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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 26/97; Case 11.142
Session:	Ninty-Seventh Regular Session (29 September – 17 October 1997)
Title/Style of Cause:	Arturo Ribon Avilan, Yolanda Guzman Ortiz, Martin Quintero Santana, Luis Antonio Huertas Puerto, Isabel Cristina Munoz Duarte, Jose Alberto Aguirre Gutierrez, Jesus Fernando Fajardo Cifuentes, Francisca Irene Rodriguez Mendoza, Javier Bejarano, Jose Alfonso Porras Gil and Hernando Cruz Herrera v. Colombia
Doc. Type:	Report
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Dr. Oscar Lujan Fappiano, Dean Claudio Grossman. Commissioner Alvaro Tirado Mejia, a Colombian national, did not participate in the consideration and vote on this report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated:	30 September 1997
Citation:	Ribon Avilan v. Colombia, Case 11.142, Inter-Am. C.H.R., Report No. 26/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
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1. This case addresses the circumstances related to the death of Arturo Ribón Avilán and 10 others, as the result of the armed confrontation between members of the Army, the Departamento Administrativo de Seguridad (DAS), the Police, and the Sijin (Police Intelligence, F-2) of the Republic of Colombia (the "State", "Colombia" or the "Colombian State") and members of the armed dissident group the M-19. According to the petition, on September 30, 1985, a command of the M-19 movement took over a milk truck in the San Martín de Loba neighborhood in the south of Bogotá, and began to distribute milk. While the M-19 members were still distributing the milk, the area was cordoned off by members of the Army, the DAS, the Police, and Sijin in a joint operation that included the participation of no less than 500 men. The M-19 members fled in three different directions and were pursued by the state agents, resulting in armed episodes in three different neighborhoods.

## I. THE PETITION

2. As a result of the incidents of September 30, 1985, according to the petition, a total of 11 persons were the victims of extrajudicial executions while defenseless. One of the victims (Javier Bejarano) was a passenger on a bus and had nothing to do with the M-19 or with the milk truck incident. He was killed by a member of the police; his brother survived despite his wounds and is one of the eyewitnesses.

3. The petitioners allege that the Colombian State has violated the American Convention on Human Rights (the "Convention" or the "American Convention"), as extrajudicial executions constitute a violation of the right to life set forth in Article 4 of the Convention, and of the right to humane treatment provided for in Article 5. Likewise, it is alleged that Articles 8 and 25 were violated since the victims were denied the right to judicial protection. In addition, the petitioners allege that the Colombian State has not undertaken a serious investigation into the facts, leading to an effective remedy for the victims' next of kin and to the trial of the state agents responsible for the events.

A. The victims

4. On February 17, 1993, the Inter-American Commission on Human Rights (the "Commission") received a petition on behalf of the following persons who were victims of extrajudicial executions as a result of the above-mentioned operation:

- (1) Arturo Ribón Avilán, 27 years old, identity card number 19,319,468, student;
- (2) Yolanda Guzmán Ortiz, 23 years old, identity card number 51,699,254, student;
- (3) Martín Quintero Santana, 23 years old, identity card number 79,399,118, student;
- (4) Luis Antonio Huertas Puerto, 23 years old, identity card number 11,450,475, single;
- (5) Isabel Cristina Muñoz Duarte, 23 years old, identity card number 39,535,391, student;
- (6) José Alberto Aguirre Gutiérrez, 19 years old, student;
- (7) Jesús Fernando Fajardo Cifuentes, 23 years old, student;
- (8) Francisca Irene Rodríguez Mendoza, 22 years old, identity card number 41,734,680, teacher;
- (9) Javier Bejarano, 19 years old, identity card number 80,267,804, worker;
- (10) José Alfonso Porras Gil, 19 years old, identify card number 79,391,701, worker;
- (11) Hernando Cruz Herrera, 23 years old, identity card number 19,494,422, student.

B. The three specific cases

5. The circumstances of the time, manner, and place where the victims were assassinated, according to the petition, are as follows:

1. Diana Turbay neighborhood

Execution of Javier Bejarano, José Alberto Aguirre, Jesús Fernando Fajardo Cifuentes, and Francisca Irene Rodríguez Mendoza

6. Javier Bejarano, José Alberto Aguirre, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, and Leonardo Bejarano were riding a public transport mini-bus in the Diana Turbay neighborhood, in the southeastern sector of Bogotá, which borders the neighborhoods of Bochica and San Martín de Loba. It was approximately 8:30 a.m. on September 30, 1985, when Sijin agent José Manuel Cristancho Romero boarded the vehicle in which some 12 passengers were travelling, brandished a firearm, and ordered everyone to stay still. At that moment one of the occupants of the mini-bus, whose identity remains unknown, set

off an explosive device. Simultaneously, agent Cristancho began to shoot at the passengers who were at the rear, where the five victims were seated.

7. Leonardo Bejarano, the survivor, recounts: "... they threw something forward and then it exploded..., my brother threw himself to the left under a seat, and shouted at me 'get down, get down León,' and I threw myself on top of him, and that's when they started shooting everywhere, shooting from outside, and so I was going to exit through a window and the man from the F-2 was aiming at me, so I went back and crouched down beside my brother, and there was a hole to the rear under the seat; the man from the F-2 began to shoot against the three people who were at our feet; the weapon he was firing was one of those large ones, like an angle iron...."

8. Leonardo Bejarano, the survivor, also narrated the circumstances in which he was wounded and in which Javier Bejarano was assassinated: "... I put my head down and stayed there crouched down, that's when someone, I don't know who, came up, I looked at him, and that's when they shot me the first time ... I dragged myself aside and stayed there with my head supported by my brother's feet, blood flowing out of my mouth, then more men from the F-2 got on the bus with radios, and they said 'my captain, they're all dead, there are no wounded survivors,' then they came near us again, and since they had not wounded my brother they shot him ... that's when they saw that I was alive, and he told me 'that son of a bitch isn't dead,' and he took out his weapon and shot me again...."

9. The expert ballistics exam contains the following information with respect to these executions: the corpses of Javier Bejarano and Francisca Irene Rodríguez each had just one gunshot wound, without tattooing. The corpse of Jesús Fernando Fajardo had only one gunshot wound with positive tattooing, and the corpse of José Alberto Aguirre had two gunshot wounds, both with positive tattooing.

## 2. Bochica neighborhood

### Execution of Isabel Cristina Muñoz Duarte

10. Isabel Cristina, a young woman and member of the M-19, managed to escape from the San Martín de Loba neighborhood, where the M-19 command was distributing milk to the inhabitants of the area, to the Bochica neighborhood, which is contiguous to San Martín de Loba. There she was completely surrounded by armed personnel and intelligence agents. She tried to take refuge in the house of Mélida Quintero, as the door was open. There she sought help from Mrs. Quintero, who went to the roof of her house to speak with the police who were in the terraces of all the houses in the area. They told her the young woman who was in her house should surrender and that they would respect her life. Isabel Cristina walked out of Mélida Quintero's house with her hands up and immediately cast aside the revolver she was carrying. At that moment she was shot by members of the armed forces. Seven gunshot wounds caused by the projectiles were found in her body.

11. One of the eyewitnesses, Mr. Henry Iván Zárate, narrated in his declaration: "... the woman came up from behind the mound of sand ... about three meters away ... with her hands up, and holding the revolver, which she let go of as soon as she got up; at that same moment they

began to shoot at her and she shouted and fell to the ground. Immediately an agent came running from the main avenue, then someone shouted, 'we have to kill that bitch,' and then the police began to come from all sides, appearing atop the houses, and searching everywhere.... After that they left two agents from the motorcycle unit in charge of the corpse, and the others left; they didn't let anyone leave the houses nor look out the windows; more shots could be heard in other streets...."

#### Execution of Arturo Ribón Avilán and Yolanda Guzmán Ortiz

12. On the morning of September 30, 1985, Arturo Ribón and Yolanda Guzmán were executed in the Bochica neighborhood. Mrs. Blanca Lilia Páez de Barahona saw the two youths running, followed by the police, at the corner of block 4 of Calle 48P sur and Carrera 5. Later, she could only hear the noise of the shots.

13. Lieutenant Jaime Gallo narrated, in his account, that he had shot Ribón Avilán: "... he began to fire at me, I think I had a 9 mm submachine gun and I opened fire towards where the subject was who was shooting at me, and after an exchange of shots the subject was killed.... He was about 15 meters away...."

14. The expert exam specified that Arturo Ribón had eight gunshot wounds, three of which were from a distance of less than one meter, which flatly contradicts the testimony that Ribón Avilán was killed in combat.

15. With respect to the death of Yolanda Guzmán, the same officer indicated in his declaration: "... she was killed by uniformed personnel when they engaged in an exchange of fire with the subject I cited first; at that moment just as the woman was going by, the uniformed personnel opened fire on her, I don't know if there was civilian personnel or perhaps from Sijin, I don't know if projectiles from my weapon hit her, since she ran towards the turn ... this girl died near where the first individual died, and is different from the girl who came out of the house...."

16. Yolanda's corpse had 10 gunshot wounds caused by the projectile from the firearm. According to the ballistics exam, three shots were fired from less than one meter (tattooing positive).

17. The two youths were left dead at the corner of block 4 of Calle 48P sur and Carrera 5 in Bogotá, near the place towards which Blanca Lilia Páez saw them running.

#### Execution of Martín Quintero Santana and Luis Antonio Huertas Puerto

18. These two youths were walking in the Bochica neighborhood in the midst of the operation at about 9:00 to 9:30 a.m. on September 30, 1985. At that time a plainclothes agent, pointing out the two youths, shouted to the other members of the police present, "it's them." Immediately, the plainclothes policeman, wearing an F-2 armband, ordered the youths to throw themselves to the ground, where they were beaten by the members of the police who were present. After hitting them, the plainclothesman opened fire on the defenseless youths.

19. According to the testimony of eyewitness José Alvaro Ramírez Delgado, "then a civilian agent told the other agents, who were in uniform, 'out of the way,' and he began to shoot the persons on the ground, with a machine gun. They did not resist and remained still, and the agent shot several times.... One of them, who was on the ground, died instantly, the other was still alive and lifted his head to see how his companion was. Immediately a uniformed agent shot the one on the ground several times and he died instantly.... Afterwards, all the agents came forward to see if they were dead, and the first one to have shot kicked them several times to see if they were still alive."

20. A total of nine projectiles were found in the corpse of Martín Quintero, five with indications that they were shot from less than one meter. The corpse of Luis Antonio had 10 gunshot wounds, four of which were from close range.

### 3. Municipality of Usme

#### Execution of José Alfonso Porras Gil and Hernando Cruz Herrera

21. José Alfonso and Hernando were executed in the rural district of Los Soches in the municipality of Usme. None of the eyewitnesses made any statement to the officials who investigated this crime.

22. The members of the police who participated in the execution of these youths stated that they had been "killed in combat" during a confrontation. Nonetheless, the expert ballistics exam refuted these accounts, as it was determined that José Alfonso Porras had eight gunshot wounds, five of which were from a distance of less than one meter. Similarly, it was found that the corpse of Hernando Cruz had eight gunshot wounds, five of which had been shot from less than one meter.

