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Decided by: Chairman: Paolo Carozza;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
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Represented by: APPLICANT: the Colectivo de Abogados “Jose Alvear Restrepo”
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I. SUMMARY

1. On May 12, 1998, the Inter-American Commission on Human Rights (the “Commission” or the “IACHR”) received a petition from the Colectivo de Abogados “José Alvear Restrepo” (“petitioners”) alleging that agents of the Republic of Colombia (the “State” or the “Colombian State”) were responsible for the death of the minor Leydi Dayán Sánchez, a 14-year old girl, on March 21, 1998, in Barrio El Triunfo, Ciudad Kennedy, Bogotá, Colombia.

2. The petitioners allege that the State violated the following rights of the victim and her relatives enshrined in the American Convention on Human Rights (the “American Convention” or the “Convention”): the right to life (Article 4), the right to a fair trial (Article 8), the right to judicial protection (Article 25), the rights of the child (Article 19) and the right to the truth (Articles 8, 25 and 13). They also allege that the State violated the general obligation established in Article 1(1) to respect and ensure the rights enshrined in the Convention. For its part, the State maintains that the rights to a fair trial and to judicial protection as enshrined in the Convention were observed in the proceedings within the military criminal justice system, and that everything possible was done and all legal and constitutional proceedings used to impartially clarify the facts.

3. Having examined the evidence and arguments presented by the parties, the Commission concludes that the Republic of Colombia has violated the right to life of Leydi Dayán Sánchez, as well as the rights of the child, the right to a fair trial and the right to judicial protection as enshrined in Articles 4, 19, 8 and 25 of the American Convention. The Commission also concludes that the State has failed to meet its obligation, established in Article 1(1), to ensure the rights protected by the Convention.

II. PROCEEDING BEFORE THE COMMISSION

4. On May 26, 1998, the Commission opened Case No. 11,634 to examine the petition, in accordance with the Rules of Procedure in force until April 30, 2001. It sent the pertinent parts of the petition to the State, giving it 90 days in which to submit comments. After due study, the IACHR issued Report 43/02 declaring the petition admissible. On October 9, 2002, the Commission forwarded the admissibility report to the parties and gave the petitioners two months to present arguments on the merits. At the same time the Commission put itself at the disposal of the parties for the purpose of reaching a friendly settlement, and requested that they make their interest in such known in the near future.[FN1]

[FN1] As the Commission wrote in its admissibility report, on May 11, 1999, “The Commission placed itself at the disposal of the parties to pursue a friendly settlement, and asked that they inform the Commission of their views in this regard within 30 days. On June 15, 1999 the petitioners submitted proposed terms of a friendly settlement. At the same time, the State sought an extension of the time period for responding to the IACHR’s offer. On June 23, 1999 the IACHR forwarded the proposed terms of friendly settlement to the State, and gave it one month, commencing on July 1, 1999 to submit its response both to the offer of the IACHR and to the petitioners’ proposal. In its response of August 3, 1999 the State indicated that it would only be willing to consider a friendly settlement of the matter once the domestic remedies, including the disciplinary proceeding and the contentious-administrative proceeding, were exhausted.”

5. On August 7, 2003, the Commission forwarded the petitioners’ written arguments on the merits to the State, giving it two months to submit a written response. This period passed without such a response being received. On October 15, 2003, a hearing was held at IACHR headquarters in Washington, DC, with both parties being present and presenting oral arguments on the merits of the case.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

6. The petitioners allege that on March 21, 1998 at approximately 10:30 p.m., the minor Leydi Dayán Sánchez, her 11-year-old brother Jorge Luis Sánchez Tamayo, and two friends, Miguel Ángel León and Nelson Javier González Macana, 16 and 18 years of age respectively, were sitting along a sidewalk in their neighborhood. They were calmly talking when their attention was aroused by the sudden appearance of a vehicle and a motorcycle carrying two armed men.[FN2] The imminent arrival of these vehicles and the presence of the armed men caused the minors to panic, and they took off running down the street shouting “watch out, militias!”

[FN2] Petitioners' Statement of Facts submitted during the hearing held during the 118th regular session of the IACHR in October 15, 2003.

7. The petitioners indicate that on that same day a telephone call to the district police office of Ciudad Kennedy reported that 15 armed youth had been seen at the intersection of Carrera 113 and South 42nd Street.[FN3] In response the precinct commander ordered squad cars to the area. According to the petitioners' narration, when the dispatched patrol cars joined up at 42nd Street, they sighted an indeterminate number of people running and went in pursuit of them.[FN4] The minor Leydi Dayán Sánchez Tamayo, her bother and their two friends were among the group in question and, in fear, they had begun to run. Near 107 42nd Street, Leydi Dayán fell behind the others and was hit in the head by a bullet.

[FN3] Id.

[FN4] Petitioners' submission dated April 9, 2003.

8. Miguel Ángel León and the others heard the fatal gunshot and went in search of Leydi Dayán. First they went to her home, and then they returned to the street, where they found her lying wounded on the ground.[FN5] Before they were able to get her to the hospital by their own means, a Police vehicle picked her up and took her to the Santa Clara Hospital. Later she was transferred to the Kennedy Hospital, where she died on the morning of March 22, 1998.

[FN5] Id.

9. The petitioners allege that at the hospital the child's parents were pressured by police officials to avoid any contact with the media. General Serna Arias of the Metropolitan Police of Bogotá covered the costs of the burial as a "gesture of solidarity," making it clear that the gesture should not be interpreted as recognition that the Police were responsible for the child's death.[FN6] The petitioners further allege that later on, after legal proceeding had begun, relatives of the victim and one of the witnesses received anonymous threats.[FN7]

[FN6] Initial petition received on May 12, 1998.

[FN7] Information provided by the State in the March 2, 1999 hearing.

10. In regard to the investigations carried out in the domestic jurisdiction, information provided by the petitioners indicates that on March 22, 1998, the 86th Military Court of Criminal Investigation of the Police opened an investigation into the death of the minor Leydi Dayán Sánchez Tamayo.[FN8] The petitioners point out that on June 4, 1998 the 86th Military Court of Criminal Investigation ruled that the case should be referred to the regular courts. Nonetheless, a few days later, on June 23, 1998, an appeal regarding the imposition of a measure to assure the

appearance of the subjects was admitted by the Superior Military Tribunal. Finally, on July 7, 1998, the 86th Military Judge of Criminal Investigation removed the case to the regular courts. However, the 55th Prosecutorial Office (Fiscalía 55) of the Crimes against Life Unit decided not to evaluate the case since an appeal was pending before the military criminal courts and to send the case back to the military justice system.

[FN8] Initial petition received on May 12, 1998.

11. On July 23, 1998 the Superior Military Tribunal referred the file to the 86th Military Court of Criminal Investigation, which sent the proceedings back to the Commander of the Bacatá Police Department for him to serve as judge of first instance in the matter.[FN9] On July 27, 1998 the attorney for the civil party to the proceedings requested that the 55th Prosecutorial Office review its decision to send the case back to the military courts, but this effort was unsuccessful. On August 18, 1998 the Public Ministry requested that the Commander of the Bacatá Police Department recognize the competence of the 55th Prosecutorial Office of the Crimes against Life Unit to evaluate the case, once again unsuccessfully. On July 6, 2000, the trial before a military court resulted in policeman Juan Bernardo Tulcan Vallejos, being acquitted of the charge of negligent homicide (homicidio culposo). Finally, on May 15, 2001 the Superior Military Tribunal confirmed his acquittal.

[FN9] Petitioners' submission dated August 28, 1998.

12. In light of the events described, the petitioners maintain that the State is responsible for violating the right to life of the minor Leydi Dayán Sánchez Tamayo. More specifically, they claim that the National Police opened fire on Leydi Dayán Sánchez Tamayo and three other minors, none of whom represented a threat to public order, thus "...over-reacting, moreover against the wrong persons, since their actions cannot be considered necessary to preventing a crime, and without foregoing the use of firearms, especially against children that were putting up no resistance and were not a threat to anyone's life." [FN10] As a consequence, the petitioners maintain that the State is responsible for the death of the minor Leydi Dayán due to the involvement of law enforcement officers in the events, and for the related facts never being fully clarified in judicial proceedings, thus violating Article 4 of the American Convention (the right to life) with prejudice to Leydi Dayán Sánchez Tamayo, in conjunction with their obligation to ensure rights as stipulated in Article 1(1) of the Convention. The petitioners add that since Leydi Dayán was a minor, the State is also guilty of violating Article 19 of the American Convention since it failed to take appropriate measures to safeguard her against the disproportionate response of agents of the State.

[FN10] Id.

