In the Case of the Pueblo Bello Massacre,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 29, 31, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following judgment.

I. INTRODUCTION OF THE CASE

1. On March 23, 2004, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Colombia (hereinafter "the State" or "Colombia"), originating from petitions Nos. 10,566 and 11,748, received by the Secretariat of the Commission on February 12, 1990, and May 5, 1997, respectively.

2. The Commission lodged the application for the Court to decide whether the State had violated the rights embodied in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 19 (Rights of the Child) in relation to the obligations established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the purported victims of the alleged massacre perpetrated in the village of Pueblo Bello, described in the application. The Commission also asked the Court to decide whether the State had violated Articles 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of the alleged victims of the alleged massacre and their next of kin.

In its application, the Commission alleged that "[t]he forced disappearance of 37 [persons,] as well as the extrajudicial execution of six peasants from the village of Pueblo Bello in January 1990 is considered to be an [...] act of private justice by paramilitary groups led at the time by Fidel Castaño in the Department of Córdoba, perpetrated with the acquiescence of State agents. Owing to its magnitude and to the [alleged] fear that it sowed among the civilian population, the episode strengthened the paramilitary control of this region of the country and illustrated the consequences of the [alleged] omissions, acts of acquiescence and collaboration of State agents with paramilitary groups in Colombia, as well as their impunity. Almost 15 years have elapsed since the disappearance of the victims and, owing to the action of many civilian and State actors, the domestic courts have clarified the fate of six of the 43 disappeared persons, while only 10 of the approximately 60 individuals involved have been tried and sentenced – and only three of them have been deprived of their liberty; consequently, the State has still not complied fully with its obligation to clarify the facts, prosecute all those responsible effectively and recover the bodies of the rest of the [alleged] victims."

3. The Commission also requested the Inter-American Court, in accordance with Article 63(1) of the Convention, to order the State to adopt certain measures of reparation indicated in the application. Lastly, it requested the Court to order the State to reimburse the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the Inter-American system for the protection of human rights.

II. JURISDICTION

4. The Court has jurisdiction to hear this case, in the terms of Article 62(3) of the Convention, because Colombia has been a State Party to the American Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on June 21, 1985.

III. PROCEEDINGS BEFORE THE COMMISSION

5. On February 12, 1990, the Inter-American Commission received a "communication […] concerning the situation of 33 peasants" of Pueblo Bello from Christa Schneider. On the same date, under case No. 10,566, the Commission communicated with the State in order to request information in this regard.

6. On May 10, 1990, the State submitted its reply, which was forwarded to the complainant on June 26, 1990, and she was granted a specific time to present comments.

7. On December 6, 1990, the Commission received information about the matter from another source, and it was sent to the State so that the latter could forward its observations. On August 16, 1991, the State remitted its reply, which the Commission forwarded to the complainant on September 18 that year, so that she could submit her comments.

8. On June 9, 1993, and on January 18, 1994, the Commission tried, unsuccessfully, to communicate in writing with the complainant and told her that "if it did not receive the required information [...], the Commission could suspend consideration of the case."

9. On May 5, 1997, the Comisión Colombiana de Juristas [Colombian Jurists Commission] and the Asociación de Familiares de Detenidos Desaparecidos [Association of Next of Kin of the Detained/Disappeared] (hereinafter "the petitioners") presented a petition before the Inter-American Commission concerning the same facts, and a new proceeding was started as case No. 11,748.

10. On May 20, 1997, the State communicated with the Commission to inform it that case No. 11,748 "had already been reported and [was] being processed before [this] instance as case No. 10,566"; it therefore requested the Commission to adopt "pertinent measures in order to combine and process the case under one case file."

11. On May 28, 1997, the Commission informed both parties that the material facts in case files Nos. 10,566 and 11,748 would be joindered and processed under case file No. 11,748.

12. On March 3, 1998, the Commission made itself available to the parties to try and reach a friendly settlement.

13. On October 9, 2002, during its 116th regular session, the Commission adopted Admissibility Report No. 41/02, in which it declared the case admissible. On October 29, 2002, the Commission made itself available to the parties to help them seek a friendly settlement.

14. On October 8, 2003, during its 118th regular session, the Commission adopted Report No. 44/03, in which it recommended that the State should:

1. Conduct a complete, effective and impartial investigation in the ordinary jurisdiction, in order to prosecute and punish all those responsible for the forced disappearance and extrajudicial execution of the Pueblo Bello victims.
2. Adopt the necessary measures to find and identify the remains of the victims whose whereabouts have not yet been established and return these to the next of kin.
3. Make reparation to the next of kin of the victims for the pecuniary and non-pecuniary damage suffered owing to the violations of the American Convention established herein.
4. Adopt the necessary measures to combat and dismantle the paramilitary groups in accordance with the recommendations adopted by ICHR in its general reports, and by the international community.
5. Adopt the necessary measures to avoid the recurrence of similar events in future, in accordance with the obligation to protect and guarantee the fundamental rights embodied in the American Convention, and also the necessary measures to comply fully with the rules of law developed by the Colombian Constitutional Court and by this Commission in the investigation and prosecution of similar cases by the ordinary criminal justice system.

15. On December 23, 2003, the Commission forwarded Report on Merits No. 44/03 to the State, granting it two months from the date of transmittal to provide information on the measures adopted to comply with the recommendations contained in the report.

16. On January 23, 2004, the Commission informed the petitioners that the report had been adopted and asked them to advise their position as regards submitting the case to the Inter-American Court.

17. On March 4, 2004, the petitioners presented a brief in which they requested the Commission to submit the case to the Court if the State failed to comply with the recommendations in its report.

18. On March 12, 2004, the State requested an extension of 10 days to present its comments on the Merits Report. The same day, the Commission informed the State that it would grant a five-day extension for the presentation of those comments. There is nothing in the file of the proceedings before the Commission to show that the comments were presented.

19. On March 22, 2004, the Commission decided to file this case before the jurisdiction of the Inter-American Court.

IV. PROCEEDINGS BEFORE THE COURT

20. On March 23, 2004, the Commission filed the application before the Court (supra para. 1), attaching documentary evidence and offering testimonial evidence. The Commission appointed Susana Villarán de la Puente and Santiago A. Canton as delegates, and Ariel Dulitzky, Verónica Gómez, Norma Colledani and Lilly Ching as legal advisers. Subsequently, on August 15, 2005, the Commission appointed the same delegates, and Víctor Madrigal Borloz, Juan Pablo Albán, Verónica Gómez and Manuela Cuvi as legal advisers. Finally, on September 15, 2005, the Commission appointed only Susana Villarán de la Puente as delegate, and Lilly Ching as legal adviser, in addition to the legal advisers appointed on August 15, 2005.

21. On June 23, 2004, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it, together with the attachments, to the State and informed it of the time limits for answering the application and appointing its representatives for the proceedings. The same day, on the instructions of the President, the Secretariat informed the State of its right to appoint a judge ad hoc to take part in hearing the case.

22. On June 23, 2004, in accordance with the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat notified the application to the representatives of some of the alleged victims' next of kin (hereinafter "the representatives"): the Comisión Colombiana de Juristas, the Asociación de Familiares de Detenidos y Desaparecidos (hereinafter "ASFADDES") and the Center for Justice and International Law (hereinafter "CEJIL"), and informed them of the time limit for submitting their brief with requests, arguments and evidence (hereinafter "requests and arguments brief").

23. On August 23, 2004, after an extension had been granted, the State appointed Juan Carlos Esguerra Portocarrero as Judge ad hoc. The same day, it appointed Luz Marina Gil García as Agent and Sonia Clemencia Uribe Rodríguez as Deputy Agent. Subsequently, on August 17,

2005, the State indicated that Eduardo Montealegre Lynett had been appointed Agent and Luz Marina Gil García, Deputy Agent.

24. On August 23, 2004, the representatives presented their brief with requests and arguments, to which they attached documentary evidence, and offered testimonial and expert evidence.

25. On October 25, 2004, the State presented its brief with preliminary objections, in answer to the application and with observations on the requests and arguments (hereinafter "answer to the application"), to which it attached documentary evidence.

26. On November 24 and 25, 2004, the Commission and the representatives, respectively, submitted their written arguments on the preliminary objections filed by the State.

27. On July 29, 2005, the President issued an order in which, inter alia, he enjoined the State to determine, by August 10, 2005, at the latest, the name and position of the person it had offered as a witness. He also required the witnesses proposed by the representatives: Benidlo José Ricardo Herrera, Robinson Petro Pérez Pedro Luis Escobar Duarte, Manuel Dolores López Cuadro, Genaro Calderón Ruiz, Euclides Manuel Calle Álvarez, Eliécer Manuel Meza Acosta, María Cecilia Ruiz Álvarez, Edilma de Escobar and Leovigilda Rosa Villalba Sánchez, and also the expert witnesses Alfredo Molano Bravo and Carlos Martín Beristain, to provide their testimonies and expert evidence, respectively, by means of statements made before notary public (affidavits). The President also convened the Commission, the representatives, and the State to a public hearing to be held at the seat of the Inter-American Court starting on September 19, 2005, to hear their final oral arguments on preliminary objections and possible merits, reparations and costs, as well as the testimonies of Ángel Emiro Jiménez Romero and Mariano Manuel Martínez Pacheco, proposed by the Commission and by the representatives; and of José Daniel Álvarez Ruiz, Rubén Díaz Romero, Blanca Libia Moreno Cossio and Nancy Amparo Guerra López, proposed by the representatives. The President also informed the parties that they had a non-extendible period until October 20, 2005, to submit their final written arguments on preliminary objections and possible merits, reparations and costs.

28. On August 10, 2005, the State presented a brief in which it offered Elba Beatriz Silva Vargas as a witness.

29. On August 19, 22, 23 and 25, 2005, the representatives presented the statements of the witnesses and expert witnesses made before notary public (affidavits) requested by the President in the order of July 29, 2005 (supra para. 27).

30. On September 6, 2005, the President issued an order in which he convened Elba Beatriz Silva Vargas, proposed by the State, to appear at the said public hearing (supra para. 27).

31. On September 19 and 20, 2005, a public hearing was held, during which there appeared before the Court: a) for the Inter-American Commission: Susana Villarán, Commissioner; Víctor Hugo Madrigal, Juan Pablo Alban, Manuela Cuvi and Lilly Ching, advisers; b) for the representatives: Tatiana Rincón Covelli, Ana Alverti and Michael Camilleri, CEJIL lawyers, and

Luz Marina Monzón and Carlos Rodríguez Mejía, lawyers from the Comisión Colombiana de Juristas; and c) for the State: Eduardo Montealegre Lynett, Agent; Luz Marina Gil, Deputy Agent; Ambassador Julio Aníbal Riaño Velandia, Héctor Adolfo Sintura Varela, Carlos Rodríguez, Dionisio Araujo, Advisers, and also Ambassador Clara Inés Vargas Silva and María del Pilar Gómez and Marta Carrillo, advisers.

32. On October 14, 2005, on the instructions of the President and in the terms of Article 45(2) of the Rules of Procedure of the Court, the Secretariat requested the representatives and the State to provide, by November 3, 2005, at the latest, certain information and various documents as useful evidence in the case, including: information on the criminal proceedings underway in the military criminal jurisdiction and in the ordinary criminal jurisdiction, and on disciplinary proceedings; copies of birth, marriage and death certificates. Since the State did not submit this information, on the instructions of the President, the Secretariat reiterated this request on November 9, 14 and 21, 2005.

33. On October 19 and 20, 2005, the State, the Commission and the representatives forwarded their respective final written arguments. With its brief, the State presented a series of documents relating to the domestic proceedings as attachments. Since numerous folios of these attachments were illegible or incomplete, on October 26, 2005, the Secretariat requested the State to re-submit them as soon as possible. Some of the requested documents were presented by the State on November 17, 18 and 28, 2005.

34. On November 3 and 7, 2005, the representatives presented certain information and a series of documents in response to the request for useful evidence (supra para. 32). On November 9, 2005, the Secretariat granted the State and the Inter-American Commission one week to present any comments they deemed pertinent on these documents. No comments were received.

35. On December 9, 2005, the Inter-American Commission referred to the documents presented as attachments to the final arguments brief presented by Colombia (supra para. 33) and requested that they should not be incorporated into the case file or taken into consideration as evidence. On December 15, 2005, on the instructions of the President, the Secretariat granted a non-extendible period until December 21, 2005, for the Inter-American Commission and the representatives to submit any comments they deemed pertinent on the documents presented by the State as attachments to their final arguments and informed them that the Court would consider the Commission's request when it delivered the corresponding judgment (infra paras. 75 and 76).

36. On December 21, 2005, the Commission presented its comments on the probative nature and admissibility of the documents presented as attachments to the final arguments brief submitted by Colombia (supra paras. 33 and 35), and also a series of arguments de facto and de jure on the merits of the case.

37. On December 21, 2005, Colombia presented a brief in which it made a series of statements with regard to the Commission's brief of December 9, 2005, and the Secretariat's note of December 15, 2005, concerning the documents presented as attachments to the final

arguments brief (supra para. 35). The State also submitted information on one of the points that was requested as useful evidence in the note of October 14, 2005, which had been reiterated on three occasions (supra para. 32).

38. On December 27, 2005, on the instructions of the President, the Secretariat granted until January 9, 2006, to the Commission and the representatives to submit any comments they deemed pertinent on the State's brief of December 21, 2005, and its attachments (supra para. 37); these were presented on January 9, 2006.

V. PRIOR CONSIDERATIONS

39. Before recording its findings with regard to the evidence and its assessment, determining the proven facts and deciding on the State's responsibility in the instant case, the Court considers it necessary to examine some statements made by the parties concerning the preliminary objections filed by the State, the Court's jurisdiction, and the participation of the alleged victims' next of kin through their representatives.

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40. First, in a brief submitted on October 25, 2004, with its answer to the application (supra para. 25), the State filed a preliminary objection in the proceedings before the Court for alleged defects in the processing of the case before the Commission. Specifically, the objection filed by the State was entitled "non-compliance with requirements for applying the exceptions to exhaustion of domestic remedies in order to declare the admissibility of a petition," based on what the State described as two "grounds."

41. With regard to what it called the "first grounds" for the preliminary objection, the State questioned the Commission's decision, when examining the admissibility requirements with regard to the petitions that gave rise to the case, to apply the exceptions to the requirement of previous exhaustion of domestic remedies established in paragraphs (a) and (c) of Article 46(2) of the Convention. The State submitted its arguments in the form of a preliminary objection, even though it acknowledged that "the moment at which the Court may rule on an allegation concerning domestic remedies will depend on the specific circumstances of each case." In particular, the State argued that:

(a) The Commission rejected the military criminal jurisdiction as an instrument for the administration of justice, disregarding the rule of law in force in Colombia. The facts occurred in 1990 and, therefore, they were investigated according to the mechanisms available for the administration of justice at that time. Even though the Commission recognizes military criminal justice as a component of the administration of justice in Colombia and notes the progress made in the Constitutional Court's case law and in the Military Penal Code in delimiting and restricting jurisdictions, it forgot to examine the specific case in order to indicate the applicable norms at the time of the facts;
(b) The Court has stated that the standard for measuring the effectiveness of a domestic remedy is its capacity to produce the result for which it was conceived. The Commission failed to examine the validity of the conclusions of the Colombian courts and simply rejected the result,

merely because it derived from the military criminal justice system. The State does not accept judgments of this type and invoked the application of the Court's opinion in the Genie Lacayo case;

(c) Regarding the opinions on the effectiveness of the proceedings before the ordinary justice system, the Commission made an inexact summary of the decisions taken to date by the competent judges, in order to describe those recourses over-hastily as useless, disregarding the progress made and the results, and also the complexity of the case and the efforts made by the State to investigate the facts, and prosecute and punish those responsible;

(d) The State has complied with all the requirements of case law, the treaties, and the principle of the burden of proof for it to be acknowledged that domestic remedies have not been exhausted, so that the petition that gave rise to case No. 11,748 should not have been found admissible; and

(e) The Commission applied unduly the exceptions to the exhaustion of domestic remedies established in Article 46(2)(a) and (c) of the Convention, and this led to an improper processing of the petition that gave rise to the case and generated grounds for rejecting the application. [FN1]

[FN1] Cf. brief with preliminary objections, answer to the application and with observations on the requests and arguments brief (merits file, tome II, pp. 6 to 8, folios 352 to 354).

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42. With regard to the "second grounds," the State argued that the Commission had not complied with the "concept of a reasonable time limit" when admitting the petition. According to the provisions of Article 46(1)(b) of the Convention, it is generally required that the petition or communication should be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment. However – the State indicated – the treaty-based period of six months is not required when, in the Commission's opinion, there are circumstances in which an exception should be made to the requirement of prior exhaustion of domestic remedies, according to the Commission's parameters for the admission of a petition established in Article 32(2) of its Rules of Procedure. Specifically, the State declared that:

(a) Article 32(2) of the Commission's Rules of Procedure establishes the parameters that the Commission should take into account when considering whether the period of time within which the petition was presented is reasonable, in those cases when the treaty-based time limit of six months from notification of the final judgment established in 46(1)(b) of the Convention cannot be required;

(b) Procedural norms are inflexible and peremptory; consequently, even if the case before the Commission is not contentious, it is obliged to respect the time limits and comply with its treaty-based role with the prudence and reasonableness required by its mandate;

(c) The Commission is obliged to respect the time limits established in the Convention and, in the case of exceptions, such as in the instant case, it should require a reasonable time limit for the presentation of a petition. The Commission failed to comply with this concept of reasonableness when it admitted a petition concerning facts that occurred slightly more than seven years ago, and neither the petition nor the Admissibility Report explain this delay;

(d) Owing to the lack of justification for this decision, the State requested the Court to rule on the obligation to justify the decisions of the Commission and requested that, in its absence, the application should be rejected. [FN2]

[FN2] Cf. brief with preliminary objections, answer to the application and with observations on the requests and arguments brief (merits file, tome II, pp. 10 and 11, folios 356 and 357).

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43. The Commission and the representatives presented their written observations on this objection (supra para. 26).

44. The Commission indicated with regard to both grounds, that:

(a) The State's allegations do not constitute a preliminary object, because the facts of the case that have constituted violations of the right to a fair trial and also the ineffectiveness of domestic remedies are precisely one of the elements of the dispute submitted to the Court's consideration;
(b) There is no valid motive for re-opening the discussion on exhaustion of domestic remedies, in accordance with Article 46(1) of the Convention, or on the applicability of the exceptions established in Article 46(2) thereof, or on the timeliness of the lodging of the petition. Moreover, the State did not allege the latter during the appropriate procedural stage;
(c) Consequently, it requested the Court to reject the State's first preliminary objection as manifestly groundless and inadmissible;
(d) There is no reason to re-open the discussion on the timeliness of the lodging of the application. The State did not submit this argument at the appropriate procedural stage:
i. During the proceedings before the Commission, the State did not question the reasonableness of the time limit for lodging the petitions vis–à–vis the requirement established in Article 46(1) of the Convention and developed in Article 32 of the Commission's Rules of Procedure;
ii. There is no treaty-based or regulatory provision that obliges the Commission to give a detailed explanation of the reasons why it considers that a petition complies with the admissibility requirements; and
iii. Part of the description of the facts of the case corresponds to the concept of "forced disappearance" and a continuing partial denial of justice has occurred; the Commission's consistent practice has been to consider that the rule of the opportune lodging of a petition does not apply when it refers to a continuing situation;
e) The reasonable period of time referred to in Article 32(2) of the Rules of Procedure is not a treaty-based period of time, as the State affirms, because, according to the Convention (Article 46(2)), there is no specific time limit for lodging the petition when any of the exceptions to the requirement to lodge it within six months are applicable. In the instant case, at least two of these exceptions have been verified, so that this rule is not applicable, as the Commission has considered; and
(f) The application and interpretation of the Commission's Rules of Procedure concerning the reasonable period is an attribute of the Commission. The Court has powers to consider in toto

matters that are in dispute, but the Commission has the principal responsibility for interpreting the time limits that it has established. [FN3]

[FN3] Cf. brief with observations of the Inter-American Commission on the preliminary objections filed by the State (merits file, tome II, folios 418 to 426).

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45. The representatives requested the Court to reject this objection for the reasons set out by the Commission and also alleged, inter alia, that:

(a) Once the admissibility of a petition has been determined and the Commission has taken a decision on the exhaustion of domestic remedies, in principle, the Court should abide by the Commission's decision, in application of the principle of procedural estoppel, for reasons of legal certainty and procedural economy;
(b) The State has not proved that there was any irregularity in the proceedings before the Commission that could have affected its right to a defense; to the contrary, it was able to submit its arguments in an opportune manner;
(c) The State raised the objection that the Commission has too hastily qualified the proceedings before ordinary justice as ineffective; however, the time elapsed between the moment when the facts occurred and the date of the Tribunal Nacional's judgment (1990-1997) clearly exceeded the limits of reasonableness considered in the Court's case law. [FN4]

[FN4] Cf. brief with observations of the representatives on the preliminary objections filed by the State (merits file, tome II, folios 438 to 451).

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46. Subsequently, during the oral arguments made during the public hearing held on September 19 and 20, 2005, the State declared that:

With regard to [the preliminary objections raised], the State wishes to request the Court to joinder the reasons described in these objections to the issue of merits. […] In other words, […] we are invoking the full competence of the Court to decide on this point concerning admissibility requirements.

47. Following the public hearing, the Commission and the representatives again submitted written observations on the preliminary objections and the State's subsequent request concerning the joinder (supra para. 33). In its final written arguments, the State did not make any reference to the objections, or to its request for joinder.

48. With regard to the statement made by the State during the public hearing, particularly the fact that Colombia expressly accepted the Court's jurisdiction to hear this case, the Court understands that Colombia withdrew the preliminary objection as such. In other words, the Court must now consider whether the State's request to "joinder" the arguments submitted initially as preliminary objections with the merits of the case is admissible.

49. Regarding the so-called “first grounds” for the preliminary objection filed by the State, the Court observes that these arguments are clearly related to the alleged violation of the rights to a fair trial and to judicial protection, which constitutes a central element of the dispute in this case. Since these arguments are no longer of the nature of a preliminary objection, the Court will examine the parties' arguments concerning the effectiveness of the domestic remedies in the chapter on Articles 8(1) and 25 of the Convention (infra paras. 169 to 212).

50. In relation to the so-called “second grounds,” regarding the Commission’s criteria for admitting the petitions submitted to it and processing them, and the reasonableness of the time allowed for it to adopt reports, the Court observes that this refers to the admissibility of a case before that body of the inter-American system. In other words, when the full competence of the Court has been acknowledged and the State has withdrawn the preliminary objection, a ruling in this respect is irrelevant as regards the merits of the case. Consequently, the Court considers that the State’s request to joinder these arguments to the merits of the case is inadmissible.

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51. With regard to the participation of the alleged victims’ next of kin and their representatives, the Commission made several requests concerning the reparations it considered admissible in the case as well as the following proposal:

[…] In keeping with the Court’s Rules of Procedure that grant autonomous representation to the individual, in this application, the Inter-American Commission will only set out the general principles regarding the reparations and costs it considers the Court should apply in this case. The Inter-American Commission understands that it corresponds to the next of kin of the victims and their representatives to specify their claims, pursuant to Article 63(1) of the American Convention and Article 23 and other relevant articles of the Court’s Rules of Procedure. If the next of kin of the [alleged] victim do not avail themselves of this right, the Commission requests the Court to grant it the procedural opportunity to quantify the respective claims. Additionally, the Inter-American Commission indicates that it will inform the Court opportunely if it has any observations concerning the quantification of the claims of the next of kin of the victim or his representatives. [FN5]

[FN5] Cf. application lodged by the Inter-American Commission (merits file, tome I, pp. 34 and 35, folios 35 and 36).

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52. In its answer to the application, the State expressed its opposition to the Commission's proposal as follows:

In paragraph 88 of the application, the Commission is misinterpreting the American Convention […]. The Commission is trying to give the next of kin of the victims and their representatives a role that the Convention has not granted them. According to Article 61(1) of the Convention: “Only the States Parties and the Commission shall have the right to submit a case to the Court.”

In other words, the States Parties and the Commission determine the scope of the claims that will be submitted to the Court for it to decide, either in the application, or in the answer to the application. The dispute is decided by the Commission and the States Parties.
Consequently, the Commission's proposal to delegate to the petitioners the definition of the claims with regard to reparations and, in particular, to request another procedural opportunity for quantifying them if the petitioners' next of kin fail to do so, is not consistent with the provisions of the Convention.
This paragraph of the application gives rise to procedural inequality for the State. According to the Rules of Procedure of the Convention [sic] only the Commission and the State, in their capacity as parties to the proceedings, have competence to submit their claims [Arts. 33 and 38 of the Court's Rules of Procedure]. Thus, in the answer to the application, the State should declare whether it accepts the facts and the claims or whether it rejects them, and the Court can consider as accepted those facts that have not been expressly denied and the claims that have not been contested. This indicates that it is the Commission's application and the State's answer that determine the purpose of the contentious proceedings before the Court.
In view of the above, the State considers that, in this paragraph of the application, the Commission failed to comply with the Rules of Procedure; it therefore requests a ruling from the Court in order to promote better procedural practices by the Commission to ensure the legal certainty of the parties. [FN6]

[FN6] Cf. brief with preliminary objections, answer to the application and with observations on the requests and arguments brief (merits file, tome II, p. 35, folio 392).
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53. It is true that the requests and arguments brief of the representatives, entitled "Application of the representatives of the victims in José del Carmen Álvarez Blanco et al. 'Pueblo Bello' v. the Republic of Colombia", does not have the characteristics of an application and the Court has considered it in those terms. Indeed, in this case, as stipulated by the Convention, the Inter-American Commission is the body empowered to initiate the proceedings before the Court by lodging an application strictu sensu, and not the representatives. The purpose of the requests and arguments brief is to give effect to the procedural attribute of locus standi in judicio recognized to the alleged victims, their next of kin or representatives.

54. In this regard, the Court considers it opportune to reiterate its case law in relation to the participation of the alleged victims, their next of kin or representatives in the proceedings before the Court, and their possibility of alleging facts or the violation of rights that are not included in the application:

[…] With regard to the facts that are the subject of the proceedings, the Court considers, as it has on other occasions, that it is not admissible to allege new facts distinct from those set out in the application, without detriment to describing facts that explain, clarify or reject those mentioned in the application, or responding to the claims of the applicant. In addition, so-called supervening facts may be submitted to the Court at any moment of the proceedings before judgment is delivered.

[…] Also, as regards the incorporation of rights, other than those included in the Commission's application, the Court has established that the petitioners may invoke such rights. They are the possessors of all the rights embodied in the American Convention, and to deny this would be an undue restriction of their condition of subjects of international human rights law. It is understood that the foregoing, regarding other rights, will refer to the facts already included in the application.
[…] This Court has the competence – based upon the American Convention and grounded in the iura novit curia principle, which is solidly supported in international law – to study the possible violation of Convention provisions that have not been alleged in the pleadings submitted to it, "in the sense that the judge has the authority and even the obligation to apply the pertinent legal provisions in a case, even when the parties do not invoke them expressly," in the understanding that the parties have had the opportunity to express their respective positions with regard to the relevant facts. [FN7]

[FN7] Cf. Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, para. 57; Case of the Moiwana Community. Judgment of July 15, 2005. Series C No. 124, para. 91, and Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 122.
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55. Likewise, in the "Mapiripán Massacre" case, the Court added that:

At the current stage of the evolution of the inter-American system for the protection of human rights, the empowerment of the alleged victims, their next of kin or representatives to submit requests, arguments and evidence autonomously must be interpreted in accordance with their situation of titleholders of the rights embodied in the Convention and beneficiaries of the protection offered by the system, without thereby adversely affecting the limits to their participation established in the Convention or the exercise of the Court's jurisdiction. Once the Commission has initiated the proceedings, the possibility of presenting requests and arguments autonomously before the Court includes that of alleging the violation of other articles of the Convention that were not contained in the application, based on the facts set out in the latter. Nevertheless, this should not affect the purpose of the application or violate or infringe the right to defense of the State, which is given the procedural opportunities to respond to the allegations of the Commission and the representatives at all stages of the proceedings. In the final instance, it is for the Court to decide, in each case, on the admissibility of allegations of this nature in order to safeguard the procedural equality of the parties.
[…] This Court is empowered to make its own assessment of the facts of the case and to decide on aspects of law that have not been alleged by the parties, based on the iura novit curia principle. In other words, although the application provides the factual framework for the proceedings, it does not limit the powers of the Court to determine the facts of the case, based on the evidence submitted, on supervening facts, on complementary and contextual information in the case file and also on well-known or public facts that the Court considers pertinent to include as part of these facts. [FN8]

[FN8] Cf. Case of the "Mapiripán Massacre", supra note 7, paras. 58 and 59.

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56. Therefore, the possibility of submitting requests and arguments autonomously to the Court includes the possibility of submitting their own requests and arguments with regard to reparations, based on the facts set out in the application, without this affecting the latter or violating or infringing the right to defense of the State, which is able to respond to the allegations of the Commission and the representatives at all stages of the proceedings. The fact that the Commission defers to the requests of the representatives is a procedural option that does not affect the right to defense of the State or the corresponding assessment of the Court.

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57. Finally, regarding the legitimation of the representatives in the case before the Court, the State indicated that:

In the application brief, the Commission provided information on the representation of the victims' next of kin and about the organizations that represent them and advised that the Commission would assume the representation of the victims whose next of kin were not represented by the said organizations.
The brief with requests, arguments and evidence submitted by the victims' representatives indicates the names of the persons they represent; however, only some of these names coincide with the information that the Commission provided in the application in accordance with the obligatory requirements of Article 33(3) of the Rules of Procedure.
According to the Rules of Procedure, the Commission plays the role of the Attorney General's Office (ministerio público) in the inter-American system and, consequently, in the public interest, assumes the procedural representation of the victims who have not been fully identified or located when the application is presented. This is the case of the following persons whose name and next of kin were not indicated in the application and who appear only in the brief with requests, arguments and evidence: ARIEL DULLIS DIAZ DELGADO, WILSON UBERTO FUENTES MARIMON, CELIMO HURTADO, ANGEL BENITO JIMENEZ JULIO, JUAN BAUTISTA MEZA SALGADO, MIGUEL ANTONIO PEREZ RAMOS, JORGE DAVID MARTINEZ MORENO and MIGUEL ANGEL GUTIERREZ ARRIETA. In other words, even if they have granted express powers to the representatives, their appearance in the proceedings is belated, and it is only based on the need to protect their interests that the Commission is able to represent them.
Since the participation of the alleged victims, their next of kin or representatives does not make them a party to the proceedings before the Court, they are not allowed to exceed the limits of the dispute established by the Commission and the State Party. Consequently, and with regard to the said persons, the Commission must play the role of the Attorney General's Office in their representation and not the petitioners. [FN9]

[FN9] Cf. brief with preliminary objections, answer to the application and with observations on the requests and arguments brief (merits file, tome II, p. 36, folio 393).

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58. In this regard, the Court observes that, in its application brief, the Commission indicated that it would act on behalf of the next of kin of 13 of the alleged victims who did not have representation, while the non-governmental organizations, the Comisión Colombiana de Juristas, CEJIL and ASFADDES, stated in their requests and arguments brief that they would act on behalf of the next of kin of 32 of the alleged victims. Subsequently, while the case was being processed before the Court, the representatives submitted powers of attorney granted by the next of kin of other alleged victims.

59. In relation to the above considerations regarding the participation of the victims, their next of kin or their representatives (supra paras. 53 to 56), it should be clarified, that the representatives act on behalf of the next of kin who have granted the corresponding valid power of attorney and that, in the case of those who are not represented or who lack such representation, this is assumed by the Inter-American Commission, which must protect their interests and ensure that they are represented effectively at the different procedural stages before the Court, "as guarantor of the public interest under the American Convention, to ensure that they have the benefit of legal representation" (Art. 33(3) of the Rules of Procedure of the Court). This is the Court's understanding in the instant case, and the assessments and decisions on merits and possible reparations will be made independently of the organization, institution or persons that are exercising specific representation, in keeping with the Court's inherent functions as an international human rights court and in application of the pro persona principle.