### C. Invocation of domestic remedies and alleged denial of justice due to impunity

23. The petition included information indicating that three criminal proceedings were initiated as a result of the execution of the 11 persons mentioned which were investigated by the High Command of the Metropolitan Police Department of Bogotá, as follows:

24. First proceeding: José Alberto Aguirre, Jesús Fernando Fajardo Cifuentes and Francisca Irene Rodríguez and the wounds inflicted on Leonard Bejarano, for the execution of Javier Bejarano, a military criminal proceeding was initiated against Sijin agent José Manuel Cristancho. This proceeding concluded with the discontinuance of the proceeding in favor of the accused, as the Commander of the Police Department of Bogotá who had directed the operation and served as trial judge considered that the grounds were lacking to convene a court martial proceeding against Cristancho. This decision, handed down on March 6, 1987, was confirmed by the Superior Military Tribunal.

25. Second proceeding: The executions of Martín Quintero, Luis Antonio Huertas Puerto, Arturo Ribón, Yolanda Guzmán, and María Cristina Muñoz led to the second proceeding before the military criminal jurisdiction against Lieutenant Jaime Gallo Zuleta and other police agents.

This process, in which the commander of the operation also served as trial judge, concluded with the discontinuance of the proceedings, benefitting the accused; the decision was handed down in April 1988.

26. Third proceeding: A third criminal proceeding under the Commander of the Police Department of Bogotá was brought for the executions of Hernando Cruz Herrera and José Alfonso Porras Gil. Implicated in this proceeding were Captain Josué Velandia Niño, Lieutenant Edgar Armando Mariño Pinzón, second lieutenants Luis Joaquín Camacho Sarmiento and Raúl Rondón Castillo, second corporals Henry Fernández Castellanos and Denis Alirio Cuadros Vargas, and agents Olivo Jaime Vega, Durlandy Rojas Caviedes, Pedro Miguel Martínez, and Hugo Vargas Martínez. This proceeding, like the two previous ones, concluded with its discontinuance, proffered May 5, 1988, benefitting all of the accused. The Superior Military Tribunal, in a ruling of October 3, 1988, upheld the decision.

27. The Office of the Procurator General (Procuraduría General de la Nación)[FN1] initiated an administrative disciplinary proceeding that has evolved as follows.

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[FN1] The Office of the Procurator General (Procuraduría General de la Nación) is an oversight body of the Colombian State that operates within the Public Ministry (Ministerio Público), and which has jurisdiction to adopt disciplinary decisions regarding state agents.  
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28. On October 1, 1985, the Procurator General of the Nation set up a special commission to carry out a disciplinary investigation into the events that occurred in the southeastern neighborhoods the previous day. The commission took statements from some eyewitnesses, and on October 18, 1985, reported to the Procurator General indicating that "there were excesses on the part of the police corps involved in the operation ... which may entail a disciplinary violation without prejudice to the respective criminal action.... As regards attributing disciplinary responsibility individually, while it is true that the persons who fired were members of the National Police, it was not possible to specify who fired, considering that 246 members of the National Police were involved in the operation...."

29. On December 27, 1985, the Procurator General ordered the First Procurator-Delegate for Criminal Matters to initiate the "appropriate disciplinary inquiry."

30. On January 29, 1986, the Procurator Delegate for Judicial Oversight, who the month before had been First Procurator-Delegate for Criminal Matters, refused to carry out the order of the Procurator General as he considered that "... there is no serious and respectable basis for initiating a disciplinary inquiry...."

31. By act of September 23, 1986, the Procurator General rejected the argument of his subordinate and ruled that the disciplinary proceeding should be opened; he ordered that evidence be taken, to which end he commissioned the Third Procurator-Delegate for Criminal Matters.

32. On November 12, 1986, the Third Procurator-Delegate for Criminal Matters gave a report on his efforts, indicating that it had been impossible to fully carry out the job with which he was entrusted, as the High Command of the Bogotá Police had delayed in providing information: "... it can be observed by reading the notes sent by the Delegate and the responses the neglect with which our requests were received; it was necessary to insist on complementary information, which is basic for this matter, some of which has not been provided efficiently and promptly.... It should be noted that the Office of the Procurator-Delegate has found absolute neglect as regards disciplinary and procedural review in the criminal proceedings handled by the Office of the Auxiliary and Principal Judge Advocate."

33. The Office of the Procurator-Delegate for the National Police, where the proceedings were referred, filed charges against 13 persons on January 20, 1989.

34. On October 3, 1990, the Office of the Procurator-Delegate for the National Police declared the disciplinary action had prescribed and ordered the proceedings closed, because "more than five years had elapsed since the date of the events."

35. The petitioners suggest that the celerity of the decision on prescription--just two days after the fifth anniversary of the events--be contrasted with the delay in the disciplinary proceeding that helped the crime go unpunished.

36. According to the petition, the existence of the military court jurisdiction in Colombia results in crimes committed by members of the armed forces being judged by military courts when they are service-related. On more than a few occasions the judge in the case is the very officer who ordered the operation, as occurred in the three military criminal proceedings referred to, ruled on by the Police Commander of Bogotá, who was in charge of the operation pursuant to which the massacre took place.

37. Furthermore, according to the provisions of the code of military criminal procedure, neither the victims nor their next of kin may be party to the proceedings before the military criminal courts; this is a legal impediment to their access to justice, and to the exhaustion of domestic remedies.

38. The petitioners argue that in this case the Colombian State did not provide the victims' next of kin with effective judicial remedies. To the contrary, by law it was impossible for them to participate in the judicial proceedings, thereby giving rise to a new violation.

39. The petitioners argue that the establishment by the Constitution of the military jurisdiction, the fact that the person making the judicial decision was the commander of the operation, and the legal impossibility of the victims' next of kin being party to the proceedings bring this case under the provisions of Article 46(2) of the American Convention, insofar as the domestic remedies were completely ineffective for protecting the victims' rights.

## II. PROCESSING OF THE CASE BEFORE THE COMMISSION

### A. The initial processing

40. Once the petition was received, and without pre-judging its admissibility, in a communication of April 12, 1993, the Commission forwarded the pertinent parts to the Colombian State, requesting that it provide information.

41. On October 28, 1993, the petitioners sent the Commission a copy of the ruling of the Administrative Tribunal of Cundinamarca[FN2] of June 3, 1993, which rules on the service-related breach (falla del servicio) of the police forces and orders the payment of damages for pain and suffering for the death of Arturo Ribón Avilán, José Alfonso Porras Gil, Javier Bejarano, and Isabel Cristina Muñoz Duarte.

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[FN2] The administrative tribunals are part of the contentious-administrative jurisdiction in Colombia. The contentious-administrative jurisdiction is instituted by the Constitution to try administrative disputes and litigation arising from the acts of public agents and entities. It is a legal proceeding by which Colombian citizens can seek compensation for the violation of a right by state agents.  
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42. The Administrative Tribunal declared that there was administrative liability on the part of the Colombian State (Ministry of Defense/National Police) for the deaths which occurred on September 30, 1985, in the city of Bogotá.

43. A copy of the decision was forwarded by the Commission to the Colombian State on December 15, 1993, with a reiteration of the request of April 12, 1993, to the State to provide information on the case. The Commission reiterated its request for information to the Colombian State for the third time on July 15, 1994.

B. The answer of the Colombian State

44. In a note of August 24, 1994, the Colombian State provided its answer, reporting on the status of the domestic proceedings in this case. The State noted that on October 3, 1990, as more than five years had elapsed since the date of the events that gave rise to the investigation, pursuant to the provisions of Article 12, Law 25 of 1974, the Procurator General of the Nation decided to declare the disciplinary action to have prescribed and therefore ordered the investigation to be closed.

45. In view of the foregoing, the Office of the Presidential Adviser for the Defense, Promotion, and Protection of Human Rights inquired of the Office of the Procurator-Delegate for the National Police as to the possibility of carrying out an investigation to determine the possible negligence of the officers in charge of the disciplinary case.

46. The Office of the Procurator-Delegate for the National Police, pursuant to the request of the Presidential Adviser, appointed an attorney to review the record. That lawyer concluded that the officials in charge of the proceeding after March 1989 might face disciplinary liability for failure to carry out the duties of public officers and employees set forth at Article 158(3) of



Decree 1660 of 1978, considering that the term for initiating a disciplinary action with respect to those involved in the case before that time would have prescribed.

47. The State reported that the next of kin of Arturo Ribón Avilán, Isabel Cristina Muñoz Duarte, Javier Bejarano, and José Alfonso Porras Gil, in the exercise of the judicial remedies available to them in the domestic jurisdiction, brought an action against the Nation before the Administrative Tribunal of Cundinamarca.

48. The various actions were submitted separately to the contentious-administrative jurisdiction in these four cases. To guarantee the petitioners prompt administration of justice, the Administrative Tribunal of Cundinamarca joined these proceedings on June 7, 1988.

49. The case was sent to the prosecutor before the contentious-administrative jurisdiction for his opinion on September 6, 1991, and was sent back in March 1993. That opinion affirms that the police committed excesses in attempting to counter the action of the M-19. Therefore, the facts made out a case of what in the jurisprudence is known as a falla del servicio (a service-related breach) causing serious injury to the petitioners. Consequently, it was deemed that an action could be brought for direct reparations.

50. The State noted that it is especially important to consider that the administrative judge, analyzing the testimony offered in evidence in the military criminal proceedings that were brought in this case and that culminated with the discontinuance of the proceedings, benefiting the accused, had a different assessment. The key reason behind the administrative judge's decision to reject the criminal decisions derives from the different characterization of the evidence given by an administrative judge; the immediate result of this difference is maintaining the presumption of a falla de servicio, by virtue of the use of dangerous devices, i.e. their official-issue weapons.

51. On June 3, 1993, the Administrative Tribunal of Cundinamarca ruled as follows:

The Colombian Nation is condemned to pay a sum equivalent to one thousand (1,000) grams gold for each of the petitioners, based on the price certified by the Central Bank (Banco de la República) as of the date of execution of the judgment, as compensation for pain and suffering. The Nation was not ordered to pay material damages, because it was shown in the proceeding that Mr. Avilán was not working at the time of his death, for he had ceased being an employee of the Banco Cafetero 10 months prior to his death. In the case of Mr. Bejarano, on April 15, 1985, he had left his job at Danaranjo. The Porras Gil family, in its cause of action, did not state that the deceased was working, and there was no evidence that would allow one to conclude that he had gainful employment. In the case of Muñoz Duarte, there are no bases for guaranteeing the payment of material damages, because it was proven in the proceedings that the deceased was a day student at the Universidad Nacional de Colombia, and it was not stated that she had gainful employment.

52. On October 7, 1994, the Commission transmitted the response of the Colombian State to the petitioners.

C. Petitioners' reply

53. In reply, on December 13, 1994, the petitioners submitted to the Commission a brief in which they set forth observations to the answer by the Colombian State. The petitioners note that the State does not bring forth anything new; that on stating that an attorney from the Office of the Presidential Adviser for Human Rights reached the conclusion that officials of the Office of the Procurator-Delegate for the National Police in charge of the disciplinary investigation "could be held liable for disciplinary purposes for having failed to carry out their legal duties" corroborated the petition; that this also ratifies the allegations that members of the National Police were the perpetrators of and are responsible for the extrajudicial execution of Arturo Ribón Avilán and the other 10 youths; that the Government did not specify whether a disciplinary proceeding had been brought against these officers, which was worrisome, because the action was to prescribe very soon.

54. The petitioners argued that the foregoing means that the perpetrators of the death of Arturo Ribón Avilán and the other 10 youths were not subject to any disciplinary action because the officials in charge of the disciplinary investigation allowed the action to prescribe in irregular fashion; that no disciplinary action had been initiated against those officials even though more than four years have elapsed since the investigation was closed and almost 10 years since the underlying events.