13. The petitioners also maintain that the State has violated the victim's and her relative's rights to a fair trial and to judicial protection, enshrined in Articles 8 and 25 of the Convention, in conjunction with its obligation to respect and ensure rights stipulated in Article 1(1). The petitioners point out that the State has not fulfilled its obligation to administer justice in accordance with the standards set by the American Convention since it allowed the case against the police officials investigated for involvement in the death of Leydi Dayán Sánchez Tamayo to proceed within the military criminal justice system. In the petitioners' opinion, the use of military jurisdiction constitutes a violation of the right to a fair trial as there is no guarantee of independence and impartiality, seeing as this jurisdiction is under the Ministry of Defense and the Executive Branch rather than the Judicial Branch. They stress that the military justice system is not an appropriate remedy to seek judicial clarification of responsibility for the death of Leydi Dayán Sánchez Tamayo and due prosecution and punishment of those responsible.

14. Along the same lines, the petitioners maintain that investigation undertaken to clarify the circumstances of the death of Leydi Dayán Sánchez were arbitrary since a large part of the evidence brought forward was never studied and taken into consideration, and because the courts refused to order the gathering of evidence that would have been decisive in clarifying the events, which led to a denial of justice both procedurally and substantively.[FN11] The petitioners maintain that the State has not met its obligation to elucidate the responsibility of its agents and punish them in accordance with Articles 8 and 25 of the American Convention in conjunction with the general obligation to respect and ensure rights found in Article 1(1).

[FN11] Petitioners' submission dated April 9, 2003.

15. The petitioners point out that on September 11, 2003, the contentious-administrative courts ruled that Leydi Dayán died as a direct consequence of the actions taken by an agent of the state. They claim, however, that contentious-administrative decisions do not establish individual criminal responsibility and that full reparation of damages occurs only when monetary compensation is accompanied by full judicial investigation of the facts, prosecution and punishment of those responsible and restoration of the victim's good name.

16. These allegations are the basis of the petitioners request that the Commission declare the State responsible for violating the right to life, the right to a fair trial, the rights of the child and the right to judicial protection as enshrined in Articles 4, 8, 19 and 25 of the American Convention, in conjunction with the general obligation to respect and ensure the exercise of the rights protected by the Convention.

B. Position of the State

17. To begin, it must be indicated that the State chose not to submit written comments on the merits as allowed under Article 38 of the IACHR Rules of Procedure, although the Commission did invite it to do so in a missive sent on August 7, 2003 that included the petitioners' written comments on the merits. As a result, the allegations concerning facts and law outlined below are taken from submissions made by the State prior to the publication of Report 43/02 and from

statements made during the hearing on the merits held during the IACHR's 118th regular session.

18. The State maintains that the official bodies in charge of clarifying the circumstances of the death of Leydi Dayán undertook the proper proceedings in accordance with the legal and constitutional procedures in force. The State also indicates that the National Police denies bringing any pressure to bear on the child's relatives to discourage them from talking to the media, as the petitioners claim.[FN12]

[FN12] Note EE/DH 035093 from the Ministry of Foreign Affairs of the Republic of Colombia of July 9, 1998.

19. As for the use of the military justice system in the investigation of the case, the State stresses that proceedings were assigned to said jurisdiction by order of the High Council of the Judicature, the body that is assigned the task of deciding on cases of conflicting competency. The State insists that the military criminal courts provide an appropriate and effective means to administer justice in this case, and that any allegation that impunity reigns within them is unfounded. It notes that the 86th Military Court of Criminal Investigation, attached to the Bacatá Police Department, began the investigation into the facts on March 23, 1998.[FN13] It indicates that despite the efforts of the Public Ministry official to send the investigation to the regular courts, the case was returned to the military criminal courts due to the ruling not being properly executed.[FN14]

[FN13] Id.

[FN14] Note from the Ministry of Foreign Affairs of December 3, 1998.

20. The State reports that through judgment of July 6, 2000 by the Police Commander of Bacatá, in his capacity as a military criminal court judge, patrolman Juan Bernardo Tulcan Vallejos was acquitted of the charge of negligent homicide (homicidio culposo), and that the verdict was confirmed on May 15, 2001 by the Superior Military Tribunal. It indicates that both decisions were based on the principle of in dubio pro reo as there were continuing doubts as to who fired the shot that killed the minor Leydi Dayán Sánchez.[FN15] It adds that the Supreme Court of Justice examined an appeal for annulment in this case, ruling against it due to petitioners' apparent non-compliance with certain formal requirements.

[FN15] Note EE 41640 of the Ministry of Foreign Affairs, October 12, 2001.

21. The State reports that a copy of the complaint was forwarded to Office 1 of the District Procurator of Bogotá for a disciplinary investigation into the matter.[FN16] From the information provided by the State, it can be seen that on March 22, 1998, Office 2 of the District

Procurator of Bogotá ordered a preliminary investigation of police official Juan Bernardo Tulcán Vallejo, and that on March 24, 1998, charges were filed against him. On appeal, the Procurator Delegate for the National Police declared the charges null and void on the basis of an incomplete determination of the conduct in question since it had not been determined if the violation was criminal or negligent. On November 22, 1998, new charges were brought against police official Tulcán Vallejo,[FN17] but so far the State has provided no further information of the outcome of these disciplinary proceedings.

[FN16] Note EE/DH 035093 from the Ministry of Foreign Affairs of the Republic of Colombia of July 9, 1998.

[FN17] Note EE. 41640 from the Ministry of Foreign Affairs of the Republic of Colombia of October 12, 2001.

22. Lastly, in the hearing held during the 118th regular session of the IACHR, the State reported that the Ministry of Defense had ordered a special study of all evidence collected with the aim of issuing an opinion on the military justice system's effectiveness in the case. The State noted that such an opinion could indicate whether or not the military criminal justice proceedings were carried out according to law. The IACHR has received no information on the outcome of this special study.

IV. ANALYSIS

23. The petitioners claim that the State is responsible for the death of the minor Leydi Dayán Sánchez, due to actions taken by one of its agents, and for the lack of due clarification of the facts in the regular court system. The State, for its part, claims that the military criminal courts carried out the pertinent investigations without being able to establish the individual responsibility of the police official for the acts in question. Nonetheless, its allegations indicate that other instances, such as the contentious-administrative court, did put responsibility for the actions of the police on the State.

24. The Commission will herein establish findings of fact on the basis of the evidence submitted by the parties.

A. Findings of Fact

1. Circumstances of the death of the minor Leydi Dayán Sánchez Tamayo

25. The evidence submitted shows the on March 21, 1998; the National Police office (CAI-PATIO BONITO – Rapid Action Center) with jurisdiction for Ciudad Kennedy received a telephone call reporting the presence of 15 armed youth in the vicinity of the intersection of Carrera 113 and South 42nd Street. In response, the police commander sent out a PATIO-2 patrol, composed of patrolmen Tulcán Vallejos and Cuspian Sánchez on a motorcycle, and a MOVIL-3 patrol composed of patrolman Sánchez Romero and agent Sierra Florián in a patrol car, with instructions to head to the area in question for reconnaissance.[FN18]

[FN18] Military Forces of Colombia, Superior Military Tribunal, decision on an appeal, October 14, 1998.

26. At approximately 10.30 p.m. that same night, the minor Leydi Dayán Sánchez Tamayo, 14 years of age, and her 11 year-old brother Jorge Luis Sánchez Tamayo were talking with their friends, Miguel Ángel León and Nelson Javier González Macana of 16 and 18 years of age respectively, a short distance away from their home located at 42 F-40 of Carrera 107, Barrio el Triunfo, Sector Patio Bonito, Ciudad Kennedy.[FN19] At the time indicated, the children noticed that vehicles were rapidly approaching, including a motorcycle carrying two armed men. Given the situation, they assumed that these were militias, well known as the perpetrators of acts of violence, and they decided that to for safety's sake they would leave. In testimony given on April 15, 1998, Miguel Ángel León stated:

We were at the corner, about 3 blocks down from where Lady [sic] lives, on the avenue the buses take, we saw a motorcycle and a car arrive, we didn't know who they were, we thought they were militias, and we took off running, to the right from the corner, and then we turned left, going down two blocks, we were going around another corner when we heard shots, off to the left, we ducked into a lot, there was a car there, we hid and waited about five minutes, [...] then me and my friend Nelson Javier left [...].[FN20]

The testimony of Jorge Luis Sánchez Tamayo, Leydi Dayán's brother, confirms that they were sitting at the corner of 42nd A Street and Carrera 107 B watching the vehicles that were around 42nd and Carrera 106.

When we started to run, they came faster, we were seated like this, Miguel, Javier, Leydi and me, we took off running to the left of the corner, me first, then my sister and then Nelson, Miguel took the lead, then Javier, then me and my sister last, we turned left running (that is Carrera 107 in a west-to-east direction), I kept on running up that street on the right.[FN21]

[FN19] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, deposition of the minor Jorge Luis Sánchez Tamayo, March 22, 1998.

[FN20] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, additional deposition of Miguel Ángel León, April 15, 1998.

[FN21] National Police, Bacatá Police Department, 86th Military Court of Criminal Investigation, Report of the Judicial Reconstruction of Events that took place at the intersection of Carrera 107 C with 42nd F in Barrio el Triunfo, Sector Patio Blanco, on April 29, 1998.