VI. EVIDENCE

60. Before examining the evidence received, the Court will make some observations in light of the provisions of Article 44 and 45 of the Rules of Procedure, which are applicable to the specific case, most of which have been developed in its case law.

61. The adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence. This principle is embodied in Article 44 of the Rules of Procedure, as regards the time at which the evidence should be submitted to ensure equality between the parties. [FN10]

[FN10] Cf. Case of Blanco Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 37; Case of García Asto and Ramírez Rojas. Judgment of November 25, 2005. Series C No. 137, para. 82, and Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 45.

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62. According to the Court's practice, at the commencement of each procedural stage, the parties must indicate the evidence they will offer at the first opportunity they are given to communicate with the Court in writing. Moreover, in exercise of the discretional powers included in Article 45 of its Rules of Procedure, the Court or its President may request the parties to provide additional probative elements as helpful evidence; and this shall not provide a new

opportunity for expanding or completing the arguments or offering fresh evidence, unless the Court expressly permits it. [FN11]

[FN11] Cf. Case of Blanco Romero et al., supra note 10, para. 38; Case of García Asto and Ramírez Rojas, supra note 10, para. 32, and Case of Palamara Iribarne. Judgment of November 25, 2005. Series C No. 137, para. 50.

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63. In the matter of receiving and weighing evidence, the Court has indicated that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the quantum of evidence needed to support a judgment. This criterion is particularly valid for international human rights courts, which have greater latitude to evaluate the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience. [FN12]

[FN12] Cf. Case of Blanco Romero et al., supra note 10, para. 39; Case of García Asto and Ramírez Rojas, supra note 10, para. 84; and Case of Gómez Palomino, supra note 10, para. 46.

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64. Based on the foregoing, the Court will now proceed to examine and assess the elements that comprise the body of evidence in this case.

A) DOCUMENTARY EVIDENCE

65. The representatives forwarded testimonial statements and expert evidence in response to the order of the President of July 29, 2005 (supra para. 27). The Court will now summarize these statements:

a) Eliécer Manuel Meza Acosta, father of Juan Bautista Meza Salgado

Eliécer Manuel Meza Acosta stated that, on the day of the events, he was leaving the religious service in which he had participated with his family when armed men, who said they were members of a paramilitary group, arrived. They were singling out people from the village who they would take away, including Juan Bautista Meza Salgado, the witness's son, who was 22 years of age and a farmer.

The following day, the next of kin of the alleged disappeared went to San Pedro, where there was a military base, but the base commander told them that "he knew nothing." The witness stated that "the people of San Pedro heard the men who were in a truck crying out and shouting."

The witness said that 25 days after these events, they were told that those who wanted "to fetch the dead" should go to the Montería hospital. He went to the hospital to try and identify his son,

because "he knew that [...] he had a green shirt [...] and two platinum teeth. However, it was impossible to identify the remains and there was a [body] that had no [...] head. The bodies were brought in black bags; [that is,] each corpse [was] in a bag[, and the bags were] thrown on the floor in the back part of the hospital."
At the time of the facts, the witness had "a recently-built house and a plot where [he] grew corn, rice and yucca, and kept animals, together with another man[, but] [he] had to give them up. When the animals were taken away from the farm, it caused great distress."
Mr. Meza Acosta stated that one day he was passing through the parish of Juan Benítez and a commander of a paramilitary group [told him] to leave because "[…] something could happen to him, and the group would not hold itself responsible." Therefore, he and his family moved to the village of San Vicente del Congo and have lived there ever since.
Currently, the witness does nothing because he lives "far from arable land and is unable to work and, since then, [his] sons help [him]. These events caused considerable upheaval in his life, because [he] subsisted with what [he] had, the animals, the harvests; afterwards, matters got progressively worse […]."
The witness stated that his wife was extremely sad because their "son was the person who was most attentive to the home; he was very obedient; he was very home-loving; he was the only son who helped [them ....], who was constantly there; this son was [their] support and hope for the future."
About five years ago, Mr. Meza Acosta "regained [his] will to see that those responsible should be punished; that the event should not remain unpunished. [He believes] that all injustices should be punished."

b) Leovigilda Villalba Sánchez, wife of Santiago Manuel González López

Mrs. Villalba Sánchez lived with her husband and children in Pueblo Bello at the time of the facts. Her husband kept livestock and a general store; he also bought and sold grain. The day of the facts her "husband was asleep in the living room and they began to bang on the door until they broke it down[. T]hree men armed with long-barreled rifles entered, two of them in army uniforms and one in civilian dress. They turned round and told [her] husband to accompany them[. The witness] went out into the street and saw how they threw him on the ground and tied his hands behind him and [she] saw other people who were also lying on the ground. […] The armed men took [her] husband and told [the witness] to go back into the house."
The witness stated that "no one thought [the paramilitary forces] would enter the village because [they] felt protected by the roadblock set up by the Army. [They wondered] how the cars with armed men could pass if there was a permanent military roadblock where [everyone] was searched each time they passed."
Leovigilda Villalba Sánchez stated that the next of kin of those who had disappeared formed a committee and the morning after the facts, they went to the Police in San Pedro "to file a report that [their] next of kin had disappeared." Next they went to the army base in San Pedro, where Lieutenant Rincón told them that "no one had passed by there; that perhaps they had gone somewhere else; he then said that it must have been the guerrilla [and] insisted that the roadblock had never been lifted." Nevertheless, the witness considered that the State "is responsible because it let the trucks through when they entered [the village] and when they left."
On January 16, 1990, the next of kin of the alleged disappeared who formed the search committee occupied the office of the mayor of Turbo. While they were there, ASFADDES

arrived and provided them with assistance. Then a commission from the Attorney General's Office in Bogotá arrived. Subsequently, they went to Carepa to talk to General Clavijo, who "assured them that the roadblock was there every day. [The witness] asked where the vehicles went that were full of people who were calling out for help, crying and shouting, and the General did not answer [her …] and did not offer to do anything to look for the disappeared." When they returned to Pueblo Bello from the meeting in Turbo, they were told that the Army, specifically General Clavijo, "had organized a meeting in the village and gave fifty thousand pesos to the people, but [the witness] did not want [this]."

Regarding her participation in the procedures to identify the corpses, the witness stated that they "found out that they were going to [take] the bodies to the Montería hospital. [She does] not want to remember this[.] The bodies were dismembered; there were corpses that only consisted of bodies from the waist down, others without a head. [She has] never been able to understand this. [Mrs. Villalba Sánchez] collected the shirts of the corpses and rinsed them in water to know if one of them belonged to [her] husband. [She] could not find it. No one helped them to search. [T]he bodies were [brought] in black bags [and] they had to break open the bags to see [what they contained. She thinks] that a complaint should be brought against the State for having dug up the bodies with a backhoe. [She thinks] that they should have gathered them up one by one, as any human being deserves. [T]hat was a tremendous error […]. If the authorities did not want to do it […] they should have called on the families who would have done it.

Leovigilda Villalba Sánchez decided "to leave the village because [she] was afraid." She left everything in Pueblo Bello: the house, the business and her clothes, because "there were many rumors that the paramilitary forces would visit [the village] again."

The witness stated that, before the facts, "life in Pueblo Bello was very agreeable, because everyone knew each other and the village was very united and very hardworking." Her children "were very close to their father, [because] he spent time with his children; he used to go to the river and he played 'parqués' [ludo] with them." After these events, her family disintegrated. Mrs. Villalba Sánchez sent her daughters to Turbo to live "in a rented room." Her daughter, Delia, left school to take care of her sister, Leda, and could never continue her studies. Her sons began "to be increasingly resentful because of what happened to their father. They enrolled in the Army; it was as if they wanted to die. [Her son, Onasis,] remained [in the Army] and went blind." The witness herself "almost went mad"[. She] was attended by a psychologist and then, in Montería, visited a psychiatrist. [Her] hair began to fall out; [she] felt very afraid; [she] felt that everyone was following [her] and [she] lost a great deal of weight. [She] wanted to die."

After the facts, a man called Pedro Escobar Mejía went to her store and told her that his sons who had allegedly disappeared, "Juan Luis and Leonel, were calling him and that he was going to go to them. After this don Pedro committed suicide. He needed a psychologist."

The witness wants justice to be done and to find the remains of those who disappeared; she wants the State to acknowledge what happened and undertake to return their loved ones to them.

c) Benildo José Ricardo Herrera, father of Elides Ricardo Pérez and Luis Carlos Ricardo Pérez

When the facts occurred, the witness lived in Pueblo Bello with his wife and children; he was a pastor of the Presbyterian Church. That day, he saw "a number of soldiers and police. They took the men to the central square; […] there was a great deal of confusion and that was when they began to put the people into the 'jaulas' [cattle trucks]." When the villagers began to look for

people, they realized that 10 young members of the Church were missing; they were "young men who led good lives. [The witness) knew them well; they enlivened the village life[. His] two sons were among those missing. People were crying, […] some people had visions from the Holy Spirit […]. The villagers knew the men were "tangueros"; consequently they knew that they had killed the [men they took away]." The following day, when they were passing through the military roadblock, the judge who was part of the committee that had been formed asked the lieutenant whether he had seen the "jaulas" pass by and the lieutenant became very nervous and said that they had not passed through the roadblock. The witness said he considered that the State "knows what happened, knows who did it, and should at least have provided reparation."

The witness said that, following the facts, life in Pueblo Bello changed, "because then the Army came and established about 200 soldiers, who had not been there before. Now the guerrilla could not come through the village and it made people's lives impossible; [therefore,] they began to abandon their homes." In Pueblo Bello, he and his family had four lots, but they had to almost give them away, because his wife received threats; so "he had to sell them off," and only received 120,000 pesos for them. Consequently, Mr. Ricardo Herrera moved to Barranquilla with his family.

The witness's grandchildren, children of Elides Ricardo, want to go to university, but "they do not have the means […] and, since they have no father, they have no one to help them." His wife became "very thin; she cries all the time; this was terrible […]; all she thinks about is her sons."

Mr. Ricardo Herrera said that he would like at least some acknowledgment and compensation for the next of kin of the alleged disappeared so they "can live in peace and so that the children of [the disappeared] can live decently and study, and will not end up in the gutter, smoking bazuco."

d) María Cecilia Ruiz de Álvarez, wife of José del Carmen Álvarez Blanco

Mrs. Ruiz de Álvarez stated that on the day of the facts, a truck "covered with a tarpaulin, or a cattle truck" arrived in Pueblo Bello. She told her husband that it was the Army or the guerrilla, but whichever they were, they were armed men. They began to round up people, including her husband. The armed men beat the women who did not want their family members to be taken away. Suddenly, the men began to start fires; the electricity began to fail and went off. The witness "began to ask about [her] husband, but no one knew anything."

Following the facts, Mrs. Ruiz de Álvarez went to the Montería hospital to identify some corpses, which were "spread out on the floor; there was just enough room to walk between them to identify them. Some bodies were very badly damaged, because [they were] told […] that they had been dug out with machinery." She went into the so-called "cuarto del olvido" [room of no return] and no official asked her for any documentation, or accompanied her to identify the corpses. The witness thought that "she would be able to identify [her] husband by his clothes and because he [had taken] his wallet with his identity documents."

When the facts took place, the witness had been married to José del Carmen Álvarez Blanco for 20 years. They made a living from agriculture and raising livestock in La Octavia, "on a small eight-hectare plot; they had animals and crops […]." Following the facts, the witness moved away, because "it was very difficult to live with the memories."

They had to sell their farm in the parish of Isaías to members of the paramilitary group because they "told [her] that [she] should not return, since if the guerrilla did not kill [her], they would kill [her], as one of [her] sons was trying to find out what happened to those who disappeared."

Her children were deeply affected by the disappearance of her husband; they "became disorderly; they did whatever they wanted; they drank; they did not abide by the education that [she and her husband] had given them. This affected [her] greatly; the family broke up." The witness thought that she would die, because "the sky fell in on [her]." Also, her children, Daniel, Emilse and Richard, were unable to go to school because they did not have enough money.
The witness wants "justice to be done; those guilty to be identified and convicted; […] the remains of [her husband] and her brother Cristóbal to be found. [She also asked] for financial assistance because [they] have not got sufficient resources, even to cover their health needs."

e) Pedro Luis Escobar Duarte, brother of José Leonel and Juan Luis Escobar Duarte

Pedro Luis Escobar Duarte stated that, at the time of the facts, his brother, José Leonel Escobar Duarte, was 16 years of age, and his brother, Juan Luis Escobar Duarte, was 24 years of age; both of them worked in agriculture.
The witness learned of the facts on the television news, where he heard that, on Saturday evening, they had taken some people, including his brothers, away from Pueblo Bello.
Pedro Luis Escobar Duarte said that, following the facts, the Army organized a meeting and "told the people that they could not change what had happened and they should move on. [He] was told that [his] father told the soldiers that a loved one is never forgotten and that they had taken away his sons as if they had been criminals […]." Following the facts, the witness's father "scarcely greeted people; he did not talk to people, even [the witness]" Then he was told that his father "had just severed his jugular vein with a machete."
The witness's mother went to Apartadó and never returned to the farm. Following the event, his family disintegrated; his sister "went mad. She cried and said that she saw their brothers, and she ran away from people because she was afraid of them; she said that they were going to kill her." Before the facts, the witness was someone who "was happy with all his siblings, his family and his friends; but now [he] cannot forget […] this empty space in his life".
Mr. Escobar Duarte considers that the State should assist the victims of the events and improve his mother's life. He thinks that the State has a responsibility because the trucks should not have been able to pass "the control[, namely] the military base." Consequently, he requests the Court to acknowledge that "the paramilitary group passed by the base with the peasants and that the [State's] error should not continue to be hidden." The witness also said that he wants to know "why it happened and why they were taken, [because] if the [State] had not let those trucks pass, nothing […] would have happened. [However, the State] did not stop them, either when they entered [the village] or when they left."

f) Edilma de Jesús Monroy Higuita, sister-in-law of Juan Luis and José Leonel Escobar Duarte

The witness lived in Pueblo Bello with her husband and children. The day of the facts, she was at home with her children and three nephews and nieces, all of them young children, and also with her brothers-in law, Juan Luis and José Leonel, and with Ovidio Suárez Carmona, a farm worker.
In the evening, a neighbor told Edilma de Jesús Monroy Higuita that she should "run away [because] the 'tangueros' had arrived." Consequently, the witness told her brothers-in-law "that they should run away because armed men had arrived[. Subsequently,] the 'tangueros' followed [them] and asked [her] where the men who had run from [her] house had gone and [said that] if

she did not tell them, they would take [the women of the family]. At that moment, one by one, [her] brothers-in-law and the worker emerged from where they were hidden." When the "tangueros" were taking away her brothers-in-law, "a niece of 9 or 10 years of age [...] clutched onto Juan Luis' waist until they put them in the truck."

Mrs. Monroy Higuita stated that, after the events, all the family's plans to go and run a business in Medellín changed, because they were left "without anything. After everything that happened, all their projects failed." As a result, nowadays "they have very limited means and are unable to give the children the possibility of further schooling." Also, following the death of her father-in-law, there were never any more family reunions or family celebrations.

Following the facts, her sister-in-law "wandered through the countryside crying out 'Juan Luis and Leonel, take me with you!'" Also, when this sister-in-law "saw armed men, she took fright and began to run. Now […] she sits there on the floor and makes dolls with mud from the swamp."

The witness asked the State "to see that justice is done and to repair the damage that continues up until today and [requested] the Court to help [them], because 16 years have elapsed without knowing what happened." In her opinion, justice will be done when "those responsible who are still alive are punished."

g) Euclides Manuel Calle Álvarez, father of Jorge Fermín Calle Hernández

At the time of the facts, the witness lived in Palmira, a hamlet in the municipality of Pueblo Nuevo in the Department of Córdoba, with his wife and their eight children. His son, Jorge Fermín Calle Hernández, lived in Pueblo Bello.

Euclides Manuel Calle Álvarez heard about what happened in Pueblo Bello by radio. When "he heard his son's name […] [he] felt an enormous anguish that [his] son had been disappeared in this way[, because] he was never a bad person." The following day, he traveled to Pueblo Bello and, met up with the other next of kin of the alleged disappeared in Turbo. He was there for about a month trying to discover their whereabouts, but "they were unable to find out anything." During the month he spent in Turbo, the witness had to beg in order to feed himself, "something that […] he had never done before." The people said that the disappearances had occurred because the guerrilla had stolen livestock from Fidel Castaño and "he had said that the 42 head of cattle would be paid for by 42 people." The witness considers that "the [State] was responsible for this because the trucks passed through a military base established in San Pedro."

The witness stated that, subsequently, the next of kin of the alleged disappeared were advised by radio to go to the Montería hospital, because they were going to take the bodies recovered from "Las Tangas" there. He spent about three days in Montería waiting for the arrival of the bodies. He did not find his son's body, because he would have recognized it, since no one in Pueblo Bello had similar clothes. However, he saw that "the bodies were destroyed, […] dismembered. There were bodies with their hands tied; others with holes in their skulls." Other next of kin "recognized their loved ones because of what they were wearing or their possessions; for example, a comb."

Mr. Calle Álvarez said that he has never been contacted by the authorities and he has never been asked for information about his son in order to find him. However, he is aware of what is happening in the case, through the people from ASFADDES, who "[t]ell him what the human rights lawyers are doing."

The witness and his wife live with their grandson, Jorge Fermín's son, who is now 16 years of age and studying for his school leaving certificate. The child is like "an old man. People say he is very quiet." With the disappearance of Jorge Fermín, "a great deal has changed, the improvement in their living conditions was greatly delayed; [his] wife is now very fearful of everything; she does not have the will to do anything. [... I]t is very painful for [them both] now. […] Herminia[, the alleged victim's sister,] was very close to [him, so that] she was greatly affected and cried a great deal […] after the facts occurred."
Mr. Calle Álvarez wants to find his son, even though he knows that his son is not alive, but he wants to have his remains in order to bury them. He asks that the remains of his son as well as those of the other alleged disappeared should be found. However, he is "very afraid that the bodies buried on the banks of the river will never be found." Finally, he said that he wants the Court's judgment to ensure that his grandson can study and that he and his wife can "end their lives peacefully."

h) Genaro Benito Calderón Ruiz, father of Genaro Benito Calderón Ramos

The day of the facts, Mr. Calderón Ruiz left to visit a family member in the village of Pica-Pica and his son, Genaro Benito, went to visit his girl friend in Pueblo Bello. The following day, he was advised by telephone that, the previous evening, "a group of Castaño's men had taken away men from Pueblo Bello, including [his] son." He said the people from the village commented that "Fidel Castaño did this because he had sent some cattle to Medellín and the guerrilla had stolen them."
When the witness returned home after the facts, he found his wife "as if she had been sedated, medicated with tranquilizers, because she could not stop crying, calling for Genaro, and she could not stand up or anything. Since then, she has not had a life." Mr. Calderón Ruiz began to drink almost every day. If he was told that someone could tell him where his son was, he went.
His son was a good student, a good son, hardworking; he was the son that helped him in his grocery store. He was the only one of his children who wanted to study a career. The disappearance of Genaro Benito affected the business, "the income went down, because he had helped them a great deal."
The witness stated that he had taken many steps to seek his son. He even filed a report before the Montería authorities and went to see them three times; but, since then, he has not returned to Montería.
A friend of Mr. Calderón Ruiz called him to go with his wife to Montería because they had found 24 corpses on the "Las Tangas" ranch. At the hospital, no one helped them identify the people; there were no doctors or anyone from prosecutor's office; no one took information from the next of kin, or "gave them any explanation." The witness and his wife examined the corpses that were on the floor, "lined up[, black with mud]." They thought they would be able to identify them by their clothes, because "they did not know any other way." The witness said that, after this, he has never received any information from any State authority, and has never been informed of the measures being taken to find his son.
Mr. Calderón Ruiz said he hoped his son would appear and is still alive. If his son does not appear, the State should compensate them. He also said that he wanted an investigation to be conducted and the perpetrators to be punished. He asked for health care for his wife, because "owing to this [...] she became ill."

Finally, the witness said that "when one can bury [a son] one comes to terms with his death, but when one cannot bury him, one lives thinking that he will return." He added that his wife "lives pending and keyed up about the paramilitary groups who are laying down their arms, because she still hopes that [her son] is alive and that he is with the paramilitary group who took him."

i) Manuel Dolores López Cuadro, brother of Miguel Ángel López Cuadro

The day the facts occurred, the witness was in San Pedro. His brother lived in Pueblo Bello, mended radios, clocks and other domestic appliances, and "sponsored" a niece so that she could go to school. Manuel Dolores López Cuadro stated that, in 1989, the guerrilla had killed another of his brothers; in 1990, they had disappeared his brother, Miguel Ángel, and two years later, his father died; so "the morale of [his family] had declined greatly with all these events."

Manuel Dolores López Cuadro stated that there is a military base in the entrance to San Pedro and that there were police officials in the town of San Pedro who knew "about the livestock [of Fidel Castaño that had disappeared] and that he was going to exact revenge[. However,] the authorities did nothing to protect [them]."

The witness began to look for his brother immediately after his disappearance through a committee which filed reports before the authorities. The members also "occupied peacefully" the Turbo mayor's office.

Subsequently, Mr. López Cuadro took part in the exhumation of some corpses in Montería. In this regard, he said that "the impression one receives is so immense, that there is no way to explain it; to see a mound of massacred and decomposed bodies and to think that one's brother could be among them, makes one despair." He stated that "it is quite different […] to know that they killed your brother and that he is in the cemetery, rather than, in this case, when one does not know where he is, or where he was killed." He just wants "someone to tell him truthfully [where his brother] is." He said that when they are called to take part in exhumations he "become[s] optimistic thinking that there is a possibility of finding his brother" but, when he does not find him he "feel[s] greater anguish, and the pain is even more profound." Neither the witness nor his family has been called upon to make a statement.

The witness stated that, following the disappearances in Pueblo Bello, "public order began to fall apart, and the community's fear increased. Since [the guerrilla were in the area], the people in the community had to give them whatever they asked for; however, the paramilitary groups considered that this indicated that the community was collaborating with the guerrilla," so "they began to take people away." Mr. López Cuadro stated that this was why they had to move. He said that he had supported his family with two hectares of plantains, but he lost this land because he had to move.

Manuel Dolores López Cuadro stated that, as a result of the disappearance of his brother, Miguel Ángel, the niece that the latter "sponsored" could not continue studying. The family would be in a much better situation if he were alive, because he helped them a great deal financially. "It has all been both an emotional and a financial loss."

The witness also declared that the disappearance of his brother, Miguel Ángel, had been "a great loss, an emotional loss," for the whole family. He said that his mother "was greatly affected by the disappearance [of his brother] and has suffered immensely. Her health has also suffered a great deal due to all this."

Finally, Manuel Dolores López Cuadro said that he wants "those responsible to be punished and […] non-pecuniary reparation for [his family], for the community, and for the country […] and

to be able to find the remains. He needs the [State] to ensure their safety and provide them with support so they can work without interference from the paramilitary groups or the guerrilla."

j) Robinson Petro Pérez, son of José Manuel Petro Hernández

The day of the facts, Robinson Petro Pérez was listening to the service outside the Presbyterian Church. When he heard about the presence of armed men, he went into hiding; when he returned home from his hiding place, he realized that they had taken his father, a brother of his mother called Benito Pérez, and Luis Miguel Salgado, who lived with his sister.
The father of Robinson Petro Pérez, who was a farmer and sold beer in a store, was at home. The witness stated that his father "was taken by the members of the paramilitary group, who were armed, some of them disguised with army uniforms, some with police uniforms and others in civilian clothing."
The witness declared that, at the time of the events in Pueblo Bello, neither the Army nor the police were present. He said that "the authorities did nothing to prevent the raid on the village, even though they had heard the rumors that the 'tangueros' were going to take Pueblo Bello".
Following the events, a Committee was established with members of the alleged disappeared and it went to the Turbo mayor's office to ask the authorities to help them find their next of kin. There was no response from the authorities. When they returned from Turbo, the Army was in Pueblo Bello and had ransacked the village.
Robinson Petro Pérez began to take part in ASFADDES meetings and to take steps to look for the alleged disappeared. The people of Montería told him that he "should be careful because Fidel Castaño's people worked in the prosecutor's office in Montería." Immediately after the events, he also made a statement before the judicial police, but they have never asked him to make another statement.
The witness stated that "when they disappeared [his] father, the family had no financial support, because it was [his] father who paid the bills." The witness "was greatly affected by what happened to [his] father," so he decided to train with a paramilitary group in order to find out what had happened to the disappeared.
Robinson Petro Pérez said that "if [his] father had not been disappeared, [his] life would be better, because [his] father had said that he would pay for [him] to study whatever [he] wanted, and if [he] had been able to study, everything would have been different." He said that, after what happened, life in Pueblo Bello changed. "You could feel a great deal of fear; those who could departed, and only the poorest people stayed."
The witness stated that he hopes that the Inter-American Court "will make those who were really responsible […] pay for what happened and receive the punishment they deserve, and that [the Court] will help [them] find the remains of [their] family members."

k) Expert evidence of Alfredo Molano Bravo concerning the dynamics of the armed men in different regions of the country, particularly in Urabá

The expert referred to the social and political context of Pueblo Bello, which is a hamlet located to the northwest of Turbo, in Urabá Antioqueño, on the border between the departments of Antioquia and Córdoba. Owing to the region's biodiversity, the forest has been thinned out and intense logging operations have been carried out; this has given rise to confrontations between

the local population and the logging companies. The logging companies are protected by the paramilitary groups, while the peasants are supported by the guerrilla.

Logging has extended towards the south, and represents an enormous source of revenue. This exploitation has opened up the land to peasant settlements and facilitates the concentration of land in the hands of the large-scale livestock ranches owned by Antioqueños, supported by the paramilitary groups.

According to the expert witness, the high levels of humidity in the region made it difficult to build highways and roads. Mr. Molano stated that the opening up of the highway increased land values immensely. However, the increase in prices did not benefit the peasants, rather the contrary: the villages grew rapidly and other urban centers were founded. In the 1960s, the United Fruit Company, under its new name, Frutera Sevilla, came to Turbo and, within a few years, the highway between Chigorodó and Turbo became the extremely profitable Eje Bananero [banana-production center]. The livestock owners who had acquired land in the 1950s were faced with the alternative of growing bananas or migrating with their cattle to land on the edges of this area. The periphery areas to the north and east of the highway to the sea were converted into "cattle land," and this led to land conflicts and new displacements. The growth of San Pedro de Urabá, Totumo, Pueblo Bello and Valencia was one of the most evident demographic effects of the period from 1960 to 1990.

The expert witness stated that FARC followed the Soviet line, while a new "Marxist-Leninist" communist party was guided by the policies of Maoist China. The two political and military tendencies gradually occupied the mountainous country of Abibe, San Jerónimo and Ayapel and were joined by many of the peasants who had been persecuted by law enforcement bodies as a result of their efforts to implement the frustrated agrarian reform. The people's demands for public services, housing, health care, education and land were supported and, to a certain extent, emboldened by the appearance and consolidation of the FARC and EPL military fronts.

Mr. Molano indicated that, in 1965, the Government authorized the Army by decree – later endorsed as a law in 1968 – to arm civilian forces. As the social conflict was increasingly channeled through the guerrilla, the tendency to use the civilian population to support the State's military operations increased. Since the guerrilla was also supported by the civilian population, the latter became one of the central elements of the confrontation.

Subsequently, with the increase in drug-trafficking, the irregular war found an inexhaustible source of logistic resources, which introduced another model: outright paramilitarism, financed by the drug-traffickers and assessed by Israeli intelligence forces. From the Magdalena Medio, this new type of security force came to the regions of Urabá and Alto Sinú with Fidel Castaño. Fidel Castaño became a landowner in the western part of Córdoba, in the municipality of Valencia, where he had his ranch, "Las Tangas." This cattle-raising region was an area of great strategic importance for the guerrilla, because they collected war taxes from the businessmen and the livestock owners and it constituted a corridor towards the banana-producing center where they had significant trade union and political influence.

In Turbo, the activities of Frutera de Sevilla and the trade unions took root. In the 1980s, social and political forces emerged that would ultimately confront each other in the following decade in a fight to the death. The elements that help explain the conflict are: the deplorable working conditions on the banana plantations; the repression of the land invasions in Córdoba and Sucre that resulted in the peasant colonization of Abibe and the invasion of land devoted to large-scale cattle-raising, and the activities of the Frutera; also the election of mayors who threatened to take away the traditional power of the established parties in favor or new forces. The social and

political agitation, the declaration of civic and labor strikes, and the military strength attained by the guerrilla (both FARC and ELP) provided the justification, in 1988, for the Government to create the XIth Brigade in Montería, and the No. 1 Mobile Brigade and the Military Headquarters in Urabá. Thus, the social conflict became a military confrontation.
In the period between 1988 and 1990 the paramilitary groups committed more than 20 massacres of peasants and trade unionists, resulting in no less than 200 deaths. With the tolerance and collaboration of law enforcement officials, from "Las Tangas," Fidel Castaño perpetrated the massacres at Currulao (15 people murdered), Buenavista, Córdoba (28 people assassinated), Punta Coquitos, Turbo (26 people murdered), Canalete, Córdoba (16 victims), Pueblo Bello (43 peasants disappeared and murdered). On April 14, 1990, five people were assassinated in Valencia; on April 16, 1990, six more peasants were executed in Apartadó; on October 19 the same year, six more people were murdered; and on October 25, 1990, there was another massacre in Tierralta with a further 12 victims.
In April 1990, six corpses of those who had allegedly disappeared from Pueblo Bello appeared on "Las Tangas."

l) Expert evidence of Carlos Martín Beristain on the psychosocial harm that the facts caused to the next of kin of those who allegedly disappeared and were murdered, and also on the climate in the jurisdiction of Pueblo Bello

Mr. Beristain stated that the facts that occurred in Pueblo Bello had an enormous impact owing to the number of alleged victims, the public nature of their capture and subsequent disappearance, and also the context of defenselessness in which the events took place.
The next of kin have developed a feeling of injustice and defenselessness; they suffered a significant level of "secondary victimization" owing to the lack of response to their efforts to find the victims, the lack of respect shown towards them, and the threats. In addition, the next of kin began to question the State's guarantee of security and protection owing to the failure to respond to their requests to seek the victims, the fact that they encountered complicity and concealment on the part of the different authorities, and the perception that they were ignored. Also, they have experienced significant frustration and despair due to the lack of response to the requests to the authorities, and the failure of the actions they have undertaken.
The factors that have had the greatest psychosocial impact are: (a) the total absence of the appropriate conditions for identifying the remains in the Montería hospital; (b) the lack of care and attention to the psychological needs of the next of kin; (c) the fear stemming from the absence of guarantees that prevented other family members from going to the hospital or taking part in the identification procedures; and (d) the exacerbation of the psychological condition of the next kin after they had observed the "full details of the horror...", without any type of support.
Following the events, "a climate of fear and desolation invaded the village and a total change in daily life." The next of kin evinced many stress-related symptoms, owing to the situation of their property, which was affected by the context of emergency and forced displacement. This has been "a key factor in the disintegration of the families and the community." Actually, 75% of the population of Pueblo Bello is new to the village and the armed groups remain, preventing investment and the reactivation of the community.
The expert witness stated that the next of kin of the alleged disappeared have "emotional scars," rather than mental problems. Some of the next of kin have major symptoms of depression and

most have had psychotherapeutic or pharmacological treatment in the past and, in some cases, this continues. The mental suffering of the next of kin resulting from the alleged disappearance of their family members has been very acute and this has caused them "important functional difficulties" in adapting to daily life.