55. In addition, the petitioners indicated that the Government made no allusion to the fact that in the domestic criminal proceeding the police responsible have been acquitted definitively. As a result of all the foregoing, the extrajudicial execution of Arturo Ribón Avilán and the other 10 youths has been met by absolute impunity; and 10 years after the events, the Government has not taken any measure whatsoever to change this situation and sanction the persons responsible.

56. The petitioners argued that the contentious-administrative jurisdiction that ordered the Nation to pay compensation for the damage caused to the next of kin of the four victims is not the appropriate domestic mechanism for making reparations for the human rights violations in this case.

57. It was noted that the domestic remedy that must be exhausted is the one suitable for making full reparations for the violation committed, in respect of which the Inter-American Court of Human Rights (the "Court"), in the Velásquez Rodríguez case, noted:

A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.... A remedy must also be effective--that is, capable of producing the result for which it was designed.[FN3]

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[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paras. 64, 66.

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58. According to the petitioners, in the case of the extrajudicial execution of Arturo Ribón Avilán and the other 10 youths, the suitable domestic remedy is the criminal action, as it is in bringing criminal charges that the persons responsible for the violation can be punished, and reparation for the damage caused can be obtained. While the victims of state agents can bring an action for economic compensation for the damages caused before the contentious-administrative jurisdiction, they cannot use the proceeding to demand an investigation and punishment of the persons responsible, nor that they be named individually. Consequently, that administrative jurisdiction cannot be considered an adequate and effective remedy that must be exhausted in this case to redress for the violation.

59. The petitioners note that the compensation ordered by the contentious-administrative jurisdiction was only partial compensation, for pain and suffering, for the next of kin of four of the youths assassinated, but not, as it should have been, compensation for material damages.

60. In addition, the contentious-administrative jurisdiction ordered the state to pay damages for pain and suffering to the next of kin of four of the youths assassinated, but not for the next of kin of the other seven youths executed--Yolanda Guzmán Ortiz, Martín Quintero Santana, Luis Antonio Huertas Puerto, José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, and Hernando Cruz Herrera--in respect of whom compensation has not been made even for pain and suffering, because the action for direct reparations that could benefit them already prescribed, according to the provisions of the Colombian Contentious-Administrative Code. This means that the next of kin of seven of the youths assassinated have not been paid compensation, and that the next of kin of four of the youths received only partial compensation, to cover damages for pain and suffering.

61. Based on the foregoing, the petitioners concluded: (1) that the perpetrators of the deaths of those persons mentioned in the petition were definitively acquitted by the military criminal jurisdiction, without the Colombian State adopting measures aimed at keeping this crime from remaining in total impunity to this day, 10 years after the facts; that therefore, the domestic remedies are fully exhausted; (2) that the economic compensation ordered by the contentious-administrative jurisdiction constitutes only partial and meager compensation to the next of kin of four of the youths assassinated, leaving the next of kin of the other seven youths who suffered extrajudicial executions with no economic compensation; and (3) that the information provided by the State indicating that the officials from the Office of the Procurator General who discontinued the disciplinary action related to these events "could be found liable in the disciplinary jurisdiction for having failed" to fulfill their legal duties, corroborated the petition, as it confirms that the victims' rights were violated not only in relation to the right to life and personal integrity, but also in relation to their right to justice, since the case was protected by total impunity, even in the disciplinary sphere.

62. This brief of the petitioners was provided to the Colombian State in a note of January 3, 1995.

D. Hearing

63. On January 12, 1995, the petitioners asked the Commission to hold a hearing in the case. The Commission, in a note of January 19, 1995, wrote the petitioners, granting them the hearing requested.

64. The hearing was held on February 3, 1995, during the 88th Regular Session of the Commission, and both parties had an opportunity to present a summary of their arguments. The petitioners referred once again to the facts and to the status of the domestic remedies, and asked that the liability of the Colombian State be declared, and that it be required to take urgent measures to protect the life of Mr. Jorge Enrique García Londoño, the surviving witness to the events, who had been followed and threatened since November 1994.

E. Precautionary measures

65. The Colombian State, in a communication dated February 24, 1995, sent the Commission information related to the adoption of measures aimed at protecting Mr. Jorge Enrique García Londoño, and reported as follows:

I take this opportunity to inform Your Excellency that this Office has communicated to the Office of the Presidential Adviser for Human Rights, the Office of the Attorney General, and the Departamento Administrativo de Seguridad (DAS) as to the situation, so that measures are taken aimed at protecting Mr. JORGE ENRIQUE GARCÍA LONDOÑO. Once we obtain the responses from those entities, we shall communicate the results of such initiatives to the Honorable Commission.

66. In a note of March 16, 1995, the Commission forwarded to the petitioners the response from the Colombian State and asked that they forward their observations within 45 days.

67. On April 24, 1995, the petitioners sent their observations to the response from the Colombian State; they supplemented the information provided by the Colombian State with respect to the measures to protect Mr. Jorge Enrique García Londoño,[FN4] they insisted that the extrajudicial executions of 11 persons by agents of the Colombian State was proven by testimonial and expert evidence, and that the Colombian State at no time denied that state agents, in this case members of the National Police, were the perpetrators of the extrajudicial execution of the 11 youths and that, against the weight of the evidence, the members of the National Police who perpetrated the extrajudicial executions were acquitted definitively by the judges of the military criminal justice system.

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[FN4] It was reported that DAS officials met with Jorge García on March 15 to make an initial assessment of the risk to him. In that meeting the DAS officials recognized that the situation described by Mr. Jorge García was delicate and merited immediate measures. The DAS officials announced the initiation of a risk analysis so as to submit a final report to the director of DAS with the pertinent recommendations. Nonetheless, Mr. Jorge García had not been notified of the results of the risk evaluation that the DAS officers were going to undertake, nor what recommendations had been made to adopt the measures to guarantee the life and integrity of Mr. García, nor had the DAS officials spoken with Mr. Jorge García since that meeting.

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68. The brief with the petitioners' observations was transmitted by the Commission to the Colombian State in a note of May 15, 1995.

69. The Colombian State sent the Commission information on the case in a communication of June 28, 1995. In that communication the Colombian State reported that according to a letter from the Director of Protection of the DAS to the Office of the Presidential Adviser for Human Rights:

Based on the results of the technical study on the level of risk and degree of threats against Mr. JORGE ENRIQUE GARCÍA LONDOÑO, it is concluded that, at present, he does not merit special security treatment by this Office.

70. In addition, the Colombian State reported that the disciplinary investigation, which was carried out in due course by the Office of the Procurator-Delegate for the National Police had concluded with the prescription of the action, when five years had elapsed since the events in question; that the Inspector-General of the Office of the Procurator General of the Nation was carrying out a preliminary inquiry, as case 030-0065/95, into the officials who were in charge of that investigation for alleged failure to perform the duties indicated in decree 1660 of 1978.

71. The Commission, in a note of July 11, 1995, transmitted the pertinent parts of the communication from the Colombian State to the petitioners.

F. Additional observations by the petitioners

72. The petitioners sent the Commission their observations in a letter dated July 31, 1995, stating in respect of the facts alleged and the responsibility of the state agents who committed them that the Colombian State had not taken any measures aimed at modifying the situation of impunity; that to the contrary, all the officials who participated in the extrajudicial execution of the 11 youths were promoted after the events; that several remained on active duty in the National Police, which they substantiated with the certifications issued by the Chief of the Unit of Officers of the National Police, Major Luis Antonio Montaña Mendoza; that acquitting the agents responsible and promoting them contrasted with the decision of the courts of the contentious-administrative jurisdiction.

73. The petitioners further indicated that the judgment of the Administrative Tribunal of Cundinamarca of June 3, 1993, which ordered the Colombian State to pay compensation for damages in the form of pain and suffering to the next of kin of the youths executed, which was upheld by the Council of State on December 14, 1993, concludes: "It is shown that they were killed by the National Police." It is also noted that the Tribunal concluded that: "Most of the persons named were killed by shots fired from short range. The microscopic exam of samples done by the National Police yield a positive result for gunpowder residue, thereby showing that they were shot by projectiles from distances of less than one meter...."

74. The petitioners underscore that the same evidence on participation and responsibility analyzed in the criminal investigation and inexplicably dismissed by the military criminal judges, who opted to absolve the members of the National Police, were the basis for the decision of the administrative tribunals declaring the state's responsibility and ordering economic compensation as damages for pain and suffering for the next of kin of four of the victims.

75. The petitioners added that the preliminary inquiry by the Inspector-General of the Office of the Procurator General of the Nation into the officials who were in charge of the disciplinary inquiry and failed to bring disciplinary sanctions against the members of the National Police who perpetrated the act and let the action prescribe is clear evidence that in the course of this process irregularities were committed that also facilitated disciplinary impunity; and that to date there was no information on any criminal investigation into these same officials for the offenses they have committed by allowing, furthering, and facilitating the prescription of the preliminary inquiry.

G. Additional observations by the Colombian State

76. On December 1, 1995, the Colombian State responded, stating as follows.

77. **ON THE PAYMENT OF COMPENSATION:** It is not proper to make reparations for damages caused by state agents in the performance of their public functions outside of the contentious-administrative action; that the payment of the compensation determined by the Council of State to the next of kin of four of the 11 victims, as the result of bringing a contentious-administrative action, has already been made. In cases such as these, the State cannot step in to recognize and pay compensation not ordered in an administrative judgment of liability; that those who seek compensation should do so lawfully.

78. **ON THE FAILURE TO PROTECT THE WITNESSES:** The State cannot accede to these petitions without evaluating the real need and justification for the request put to the DAS, the government agency responsible, for an evaluation of the protective measures. Once the study on risk and degree of threat were completed, no special protective measures were deemed merited, and so protection cannot be granted.

79. **THE INVESTIGATIONS:** Three investigations were carried out by the military criminal justice system, though the facts that gave rise to the confrontations were the same: (1) the takeover of a milk truck; and (2) the attack to which two members of the police fell victim. Those confrontations took place in different places and circumstances, since the members of the guerrilla group dispersed, covering a large area in the southern sector of Bogotá. A military criminal investigation was initiated for each episode.

80. The case before the 27th Court of Military Criminal Investigation addressed the events relating to the death of Martín Quintero Santana, Luis Antonio Huertas Puerto, Isabel Cristina Muñoz Duarte, Arturo Ribón Avilán, and Yolanda Guzmán Ortiz, which occurred in the Bochica neighborhood. It concluded on March 11, 1988, with the discontinuance of the proceedings, as it was shown that grounds existed, i.e. legitimate defense, that rule out the possibility of unlawful action. Based on the declarations by the Police, the investigation established that one of the

subversives, armed with a revolver and a fragmentation grenade, entered a residence in the sector. The Police surrounded the residence and urged her to come out. The woman came out armed, apparently shooting, and at that moment was killed. An inhabitant of the residence where she had hidden stated that she realized that they were carrying firearms, they said they were M-19 guerrillas; a woman entered her residence and asked her daughter for a change of clothes; that the subversive left the residence, bearing a firearm, and, it appears, was shot at that moment. In a near-by location four others were killed who attacked the members of the National Police with firearms. The Military Criminal Court considered that legitimate defense was shown; as the subversives attacked the members of the police with firearms, they were obligated to respond to the attack to protect not only their own lives, but the safety of the members of the community. When the judgment was reviewed by the Superior Military Tribunal, it was affirmed on June 24, 1988. Apart from legitimate defense, that Court found additional justifications: the grounds of performance of duty, defense of their own lives, and safeguarding the interests of society, as imposed by the Constitution; that they were inclined to resist and repel an imminent and unjust attack that endangered their lives and personal integrity, and that only by the use of their official-issue weapons could they counter the attack.