27. The testimony of Miguel Ángel León confirms that Leydi Dayán fell behind the rest of the group and then was hit in the head by a bullet:

[...] Leydi got to the corner and couldn't turn because she was wearing sandals, and we were ahead of her, her bother Luis turned right, I think toward home, then we got out left the lot, on that street turning toward Lady's [sic] house, to see if she had gotten there yet, when we arrived we asked Luis if Lady [sic] had gotten there, and he said that he didn't know, where was she? That was when I said to my friend Nelson Javier to get moving, we'll go find her, and we set off to look for her and we went up one block from where we had turned off when we heard the shots, we went back and we found her on the ground, at the corner where the phone booth is, I went to lift her up [...] Luis wasn't with us, we went to call a man named Baudillo, to see if he would help us take her to the hospital, he has a car that he parks in the lot where we hid, he got the car, turned it around, it's a small red car, when we went to get her the patrol car arrived, I remember the number, my friend Nelson and me, the police helped us put her in the police car, me and my friend got in the police car and went to the CAMI (Immediate Medical Attention Center) in Patio Bonito [...].[FN22]

Nelson Javier González testified that:

We were at a corner in Barrio el Triunfo talking with the girl who just died, Leydi ... don't know her last name, I had met her around there in the neighborhood [...] we thought it was the militia and we took off running and the girl, don't know why, started running behind us, when we turned the corner at the end of the block we heard a shot, we hid there in a parking lot and there was a car parked there and an we hid, I mean Miguel and me hid, ten minutes later we left to go see what happened, we went to Leydy's house and only her brother was there, he had been with her, think his name is Luis, and the kid said she hadn't come home, he didn't know where she was, and me and Miguel went to look for her, we looked for two blocks and I told Miguel that we would go to the block we had run down and we found her, bleeding, on her back and bleeding in her eyes, I saw blood in her left eye, Miguel said get going, we'll go get Baudillo, he has a car – get him to help us take her to the hospital and right when we were about to lift her into the car, the police got there, we took her to the CAMI in Patio Bonito [...].[FN23]

[FN22] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, additional deposition of Miguel Ángel León, April 15, 1998.

[FN23] 86th Military Court of Criminal Investigation, Bacatá Police Department, deposition of Nelson Javier González Macana, March 22, 1998.

28. In regard to the gun shot that hit Leydi Dayán Sánchez, Miguel Ángel León testified that:

[...] me and my friend went in the police car to the CAMI in Patio Bonito, that was when all the police started to ask me questions, and I told them what I saw, I told them they were the same as you, that it was the police that shot her, the police chased us and shot, that is why I said it had been them, I only heard one shot, QUESTION/. _ Say if you could notice who shot since you said before that it was the police. ANSWER/. _ It was a motorcycle that turned up that block, I think there were one or two policemen on it, and I think it was one of them that fired [...].[FN24]

Moreover, Nelson Javier González Macana declared that officers of the National Police urged them to point out in their testimony that the Police only appeared at the scene of the events suddenly:

[...] Say if you would like to add, correct or amend anything in this deposition. ANSWER/ Yes, when the girl was put into the police car along with the two friends, they took us to Avenida Ciudad de Cali and said that we could get a taxi from there to the Kennedy hospital and a patrolman, one of the ones that was in the car, called me over and said that if they asked me anything that I should say that they had just arrived all of a sudden, [...] [FN25]

[FN24] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, additional deposition of Miguel Ángel León, April 15, 1998.

[FN25] 86th Military Court of Criminal Investigation, Bacatá Police Department, deposition of Nelson Javier González Macana, March 22, 1998.

29. The declaration made to the Office of the Procurator General (Procuraduría General de la Nación) by Jorge Enrique Sánchez Chávez, Leydi Dayán Sánchez's father, coincides with the above-mentioned testimony:

[...] My wife and I met two boys that were there when it happened, one is called Miguel and the other Nelson Javier, but I don't know their last names, but they live in our neighborhood and they said they were willing to testify whenever they were needed, I can always find them, we talked with them and they said that they were with the girl at the corner next to our house, sitting, talking and waiting to see if we might arrive, around ten or ten-twenty, they saw lights like motorcycles, then one of them said to both my kids, because my son Luis was there too, run, it could be militias, and frightened and afraid, my kids took off after them, but my daughter was wearing sandals and fell behind, then after two blocks she turned the corner because she saw the two boys do the same and she went into that street, when my son Luis got home, scared and banging hard on the door, crying and desperate, he heard a gun shot, and said oh my God, I hope my sister is ok, and he went inside and went up to the terrace crying, [...] [FN26]

[FN26] Office of the Procurator General, National Special Investigations Bureau, Human Rights Unit, deposition of Mr. Jorge Enrique Sánchez Chávez, March 25, 1998.

30. Major Marco Fidel Pava Jiménez of the National Police testified that:

The first patrol, that is the Patio-2, when going to check on the case it had been assigned to encountered a group of young people or a gang composed of minors who, according to the patrolmen, took off running in several different directions, and seeing the situation, the patrol, that is the first two, returned and informed the other two in support that the gang had dispersed, and the fourth patrol, that is the one under Sergeant Suarez Cardenas, went in pursuit and reached that place and he says that they found a minor wounded and they took her first to a

CAMI and then to the Kennedy hospital, he also said that some other minors were in the same place and that one of them was the brother of the wounded girl, and that they told him that it had been the police on the motorcycle that had shot and wounded the girl.[FN27]

[FN27] National Police, Bacatá Police Department, 86th Military Court of Criminal Investigation, deposition of National Police Major Marco Fidel Pava Jiménez, March 25, 1998.

31. An anti-guerilla unit operating in a LUV vehicle reported that a minor, identified as Lady Dayán Sánchez Tamayo, with a gunshot wound to the head had been taken to the CAMI in Patio Bonito, where she received first aid treatment and was later transferred to the Kennedy hospital, where she passed away during the early hours of March 22, 1998.[FN28]

[FN28] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, declaration of National Police Sergeant Nelson Efrén Suárez Cárdenas, March 26, 1998. Also see Institute of Legal Medicine and Forensic Science, Bogotá Region, Forensic Pathology Group, Autopsy Report No. 1326-98.

32. National Police Sergeant Nelson Efrén Suárez Cárdenas, who used his police vehicle to transport Leydi Dayán Sánchez to the CAMI in Patio Bonito on the night of March 21, 1998, testified that:

QUESTION/. – When you reached the scene of the events, who was the young girl with, what did people present say, and who did they indicate as the material authors of what had happened?

ANSWER/. – When I arrived at the scene of the events, I saw that the girl was in very bad shape, the first thing I did was get her into the Nissan as quickly as possible to get her to a medical center, very quickly I asked people what had happened, and someone answered that the guys on the motorcycle had fired [...].

QUESTION/. – When you were on your way to where the girl was, did you see a police motorcycle, and if yes, where did you pass it or see it, and in which direction was it traveling?

ANSWER/. – When I was entering the neighborhood, about two blocks before the scene of the events, I did cross paths with a police patrol, a motorcycle followed by a LUV and a “penta” heading toward Avenida Cali [...].[FN29]

[FN29] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation , deposition of National Police Sergeant Nelson Efrén Suárez Cárdenas, March 26, 1998.

33. In his testimony, Major Pachón Páez indicated that on the night of the events he questioned the four patrolmen who had headed to Patio Bonito in Barrio El Triunfo on patrol with a view to verifying if any of them had fired an official firearm. He testified that:

When I spoke to the four uniformed patrolmen and asked if any of them had used his firearm, they said no, later when Major Pava asked patrolman Tulcán Vallejos the same question, he said he had fired once the previous day during the third shift, but that he had not informed a superior.[FN30]

[FN30] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, declaration of Major Dios de Pachón Páez, March 26, 1998.

34. National Police Colonel Oscar Gamboa Arguello indicated that he had learned of the events by telephone when Major Pachón, deputy station commander, called to inform him that “there had been an incident with a girl” during the operations of the “PATIO-2 patrol, that had been dispatched to the area by the information officer of CAI-PATIO BONITO” due to a report of a youth gang in the area, “and it seems that the police patrol looking into the matter wounded the girl”. [FN31]

[FN31] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, declaration of National Police Lieutenant Colonel Oscar Gamboa Arguello, March 30, 1998.

35. Atomic absorption tests (analysis of residual matter left when discharging a firearm) carried out by the National Institute of Legal Medicine and Forensic Science resulted in positives for patrolmen Tulcán Vallejos, Cuspian Chávez and Sánchez Romero, all of whom had been sent to patrol the Patio Bonito area on the night of March 21, 1998.[FN32] The Superior Military Tribunal’s decision of October 14, 1998, establishes that “Patrolman Tulcán admits to firing his service revolver in self-defense, but without knowing the effects as he kept to the task of looking for the youths, but without success.”[FN33]

[FN32] National Institute of Legal Medicine and Forensic Science, Bogotá Regional Chemical Laboratory, Analysis of gunshot residue using atomic emission or atomic absorption, No. 424-98-EA-LQ-RB, No. 425-98-EA-LQ-RB and No. 423-98-EA-LQ-RB.