In addition to being affected by mourning their children, the parents interviewed say they are affected by different physical health problems in a context of precariousness and lack of financial resources; they associate the lack of resources to confront these health problems with the impact of financial losses and the loss of their allegedly disappeared family members, owing to the latter's role in supporting the family financially. Also, most of the children suffered significant emotional problems in the years following the alleged disappearance of their fathers, such as "isolation, sadness and social withdrawal" and "behavioral problems such as hyperactivity and aggressive conduct." The lack of a father figure in their education and upbringing "has conditioned their lives to date."

Mr. Beristáin stated that the search for the remains of the alleged victims would benefit from the complementary intervention of independent professionals as well as guarantees that the recommendations of international protocols would be followed. Finally, he indicated that all psychosocial care should be arranged in agreement with the next of kin.

B) TESTIMONIAL EVIDENCE

66. During the public hearing (supra para. 31), the Court received the statements of the witnesses proposed by the Inter-American Commission, the representatives and the State. The Court summarizes the relevant parts of these statements below.

Witnesses proposed by the Commission and the representatives

a) Ángel Emiro Jiménez Romero, son of Ángel Benito Jiménez Julio

Ángel Emiro Jiménez Romero stated that his father was a peasant from Pueblo Bello who did agricultural work. He also explained that there were always soldiers in the area, because, the FL operated around Pueblo Bello and, according to the witness, this caused military conflicts in the area. The armed forces were located at the military base of San Pedro de Urabá, which manned a military roadblock 24 hours a day at the entrance to the municipality, and at another military base in the jurisdiction El Alto, Mulatos. He said he knew the Army prevented vehicles from passing after 6 p.m., without any exceptions.

The witness took various steps to find the alleged victims. For example, he made a list with the names of those who had seen what happened to the people of Pueblo Bello and, with this list, he went to San Pedro de Urabá because, he said, this was where the trucks with the alleged victims went. Mr. Jiménez Romero said that the next of kin spoke with a Lieutenant Rincón, who did not give them any information when they told him that, on the night of the facts, there were soldiers present. To the contrary, he stated that the lieutenant "became furious and said 'and why are you here now; when they took [Fidel Castaño's] cattle, you did not come to report that, but now that they have taken the people, you come to report it. This must be revenge; you exchanged people for cattle.'" The witness stated that they asked the lieutenant "to carry out an immediate raid on the 'Las Tangas' ranch, but he refused to do this, alleging that he did 'not have enough troops to send to 'Las Tangas' and it involved a certain procedure and he had to request permission.'"

Subsequently, the witness stated that he reported the facts on the television and in the press; but without any success as regards obtaining help in locating the alleged victims. Likewise, he stated that he met with the military authorities in his search for information on the whereabouts of his father and the other disappeared persons, without any results.
Finally, Mr. Jiménez Romero stated that he had to abandon the region for safety reasons. Subsequently, he had to leave Colombia and go into exile in Sweden, because he "saw that there was evident danger and if [he] did not leave the country, they would kill [him]."

b) Mariano Manuel Martínez, father of Jorge David Martínez

At the time of the facts, Mariano Manuel Martínez had been living in Pueblo Bello for 18 days. He had moved there for work-related reasons, because he had seen "that it was a good place to work and support a family." The day of the facts, two vehicles entered the village with armed men. He saw how they took men at gunpoint to where the vehicles were parked. He stated that the armed men "threw [the men from Pueblo Bello] face down on the ground." The witness stated that he observed "more or less 12 soldiers from the San Pedro de Urabá base."
The witness stated that, the day after the facts, the next of kin of the alleged disappeared went to the base in San Pedro to look for the disappeared and the lieutenant at this base showed no interest in helping them; "he did not pay any attention." Mr. Martínez did not tell this lieutenant that there had been soldiers from his base, because he "felt it would cause problems to contradict a solider who was on duty." He said that three days after the events, members of the Army came to Pueblo Bello and began to hand out envelopes with 50,000 pesos for each family. "Some of the people present, parents of the disappeared, did not want to receive the money." He also stated that another man, whose son had also been taken, "[took] the envelope and […] threw it at the feet of one of [the soldiers … saying to them] that he had not sold them an animal, for them to come and pay him 50,000 pesos."
Mariano Manuel Martínez stated that the next of kin of the alleged disappeared were advised that they should go to the Montería hospital to identify some corpses, and he identified the body of his son among them.
Finally, the witness stated that he had to abandon his farm, because he had to leave, displaced. His son who allegedly disappeared "was the one who helped [him] most." At the present time, he has no financial resources for his subsistence.

Witnesses proposed by the representatives

c) Rubén Díaz Romero, father of Ariel Díaz Delgado

At the time of the facts, Mr. Díaz Romero lived in Pueblo Bello with his wife and seven children. Ariel, his disappeared son, was 19 years of age. The day after the events, the witness went with other people to the San Pedro military base to look for the disappeared, but the Army did not offer to help them find [the disappeared] and they had to return to the village. He said that, months later, he was advised about the remains found on "Las Tangas," but he did not learn this from the prosecutor's office or any State authority. When he went to identify the corpses in the hospital where the remains had been "thrown on the floor," he did not receive any type of help from the hospital personnel, or the prosecutor's office, or any State official.

The witness stated that, following the facts, "many [of the people of Pueblo Bello were] dispersed, displaced […] to Turbo, Chigorodó and Apartadó." The Army told them they had to leave the village because, if they did not leave, "they were accomplices of the guerrilla." Consequently, he had to go to Chigorodó with his cattle. As a displaced person, members of the Army "took advantage of the situation, […] and obliged [him] to sell [his] farm."
Mr. Díaz Romero stated that, since the facts occurred, he lives "in penury, […] in a bad financial situation, and ha[s] suffered owing to the violence, the distress of so many people, that does not allow [him] to live in peace."
The witness stated that he knows the authorities have looked for his son, Ariel, but "they have never been able to give him any certainty about anything, [anything at all], even the remains [of his son]." Following the events, "[his] children left [and his] wife was in a very bad way." Finally, he said that "it is impossible […] to explain the anguish, the sadness […], and [particularly] owing to the lack of help."

d) Blanca Libia Moreno Cossio, mother of Camilo Antonio Durango Moreno

Mrs. Moreno Cossio lived with her husband and children. Her son, Camilo, was 20 years of age and, together with her husband, supported the household.
When the witness heard about what had happened in Pueblo Bello, she went to find a means of transport to go to San Pedro de Urabá, together with the next of kin of the other people who were disappeared, in order to seek information on the whereabouts of her son; but they were unable to obtain any information.
The witness indicated that she also went to the Montería hospital to try and identify her son among the corpses there. The bodies were "in a horrible state of decomposition" and she had no one to advise her how to identify her son. To date, no State authority has given her any information about her son's whereabouts.
Mrs. Moreno Cossio stated that Belarmino, her youngest son, was 9 years old at the time of the facts. Following the alleged disappearance of his brother, the child "became very sad" and constantly asked for the return of his brother. The witness said that the child "was terribly sad, […] ever after he was sad, sad." The little boy told her that "Camilo had been to see him; that Camilo threw him a noose and said that he should put it on and jump and nothing would happen." The witness took her youngest son to a doctor, who said that "nothing was wrong with him; that it was just his imagination; it was impossible to take him to a specialist [owing to their] financial situation, because [they] did not have insurance or anything, [and they] had to leave him without any treatment." The witness stated that two weeks after this happened, her youngest son hanged himself. They took him to the hospital immediately, but "there was nothing to be done, he hanged himself; […] his neck was broken."
Finally, Mrs. Moreno Cossio asked for justice to be done and that "her son [Camilo] should be returned to her, even though it is just his remains."

e) Nancy Amparo Guerra López, daughter of Carmelo Guerra

At the time of the facts, the witness was 15 years old and lived with her father and his wife. She said that her father was "the only person [she] had, […] the person [she] loved most."
Ms. Guerra López indicated that it was her father who "supported the household and [they] were never in need of anything." After he disappeared, she abandoned school and had "to work, […]

and put up with humiliations, cold, hunger, […] depression." The witness said that her life would have been different if her father had not disappeared, because she "would have completed her studies, would have been an educated woman, might have studied a professional career and […] perhaps, today, would be providing for [her] father." Finally, the witness stated that she wants them to "return [her father], because to date [she does] not know where he is."

f) José Daniel Álvarez Ruiz, son of José del Carmen Álvarez Blanco and nephew of Cristóbal Arroyo Blanco

José Daniel Álvarez Ruiz described "the distressing experience" of the procedure to identify the corpses in the San Jerónimo Hospital in Montería. He referred to the bodies lying there in "a mass with mud and human remains [that] it was impossible to identify."

The witness indicated that he joined ASFADDES in 1993. As a member of this association, he has kept up to date with the "status of the investigations and [what has] happened about the remains." He also declared that he has submitted oral and written requests to obtain information on the case file.

Mr. Álvarez Ruiz stated that the exhumation in August 1993 was conducted in winter; hence "after 15 days, the procedure ended without any success." He said that an exhumation was carried out on the "Las Tangas" ranch and that, afterwards, the place "was not guarded or watched...". He also stated that blood samples were later taken from the next of kin of the alleged disappeared in order to carry out DNA testing on the remains that had been found. However, he affirmed that the prosecutor's office did not offer any help when these samples were taken, or assistance to transport the next of kin to the places where the samples were taken. He declared that no official records were made of the collection of the blood samples, and the only collaboration received from the State was the person who carried out this procedure who, himself, "had very limited financial resources for transport."

The witness explained the steps taken to exhume the remains from a common grave in the cemetery of San Antonio de Montería in October 2005. In this regard, he stated that "there was a great deal of water" and that the Government agents who took part "did not have the tools to prevent the site from becoming inundated." Consequently, the exhumation could not be carried out.

Mr. Álvarez said that, as far as he knows, the prosecutor's office never summoned the alleged victims' next of kin to make statements from the time the events occurred until after the exhumation conducted in 2004.

The witness stated that, as a result of his investigations to find the persons who were allegedly disappeared, he has "been harassed" and has received "personal threats owing to the measures [he] took to try and find [his] father." In addition, he "had to move to Bogotá and, while on the ASFADDES Board, a secretary received a telephone call saying that "they had found [him] and would kill [him]."

Mr. Álvarez stated that the facts "have had an impact on [his] personal life, [because,] when an exhumation begins, [he] believe[s] they will find [the remains of the alleged victims, but] when it ends unsuccessfully, [his] hopes of being able to find them and know that, at least, the remains will be returned, evaporate."

Finally, the witness indicated that, following the events of 1990, "neither [he] nor [his] six siblings could return to school, [because] there was no one to bring home the food they needed,

[so they] all had to take care of themselves." His "12-year old brother used to get drunk." All the siblings went to live in different places and "have never again been able to live together."

Witness proposed by the State

g) Elba Beatriz Silva Vargas, attorney from the National Human Rights Unit of the Office of the Prosecutor General of Colombia

The witness stated that 10 people had been convicted of the facts that occurred in Pueblo Bello; in particular, Fidel Castaño Gil, one of the main promoters, organizers and financers of the paramilitary groups. She also indicated that the statements of the next of kin had been included in the proceedings and that almost 23 people had been investigated, of whom nearly 20 had been accused and 10 found guilty; of the latter, two were serving their sentences. In this regard, the witness stated that "they had been unsuccessful in capturing the individuals involved in the facts."

Regarding the participation of military personnel in the events, Ms. Silva Vargas stated that "the Attorney General's Office [began] a disciplinary investigation, a series of procedures, of tests […] to establish the possible responsibility of the Army and that two people had been investigated during [this] procedure."

The witness referred to the exhumations carried out in the cemetery of San Antonio de Montería and to the collection of evidence from the bodies, with "negative results." She also stated that the time of year and climate conditions had been taken into account when carrying out these exhumations, but they had been suspended "because there was a change of climate in the country at that time." She also said that at one time the Prosecutor General's Office had to interrupt its work owing to "the notorious situation of public order; [namely, the] permanent presence of illegal guerrilla and paramilitary groups, supported by organized crime, drug-trafficking." However, she said that "different actions [had been carried out], people had been interviewed; they had looked for the disappeared throughout the country[, …]; there had been communication with the representatives of the victims[, who] had been informed of the search [and] invited to take part in the procedures."

Ms. Silva Vargas also stated that she could vouch for the technical capacity of those responsible for searching for the disappeared and exhuming the bodies; they were members "of the forensic team of the Prosecutor General's Office, composed of doctors, anthropologists, forensic experts [who] use […] every scientific method possible."

The witness indicated that, in this case, "specialized prosecutors had been appointed who were fully trained in affairs related to the inter-American systems and […] in investigation techniques." She stated that these prosecutors "were supported financially […] by a State program […] sponsored […] by a United Nations agency to undertake this type of case, […] and a special group of investigators had been assigned to the case; a special group of forensic experts, of experts in technical and scientific areas such as doctors, odontologists, anthropologists, and people with experience in these sensitive issues."

Finally, the witness indicated that there is "a steering committee to guide the investigation of this case, composed of members of the Judiciary: judges, and representatives of the Attorney General's Office, the Ombudsman's Office, and the Prosecutor General's office, assisted by the Office of the United Nations High Commissioner." She stated that currently the investigation is being handled by the National Human Rights Unit.

C) ASSESSMENT OF THE EVIDENCE

67. In this section, the Court will assess the probative elements provided to the Court, as regards both their admissibility and their value in relation to the facts of the instant case.

Assessment of the testimonial evidence

68. In relation to the statements made by the witnesses proposed by the Commission, the representatives and the State, Court admits them, to the extent that they are in keeping with the purpose established by the President in his orders of July 29 and September 6, 2005 (supra paras. 27 and 30), and accepts their probative value.

69. In this regard, the Court considers that the testimony of Ángel Emiro Jiménez Romero, José Daniel Álvarez Ruiz, Rubén Díaz Romero, Blanca Libia Moreno Cossio and Nancy Amparo Guerra López (supra para. 66(a), (c), (d), (e) and (f)) is useful in this case. [FN13] However, since they are next of kin of the alleged victims and have a direct interest in the case, it must be assessed together with all the evidence in the case and not in isolation (infra para. 77).

[FN13] Cf. Case of Blanco Romero et al., supra note 10, para. 45; Case of García Asto and Ramírez Rojas, supra note 10, paras. 91 and 95, and Case of Gómez Palomino, supra note 10, para. 50.

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70. The State contested the statement made before the Inter-American Court on September 19, 2005, by the witness, Mariano Manuel Martínez (supra para. 66(b)), considering that it lacked credibility. In this regard, the Court considers that this testimony can help the Court understand the facts of this case, to the extent that it is in keeping with the purpose defined in the said order of July 29, 2005 (supra para. 27), and assesses it together with the body of evidence, since the witness is among the alleged victims' next of kin (supra para. 69), applying the rules of sound criticism and bearing in mind the State's observations.

Assessment of the documentary evidence

71. In this case as in others, [FN14] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity that were not contested or opposed, and whose authenticity was not questioned.

[FN14] Cf. Case of Blanco Romero et al., supra note 10, para. 43; Case of García Asto and Ramírez Rojas, supra note 10, para. 88, and Case of Gómez Palomino, supra note 10, para. 45.

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72. Regarding the documents requested by the Court based on Article 45 of the Rules of Procedure which were submitted by the representatives (supra paras. 32 and 34), the Court

incorporates them into the body of evidence in this case. Also, in application of the provisions of the said article of the Rules of Procedure, the documentation presented by the Commission, the representatives and the State following the presentation of the application, the requests and arguments brief and the answer to the application, respectively, are incorporated into the evidence, since they are considered useful in the instant case.

73. With regard to the statements made before public notary (affidavits), the Court admits them to the extent that they are in keeping with the purpose established in the order of July 29, 2005 (supra para. 27), bearing in mind the State's observations during the public hearing (supra para. 31), in particular in relation to the statements of Benildo José Ricardo Herrera and Leovigilda Rosas Villalba. Moreover, since the alleged victims' next of kin have a direct interest in the case, their statements must be assessed together with all the evidence in the case and not in isolation, applying the rules of sound criticism. [FN15]

[FN15] Cf. Case of Blanco Romero et al., supra note 10, para. 45; Case of García Asto and Ramírez Rojas, supra note 10, paras. 91 and 95, and Case of Gómez Palomino, supra note 10, para. 50.

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74. In the case of the newspaper articles submitted by the parties, the Court considers that they can be assessed to the extent that they refer to well-known public facts, or statements by State officials, or corroborate aspects related to the instant case. [FN16]

[FN16] Cf. Case of Blanco Romero et al., supra note 10, para. 43; Case of García Asto and Ramírez Rojas, supra note 10, para. 88; and Case of Gómez Palomino, supra note 10, para. 45.

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75. The Inter-American Commission contested the evidence submitted by the State with its final written arguments, because it considered "that it was not offered or submitted at the corresponding procedural occasion; it does not correspond to the reports on supervening facts that were requested as useful evidence by the President of the Court at the end of the public hearing […], and it was not accompanied by an explanation about its late incorporation into the case file." It added that "irrespective of the question of admissibility, there are serious flaws in the documents presented; which is the only conclusion that can be inferred from the material conditions in which the documentation was forwarded […]: incomplete, repeated, partially illegible, damaged and disordered." It therefore requested the Court to "reject [this documentation] on the grounds that it is inadmissible and inappropriate." The State argued, inter alia, that "the documents submitted as attachments to its final arguments correspond to the evidence requested de oficio by the Inter-American Court during the public hearing."

76. In this regard, the Court notes that, as indicated by the State, during the public hearing (supra para. 31), the President of the Court requested general information and documentation from the State, the Inter-American Commission and the representatives concerning different aspects of this case. Consequently, the Court understands that this documentation was presented

by the State in response to the verbal request of the President; consequently, it is formally incorporated in application of Article 45(1) of the Rules of Procedure. Nevertheless, the Court agrees with the Inter-American Commission that many of the documents submitted by the State were incomplete and disordered, and that the administrative and judicial case files that were provided were incomplete. Owing to the way in which this documentation was submitted, the Court accepts it and assesses it to the extent that it is useful for determining the facts of this case, taking into account the defects that have been indicated.

77. The Court also notes that on December 21, 2005, the State submitted documentation concerning one of the items that was requested as useful evidence (supra para. 37), after the request had been repeated three times in notes from the Secretariat dated November 9, 14 and 21, 2005 (supra para. 32). The Court recalls that, based on the principle of international cooperation, the parties should not only forward to the Court the evidence it requests, but should do so opportunely and in a complete, orderly and legible manner, so that the Court has as much evidence as possible to understand the facts and justify its decisions. [FN17] The Court formally incorporates this evidence into the body of evidence, in accordance with the considerations indicated below (infra para. 94) as it is useful for deciding this case.

[FN17] Cf. Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 93.

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78. Also, in application of the provisions of Article 45(1) of the Rules of Procedure, the Court incorporates into the body of evidence in the instant case, the following evidence already assessed in Case of the 19 Merchants and the Case of the "Mapiripán Massacre", because it is useful to decide this case: Legislative Decree No. 3398 of December 24, 1965; Decrees Nos. 0180 of January 27, 1988, 0815 of April 19, 1989, 085/1989, 1194 of June 8, 1989, 3030/90 of December 14, 1990, 2266 of October 4, 1991, 2535 of December 17, 1993, 356/94 of February 11, 1994, 324 of February 25, 2000, 3360 of November 24, 2003, 2767 of August 31, 2004, and 250 of February 7, 2005; Acts 48 of December 16, 1968, 200/1995, 387 of July 18, 1997, 418 of December 26, 1997, 548 of December 23, 1999, and 782 of December 23, 2002; the judgment of May 25, 1989, delivered by the Supreme Court of Justice, the judgment of May 28, 1997, delivered by the Cúcuta Regional Court, the judgment of March 17, 1998, delivered by the Military Superior Court, and the judgment of April 14, 1998 delivered by the Tribunal Nacional; the report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989; and the reports of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia of 1998, 2000, 2004 and 2005.

79. The Court also incorporates into the body of evidence the joint report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Barce Waly Ndiaye, submitted pursuant to Commission on Human Rights [of the United Nations Economic and Social Council] resolutions 1994/37 and 1994/82: Visit by the Special Rapporteurs to the Republic of Colombia from 17 to 26 October, 1994, E/CN.4/1995/111 of January 16, 1995, since it is useful for deciding this case.

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80. The specific facts that are in dispute include the possible transit of the trucks with the alleged victims and the paramilitary group through the military roadblock located between Pueblo Bello and San Pedro de Urabá. One of the fundamental probative elements in this regard is the testimony of the self-confessed member of the paramilitary group, Rogelio de Jesús Escobar Mejía.

81. The State has alleged that there are alternative drivable routes by which the members of the paramilitary group and the alleged victims could have left Pueblo Bello.

82. As will be indicated below, there is no dispute concerning the existence of detours, paths and trails branching off the main road between Pueblo Bello and San Pedro de Urabá (infra para. 138). This possibility was examined in the proceedings before the Attorney General's Office, during which four reports were submitted, three of them by military officials in October 1990. Nevertheless, based on these reports, it is not possible to conclude whether these other routes were drivable by the trucks in question:

(a) Based on an aerial inspection of Pueblo Bello and the road to San Pedro de Urabá, a "strategic expert opinion" given by a member of the Army indicated that it had been determined that "there are many possible detours that [...] do not require obligatory transit through the San Pedro military roadblock";
(b) The report made by a tactical officer of the National Army explained that there were adequate trails that were "drivable";
(c) An Army officer prepared a topographical report in which he presented several assessments resulting from an aerial reconnaissance and concluded that "the trucks in which those abducted were transported did not necessarily have to pass by the San Pedro de Urabá roadblock, because they could take any of the detours or trails referred to. This possibility was reaffirmed by the fact that, at the time of the crime, it was summer, so that the land was firmer and easier to transit," and
(d) And, in September, 1981, the Special Investigations Office of the Judicial Police of the Attorney General's Office inspected the road and the trails between Pueblo Bello and San Pedro de Urabá and concluded that there were six trails or detours from the main road, but could not state conclusively whether all of them were drivable at the time of the facts or whether they could be used as routes to avoid passing by San Pedro de Urabá (infra paras. 95(130), 95(131), 95(132) and 95(135)).

83. The testimonies and statements received by the Court concur that trails or detours exist, but some of them deny categorically that such trails would be drivable by trucks. Thus, Rubén Díaz Romero stated that he had lived in the area for a long time and knew it very well, and it was not possible for the trucks to reach San Pedro de Urabá by any other road than the one that led to the military roadblock at the entrance to the town. Ángel Emiro Jiménez, who periodically drove through the area because he worked in the banana trade between Apartadó and Montería, agreed with Mr. Díaz Romero and testified that all the vehicles traveling in either direction were intercepted at this roadblock and that it was the only road accessible to vehicles of the size of the

trucks. Mariano Martínez made the same affirmation, and also several witnesses who made statements before notary public, such as Benildo José Ricardo Herrera and Leovigilda Villalba.

84. However, over and above whether the alternate routes between Pueblo Bello and San Pedro de Urabá, by which the trucks could have evaded the military roadblock, were drivable, the principal probative element to support the premise that the soldiers allowed the trucks to pass through the roadblock and the military base is the statement of the former member of the paramilitary group, Rogelio de Jesús Escobar Mejía, who confessed that he had taken part in the events as a member of the "tangueros" group and who was indicted in the criminal proceedings in the ordinary jurisdiction. According to this statement:

We identified ourselves with red and pink scarves. The people were gagged so that when we drove through San Pedro no one could make any noise. There is an Army base about 20 minutes on foot from Pueblo Bello and beyond it the Army roadblock. Fernando, alias "Noventa," emerged from the Army base, and also an Army lieutenant and two other soldiers; according to the lieutenant, they were a corporal and a soldier. The lieutenant got into the cabin of the first vehicle; the corporal climbed onto one running board and the soldier onto the other. I was on the front part of the truck's chassis and the lieutenant asked me how many people we had in that vehicle. I did not answer him. The lieutenant took us through the roadblock which was about 15 or 20 minutes from the base. When the lieutenant dismounted, he told the driver and Fernando, alias "Noventa," that, from there on, there would be no problem. When we passed by the Army base, the lieutenant made the truck detour to the south so that it did not pass through a small village called San Vicente del Congo; he told the driver which way to go. When we passed by the village, the soldier who was on the running board of the truck raised his arm and saluted a soldier who was in one of the streets of the village. The truck did not stop at the roadblock at the entrance to San Pedro. When we were in the center of San Pedro, the lieutenant and the other men in uniform dismounted and Fernando had to get out to vomit because he was drunk on "aguardiente." When the lieutenant got out he told me to fasten down the tarpaulin of the truck so that no one in San Pedro would be able to see anything. From the outset, Fidel Castaño told us that we would not have any problem with the Army because everything had been arranged. [FN18]

[FN18] Cf. statement made by Rogelio de Jesús Escobar Mejía before the DAS on April 25, 1990 (file of useful evidence submitted by the State, folio 4549).

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85. The State alleged that the testimony of Rogelio de Jesús Escobar Mejía "did not have the necessary probative value to accuse the soldiers of the facts and, consequently, destroy the presumption of their innocence." In this regard, the State indicated in its final written arguments that:

[…] In this proceeding before the Court, reference has been made over and over again to the testimony of ROGELIO DE JESÚS ESCOBAR MEJÍA in order to use it as evidence, without respecting the minimum rules that should govern assessment of the testimony of one of the accused in criminal proceedings. Since this is key testimony in the proceedings to attribute

responsibility to an individual agent – an obligatory requirement for attributing international responsibility to the State - we will examine it below in order to prove that it has no probative value as regards attribution of responsibility to the soldiers. We wish to make it very clear that this testimony is not, and can never be considered indivisible. Undoubtedly some parts of his statement have probative value; however, it has no credibility with regard to the intervention of the soldiers, by act or omission, in the actions of the members of the illegal armed group […]
The testimony of ROGELIO DE JESÚS ESCOBAR MEJÍA cannot be considered grounds for a judgment by the Court against the State, because its content has not been proved. The only way that the content of this statement could have been taken into consideration as a proven fact would have been if it had been corroborated by objective external elements, which has not happened in this case. Furthermore, it has been verified […] that the testimony of Mr. ESCOBAR MEJÍA should be considered inappropriate [and] leaves many questions unanswered when it is examined pursuant to the principles of experience and of the psychology of the testimony.

86. This testimony was assessed by the organs of the ordinary criminal jurisdiction and in the proceeding filed by the Office of the Delegate Attorney for Human Rights. Escobar Mejía's testimony was never admitted in the investigation initiated in the military criminal jurisdiction, and there is no record that he made a statement.

87. On this point, it should be emphasized that, as will be described in more detail below (infra paras. 179 to 183), no charges were laid against the members of the armed forces in the ordinary criminal jurisdiction. However, the testimony of Mr. Escobar Mejía was assessed by the three instances that heard the criminal proceedings culminating in the conviction of several members of the paramilitary group, as follows:

a) The judgment in first instance of the Medellín Regional Court granted probative value to this testimony in order to justify the conviction of several members of the paramilitary forces:

In view of the foregoing, this Court finds that the statement provided by Rogelio de Jesús Escobar Mejía has endured the rigors of sound criticism and, indeed, should not be underrated [...] principally because, in the type of crime that we are examining, the evidence is often supported by the confession, betrayal or description provided by one or some members of the criminal group.

[...] Here we have an appropriate, coherent, serious, impartial testimony, which endured the rigors of sound criticism [...] The insightfulness that Rogelio de Jesús has shown during his different appearances reveals a factual reality [...]

[...] this Court considers that the testimony of Rogelio de Jesús is completely admissible [...]. [FN19]

b) In second instance, the Tribunal Nacional ruled on the truth of this testimony:

[The statements of] Rogelio Escobar Mejía before different judicial officials, and before DAS and the Attorney General's Office are coherent, specific, certain and reiterative in relating in detail the different illegal activities carried out by the "paramilitary" group of which he was a member. These affirmations merit credibility because, contrary to the allegations of the appellants, no other motive can be observed in these affirmations, given freely and of his own free will, than to tell the truth, to prevent the impunity of such horrendous events and to try and obtain the benefits that the Government offers openly in exchange for the collaboration of those who submit themselves to justice. [FN20]

c) The Appeals Chamber of the Supreme Court of Justice also ruled on the credibility of the statement made by Escobar Mejía. This Chamber decided an appeal filed by the defense lawyers of one of the accused, who considered that the Tribunal Nacional had incurred in alleged error in the assessment of the only testimonial evidence – precisely the testimony of Rogelio de Jesús Escobar Mejía. The Appeals Chamber found:

[…] Indeed, as it is already known, the said witness Escobar Mejía, referring to OGAZZA PANTOJA, in relation to the raid on Pueblo Bello, stated that the latter had acted as head of intelligence, establishing the names of those who had some link or sympathy with the guerrilla, but he did not know [whether] this individual had taken part in the raid itself. The Chamber found that this testimonial statement was credible, taken as a whole; in other words, not assessing isolated phrases of the statement, outside the context and the circumstances in which the facts took place – its sphere of action – taking into consideration, as was corroborated, that it was not an invention, but corresponded to the experience of the witness himself, as a former member of the paramilitary group commanded by Castaño Gil. This allowed him to explain specifically the hierarchical structure of the organization, the names of several of its commanding officers, the criminal acts that had been committed, the time, methods and place where the activities had occurred, even specifying the place where some of the victims abducted during the raid on Pueblo Bello had been buried, as corroborated by the respective authorities.

[...] Consequently, it is in this context that the ad quem proceeded to assess the affirmations of Escobar Mejía in relation to his accusation against OGAZZA PANTOJA, evaluating the whole content, without disregarding anything, but situating and appreciating it within the factual context described by this witness; that is, understanding that it referred to a criminal organization, which, among its different activities, deliberately planned the raid on Pueblo Bello with a specific purpose, which was to murder all the persons it believed had links to the guerrilla [...]. [FN21]

[FN19] Cf. ordinary judgment of May 26, 1997, delivered by the Medellín Regional Court (file of attachments to the application brief, tome II, attachment C2, folios 373, 379 and 384).
[FN20] Cf. judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folio 456).
[FN21] Cf. appeal judgment of March 8, 2001, of the Criminal Appeals Chamber of the Supreme Court of Justice (file of attachments to the application, tome II, attachment C4, folios 503 and 504).

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88. In other words, the ordinary criminal jurisdiction granted full credibility to the testimony of Mr. Escobar Mejía. It is also relevant that his statement before the State authorities was decisive for finding the place where some of the alleged victims abducted from Pueblo Bello had been buried. Nevertheless, since proceedings before the Court are not of a criminal nature (infra para. 122), it is not necessary to determine the truth of his statement as a co-accused in the said criminal proceedings, or the alleged contradictions in which he incurred before the said instances. When attempting to deny the probative value of this statement, among other arguments, the State based itself on the assessment of the said statement made by the Attorney General's Office during the initial administrative proceeding.

89. However, in both instances, the Office of the Delegate Disciplinary Attorney for Human Rights accorded probative value to the testimony of Mr. Escobar Mejía, even though it did not consider it provided sufficient evidence for establishing the disciplinary responsibility of the soldiers under investigation. This Office's ruling of July 31, 2000, absolved Officer Rincón Pulido from responsibility, arguing that, against him, there was only a slight indication that he had been one of the perpetrators of the facts under investigation. Nevertheless, in this decision, the Office itself indicated that:

This Office of the Delegate Attorney considers it evident, according to the probative material gathered, particularly based on the statement of Rogelio de Jesús Escobar Mejía, and, although it contains a few inaccuracies as regards time, distances and the names of some places – since it appears that he did not know the area very well – this Delegate does not find any reason for this witness to have lied as regards the collaboration he says that an officer of the national Army, regarding whom he did not provide any further elements so as to be able to identify the latter, who was on duty at the roadblock installed in San Pedro de Urabá at that time, gave the paramilitary group. [FN22]

[FN22] Cf. judgment of July 31, 2000, delivered by the Office of the Delegate Disciplinary Attorney for Human Rights of the Attorney General's Office (file of attachments to the application, tome II, attachment C-10, folio 679).