81. The case before the 58th Court of Military Criminal Investigation addressed the second episode, which occurred in the Bachué neighborhood of Bogotá, in which Jesús Fernando Fajardo Cifuentes, Francisco Rodríguez Mendoza, Javier Bejarano Rodríguez, and José Alberto Aguirre Gutiérrez were killed and Leonardo Bejarano was wounded. By judgment of March 6, 1987, the proceeding was discontinued, benefitting police officer José Manuel Cristancho Romero, as it was deemed that legitimate defense was shown as grounds to rule out unlawful action. After the milk was distributed, four subversives boarded a public transport vehicle (a mini-bus) in the Bachué neighborhood. According to the driver, they sat at the rear. Immediately thereafter a policeman boarded and proceeded to take aim at the persons who were in the back seats, asking that he be driven to the nearest police station. The persons at whom he was aiming stated that he was a thief and was going to assault them. The driver, looking into the rear view mirror, saw that one of them was removing an object from a package and threw it at the policeman, causing a violent explosion. He was forced to throw himself out of one of the windows of the vehicle, and the policeman used his weapon and shot five people. In this case, as well, legitimate defense was deemed to have been shown. On November 9, 1987, the Superior Military Tribunal, on reviewing the judgment, reached the same conclusion and confirmed the discontinuance of the proceedings.

82. The case before the 78th Court of Military Criminal Investigation addressed the incident that occurred after the distribution of the milk in the La Aurora neighborhood, on the highway to Villavicencio, where Hernando Cruz Herrera and José Alfonso Porras Gil were killed. The judge decreed the discontinuance of the proceeding on May 5, 1988, on grounds of legitimate defense; this decision was confirmed by the Military Superior Tribunal on October 3, 1988. After the events these individuals fled in a Toyota vehicle. When they saw they were being pursued by a Police patrol they opened fire on its occupants, who were forced to repel the attack, with the results mentioned above. One of the subversives managed to escape in the Toyota; a revolver and M-19 insignias were found on those who were killed.

83. CONSIDERATIONS AS TO THE INVESTIGATIONS: The Colombian State asks that the following considerations, which, the governmental note clarifies, are put forth by the military judicial authorities, be taken into account: (1) that it was fully shown that there was a confrontation caused by subversives from the M-19 who were armed with revolvers and fragmentation grenades; that they attacked the police who tried to stop them from taking control of the milk truck, thereby causing terror in the population; (2) that contrary to what the petitioner stated, it is not possible to deduce, without more, that the presence of the tattooing necessarily implies a state of defenselessness, but simply that the victim was at a distance of less than 120 cm from the weapon fired, which in itself does not necessarily mean the persons shot were defenseless; (3) that the subversives were urged to surrender before being shot down, and far from heeding these words, they responded by shooting, like the woman who went into the house; that those who boarded the public transport vehicle to arrest the guerrillas responded after a fragmentation grenade was thrown at them; that the same happened to those who took over the milk truck who, when they realized the police were there, far from abandoning their criminal action, responded by use of their firearms, and instead of stopping and surrendering fired on the authorities.

84. It was argued that in none of the four episodes did the police begin firing, but rather that it was the subversives; that when the milk truck was taken over, two police were seriously wounded; that the police could not have begun to shoot because the guerrillas were mixed in with the population, and so the Police fired only at those who fired at them; that at no time was it denied that the deaths were caused by the members of the police, but it is clarified that the events occurred in an armed confrontation and were justified; that the judicial decision to discontinue the proceedings and not punish the accused cannot be considered impunity, since they were exonerated based on the legal principle of the presumption of innocence; that while the judicial officer established that the identity of those who had engaged in the conduct had been proven, it had also been proven that the conduct had occurred in a justified fashion, such that there was no unlawful conduct, which is a necessary requisite for finding criminal liability.

#### H. Petitioners' final observations

85. On February 5, 1996, the petitioners answered the arguments of the Colombian State as follows: that the State presents a summary of the military proceedings in an effort to show that the military judges acted in accordance with the actual facts and with the requirements of due process, that they took account of the evidence provided, and that they ruled in accordance with justice by closing the cases based on the principle of legitimate defense.

86. The petitioners argued that the State's arguments were baseless because the facts were not as described by the accused, whose testimony is the only testimony taken into account, but rather as narrated by the independent witnesses who witnessed the events, whose statements were taken into consideration by the Office of the Procurator General and the Administrative Tribunal, which reached a completely different conclusion.

87. The petitioners noted that Martín Quintero Santana and Luis Antonio Huertas Puerto had not previously attacked the Police; that once detained they put up no resistance, nor did they brandish any weapon, nor did they make use of the grenade that one of them was carrying; that



they were beaten while on the ground and that while defenseless they were shot and finished off; that the Police did not act in a situation of legitimate defense, nor were the deceased killed in combat; that the Police should have arrested them without mistreatment and brought them before a judge instead of mistreating them and executing them extrajudicially, conduct which constitutes a violation of human rights.

88. The petitioners added that Isabel Cristina Muñoz surrendered and threw down the revolver she had to surrender to the police, and at that precise moment they shot her, and then they finished her off while she lay wounded on the ground; that they should have arrested her without mistreating her and immediately turned her over to the judicial authority instead of executing her extrajudicially.

89. According to the communication from the petitioners, in relation to the incident on the public transport bus, after one of the M-19 guerrillas threw the explosive device, the police shot the victims, without their putting up new resistance, and then proceeded to finish them off; that the police shot Javier Bejarano when they realized he was alive because he shouted that his brother was wounded; that the police tried to finish off Leonardo Bejarano but did not succeed; that instead of killing them the Police should have arrested José Alberto Aguirre, Jesús Fernando Fajardo Cifuentes, and Francisca Irene Rodríguez Mendoza, probably guerrillas, taken them to a clinic or hospital and turned them over to the competent judicial authority; that if they believed that the Bejarano brothers were members of the M-19, they should have brought them before the competent authorities instead of causing harm to their personal integrity.

90. The petitioners underscored, in addition, the results of the expert ballistic exams on the bodies of Martín Quintero Santana (nine gunshot wounds, five with tattooing); Luis Antonio Huertas Puerto (10 gunshot wounds, four with tattooing); Yolanda Guzmán (10 gunshot wounds, three with tattooing); Arturo Ribón (eight gunshot wounds, three with tattooing); Isabel Cristina Muñoz (seven gunshot wounds, no tattooing found); José A. Aguirre (two gunshot wounds, both with tattooing); Jesús Fajardo (one gunshot wound with tattooing); Francisca Rodríguez (one gunshot wound without tattooing); Javier Bejarano (one gunshot wound without tattooing); José Porras Gil (seven gunshot wounds, six with tattooing); and Hernando Cruz Herrera (eight gunshot wounds, five with tattooing).

91. It was pointed out that this ballistics report led the Procurator-Delegate for the National Police to conclude that in the cases of Martín Quintero Santana, Luis Antonio Huertas Puerto, and Isabel Cristina Muñoz Duarte, it was clear that there had been excesses on the part of the police corps involved in the operation, a probable violation of the rules of the Police Disciplinary Statute, and a possible criminal action; likewise in the cases of José Porras Gil and Hernando Cruz Herrera.

92. Based on the expert ballistics exams and other considerations, the Administrative Tribunal ruling of June 3, 1993, ordered the Colombian State to pay compensation to the next of kin of Javier Bejarano, Arturo Ribón Avilán, José Alfonso Porras Gil, and Isabel Cristina Muñoz Duarte, most of whom died from shots fired from distances of less than one meter.

93. According to the petitioners, the Colombian State cannot deny evidence accepted and weighed by two different Colombian authorities, the Office of the Procurator General and the contentious-administrative jurisdiction. They noted that the Administrative Tribunal, on referring to the judgment of the military criminal judge who acquitted the police officers in the deaths of José Alfonso Porras Gil and Hernando Cruz Herrera, rejected the argument of legitimate defense, finding it squarely at odds with the facts.

94. The petitioners argued that the Colombian State relies on a different version of the facts, presented by the police officers who participated in the operation, which is totally at odds with the version of the eyewitnesses, all of whom are civilian residents of the neighborhoods where the events unfolded.

95. In addition, they underscore, the investigation was carried out by the Commander of the Metropolitan Police of Bogotá, who gave the order to carry out the operation in which the 11 youths were executed and who also sat as the military criminal judge at trial, and that this destroys the credibility of the State's position when it argues (1) that "the evidence was assessed pursuant to the principles of prudent appreciation so as to eliminate the possibility of an arbitrary and unfounded decision"; (2) that "the decisions of the judicial officers were grounded in a critical and well-reasoned assessment of the evidence brought forth, which eliminates the possibility of an arbitrary decision...."

96. The petitioners refer to the fact that several eyewitnesses were never called by the military judges to give testimony, and the victims' next of kin could never have access to the investigation because no involvement of the civilian party is allowed in military criminal proceedings; consequently, they were never able to gain access to justice and to obtain a decision at criminal law based on what actually happened.

97. According to the petitioners, the case of Arturo Ribón Avilán, Yolanda Guzmán, Isabel Cristina Muñoz, Martín Quintero Santana, Luis Antonio Huertas, José A. Aguirre, Jesús Fajardo, Francisca Rodríguez, Javier Bejarano, José Porras Gil, and Hernando Cruz Herrera constituted an extrajudicial execution by members of the National Police; the perpetrators of this crime were acquitted by their own Police Commander, who served as the military criminal judge at trial; this case is an example of total impunity and the State has failed in its obligation to guarantee and respect human rights imposed by the American Convention on Human Rights.

98. The petitioners further noted that the claim for compensation by the victims' next of kin is made within a proceeding that is before the Commission under the American Convention, which guarantees this right, and that victims of the denial of justice who appeal to the Commission as a final possibility for justice, cannot be required upon the conclusion of the international proceeding, to go back to the country where justice was denied to seek the compensation to which they have a right. In this case the Colombian State cannot raise a procedure of domestic law as an obstacle to carrying out its obligation to pay compensation for the harm caused as a result of the violation of human rights.

99. They asked that the Colombian State be held liable for violations of Articles 4, 5, 8, and 25 of the American Convention on Human Rights, in conjunction with Article 1(1) of the

Convention, and that this case be forwarded to the Inter-American Court if the Colombian State does not consider the decisions of the Inter-American Commission on Human Rights to be binding.

### III. ANALYSIS

#### A. Procedure

100. In considering this case the Commission has taken into account the statements of several witnesses, provided by the petitioners, as well as the report on the ballistics exam of the corpses and the judgment of June 3, 1993, of the Administrative Tribunal of Cundinamarca. The Commission has not considered the account of the facts given by the state agents to the military courts, which at no time was offered into evidence by the State, and in respect of which the Commission has knowledge only by references made by both parties.

101. In addition, the Commission has taken into account the final arguments of the Colombian State, of December 1, 1995, in which it invokes the principle of legitimate defense. In setting forth these arguments, the State expresses: "I beg of Your Excellency to take into account that the following considerations do to constitute an analysis by the Government of the evidence taken by (military) judicial authorities. The Government cannot evaluate evidence taken by such authorities, since they have exclusive jurisdiction for this purpose."

102. The Commission has taken into account the petitioners' final arguments, of February 5, 1996, in which they ask that the legitimate defense argument not be taken into account because it comes from a judicial proceeding fraught with irregularities, in which the very commander who directed the operation in which the persons listed in the petition were killed was both judge and party; the only testimony taken into account was that of the accused, not of the eyewitnesses; and no participation or opportunity to cooperate in the investigation was offered to the victims' next of kin.