[FN33] Military Forces of Colombia, Superior Military Tribunal, final decision on the appeal, October 14, 1998.

36. The Administrative Tribunal of Cundinamarca issued a decision on September 11, 2003, establishing the responsibility of “the Nation – Ministry of Defense – National Police” for the

death of the minor Leydi Dayán Sánchez Tamayo. The pertinent part of the Tribunal's decision states:

The patrolmen (Cuspián Chávez and Tulcán Vallejo) arrived at the scene of the events after a call to the radio center of the National Police requesting that police be sent there due to the presence of "gangs".

During the trial it was shown that Leydi Dayán Sánchez Tamayo perished as a result of a shot fired by agent of the National Police Juan Bernardo Tulcán Vallejo, who fired his official firearm recklessly, [...].^[FN34]

^[FN34] Administrative Tribunal of Cundinamarca, Section Three, Subsection A, Decision of September, 11, 2003.

37. In view of the testimony and expert reports submitted to the IACHR as documentary evidence, it must be concluded that on March 21, 1998, Leydi Dayán Sánchez Tamayo died from the injuries caused by a bullet that struck her when she was in the Patio Bonito area and that was fired by agents of the National Police that were on patrol in that same area.

2. Subsequent actions: investigation of the events and proceedings in the military criminal courts

38. As can be seen in the file, on March 22, 1998, the 86th Military Court of Criminal Investigation of the Police opened an investigation into the events surrounding the death of the minor Leydi Dayán Sánchez Tamayo. On June 4, 1998, the 86th Military Court of Criminal Investigation decided to refer the case to the regular courts.^[FN35] On June 23, 1998, the Superior Military Tribunal agreed to hear an appeal on the imposition of a measure to assure the appearance of the subjects.^[FN36] On July 7, 1998, the judge of 86th Military Court of Criminal Investigation remitted the case to the regular courts. Pubic Prosecutors Office 55 of the Unit of Offenses against Life decided against undertaking the case as an appeal was pending before a military criminal court, and sent the case back to the military courts.^[FN37]

^[FN35] Bacatá Police Department, Court of First Instance, Decision on lack of competence, Santafé of Bogotá, November 18, 1998 (citing the decision of June 4, 1998 of the 86th Military Court of Criminal Investigation which referred the case to the regular courts).

^[FN36] Metropolitan Police of Santafé of Bogotá, Bacatá Police Department, 86th Military Court of Criminal Investigation, June 23, 1998.

^[FN37] Bacatá Police Department, Court of First Instance, Decision on lack of competence, Santafé of Bogotá, November 18, 1998 (citing that Pubic Prosecutors Office 55 returned the case to the military courts given that there was an appeal pending before a military court, without comment on the June 4, 1998 decision of the 86th Military Court of Criminal Investigation attributing competence to the regular courts).

39. On July 29, 1998, the Superior Military Tribunal remitted the case to the 86th Military Court of Criminal Investigation, which in turn handed the proceedings over to the Commander of the Bacatá Police Department for him to serve as judge of first instance. On July 6, 2000, patrolman Juan Bernardo Tulcán Vallejos was acquitted of the charge of negligent homicide.[FN38] On May 15, 2001, the Superior Military Tribunal confirmed the acquittal.[FN39] From the file it can be seen that no other criminal investigation was opened to try to clarify who was responsible for the death of the girl.

[FN38] Military Forces of Colombia, Superior Military Tribunal, Decision 044 of May 15, 2001 (citing the verdict of the Bacatá Police Department of July 6, 2000).

[FN39] Military Forces of Colombia, Superior Military Tribunal, Decision 044 of May 15, 2001.

40. In a September 11, 2003 decision, the Administrative Tribunal of Cundinamarca declared the State responsible for the death of Leydi Dayán Sánchez Tamayo due to acts of the National Police.[FN40]

[FN40] Administrative Tribunal of Cundinamarca, Section Three, Subsection A, Decision of September, 11, 2003.

B. Findings of law

41. The IACHR will now analyze the international responsibility that can be attributed to the State with respect to the petitioners' allegations of violations of the rights to life, a fair trial and judicial protection, in conjunction with the obligation to especially safeguard children and the general obligation to respect and ensure rights contained in Article 1(1) of the American Convention.

42. It should be stressed that international proceedings have the objective of establishing whether or not the State bears international responsibility for violating human rights enshrined in treaties and other international instruments. While in domestic proceedings it is necessary to identify the perpetrator of a violation with the purpose of meting out punishment, in international proceedings it is not necessary to identify the agent of the State that violated someone's human rights. To establish the international responsibility of the State, it is sufficient to establish that the violation was perpetrated by an agent of the State without establishing the identity of that agent.[FN41]

[FN41] Inter-American Court on Human Rights, Case of Suarez Rosero, Judgment of November 3, 1997, para. 37.

1. The State is responsible for violating the right to life as enshrined in Article 4 of the American Convention, in conjunction with the obligation to respect the rights of the child enshrined in Article 19 and the general obligation to respect and ensure rights contained in Article 1(1).

43. Article 4(1) of the American Convention states that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

44. The Inter-American Court has pointed out that the right to life plays a fundamental role in the American Convention because it is a prior condition for the realization of the other rights,[FN42] and without it the other rights lack meaning.[FN43] States have the obligation to ensure the creation of such conditions that may be required to avoid violations of this inalienable right and, specifically, the duty to prevent attempts against it by agents of the State.[FN44] As the guarantor of this right, the State has the duty to prevent situations that could lead, by action or omission, to infringement of the right.[FN45]

[FN42] Inter-American Court on Human Rights, Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 128; Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 152; and Case of Juan Humberto Sánchez, Judgment of June 7, 2003, para. 110.

[FN43] Inter-American Court on Human Rights, Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 152.

[FN44] Inter-American Court on Human Rights, Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 152; and Case of Juan Humberto Sánchez, Judgment of April 29, 2004, para. 110.

[FN45] Inter-American Court on Human Rights, Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 124.

45. In light of Article 19 of the Convention, the above-mentioned obligation requires that special measures be taken in the case of children. In effect, it must be pointed out that the State takes on additional obligations with regard to protecting the lives of children. On the one hand, it must be all the more vigilant and accountable in its role as special guarantor. On the other, it must take special measures to contribute to the best interests of children.[FN46]

[FN46] Inter-American Court on Human Rights, Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, paras. 124, 163-64 and 171; Case of Bulacio, Judgment of September 18, 2003, paras. 126 and 134; and Case of the “Street Children,” (Villagrán-Morales et al.), Judgment of November 19, 1999, para. 146 and 191. Also, Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, August 28, 2002, paras. 56 and 60.

46. Article 19 of the American Convention must be read as a complementary right established for human beings that need special measures of protection due to their level of physical and emotional development.[FN47] Given the special situation of children, the American Convention imposes on States an obligation to provide special protection for them, an obligation that goes beyond the general one to respect rights enshrined in Article 1(1) of the Convention, which itself can never be suppressed under any circumstances, as stipulated in Article 29 of the Convention.[FN48]

[FN47] Inter-American Court on Human Rights, Advisory Opinion OC-17/02, August 28, 2002, para. 54. Also see Case of Children’s Rehabilitation, Judgment of September 2, 2004, para. 147. [FN48] In General Comment No. 17 on the rights of the child enshrined in Article 24 of the International Covenant of Civil and Political Rights, the Covenant Committee points out that this paragraph recognizes the right of all children, without discrimination, to such measures of protection as are required on the part of the family, society and the State. The Committee also indicates that application of this provision implies the adoption of special measures of protection for children, supplemental to those adopted in virtue of Article 2 ensuring all persons the enjoyment of the rights recognized in the Covenant. General Comment No. 17, approved by the Committee in its 35th session in 1989.

47. For purposes of interpreting Article 19 of the American Convention, the UN Convention on the Rights of the Child[FN49] can be taken into consideration:

Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international corpus juris for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.[FN50]

[FN49] Ratified by Colombia on January 28, 1991, entering into force on February 27, 1991.

[FN50] Inter-American Court on Human Rights, Case of the “Street Children,” (Villagrán-Morales et al.), Judgment of November 19, 1999, para. 194. See also: para. 146 of the same judgment; Case of Bulacio, Judgment of September 18, 2003, para. 138; Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 166; and Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, August 28, 2002, para. 24.

48. Furthermore, when considering application of Article 19 of the Convention, it is necessary to consider what Article 44 of the Constitution of the Republic of Colombia establishes in this regard.[FN51] In summary, international norms[FN52], domestic law of Colombia and Article 19 of the American Convention all require that special measures be taken to protect children against violations of their human rights.[FN53]

[FN51] Article 44 of the Constitution of Colombia states: “Children are recognized as having a basic right to: life, physical integrity, health and social security, a balanced diet, a name and nationality, have a family and not be separated from it, care and love, education and culture, recreation and free expression. Children shall be protected against all forms of abandonment, physical or moral violence, kidnapping, trafficking, sexual abuse, job or economic exploitation and dangerous work. They shall also enjoy all other rights enshrined in the Constitution, in law and in international treaties ratified by Colombia. The family, society and the State have the obligation to aid and protect children in order to guarantee their harmonic, integral development and the full exercise of their rights. Any person may call on the competent authority to enforce compliance and punish offenders.”