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90. According to the assessment of Mr. Escobar Mejía's statement by the domestic administrative and criminal instances, it can be seen that, under the ordinary criminal justice system, the testimony of a person who had been a member of a paramilitary group was considered valid for prosecuting and convicting other members of the group, and also to find the place where the bodies of the victims had been buried. Nevertheless, despite its evident relevance, this testimony was not assessed by the military criminal justice system. This is also inconsistent with the position expressed by the State before the Court: if one of the State's arguments is that domestic remedies (in the ordinary criminal justice jurisdiction and the disciplinary procedure) have been effective in this case, this opinion of the domestic remedies that accorded probative value to the statement, prevents the State from validly rejecting its content before this international instance.

91. The Court does not determine individual responsibilities (supra para. 122), so it does not need to make a more specific assessment of the probative nature of the statement made by Mr. Escobar Mejía before the domestic administrative and jurisdictional bodies, as the State suggests.

92. The Court considers that the statements made by Mr. Escobar Mejía before the domestic administrative and jurisdictional bodies may be relevant to decide this case, so they will be assessed together with the other evidence.

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93. In addition, the Commission and the representatives have alleged that approximately eight days after the facts, three men dressed as solders, allegedly from the Carepa military base, came to Pueblo Bello by helicopter and, based on a list, gave out envelopes containing 50,000 pesos to the alleged victims' next of kin, even though many of the latter refused to receive the envelopes. During the public hearing, the State did not contest the statements of the witnesses in this regard. In the opinion of the representatives, this also shows the connection of members of the Armed Forces with the facts of the case, because it is an action that acknowledges responsibility for acts carried out by the Army and, particularly, by the Urabá Military Chief.

94. Consequently, as helpful evidence, the Court requested clarification of this point (supra para. 32). It wanted to know if this had really occurred and the nature and motive of the administrative or legal act ordering delivery of this money. The State submitted some information in this regard (supra para. 37), after the allotted time and when it had been asked to do so three times. It advised that, according to the Presidential Social Action and International Cooperation Agenda (Deputy Director for Attention to the Victims of Violence) and the Budgetary Group of the Administrative Department of the Presidency of the Republic, "there was no record to show that money had been provided on the occasion of the [Pueblo Bello] massacre," or "any payment [of suppliers of services] for the 1990 and 1991 fiscal year allocated to the jurisdiction of Pueblo Bello." In addition to its late presentation (supra para. 32), this information does not contradict the statements of the witnesses, does not respond to the Court's question, and does not adversely affect the probative nature of this fact.

VII. PROVEN FACTS

95. Having examined the probative elements in the case file and the statements of the parties, the Court finds that the following facts have been proved:

The internal armed conflict in Colombia and the illegal armed groups, called "paramilitary groups"

95(1) Beginning in the 1960s, different guerrilla groups emerged in Colombia and, owing to their activities, the State declared "that public order had been disrupted and national territory was in a state of siege." In view of this situation, on December 24, 1965, the State issued Legislative Decree No. 3398 "organizing the defense of the nation"; this decree was of a transitory nature, but it was adopted as permanent legislation by Act No. 48 of 1968 (with the exception of articles 30 and 34). Articles 25 and 33 of this Legislative Decree provided a legal basis for the creation of "self-defense groups." The preambular paragraphs of the decree stated that "the subversive actions undertaken by extremist groups to alter the legal order called for a coordinated effort by all law enforcement bodies and the armed forces of the nation"; in this regard, the said article 25 stipulated that "[a]ll Colombians, men and women, who were not affected by conscription for obligatory military service c[ould] be used by the Government in activities and tasks which w[ould] contribute to re-establish normality." In addition, article 33(3) stated that "[t]he Ministry of National Defense, through the authorized commands, may seize, when it deemed appropriate, as its own property, arms considered to be for the exclusive use of the Armed Force." "Self-defense groups" were formed legally under these provisions; hence they had the support of the State authorities. [FN23]

[FN23] Cf. Legislative Decree No. 3398 of December 24, 1965; Act 48 of December 16, 1968; judgment delivered by the Military Superior Court on March 17, 1998, and report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990.

95(2) In the context of the fight against the guerrilla groups, the State encouraged the creation of "self-defense groups" among the civilian population; the main purpose was to help law enforcement agents during anti-subversive operations and to defend the civilian population from the guerrilla groups. The State gave them permission to carry and own weapons, and also logistic support. [FN24]

[FN24] Cf. judgment delivered by the Tribunal Nacional on April 14, 1998; judgment delivered by the Military Superior Court on March 17, 1998; judgment delivered by the Cúcuta Regional Court on May 28, 1997; report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990, and report of the Administrative Department of Security (DAS) of March 15, 1989.

95(3) During the 1980s, mainly as of 1985, it was well-known that many "self-defense groups" changed their objectives and became criminal groups, usually known as "paramilitary groups." This happened first in the Magdalena Medio region and then extended gradually to other regions of the country. [FN25]

[FN25] Cf. Decree No. 0180 of January 27, 1988; Decree No. 0815 of April 19, 1989; Decree No. 1194 of June 8, 1989, judgment delivered by the Military Superior Court on March 17, 1998, and report of the United Nations Special Rapporteur on summary or arbitrary executions on a visit to Colombia from October 11 to 20, 1989, E/CN.4/1990/22/Add.1 of January 24, 1990.

95(4) On December 17, 1986, Colombia issued Decree No. 3664 "ordering measures for the re-establishment of public order", which stipulated, inter alia:

Article 1. While public order has been disrupted and there is a state of siege throughout national territory, the person who without permission from the competent authority imports, manufactures, transports, stores, distributes, sells, supplies, repairs or carries personal defense weapons shall be sentenced to imprisonment for one to four years and the said weapon will be confiscated […] [FN26]

[FN26] Cf. Decree No. 3664 of December 17, 1986, “ordering measures to restore public order” (file of attachments to the requests and arguments brief, tome I, attachment 2(2), folio 886).

95(5) On January 27, 1988, Colombia issued Legislative Decree No. 0180 “complementing some provisions of the Penal Code and ordering other provisions leading to the re-establishment of public order.” This decree defined, inter alia, the membership, promotion and leading of groups of hired assassins, and also the manufacture or trafficking of weapons and ammunition exclusively for the use of the Armed Forces or the National Police. This decree was later converted into permanent legislation by Decree No. 2266 of 1991. [FN27]

[FN27] Cf. Decree No. 0180 of January 27, 1988, by which “complementary elements to some provisions of the Penal Code are introduced and other provisions leading to the re-establishment of public order are ordered,” and Decree No. 2266 of October 4, 1991 (file of attachments to the answer to the application, folio 1764).

95(6) On April 14, 1988, Decree No. 0678 was issued “ordering measures to restore public order in the area of Urabá Antioqueño.” This decree was issued, with, inter alia, the following preambular paragraphs:

[...] That one of the factors that disrupts public order has been the violent activities of criminal groups [...];
That one of the sectors most affected by these criminal activities has been the geographical area of Urabá Antioqueño;
That the recent genocides perpetrated by criminal groups in the municipalities of Turbo and Apartadó have contributed to exacerbating the already disrupted public order, causing profound concern in the country;
That, in view of the critical nature of this situation, it is the obligation of the Government to adopt measures to try and restore public order and peace in that troubled part of the country.
That the situation in Urabá Antioqueño converts it into an emergency zone and an area where military operations are conducted, and this requires special public order measures [...]

and decreed:

Article 1. To declare that the region of Urabá Antioqueño is a zone of emergency and of military operations [...]
Article 2. To create the Military Headquarters of the Urabá Antioqueño based in Carepa, with jurisdiction in the following municipalities of the Department of Antioquia: Turbo, Arboletes, Necoclí, Apartadó, Chigorodó, Mutatá, Murindó, Vigía del Fuerte, San Juan de Urabá, Carepa, San Pedro de Urabá and Dabeiba. The Military Chief of Urabá Antioqueño shall be a general or ranking officer of the Armed Forces on active service and he shall be attached to the Ministry of National Defense.
Article 3. The Governor of Antioquia, the mayors of the municipalities cited in Article 2 of this Decree and all civil authorities who perform their functions in the geographical area of

Urabá Antioqueño are obliged to provide the Military Chief with the collaboration that he asks of them with a view to taking the necessary measures to restore public order in that zone.

Article 4. The Military Chief shall exercise the following functions in the geographical area of Urabá Antioqueño:

(a) Maintain public order in the area under his jurisdiction;

(b) Determine the public order measures that are required and coordinate their implementation with the mayors in the area;

(c) Adopt police measures to maintain public order, such as: prohibiting the bearing of arms and the sale and consumption of alcohol, decreeing a curfew, regulating meetings and parades in public places, and prohibiting the transit of persons or vehicles in specific areas of his jurisdiction;

(d) Dispose of the law enforcement personnel and the personnel of the Administrative Department of Security (DAS), operating in the territory under his jurisdiction; [...]

(e) Issue, in urgent or serious situations, with a provisional nature and for 60 days, disciplinary or administrative provisions or orders that, although outside his responsibility, are considered essential for maintaining public order, and which will be final in nature when they are adopted by the government of Antioquia [...].

Article 10. Authorize the Governor of Antioquia to delegate to the Military Chief of the geographical zone of Urabá Antioqueño, those of his legal attributes considered essential for more effective compliance with this Decree [...]. [FN28]

[FN28] Cf. Decree No. 0678 of April 4, 1988, "ordering measures to restore public order in the area of Urabá Antioqueño" (file of attachments to the requests and arguments brief, tome I, attachment 2(5), folio 898).

95(7) The Military Chief of Urabá Antioqueño was appointed by Decree No. 0680 of April 15, 1988. [FN29] Decree No. 0769 of April 26, 1988, added to and clarified Decree No. 0678 of 1988 (supra para. 95(6)). [FN30]

[FN29] Cf. Decree No. 0680 of April 15, 1988, "naming the Military Chief of Urabá Antioqueño" (file of attachments to the requests and arguments brief, tome I, attachment 2(6), folio 901).

[FN30] Cf. Decree No. 0769 of April 26, 1988, "adding to and clarifying Legislative Decree No. 678 of 1988" (file of attachments to the requests and arguments brief, tome I, attachment 2(7), folio 902).

95(8) On April 9, 1989, Decree No. 0813 was issued, ordering the creation of a "coordinating and advisory committee on actions against death squads, bands of hired killers, or self-defense or private justice groups, erroneously known as paramilitary groups." [FN31]

[FN31] Cf. Decree No. 0813 of April 9, 1989 "issuing provisions to combat death squads, bands of hired killers, or self-defense or private justice groups, wrongly-called paramilitary groups, and creating a coordination and advisory committee in this regard" (file of attachments to the requests and arguments brief, tome I, attachment 2(8), folio 904).

95(9) On April 19, 1989, Decree No. 0815 was issued, suspending the effects of Article 33(3) of Legislative Decree No. 3398 of 1965 (supra para. 95(1)), which empowered the Ministry of National Defense to authorize private individuals to carry weapons for the exclusive use of the Armed Forces. The preambular paragraphs of Decree No. 0815 indicated that "the interpretation [given to Legislative Decree No. 3398 of 1965, adopted as permanent legislation by Act No. 48 of 1968], by some sectors of public opinion has caused confusion about its scope and purposes, to the extent that it can be understood as legal authorization to organize armed civilian groups that act outside the Constitution and the law." Subsequently, in a judgment of May 25, 1989, the Supreme Court of Justice declared "unenforceable" the said Article 33(3) of Legislative Decree No. 3398 of 1965. [FN32]

[FN32] Cf. Decree No. 0815 of April 19, 1989, and judgment delivered by the Supreme Court of Justice on May 25, 1989.

95(10) Decree No. 0814 of April 19, 1989, established the creation of the "Special Armed Corps against death squads, bands of hired killers, or self-defense or private justice groups, erroneously known as paramilitary groups," [FN33] considering:

[…] That the declaration of the state of siege was due, among other reasons, to the actions of armed groups who are disturbing the public peace and attempting to destabilize legally established institutions;
That, among the armed groups that are jeopardizing public order, there are different criminal categories, including death squads, bands of hired killers, or self-defense or private justice groups, erroneously known as paramilitary groups, whose actions have increased owing to their well-known dependence on or connection with drug-traffickers, which gravely affects the safety of the civilian population and creates an environment of uncertainty and fear;
That the alteration of public order caused by these criminal groups is so vast that, in order to restore it, it is necessary to resort to procedures and entities that allow efforts to be combined to eliminate the actions that are disturbing national peace;
That it is therefore essential to create a Special Armed Corps to combat these groups. [FN34]

[FN33] Cf. Decree No. 0814 of April 19, 1989, "creating the Special Armed Unit against death squads, bands of hired killers, or self-defense or private justice groups, wrongly-called paramilitary groups" (file of attachments to the requests and arguments brief, tome I, attachment 2(9), folio 907).
[FN34] Cf. Decree No. 0814 of April 19, 1989, "creating the Special Armed Unit against death squads, bands of hired killers, or self-defense or private justice groups, wrongly-called

paramilitary groups" (file of attachments to the requests and arguments brief, tome I, attachment 2(9), folio 907).

95(11) On April 19, 1989 the State issued Decree No. 0815 "suspending some provisions that are incompatible with the state of siege." This decree established, inter alia:

Article 1. [...] to adopt as permanent legislation paragraph 1 of Act 48 of 1968, which states as follows:
"Article 33(3). The Ministry of National Defense, through the authorized military commands, may seize, when it deems appropriate, arms considered to be for the exclusive use of the Armed Forces.
Article 2. While public order continues to be disrupted and there is a state of siege on national territory, the use referred to in Article 25 of Legislative Decree 3398 of 1965 [(supra para. 95(1)], shall only be admissible by a decree of the President of the Republic, endorsed and communicated by the Ministers of Governance and National Defense.
This purpose of this use may only be the collaboration of the civilian population in non-combat activities and, at no time, shall entail providing them with weapons that are for the exclusive use of the Armed Forces, or authorization to carry or use them […] [FN35]

[FN35] Cf. Decree No. 0815 of April 19, 1989, "suspending some provisions that are incompatible with the state of siege" (file of attachments to the requests and arguments brief, tome I, attachment 2(10), folio 909).

95(12) On June 8, 1989, the State issued Decree No. 1194, "which added to Legislative Decree No. 0180 of 1988, penalizing new criminal activities, in the interests of restoring public order." The preambular paragraphs of the decree state that "the events occurring in our country have shown that there is a new criminal activity consisting of the perpetration of horrendous acts by armed groups, wrongly called 'paramilitary groups,' which set themselves up as death squads, bands of hired killers, or self-defense or private justice groups, whose existence and activities severely affect the country's social stability and which must be eliminated in order to restore public peace and order." This decree defined as a crime the promotion, financing, organization, leading, encouragement and execution of acts "designed to train individuals or enroll them in armed groups commonly known as death squads, bands of hired killers or private justice groups, erroneously known as paramilitary groups." It also defined as a crime, connection with and membership in such groups, as well as instructing, training or equipping "individuals in military procedures, techniques or tactics to carry out the criminal activities" of the said armed groups. In addition, it stipulated that it was an aggravating circumstance of these conducts, if they were "committed by active or retired members of the Armed Forces, the National Police or State security agencies." The decree subsequently became permanent legislation by Decree No. 2266 issued on October 4, 1991. [FN36]

[FN36] Cf. Decree No. 1194 of June 8, 1989, "which added to Legislative Decree No. 180 of 1988, penalizing new criminal activities, because the restoration of public order required it" (file of attachments to the requests and arguments brief, tome I, attachment 2(11), folio 911), and Decree No. 2266 of October 4, 1991, "adopting as permanent legislation, several provisions issued in exercise of the attributes of the state of siege" (file of attachments to the answer to the application, folio 1764).

95(13) On July 31, 1990, Decree No. 1685 was issued, annulling Legislative Decrees No. 678 (supra para. 95(6)) and No. 679/1988. [FN37]

[FN37] Cf. Decree No. 1685 of July 31, 1990, "derogating legislative Decrees Nos. 678 and 769/1988" (file of attachments to the requests and arguments brief, tome I, attachment 2(12), folio 913).

95(14) On December 14, 1990, the State issued Decree No. 3030/90 "establishing the requirements for reducing sentences as a result of the confession of crimes committed before September 5, 1990." [FN38]

[FN38] Cf. Decree No. 3030/90 of December 14, 1990, "establishing the requirements for the reduction of sentences owing to the confession of crimes committed before September 5, 1990."

95(15) On October 4, 1991, Decree No. 2266 was issued "adopting as permanent legislation several provisions issued in exercise of the powers of the state of siege"; namely: Legislative Decrees Nos. 3664/1986, 1198/1987, 1631/1987, 180 of 1988, 2490/1988, 1194/1989, 1856/1989, 1857/1989, 1858/1989, 1895/1989, 2790/1990 and 099/1991. [FN39]

[FN39] Cf. Decree No. 2266 of October 4, 1991, "adopting as permanent legislation several provisions issued in exercise of the attributes of the state of siege" (file of attachments to the requests and arguments brief, tome I, attachment 2(13), folio 914).

95(16) On December 17, 1993, Decree No. 2535 was issued "with provisions concerning weapons, ammunition and explosives." [FN40]

[FN40] Article 1 states that the purpose of this decree "is to establish norms and requirements for owning and carrying weapons, ammunition and explosives and their accessories […]; to establish the regime for […] surveillance and private security services." Article 9 stipulates that "weapons of restricted use are combat weapons or those exclusively for the use of law enforcement bodies, which may be authorized, exceptionally, for special personal defense based

on the discretional powers of the competent authority." Cf. Decree No. 2535 issued on December 17, 1993, "issuing norms on weapons, ammunition and explosives."

95(17) On February 11, 1994, the State issued Decree No. 356/94 "with the Surveillance and Private Security Statute." [FN41]

[FN41] Article 1 states that the purpose of this decree "is to establish the rules for individuals to provide surveillance and private security services." Article 39 provides for supplying "weapons of restricted" and activities "with techniques and procedures distinct from those established for other surveillance and private security services". Cf. Decree No. 356/94 issued on February 11, 1994, "issuing the Surveillance and Private Security Statute."

95(18) On December 26, 1997, the State issued Act 418 "embodying various instruments seeking peaceful coexistence and effective justice, and ordering other provisions." This law was extended by Act 548 of December 23, 1999, and Act 782 of December 23, 2002. [FN42] The State issued regulations to this law on several occasions: on January 22, 2003, by Decree No. 128, [FN43] on November 24, 2003, by Decree No. 3360, [FN44] and on August 31, 2004, by Decree No. 2767. [FN45]

[FN42] Cf. Act 418 issued on December 26, 1997, "embodying some instruments for seeking coexistence and effective justice, and ordering other provisions"; Act 548 of December 23, 1999, "extending the validity of Act 418 of December 26, 1997, and issuing other provisions," and Act 782 of December 23, 2002, "extending validity of Act 418 of 1997, extended and modified by Act 548 of 1999 and modifying some of its provisions."

[FN43] This decree established legal and socio-economic benefits" as well as other types of benefits for the "illegal armed organizations" that accepted the demobilization program. Article 13 of the decree establishes that "members of illegal armed organizations who demobilize, and regarding whom the Operational Committee on the Laying Down of Arms (CODA) has issued a certification, shall have a right to pardon, conditional suspension of the execution of sentence, cessation of the proceedings, preclusion of the investigation, or writ of prohibition, according to the status of the proceedings." Article 21 of this decree excludes from the enjoyment of these benefits "those who are being prosecuted or have been convicted of crimes that, according to the Constitution, the law or the international treaties signed and ratified by Colombia may not receive this type of benefit." Cf. Decree No. 128 issued on January 22, 2003, "regulating Act 418 of 1997, extended and modified by Act 548 of 1999, and Act 782 of 2002 on reincorporation into civil society."

[FN44] According to one of the preambular paragraphs, "special procedures shall be established to facilitate the collective demobilization of illegal organized armed groups within the framework of agreements with the national Government." Cf. Decree No. 3360 issued on November 24, 2003, "regulating Act 418 of 1997, extended and modified by Act 548 of 1999 and Act 782 of 2002."

[FN45] According to one of the preambular paragraphs, "conditions shall be established that precisely and clearly delineate spheres of competence, assign functions and develop the procedures for acceding to the benefits referred to in Act [418 of 1997, extended and modified by Act 548 of 1999 and Act 782 of 2002], once the process of voluntary demobilization has started." Cf. Decree No. 2767 issued on August 31, 2004, "regulating Act 418 of 1997, extended and modified by Act 548 of 1999, and Act 782 of 2002 concerning reincorporation into civilian life."

95(19) On February 25, 2000, Decree No. 324 was issued "establishing the center for coordinating the fight against the illegal self-defense groups and other illegal groups." [FN46]

[FN46] Cf. Decree No. 324 issued on February 25, 2000, "establishing the center for coordinating the fight against the illegal self-defense groups and other illegal groups."

95(20) On June 22, 2005, the Congress of the Republic of Colombia adopted Act No. 975, called the "Justice and Peace Act," "with provisions for the reincorporation of members of illegal organized armed groups, who make an effective contribution to achieve national peace and other provisions concerning humanitarian agreements," which was ratified and published on July 25, 2005. [FN47]

[FN47] Cf. Act 975 issued on July 25, 2005, "with provisions for the reincorporation of members of illegal organized armed groups who make an effective contribution to achieving national peace and other provisions for humanitarian agreements."

Concerning the context of Pueblo Bello historically and at the time of the massacre

95(21) The jurisdiction of Pueblo Bello was a hamlet devoted mainly to agriculture, located southwest of San Pedro de Urabá, and northeast of Turbo, in the municipality of the same name, which is in Urabá Antioqueño, an area that forms the western part of the Department of Antioquia. This Department adjoins the departments of Córdoba, Sucre, Bolívar, Santander, Boyacá, Caldas, Risaralda and Chocó. [FN48]

[FN48] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folio 2671); political map of Colombia. Geographical location of the area of Urabá Antioqueño; Map of Urabá Antioqueño. Division by zones (file of attachments to the requests and arguments brief, attachments 1(1) and 1(2), folios 785 and 786); statement made before the Inter-American Court by Rubén Díaz Romero during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by María Cecilia Ruiz de Álvarez, Eliécer Manuel Meza Acosta, Venidlo José Ricardo Herrera, Pedro Luis Escobar Duarte and Euclides Manuel Calle Álvarez

(file of statements made before or authenticated by notary public, folios 2703, 2713, 2715, 2720 and 2729).

95(22) During the 1950s, a highway was built to the sea, communicating Medellín to the Gulf of Urabá. This highway led to the rise in value of the land in the region and the convergence of economic forces – timber, livestock and bananas – which would determine the economic structure of Urabá and, consequently, its political and social situation. Men who dealt in land and livestock acquired the land and displaced the peasants, which led to the growth of cattle-ranching in the region. [FN49]

[FN49] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folios 2671 and 2672).

95(23) Over the period from 1960 to 1990, with the arrival in Urabá of a major banana company in the 1960s, the highway between Chigorodó and Turbo became the axis of a very profitable "banana-production center." As a result, the livestock owners who had acquired land in the 1950s and who had not turned to the production of bananas had to migrate with their cattle to the areas bordering this area causing new land disputes. The growth of Pueblo Bello and San Pedro de Urabá, among other places, was one of the results of this period. [FN50]

[FN50] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folio 2672).

95(24) In this context, during the 1960s, some peasant political movements emerged that wanted to carry out an agrarian reform and demanded improved public services from the State; they resorted to invading the large landed estates (latifundios). The people's demands were supported by the Revolutionary Armed Forces of Colombia (hereinafter "FARC") and the Popular Liberation Army (hereinafter "ELP"), for whom this region had great strategic importance because, in addition to being an area where they collected "war taxes" from the businessmen and ranchers, it was a corridor towards the "banana production center," where the guerrilla had a major influence in the political and trade union sectors. [FN51]

[FN51] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folios 2674 and 2675).

95(25) In reaction to the guerrilla, the paramilitary groups moved into the Urabá region. Fidel Castaño Gil, a leader of paramilitary groups in the region, was an important landowner and rancher in the municipality of Valencia, in the western part of Córdoba, where he had several ranches, including "Las Tangas." [FN52]

[FN52] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folios 2673 and 2674).

95(26) Given the strength of the guerrilla the social and political unrest, and the declaration of civil and labor strikes, in 1988, the Government established the XIth Brigade in Montería, the No. 1 Mobile Brigade, and the Urabá Military Headquarters (supra para. 95(6)). [FN53]

[FN53] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folio 2675).

95(27) During the period between 1988 and 1990, members of paramilitary groups carried out more than 20 massacres of peasants and trade unionists. Over the same period, Fidel Castaño carried out several massacres from his properties. [FN54]

[FN54] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folio 2675), and report drawn up by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folios 1534 to 1547).

95(28) The military installations around Pueblo Bello consisted of a roadblock on the highway leading from Pueblo Bello to San Pedro de Urabá, and the military base of San Pedro de Urabá; the latter belonged to Infantry Brigade No. 32 “Francisco de Paula Vélez” based in Carepa, Antioquia. In addition, there were both the Infantry Brigade “Francisco de Paula Vélez” based in San Pedro de Urabá, and the Voltígeros Battalion based in Carepa. Moreover, there was a Police Command based in San Pedro de Urabá, with headquarters in Carepa. [FN55]

[FN55] Cf. ruling of the Office of the Delegate Disciplinary Attorney for Human Rights of the Attorney General’s Office of July 31, 2000, in the investigation under case file No. 008-120607 (file of attachments to the application, tome II, attachment C-10, folios 664 and 670);ruling of the Disciplinary Chamber of the Attorney General’s Office of February 9, 2001 (file of attachments to the brief with the answer to the application, attachment 2, folio 1740), and map entitled “Military Bases, Urabá Antioqueño (1990)” (file of documents received during the public hearing, folio 2749).

95(29) Since both the guerrilla and the State used the civilian population to support military operations, it became one of the central objectives of the conflict. [FN56]

[FN56] Cf. sworn statement made by the expert witness, Alfredo Molano Bravo, on August 22, 2005 (file of statements made before or authenticated by notary public, folio 2674).

The events of January 1990

95(30) Between January 13 and 14, 1990, a group of approximately 60 heavily-armed men belonging to a paramilitary organization created by Fidel Antonio Castaño Gil called the "tangueros" owing to their connection with his ranch "Las Tangas," left his "Santa Mónica" ranch, in the municipality of Valencia, Department of Córdoba. Their purpose was to carry out a raid in the jurisdiction of Pueblo Bello, to abduct a group of individuals who had allegedly collaborated with the guerrilla, based on a list they took with them. [FN57]

[FN57] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folios 344, 364, 365 and 389); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 419, 450 and 463); judgment of the Criminal Appeals Chamber of the Supreme Court of Justice of March 8, 2001 (file of attachments to the application, tome II, attachment C4, folios 482 and 504); ruling of the Disciplinary Chamber of the Attorney General's Office of February 9, 2001 (file of attachments to the brief with the answer to the application, folio 1739); testimony of Ángel Emiro Jiménez Romero before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Eliécer Manuel Meza Acosta, Benildo José Ricardo Herrera, Manuel Dolores López Cuadro, Robinson Petro Pérez, María Cecilia Ruiz de Álvarez and Edilma de Jesús Monroy Higuita on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2701, 2711, 2738, 2742, 2716 and 2725).

95(31) Fidel Castaño's personal motive for carrying out this raid was that, at the end of December 1989, the guerrilla had stolen several head of his cattle and had transported them through Pueblo Bello to another place. Consequently, Fidel Castaño considered that the inhabitants of Pueblo Bello were authors or accomplices of this theft. In addition, on an unknown date, the "mayordomo" (ranch manager) of "Las Tangas" had been murdered in the Pueblo Bello public square. [FN58]

[FN58] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 389); report on "Investigatory Collaboration" of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5683 to 5689); testimony of Rubén Díaz Romero before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Eliécer Manuel Meza Acosta, Pedro Luis Escobar Duarte, Euclides Manuel

Calle Álvarez, María Cecilia Ruiz de Álvarez and Edilma de Jesús Monroy Higuita on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2701, 2723, 2726, 2716 and 2730).

95(32) On January 14, 1990, between 8.30 p.m. and 10.50 p.m., members of this paramilitary group entered the jurisdiction of Pueblo Bello with great violence, in two Dodge-600 trucks, apparently stolen, divided into four groups. Each group was led by a "task leader" and had specific assignments: to occupy the center of the village and "capture" the "suspects"; to cover the escape routes around Pueblo Bello; and to block the roads leading from Pueblo Bello to Turbo and to San Pedro de Urabá. These paramilitary forces carried firearms of different calibers, wore civilian clothes, and also clothes for the exclusive use of the Armed Forces, and had red and pink cloths around their necks. [FN59]

[FN59] Cf. ruling of the Office of the Delegate Attorney for the defense of human rights of November 27, 1991 (file of attachments to the answer to the application, attachment 1, folio 1685);ruling of the Disciplinary Chamber of the Attorney General's Office of February 9, 2001 (file of attachments to the brief with the answer to the application, attachment 2, folio 1739); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folio 450); ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folios 344, 364, 365 and 389); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 419, 450, 451 and 463); judgment of the Criminal Appeals Chamber of the Supreme Court of Justice of March 8, 2001 (file of attachments to the application, tome II, attachment C4, folio 482); report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folios 1535 and 1536); testimonies of Ángel Emiro Jiménez Romero and Mariano Manuel Martínez before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Eliécer Manuel Meza Acosta, Benildo José Ricardo Herrera, Manuel Dolores López Cuadro, Robinson Petro Pérez, María Cecilia Ruiz de Álvarez, Leovigilda Villalba Sánchez and Edilma de Jesús Monroy Higuita on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2700, 2701, 2705, 2711, 2738, 2742, 2716, 2725 and 2741).

95(33) The paramilitary group ransacked some houses, mistreating the occupants and took an unknown number of men from their homes to the central square of the village. Some members of the armed group entered the church in front of this square and ordered the women and children to remain within and the men to leave and go to the square. There, they placed the men face down on the ground and, with the list in their hands, chose 43 men who were tied up, gagged and obliged to get into the two trucks used to transport the members of the paramilitary group. [FN60]

[FN60] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 344, 345 and 389); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 419, 451 and 463); decision of the Office of the Delegate Attorney for the defense of human rights of November 27, 1991 (file of attachments to the answer to the application, attachment 2, folio 1685); ruling of the Disciplinary Chamber of the Attorney General's Office of February 9, 2001 (file of attachments to the brief with the answer to the application, folio 1739); testimonies of Mariano Manuel Martínez and Ángel Emiro Jiménez Romero before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Leovigilda Villalba Sánchez, María Cecilia Ruiz de Álvarez, Edilma de Jesús Monroy Higuita, Eliécer Manuel Meza Acosta and Benildo José Ricardo Herrera on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2700, 2701, 2705, 2710, 2711, 2716 and 2725).

95(34) Some members of the paramilitary group set fire to a store and a home, allegedly the property of a man called "Asdrúbal," who they had been unable to capture. [FN61]

[FN61] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 344, 345 and 365), and judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folio 450).