#### B. Admissibility

103. The Commission considers that as provided by Article 44 of the American Convention on Human Rights, to which Colombia has been a State party since 1973, the Commission has jurisdiction to examine the subject matter of the case as it addresses alleged violations of rights set forth in the American Convention on Human Rights, namely: Article 4, on the right to life; Article 5, on the right to humane treatment; Article 8, on the right to a fair trial; and Article 25, on the right to effective judicial protection; all in conjunction with Article 1(1) of the Convention.

104. The claim submitted to the Commission meets the formal requirements of admissibility set forth in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

105. The Commission has not received information indicating that this claim is pending in another international proceeding for settlement, nor that it is the repetition of a prior petition already examined by this body.

106. In this case all the procedures established in the American Convention on Human Rights and the Regulations of the Inter-American Commission on Human Rights have been exhausted.

C. Exhaustion of domestic remedies

107. The domestic mechanisms are fully exhausted, as provided in Article 46(1)(a) of the American Convention on Human Rights, in conjunction with Article 37(1) of the Regulations of the Inter-American Commission on Human Rights. The State itself recognizes, in one of its answers, that the appropriate remedy for addressing the human rights violations involved in this case was exhausted. It stated that "the domestic remedy for investigating and punishing the events alleged was exhausted." [FN5] The State has never argued that any additional remedy remains to be exhausted.

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[FN5] Observations by the State, December 1, 1995.  
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108. In addition, 10 years after the events, the Colombian State has yet to take effective measures aimed at keeping this crime from going entirely unpunished, which means that the exceptions to the exhaustion of domestic remedies provided for at Article 46(2) of the Convention, in conjunction with Article 37(2) of the Commission's Regulations, apply. In reaching this conclusion, the Commission considered the following:

109. Judgment of the Administrative Tribunal: The judgment of June 3, 1993, affirmed by the Council of State on December 14, 1993, ordered the Colombian State to pay compensation as damages for the pain and suffering caused to the next of kin of the victims, and establishes beyond any doubt the responsibility of the Colombian State, rejecting the defense that the actions of the members of the National Police were lawful. That judgment concludes:

It has been shown that they were killed by the National Police because (a) while the various causes of action so affirmed categorically and unequivocally, the answers evade giving a response, thereby giving rise to a serious presumption; (b) the Office of the Procurator-Delegate for the National Police brought charges for these events against members of the police; (c) the Police Department of Bogotá, Operations Command, in Report 1,196 of October 1, 1985, to the Commander of the Department, so accepted when stating that it occurred in confrontations between the M-19 and the authorities, and indicating that the following persons were killed in that operation: Arturo Ribón Avilán, Martín Quintero Santana, Luis Antonio Huertas Puerto, Isabel Cristina Muñoz Duarte, Yolanda Guzmán Ortiz, Fernando Fajardo, Francisca Irene Rodríguez, Javier Bejarano, José Alberto Aguirre, Hernando Cruz, and José Alfonso Porras Gil, and Alirio Uribe, Jorge Enrique García, Jesús Alfredo Umbarila, and Germán Alfonso Buitrago were taken into custody.

...

Most of those named were killed by gunshots fired from short range. The microscopic exams performed by the Police show a positive result for gunpowder residue, thereby showing that they were impacted by the projectiles from distances of less than one meter.

110. In this process, the contentious-administrative jurisdiction ordered economic compensation for the next of kin of four of the youths assassinated, though the compensation ordered was partial and precarious.

111. Case before the Office of the Procurator General: This proceeding shows the negligence and disinterest with which action was taken to punish the persons responsible. Evidence of this is the answer of the Colombian State on August 24, 1994, which recognizes that officials of the Office of the Procurator-Delegate for the National Police acted negligently, which could be verified through the inspection by an attorney from the Office of the Presidential Adviser for the Defense and Promotion of Human Rights, who after studying the status of the proceedings concluded by noting that those officers had failed to carry out their duties as they allowed the lapsing of the time for bringing a disciplinary action against the members of the military who perpetrated the summary executions of the persons named in the petition.

112. Report of the Procurator-Delegate for the National Police: The report by the Procurator for the Police concluded that in the cases of Martín Quintero Santana, Luis Antonio Huertas Puerto, and Isabel Cristina Muñoz Duarte, it was clear that there had been an excess on the part of the police body involved in the operation, a probable violation of the rules of the Disciplinary Statute of the Police and a possible criminal action; likewise in the cases of José Alfonso Porras Gil and Hernando Cruz Herrera.

113. The criminal cases before the military justice system: These cases evidence the serious irregularity in the fact that the judge in the military criminal investigation was also the military commander who directed the operation in which the persons were killed.

114. In addition, the Commission takes note of the fact that several of the eyewitnesses were never called to testify before the military judges and that the next of kin of the victims did not have access to the investigation because the military criminal procedure excluded the participation of the civil party. The next of kin could never request or challenge the decisions made.

115. The versions of the officials questioned were the only ones taken into account in the military courts exculpating the state agents; the versions of the residents and eyewitnesses to the facts were not considered. Consequently, the sources taken into account by the military justice system are partial; further, the person who acted as judge and party was the very commander who directed the operations that ended in the deaths of the persons mentioned in the petition.

116. The Commission notes that the same evidence as to who carried out and was responsible for the killings which was dismissed by the military criminal judges was the basis for the decisions of the administrative tribunals in declaring the State's responsibility and ordering that

economic compensation be paid to the next of kin of four of the victims, as damages for pain and suffering. The Government cannot deny evidence accepted and assessed by two authorities, the Office of the Procurator General and the Administrative Tribunal. The Commission further notes that the Administrative Tribunal, in referring to the judgment of the military criminal judge who acquitted the police officers in the death of José Alfonso Porras Gil and Hernando Cruz Herrera, rejected the argument of legitimate defense, finding it to be totally at odds with the facts.

117. These proceedings evidence the impunity enjoyed by the perpetrators of the death of Arturo Ribón Avilán and the other 10 youths, who were not subject to any punishment, but rather were acquitted definitively. In view of all these considerations, the extrajudicial execution of Arturo Ribón Avilán and the other 10 youths has met with absolute impunity, and 10 years after the events giving rise to this case, the State has not taken any measure to modify the situation and punish the perpetrators.

118. The promotions of the officers called into question: As additional evidence of the lack of justice, it should be noted, and has not been refuted by the Colombian State, that not only have no measures been taken to change the situation of impunity, but to the contrary, all the officers who participated in the extrajudicial execution of the 11 youths were promoted afterwards, and several remained on active duty in the National Police. Acquitting the agents responsible and promoting them stands in contrast with the decision taken by the courts in the contentious-administrative jurisdiction.

#### D. Friendly settlement

119. The petitioners have requested, in their briefs and in the hearing of February 3, 1995, that the Commission apply the procedure provided for in Articles 50 and 51 of the American Convention on Human Rights. They have not considered friendly settlement appropriate. As the friendly settlement procedure is not accepted by the petitioners in this case, the Commission should proceed as per Article 50 and 51 of the Convention, issuing its opinion and conclusions on the matter submitted for its consideration.

#### E. Facts proven

120. The Commission takes note of the fact that the Colombian State refuses to endorse the conclusions of the military justice system, as observed in the text of its last communication, of December 1, 1995; that at the end, in said communication, the principle of legitimate defense is argued, echoing the conclusions of the military trial; that it is not clear which parts the State endorses and which it does not support.

121. It is proven that several events are referred to in the petition; that in some cases there are, as has been indicated, several types of testimony--testimony by local residents and eyewitnesses, and of the police officers who perpetrated the deaths--yet the Commission has had access only to the testimony by local residents and eyewitnesses, which--as it is not offered or challenged by the Government in the domestic proceedings, but rather comes from investigations carried out by serious public institutions--is reliable.

122. It is proven that all the victims in this case died from gunshot wounds caused by projectiles fired by state agents; that in most of the cases, according to the Administrative Tribunal and the Office of the Procurator General, based on the expert ballistics exam, the projectiles were fired from very short distances, including "less than one meter."

1. Javier Bejarano, José Alberto Aguirre, Jesús Fajardo Cifuentes, and Francisca Irene Rodríguez Mendoza

123. Specifically with respect to Javier Bejarano, José Alberto Aguirre, Jesús Fajardo Cifuentes, and Francisca Irene Rodríguez Mendoza, the information available to the Commission indicates that they were assassinated while defenseless and under the control of police officer José Manuel Cristancho Romero and other agents of the F-2. The Commission considers that it does not have sufficient information to address the issue of the legitimacy and proportionality of the initial use of force by the police in the incident involving the mini-bus. Nonetheless, the Commission considers that it may conclude that the victims' deaths occurred when they had already ceased putting up resistance and were wounded or defenseless.

124. The testimony of Leonardo Bejarano explains how he and his brother had hidden under the seats of the mini-bus after the explosion and how, despite finding them in that position, the police officers shot them with the explicit intent of killing them, achieving their objective in the case of Javier, and causing serious injuries to Leonardo. Leonardo Bejarano explained that they killed his brother with one shot when they discovered that Javier had not suffered a bullet wound, and was alive. This testimony is corroborated by the autopsy, which indicated that Javier Bejarano had only one gunshot wound. Subsequently, according to his own testimony, they shot at Leonardo again, saying: "this son of a bitch won't die." It was later confirmed that neither Javier or Leonardo Bejarano were M-19 members.

125. With respect to the other three victims, who were probably guerrillas, the testimony of Leonardo Bejarano confirms once again that they were also executed after having become defenseless. According to Leonardo's testimony, immediately after killing his brother Javier, the F-2 police officer approached "the guerrillas who were nearly dead, and who were moaning, and turned around and shot at them." Both Jesús Fajardo Cifuentes and José Alberto Aguirre, had gunshot wounds, both with tattooing.

126. The body of Francisca Irene Rodríguez Mendoza had a gunshot wound without tattooing. It could therefore be argued that she was shot immediately after the explosion, and not at this later moment when the police officer had already begun to shoot, causing serious injuries and death, and the victims were obviously defenseless. Nonetheless, the testimony of Leonardo Bejarano, cited in the previous paragraph, contradicts that theory of the facts and suggests that at the time they were shot, "the guerrillas ... were nearly dead." Based on the testimony, it has not been shown that Francisca Irene Rodríguez Mendoza was not defenseless when shot.

127. The petitioners have also alleged that the three members of the M-19 were already wounded and remained hors de combat at the moment when the Police officer proceeded to finish them off.[FN6] At no time did the State refute this statement, and it has not tried to show that Francisca Irene Rodríguez Mendoza and/or the other guerrillas continued putting up

resistance at the time they were killed. The State, instead, merely reported that the police officer involved indicated in the inquiry that "he does not clearly remember" what happened after the explosion, being certain only that "evidently he had used his weapon." [FN7] Under these circumstances, and given the clear signs that indicate that the police officer was seeking to kill each of the five victims on the mini-bus, the Commission concludes that Francisca Irene Rodríguez Mendoza was also executed extrajudicially while defenseless and hors de combat.

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[FN6] See, for example, Petitioners' Observations of February 5, 1996.

[FN7] See, Observations by the State, December 1, 1995.

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2. Arturo Ribón Avilán, Yolanda Guzmán Ortiz, Isabel Cristina Muñoz Duarte, Martín Quintero Santana, and Luis Antonio Huertas Puerto

128. The report of the Procurator-Delegate for the National Police concluded that the action of the police in the cases of Martín Quintero Santana, Luis Antonio Huertas Puerto, and Isabel Cristina Muñoz Duarte was no doubt an excessive violation by the police who participated in the operation, presumably a violation of the Disciplinary Code of the Police, and of the Criminal Code. The ballistics report shows that Arturo Ribón had eight gunshot wounds, three with tattooing; Yolanda Guzmán had ten gunshot wounds, none with tattooing; Martín Quintero had nine gunshot wounds, five with tattooing; and Antonio Huertas Puertos had 10 gunshot wounds, three with tattooing.