[FN52] In this regard, Principle 2 of the Declaration on the Rights of the Child approved by the UN General Assembly in Resolution 1386 (XIV) on November 20, 1959 establishes that: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”

[FN53] In this regard, Chapter 13, para. 1 of the Third Report on the Human Rights Situation in Colombia (1999) points out that: “Respect for the rights of the child is a fundamental value in a society that claims to practice social justice and observe human rights. This respect entails offering the child care and protection, basic parameters that guided in the past the theoretical and legal conception of what such rights should embody. It also means recognizing, respecting, and guaranteeing the individual personality of the child as a holder of rights and obligation.”

49. The Inter-American Court has established that cases in which the victims of human rights violations are children take on particular gravity, since “children have the same rights as all human beings – minors or adults - and also special rights derived from their condition, and these are accompanied by specific duties of the family, society and the State.”[FN54] The regulating principle is the best interest of the child which is “based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential.”[FN55]

[FN54] Inter-American Court on Human Rights, Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, August 28, 2002, para. 54. Also see Case of Children’s Rehabilitation, Judgment of September 2, 2004, para. 147.

[FN55] Inter-American Court on Human Rights, Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02, August 28, 2002, para. 56, and Case of the Mapiripán Massacre, Judgment of September 15, 2005, para. 152.

50. In consequence and in view of the characteristics of this case, it is right and proper to consider the responsibility of the State for the alleged violation of the right to life in conjunction with the specific obligations imposed by Article 19 of the American Convention.

51. It is also right and proper to study the alleged violation of the right to life of a minor in relation to the general obligation to respect and ensure rights established by Article 1(1) of the Convention. Compliance with Article 4 of the Convention, in conjunction with Article 1(1), requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but that States adopt all appropriate measures to protect and preserve the right to life (positive obligation)[FN56] as part of their duty to ensure the full and free exercise of rights by all persons under their jurisdiction. [FN57] It is in this sense that, to assure integral protection of the right to life, the obligation of the State to guarantee that right must be added to the State's obligation to respect the right to life, in conformity with Article 4 of the Convention. Active protection by the State of the right to life is not restricted to legislators, but extends to all state institutions and to those who have the duty to safeguard security, whether that means the police forces or the armed forces.[FN58]

[FN56] Inter-American Court on Human Rights, Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 153; Case of Bulacio, Judgment of September 18, 2003, para. 111; Case of Juan Humberto Sánchez, Judgment of June 7, 2003, para. 110; Case of Bámaca Velásquez, Judgment of November 25, 2000, para. 172; and Case of the "Street Children," (Villagrán-Morales et al.), Judgment of November 19, 1999, para. 139.

[FN57] Inter-American Court on Human Rights, Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 153; Case of Bulacio, Judgment of September 18, 2003, para. 111; Case of Juan Humberto Sánchez, Judgment of June 7, 2003, para. 110; Case of Cantoral Benavides, Reparations, Judgment of December 3, 2001, para. 69; Case of the "Street Children," (Villagrán-Morales et al.), Reparations (Article 63(1) of the American Convention on Human Rights, Judgment of May 26, 2001, para. 99; and Case of the "Panel Blanca" (Paniagua-Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001, para. 199.

[FN58] Inter-American Court on Human Rights, Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 153; and Case of Juan Humberto Sánchez, Judgment of June 7, 2003, para. 110.

52. The Commission will now proceed to an analysis of the alleged violation of the right to life taking into consideration both levels necessary to its integral protection. First it will analyze the State's obligation to respect said right and then the State's obligation to guarantee the right.

53. In the case under study and in conformity with the findings of fact, it has been established that Leydi Dayán Sánchez died as a result of a gunshot fired by a member of the National Police on patrol in the vicinity of Barrio el Triunfo on the night of March 21, 1998. It has also been established that Leydi Dayán Sánchez did not put up any armed resistance to the police officers pursuing her, that she was defenseless – running away, her back to them – and that, being an underage girl, she required special measures of protection. From the wealth of evidence it is clear that the patrolman that fired his gun on the night of March 21, 1998, did not identify himself as a law enforcement official at the time, that he never checked to see if his shot had affected any of the persons he was allegedly pursuing or who happened to be in the vicinity, and that he did not immediately report to the pertinent authorities that he had fired his officially-assigned weapon. In

fact, it can be seen that in an initial statement to his superior officers, the patrolman denied having used his weapon.

54. International standards on the use of force by law enforcements officials in the course of duty establish that its use must be necessary and proportionate to the ends[FN59]. In effect, Article 3 of the UN Code of Conduct for Law Enforcement Officials states that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”[FN60].

[FN59] United Nations, Code of Conduct for Law Enforcement Officials, Adopted by the General Assembly by virtue of resolution 34/169 on December 17, 1979, Article 3. See also: IACHR, Report 57/02, Case 11.382, Finca “La Exacta”, October 21, 2002, included in the IACHR Annual Report of 2002, March 7, 2003, para. 40; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Chapter V: Right to Life, para. 50; and Inter-American Court on Human Rights, Case of Neira Alegría et al. , Judgment of January 19, 1995, paras. 74-75.

[FN60] United Nations, Code of Conduct for Law Enforcement Officials, Adopted by the General Assembly by virtue of Resolution 34/169 on December 17, 1979, Article 3.

55. The abovementioned standard has been used as an authoritative and internationally accepted guide in the field. As the commentary to Article 3 elucidates, the stipulation means, first of all, that the use of force must be considered exceptional and force should be used only “as is reasonably necessary under the circumstances for the prevention of crime” or to legally arrest a suspect. Secondly, force must be used only to an extent proportionate to the legitimate objective to be achieved. And lastly, the Code states that “firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and other less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities”.[FN61]

[FN61] United Nations, Code of Conduct for Law Enforcement Officials, Adopted by the General Assembly by virtue of Resolution 34/169 on December 17, 1979, Article 3, Commentaries (a), (b) and (c). Also see IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Chapter V: Right to Life, para. 50.

56. The Commission also believes it important to underscore that the Code expressly states that special efforts should be made to exclude the use of firearms against children.[FN62] In the case here under consideration, an official of the National Police used his official firearm without taking any special measure to exclude firing against the children of Barrio el Triunfo.

[FN62] United Nations, Code of Conduct for Law Enforcement Officials, Adopted by the General Assembly by virtue of Resolution 34/169 on December 17, 1979, Article 3, Commentary (c).

57. The Ninth Principle of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which are complementary to the Code, states:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life [FN63]

In the circumstances provided for under the above principle, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident. [FN64]

[FN63] Basic principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth Conference on Crime Prevention and the Treatment of Offenders, Havana 27 August-7 September 1990, Special Provisions, No. 9.

[FN64] Basic principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth Conference on Crime Prevention and the Treatment of Offenders, Havana 27 August-7 September 1990, Special Provisions, No. 10.

58. It should be said that these principles also set out a number of obligations with which law enforcements officials must comply when the use of firearms is unavoidable. In such cases, officials shall:

- a. Exercise restraint and act in proportion to the seriousness of the offense and the legitimate objective;
 - b. Minimize damage and injury, and respect and preserve human life;
 - c. Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - d. Ensure that relatives or close friends of the injured or affected person are notified at the earliest moment. [FN65]
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[FN65] Basic principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth Conference on Crime Prevention and the Treatment of Offenders, Havana 27 August-7 September 1990, Special Provisions, No. 5.

59. In the Commission's opinion, these are minimum requirements that the State and its law enforcement officials must respect in order to safeguard the right to life in accordance with Article 4 of the Convention.

60. As a consequence, the Commission concludes that the Colombian State did not respect the right to life of Leydi Dayán Sánchez as its agents with the authority to use force did not strictly comply with the international standards on necessity, exceptionality and proportionality regarding the use of force by law enforcement officials, and they caused the minor's death. In effect, it has been established that Leydi Dayán Sánchez, a minor, did not offer armed resistance to the police officials pursuing her, that she was defenseless – running away, her back to them – and that as a minor she deserved special protection measures. Moreover, the police official that discharged his firearm on the night of March 21, 1998, did not identify himself as such at the times of the events; neither did he check for any possible consequences of the discharge to the persons that he was allegedly pursuing or that happened to be in the vicinity, nor did he immediately report to the competent authorities that he had fired his official firearm. Furthermore, the police official who used his firearm initially denied having done so when questioned by his superiors.

61. The State also incurs responsibility for violating the right to life as a result of not acting with due diligence in investigating the events, and prosecuting and punishing those responsible. In order to ensure full enjoyment and exercise of the right to life[FN66], as well as of other rights, the State must investigate acts affecting this right. The obligation to investigate is derived from the general obligation of States Parties to the Convention to respect and ensure the rights enshrined therein, - in other words from the obligation established in Article 1(1), in conjunction with substantive law. In cases involving a violation of the right to life, compliance with the obligation to investigate is a key element in determining state responsibility.[FN67]

[FN66] Inter-American Court on Human Rights, Case of Children's Rehabilitation, Judgment of September 2, 2004, para. 156.