95(35) The following individuals were abducted: José del Carmen Álvarez Blanco, Fermín Agresott Romero, Víctor Argel Hernández, Genor Arrieta Lora, Cristóbal Manuel Arroyo Blanco, Diómedes Barrera Orozco, Urías Barrera Orozco, Jorge Fermín Calle Hernández, Jorge Arturo Castro Galindo, Benito Genaro Calderón Ramos, Juan Miguel Cruz (or Cruz Ruiz), Ariel Dullis Díaz Delgado, Camilo Antonio Durango Moreno, César Augusto Espinoza Pulgarín, Wilson Uberto Fuentes Miramón, Andrés Manuel Flórez Altamiranda, Santiago Manuel González López, Carmelo Manuel Guerra Pestana, Miguel Ángel Gutiérrez Arrieta, Lucio Miguel Úrzola Sotelo, Ángel Benito Jiménez Julio, Miguel Ángel López Cuadro, Mario Melo Palacio, Carlos Antonio Melo Uribe, Juan Bautista Meza Salgado, Pedro Antonio Mercado Montes, Manuel de Jesús Montes Martínez, José Encarnación Barrera Orozco, Luis Carlos Ricardo Pérez, Miguel Antonio Pérez Ramos, Raúl Antonio Pérez Martínez, Benito José Pérez Pedroza, Elides Manuel Ricardo Pérez, José Manuel Petro Hernández, Luis Miguel Salgado Berrío, Célimo Arcadio Hurtado, Jesús Humberto Barbosa Vega, Andrés Manuel Peroza Jiménez, Juan Luis Escobar Duarte, José Leonel Escobar Duarte, Ovidio Carmona Suárez, Ricardo Bohórquez Pastrana and Jorge David Martínez Moreno. Of these, the first 37 are disappeared, and Andrés Manuel Peroza Jiménez, Juan Luis Escobar Duarte, José Leonel Escobar Duarte, Ovidio Carmona Suárez, Ricardo Manuel Bohórquez Pastrana and Jorge David Martínez Moreno were murdered (infra para. 95(75)). Manuel de Jesús Montes Martínez, José

Encarnación Barrera Orozco and Miguel Antonio Pérez Ramos were minors at the time of the facts. [FN62]

[FN62] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folios 393, 396 and 397); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 440 and 443); judgment of the Disciplinary Chamber of the Attorney General's Office of February 9, 2001 (file of attachments to the brief with the answer to the application, attachment 2, folios 1739 and 1740); communication entitled "Qualifying opinion" of October 17, 1995, addressed the Office of the Prosecutor for Criminal Affairs to the Medellín Regional Prosecutor (file of useful evidence submitted by the State, folios 6419 to 6420); birth certificates of Manuel de Jesús Montes Martínez and José Encarnación Barrera Orozco (file of useful evidence submitted by the State and by the representatives, folios 968 and 2697), and baptism certificate of Miguel Antonio Pérez Ramos (file of attachments to the requests and arguments brief, tome III, folio 1122).

95(36) The two trucks with the individuals who had been abducted left Pueblo Bello at approximately 11.30 p.m. and drove back to the "Santa Mónica" ranch by the highway that connects Pueblo Bello to San Pedro de Urabá in an area that had been declared "an emergency and military operations [zone]." [FN63]

[FN63] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 365); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 450 and 451); judgment of the Criminal Appeals Chamber of the Supreme Court of Justice of March 8, 2001 (file of attachments to the application, tome II, attachment C4, folio 482); report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folio 1536); Decree No. 0678 of April 4, 1988, "ordering measures to restore public order in the area of Urabá Antioqueño" (file of attachments to the requests and arguments brief, tome I, attachment 2(5), folio 898), and testimony of Ángel Emiro Jiménez Romero before the Inter-American Court during the public hearing held on September 19, 2005.

95(37) The purpose of the roadblock located between Pueblo Bello and San Pedro de Urabá was to control the transit of vehicles and persons. The inspection consisted in requesting the identity documents of travelers, searching vehicles, the occupants and whatever they were carrying, and all types of transit during the armed strikes. When an armed strike was declared, the military roadblocks in the zone operated from 6 a.m. to 6 p.m.; after this time, the road was closed to all vehicles until the following day. [FN64]

[FN64] Cf. testimonies of Mariano Martínez, Ángel Emiro Jiménez, Rubén Díaz Romero and Nancy Guerra before the Inter-American Court during the public hearing held on September 19, 2005.

95(38) At approximately 1.30 a.m. on January 15, 1990, they reached the "Santa Mónica" ranch where they were received by Fidel Castaño Gil, who ordered that the individuals who had been abducted should be taken to a sandbank along the Sinú River, located in "Las Tangas." When they arrived, Fidel Castaño Gil gave orders that the trucks should be taken away and that the detainees should be divided into groups of three to five people to question them "about some livestock that he had lost a few days previously [...] and about the death of Humberto Quijano [...]." [FN65]

[FN65] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 365); judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 451 and 452), and report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folio 1537).

95(39) During these interrogations, they severed the veins, ears or genital organs of some of those abducted, or they gouged out their eyes. [FN66]

[FN66] Cf. judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folio 452), and ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 365).

95(40) 20 people died as a result of these initial actions. The survivors were transferred to a wooded area so that no one would see them. At about 7 a.m. on the morning of January 15, 1990, Fidel Castaño Gil continued the interrogation in person; the survivors were "kicked and beaten" to death. [FN67]

[FN67] Cf. judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 452 and 453).

95(41) Subsequently, the members of the paramilitary group transferred the corpses to "Las Tangas." Around 22 corpses were transported to another sandbank of the Sinú River on this

ranch, where they were buried. [FN68] However, at the date of this judgment, the whereabouts of 37 of the alleged victims is still not known (supra para. 95(35)).

[FN68] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 345) and judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 420 and 452); judgment of the Criminal Appeals Chamber of the Supreme Court of Justice of March 8, 2001 (file of attachments to the application, tome II, attachment C4, folio 482), and report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folio 1537).

95(42) During the morning of January 15, 1990, several next of kin of the individuals who had been abducted went to the San Pedro de Urabá military base to obtain information on the whereabouts of the disappeared. At the base, they were received by Lieutenant Fabio Enrique Rincón Pulido, who told them that the trucks transporting the persons taken from Pueblo Bello had not passed through the military roadblock and mentioned that the inhabitants of Pueblo Bello "had exchanged people for cattle." The alleged victims' next of kin received little help from the authorities in the search for the disappeared. [FN69]

[FN69] Cf. ruling of the Office of the Delegate Disciplinary Attorney for Human Rights of the Attorney General's Office of July 31, 2000 (file of attachments to the application, tome II, attachment C10, folio 662); testimonies of Rubén Díaz Romero, Mariano Manuel Martínez, Ángel Emiro Jiménez Romero, José Daniel Álvarez and Blanca Libia Moreno Cossio before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Eliécer Manuel Meza Acosta, Genaro Benito Calderón Ruiz, Manuel Dolores López Cuadro, Euclides Manuel Calle Álvarez, Benildo José Ricardo Herrera, Leovigilda Villalba Sánchez, María Cecilia Ruiz de Álvarez and Edilma de Jesús Monroy Higuita (file of statements made before or authenticated by notary public, folios 2701, 2704, 2706, 2704, 2712, 2719, 2726, 2730, 2735 and 2739).

95(43) Approximately one week after the facts occurred, some of the next of kin of the disappeared, accompanied by personnel from the Special Prosecutions Division searched the military base to see if those abducted were there, but they found no one. [FN70]

[FN70] Cf. testimony of Mariano Manuel Martínez before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Eliécer Manuel Meza Acosta and Leovigilda Villalba Sánchez (file of statements made before or authenticated by notary public, folios 2701, 2706 and 2707).

95(44) Eight days after the facts, men in army uniforms, allegedly from the Carepa military base, arrived in Pueblo Bello by helicopter and, based on a list, distributed envelopes with 50,000.00 pesos to the next of kin of the disappeared, although many of them refused to receive the envelopes. [FN71]

[FN71] Cf. testimonies of Mariano Manuel Martínez and Ángel Emiro Jiménez Romero before the Inter-American Court during the public hearing held on September 19, 2005, statement made before notary public (affidavit) by Leovigilda Villalba Sánchez on August 16, 2005 (file of statements made before or authenticated by notary public, folio 2707).

Concerning the investigations and the domestic administrative and judicial proceedings

The military criminal jurisdiction

95(45) On January 24, 1990, the 9th Special District of Urabá of the Antioquia Police Department informed the investigators of the Attorney General's Office that they had informed the Military and Civil Headquarters of Urabá about the events that had taken place in Pueblo Bello. [FN72]

[FN72] Cf. official communication of January 24, 1990, from the No. 9 Urabá Special District of the Antioquia Police Department to the investigators of the Attorney General's Office (file of useful evidence submitted by the State, folios 7083 to 7084).

95(46) On January 30, 1990, the 21st Military Criminal Trial Court opened a preliminary inquiry "to determine whether criminal laws had been violated by the troops based in San Pedro de Urabá." [FN73]

[FN73] Cf. ruling of the 21st Military Criminal Trial Court of January 30, 1990 (file of useful evidence submitted by the State, folio 7227).

95(47) From January 30 to April 3, 1990, the 21st Military Criminal Trial Court carried out probative measures, principally receiving statements, to determine any possible omissions by members of the Armed Forces during the events that had occurred on January 14, 1990, and also to determine the existence of "drivable trails" which could have been used to by-pass the military roadblock. [FN74]

[FN74] Cf. statements made before the 21st Military Criminal Trial Court by the soldiers, Álvaro Gómez Luque, Néstor Barrera Vega, Manuel José de la Cruz, Gabriel Jaime Espitia, Jorge Humberto Ochoa Álvarez, Elmer de Jesús Ospina Bedoya, José Julian Rodríguez Tamayo, Luis

Hames Trujillo García, Humberto Gutiérrez Grajales, John Salgar Castaño, Omai Vergara Atehortua and Edwin Cardona Patiño; statement of the police official, Evelio Montaña Perdomo; and statements of the private individuals, Julio Sánchez Sánchez, Rosa Helena Orozco Jiménez, Rosmira Mendoza Restrepo, José Guerrero Palacio, José Freddy Hincapié Careth, Marino Valenzuela Aguilar, Abel Antonio Lara Quevedo and Diva del Socorro Arroyo Blanco (file of useful evidence submitted by the State, folios 7228 to 7269).

95(48) On April 20, 1990, the 21st Military Criminal Trial Court decided:

To abstain from opening the corresponding criminal investigation into alleged irregularities by any member of the 32nd Infantry Battalion "Francisco de Paula Vélez" [...]
To forward a certified copy of the publication in the El Espectador newspaper of the interview with MARIANO VALENZUELA AGUILAR, and the statements of the private individuals, ABEL ANTONIO LARA QUEVEDO and DIVA DEL SOCORRO ARROYO BLANCO, and of Police Lieutenant EVELIO MONTAÑA PERDOMO, to the respective Criminal Court of first instance, so that it can investigate the alleged false testimony of councilor VALENZUELA AGUILAR. [FN75]
[This court made the following findings: It is inferred that since the empty trucks passed through the roadblock between San Pedro de Urabá and Pueblo Bello, they could have been stolen by the Fidel Castaño paramilitary group or another subversive group, and after the abduction of the peasants had been perpetrated, the group could have taken a special route with the people using another means of transport, returning the empty vehicles through the roadblock, because those who know the region well state that there are no drivable roads, only trails. [...] The [court abstains from opening the corresponding criminal investigation, since it has established that none of the military personnel from that battalion committed any unlawful conduct...]

[FN75] Cf. ruling of the 21st Military Criminal Trial Court of August 18, 1990 (file of attachments to the answer to the application, folios 1755a to 1755e).

95(49) On August 21, 1990, a note appeared in a national newspaper concerning the Army's participation in some massacres. This note:

Cited a letter from a sub-official named Silva, in charge of a roadblock in Puerto Bello, Urabá province (northwestern Colombia), in which the soldier declared that his superior officers ordered him to leave the area where the bodies of 42 peasants were subsequently found on the ranch of a drug-trafficker [...] According to the letter from sub-official Silva dated January 14, [1990,] these peasant 'must necessarily have passed through the roadblock.' [FN76]

[FN76] Cf. press communiqué of August 21, 1990 (file of useful evidence submitted by the State, folio 6479).

95(50) On August 28, 1990, the 21st Military Criminal Trial Court, based on an official communication and in a press communiqué of August 21, 1990, decided:

FIRST: TO REVOKE the decision dated April 20, 1990.
SECOND: To carry out all necessary measures to clarify the facts and to determine the merits of opening an investigation. [FN77]

[FN77] Cf. ruling of the 21st Military Criminal Trial Court of August 28, 1990 (file of attachments to the answer to the application, folio 1755g).

95(51) On November 8, 1990, Corporal Edison Silva Molina made a statement before the 21st Military Criminal Trial Court. [FN78]

[FN78] Cf. statement made by Edinson Silva Molina before the 21st Military Criminal Trial Court on November 8, 1990 (file of useful evidence submitted by the State, folio 6483).

95(52) On November 13, 1990, the 21st Military Criminal Trial Court decided:

FIRST: To abstain from opening a criminal investigation because the act investigated has not been committed by a member of the armed forces [...]. [FN79]
[It considered that Silva's statement did not provide any elements that would allow it to continue with the proceedings.]

[FN79] Cf. ruling of November 13, 1990, issued by the 21st Military Criminal Trial Court (file of attachments to the answer to the application, folios 1756 to 1757).

95(53) On March 9, 1994, the Commander of the National Army addressed an official communication to the Commander of the 17th Brigade of Carepa in Antioquia, in which he stated that:

In order that the corresponding investigation may be pursued, I am attaching the case file, together with Resolution No. 006 of November 27, 1991, issued by the Office of the Delegate Attorney (Procuraduría Delegada) for the Defense of Human Rights, and also the decision of the Medellín Delegate Regional Prosecutor (Fiscalía Regional Delegada), dated February 4, 1994, so that the criminal responsibilities may be established of the military personnel who, on January 14, 1990, manned a roadblock, on the road to San Pedro de Urabá, which allowed two stolen trucks with license plates IB-3544 and UU-0783 to pass through with 43 peasants, abducted and taken from the jurisdiction of Pueblo Bello, municipality of Turbo, by an armed group of approximately 30 men, thus facilitating, by omission, the disappearance of those who had been abducted. […] [FN80]

[FN80] Cf. official communication of March 9, 1994, from the Commander of the National Army to the Brigadier General, Commander of the 17th Brigade, Carepa, Antioquia (file of useful evidence submitted by the State, folio 6804).

95(54) On March 23, 1994, the Adjunct Commander of the 17th Brigade received the copies referred to in the communication of March 9, 1994 (supra para. 95(53)) and forwarded them to the 21st Military Criminal Court of first instance so that it could "proceed with the corresponding investigation as necessary." [FN81]

[FN81] Cf. note of March 23, 1994, from the Adjunct Commander of the 17th Brigade, Carepa, Antioquia (file of useful evidence submitted by the State, folio 6805).

95(55) On September 11, 1995, the 21st Military Criminal Trial Court decided "to abstain from opening an investigation [...] since no violation of criminal law had been established." This decision was based on the measures described in the case file corresponding to the investigation carried out by the Attorney General's Office, and also that it considered that there were "several alternatives that would allow the groups to detour by other roads to evade the military control." [FN82]

[FN82] Cf. ruling of the 21st Military Criminal Trial Court of September 11, 1995 (file of useful evidence submitted by the State, folios 6825 to 6828).

Ordinary criminal jurisdiction

a) First investigatory measures and proceedings of administrative and jurisdictional bodies

95(56) On January 15, 1990, after they had been to the San Pedro de Urabá military base to obtain information on the whereabouts of the alleged victims who were then disappeared (supra para. 95(35)), some of their next of kin reported the events that had occurred in Pueblo Bello to the Turbo municipality. Consequently, the Municipal Attorney (Personería Municipal) ordered that a copy of the pre-trial measures should be forwarded to the Turbo Criminal Investigation judges and to the Apartadó Regional Office of the Attorney General. [FN83]

[FN83] Cf. report of January 15, 1990, issued by the Turbo Municipal Attorney (file of useful evidence submitted by the State, folios 6031 and 6032).

95(57) On January 15, 1990, the Secretary of the government of the Department of Antioquia forwarded a public order report to the Governor of the Department informing her, based on the "information […] received from the Mayor of Turbo," of the events that had occurred in Pueblo Bello the previous day. In addition, he indicated that "he had spoken by telephone with General Clavijo[, who] had told [him] that the pertinent investigations were underway." [FN84]

[FN84] Cf. note of January 15, 1990, issued by the government Secretary to the Governor of Antioquia (file of attachments to the requests and arguments brief, attachment 5(3), folios 1557 and 1558).

95(58) On January 16, 1990, the Turbo 65th Criminal Trial Court received the pre-trial case file related to the events that took places in Pueblo Bello, which corresponded to it under the case distribution system. Two days later, based on the communication issued by the Turbo Municipal Attorney (supra para. 95(56)), it ordered that preliminary measures should be taken "in order to establish the facts, gather relevant evidence, and identify all the perpetrators or participants in the facts […]" [FN85].

[FN85] Cf. certification (file of useful evidence submitted by the State, folio 6171), and ruling of the 65th Criminal Trial Court of January 18, 1990 (file of useful evidence submitted by the State, folio 6171).

95(59) On January 16, 1990, the Medellín Criminal Investigation Sectional Directorate forwarded a report on the events that occurred in Pueblo Bello, issued by the Secretariat of the government of the Department of Antioquia to the corresponding Public Order Court (supra para. 95(57)), so that it could assume the respective investigation. [FN86]

[FN86] Cf. official communication of January 16, 1990, issued by the Criminal Investigation Sectional Directorate of Medellín (file of useful evidence submitted by the State, folios 5931 to 5933).

95(60) On January 17, 1990, the Office of the Mayor of Turbo issued a communiqué establishing, inter alia, that:

The Mayor of Turbo advises that on Sunday, January 15 this year […] a group of unknown individuals […] entered the jurisdiction of Pueblo Bello violently […] abducting […] 40 peasants […] who they took away in two trucks, using the road that leads to San Pedro de Urabá […]
[…] The collaboration of the population is requested […] to inform the authorities of any facts or indications that could lead to the rescue of the […] disappeared, and they can be assured that they will be guaranteed the most absolute discretion. [FN87]

[FN87] Cf. public communiqué issued by the Mayor's office dated January 17, 1990 (file of documents received during the public hearing, folio 2750).

95(61) On January 17, 1990, the Medellín Fourth Public Order Court received the case file related to the facts that occurred in Pueblo Bello, forwarded by the First Public Order Court of this city. A day later, the Medellín Fourth Public Order Court ordered that preliminary measures should be taken to identify or individualize the perpetrators of or participants in the criminal act. [FN88]

[FN88] Cf. certification of January 17, 1990 (file of useful evidence submitted by the State, folio 5953), and ruling of the Medellín Fourth Public Order Court of January 18, 1990 (file of useful evidence submitted by the State, folio 5935).

95(62) On January 23, 1990, the Head of the Apartadó Operations Duty Station of the Administrative Department of Security (DAS) (hereinafter "DAS") forwarded an official communication to the office of the Delegate Inspector (Visitaduría Delegada) for Human Rights and to the Regional Office of the Attorney General's Office advising that:

[In the preceding days,] no operations of any kind had been carried out in either the jurisdiction of Pueblo Bello or any other jurisdiction, owing to the lack of means of transport, weapons, or sufficient personnel for this purpose; and that this zone (Pueblo Bello), is considered a dangerous high-risk zone.
This Headquarters issued assignment No. 008 of January 15, 1990, to investigate the alleged disappearance or abduction of 39 persons in the jurisdiction of Pueblo Bello, with negative results to date.
Likewise, the deployment of intelligence services was ordered in the municipalities of Apartadó and Turbo, with the same results […]. [FN89]

[FN89] Cf. official communication of January 23, 1990, issued by the Head of the Apartadó Operations Duty Station of the Administrative Department of Security (DAS), addressed to the office of the Delegate Inspector for Human Rights and to the Regional Office of the Attorney General's Office (file of useful evidence submitted by the State, folio 6137).

95(63) On January 29, 1990, based on the statements of 29 witnesses, the Judicial Police Technical Corps of the Criminal Investigation Sectional Directorate of the Department of Antioquia informed the Medellín Fourth Public Order Judge about the events that had occurred in Pueblo Bello on January 14, 1990. The Judicial Police Technical Corps noted that:

[…] on the road from Pueblo Bello to San Pedro de Urabá there are two military roadblocks, the first in the jurisdiction of San José and the other in San Pedro de Urabá (entrance) […]

It also advised that it had been established that the vehicles used to transfer the peasants had been stolen "on the day of the events."

The report also established that:

[…] On Tuesday, 16th (January, 1990], several of the complainants went to San Pedro to request the collaboration of the Army Commander and the complainants state that he told them: "Don't come here trying to find out anything because there is no one here; perhaps you don't remember that when the cattle were stolen, none of you said anything; you exchanged human lives for animals; go away." […] [FN90]

[FN90] Cf. report of January 29, 1990, issued by the Technical Corps of the Judicial Police of the Criminal Investigation Sectional Directorate, Department of Antioquia (file of attachments to the requests and arguments brief, tome V, attachment 5(5), folios 1564 to 1566).

95(64) On January 31, 1990, the Medellín Fourth Public Order Court sitting in Turbo, based on the evidence gathered up until that time […], ordered a search of "Las Tangas" and sent an official communication to the Urabá Military Headquarters requesting it to proceed to search and examine this ranch. [FN91]

[FN91] Cf. ruling of the Medellín Fourth Public Order Court of January 31, 1990 (file of useful evidence submitted by the State, folio 6039), and official communication of January 31, 1990, issued by Medellín Fourth Public Order Court (file of useful evidence submitted by the State, folio 6040).

95(65) On February 1, 1990, the Córdoba Police Department submitted a report to the Operations Directorate of the National Police concerning the discovery of the two trucks with license plates, UU-07-83 and IB-35-44, found on the afternoon of January 15, 1990, on the road leading from Montería to Arboletes. The said trucks were subjected to a forensic examination by the Technical Corps of the Judicial Police in order to find "organic fluids or liquids such as blood and elements that might have been used in committing illegal acts; the results were negative, and only plantain stains were found." [FN92]

[FN92] Cf. report of February 1, 1990, issued by the Córdoba Police to the Operations Directorate of the National Police (file of attachments to the requests and arguments brief, attachment 5(7), f. 1573).

95(66) On February 2, 1990, the Military Headquarters of Urabá informed the Medellín Fourth Public Order Court that on January 15, 16 and 17, 1990, "Las Tangas" had been searched, with

negative results. It also stated that the inspections made on January 31 and February 1, 1990, also had negative results. [FN93]

[FN93] Cf. official communication of February 2, 1990, addressed by the Military Headquarters of Urabá to the Fourth Public Order Judge (file of useful evidence submitted by the State, folio 6186 to 6187).

95(67) On February 1 and 3, 1990, the Medellín Fourth Public Order Court received the statements of two people who spoke of the alleged communication between the members of the paramilitary group and the soldiers on the afternoon of the day of the events. [FN94]

[FN94] Cf. statement of Jairo Zuluaga Quiceno and statement of Guillermo Nicolás Narváez Ramos before the Fourth Public Order Court (file of useful evidence submitted by the State, folios 4554 to 4562).

95(68) On February 6, 1990, the Fourth Public Order Court ordered the search of the "Linares," "Villa Nueva," "Quetendama" and "Las Tangas" ranches, and issued an official order to that effect to the National Criminal Investigation Directorate. In addition, it declared that an investigation had been opened concerning the violation of Decree No. 180 of 1988 (Defense of Democracy Act), based on the actions carried out up until that time. [FN95]

[FN95] Cf. ruling of the Medellín Fourth Public Order Court of February 6, 1990 (file of useful evidence submitted by the State, folio 6162), and official communications of February 6, 1990, from the Fourth Public Order Court to the National Director of Criminal Investigation and the Sectional Director of Criminal Investigation (file of useful evidence submitted by the State, folios 6163 and 6165).

95(69) In an official communication of February 22, 1990, the Urabá Military Headquarters informed the Medellín Fourth Public Order Judge of the actions taken by this entity to try and find the 43 persons disappeared from Pueblo Bello. This communication stated that:

[…] Lieutenant Officer FABIO ENRIQUE RINCON PULIDO was not the Commander of the roadblock located on the way out of San Pedro at the time of the facts, but rather the person who attended the human rights committee when they went to verify whether any persons were detained there.
The personnel on the roadblock on [January 14, 1990,] commanded by Sub-Lieutenant BARRERA VEGA, NESTOR ENRIQUE were: Corporal First Class SILVA MOLINA EDISON, Soldier RODRIGUEZ TAMAYO JOSE, Soldier TRUJILO GARCIA LUIS, Soldier SALGAR CASTAÑO JHON, Soldier CARDONA PATIÑO EDWIN, Soldier VERGARA ATEHORTUA OMAIRO, Soldier OSPINA ECHEVERRIA GABRIEL, Soldier ORTIZ

GRAJALES HUMBERTO, Soldier OSPINA BEDOYA HELMER, Soldier OCHOA ALVAREZ JORGE and Soldier MURIEL JOSE […] [FN96]

[FN96] Cf. official communication of February 22, 1990, from the Urabá Military Headquarters, to the Medellín Fourth Public Order Judge (file of attachments to the requests and arguments brief, tome V, attachment 5(6), folios 1569 to 1572).

95(70) On April 4, 1990, the member of the paramilitary forces, Rogelio de Jesús Escobar Mejía, appeared voluntarily before the Administrative Department of Security (DAS) and confessed that he had take part in the events in Pueblo Bello, as well as in other acts related to the "tangueros" paramilitary group. His confession contributed to the discovery of the corpses on the "Las Tangas" and "Jaraguay" ranches (infra para. 95(74)). [FN97]

[FN97] Cf. ordinary judgment of the Medellín Regional Court of May 26, 1997(file of attachments to the application brief, tome II, attachment C2, folio 345), and report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folio 1523).

95(71) On April 10, 1990, the judge responsible for the Seventh Criminal Court of first instance accompanied by several members of the Technical Corps of the Judicial Police, went to the "Jaraguay" ranch, which borders on the "Las Tangas" ranch, to effect the "removal" of corpses. The result of this action was the discovery of the skeletons of four corpses. [FN98]

[FN98] Cf. official record of the exhumation of corpses of April 10, 1990, issued by the Seventh Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(1), folios 1641 and 1642).

95(72) On April 12, 1990, the Judge and the Secretary of the 19th Criminal Court of first instance went to "Las Tangas" to carry out an "exhumation" procedure. On that occasion, they found four corpses. Regarding one of them, the experts who took part in the operation, estimated that, given the state of decomposition, it must have been buried for about two and a half months. The respective official record did not indicate the state of the other corpses and mentioned that "despite a careful examination of the pockets of the clothes of the corpses, no documents were found that would have identified them." [FN99]

[FN99] Cf. official record of the exhumation of corpses of April 12, 1990, issued by the 19th Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(2), folios 1643 to 1644).

95(73) On April 16, 1990, the Judge and Secretary of the 15th Criminal Court of first instance went to "Las Tangas" to carry out the "removal" of the corpses. During this procedure, eight trenches were found, each of which contained remains of corpses, with their arms tied behind their backs. Some of the remains found were completely decomposed and most of them were merely osseous remains. [FN100]

[FN100] Cf. record of the exhumation of corpses of April 16, 1990 issued by the 15th Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(3), folios 1645 to 1647).

95(74) As a result of the exhumations carried out on the "Las Tangas" and "Jaraguay" ranches in April 1990 (supra paras. 95(71) to 95(73)) 24 corpses were found, and taken to the San Jerónimo Hospital in Montería to be identified by the next of kin of the disappeared from Pueblo Bello. The next of kin who went to the hospital did not receive any information or collaboration from the State authorities or the hospital personnel and were left alone to examine the corpses, which were decomposed and had been thrown on the floor of the "amphitheater" (anfiteatro). [FN101]

[FN101] Cf. official record of the exhumation of corpses of April 10, 1990, issued by the Seventh Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(1), folios 1641 to 1642); official record of the exhumation of corpses of April 12, 1990, issued by the 19th Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(2), folios 1643 to 1644); record of the exhumation of corpses of April 16, 1990, issued by the 15th Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(3), folios 1645 to 1647); testimonies of Mariano Manuel Martínez, Rubén Díaz Romero, José Daniel Álvarez Ruiz and Blanca Libia Moreno Cossio give before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Benildo José Ricardo Herrera, Pedro Luis Escobar Duarte, Euclides Manuel Calle Álvarez, Genaro Benito Calderón Ruiz, Manuel Dolores López Cuadro, Leovigildo Villalba Sánchez and María Cecilia Ruiz de Álvarez on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2702, 2709, 2713, 2717, 2723, 2730, 2735 and 2738).

95(75) On April 19, 1990, after they had been to the "amphitheater" of the San Jerónimo Hospital in Montería, four inhabitants of Pueblo Bello made statements and declared that they had identified the bodies of Ricardo Bohórquez, Andrés Manuel Peroza Jiménez, Juan Luis Escobar Duarte, Leonel Escobar Duarte, Ovidio Carmona Suárez and Jorge David Martínez Moreno. [FN102]

[FN102] Cf. communication entitled “Qualifying opinion” of October 17, 1995, from the Office of the Attorney for Criminal Affairs (Procuraduría en lo Judicial Penal) to the Medellín Regional Prosecutor (file of useful evidence submitted by the State, folios 6419 and 6420); ordinary judgment delivered by the Medellín Regional Court on May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folios 393 and 397), and judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folio 443).

95(76) On an unknown date, the unidentified bodies were buried in a common grave in the San Antonio cemetery, in Montería. [FN103]

[FN103] Cf. testimony of José Daniel Álvarez Ruiz before the Inter-American Court during the public hearing held on September 19, 2005; report of November 24, 2003 issued by the Identification Unit of the Prosecutor General’s Office (file of useful evidence submitted by the State, folios 5653 to 5660), and note of September 17, 2002, from ASFADDES to the Coordination Office of the Human Rights and International Humanitarian Law Unit (file of documents received during the public hearing, folios 2753 to 2755).

95(77) On an unknown date, the alleged members of the paramilitary forces,Ramiro Enrique Álvarez Porras, Héctor de Jesús Narváez Alarcón, Luis Ángel Gil Zapata, Pedro Hernán Ogaza Pantoja, Tarquino Rafael Morales Díaz and Elkin de Jesús Tobón Zea were captured at “Las Tangas”; they made preliminary statements before the Fourth Public Order Court on April 20, 1990. [FN104]

[FN104] Cf. decision of the Medellín Fourth Public Order Court of May 15, 1990 (file of useful evidence submitted by the State, folio 6998), and decision of May 16, 1990 issued by the Second Superior Court of Montería (file of useful evidence submitted by the State, folio 6900).

95(78) On April 24 and 25, 1990, Rogelio de Jesús Escobar Mejía again appeared before the DAS to make a statement. On April 26, 1990, Rogelio de Jesús Escobar Mejía made a statement before the Fourth Public Order Court and confessed facts related to the events of Pueblo Bello. Subsequently, on May 15 and 29 and on June 12, 1990, he made a statement before the First Public Order Court. [FN105]

[FN105] Cf. statement of April 25, 1990, made by Rogelio de Jesús Escobar Mejía before DAS; statements of April 26, 1990, May 15 and 29, 1990 and June 12, 1990, made by Rogelio de Jesús Escobar Mejía before the Medellín Fourth Public Order Court (file of useful evidence submitted by the State, folios 3523 to 3597, 4547, 5221 to 5295, 5312 to 5319, 5324 to 5336, and 6976 to 6995).

95(79) In a note of September 12, 1990, the Headquarters of the General Directorate of Intelligence of the Administrative Department of Security (DAS) gave the First Public Order Judge information concerning the facts that had occurred in Pueblo Bello. Among the documents accompanying this note were the "report provided freely and spontaneously" by Rogelio de Jesús Escobar Mejía. The General Directorate of Intelligence indicated that this testimony had provided the basis for the operation that led to the discovery of several common graves on the "Jaraguay" and "Las Tangas" ranches in the jurisdiction of Valencia (Córdoba), and referred to the communications network among Fidel Castaño Gil's ranches that existed at that time:

[…] The organization remains in close contact owing to a communications system that links all the ranches of FIDEL CASTAÑO, thus:
[…] 6. The Police Station in the municipality of Valencia has a [wireless] frequency available to communicate with FIDEL CASTAÑO's organization, informing it opportunely of the presence of suspicious individuals or the execution of operations on the paramilitary group's ranches.