129. The testimony of eyewitnesses José Alvaro Ramírez Delgado (with respect to the assassination of Martín Quintero and Luis Antonio Huertas Puerto) and Henry Iván Zárate Ruiz (with respect to the assassination of Isabel Cristina Muñoz) contradict the versions of the police officers that the victims were killed in combat. It is apparent that if four of the persons were assassinated at a short distance and their bodies had numerous gunshot wounds, they were summarily executed.

3. José Alfonso Porras Gil and Hernando Cruz Herrera

130. The police officers who participated in the assassination of these two persons stated that they died in an exchange of fire. Both, José Porras and Hernando Cruz, had eight gunshot wounds each, five with tattooing, which leads us to conclude that they were shot from a short distance. In addition, the report of the Procurator for the National Police concluded that there was an evident excess of violence on the part of the police who participated in the operation, presumably a violation of the Police Disciplinary Code and the Criminal Code; likewise in the cases of José Alfonso Porras Gil and Hernando Cruz Herrera. The Commission concludes that they were victims of extrajudicial execution.

F. Analysis of the applicable law

131. The non-derogable provisions of Common Article 3 of the Geneva Conventions govern conduct with respect to hostilities, and are binding on both the State and dissident armed groups,



in all internal armed conflicts. Colombia ratified the Geneva Conventions on November 8, 1961. In May 1995, it acceded to Additional Protocol II of the Geneva Conventions.

132. Article 29 of the American Convention establishes that no provision of the Convention may be interpreted as "excluding or limiting the effect" of other international acts of the same nature, or of another convention, to which a State is party. Consequently, the Commission is competent to directly apply norms of international humanitarian law, i.e. the law of war, or to inform its interpretation of the Convention provisions by reference to these norms. This position of the Commission is confirmed in the Court's advisory opinion on "Other Treaties," where the Court considered the precedents of the Commission and noted with approval that it had made reference to treaties other than the American Convention, "regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system." [FN8]

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[FN8] Inter-American Court of Human Rights, "'Other Treaties' Subject to the Advisory Jurisdiction of the Court" (Article 64 of the American Convention on Human Rights), OC-1/82, September 24, 1982. Series B, No. 1, paras. 43 and 44.

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133. The Commission recognizes that the Colombian State has the full right to defend itself from violent actions that may be taken against it, and to take military actions against the M-19 and other irregular armed groups. The members of the M-19 who took over the milk truck on September 30, 1985, were armed combatants. As such, these members of the M-19 were legitimate military objectives and were subject to an individualized direct attack up until the moment of their surrender, their arrest, or their being wounded, thereby terminating the hostile acts. Nonetheless, the information provided by eyewitnesses and the forensic evidence in the three incidents that are the subject of this case indicate that the 11 persons assassinated did not die as the result of combat.

134. Once the members of the M-19 were hors de combat and in the custody of the Colombian authorities, the Colombian State had no right to attack them or kill them. These combatants who were wounded or defenseless, like any wounded civilian, had the absolute right to the guarantees of humane treatment provided for in the non-derogable guarantees of Common Article 3 of the Geneva Conventions and of the American Convention. The evidence submitted in this case supports the petitioners' claim that the victims were executed extrajudicially by state agents in a clear violation of Common Article 3 of the Geneva Conventions as well as the American Convention.

135. The Commission would like to note that even in situations of armed conflict, Article 27 of the American Convention expressly prohibits any derogation of Article 4. Therefore, this non-derogable guarantee, set forth in the American Convention, applies along with and is informed by the provisions of international humanitarian law for internal hostilities. Consequently, the summary execution of these persons not only violated Common Article 3, but also Article 4 of the American Convention.

136. Once the members of the M-19 were hors de combat or in the custody of the State authorities, they had a right to humane treatment and to the protections of international humanitarian law and the American Convention. The Colombian State indicates that the mere fact that they were shot from point-blank range does not necessarily mean that they were defenseless ("which, contrary to petitioner's statement, cannot be deduced, without more, that the presence of the tattooing necessarily implies defenselessness, but that the victim was at a distance less than 120 cm from the firearm that was shot, which in and of itself does not constitute defenselessness"). Nonetheless, there are additional elements that lead the Commission to consider that the victims were defenseless when assassinated by members of the police. For example, the judgment of the Administrative Tribunal of Cundinamarca, of June 3, 1993, held that the State was responsible for the death of four of the individuals and ordered that compensation be paid, rejecting the argument of legitimate action in combat or for self-defense.

137. In relation to the question of justice, the preliminary investigation carried out by the Office of the Procurator General failed to apply the disciplinary sanctions to the members of the National Police who committed the crime, allowing the action to prescribe, even though the Procurator General concluded that excessive force was used by the police in the operation.

138. The most important thing is that none of the police officers supposedly responsible for these deaths has been subject to any criminal sanction and, inexplicably, all were promoted. Despite the ambiguities in the details of the three different incidents, it is clear that the Colombian State at no time undertook a serious criminal investigation into the events to determine the facts. The State never denied that its agents were the perpetrators in the deaths of the 11 youths. Nonetheless, the State never sought to reconcile the versions of the facts presented by government organs, the Office of the Procurator General and the Administrative Tribunal, that considered the State responsible for the deaths, and that of the military criminal courts, which accepted the version offered by the police officers who carried out the operation.

139. Consequently, the Commission is of the opinion that the military investigation of these facts does not meet with the basic requirements of the judicial guarantees and judicial protection set forth in Articles 8 and 25 of the American Convention. Because of its structure, the military investigation was neither independent nor impartial. The proceeding also clearly denied the petitioners their fundamental right to an effective judicial remedy, as they were not permitted to be a party in the case. Another serious defect in the military proceeding was the exclusion of available evidence from eyewitnesses.

140. In conclusion, the Commission does not question the right of the State to defend itself and its population against an armed enemy. But neither the State, nor the dissidents, have the power to select how to conduct hostilities. Military operations must always be conducted within the regulations and prohibitions imposed by the application of the rules of international humanitarian law. The first of these rules is that a wounded person and/or a combatant who is captured or hors de combat must be afforded humane treatment.[FN9] This rule recognizes that when some combatants have ceased participating in the hostilities and no longer pose a threat or the possibility of immediate harm to the adversary, they do not qualify as legitimate military targets. Mistreatment, and even more so extrajudicial executions, of wounded or captured combatants are grave violations of Common Article 3.[FN10]

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[FN9] Nothing in Common Article 3 of the Geneva Conventions prohibits the Government of Colombia from trying the dissidents arrested for sedition and each of their hostile acts. Such a trial, however, must comply with the compulsory standards established in Common Article 3 and Article 8 and 25 of the American Convention.

[FN10] The perpetrator of such a violation becomes liable, individually, under criminal law. See the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia Since 1991, originally published as an annex to the Report of the General Secretariat, pursuant to paragraph 2 of Security Council Resolution No. 808 S/25704 (1993). Reprinted at 32 I.L.M. 1159. See also *Prosecutor v. Dusko Tadic a/d/a "Dule"*, No. IT-94-1-AR712, slip op. Sec. 86-95 (International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia Since 1991, 1995).

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141. Apart from the situation of the guerrillas who died in the mini-bus after throwing a grenade at the police officer who appears to have responded to the attack immediately, and the case of the young woman who surrendered with a revolver in hand and was shot down the moment she let go of the weapon, in all the other cases the eyewitnesses and the forensic evidence clearly agree in holding the state agents responsible for the summary and extrajudicial execution outside of combat of those who were left defenseless. In addition, the Commission concludes that even in the case of the youths on the mini-bus, including the guerrillas, and the young woman with the revolver, after being wounded and having fallen into a defenseless state, or after surrendering in unclear circumstances, they were then "finished off." Pursuant to Common Article 3 of the Geneva Conventions, the State was under an obligation to provide humane treatment to defenseless individuals, treatment that was not provided to the victims in this case, as they were assassinated hors de combat.

142. The State has not proven the argument that suggests that its agents acted legitimately in the context of an armed conflict and in legitimate defense. It has said nothing of the conclusions of the investigations other than the criminal investigations, which it cannot disavow, and in which summary and extrajudicial executions are shown to have taken place in some cases, while in others, prisoners who surrendered, or were wounded and defenseless were killed, in violation of international humanitarian law, to which Colombia is bound as a party to the Geneva Conventions.

#### G. Responsibility of the Colombian State

143. In this case it has been proven that Arturo Ribón Avilán, Yolanda Guzmán Ortiz, Martín Quintero Santana, Luis Antonio Huertas Puerto, Isabel Cristina Muñoz Duarte, José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, Javier Bejarano, José Alfonso Porrás Gil, and Hernando Cruz Herrera were executed arbitrarily and summarily by police officers in the city of Bogotá on September 30, 1985.

144. This is confirmed by the uncontroverted evidence studied in the military criminal investigation, the disciplinary investigation carried out by the Office of the Procurator-Delegate for the National Police, and in the contentious-administrative jurisdiction, which describes and characterizes how 11 members of the M-19 who participated in the distribution of milk in the San Martín de Loba neighborhood were killed by members of the National Police on the morning of September 30, 1985, in various neighborhoods of the southeastern part of Bogotá.

145. The expert opinions based on the ballistics exams show that most of the victims had gunshot wounds with tattooing, fired from a very short distance estimated at less than one meter, which corroborates what was said by the various witnesses as to how they were killed, without putting up any resistance.

146. Pursuant to Article 1(1) of the American Convention on Human Rights, the States Parties assume the obligation to respect and guarantee the rights and liberties recognized in the Convention for all persons subject to their jurisdiction, and undertake to adopt the necessary measures to ensure the effective exercise and enjoyment of these rights and liberties.

147. Common Article 3 of the Geneva Conventions obliges the parties to internal armed conflicts to afford humane treatment to those persons who do not take part or who no longer take active part in the hostilities. This guarantee applies equally to civilians and members of armed forces who surrender or are hors de combat.

148. The various cases herein described and proven entail the international responsibility of the Colombian State and constitute grave violations of human rights and humanitarian law.

149. The international responsibility of the Colombian State in respect of human rights, independent of it being declared by the domestic courts, derives from the acts of the public authorities in the cases in which, voluntarily and involuntarily, its agents, by act or omission, violate human rights.

#### IV. CONSIDERATIONS IN RESPECT OF THE ACTIONS TAKEN SINCE ADOPTION OF THE ARTICLE 50 REPORT

##### A. Procedure after the adoption of the Article 50 report

150. The Commission examined this case during its 93rd Regular Session. On October 1, 1996, pursuant to Article 50 of the Convention, it adopted Report 50/96, which concluded that the Colombian State was responsible for violations of the Convention, including violations of the right to life (Article 4), to humane treatment (Article 5), and the right to access to justice and to an effective remedy (Articles 8 and 25), in conjunction with Article 1(1) as well as for violations of common Article 3 of the Geneva Conventions. The Commission recommended that the State adopt specific measures to resolve the situation.

151. Report 50/96 was sent to the Colombian State on November 4, 1996, with a request to the State to inform the Commission as to the measures taken to remedy the situation, in line with the

recommendations made. The petitioners were notified of the adoption of the report in a note of November 15, 1996.

152. On December 24, 1996, the Commission received a note from the Colombian State requesting a 15-day extension to submit its response to Report 50/96. On January 8, 1997, the State's response was received.