[FN67] Inter-American Court on Human Rights, Case of the Mapiripán Massacre, Judgment of September 15, 2005, para. 233 (citing the case *Ergi v. Turkey* in which the European Court of Human Rights declared the State guilty of violating Article 2 of the European Convention because, even in the absence of irrefutable proof that law enforcement officials had provoked the death of the victim, the State had failed in its duty to protect the right to life of the victim, taking into account the behavior of the law enforcements forces and the lack of an adequate and effective investigation) (European Court of Human Rights, *Ergi v. Turkey* [GC], Judgment of 28 July 1998, Reports of Judgments and Decisions 1998-IV, § 85-56).

62. In this regard, the European Court of Human Rights has pointed out that interpretation of Article 2 of the European Convention (equivalent to Article 4 of the American Convention) "must be guided by the fact that the object and purpose of the treaty as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as

to make its safeguards practical and effective.”[FN68] Regional and international human rights law has established that any violation of the right to life requires the State in question to undertake an effective judicial investigation through criminal courts with a view to charge, prosecute and punish those considered to be responsible for the violations.[FN69]

[FN68] ECHR, *In the case of McCann and others v. the United Kingdom* (1995), A 324, para. 146.

[FN69] United Nations Commission on Human Rights, *Bautista v. Colombia*, Decision of October 27, 1995, para. 8.6. Also see IACHR Report 28/92 (*Argentina, Herrera and others*, and 29/92 (*Uruguay*), *De los Santos and others*, in the 1992-93 Annual Report of the IACHR, March 12, 1993, pages 35 and 154.

63. States must, in effect, take the measures needed not only to keep their own law enforcement officials from arbitrarily carrying out executions, but also to prevent and punish any loss of life due to such criminal acts, in compliance with their obligation to guarantee the right to life.[FN70] In this regard the Inter-American Court has pointed out:

[It] is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.[FN71]

[FN70] Inter-American Court on Human Rights, *Case of Myrna Mack Chang*, Judgment of November 25, 2003, para. 153; *Case of Juan Humberto Sánchez*, Judgment of April 29, 2004, para. 110; *Case of Bámaca Velásquez*, Judgment of November 25, 2000, para. 172; and *Case of the “Street Children,”* (*Villagrán-Morales et al.*), Judgment of November 19, 1999, para. 144-145. Also see General comment No. 6 (16th Session, 1982), para. 3; *Maria Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), UN Doc. Supp. No. 40 (A/37/40), in 137 (1982) page 137

[FN71] Inter-American Court on Human Rights, *Case of Myrna Mack Chang*, Judgment of November 25, 2003, para. 156.

64. In such circumstances, an effective investigation to clarify events leading to death as a result of the use of force by agents of the State is necessary to safeguard the right to life.[FN72] The Inter-American Court on Human Rights, following the jurisprudence of the European Court of Human Rights, has indicated that:

[A] general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the lethal use of force by State authorities. The obligation to protect the right of life [...], read in conjunction with the State’s general duty [...] to “secure to everyone within their jurisdiction the rights and freedoms

defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.[FN73]

[FN72] Inter-American Court on Human Rights, Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 130; Case of Myrna Mack Chang, Judgment of November 25, 2003, para. 157; and Case of Juan Humberto Sánchez, Judgment of June 7, 2003, para. 112.

[FN73] Inter-American Court on Human Rights, Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 131 (citing European Court of Human Rights, Case of Nachova and others v. Bulgaria, Judgment of 26 February 2004, para. 116; European Court of Human Rights, Case of Hugh Jordan v. the United Kingdom, Judgment of 4 May 2001, para. 105; European Court of Human Rights, Case of Çiçek v. Turkey Judgment of 27 February 2001, para. 148; and European Court of Human Rights, Case of McCann and Others v. the United Kingdom, Judgment of 27 September 1995, Series A No. 324, para. 161). Note: quote taken from last referenced case.

65. As for an investigation being effective, the Inter-American Court has clearly indicated that the obligation to investigate must be fulfilled:

In a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government.[FN74]

[FN74] Inter-American Court on Human Rights, Case of Bámaca Velásquez, Judgment of November 25, 2000, para. 212; Case of the “Street Children,” (Villagrán-Morales et al.), Judgment of November 19, 1999, para. 226; Case of Godínez Cruz, Judgment of January 20, 1989, para.188; and Case of Velásquez Rodríguez, Judgment of July 28, 1988, para. 177.

66. Moreover, in cases in which the State has not fulfilled its obligation to adequately investigate homicides in which agents of the state may possibly have participated, international human rights courts have declared the State responsible for violating the right to life even when the circumstances surrounding the deaths have never been completely clarified.[FN75]

[FN75] For example, see ECHR, Case of Kaya v. Turkey, Judgment of 24 October 1996 (App. No. 22729/93) (ruling that there were insufficient grounds to prove the illegitimacy of a murder committed by security forces of the State, but there were sufficient grounds to rule that a violation of the right to life had been committed on the basis of an inadequate investigation); United Nations Commission on Human Rights, Dermis Barbato v. Uruguay, No. 84/1981, para. 9.2 (examining similar considerations regarding a decision on whether the death of a person in custody had been homicide, or a suicide as the State claimed); and General Comment on Article 2 “The Nature of the General Legal Obligation Imposed on State Parties to the Covenant”

(adopted at 2187th meeting on 29 March 2004), paragraph 8: “There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts.”

67. As can be seen from the body of evidence, the facts of the instant case were investigated within the military criminal justice system, which fully acquitted the only person charged in the case without opening another investigation within the regular courts in order to clarify responsibility for the death of Leydi Dayán Sánchez.

68. As a consequence, state law enforcement agencies did not administer justice in accordance with the standards established by the American Convention as they did not investigate the facts and try the parties responsible with due guarantees. For similar cases the Inter-American Court has established that:

This consideration alone is enough to conclude that the State has violated Article 1.1 of the Convention, since it has not punished the perpetrators of the corresponding crimes. In this respect, there is no point in discussing whether the defendants in the domestic proceedings should be acquitted or not. What is important is that, independently of whether or not they were the perpetrators of the unlawful acts, the State should have identified and punished those who were responsible, and it did not do so.[FN76]

[FN76] Inter-American Court on Human Rights, Case of the “Street Children,” (Villagrán-Morales et al.), Judgment of November 19, 1999, para. 228.

69. The Inter-American Court has repeatedly indicated that the State has the obligation to avoid and combat impunity, which it has defined as “the overall lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention”. [FN77] In this regard the Court has warned that:

[...] the State is obliged to combat this situation by all available legal means. Impunity promotes the chronic repetition of the human rights violation.[FN78]

[FN77] Inter-American Court on Human Rights, Case of Moiwana Village, Judgment of June 15, 2005, para. 203.

[FN78] Inter-American Court on Human Rights, Case of Maritza Urrutia, Judgment of November 27, 2003, para. 126. Also see Case of Moiwana Village, Judgment of June 15, 2005, para. 203.

70. The Court has indicated that when the State and its organs act in a way that results in impunity, the State has failed to comply with its obligation to ensure to all persons subject to its jurisdiction the full and free exercise of their human rights.

71. In consequence and has been herein established in regard to the death of the minor Leydi Dayán Sánchez[FN79] of 14 years of age, said death occurred as a result of acts of agents of the State when the girl was defenseless. Therefore, she never received the special measures of protection that were required for a person of her age and vulnerability. It has been shown that the means employed to determine the criminal responsibility of the agents involved and to adequately punish them were neither adequate nor effective. In light of the evidence, the IACHR concludes that the Colombian State violated its obligation to respect the right to life of Leydi Dayán Sánchez, as established in Article 4 of the Convention and in accordance with Articles 1(1) and 19 of the same, by not having created the conditions needed to ensure the exercise of that right, by not having impeded the violations of that right that resulted in the death of the girl, and by the absence of an effective investigation by a competent and impartial court.

[FN79] Accordance to the UN Convention on the Rights of the Child (1989), “child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

2. The State is responsible for the violation of the right to judicial protection enshrined in Articles 8(1) and 25 of the American Convention in conjunction with the obligation to ensure rights established in Article 1(1).

72. As has been found above, the circumstances surrounding the death of Leydi Dayán Sánchez and the responsibility of members of the National Police were investigated by the military criminal justice courts, which acquitted the only defendant. It has also been found that no other investigations were opened with the purpose of prosecuting and punishing the responsible parties and that, in spite of the acquittal issued by the military criminal court, a contentious-administrative court found the State materially responsible for the death of the girl due to acts directly attributable to agents of the National Police.

73. It is up to the Commission to determine if the judicial steps taken by the State within the military justice system with the purpose of investigating the conduct of the agents of the State implicated in the facts under examination in the instant case measure up to the international standards set by the American Convention regarding access to the courts and judicial protection.