In addition, this report concluded with "suggestions for the operational and investigatory action" required by the situation, in the following terms:

A. Before disseminating this report to the competent judicial instances, it is advisable that the Head of DAS […] should hold a meeting with […] the National Director of Criminal Investigation and the Attorney General, in order to plan the exhumation procedures with the maximum discretion.
B. It is advisable that the Elite National Police Corps should intervene in the exhumation of the corpses, and that authorities with jurisdiction in Urabá and Córdoba should not be involved in the operation, because evidence exists that some of them have cooperated with the criminal organization led by FIDEL ANTONIO CASTAÑO GIL.
[…] D. The procedures for the excavation and exhumation of the corpses must be focused particularly on the Las Tangas ranch, because the common grave with 20 or 22 corpses of the 42 peasants abducted in Pueblo Bello is to be found there. [FN106]

[FN106] Cf. report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folios 1552 to 1555).

95(80) On October 21, 1994, Technical Investigation Corps of the Prosecutor General's Office (Fiscalía General de la Nación) advised that, on October 18, 1994, work had started on the procedure to remove the corpses in the San Antonio cemetery, in Montería. The excavations had been ordered by the Regional Prosecutor's Office (Fiscalía Regional) in Medellín. The procedure was suspended due to difficulties in executing the excavations owing to problems of water, which meant that the land was unsuitable for carrying out a technical excavation. [FN107]

[FN107] Cf. testimony of José Daniel Álvarez Ruiz before the Inter-American Court during the public hearing held on September 19, 2005, and report of October 21, 1994, issued by National Identification Sector of the Technical Investigation Corps of the Prosecutor General's Office (file of useful evidence submitted by the State, folio 6380).

95(81) On March 23, 1995, the Medellín Regional Prosecutor's Office commissioned the Technical Investigation Corps to coordinate with the Bogotá Forensic Division to conduct the exhumation and identification of the corpses that could not be carried out in 1994 (supra para. 95(80)). [FN108]

[FN108] Cf. decision of March 23, 1995, issued by the Medellín Regional Prosecutor's Office (file of useful evidence submitted by the State, folios 6391 to 6392).

95(82) On April 21, 1995, the Technical Investigation Corps advised that between March 27 and April 7 that year, it had exhumed 13 bodies. [FN109]

[FN109] Cf. report of April 21, 1995, issued by the Investigation Unit of the Technical Investigation Corps of the Prosecutor General's Office (file of useful evidence submitted by the State, folio 6393).

95(83) On June 17, 1997, the National Identification Section of the Technical Investigation Corps, Forensic Division, issued a report on the analysis of the osseous remains of the corpses that had been exhumed in 1995 (supra para. 95(81)). According to this report. 13 corpses were examined, 12 of which belonged to men. The study made an assessment of the approximate age, sex, cause of death, height and dental plates of the corpses. In addition, drawings were made of the reconstructed craniums and DNA testing was recommended. There is no record that the remains were those of the people who disappeared from Pueblo Bello. [FN110]

[FN110] Cf. report of June 17, 1997, issued by the National Identification Section of the Technical Investigation Corps, Forensic Division (file of useful evidence submitted by the State, folios 4372 to 4505), and statements made before notary public (affidavits) by Manuel Dolores López Cuadro and Robinson Petro Pérez on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2739 and 2745).

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b) Decisions and judgments in the ordinary criminal jurisdiction

95(84) On May 9, 1990, the First Public Order Court decided:

First. To abstain from ordering the preventive detention of the accused Héctor de Jesús Narváez Alarcón, Luis Ángel Gil Zapata, Ramiro Enrique Álvarez Porras, Tarquino Rafael Morales Díaz, Pedro Hernán Ogaza Pantoja and Elkin de Jesús Tobón Zea [… since there is not the slightest evidence that they are the alleged perpetrators of or participants in the violent death of the corpses found in the common graves, since no hard evidence has been legally produced during the proceedings to indicate that they are really responsible].
Second. To send an official communication to the Director of the Las Mercedes National Prison of this city, informing him that the accused referred to in the previous paragraph should be released as regards the matter before this court; nevertheless, as of the date of this decision, they are at the orders of the Medellín Fourth Public Order Court. An official communication should also be sent to the said court in this regard. [FN111]
[The court considered that, although it was evident that criminal laws had been violated, because the discovery of several corpses in common graves with signs of having been tortured before they were killed violently had been fully demonstrated, in the investigation there was not the slightest evidence that the accused were the alleged perpetrators of or participants in the facts investigated, since no hard evidence had been produced that proved they were really responsibility. Therefore, finding that the requirements for ordering preventive detention had not been fulfilled, the court abstains from ordering this measure. However, it does not order the release of the detainees, but places them at the orders of the Fourth Public Order Court because that court had summoned the accused.]

[FN111] Cf. decision of May 9, 1990, issued by the First Public Order Court (file of useful evidence submitted by the State, folios 6894 to 6899).

95(85) On May 15, 1990, the Fourth Public Order Court issued a decision on the legal status of Fidel Castaño Gil, Ramiro Enrique Álvarez Porras, Héctor de Jesús Narváez Alarcón, Luis Ángel Gil Zapata, Pedro Hernán Ogaza Pantoja, Tarquino Rafael Morales Díaz, Elkin de Jesús Tobón Zea and Rogelio de Jesús Escobar Mejía. In this regard, it decided:

1. TO ORDER a measure consisting in the PREVENTIVE DETENTION of RAMIRO ENRIQUE ALVAREZ PORRAS, HECTOR DE JESUS NARVAEZ ALARCON, LUIS ANGEL GIL ZAPATA, PEDRO HENAN OGAZA PANTOJA, ELKIN DE JESUSS TOBON and ROGELIO DE JESUS ESCOBAR MEJIA [...] for violation of Decree 180 of 1988, arts. 1 and 7, for abduction, multiple murders, and aggravated theft [...].
3. TO ABSTAIN from ordering the preventive detention of TARQUINO MORALES DIAZ [...].
4. TO ORDER the capture of Fidel Castaño Gil, to be investigated by this plenary court as the alleged mastermind and perpetrator of the facts [...].
5. To order by all possible means the appearance of Lieutenant FABIO RINCON QUIÑONES for questioning in this investigation. [FN112]
[After listing all the evidence, the court found that there was significant evidence against the accused (with the exception of Tarquino Morales Díaz) and, therefore, ordered preventive detention measures. Among the evidence that provided grounds for the summons of Rincón Quiñones were the statement of Escobar Mejía, and the statements of Jairo Zuluaga Quicero and

Nicolás Narváez. The statement of Dennis Beltrán Caravajal was also mentioned; he had said that following the events of Pueblo Bello, he had seen one of the victims with an army lieutenant.]

[FN112] Cf. decision of the Medellín Fourth Public Order Court of May 15, 1990 (file of useful evidence submitted by the State, folios 6996 to 7011).

95(86) The defense lawyers filed a plea for habeas corpus against the decision of May 15, 1990 (supra para. 95(85)), alleging that the Fourth Public Order Court had issued a decision on the juridical status of the accused after the period during which they could be legally held. On May 16, 1990, the Second Superior Court of Montería admitted the recourse and ordered the immediate release of those detained. [FN113]

[FN113] Cf. decision of May 16, 1990, issued by the Second Superior Court of Montería (file of useful evidence submitted by the State, folios 6900 to 6903).

95(87) On May 30, 1990, the Fourth Public Order Court ordered the capture of Ramiro Enrique Álvarez Porras, Héctor de Jesús Narváez Alarcón, Luis Ángel Gil Zapata, Pedro Hernán Ogaza Pantoja, Elkin de Jesús Tobón Zea and Rogelio de Jesús Escobar Mejía. [FN114]

[FN114] Cf. official communication No. 17 of January 31, 1992, issued by the 83rd Public Order Examining Magistrate (file of useful evidence submitted by the State, folio 7022).

95(88) On July 10, 1990, the First Public Order Court issued a decision on the juridical status of Rogelio de Jesús Escobar Mejía, and did not grant him the benefit of conditional release. [FN115]

[FN115] Cf. official communication No. 17 of January 31, 1992 issued by the 83rd Public Order Examining Magistrate (file of useful evidence submitted by the State, folio 7020).

95(89) On October 19, 1990, the Fourth Public Order Court ruled on the joinder proposed by the First Public Order Judge between the criminal facts that he was investigating for the abduction of Manuel Alfonso Ospina Ospina, with those being investigated by the Fourth Public Order Court in relation to the events of Pueblo Bello. In that regard, it found that the motivation for the different criminal events was similar and consequently decided:

FIRST: To transmit the proceedings being conducted against FIDEL CASTAÑO GIL and others, based on the violation of Decree 180 of 1988, to the First Public Order Court, owing to concurrence of offences, due to the connection examined [...]. [FN116]

[FN116] Cf. decision of October 19, 1990, issued by the Fourth Public Order Court (file of useful evidence submitted by the State, folios 5347 to 5351).

95(90) On December 7, 1990, the First Public Order Court granted the benefit of conditional release to Rogelio de Jesús Escobar Mejía, who "despite being detained in relation to the proceedings before the Fourth Public Order Court and [the First Public Order Court] [...] had provided effective collaboration, more than sufficient to identify completely the masterminds and the perpetrators." [FN117]

[FN117] Cf. decision of December 17, 1990, issued by the First Public Order Court (file of useful evidence submitted by the State, folios 5352 to 5360).

95(91)On March 31, 1992, the 83rd Public Order Examining Magistrate requested the capture of Jesús Antonio Roa, Manuel Ospina, Rodrigo Restrepo, Telesforo Morroco, Jairo Mantilla, Hernán Vegadiso Sosa, Iván Rojas and five of the latter's brothers. In addition, it requested the following aliases to be identified and individualized: "Suqui," "Tarquino," "Grillo," "Arlex," "Patecumbia," "El Mosco," "Chico," "Roberto," "Chucho," "Peludo," "El Brujo," "Mauro" and "Cociaca" [FN118].

[FN118] Cf. official communication No. 034 of March 31, 1992, issued by the 83rd Public Order Examining Magistrate (file of useful evidence submitted by the State, folio 7017).

95(92) On March 31, 1992, the 83rd Public Order Examining Magistrate advised that the original folder with the case file corresponding to the proceedings before the public order jurisdiction had been found; it had been misplaced for some time. [FN119]

[FN119] Cf. official communication No. 034 of March 31, 1992, issued by the 83rd Public Order Examining Magistrate (file of useful evidence submitted by the State, folio 7017).

95(93) On March 11, 1993, the Medellín Regional Court delivered an anticipated judgment (sentencia anticipada) in case file No. 153 (1227) convicting José Otoniel Vanegas Pérez, who had confessed his participation in the abduction and murder of Manuel Alfonso Ospina Ospina. [FN120]

[FN120] Cf. anticipated judgment of March 11, 1993, issued by the Medellín Regional Court (file of useful evidence submitted by the State, folios 6257 to 6278).

95(94) On July 23, 1993, the Medellín Delegate Regional Prosecutor decided:

(1) TO ORDER THE PREVENTIVE DETENTION, without parole, of Fidel Castaño Gil, whose details and civil status appear in the case file, finding him responsible for violating the provisions of Decree 180/88, Homicide with terrorist purposes, art. 29; Abduction with extortion, art. 22; Conspiracy to commit a crime, art. 7; Instruction and training, art. 15; Illegal distribution of uniforms and badges, art. 19; Illegally carrying weapons for the exclusive use of the army, Decree 3664 art. 2; Multiple homicide, art. 323 of the Penal Code, in connection with and subject to art. 26 of the Penal Code.
(2) TO ORDER THE EMBARGO AND SEIZURE of the Jaraguay and Las Tangas ranches […]
(3) To proceed to capture the accused. […] [FN121]

[FN121] Cf. decision of July 23, 1993, issued by the Medellín Delegate Regional Prosecutor's Office (file of useful evidence submitted by the State, folios 6287 and 6298).

95(95) On August 23, 1993, the Medellín Delegate Regional Prosecutor decided:

To expand its decision of July 23, 1993, to the effect that the preventive detention measure against Fidel Castaño Gil is also ordered on the grounds of the crime of multiple abductions embodied in art. 2 of Decree 180/88, adopted as a permanent law by art. 4 of Decree 2266/911. [FN122]

[FN122] Cf. decision of August 23, 1993, issued by the Medellín Delegate Regional Prosecutor's Office (file of useful evidence submitted by the State, folios 6299 to 6300).

95(96) On November 19, 1993, the Medellín Delegate Regional Prosecutor decided:

[…] SECOND: Also, TO ORDER the PREVENTIVE DETENTION of FIDEL CASTAÑO (alias RAMBO), in his capacity as author, based on the violation of art. 1 of Decree 119/1989, owing to the creation of a paramilitary group; […] violation of art. 22 of Decree 180 of 1988, owing to the abduction of Ricardo Bohórquez and Andrés Manuel Pedroza Jiménez, among others, making a total of 43 individuals affected by this act; multiple homicide, regulated by art. 29 of the same decree, aggravated by paragraphs (d), (e) and (f), where the victims were the individuals who had been abducted; violation of art. 2 of Decree 3664/1986 and violation of art. 19 of decree 180 of 1988.

THIRD: To notify that those named above may not enjoy any type of conditional release. Consequently, the orders of arrest against FIDEL CASTAÑO (alias RAMBO) should be reactivated. [FN123]

[FN123] Cf. decision of September 23, 1993, issued by the Medellín Delegate Regional Prosecutor's Office (file of useful evidence submitted by the State, folios 6316 to 6322).

95(97) On February 4, 1994, the Medellín Regional Directorate of the Prosecutor General's Office ordered that copies of the disciplinary investigation should be sent to the Army High Command so that it could verify the possible responsibility in the facts of members of the Army. In particular, this Directorate considered that if "military personnel were involved in any way in the facts, it is not incumbent on this Directorate to determine their responsibility owing to the jurisdiction to which they are subject because they were on active service, especially if they were in the so-called public order units that require permanent active service. The prosecutor has therefore decided that the criminal responsibility should be determined by an official of the military justice system. [FN124]

[FN124] Cf. note of February 9, 1994, from the Medellín Regional Directorate to the Delegate Attorney for the Defense of Human Rights (file of useful evidence submitted by the State, folios 4832 and 4834).

95(98) On October 17, 1995, the Criminal Judicial Prosecutor issued a "Qualifying opinion" in relation to the proceedings in which the abduction and murder of Manuel Alfonso Ospina Ospina was being investigated, as well as the abduction and murder of 43 persons in Pueblo Bello. He found that there were more than sufficient merits to request the Medellín Delegate Regional Prosecutor to file charges against Fidel Antonio Castaño Gil, Elkin Henao, José Aníbal Rodríguez Urquijo, Rogelio de Jesús Escobar Mejía, Mario Alberto Álvarez Porras, Francisco Javier Álvarez Porras and Héctor Castaño Gil based on, inter alia, the following criminal acts: multiple abduction, aggravated multiple murders, terrorism, and aggravated theft. [FN125]

[FN125] Cf. communication entitled "Qualifying opinion" of October 17, 1995, from the Office of the Criminal Affairs Prosecutor to the Medellín Regional Prosecutor's Office (file of useful evidence submitted by the State, folios 6408 to 6423).

95(99) On November 17, 1995, the Medellín Delegate Regional Prosecutor accused several individuals for the abduction of Manuel Alfonso Ospina Ospina and the facts that had occurred in Pueblo Bello, deciding as follows:

1. TO FILE CHARGES against Fidel Antonio Castaño Gil […] as alleged author responsible for aggravated extortive abduction […] of which the victim is Manuel Alfonso

Ospina Ospina, multiple abduction […] because this action caused a public outcry, multiple murders (aggravated), of which the victims are Ricardo Bohorquez, José del Carmen Álvarez Blanco, Cristóbal Arroyo, Mario and Daniel Melo Palacio, Jesús Humberto concurrently […]

2. TO FILE CHARGES against Rogelio de Jesús Escobar Mejía […] as co-author of aggravated extortive abduction […] of which the victim is Manuel Alfonso Ospina Ospina, perpetrator [of the crime of belonging to an armed group], co-author [of the crime of destruction of identity documents], author [of the crime of using clothing that is for the exclusive use of the Armed Forces]; in relation to the facts that occurred in Pueblo Bello: author of multiple abduction [with terrorist purposes], [terrorism], aggravated multiple murders, author of aggravated theft […],[fire], [belonging to an armed group], heterogeneous concurrent crimes […]

3. TO FILE CHARGES against José Aníbal Rodríguez Urquijo, Mario Alberto Álvarez Porras, Francisco Javier Álvarez Porras and Elkin Henao Cano […] responsible as co-authors of aggravated extortive abduction […], aggravated murder […] of which the victim is Manuel Alfonso Ospina Ospina, perpetrators [of the crime of belonging to an armed group], co-authors [of the crime of destruction of identity documents], concurrently […]

4. TO FILE CHARGES based on the events in Pueblo Bello against Héctor de Jesús Narváez Alarcón, Luis Ángel Gil Zapata, Elkin de Jesús Tobón Zea and Pedro Hernán Hogaza Pantoja […] as authors of multiple abduction […], [terrorism] and co-authors of aggravated multiple murders […],[belonging to an armed group], [carrying weapons that are for the exclusive use of the Armed Forces], [use of clothing that is for the exclusive use of the Armed Forces], authors of qualified and aggravated theft […], [fire], heterogeneous concurrent crimes […], of which the victims were the inhabitants of Pueblo Bello, including Juan Luis and Leonel Escobar Duarte.

5. TO FILE CHARGES against Jhon Darío Henao Gil and Manuel Salvador Ospina Cifuentes […] as the persons who delivered the list of the people to be taken from Pueblo Bello, for: multiple abduction […], [terrorism], and co-authors of aggravated multiple murders […], [belonging to an armed group] and [carrying weapons that are for the exclusive use of the Armed Forces], [use of clothing that is for the exclusive use of the Armed Forces].

6. TO PRECLUDE THE INVESTIGATION of Fidel Antonio Castaño Gil, for [promoting, financing, organizing, fostering the training or recruitment of individuals for armed groups].

7. TO PRECLUDE THE INVESTIGATION […] of Rafael Tarquino Morales Días, for the abduction and murder of the inhabitants of Pueblo Bello, for [terrorism and conspiracy to commit a crime], aggravated and qualified theft.

8. TO PRECLUDE THE INVESTIGATION of Ramiro Enrique Álvarez Porras […] in relation to the abduction and murder of the inhabitants of Pueblo Bello, for [terrorism and conspiracy to commit a crime], aggravated and qualified theft.

9. TO PRECLUDE THE INVESTIGATION of Héctor Castaño Gil […] for conspiracy to commit a crime, abduction and murder […] where the victim is Manuel Alfonso Ospina Ospina, and murder […] of Hernando Arango and Jorge Osorno. […] [FN126]

[FN126] Cf. decision of November 17, 1995, issued by the Medellín Delegate Regional Prosecutor's Office (file of attachments to the application, tome III, attachment C9, folios 530 to 620).

95(100) The defense lawyer filed before the Prosecutor General's Office a remedy of appeal and consultation on the charges filed by the Medellín Delegate Regional Prosecutor on November 17, 1995 (supra para. 95(99)). [FN127]

[FN127] Cf. decision of March 11, 1996, issued by the Prosecutor General's Office (file of useful evidence submitted by the State, folio 6679).

95(101) On March 11, 1996, the Delegate Prosecutor before the Tribunal Nacional of the Prosecutor General's Office decided the appeal and the consultation. In this regard, he decided:

FIRST: TO CONFIRM the charges object of the appeal […]
SECOND: TO REVOKE the preclusion of the investigation of Rafael Tarquino Morales Díaz and instead file charges against the latter, whose personal details and civil status are in the case file, for the violation of Book II, Title IV, Chapter IV, in general, entitled "Complicity" […]
THIRD: To order the preventive detention of the said individual, for violation of art. 176 of the Penal Code, which provides for a penalty of from six months to four years' detention. […]
FOURTH: TO REVOKE the preclusion ordered in favor of Ramiro Enrique Álvarez Porras and, instead FILE CHARGES against the latter, whose personal details and civil status are in the case file, for violation of art. 2 of Decree 1194/89 […]
FIFTH: To order the preventive detention of Ramiro Enrique Álvarez Porras, for violation of art. 2 of Decree 1194/89 […]
SIXTH: TO CONFIRM the preclusion of the investigation ordered in first instance in favor of Fidel Antonio Castaño Gil for violation of Decree 1194/89 […]
SEVENTH: TO CONFIRM the preclusion of the investigation ordered in favor of Héctor Castaño Gil […]. [FN128]

[FN128] Cf. decision of March 11, 1996, issued by the Prosecutor General's Office (file of useful evidence submitted by the State, folios 6679 to 6703).

95(102) On November 29, 1996, the Medellín Regional Court delivered judgment on José Aníbal Rodríguez Urquijo for his participation in the abduction and murder of Manuel Alfonso Ospina Ospina. [FN129]

[FN129] Cf. anticipated judgment of November 9, 1996, delivered by the Medellín Regional Court (file of attachments to the application, tome II, attachment C1, folios 315 to 338).

95(103) Following the initial investigatory measures, on May 26, 1997, the Medellín Regional Court delivered judgment in first instance on the facts relating to the alleged abduction of Senator Manuel Alfonso Ospina Ospina, which occurred in Medellín on November 15, 1988,

and the alleged disappearance of 43 men from the jurisdiction of Pueblo Bello on January 14, 1990. Regarding the latter, it decided to declare that six men were criminally responsible: Fidel Antonio Castaño Gil, Rogelio de Jesús Escobar Mejía, Héctor de Jesús Narváez Alarcón, Pedro Hernán Ogaza Pantoja, John Darío Henao Gil and Manuel Salvador Ospina. They were sentenced to terms of from 25 to 30 years' imprisonment for the crimes of abduction multiple murders, use of clothing that is for the exclusive use of the Armed Forces, terrorism and belonging to an armed group, among others. [FN130]

[FN130] Cf. ordinary judgment of May 26, 1997, delivered by the Medellín Regional Court (file of attachments to the application brief, tome II, attachment C2, folios 339 to 416).

95(104) The defense lawyers of the men convicted and the representative of the claimant, José Daniel Álvarez, filed a remedy of appeal against the judgment of May 26, 1997 (supra para. 95(103). [FN131]

[FN131] Cf. judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 417 to 480).

95(105) On December 30, 1997, the Sentencing Chamber of the Tribunal Nacional ruled on the appeal against the judgment of May 26, 1997 (supra para. 95(103)) and decided "not to accede to declaring it null as the accused Ogazza Pantoja had requested". It also decided, inter alia, "to order [...] the partial annulment of the proceedings, concerning [...] the murder of the inhabitants of Pueblo Bello, whose corpses had not been identified," so that it reduced the sentences of those convicted to 19 and 28 years' imprisonment. In addition, it revoked the decision absolving some of those accused of the crime of theft and arson in first instance and the decision ordering the investigation of Fidel Castaño for the crime of terrorism. It also ordered three of those convicted to pay jointly and severally in favor of an inhabitant of Pueblo Bello, "compensation for the pecuniary damage caused by the illegal [act] of arson." Lastly, it absolved several of those accused of the crime of carrying weapons that are for the exclusive use of the Armed Forces, and of terrorism." [FN132]

[FN132] Cf. judgment of the Sentencing Chamber of the Tribunal Nacional of December 30, 1997 (file of attachments to the application brief, tome II, attachment C3, folios 417 to 480).

95(106) Pedro Hernán Ogazza Pantoja's defense lawyer, filed an appeal for annulment against the judgment in second instance delivered by the Tribunal Nacional of December 30, 1997 (supra para. 95(105)), considering that it had incurred in alleged errors of fact owing to erroneous assessment of the only testimonial evidence, which consisted of the testimony of Rogelio de Jesús Escobar Mejía. On March 8, 2001, the Criminal Appeals Chamber of the Supreme Court of Justice decided not to annul the ruling that had been appealed. [FN133]

[FN133] Cf. appeal judgment of March 8, 2001, of the Criminal Appeals Chamber of the Supreme Court of Justice (file of attachments to the application, tome II, attachment C4, folios 481 to 508).

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c) Continuation of investigatory measures in the ordinary criminal jurisdiction

95(107) Following the judgment of March 8, 2001 (supra para. 95(106)), the criminal proceedings continued with various measures taken by the Prosecutor General's Office. On March 27, 2002, the 8th Prosecutor's Office of the Delegate Prosecutor's Unit before the criminal justices of the specialized Medellín Circuit issued a writ of prohibition. In this respect, the Prosecutor's Office considered that:

By law, the duration of the investigation prior to the existence of evidence is conditional upon the issue of a writ of prohibition or merit to consider that the accused is a party to the crime. This is left to the discretion of the Prosecutor who must define the situation based on the probative evidence obtained and the results of the investigation […] The decision on whether to open a pre-trial investigation which is left to the discretion of the Prosecutor entails a power or mechanism, such as the power to collect evidence to comply with the purpose of this investigatory stage […] Therefore, this Office, exercising this power, will not proceed to a pre-trial investigation and, instead, will proceed to issue a writ of prohibition, because, in the first place, unidentified persons must be investigated, since those implicated have not been named, and since the witnesses cannot provide any new evidence about the reported fact. This Office observes that when generalizations are made without any specifics, without directly accusing anyone, and when the pre-trial investigation is prolonged indefinitely, the principle of human dignity is affected.
We have examined the case file carefully and find there is insufficient evidence to accuse anyone in particular for the authorship of the facts that have been reported, because new co-participants have not been identified or individualized, three years after the opening of the pre-trial investigation and, especially, when the accused who have been identified have already been tried and sentenced. Hence, in these circumstances, it is inadmissible for this Office to continue indefinitely with this preliminary stage without supervening evidence. However, we will be attentive to any of the victims coming forward some time in the future to denounce a specific individual who has not been prosecuted and convicted, as a perpetrator or participant in the facts investigated […] [FN134]

[FN134] Cf. writ of prohibition of March 27, 2002, issued by the 8th Prosecutor's Office of the Delegate Prosecutor's Unit before the criminal justices of the specialized Medellín Circuit (file of attachments to the requests and arguments brief, tome V, attachment 7(4), folios 1648 to 1650).

95(108) On September 17, 2002, ASFADDES requested the Coordination Office of the Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office to take over the investigation of the events that occurred in Pueblo Bello "to coordinate the procedure for the exhumation of the corpses and their technical identification, guaranteeing the necessary custody of the evidence." [FN135]

[FN135] Cf. note of September 17, 2002, from ASFADDES to the National Human Rights and International Humanitarian Law Unit (file of documents received during the public hearing, folios 2752 to 2755).

95(109) In January 2003, José Daniel Álvarez, a relative of one of the alleged victims, reiterated the request he had made in August 2002 to the First Criminal Court of the Medellín Specialized Circuit. He also stated that "the delay in response was causing a delay in the procedure of identifying the corpses that was being carried out by the Technical Investigation Corps of the Prosecutor General's Office." In this note, he requested this court to order:

[…] The Forensic Division of the TIC in Bogotá to carry out the procedure to exhume the corpses from the common grave in the San Antonio de Montería cemetery in order to try to identify them fully and, in particular, to determine which of them correspond to the victims of the collective disappearance from Pueblo Bello. This order is necessary because, according to recent declarations by the TIC, legal authorization is required to be able to proceed with this new measure, duly respecting the established procedures and, in particular, the chain of custody of the evidence. […] I must emphasize the urgency of collecting this evidence as soon as possible because we have been informed that, in the San Antonio cemetery and, in particular, in the area where the common grave containing the remains of our unidentified loved ones are buried, there are plans to carry out a paving project, which, if it is implemented, would eliminate the possibility of identifying the victims of the forced disappearance.
[…] To suspend the planned paving project in the area used as a common grave in the cemetery […] [FN136]

[FN136] Cf. note of January 2003 from José Daniel Álvarez to the First Criminal Court of the Medellín Specialized Circuit (file of documents received during the public hearing, folios 2756 to 2757).

95(110) On February 21, 2003, the Office of the First Prosecutor of the National Human Rights and International Humanitarian Law Unit requested ASFADDES to provide information on the location of the common grave in the San Antonio cemetery, Montería, where there were unidentified corpses that might be related to the events of Pueblo Bello. [FN137]

[FN137] Cf. decision of February 21, 2003, issued by the Office of the First Prosecutor of the National Human Rights and International Humanitarian Law Unit (file of attachments to the requests and arguments brief, tome V, attachment 7(5), folios 1653 and 1654).

95(111) On February 21, 2003, the National Human Rights and International Humanitarian Law Unit of the Prosecutor General's Office, considered that:

[…] There is a juridical-philosophical principle that exists not only in our domestic laws, but in different types of international law, whose purpose is to provide real protection and promotion for the respect of human rights and international humanitarian law. We refer to the principle of the "Right to know the truth" […]
[…] We have only gone halfway towards clarifying the [facts]; however, this office envisages the possibility of augmenting the body of evidence by ordering certain judicial measures to be taken that are warranted and may allow us to understand what really happened […]

and, consequently, decided to order the partial annulment of previous actions, including the measures that ordered the closure of the investigation and, therefore, to continue with the pre-trial investigation. Thus, to advance the investigation, it ordered the following measures to collect evidence:

FIRST: ASFADDES personnel should be contacted in order to expand and clarify the contents of their latest communication, especially with regard to the location of the common grave, situated in the San Antonio cemetery of the municipality of Montería, Córdoba, where there are possibly some unidentified corpses […]
SECOND: An official communication should be sent to the administrator of the San Antonio cemetery requesting him to advise whether there is a project to pave land within this cemetery. If so, he should inform all those concerned about this project, advising which authority, institution or entity ordered it and when it will be executed.
THIRD: Through the Secretariat, an official communication should be sent to the National Forensic Directorate in Bogotá, informing it that this investigation is being continued and asking it to advise which judicial officials have been involved in it.
FOURTH: Once this information has been obtained, a decision must be take on the viability of ordering the exhumation procedure in the San Antonio cemetery, in the municipality of Montería, to make it possible to fully identify the corpses […]
FIFTH: All the arrest warrants ordered in the case file which have not been executed should be reactivated […] [FN138]

[FN138] Cf. decision of February 21, 2003, issued by the National Human Rights and International Humanitarian Law Unit (file of attachments to the requests and arguments brief, tome V, attachment 7(5), folios 1651 to 1654).

95(112) On May 15, 2003, ASFADDES, the Comisión Colombiana de Juristas and the Corporación "Opción Legal" requested a meeting with the head of the Human Rights and

International Humanitarian Law Unit to discuss the exhumations programmed for May 20, 2003, because, at that time of year, the site conditions were inappropriate, owing to the weather. [FN139]

[FN139] Cf. note of March 15, 2003, from ASFADDES, the Comisión Colombiana de Juristas and the Corporación Opción Legal to the National Human Rights and International Humanitarian Law Unit (file of documents received during the public hearing, folios 2758 and 2759).

95(113) On June 1, 2003, ASFADDES and the Comisión Colombiana de Juristas sent a note to the prosecutor of the Medellín Human Rights Unit, requesting:

(a) That the pending exhumation procedure should be agreed and coordinated with the next of kin of the victims and the petitioners.
(b) That, when performing this exhumation procedure, the Bogotá Technical Investigation Corps should draw on elements that have already been used in the search and identification of the victims.
(c) That experts in the collection of this type of evidence should be present during the exhumation procedure to ensure the identification of the remains of the disappeared victims.
(d) That the presence of the next of kin of the victims and the petitioners is guaranteed during this procedure.
(e) That we are provided with information on the investigation […] [FN140].