153. The Colombian State reported, in its response, that the Committee of Ministers, carrying out the functions assigned to it in Law 288 of 1996, issued a favorable opinion regarding compliance with Report 50/96 for the purposes of law 288, with respect to seven of the victims mentioned in the Commission's report: Yolanda Guzmán Ortiz, Martín Quintero Santana, Luis Antonio Huertas Puerto, Hernando Cruz Herrera, Arturo Ribón Avilán, Isabel Cristina Muñoz, and José Alfonso Porras Gil. This favorable opinion, pursuant to law 288, entailed acceptance by the Colombian State that the requirements of law and fact necessary to justify the Commission's decision existed. The persons named will thus receive the monetary compensation recommended.

154. The State announced that the Committee of Ministers decided to issue an unfavorable opinion with respect to Report 50/96, in relation to José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, and Javier Bejarano. In the view of the Committee, the requirements of fact and of law were not met so as to make out a case whereby the Commission's decision with respect to these persons could be accepted. Therefore, and as provided by law 288, the Colombian State requested reconsideration of the Report in respect of these persons, and as to the other Commission conclusions which, according to the State, were not appropriate. In its request for reconsideration, the State set forth its observations of fact and of law in relation to Report 50/96.

155. On March 13, 1997, the Commission sent a note to the State reporting that it had considered the request for reconsideration submitted by the State during its 95th Regular Session, and that it would take into account the State's observations set forth therein in preparing the final report in the case, pursuant to Article 51 of the Convention.

#### B. The Adoption of the Article 51 Report

156. The Commission adopted a revised report, No. 21/97, pursuant to Article 51 of the Convention, on April 23, 1997. The Commission carefully considered each of the observations by the Colombian State in respect of Report 50/96 in the preparation of the Article 51 report and modified the text of the original report, taking into account the State's observations. In addition, the Commission proceeded to consider in more detail, in a separate section, some of the State's observations that merited special attention. That analysis was as follows:

1. The incident on the mini-bus that resulted in the deaths of José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, and Javier Bejarano

157. The Colombian State refused to accept the conclusions of the Commission in relation to the facts that resulted in the deaths of José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo

Cifuentes, Francisca Irene Rodríguez Mendoza, and Javier Bejarano in the public transport mini-bus in the Diana Turbay neighborhood, and presented several arguments in this connection. First, the State suggests that the Commission incorrectly analyzed the facts with reference to the issue of whether State agents acted in self defense. The State holds that the Commission should have employed, instead, an analysis of the justification and proportionality of the state action, thereby avoiding the imposition of excessive evidentiary burdens on the State that do not pertain to the applicable law in this case before the Commission. The Commission clarifies that it based its conclusions regarding the responsibility of the State for these events neither on an analysis of the justification and proportionality of the action taken by State agents nor of the self-defense issue.

158. The Commission, after having studied the evidence and testimony related to the mini-bus incident, decided that it did not have sufficient evidence to reach a conclusion on the petitioners' arguments indicating that State agents used force in an indiscriminate and disproportionate manner. The Commission considered that the information available to it--including evidence indicating that the state agents who entered the mini-bus did so in pursuit of members of the M-19 guerrilla movement who had participated in the incident involving the distribution of milk, that an undetermined number of civilians were on board the mini-bus, and that the members of the guerrilla movement were in the possession of firearms and then threw a grenade--did not point to a clear conclusion as to the legitimacy of the force used in the incident.

159. Nonetheless, the Commission concluded that, even presuming that State agents did not initially engage in an indiscriminate or disproportional attack against the alleged guerrillas on the mini-bus, these agents later summarily executed the four victims after they had become defenseless, in violation of Common Article 3 of the Geneva Conventions and Article 4 of the American Convention. In reaching this conclusion, the Commission relied primarily on the testimony of a survivor of the incident, and on the petitioners' statements that went unchallenged by the State.

160. The Commission referred to the issue of self-defense because the State did so in several stages of the processing of this case. It was not always clear that the State, in mentioning the issue, did so only to explain the outcome of the domestic criminal proceedings, that had ended in the acquittal of the persons implicated in the events that occurred in the mini-bus and other events that are the subject of this case, based on the theory of legitimate defense. The Commission understood that the State also presented arguments regarding legitimate defense in relation to its general defense of the case before this Commission, in which it held that the Police had used force, but that such use of force was always legitimate. Nonetheless, the Commission clarifies once again that it did not reach any conclusion in relation to the legitimacy and proportionality of the force used in the attack on armed dissidents in the mini-bus, but rather based its conclusions on the evidence that indicated that, after the initial attack, persons who were hors de combat and, thus, in a defenseless state were summarily executed.

161. The State maintains in a second argument that the Commission also "failed to analyze considerations and evidence relevant to the analysis" of the events that occurred on the mini-bus, making special reference to the presumed failure to consider the testimony of Jairo Colmenares, the driver of the mini-bus. The Commission considers that the testimony of the mini-bus driver does not add anything new to its conclusions of fact and of law.

162. The driver declared to Colombian judicial officers that an agent of the F-2 boarded his mini-bus and asked that it be driven to the nearest police station. After that, according to his testimony, some young people seated at the rear of the mini-bus threw a package forward and there was an explosion. He stated that at that moment he exited through the window and that, therefore, he was not able to provide information as to "what may have happened to the passengers."

163. All the testimony considered by the Commission coincides in indicating that an explosive was thrown by the guerrillas who boarded the mini-bus; the driver's testimony does not reveal new material information in this regard. Further, the driver's testimony does not bring any new pertinent information into the case as regards the events that occurred after the explosion, which resulted in the deaths of four persons. Most importantly, the testimony does not establish new elements of fact or law which would controvert the Commission's conclusions that the four victims, while hors de combat and defenseless, were executed by State agents in violation of their rights under human rights and humanitarian law.

## 2. Other observations of the State

164. Some of the State's comments address aspects of Report 50/96 not specifically related to the incident on the mini-bus in the Diana Turbay neighborhood, which resulted in the deaths of four persons. The Commission deems it necessary to define the State's theory in the processing and defense of this case before this body in order to address all of the State's comments.

165. The State argued that it did not dispute that members of the police killed the victims named in this case. Nonetheless, the State considered that these deaths did not involve violations of the victims' rights because they occurred as the result of the legitimate use of force by State agents.

166. Analyzing and giving credit, to a certain extent, to this argument by the State, in Report 50/96 the Commission made several mentions of the State's right to defend itself.[FN11] These mentions are made in reference to the State's argument and are based on the clear jurisprudence of the inter-American human rights system.[FN12] They should not be understood as an application by the Commission of the theory of self-defense as defined in domestic law.

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[FN11] The State, in its response and request for reconsideration, cites as examples the following references:

The Commission recognizes that the Government of Colombia has the right to defend itself from the violent actions taken against it and to take military actions against the M-19 and other armed groups. (Report 50/96, para. 130).

The Commission does not question the right of the Government to defend itself and its population from an armed enemy. (Report 50/96, para. 136).

[FN12] For example, in the Velásquez Rodríguez Case, the Court explicitly stated that, "Without question, the State has the right and duty to guarantee its security," clarifying, however, that, "the

power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality." Judgment of July 29, 1988, para. 154.

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167. It is also in consideration of this argument presented by the State that the Commission applies humanitarian law in this case. The State argued specifically that "the events occurred in an armed confrontation (not as an extrajudicial execution, as affirmed by the petitioner) in which the police made legitimate use of its authority in order to re-establish public order." [FN13] It is precisely pursuant to humanitarian law that certain actions, which perhaps would be considered violative of human rights if taken outside of an armed confrontation, are considered legitimate in the context of an armed conflict.

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[FN13] Observations by the State, December 1, 1995 (emphasis added).

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168. Indeed, humanitarian law may be a defense available to a State to rebut charged violations of human rights during internal hostilities. For example, State agents who kill or wound armed dissidents in accordance with applicable laws and customs of warfare incur no liability under international law. Where humanitarian law is applicable, however, it also imposes limits on the actions of State agents carried out in the context of the armed conflict. Therefore, in cases such as this one, which involve situations of armed conflict, and particularly where the State makes special reference to the armed conflict, the Commission should apply humanitarian law to analyze the actions of State agents in order to determine whether they have exceeded the limits of legitimate action.

169. The State notes that none of the parties invoked humanitarian law in this case. The Commission considers that the State's argument, though it did not explicitly invoke humanitarian law, opened the door to and required reference to humanitarian law norms. In addition, there are no grounds for maintaining that because none of the parties to this case invoked humanitarian law that the Commission cannot apply it. The facts in this case require the application of humanitarian law if they are to be properly analyzed, as the State indicated when it noted that they had to be analyzed in the context of an armed confrontation. The Commission, sitting in judgment of the case, "has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them." [FN14] The law, even if not invoked by the parties, must be applied by the tribunal with jurisdiction over a case pursuant to the ancient Roman principle: "iura novit curia." That principle is clearly applicable in a human rights system, by its very nature as a protective inquisitorial system, treating issues of public interest.

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[FN14] Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 163.

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170. The State, however, argues in its response and request for reconsideration that the Commission is not competent to apply humanitarian law in individual cases, such as this one,



processed pursuant to Articles 44 to 51 of the Convention. The Commission rejects the State's argument and affirms that, in the processing and consideration of certain individual cases, it is competent to apply directly provisions of international humanitarian law or to refer to these norms to inform its interpretations of relevant provisions of the American Convention. The Commission considers that it is useful to develop the reasons, originally set forth in Report 50/96, by which it has reached this conclusion.

171. Even though technically the American Convention and the other human rights treaties are applicable in times of peace and situations of armed conflict, none of these human rights instruments has been designed to regulate situations of armed conflict, and therefore they do not include norms that govern the means and methods of such conflicts. To the contrary, international humanitarian law does not apply, in general, in peace time, and its fundamental objective is to regulate armed conflict so as to diminish the effects of the hostilities. Therefore, it is understandable that the provisions of treaty-based and customary humanitarian law generally provide for more specific protection for the victims of armed conflicts than the guarantees set forth in more general terms in the American Convention.

172. Nonetheless, the provisions of Common Article 3 of the Geneva Conventions are in essence also found in human rights treaties, including the American Convention. Therefore, in practice the application of Common Article 3 to a State party to the American Convention does not impose additional burdens on the State.

173. Even so, the capacity of the Commission to rule on alleged violations of the right to life and physical integrity in the context of an armed conflict may be limited in many cases by exclusive reference to Articles 4 and 5 of the Convention. This is because the American Convention does not contain provisions that specify, for example, when casualties are a legitimate consequence of military operations. Consequently, the Commission must necessarily refer to and apply definitional provisions and relevant rules from humanitarian law as authoritative sources which provide orientation in the resolution of these cases.

174. It is precisely in situations of internal armed conflict that human rights and humanitarian law converge most precisely and reinforce one another. In this specific case, where the execution of several persons linked to a guerrilla group in the context of a military operation is at issue, the relevant rights for the analysis are mainly the right to life and physical integrity, rights which are non-derogable even in situations of armed conflict.[FN15] Both Common Article 3 of the Geneva Conventions and the American Convention guarantee these rights and prohibit extrajudicial execution, and the Commission should apply both bodies of law.

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[FN15] American Convention on Human Rights, Article 27.

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175. Apart from these considerations, the Commission's competence to apply the provisions of humanitarian law is based on the text of the Convention and the jurisprudence of the Court. In addition to the jurisprudence and the articles of the Convention already referred to in this report

and in Report 50/96, the Commission considers that Article 25 of the Convention is relevant for the application of humanitarian law to this case.