74. Article 8(1) of the American Convention on Human Rights establishes that:

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

75. Article 25 of the American Convention establishes that:

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

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted

These norms create an obligation to provide access to a competent, independent and impartial court with due guarantees. It also creates the general obligation to provide effective judicial recourse when basic rights are violated, adding the requirement of effectiveness to that of the provision of procedural mechanisms or instruments. As the Inter-American Court on Human Rights has shown:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction.[FN80]

[FN80] Inter-American Court on Human Rights, Case of Velásquez Rodríguez, Preliminary Exceptions, Judgment of June 26, 1987, para. 91.

76. Seeing that the investigations into the circumstances of the death of Leydi Dayán Sánchez Tamayo were carried out within the military criminal justice system, the Commission finds it necessary to point out yet again that, given its nature and structure, the military criminal justice system does not meet the standards of independence and impartiality set in Article 8(1) of the American Convention, standards fully applicable to the instant case.[FN81]

[FN81] IACHR, Third Report on the Situation of Human Rights in Colombia (1999), pages 175-86.

77. The Commission has previously made its views on these matters known, pointing out that Colombian military criminal courts are not an appropriate forum for the examination, prosecution and punishment of human rights cases:

The military criminal justice system has several unique characteristics which prevent access to an effective and impartial judicial remedy in this jurisdiction. First, the military justice system may not even be properly referred to as a true judicial forum. The military justice system does not form part of the judicial branch of the Colombian State. Rather, this jurisdiction is operated by the public security forces and, as such, falls within the executive branch. The decision-makers are not trained judges, and the Office of the Prosecutor General does not fulfill its accusatory role in the military justice system.[FN82]

[FN82] Id. Also see the Second Report on the Situation of Human Rights in Colombia (1993), p. 237: “The military tribunals do not guarantee that the right to a fair trial will be observed, since they do not have the independence that is a condition sine qua non for that right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose involvement in very serious human rights violations has been established.”

78. The Inter-American Court has established precedent in its case law:

In a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only the military shall be judged by commission of crime or offenses that by its own nature attempt against legally protected interests of military order.[FN83]

[FN83] Inter-American Court on Human Rights, Case of Durand and Ugarte, Judgment of August 16, 1999, para. 117. Also see: Case of 19 Merchants, Judgment of July 5, 2004, para. 174; Case of Las Palmeras, Judgment of December 6, 2001, para. 51; and Case of Cantoral Benavides, Judgment of August 18, 2000, para. 113.

79. Military jurisdiction has been established by many countries to maintain order and discipline within their armed forces. In regard to legislation doing so in Colombia, Article 221 of the 1991 Constitution stipulates that the military courts shall consider “offenses committed by members of the Armed Forces in active service and which are related to that service.” This clause clearly indicates that military judges have exceptional competence restricted to considering cases on conduct of members of the armed forces directly related to a legitimate military or police task.[FN84]

[FN84] Inter-American Court on Human Rights, Case of 19 Merchants, Judgment of July 5, 2004, para. 166.

80. The Inter-American Court has pointed out that “When a military court takes jurisdiction over a matter that regular courts should hear, the individual’s right to a hearing by a competent, independent and impartial tribunal previously established by law and, a fortiori, his right to due process are violated. That right to due process, in turn, is intimately linked to the very right of access to the courts.”[FN85]

[FN85] Inter-American Court on Human Rights, Case of Castillo Petruzzi et al., Judgment of May 30, 1999, para. 128. Also see: Id. para. 130; Case of Las Palmeras, Judgment of December 6, 2001, para. 52; and Case of Cantoral Benavides, Judgment of August 18, 2000, para. 112.

81. The Commission also takes the view that the State has not fulfilled its obligation under Article 1(1) of the American Convention to ensure the exercise of the rights and freedoms enshrined in the Convention to all persons subject to its jurisdiction. This obligation encompasses the duty to organize the system of government, and in general all bodies through which public power is exercised, in such a way that they are made capable of legally ensuring the free and full exercise of human rights. It is as a consequence of this obligation that the States Parties have the legal obligation to prevent, investigate and punish violations of the human rights protected by the American Convention.[FN86] The Inter-American Court on Human Rights has maintained that “If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.”[FN87]

[FN86] Inter-American Court on Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 166.

[FN87] Id. para. 176. Also see para. 174.

82. It is a fact that the American Convention imposes on States the obligation to prevent, investigate, identify and punish the perpetrators of human rights violation or anyone who covers up such violations. The Inter-American Court has pointed out that:

Article 8 taken together with Article 1(1) obliges the State to guarantee to all persons access to the courts and, in particular, to simple and rapid remedy to assure that the perpetrators of human rights violations are tried and that compensation of damages is obtained. As this Court has previously stated, “Article 25 is a mainstay not only of the American Convention, but of the Rule of Law in a democratic society, in the sense set forth in the Convention.”[FN88]

[FN88] Inter-American Court on Human Rights, Case of Cantos, Judgment of November 28, 2002, para. 52; Case of the Mayagna (Sumo) Awas Tingni Community, Judgment of August 31, 2001, para. 112; and Case of Ivcher-Bronstein, Judgment of February 6, 2001, para. 135.

83. The content of Article 25 is closely linked to Article 8(1), which enshrines the right of every person to a hearing before an independent and impartial tribunal or judge with due guarantees and within a reasonable period, and confers on the victim the right to have any violation of rights protected by the American Convention investigated by the authorities, to have judicial recourse against those responsible, to have pertinent sanctions applied, and to be adequately compensated for any damages.[FN89]

[FN89] Inter-American Court on Human Rights, Case of Durand and Ugarte, Judgment of August 16, 200, para. 130; Case of the Moiwana Community, Judgment of June 15, 2005, para. 205.

84. The Commission has established that in the case of crimes of public action, the State has the obligation to initiate criminal proceedings and pursue them to the end,[FN90] and that this is the best way to establish the facts, prosecute the responsible parties, and determine pertinent criminal sanctions, as well as to make other forms of compensation possible. In the instant case the authorities failed in their duty to take investigations and judicial proceedings forward with the due guarantees necessary to assuring compliance with the parameters set out in the American Convention. This failure affected the right of the victim's relatives to a hearing before an independent and impartial tribunal.

[FN90] IACHR, Report 52/97, Case 11.218, Arges Sequeira Mangas, 1997 IACHR Annual Report, paras. 96-97. Also see Report 55/97, para. 392.

85. With these consideration in mind, the Commission points out that entrusting the military criminal justice system with the investigation of the involvement of police officials in the circumstances surrounding the death of Leydi Dayán Sánchez Tamayo violates the principles of a hearing before a competent and impartial tribunal, of due process, and of access to adequate legal remedy.[FN91] In addition, the absence of investigation, prosecution and punishment of the facts by a regular court of law entails a violation of Articles 8 and 25 of the Convention in conjunction with the general obligation to respect and ensure rights set out in Article 1(1).

[FN91] Inter-American Court on Human Rights, Case of 19 Merchants, Judgment of July 5, 2004, para. 174.

86. In consequence, the Commission concludes that the Colombian State did not comply with its obligation to ensure full clarification of the role of agents of the State in the death of the minor Leydi Dayán Sánchez Tamayo through proceedings in the regular courts of the land and with due guarantees, as stipulated by Articles 8 and 25 of the American Convention in conjunction with Article 1(1) of the same.

V. PROCEEDINGS SUBSEQUENT TO THE ADOPTION OF REPORT N° 5/06 PURSUANT TO ARTICLE 50 OF THE CONVENTION

87. On February 28, 2006, the Commission adopted Report 05/06 pursuant to Article 50 of the American Convention. In that report the Commission concluded that the Republic of Colombia was responsible for violating the rights to life, to a fair trial, of the child, and to judicial protection under Articles 4, 8, 19, and 25, respectively, of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the minor Leydi Dayán Sánchez Tamayo. The Commission also concluded that the Colombian State had violated the rights of the relatives of Leydi Dayán Sánchez Tamayo to a fair trial and judicial protection corresponding to Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) of said international instrument. The IACHR also recommended that the State: (1) carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo; (2) fully compensate the relatives of the victim for the violations of the American Convention established in th[at] report; (3) make a public statement recognizing the State's responsibility for the violations of the American Convention established in th[at] report; (4) Adopt training, monitoring and law enforcement measures to assure that agents of the State authorized to bear arms use them in strict compliance with the principles of necessity, exceptionality and proportionality, especially in the presence of children, a group that requires special measures of protection; and, (5) adopt all measures necessary to ensure that such events are not repeated, in compliance with the obligation to prevent violations and ensure the basic rights recognized in the American Convention, and fully comply with the doctrine developed by the Commission and the Inter-American Court on the exclusive use of the military criminal justice system to try crimes committed in the line of duty.

88. The report was transmitted on March 31, 2006, to the State, which was given two months in which to adopt the recommendations it contained. That same day, in keeping with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that it had adopted a report on merits and transmitted it to the State, and it requested them to set out their position with respect to submission of the case to the Inter-American Court.