[FN140] Cf. note of June 1, 2003, from ASFADDES and the Comisión Colombiana de Juristas to the Prosecutor of the Medellín Human Rights Unit (file of documents received during the public hearing, folio 2760).

95(114) Between August 19 and 25, 2003, the Technical Investigation Corps of the Prosecutor General's Office made a judicial inspection in the San Antonio cemetery, Montería, to exhume the corpses of 18 alleged victims of the events of Pueblo Bello. The result of the procedure was negative. [FN141]

[FN141] Cf. report of November 24, 2003, issued by Identification Unit of the Technical Investigation Corps of the Prosecutor General's Office (file of useful evidence submitted by the State, folios 5653 to 5660).

95(115) On February 13, 2004, the 42nd Prosecutor of the National Human Rights and International Humanitarian Law Unit ordered the reactivation of the arrest warrants for Rogelio de Jesús Escobar Mejía, Fidel Antonio Castaño Gil, Mario Alberto Álvarez Porras, Ramiro Enrique Álvarez Porras, Francisco Javier Álvarez Porras, Elkin Henao Cano, Jhon Darío Henao Gil, Manuel Salvador Ospina Cifuentes and Elkin de Jesús Tobón. It also ordered that the

individuals with the following aliases should be identified: “Tarquino,” “Suqui,” “Grillo,” “Patecumbia,” “Mosco,” “Chino,” “Roberto,” “Peludo,” “Brujo,” “Marlon,” “Cosiaca,” “Ariel Mantilla,” “Nequi Espinosa (alias Álvaro),” and also Jaime Aparicio (alias Arles), Fernando García (alias Noventa), Sergio Rojas and León Yesid Henao, in relation to the events of Pueblo Bello. [FN142]

[FN142] Cf. decision of February 13, 2004, issued by the 42nd Prosecutor of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folio 5661).

95(116) In May 2004 renewed excavations were carried out in the San Antonio cemetery in Montería, but the corpses of the peasants who had allegedly been disappeared owing to the facts of Pueblo Bello were not found. [FN143]

[FN143] Cf. testimony of José Daniel Álvarez Ruiz before the Inter-American Court during the public hearing held on September 19, 2005, and report “Pueblo Bello case Investigations,” issued by the Prosecutor General’s Office (file of useful evidence submitted by the State, attachment V, folios 7280 to 7291).

95(117) On August 23, 2004, investigators from the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit went to the San Antonio cemetery, in Montería, to oversee the work of construction, transfer and demolition of vaults. On August 27, 2004, they proceeded to delimit the total area of the common grave where, supposedly, the corpses of the 18 alleged victims of Pueblo Bello were to be found. In this respect, they reported that:

The excavation work began and the extraction was carried out [...]. On August 29, 30 and 31 and September 1 excavation work continued, and several pieces of evidence were found, such as: children’s coffins, thin, transparent, black plastic bags with osseous remains [...] The bags that contained osseous remains with similar characteristics to those used to bury the bodies brought from the exhumation carried out at Las Tangas which, it appears, were those of the persons who disappeared from Pueblo Bello, were taken out and set aside. Then, the anthropologist OSCAR JOAQUIN HIDALGO DAVILA and the odontologist, ADRIANA MARIA CASTAÑO GARCIA made a comparison of the DENTAL CHART and BONE ANALYSIS of all the osseous remains with those characteristics in order to eliminate [those that did not belong to the disappeared].

A total of 121 “elements (sic) [were found], coffins, plastic bags and bags made of a synthetic fiber.” Of this total, 18 corpse/elements were selected, which had similar characteristics to the bodies from “Las Tangas” they were looking for, and which had been buried in that cemetery in Montería District P5. [FN144]

[FN144] Cf. report on “Investigatory Collaboration” of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5678 to 5689).

95(118) On September 2, 2004, investigators from the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit visited the Montería Specialized Court where they met with the Specialized Judge who put them in touch with someone who knew how the facts investigated had occurred, but who, for safety reasons, did not want to identify himself or make a statement. [FN145]

[FN145] Cf. report on “Investigatory Collaboration” of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5678 to 5689).

95(119) On September 2, 2004, investigators from the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit visited the Montería prison where they interviewed Pedro Hernán Ogaza Pantoja, who did not wish to collaborate by providing information on the location of the bodies that were buried on the “Las Tangas” ranch. Regarding the interview with Ogaza Pantoja, the investigators added:

He was asked if he knew the whereabouts of ROGELIO DE JESUS ESCOBAR MEJIA and he answered that he had received information in prison that ROGELIO had been killed near Tierralta Córdoba, but he did not know if his body had been removed or whether he was disappeared. [FN146]

[FN146] Cf. report on “Investigatory Collaboration” of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5678 to 5689).

95(120) On September 29, 2004, investigators from the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit went to the municipality of Apartadó, where they took statements from six next of kin of the disappeared. [FN147]

[FN147] Cf. report on “Investigatory Collaboration” of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5678 to 5689).

95(121) On May 16, 2005, the 36th Prosecutor of the National Human Rights and International Humanitarian Law Unit ordered the following probative measures:

Verify the information concerning the death of ROGELIO DE JESUS ESCOBAR MEJIA, accused and collaborator, because he was an eye witness of the events and could clarify this investigation.
Re-establish contact with the informer who knows the possible location of the Guacimal and/or Caudillo river sandbanks, through Doctor CARLOS MARTINEZ, Specialized Judge, in order to try and obtain a statement from him.
Find the acting official of the Technical Investigation Corps, FERNANDO VANEGAS, who may have information on the facts, and take a statement from him.
Interview, in the Municipal Prison, PEDRO HERNAN OGAZA PANTOJA, sentenced in these proceedings as a perpetrator [...] [FN148]

[FN148] Cf. decision of May 16, 2005, issued by the 36th Prosecutor of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folio 5690).

95(122) On June 13, 2005, investigators from the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit reported on the measures taken to clarify the events of January 14, 1990, with regard to the possible location of the bodies of those abducted and on the determination of the whereabouts and possible death of Rogelio de Jesús Escobar Mejía. [FN149]

[FN149] Cf. report on “Investigatory Collaboration” of October 6, 2004, issued by the Technical Investigation Corps of the National Human Rights and International Humanitarian Law Unit (file of useful evidence submitted by the State, folios 5693 to 5697).

95(123) In August 2005, the Medellín National Human Rights and International Humanitarian Law Unit tried to carry out exhumations at “Las Tangas,” but suspended them owing to the weather conditions. [FN150]

[FN150] Cf. testimonies of José Daniel Álvarez Ruiz and Elva Beatriz Silva Vargas given before the Inter-American Court during the public hearing held on September 19, 2005, and document on the area explored in August 2005 on the “Las Tangas” ranch (file of documents received during the public hearing).

95(124) At the date of this judgment, the investigation is still ongoing by the 42nd Prosecutor of the National Human Rights and International Humanitarian Law Unit.

Disciplinary administrative proceedings

95(125) Owing to the publication of a newspaper article on January 16, 1990, the Special Investigations Office of the Attorney General's Office ordered the opening de oficio of the preliminary investigation into the alleged human rights violation based on the events of Pueblo Bello on January 19, 1990, and also that statements should be taken and visits should be made to sites, battalions, military barracks and private homes. [FN151]

[FN151] Cf. decision of January 19, 1990, issued by the Special Investigations Office of the Attorney General's Office (file of useful evidence submitted by the State, attachment 6105).

95(126) On January 26, 1990, the Deputy Attorney General's Office requested the Military Headquarters of Urabá to carry out "search operations in the following sites: the "Las Tangas ranch, the Municipality of Moñitos, Las Cruces and El Pescadito, in order to discover the whereabouts of more than 39 persons allegedly disappeared or abducted from the jurisdiction of Pueblo Bello. [...] This request is made based on information provided by some of the victims' next of kin." [FN152]

[FN152] Cf. official communication of January 26, 1990, issued by the Attorney General's Office (file of useful evidence submitted by the State, folio 6147).

95(127) On February 5, 1990, the XIth Brigade of the National Army reported that troops from this operational unit had carried out a search "of the Las Tangas ranch [...] and in the Pescado stream, to try and find the [...] peasants of the jurisdiction of Pueblo Bello [...] with negative results." [FN153]

[FN153] Cf. official communication of February 5, 1990, issued by the XIth Brigade of the National Army (file of useful evidence submitted by the State, folio 4987).

95(128) On February 12, 1990, based on the measures taken up until that time, the Deputy Attorney General's Office decided to forward the preliminary investigation to the Delegate Attorney for the Armed Forces "so that he could order any necessary measures, since Captain ALVARO GOMEZ LUQUE, Commander of the military base of San Pedro de Urabá may have violated Decree No. 085/89." [FN154]

[FN154] Cf. decision of February 12, 1990, issued by the Deputy Attorney General's Office (file of useful evidence submitted by the State, folio 4978 to 4983).

95(129) On April 30, 1990, based on the preliminary measures that had been taken, the Office of the Delegate Attorney for the defense of human rights formally opened the disciplinary inquiry, to investigate the conduct of the National Army officers, Captain Álvaro Gómez Luque and Sub-Lieutenant Néstor Enrique Barrera Vega, who, at the time of the facts, were Commanders of the military base of San Pedro de Urabá and the roadblock in the same location, respectively. [FN155]

[FN155] Cf. decision of April 30, 1990, issued by the Office of the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folio 5030 to 5032).

95(130) On October 3, 1990, the Apartadó Provincial Attorney's Office proceeded to carry out a judicial inspection of the installations of the military base of San Pedro de Urabá. Subsequently, an aerial inspection of Pueblo Bello and the road to San Pedro de Urabá was conducted. Based on this inspection, a "strategic expert opinion" was prepared. [FN156]

[FN156] Cf. judicial inspection procedure of October 3, 1990, issued by the Apartadó Provincial Attorney's Office (file of useful evidence submitted by the State, folio 5158 to 5161), and strategic expert opinion of October 5, 1990, issued by Lieutenant Martías Hernán Bagett, strategist (file of useful evidence submitted by the State, folios 5167 to 5168).

95(131) On October 6, 1990, Major Marco Aurelio Quintero Torres, Tactical Officer of the National Army, issued a "tactical opinion" indicating, inter alia, that there were trails such as "those that start out from San Vicente del Congo and Maquencal, pass by the right edge of the village [and] converge again on the main highway beyond the hamlet, and the one that branches off the drivable road that goes from San José de Mulatos and goes back to the drivable road from Santa Catalina, El Carmelo, Canaletes, among others." [FN157]

[FN157] Cf. "tactical opinion" of October 6, 1990, issued by Major Marco Aurelio Quintero Torres, Tactical Officer of the National Army (file of useful evidence submitted by the State, folio 5165).

95(132) On October 6, 1990, based on an inspection made on October 3, 1990 (supra para. 95(130)), Major Jairo Antonio Puerto Medina of the National Army prepared a topographical report with his opinion on the results of an aerial reconnaissance of the zone between Pueblo Bello and the Department of Córdoba. [FN158]

[FN158] Cf. topographic report of October 6, 1990, issued by Major Jairo Antonio Puerto Medina (file of useful evidence submitted by the State, folios 5169 to 5170).

95(133) On July 16, 1991, the Office of the Delegate Attorney for the defense of human rights of the Attorney General's Office, "considering the complexity of the facts being investigated and given their gravity and importance," decided "to grant the Special Investigations Office […] broad legal powers to inspect the routes or drivable roads to verify [the existing trails or detours from the road from Pueblo Bello to San Pedro de Urabá and whether the trucks that transported the peasants who disappeared on January 14, 1990, could have used them to reach the place where the vehicles were found at Las Cruces]." [FN159]

[FN159] Cf. decision of July 16, 1991, issued by la Delegate Attorney for the Defense of Human Rights (file of attachments to the application, tome III, attachment C11, folio 683).

95(134) On August 9, 1991, the Special Investigations Office of the Judicial Police of the Attorney General's Office agreed to provide the collaboration requested by the Delegate Attorney's Office and, consequently, to inspect the zone where these routes were located. [FN160]

[FN160] Cf. decision of August 9, 1991, of the Special Investigations Office of the Judicial Police (file of attachments to the application, tome III, attachment C12, folios 684 to 686).

95(135) On September 3, 1991, the Special Investigations Office of the Judicial Police of the Attorney General's Office submitted its report with its findings on the inspection of the highway and trails between Pueblo Bello and San Pedro de Urabá in compliance with its agreement to collaborate of August 9, 1991 (supra para. 95(134)). [FN161]

[FN161] Cf. report of September 3, 1991, of the Special Investigations Office of the Judicial Police (file of attachments to the application, tome III, attachment C13, folios 687 to 710).

95(136) On November 27, 1991, the Office of the Delegate Attorney for the defense of human rights decided:

FIRST: To absolve National Army Captain Álvaro Gómez Luque […], in his capacity as Commander of the military base de San Pedro de Urabá, of all the charges laid against him, for the facts investigated here, which allegedly occurred in that place on the night of January 14, 1990, following the perpetration of the abduction of 43 peasants in the jurisdiction of Pueblo Bello in the Municipality of Turbo (Ant.), on the said date [...]

SECOND: To absolve National Army Lieutenant Néstor Enrique Barrera Vega […] in his capacity as Commander of the military checkpoint of San Pedro de Urabá, for the facts investigated here, allegedly perpetrated at that military checkpoint, on the night of January 14,

1990, following the perpetration of the abduction of 43 peasants in the jurisdiction of Pueblo Bello of that locality, on the said date […]
[The Delegate Attorney's Office decided to absolve them owing to "the doubt that arose from the investigation into the disciplinary responsibility of the officers […] involved in the facts that are being investigated."]
[… The charges are: "That they committed omissions by failing to duly control the civil population and to prevent the transit of the vehicles and also failing to capture the kidnappers, seize their weapons and obtain the liberation of those abducted and protect their lives, at the military roadblock under their command in San Pedro de Urabá, on the night of Sunday, January 14, 1990, and by allowing the transit of the stolen trucks, with license plates IB-3544 and UU-0783, through the military roadblock of San Pedro de Urabá, transporting the 43 peasants who had been abducted in the jurisdiction of Pueblo Bello in the Municipality of Turbo, Antioquia, by an armed group of approximately 30 individuals, who entered this jurisdiction violently at about 8:40 p.m. on that day, facilitating the disappearance of the peasants […] because these vehicles were not subjected to a search by [the soldiers under investigation], or by the soldiers under their command, which could have thwarted the criminal act of the authors of the illegal action, who immediately after having committed the act went to the Santa Mónica ranch, passing by both the roadblock and the military base of San Pedro de Urabá…]
THIRD: […] To issue authenticated copies of [the statement of Rogelio de Jesús Escobar Mejía and of the testimonies given by Jairo Zuluaga Quiceno and Guillermo Nicolás Narváez Ramos] so that [any possible collaboration that Lieutenant Quiñones and another two soldiers may have provided to the authors of the abduction for their alleged transit through San Vicente del Congo and San Pedro can be investigated separately, and also to investigate the conduct of the lieutenant and the four soldiers in San Pedro de Urabá] […]
FIFTH: An appeal for reconsideration of judgment is admissible against this decision and this should be filed by means of a brief stating the grounds at the time the person concerned is notified or within the following five days […] [FN162]

[FN162] Cf. decision of November 27, 1991, issued by the Office of the Delegate Attorney for the defense of human rights (file of attachments to the answer to the application, attachment 1, folios 1685 to 1736).

95(137) Between November 1991 and May 1993, members of Amnesty International sent communications to the Attorney General's Office and several Ministries of the Executive Branch, requesting that the investigations into the disappearance of the Pueblo Bello peasants should continue. [FN163]

[FN163] Cf. Amnesty International letters (file of useful evidence submitted by the State, folios 4723 to 4725 and 5705 to 5708).

95(138) On June 13, 1992, the Delegate Attorney for Human Rights informed the Director General of Multilateral Political Affairs of the Ministry of Foreign Affairs that "the witnesses

who had declared that they had direct knowledge of the links between members of the National Army and the paramilitary groups led by Fidel Castaño (allegedly perpetrators of the facts), no longer live in the jurisdiction of Pueblo Bello and their actual places of residence are not known." [FN164]

[FN164] Cf. note of June 13, 1992, from the Delegate Attorney for Human Rights to Lieutenant Fabio Enrique Rincón Pulido (file of useful evidence submitted by the State, folios 4735 and 4736).

95(139) On July 3, 1992, Lieutenant Fabio Enrique Rincón Pulido made a statement before the Office of the Delegate Attorney for the defense of human rights regarding the events in Pueblo Bello in which he stated, inter alia, that he had attended the next of kin who denounced the disappearance of the men from Pueblo Bello; that it was not true that he had told them "they had exchanged people for cattle," and that, on the day after the denunciation, he took his platoon and another one to Pueblo Bello to "provide security to the inhabitants because they were afraid there might be another raid." [FN165]

[FN165] Cf. statement made on July 3, 1992, before the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 4713 and 4720).

95(140) On August 6, 1992, ASFADDES requested the Office of the Delegate Attorney for the defense of human rights to order the exhumation of the corpses that were still in a common grave on the "Las Tangas" ranch. [FN166]

[FN166] Cf. note of August 6, 1992, from ASFADDES to the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 4704 and 4705).

95(141) On September 20, 1996, the Office of the Delegate Attorney for the defense of human rights considered that:

Although there has already been a decision on merits with regard to the facts examined during the [...] preliminary investigation, which absolved those allegedly involved [owing to their] omissions, it was considered at that time that there was evidence that warranted ordering the opening of a new preliminary investigation, this time for their acts [...]
Although, from the assessment of the evidence available to this new preliminary investigation, it appears that, for the moment, there are insufficient merits to proceed [...], and […] contrario sensu that it could be decided that the case file of the proceedings should be filed; however, in order to clarify the respective decision and given the need to gather more evidence that will contribute to this decision, it is in order to expand the duration of the preliminary investigation for up to six months during which time [various] measures will be taken. [FN167]

[FN167] Cf. decision of September 20, 1996, issued by the Office of the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 6383 and 6384).

95(142) On February 12, 1998, the Office of the Delegate Attorney for the defense of human rights ordered a series of measures to be taken to clarify the events of January 14, 1990. They included:

That an official communication be sent to the Prosecutor General's Office and to the Forensic Medicine Institute so that, together with the Delegate Attorney for Human Rights, they would proceed to locate [the common graves situated in the Las Tangas ranch and on the banks of the Sinú River and] carry out the corresponding exhumation [and] identification of the corpses in order to establish whether, among them, are any of the 43 men who disappeared on January 14, 1990 […]

That ROGELIO DE JESUS ESCOBAR MEJIA [be found] so that, based on the photographs [of the officers and subordinate officers who were in the area at the time of the facts], since an unofficial version was received from Lieutenant FABIO RINCON PULIDO, a photographic identification procedure can be carried out and he can indicate whether the Lieutenant Quiñones referred to in several statements is among [those] persons, and also whether he recognizes in those photographs the subordinate officers he mentioned as having allowed transit through one of the military roadblocks when the 43 people abducted from Pueblo Bello were being taken away.

That his statement be expanded to describe the exact place where the military roadblock was located through which the two trucks with the 43 people abducted passed, [using] the map prepared by the Armed Forces to indicate the different routes that could be used for this displacement, from [Pueblo] Bello to Las Tangas.

That [the same procedure be carried out] with the two drivers who, during the night of January 14, 1990, drove military personnel between that […] jurisdiction and the military base; so that they can say whether the soldiers that are said to have been guarding the two men who were traveling in a black pick-up (allegedly including FIDEL CASTAÑO GIL) appear in the photographs.[...]

That [it be established] whether, at some time, ELKIN HENAO [...], who was formerly an officer in the National Army, was present in the same military bases, courses or operations as some of the Army officers who were in the area of Pueblo Bello on January 14, 1990. [...] [FN168]

[FN168] Cf. decision of February 12, 1998, issued by the Office of the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 4251 to 4254).

95(143) On August 16, 1998, the Office of the Delegate Attorney for the defense of human rights ordered a disciplinary investigation to be opened against Lieutenant Fabio Enrique

Rincón Pulido. In the decision, it indicated that the investigation should be limited to the act of forced disappearance of persons, and should not extend to possible torture and multiple murders, since these were time-barred. [FN169]

[FN169] Cf. decision of August 16, 1998, issued by the Office of the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 4522 to 4534).

95(144) On March 10, 1999, the Office of the Delegate Attorney for the defense of human rights laid charges against National Army Lieutenant Fabio Enrique Rincón Pulido, for allegedly having:

Collaborated with the kidnappers – apparently as previously agreed – so that they could continue on without any difficult towards their final destination in the ranch known as 'Las Tangas,' located in the Department of Córdoba, where the corpses of some of those people were found in common graves, while others remain disappeared, 'in an indefinite status' as regards their possible fate. [FN170]

[FN170] Cf. decision of March 10, 1999, issued by the Office of the Delegate Attorney for the defense of human rights (file of useful evidence submitted by the State, folios 5796 to 5805).

95(145) On July 31, 2000, the Office of the Delegate Disciplinary Attorney for the defense of human rights issued a ruling in first instance in the disciplinary investigation against National Army Lieutenant Fabio Enrique Rincón Pulido, in which he decided:

FIRST: TO ABSOLVE National Army Lieutenant FABIO ENRIQUE RINCON PULIDO of all disciplinary responsibility [...] in relation to the charges of which he is accused for alleged active participation in the facts that occurred in Pueblo Bello on January 14, 1990, and in accordance with the findings set out in the pleadings [...]
THIRD: In the event that this decision is not appealed, a request for summary review is in order [...] [FN171]
[The charges laid against the accused were: "On January 14, 1990, when 43 residents of the locality of Pueblo Bello, Municipality […] of Turbo, Department of Antioquia, were abducted by a group of heavily-armed men who, after detaining them, took them in two trucks to San Pedro de Urabá (Ant.), where the military base of this municipality was located, proceeding to provide collaboration to the kidnappers – apparently previously agreed – so that they could continue without any type of difficulty towards their final destination which was the ranch known as 'Las Tangas,' located in the Department of Córdoba, where the bodies of some of these persons were found in common graves; and 43 persons remained disappeared 'in an indefinite status' regarding their possible fate."]
[When deciding the above, the Office of the Delegate Disciplinary Attorney considered that: "it can be supposed that, despite the existence of some evidence that allowed the alleged collaboration of Lieutenant FABIO ENRIQUE RINCON PULIDO in the facts under

investigation to be inferred when the charges were filed, a series of reasonable doubts clearly arise from the respective assessment, regarding the participation, by act, of the said lieutenant in the facts investigated, doubts that could not be eliminated and, consequently, must be decided in favor of the disciplined member of the Armed Forces." However, it added that "it finds no reason for the witness [Escobar Mejía] to have lied regarding the collaboration he says that an officer of the National Army […], who was on duty at the roadblock installed in San Pedro de Urabá at the time of the facts, gave to the paramilitary group to which he [Escobar Mejía] belonged."]
[It also considered that "since Lieutenant Néstor Enrique Barrera Vega was the only officer with the rank of lieutenant who has been reported to have been on duty at the said roadblock at the entrance to San Pedro de Urabá, and he has already been investigated and absolved for the same facts as those of this case […] culminating in Decision No. 006 of November 27, 1991, which absolved him of all disciplinary responsibility, it is evident that the juridical mechanism of res judicata has come into effect for this servant of the State (Art. 11/Act 200 of 1995) and, therefore, it is not possible to focus any type of investigation on him."]

[FN171] Cf. judgment of July 31, 2000, delivered by the Delegate Disciplinary Attorney for Human Rights of the Attorney General's Office in the investigation under File No. 008-120607 (file of attachments to the application, tome II, attachment C10, folio 621).

95(146) On October 27, 2000, the file was sent to the Disciplinary Chamber of the Attorney General's Office for it to decide on the request for summary review, which was in order since the judgment of July 31, 2000, had not been appealed. [FN172]

[FN172] Cf. note of October 27, 2000, from the Delegate Disciplinary Attorney for Human Rights (file of useful evidence submitted by the State, folio 5895).

95(147) On February 9, 2001, the Disciplinary Chamber of the Attorney General's Office, reviewing the decision of July 31, 2000, issued in first instance by the Office of the Delegate Disciplinary Attorney for the defense of human rights, decided:

FIRST: To confirm the first instance decision issued on July 31, 2000, by the Office of the Delegate Disciplinary Attorney for the defense of human rights, absolving Army Lieutenant FABIO ENRIQUE RINCÓN PULIDO of the charges laid against him […] [FN173]
[The Disciplinary Chamber considered that the evidence gathered during the investigation did not provide the probative certainty required to sanction the person disciplined. It agreed with the Office of the Delegate Disciplinary Attorney for the defense of human rights that the testimony of Rogelio de Jesús Escobar Mejía "did not offer entire credibility to support a conviction." It also rejected the other evidence of the prosecution (statements) that "did not resist an objective analysis that would support the charges that have been laid." The Chamber added: "Lastly, it has been proved by expert evidence that there are several trails on the route from Pueblo Bello to San Pedro de Urabá, and this leads to the conclusion that the trucks in which the people were transported did not necessarily have to pass by San Pedro de Urabá, where there was a military

base and a roadblock." The Chamber considered "in keeping with the findings of the Office of the Delegate Disciplinary Attorney for the defense of human rights, that there is a reasonable doubt concerning the conduct of the person disciplined, which should be decided in his favor."]

[FN173] Cf. judgment of February 9, 2001, delivered by the Disciplinary Chamber of the Special Prosecutions Office of the Attorney General's Office (file of attachments to the brief with the answer to the application, folios 1739 to 1754).

Administrative proceedings

a) First group of next of kin of those who have died or are disappeared

95(148) On December 18, 2001, some of the next of kin of José del Carmen Álvarez Blanco, Jesús Humberto Barbosa Vega, Santiago Manuel González López and Ángel Benito Jiménez Julio, on their own behalf and in representation of the minors, formulated a claim for direct reparation "against the Colombian Nation – Ministry of National Defense," before the Administrative Affairs Court of Antioquia, Medellín, in which they stated that:

The Colombian Nation – Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that derived from alterations in family, social and affective life, caused to the persons included in the claim […] as a consequence of the violation of the rights to life, humane treatment, safety and liberty arising from the collective forced disappearance of which the following were victims: Álvarez [Blanco] José del Carmen, Barbosa Vega Jesús Humberto, González López Santiago Manuel and Jiménez Julio Ángel Benito in facts that occurred on January 14, 1990, in the jurisdiction of Pueblo Bello of the municipality of Turbo (Antioquia).
[…]The Colombian Nation – Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that derived from alterations in family, social and affective life, caused to the persons included in the claim […] as a consequence of the violation of the rights to effective judicial protection, a fair trial, the truth, and justice arising from the collective forced disappearance of which the following were victims: Álvarez [Blanco] José del Carmen, Barbosa Vega Jesús Humberto, González López Santiago Manuel and Jiménez Julio Ángel Benito in events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the municipality of Turbo (Antioquia). [FN174]

[FN174] Cf. complaint filed on December 18, 2001, by the next of kin of José del Carmen Álvarez Ruiz, Jesús Humberto Barbosa Vega, Santiago Manuel González López and Ángel Benito Jiménez Julio, before the Administrative Affairs Court of Antioquía, Medellín (file of useful evidence submitted by the representatives, folios 7305 to 7342).

95(149) On May 27, 2002, the complaint was admitted by the Administrative Affairs Court of Antioquia, Medellín. [FN175]

[FN175] Cf. report presented by the legal representative in the administrative proceedings (file of useful evidence submitted by the representatives, folio 7469). Uncontested.

95(150) On November 21, 2002, some of the next of kin of José del Carmen Álvarez Blanco, Genor José Arrieta Lora, Jesús Humberto Barbosa Vega, Ricardo Manuel Bohórquez Pastrana, Jorge Fermín Calle Hernández, César Augusto Espinosa Pulgarín, Andrés Manuel Florez Altamiranda, Wilson Uberto Fuentes Miramón, Santiago Manuel González López, Miguel Ángel Gutiérrez Arrieta, Carmelo Manuel Guerra Pestana, Ángel Benito Jiménez Julio, Mario Melo Palacios, Raúl Pérez Martínez, Benito Pérez Pedroza, Andrés Manuel Peroza Jiménez, José Manuel Petro Hernández, Elides Ricardo Pérez, Luis Miguel Salgado Berrío and Célimo Arcadio Hurtado, on their own behalf and in representation of the minors expanded the claim for direct reparation against the Colombian Nation – Ministry of National Defense, before the Administrative Affairs Court of Antioquia, Medellín, in which they stated that:

[…]The Colombian Nation – Ministry of National Defense – National Army is administratively responsible for pecuniary and non-pecuniary damage (including that arising from the alterations in family, social and affective life, already caused or that will be caused), to which the persons included in the claim are entitled […] as a consequence of the collective forced disappearance of which the following were victims: Álvarez [Blanco] José del Carmen, Arrieta Lora Genor José, Barbosa Vega Jesús Humberto, Bohórquez Pastrana Ricardo Manuel, Calle Hernández Jorge Fermín, Espinosa Pulgarín César Augusto, Florez Altamiranda Andrés Manuel, Fuentes Miramón Wilson Humberto, González López Santiago Manuel, Gutiérrez Arrieta Miguel Ángel, Guerra Pestana Carmelo Manuel, Jiménez Julio Ángel Benito, Melo Palacios Mario, Pérez Martínez Raúl, Pérez Pedroza Benito Antonio, Perosa Jiménez Andrés Manuel, Petro Hernández José Manuel, Pérez Elides Ricardo, Salgado Berrio Luis Miguel and Urrutia Hurtado Celimo Arcadio in the events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the municipality of Turbo (Antioquia). [FN176]

[FN176] Cf. complaint filed on November 21, 2002, before the Administrative Affairs Court of Antioquía, Medellín (file of useful evidence submitted by the representatives, folios 7343 to 7385).

95(151) On January 19, 2004, the Administrative Affairs Court of Antioquia, Medellín, ordered that evidence should be gathered; [FN177] at the time this judgment is delivered, there is no record of subsequent actions.

[FN177] Cf. report presented by the legal representative in the administrative proceedings (file of useful evidence submitted by the representatives, folio 7469). Uncontested.

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b) Second group of next of kin of the dead or disappeared

95(152) On December 18, 2001, some of the next of kin of Genor José Arrieta Lora, Jesús Humberto Barbosa Vega, José Encarnación Barrera Orozco, Diómedes Barrera Orozco, Urías Barrera Orozco, Benito Genaro Calderón Ramos, Jorge Fermín Calle Hernández, Ariel Dullis Díaz Delgado, Camilo Antonio Durango Moreno, Juan Luis Escobar Duarte, Leonel Escobar Duarte, César Augusto Espinosa Pulgarín, Andrés Manuel Flores Altamiranda, Wilson Fuentes Miramón, Miguel Ángel Gutiérrez Arrieta, Miguel Ángel López Cuadro, Jorge David Martínez Moreno, Mario Melo Palacios, Carlos Melo, Manuel de Jesús Montes Martínez, Juan Bautista Meza Salgado, Raúl Pérez Martínez, Miguel Antonio Pérez Ramos, Luis Carlos Ricardo Pérez and Lucio Miguel Úrzola Sotelo, on their own behalf and in representation of the minors, formulated a claim for direct reparations against the Colombian Nation - Ministry of National Defense, before the Administrative Affairs Court of Antioquia, Medellín, in which they indicated that:

The Colombian Nation - Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that arising from the alterations in family, social and affective life, caused to the persons included in this claim […] as a result of the violation of the rights to life, humane treatment, safety and liberty resulting from the collective forced disappearance of which the following were victims: Arrieta Lora Genor José, Barbosa Vega Jesús Humberto, Barrera Orozco Diómedes, Barrera Orozco José Encarnación, Barrera Orozco Urías, Calderón Ramos Benito Genaro, Calle Hernández Jorge Fermín, Díaz Delgado Ariel Dullis, Durango Moreno Camilo Antonio, Escobar Duarte Juan Luis, Escobar Duarte Leonel, Flores Altamiranda Andrés Manuel, Fuentes Miramón Wilson, López Cuadro Miguel Ángel, Martínez Moreno Jorge David, Melo Palacios Mario, Melo Palacios Carlos, […] Montes Martínez and Urzola Sotelo Lucio Miguel, during events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the Municipality of Turbo (Antioquia).
The Colombian Nation - Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that arising from the alterations in family, social and affective life, caused to the persons included in the claim as a result of the violation of the rights to effective judicial protection, a fair trial, the truth and justice arising from the collective forced disappearance of which the following were victims: Arrieta Lora Genor José, Barbosa Vega Jesús Humberto, Barrera Orozco Diómedes, Barrera Orozco José Encarnación, Barrera Orozco Urías, Calderón Ramos Benito Genaro, Calle Hernández Jorge Fermín, Díaz Delgado Ariel Dullis, Durango Moreno Camilo Antonio, Escobar Duarte Juan Luis, Escobar Duarte Leonel, Flores Altamiranda Andrés Manuel, Fuentes Miramón Wilson, López Cuadro Miguel Ángel, Martínez Moreno Jorge David, Melo Palacios Mario, Melo Palacios Carlos, […] Montes Martínez and Urzola Sotelo Lucio Miguel, during events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the Municipality of Turbo (Antioquia). [FN178]

[FN178] Cf. complaint filed on December 18, 2001, before the Administrative Affairs Court of Antioquía, Medellín (file of useful evidence submitted by the representatives, folios 7386 to 7423).