176. According to Article 25 of the American Convention, as a State party Colombia is obliged to provide every individual a domestic judicial remedy that provides recourse to violations consummated by state agents of fundamental rights "recognized by the constitution or laws of the state concerned or by this Convention...." (emphasis added)

177. The right to the protection of humanitarian law is recognized in the Colombian legal regime. The Colombian Constitution, at Article 214(2), indicates that "in all cases the rules of international humanitarian law shall be respected." In addition, judgment C-225 of May 18, 1995, of the Colombian Constitutional Court, which held constitutional the ratification of Additional Protocol II to the Geneva Conventions, adopted the notion of a "block of constitutionality", which "is made up of those norms and principles which, without formally appearing in the text of the Constitution, are used as parameters for reviewing the constitutionality of the laws, as they have normally been integrated into the Constitution by several means, and by mandate of the Constitution itself."

178. Therefore, given that Colombian domestic law provides for the application of humanitarian law, the Convention itself authorizes the Commission to analyze humanitarian law in cases such as this one, where a violation of Article 25 has been alleged.

### 3. Measures taken to resolve the situation pursuant to the Commission's recommendations

179. The Colombian State communicated to this Commission, in its response to Report 50/96, that internally it would carry out the recommendation to pay monetary compensation to the next of kin of Yolanda Guzmán Ortiz, Martín Quintero Santana, Luis Antonio Huertas Puerto, Hernando Cruz Herrera, Arturo Ribón Avilán, Isabel Cristina Muñoz, and José Alfonso Porras Gil, pursuant to Law 288. Therefore, the State has adopted the necessary measures to carry out the Commission's recommendation on monetary compensation in respect of seven victims. Nonetheless, the State communicated that the recommendation of monetary compensation for the four additional victims in this case had not yet been accepted.

180. The Colombian State did not supply any information related to the adoption of other measures to resolve the situation addressed in this case, pursuant to the recommendations of the Commission that do not refer to monetary compensation, in its response to Report 50/96 and its request for reconsideration.

### C. Procedure after adoption of the Article 51 report

181. The report prepared in conformity with Article 51 of the Convention (Report No. 21/97) included modified recommendations to the State to adopt specific measures to resolve the human rights situation which led to the present case. That report was forwarded to the State on April 28, 1997 with a request to the State to inform the Commission regarding the measures taken to remedy the situation, in line with the recommendations made. The report was also sent to the

petitioners on May 6, 1997 with a warning that the report should remain confidential until such time as the Commission reached a final decision ordering its publication.

182. The Commission received the response of the Colombian State to Report No. 21/97 on July 1, 1997. In its response, the State informed that "it is prepared to comply with the recommendations formulated by the Honorable Commission, within the boundaries of domestic law."

183. The Commission is extremely satisfied with this response of the Colombian State, communicating its decision to comply with the Commission's recommendations. The Commission considers that this decision is highly significant and positive. The Colombian Government has demonstrated, in this case, its profound interest in working in cooperation with the Commission to resolve human rights situations which arise in Colombia.

184. In its communication of July 1, 1997, the Colombian State responded individually to each of the recommendations of the Commission set forth in Report No. 21/97. The Commission will proceed to comment briefly on the State's specific responses before setting forth its final conclusions and recommendations.

#### 1. The Recommendation to Pay Monetary Compensation

185. In Report 21/97, the Commission recommended to the Colombian State that it "pay monetary compensation to the next of kin of José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, and Francisca Irene Rodríguez Mendoza, who have yet to be granted compensation."

186. In its response, the State informed the Commission that, on June 18, 1997, the Committee of Ministers, carrying out the functions assigned to it in Law 288 of 1996, issued a favorable opinion regarding compliance with Report 21/97 for the purposes of law 288. This favorable opinion entails a decision to comply with the recommendation of the Commission to compensate the relatives of all of the victims named in this case, including those individuals whom the State had initially refused to compensate.

187. The Commission considers that this decision to comply with the recommendation to compensate the family members of all of the victims upon reiteration by the Commission is extremely positive. The final result in this case demonstrates the positive effect that the innovative law 288 can have in human rights cases in which the Commission has found that a violation has occurred and that compensation should be paid.

188. Despite its decision to provide monetary compensation in this case, the Colombian State continues to assert, in its response to Report 21/97, that victims of human rights violations and their relatives must exhaust the contentious administrative jurisdiction before an international body, such as the Commission, may recommend monetary compensation. The Commission does not agree with this position.

189. When, as in this case, the Commission concludes that a State has committed serious violations of human rights, including violations of the right to life and other rights protected in the Convention, the Commission generally recommends that the State pay monetary compensation to the family members of the victims. The duty to provide such compensation becomes an international legal obligation, which does not derive from and may not be limited by domestic law. Thus, the Court has stated, in relation to its judgments, that "the obligation to make reparation falls under international law and is governed by it." [FN16] The same analysis applies where a State is obliged to pay compensation pursuant to a decision of the Commission. Therefore, a State cannot refuse to accept its obligation to compensate, as determined in a case found admissible and then decided by the Commission, on the grounds that certain domestic remedies have not been invoked and exhausted.

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[FN16] Inter-American Court of Human Rights, Aloeboetoe et al. Case, Reparations, Judgment of September 10, 1993, para. 45.

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190. In addition, in cases, such as the present one, involving acts which would properly be classified as crimes, the appropriate remedy to be invoked is the criminal proceeding. The State recognizes in its response that the "first effective remedy" in cases such as this one "is the criminal investigation and sanction." In many member States of the OAS including Colombia, a decision to convict in a criminal proceeding generally includes or precedes an order to pay compensation to those victims or family members who have participated in the proceedings as civil parties. Thus, the criminal proceeding, which would constitute the appropriate remedy for cases such as this one, provides for the possibility of obtaining monetary compensation in addition to criminal sanction. Sometimes the criminal proceeding is invoked and yet does not lead to a remedy for the human rights violation, including an order to pay compensation, because no conviction is achieved or because the victims are precluded from participating as civil parties. When that situation arises, the victims cannot then be asked to exhaust another remedy in order to obtain that compensation.

## 2. The Recommendation to Make Changes Necessary to Preclude Military Jurisdiction over Certain Cases

191. In Report 21/97, the Commission recommended that the Colombian State make the changes necessary to exclude acts of torture, extrajudicial execution and forced disappearance committed by the National Police from military jurisdiction. The Commission has taken note of the various initiatives mentioned by the Government in its response which are intended to reform the military court system. However, the Commission notes that the State's response does not indicate that these reforms, even if adopted, would lead the State to full compliance with the Commission's recommendation.

## 3. The Recommendation to Carry out Criminal Investigations and Sanctions

192. In its response to Report 21/97, the State of Colombia indicated that it "is not able to comply with the recommendation" to carry out impartial and effective criminal investigations

and prosecutions in relation to the facts of this case. The State suggests that it may not comply with this recommendation, because final decisions have already been issued in the domestic criminal investigations which were initiated in this case. The State suggests that, if it reopened such investigations, it would breach principles of domestic law and of the Convention, such as the right not to be exposed to double jeopardy.

193. The Commission recognizes that prior final decisions may limit the sphere of possible action which a State enjoys in repairing a human rights violation through criminal proceedings. However, the Commission also considers that monetary compensation is not generally sufficient in a case which would have required a criminal investigation and the sanction of those responsible.

194. In such a case, the State should seek legal measures, which may be carried out in conformity with the law, which would allow for the criminal investigation and sanction of those responsible, where possible. For example, the State may be able to carry out criminal investigations and proceedings against persons who were not tried in the original criminal proceedings and against whom there exist serious indicia of responsibility.

195. At a minimum, the State should carry out a serious, impartial and complete investigation of the events.[FN17] This investigation should end in an official report, adopted by the State, which sets forth an accurate version of the events.

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[FN17] See, e.g., Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 181.  
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#### 4. The Recommendation to Guarantee the Safety of Witnesses

196. The Commission is pleased that the State has responded favorably to the Commission's recommendation to the State to provide the necessary protection for witnesses who have collaborated or who may collaborate in the future to clarify the facts of this case. In this respect, the State made clear that "it is in a position to comply" with the recommendation regarding the safety of witnesses, "as soon as those witnesses formally request [such protection] from the Government."

197. The Commission understands that this recommendation looks to the future and may continue to be important, particularly considering the Commission's recommendation that further investigations be carried out in the case. The Commission understands that the State will comply with this recommendation as the need arises and is communicated to the State.

#### 5. The Application of International Humanitarian Law

198. In its response to Report 21/97, the Colombian State "reiterates its position, set forth in its communication of January 3 [received in the Commission on January 8], that the Honorable Commission does not have competence, in the processing of individual petitions, to apply International Humanitarian Law."

199. The Commission has carefully set forth the legal authority for the Commission's competence to apply international humanitarian law, in the text of the present report as well as in other Commission reports. Accordingly, the Commission considers that it is not necessary to engage in further analysis and discussion of this point. At this stage of the proceedings, the Commission must simply analyze the compliance of the State of Colombia with the Commission's recommendations set forth in previous reports and decide whether or not to publish the Article 51 report.

Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

200. That the Colombian State violated the rights contained in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (on judicial protection), in conjunction with Article 1(1) of the American Convention on Human Rights, to which Colombia is a State party, for the extrajudicial execution of Arturo Ribón Avilán, Yolanda Guzmán Ortiz, Martín Quintero Santana, Luis Antonio Huertas Puerto, Isabel Cristina Muñoz Duarte, José Alberto Aguirre Gutiérrez, Jesús Fernando Fajardo Cifuentes, Francisca Irene Rodríguez Mendoza, Javier Bejarano, José Alfonso Porras Gil, and Hernando Cruz Herrera, and for the lack of justice with which these events were met.

201. That the Colombian State did not carry out the commitment set forth in Article 2 of the American Convention on Human Rights to adopt, pursuant to its constitutional and legal procedures in force, the necessary measures to make effective the right of persons to see that justice is done by punishing the members of the active-duty police officers who, in performing service-related acts, violated the right to life.

202. That in this case the Colombian State did not carry out its obligation to respect and guarantee the rights of persons who are placed hors de combat in an internal armed conflict. The extrajudicial execution of the 11 victims constituted a flagrant violation of Common Article 3 of the Geneva Conventions in that State agents were absolutely required to treat humanely all of the persons within their power due to injury, surrender or detention, whether or not they had previously participated in hostilities.

203. That, subsequent to the preparation of the initial Commission report in this case, the Colombian State has taken important steps toward resolution of the human rights situation which formed the subject of this case, through compliance with several of the recommendations set forth by the Commission in its reports prepared in accordance with Articles 50 and 51 of the Convention, including the provision of monetary compensation to the family members of the victims and the decision to provide protection for the persons who witnessed the events subject of this case.

RECOMMENDS:

To the Colombian State:

204. That it make the necessary changes in the Constitution, legislation or jurisprudence so that crimes of torture, extrajudicial execution, and forced disappearance committed by the Colombian Police are subjected, in this type of case, to the jurisdiction of the civilian courts.

205. That the State take the necessary actions, in conformity with the law, to permit the criminal investigation and sanction of those responsible. This process should include a serious, impartial and complete investigation of the events, concluding with an official report, adopted by the State, which sets forth an accurate version of the events.

206. That it guarantee the security of and provide the necessary protection for the eyewitnesses who have collaborated to clarify the facts, or who may cooperate with the investigation that the State has been recommended to continue and take further.

207. The Commission decides to publish this report and include it in the Commission's annual report to the General Assembly of the OAS, pursuant to Article 51.3 of the Convention and Article 48 of the Commission's Regulations.