89. In a communication of May 1, 2006, the representatives of the victim and her next of kin requested that the case be submitted to the Court. In a communication of May 31, 2006, the State expressed its willingness to comply in good faith with the recommendations contained in Report 05/06 and, to that end, requested the Commission to grant an extension of one year "to complete the process of compliance with the recommendations, in particular the one concerned with the review process." The State also provided an account of a series of measures proposed so that the Office of the Attorney General might bring an action for review, as provided in the Code of Criminal Procedure, against the acquittal issued in the military jurisdiction, so as to lift the status of *res judicata* and enable investigation of the case to be resumed in the general jurisdiction; reach a financial settlement with the relatives of the victim in contentious-administrative proceedings; and come to an agreement on an act of apology with the relatives of the victim and their representatives.

90. Based on information provided by both parties, on June 16, 2006, the IACHR decided to extend the deadline for referring the case to the Court by three months. On September 25, 2006, based on information from both parties regarding progress in implementation of the recommendations contained in report 05/06, the IACHR extended the deadline for submitting the case to the Court by six months as from September 22, 2006, and requested the States to present a progress report by March 8, 2007.

91. In its report of March 8, 2007, the State mentioned that in a decision dated February 22, 2007, the Council of State approved the financial settlement reached by the victims' representatives with the National Police and the respective payment. It also noted that in consensus with the representatives of the victims, on November 20, 2006, ceremonies were held to restore the historic memory of Leydi Dayán Sánchez at the school she had attended, which were attended by the Director General of the National Police, who accepted responsibility on behalf of the State and apologized to the relatives.[FN92] The State also said that a plaque was unveiled in her memory. This ceremony came in addition to an earlier one held on September 8, 2006. The State reported on training in proportional use of force for the National Police and the inclusion of Report 05/06 in the studies curriculum. With respect to progress in the action for review provided for in the Code of Criminal Procedure against the acquittal issued by the military courts, the State informed that the Criminal Chamber of the Supreme Court of Justice had taken a number of procedural steps. In response to this information, the representatives of the victims valued the good faith demonstrated by the State in its efforts to comply with the recommendations; expressed satisfaction at the public admission of responsibility made by the State, and recognized the importance of the financial reparations agreed on in the contentious-administrative jurisdiction. Based on these elements and at the request of the State, on March 8, 2007, the IACHR granted an additional extension (this time for eight months) so that the State might present further results with respect to progress in the action for review of the judgment adopted in the military justice system.

[FN92] In said admission of responsibility, the Director General of the National Police, Major General Jorge Daniel Castro Castro said, "On behalf of the State, this humble servant regrets the death of the minor Leydi Dayan Sánchez Tamayo, acknowledges before you, her relatives, and before the national and international community all due responsibility for the aforementioned acts and asks the forgiveness of her parents, her siblings for having caused the profound distress of losing a daughter, a sister, when her life was just beginning, in her adolescence. The State hopes, as do the Police, that with this act, which is from the heart, we might in some way mitigate the pain of her peers, her siblings, and her friends, her companions. We realize that these events are beyond repair but hope that you will take into account this act of apology and contrition. The Police of Colombia reiterate once more the commitment to respect the life and human rights of all persons and to act always in accordance with the law and its regulations, and hope that never; ever again will an act of this enormity be committed in Colombia." Note DDH.GOI 20779/1106 from the Ministry of Foreign Affairs of April 25, 2008, pp. 2 and 3.

92. The State presented its report on compliance on November 7, 2007, in which it noted that in a judgment of November 2, 2007, the criminal cassation chamber of the Honorable Supreme

Court of Justice adopted a decision on the merits of the action for review and decided: to admit the grounds for review invoked on behalf of the victim; to overturn the judgments at first and second instance adopted by the Commander of the Bacatá Police Department on July 6, 2000, and the Superior Military Tribunal on May 15, 2001, by which patrolman Juan Bernardo Tulcan Vallejos was acquitted of the charge of negligent homicide of the minor Leydi Dayán Sánchez Tamayo, and all the acts adopted on the basis of, and including, the decision of July 23, 1999, by which the Bacatá Police Command closed the investigation; and to refer the proceeding to the Office of the Prosecutor General to initiate an investigation in the general jurisdiction. The judgment of the Supreme Court of Justice in this case was motivated by the report on merits adopted by the Inter-American Commission and the protection of the rights of the minor Leydi Dayán Sánchez.

93. In this respect, the petitioners reiterated their recognition of the progress made in implementing the recommendations and asked the Commission to request additional information from the State “before making a decision on a report under Article 51.” They considered that the State should adopt “a number of initial measures to show that this case would be investigated in a meaningful and effective manner and within a reasonable time by the regular justice system.”

94. The communication of the petitioners was relayed to the State for comment. In response, in a communication dated November 19, 2007, and received on November 21, 2007, the State noted the decision of the Supreme Court to order the institution of criminal proceedings in the regular jurisdiction to prosecute those responsible for the killing of Leydi Dayán Sánchez and that follow-up on said proceeding should be carried out as part of the follow-up on compliance with the recommendations contained in the report under Article 51 of the American Convention.

95. On November 26, 2007, the IACHR decided by the vote of an absolute majority of its members, and pursuant to Article 44(1) in fine of its Rules of Procedure, not to refer the instant case to the Inter-American Court of Human Rights. In adopting the aforesaid decision the IACHR took into consideration the steps taken by the State to comply with the recommendations with respect to initiating the action for review in the general jurisdiction; the acts in restoration of the historic memory of Leydi Dayán Sánchez; the training in the National Police on the use of firearms in keeping with the principles of necessity, exceptionality, and proportionality; and the payment of compensation to the relatives of the victim.

96. Although the investigation currently underway in the regular justice system has yet to yield results, the Commission values the impetus given to the action for review and the decision of the Criminal Cassation Chamber of the Honorable Supreme Court of Justice, which admitted the grounds for review; overturned, based on the conclusions contained in Report 05/06, the acquittals issued by the military criminal justice system; and referred the proceeding to the Office of the Prosecutor General to initiate a new investigation in the general jurisdiction.

97. There is nothing in the reply of the State to suggest that the review proceeding initiated has produced results in connection with compliance with the IACHR’s recommendation to “carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo.”

Accordingly, in view of the partial compliance, the Commission must continue to process the case pursuant to Article 51 of the American Convention.

VI. CONCLUSIONS

98. In light of the above factual and legal analysis, the Commission reiterates its conclusions to the effect that the State is responsible for violation of the rights to life, to a fair trial, of the child, and to judicial protection under Articles 4, 8, 19, and 25, respectively, of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the minor Leydi Dayán Sánchez Tamayo; and that the State has violated the rights of the relatives of Leydi Dayán Sánchez Tamayo to a fair trial and judicial protection corresponding to Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) of said international instrument.

VII. RECOMMENDATION

99. Based on the analysis and conclusions in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE COLOMBIAN STATE:

1. Carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo.

VIII. PUBLICATION

100. On March 13, 2008, the Commission considered the information furnished by the parties with regard to compliance with the recommendations adopted in Report 05/06. The conclusions and recommendations were set down in Report 18/08, of which the parties were notified on March 25, 2008, in keeping with Article 51(1) of the American Convention, so that they might submit additional information on progress in compliance with the recommendation concerning administration of justice in the instant case.

101. On April 29, 2008, the State submitted its reply, in which it informed that the proceeding in the regular courts registered as Case 833999 was assigned to the Office of the 52nd Prosecutor of the Criminal Circuit, attached to the First Crimes against Life Unit. It mentioned that on March 17, 2008, a decision was adopted to indict Mr. Juan Bernardo Tulcán Vallejos as the alleged perpetrator of the crime of negligent homicide of the minor Leydi Dayán Sánchez, which concluded the investigation stage and initiated the trial stage of the proceeding.[FN93] The State mentions that it has taken significant steps to comply fully with the recommendations of the IACHR in Reports 05/06 and 18/08 and that it expects results to be achieved in the short term.

[FN93] Note DDH.GOI 20779/1106 from the Ministry of Foreign Affairs of April 25, 2008.

102. The State request the IACHR to refrain from making public its decision in the instant case in view of the resolute measures that it has adopted to comply with the recommendations and its international obligations, as well as the good faith demonstrated in the proceedings before the IACHR.

103. The Commission values the progress reported by the State in its brief and, in light of the characteristics of this particular case, considers it appropriate at the same time to continue with the process of follow-up on compliance with the recommendation to prosecute and punish those responsible for the death of Leydi Dayán Sánchez Tamayo. Based on the foregoing considerations and pursuant to Articles 51(3) of the American Convention and 45 of its Rules of Procedure, the Commission resolves to publish the instant report and included in its Annual Report to the OAS General Assembly.

104. In keeping with its mandate, the Commission will continue to evaluate the steps taken by the Colombian State in connection with the aforementioned recommendation until full compliance therewith is reached.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2008.
(Signed): Paolo G. Carozza, Chairman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, Commissioners.