95(153) On November 19, 2002, the complaint was admitted by the Administrative Affairs Court of Antioquia, Medellín. [FN179]

[FN179] Cf. decision admitting the complaint presented against the Ministry of Defense (file of useful evidence submitted by the State, folio 3723), and report of the Pueblo Bello case presented by the legal representative in the administrative proceedings (file of useful evidence submitted by the representatives, attachment 5, folios 7469 to 7578).

95(154) On January 30, 2003, the Administrative Affairs Court of Antioquia notified the Ministry of Defense of the complaint filed on December 18, 2002 (supra para. 95(152)). [FN180]

[FN180] Cf. report presented by the complainants' legal representative in the administrative proceedings (file of useful evidence submitted by the representatives, folio 7469). Uncontested.

95(155) On June 4, 2003, a correction and addition to the complaint filed before the Administrative Affairs Court of Antioquia, Medellín, was presented incorporating into a single brief, the complaint filed by the next of kin of Genor José Arrieta Lora, José del Carmen Álvarez Blanco, Cristóbal Manuel Arroyo Blanco, Jesús Humberto Barbosa Vega, Diómedes Barrera Orozco, Urías Barrera Orozco, José Encarnación Barrera Orozco, Benito Genaro Calderón Ramos, Jorge Fermín Calle Hernández, Jorge Arturo Castro Galindo, Ariel Dullis Díaz Delgado, Camilo Antonio Durango Moreno, Juan Luis Escobar Duarte, Leonel Escobar Duarte, César Augusto Espinosa Pulgarín, Andrés Manuel Florez Altamiranda, Wilson Uberto Fuentes Miramón, Miguel Ángel Gutiérrez Arrieta, Santiago Manuel González López, Ángel Benito Jiménez Julio, Miguel Ángel López Cuadro, Mario Melo Palacios, Manuel de Jesús Montes Martínez, Pedro Antonio Mercado Montes, Jorge David Martínez Moreno, Juan Meza Salgado, Raúl Pérez Martínez, Miguel Antonio Pérez Ramos, Luis Carlos Ricardo Pérez, Luis Miguel Salgado Berrío and Lucio Miguel Úrzola Sotelo. This brief indicated that:

The Colombian Nation - Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that arising from the alterations in family, social and affective life, caused to the persons included in this claim […] as a result of the violation of the rights to life, humane treatment, safety and liberty arising from the collective forced disappearance of which the following were victims: Arrieta Lora Genor José, Álvarez Blanco José del Carmen, Arroyo Blanco Cristóbal Manuel, Barbosa Vega Jesús Humberto, Barrera Orozco Diomedez, Barrera Orozco Urías, Barrera Orozco José Encarnación, Calderón Ramos Benito Genaro, Calle Hernández Jorge Fermín, Castro Galindo Jorge Arturo, Díaz Delgado Ariel Dullis, Durango Moreno Camilo Antonio, Escobar Duarte Juan Luis, Escobar Duarte Leonel, Espinosa Pulgarín César Augusto, Florez Altamiranda Andrés Manuel, Fuentes Miramón Wilson Humberto, Gutiérrez Arrieta Miguel Ángel, González López Santiago Manuel, Jiménez Julio Ángel Benito, López Cuadros Miguel Ángel, Melo Palacios Mario, Montes Martínez Manuel de Jesús, Mercado Montes Pedro Antonio, Martínez Moreno Jorge David, Meza Salgado Juan Bautista, Pérez Martínez Raúl, Pérez Ramos Miguel Antonio, Ricardo Pérez

Luis Carlos, Salgado Berrio Luis Miguel and Urzola Sotelo Lucio Miguel, during events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the Municipality of Turbo (Antioquia).
The Colombian Nation - Ministry of National Defense – National Army is administratively responsible for the non-pecuniary damage, including that arising from alterations in family, social and affective life, caused to the persons included in this petition […] as a result of the violation of the rights to effective judicial protection, a fair trial, the truth and justice, arising from the collective forced disappearance of which the following were victims: Arrieta Lora Genor José, Álvarez Blanco José del Carmen, Arroyo Blanco Cristóbal Manuel, Barbosa Vega Jesús Humberto, Barrera Orozco Diomedez, Barrera Orozco Urías, Barrera Orozco José Encarnación, Calderón Ramos Benito Genaro, Calle Hernández Jorge Fermín, Castro Galindo Jorge Arturo, Díaz Delgado Ariel Dullis, Durango Moreno Camilo Antonio, Escobar Duarte Juan Luis, Escobar Duarte Leonel, Espinosa Pulgarín César Augusto, Florez Altamiranda Andrés Manuel, Fuentes Miramón Wilson Humberto, Gutiérrez Arrieta Miguel Ángel, González López Santiago Manuel, Jiménez Julio Ángel Benito, López Cuadros Miguel Ángel, Melo Palacios Mario, Montes Martínez Manuel de Jesús, Mercado Montes Pedro Antonio, Martínez Moreno Jorge David, Meza Salgado Juan Bautista, Pérez Martínez Raúl, Pérez Ramos Miguel Antonio, Ricardo Pérez Luis Carlos, Salgado Berrio Luis Miguel and Urzola Sotelo Lucio Miguel, during events that took place on January 14, 1990, in the jurisdiction of Pueblo Bello, in the Municipality of Turbo (Antioquia). [FN181]

[FN181] Cf. complaint filed on June 4, 2003, before the Antioquia Court for Administrative Affairs, Medellín (file of attachments to the brief with final arguments presented by the representatives, folios 7424 to 7467).

95(156) On July 9, 2003, the Ministry of National Defense – National Army submitted the answer to the complaint. [FN182]

[FN182] Cf. answer to the complaint filed by the Ministry of National Defense – National Army on July 9, 2003 (file of useful evidence submitted by the State, folios 3735 to 3744).

95(157) On March 23, 2004, the addition to the complaint was admitted by the Administrative Affairs Court of Antioquia, Medellín, and the proceedings were scheduled for May 26, 2004. [FN183]

[FN183] Cf. report on the Pueblo Bello case presented by the legal representative in the administrative proceedings (file of useful evidence submitted by the representatives, attachment 5, folios 7469 to 7478). Uncontested.

95(158) At the time this judgment is delivered, no further actions have been recorded in this administrative proceeding.

Concerning the alleged victims and their next of kin

95(159) The list of the alleged victims and their next of kin is to be found in Attachment II of this judgment.

Concerning the damages caused to the next of kin of the alleged victims and the costs and expenses

95(160) The inhabitants of Pueblo Bello were subjected to a situation of terror and anguish on the night of January 14, 1990, and several of them saw how a paramilitary group took their family members and the others who were abducted. [FN184]

[FN184] Cf. ordinary judgment delivered by the Medellín Regional Court on May 26, 1997 (file of attachments to the application brief, tome II, attachment C2, folio 344, 345, 365 and 389), judgment of December 30, 1997, delivered by the Sentencing Chamber of the Tribunal Nacional (file of attachments to the application brief, tome II, attachment C3, folios 419, 451, 452, 463 and 464); decision of November 27, 1991, issued by the Office of the Delegate Attorney for the defense of human rights (file of attachments to the answer to the application, attachment 1, folio 1685); judgment of February 9, 2001, issued by the Disciplinary Chamber of the Attorney General's Office (file of attachments to the brief with the answer to the application, attachment 2, folio 1739); report submitted by the General Directorate of Intelligence of the Administrative Department of Security (DAS) on September 12, 1990 (file of attachments to the requests and arguments brief, attachment 5(2), folio 1537); testimonies of Mariano Manuel Martínez and Ángel Emiro Jiménez Romero given before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Leovigilda Villalba Sánchez, María Cecilia Ruiz de Álvarez, Edilma de Jesús Monroy Higuita, Eliécer Manuel Meza Acosta and Benildo José Ricardo Herrera on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2700, 2701, 2705, 2710, 2711, 2716 and 2725).

95(161) The alleged victims' next of kin have suffered pecuniary and non-pecuniary damage as a direct result of the facts; this has affected their physical and psychological health, had an impact on their social and labor relations, altered their family dynamics and, in some cases, jeopardized the lives and safety of some of their members, who lost their property and were threatened constantly by the paramilitary groups. The partial impunity that exists in this case has caused and continues to cause suffering to the alleged victims' next of kin. As a result of the facts, especially the damage suffered by the families, the next of kin's fear that similar events could be repeated, and the threats received by some of them, several Pueblo Bello families have displaced internally. This situation takes several different forms; there are individuals or families who were temporally displaced and have returned to the jurisdiction;

others were forced to displace intermittently immediately after the facts or subsequently. Also, some people have had to leave Colombia. [FN185]

[FN185] Cf. testimonies of Mariano Manuel Martínez, José Daniel Álvarez, Rubén Díaz Romero, Ángel Emiro Jiménez Romero, Blanca Libia Moreno Cossio and Nancy Amparo Guerra López given before the Inter-American Court during the public hearing held on September 19, 2005, and statements made before notary public (affidavits) by Leovigilda Villalba Sánchez, María Cecilia Ruiz de Álvarez, Edilma de Jesús Monroy Higuita, Eliécer Manuel Meza Acosta, Pedro Luis Escobar Duarte, Euclides Manuel Calle Álvarez, Genaro Benito Calderón Ruiz, Manuel Dolores López Cuadro and Benildo José Ricardo Herrera on August 16, 2005 (file of statements made before or authenticated by notary public, folios 2703, 2704, 2708, 2713, 2717, 2718, 2722, 2727, 2730, 2734, 2739, 2740 and 2744).

95(162) The Comisión Colombiana de Juristas, ASFADDES and CEJIL have incurred expenses relating to the processing of this case at the domestic level and before the organs of the inter-American system for the protection of human rights, in representation of the next of kin of some of the alleged victims. [FN186]

[FN186] Cf. vouchers for costs and expenses incurred by the Comisión Colombiana de Juristas, CEJIL and ASFADDES (attachments to the requests and arguments brief, tome V, attachment 6(2) to 6(6), folios 1575 to 1639).

VIII. OBLIGATION TO GUARANTEE (ARTICLE 1(1) OF THE AMERICAN CONVENTION) THE RIGHTS PROTECTED IN ARTICLES 4, 5 AND 7 THEREOF (RIGHTS TO LIFE, TO HUMANE TREATMENT AND TO PERSONAL LIBERTY)

Arguments of the Commission

96. Regarding the State's responsibility in this case, the Commission stated the following:

(a) The State had played an important role in the development of the so-called self-defense or paramilitary groups, which it allowed to act legitimately and with legal protection during the 1970s and 1980s, and it is responsible in general for their existence and consolidation. For the most part, these groups were created to combat dissident armed groups. Finally, on May 25, 1989, the Supreme Court of Justice took away the legal support for the connection between the paramilitary groups and the national defense forces, after which the State adopted a series of legislative measures to criminalize the activities of these groups and those who supported them. Despite this, the State did little to dismantle the structure that it had created and promoted and, indeed, linkages remained at different levels, in some case, the paramilitary groups were requested or allowed to carry out certain illegal actions in the understanding that they would not be investigated, prosecuted or punished. In this context, and as established by the Commission in its second and third Reports on the situation of human rights in Colombia, from the start, the

illegal actions of the private justice or paramilitary groups could depend on the tolerance and collaboration of State agents;
(b) The aim of the paramilitary group led by Fidel Castaño, known as the "tangueros," was the pursuit and elimination of those who allegedly collaborated with the guerrilla, using a modus operandi which included torture, selective murder and massacres. During those years, the "Las Tangas" ranch was the scene of paramilitary training by foreign mercenaries and members of law enforcement authorities. The "tangueros" could rely on the financial support of livestock owners and businessmen in the region, well-known local politicians and even the armed forces, which, as of 1987, were represented by the presence of the Army's XIth Brigade in Montería, and
(c) In this case there are probative elements that indicate the complicity of State agents in the perpetration of the facts that are the subject of this case, by both act and omission. Moreover, the actions of individuals entail the State's responsibility under international law. In this regard, it is sufficient to demonstrate that the public authorities have supported or tolerated the violation of the rights established in the Convention. Consequently, the violations of the American Convention committed as a result of the acts or omissions of its agents and also those committed by the individuals involved in the disappearance, torture and execution of the alleged victims can be attributed to the State.

97. Regarding Articles 4, 5 and 7 of the American Convention, the Commission alleged that:

(a) The State is responsible for the violation of the rights to life, liberty and humane treatment to the detriment of the 43 alleged victims, owing to the acts of civilians with the acquiescence and collaboration of State agents;
(b) The domestic courts established the responsibility of 10 individuals for the murder of six of the 43 alleged victims, whose bodies were recovered and identified. After 14 years, the whereabouts of 37 of the alleged victims have not been clarified; hence, it is reasonable to infer that they were extrajudicially executed, and
(c) Forced or involuntary disappearance constitutes a multiple and continuing violation of several of the rights enshrined in the Convention, because not only does it produce an arbitrary deprivation of liberty, but it also jeopardizes the humane treatment, personal safety and the life of the person detained. Even though Colombia is not a party to the Inter-American Convention on Forced Disappearance of Persons and, consequently, is not bound by it, it is admissible to refer to the definition of forced disappearance therein.

98. Regarding Article 19 of the American Convention, the Commission alleged that the State has the obligation to adopt all positive measures to ensure the full enjoyment of the rights of the child. In the instant case, the minors, Manuel de Jesús Montes Martínez and José Encarnación Barrera Orozco, were not ensured the special protection measures called for by their situation of vulnerability owing to their age. Not only did the State bodies responsible for ensuring compliance with the law do nothing to prevent these facts occurring and to punish those responsible, but the responsible State bodies – specifically for the protection of children – did not intervene in either the prevention or any type of solution of the case. It is clear that, owing to the conduct of its agents, the State made them victims of forced disappearance.

Arguments of the representatives

99. Regarding the State's responsibility in the instant case, the representatives alleged that

(a) At the time of the facts, forced disappearance was carried out systematically in Urabá in order to terrorize the population so that they would not collaborate with or support the guerrilla. Most forced disappearances were carried out by paramilitary groups with the help and acquiescence of law enforcement personnel and, at times, with their direct participation;
(b) The reaction of the Colombian authorities in the case of the disappearances in the Urabá region between 1990 and 1993 was characterized by the failure to carry out genuine investigations to clarify the facts, and
(c) The facts of this case occurred in the context of the strong military presence in the zone of Urabá as part of a "military plan to exterminate and annihilate the guerrilla who were active in that region, an objective that could be achieved, according to this plan, by attacks on the civilian population that actually or allegedly supported the guerrilla." The plan was carried out at different levels and with different methods: on the one hand, the military and the police forces in the zone had common objectives with the paramilitary groups and, on the other hand, there was a strong military presence in the zone demonstrated, above all, by the establishment of the Military Headquarters, under Decree No. 678 of 1988.

100. In relation to Articles 4, 5 and 7 of the American Convention, the representatives alleged that:

(a) Despite the exceptional military control in the region, the paramilitary groups had the full freedom and cooperation of the military authorities to carry out the events in Pueblo Bello. Indeed, there was direct participation in the deprivation of liberty of the 43 alleged victims by members of the "Francisco de Paula Vélez" company, located at the entrance to San Pedro de Urabá;
(b) The 43 alleged victims were illegally and arbitrarily deprived of their liberty, tortured and disappeared. Owing to the length of time that has elapsed without their next of kin having received any information about their whereabouts, it must be inferred that the 37 people who continue to be disappeared were executed by the paramilitary group;
(c) The six alleged victims whose bodies were found buried on the "Las Tangas" and "Paraguay" ranches were executed by the paramilitary group after they had been cruelly tortured. The State did not take the necessary judicial steps to clarify these facts, once again violating the right to life of the alleged victims;
(d) The State has failed to comply with the double obligation to respect and guarantee the right to humane treatment with regard to the alleged victims and their next of kin. The alleged victims who were deprived illegally and arbitrarily of their liberty, were put into trucks and taken away, maintained incommunicado and disappeared by the paramilitary group; they were subjected to humiliation and physical mistreatment, at the time of their retention in front of their families. This group was able to enter Pueblo Bello and carry out their actions owing to the support and collaboration of members of the Army. Therefore, the State is responsible for the physical, mental and moral sufferings of the alleged victims, and also for the failure to investigate that their next of kin experienced, and
(d) The alleged victims' next of kin have suffered profound sadness, anguish, uncertainty and frustration as a result of the illegal and arbitrary detention of the alleged victims, their forced disappearance and the State's failure to act to sanction all those responsible for the facts and

return the victims to their families within a reasonable time. The next of kin of the six alleged victims whose bodies were identified endure anguish from the knowledge that their loved ones were extrajudicially executed and made to suffer.

101. Regarding Article 19 of the American Convention, the representatives alleged that:

(a) Four of the alleged victims were minors when they were illegally and arbitrarily detained, treated cruelly and inhumanly, tortured, disappeared, and undoubtedly executed by the paramilitary acting with the acquiescence and collaboration of agents of law enforcement bodies in order to further their own objectives;
(b) In view of the facts and the context in which they occurred, the pertinent provisions of the Convention on the Rights of the Child are: (a) the provisions that guarantee to the child the right to special measures of protection, and (b) the provisions that guarantee to the child special measures of protection in the context of armed conflict;
(c) The provisions contained in Articles 2, 3(2), 6, 9(1) and 37 of the Convention on the Rights of the Child establish special measures of protection in relation to non-discrimination, the guarantee of the survival and development of the child, the prohibition of torture, the conditions that must be observed when a child is deprived of its liberty, and the measures regarding the right of the child not to be separated from its parents against their will;
(d) By allowing and not preventing the perpetration of these acts, by failing to execute any of the actions necessary to ensure the return of the four minors to their parents, and by having provided its acquiescence and collaboration so that these acts could be perpetrated by the paramilitary group, the State failed to guarantee the special measures of protection that the minors - the alleged victims – had a right to, and to comply with the obligation to respect them, and
(e) The State did not implement any measure to protect the alleged victims in their condition as minors.

Arguments of the State

102. Regarding its responsibility for the facts of this case, the State indicated the following:

(a) It denied each of the charges and, particularly, that it is responsible in general for the existence and consolidation of criminal groups;
(b) It is not possible to attribute responsibility to the State for the enactment of legislation that provided legal grounds for the creation of the illegal armed self-defense groups. The State complied with its obligations of prevention. Its efforts to combat, prohibit, prevent and punish adequately the activities of these groups are proved by the adoption of legislative and judicial measures to combat them;
(c) Also, it is not possible to attribute responsibility to the State in this specific case for the violation of its treaty-based obligations, or for the tolerance or support of the public authorities for the facts of Pueblo Bello;
(d) In the investigation, prosecution and sanction of the authors and accomplices of the facts of Pueblo Bello, legislative provisions were applied, such as Decree No. 2666/1991, which embodied in permanent legislation, provisions concerning the carrying of illegal arms and terrorism, as well as increased penalties and the expansion of types of crime;

(e) The disciplinary and criminal investigations in this case did not find that State agents were linked to the criminal groups in any way or to any degree, and
(f) The "context" described in the opening paragraphs of the statement of the grounds for the application does not contribute anything specific to the case, so it cannot be considered the factual basis for condemning the State.

103. Regarding Articles 4, 5 and 7 of the American Convention, the State declared that:

(a) The objective international responsibility of the State cannot exist due merely to the fact that an illegal armed group flagrantly violated human rights. Attribution of the violation of the obligation to protect does not automatically entail attribution of the violation of the obligation to guarantee even though, obviously, the two can co-exist. In each case, it is necessary to determine the type of violation. The crucial point is the reasonableness of the legal response to the violation;
(b) To be able to attribute the State with responsibility for the facts committed directly by individuals, it is absolutely necessary to take into account the structures for attributing the fact to the State, which arise from the obligations embodied in the Convention. Only when it can be proved that the conduct of the members of the illegal armed group is attributable, by act or by omission, to members of the Colombian Armed Forces, because they failed to comply with the treaty-based obligations in the face of acts executed by individuals, may international responsibility be attributed to the State. Conversely, if it is established that the facts are not attributable to the soldiers, there are no legal grounds for accusing the State of violating human rights;
(c) The structures for attributing responsibility to the State constitute numerus clausus, because they consist of a rigorous description of the events in which the violation of the treaty-based obligation is attributable to the State in question. This premise constitutes a guarantee of the principle of legal certainty;
(d) In the case of Pueblo Bello, the Army had the obligation to provide security and protection to the inhabitants of this jurisdiction; in other words, it played the role of guarantor. However, this is insufficient to attribute responsibility. It must be demonstrated that it violated this obligation by act or omission. From the examination of the personal attribution to members of the Armed Forces, it is not possible to affirm that they created a legally-unacceptable danger, that they violated their obligation, because the awareness that the obligation was actually at risk has never been proved in this proceeding;
(e) There is insufficient evidence of the possible "support" or "tolerance" provided by members of the Colombian Armed Forces to the members of the illegal armed group that raided Pueblo Bello. Concerning the obligation to prevent human rights violations by third parties, the State has complied with this general obligation and with the other pertinent obligations in this specific case;
(f) In the instant case, there is no evidence of the State's responsibility, or any presumption that it can be attributed with facts owing to the violation of the rights to life, humane treatment and liberty during the events of Pueblo Bello, because its agents did not participate. Therefore, neither can the State be found responsible for the crime of forced disappearance of persons;
(g) The rights embodied in Articles 4, 5 and 7 of the Convention were and are duly protected by the laws of the State and guaranteed by the authorities. In this case, the judicial authority

investigated and punished those responsible, using criteria coherent with the gravity of the facts to decide who should be punished and the type of penalty;

(h) It is surprising that the Commission based its accusation against the State on the decisions taken by Colombian justice when, on different occasions, these instances exonerated the State from responsibility. The Commission lacks any evidence to accuse the State of responsibility for the criminal acts that have been attributed to it;

(i) To comply with its obligations, the State must establish priorities, taking into account financial constraints and its real possibilities, which may become valid limitations to the enjoyment of a right when they respond to criteria of reasonability and proportionality. This is even more relevant in the case of the State's prevention obligation. In these cases, the State's obligation is one of means rather than results, which supposes an obligation of diligence in terms of taking reasonable precautions and care to avoid the violation of a right by third parties;

(j) It is not possible to accuse the State of violating its general obligations and infringing these obligations in this specific case. The military activity in the zone reveals the State's diligence in the prevention of attacks on the human rights of the inhabitants of the region. In addition to the pertinent and proportional military presence, in keeping with the State's capacity to defend human rights, there were also constant operations to hunt down members of the armed groups present in that part of the country. The soldiers based in the zone had nothing do with the facts, and could not have known about them;

(k) The only probative element which has been used to support possible participation by the Army is the testimony of Rogelio de Jesús Escobar Mejía, which lacks any possibility of being able to destroy the presumption of innocence of the Army. In addition, his testimony cannot provide grounds for a conviction by the Court, because its content has not been proved;

(l) The first general element required for deciding on the State's international responsibility is the existence of a specific obligation and the evidence that this obligation has been violated;

(m)The investigation into Colombia's international responsibility for the facts that occurred in Pueblo Bello must be based on the examination of the obligations assumed by the State. According to the Convention, the State is obliged to respect the rights and freedoms established therein and to guarantee their free and full exercise to all its subjects. Each of these obligations can be broken down into other more specific obligations. These are known as the individual's right to defense before the State and they are rights to confront negative actions of the State. But there are also rights to positive actions on the part of the State, to services;

(n) The determination of the position of guarantor is not the only probative element for individual attribution to the State agent. The agent must also have created a legally-unacceptable danger, and this must have translated into a violation of the protection obligation with regard to the people of Pueblo Bello. It has not been proved that the soldiers present in the zone created a legally-unacceptable danger because they violated the obligations resulting from their activity, or because they were clearly aware of the situation of actual risk to the obligations. Furthermore, there is no evidence that would allow such awareness to be inferred. To the contrary, there are elements within the proceedings that point to the Army's total unawareness of the specific situation of danger and the possibility of an attack on the village;

(o) There is not just one access route to the ranch to which the people abducted from Pueblo Bello were taken. To the contrary, it has been proved that there are other access routes from Pueblo Bello to "Las Tangas" by which the military presence and control could be avoided, and

(p) The inter-American system expressly recognizes the possibility that some rights may be restricted when this is required for the exercise of the rights of others, for reasons of collective

security, or for the general welfare (Articles 32, 13, 15 and 22 of the Convention). However, it is one matter to limit the exercise of rights, which is admissible as an abstract concept under normal conditions, and another very different matter to eliminate a right, which owing to its nature is unacceptable.

104. Regarding Article 19 of the American Convention, the State alleged that there is no evidence of responsibility for the violation of the rights to life, liberty and humane treatment in the facts of Pueblo Bello; thus, the State did not fail to comply with the obligation to respect the rights of the child.

Findings of the Court

105. Article 1(1) of the Convention establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

106. Article 4(1) of the Convention stipulates 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.

107. Paragraphs 1 and 2 of Article 5 of the Convention establish:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

108. Article 7 of the Convention stipulates:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

109. As established in the preceding chapter (supra paras. 95(30) to 95(41)), on January 14, 1990, a group of approximately 60 heavily-armed men, belonging to a paramilitary organization known as the "tangueros," from a ranch located in the municipality of Valencia, Department of Córdoba, entered the jurisdiction of Pueblo Bello, in the Department of Antioquia. The members of the armed group traveled in two trucks and entered Pueblo Bello at between 8.30 p.m. and 10.50 p.m., divided into four groups. The paramilitary group blocked the access road to Pueblo Bello from Turbo and San Pedro de Urabá; they carried weapons of different calibers, they wore civilian clothes and clothing that is for the exclusive use of the Armed Forces and had red or pink scarves around their necks. The paramilitary forces ransacked some of the houses, mistreated the occupants and took an unspecified number of men from their homes and from a church to the village square. There they placed them face down and, based on a list they had brought with them, they chose 43 men, the alleged victims in this case, who were tied up, gagged and obliged to get into the two trucks used as transport. The two trucks, with the kidnapped individuals left Pueblo Bello at around 11.30 p.m. and returned to the "Santa Mónica" ranch, where they arrived at approximately 1.30 a.m. on January 15, 1990. There they were received by Fidel Castaño Gil, who gave orders that the individuals abducted should be taken to a sandbank of the Sinú River, located on the "Las Tangas" ranch, also in the Department of Córdoba. Once there, the alleged victims were interrogated and subjected to diverse acts of torture. The paramilitary forces killed those abducted with great violence, and then transferred some of the bodies to "Las Tangas" where they were buried. To date, only six of the 43 alleged victims have been identified and their remains handed over to their next of kin. The other 37 individuals are disappeared.

110. To determine whether Colombia has incurred international responsibility for the violation of Articles 7, 5 and 4 of the Convention, in relation to Article 1(1) thereof, the Court deems it pertinent to examine this case in accordance with the structure of the obligations that this treaty imposes on the States Parties and the circumstances and characteristics of the facts of the case, in the following order: (a) State responsibility under the American Convention; (b) the obligations of prevention and protection in relation to personal liberty, humane treatment and life; (c) the obligation to investigate the facts effectively deriving from the obligation to guarantee, and (d) the right to humane treatment of the alleged victims' next of kin.

a) State responsibility under the American Convention

111. This Court has already established that, under the American Convention, the international responsibility of States arises at the time of the violation of the general obligations erga omnes to respect and ensure respect for – guarantee – the norms of protection and also to ensure the effectiveness of all the rights established in the Convention in all circumstances and with regard to all persons, which is embodied in Articles 1(1) and 2 thereof. [FN187] There are special

obligations that derive from these obligations, which are determined in function of the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself. In this regard, Article 1(1) is fundamental for deciding whether the full scope of a violation of the human rights established in the Convention may be attributed to the State Party. Indeed, this article imposes on States Parties the fundamental obligations to respect and guarantee rights, so that any violation of the human rights established in the Convention that can be attributed, according to the rules of international law, to the act or omission of any public authority, constitutes a fact attributable to the State, which involves its international responsibility in the terms established in the Convention and according to general international law. It is a principle of international law that the State responds for the acts and omissions of its agents in their official capacity, even if they overstep the limits of their authority. [FN188]

[FN187] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 111, and Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 140.

[FN188] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 108; Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 72, and Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, para. 63.

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112. The international responsibility of the State is based on "acts or omissions of any of its powers or organs, irrespective of their rank, which violate the American Convention," [FN189] and it is generated immediately with the international illegal act attributed to the State. In these conditions, in order to establish whether a violation of the human rights established in the Convention has been produced, it is not necessary to determine, as it is in domestic criminal law, the guilt of the authors or their intention; nor is it necessary to identify individually the agents to whom the acts that violate the human rights embodied in the Convention are attributed. [FN190] It is sufficient that a State obligation exists and that the State failed to comply with it.

[FN189] Cf. Case of the "Mapiripán Massacre" case, supra note 7, para. 110; Case of the Gómez Paquiyauri Brothers, supra note 188, para. 71, and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 142.

[FN190] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 110; Case of the 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 141, and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 41.

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113. The Court has also recognized that the State's international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State's obligations to guarantee respect for those rights between individuals. In this regard, the Court has found that:

This international responsibility may arise also from the acts of individuals, which, in principle, are not attributable to the State. [The obligations erga omnes to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention,] extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations. The attribution of responsibility to the State for the acts of individuals may occur in cases in which the State fails to comply with the obligations erga omnes contained in Articles (1) and 2 of the Convention, owing to the acts or omissions of its agents when they are in the position of guarantor. [FN191]

[FN191] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 111.

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114. The Court has pointed out the existence of these effects of the Convention in relation to third parties in the exercise of its contentious [FN192] and advisory [FN193] functions, and also when it has ordered provisional measures to protect members of groups or communities from acts and threats by State agents and by individual third parties. [FN194]

[FN192] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 112; Case of the Moiwana Community case, supra note 7, para. 211; Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 108; Case of the Gómez Paquiyauri Brothers, supra note 188, para. 91; Case of the 19 Merchants, supra note 190, para. 183; Case of Maritza Urrutia, supra note 190, para. 71; Cae of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 111, and Case of Juan Humberto Sánchez, supra note 189, para. 81.

[FN193] In its Advisory Opinion on the Juridical Status and Rights of Undocumented Migrants, the Court indicated that "[…]the obligation to respect human rights between individuals should be taken into consideration. That is, the positive obligation of the State to ensure the effectiveness of the protected human rights gives rise to effects in relation to third parties (erga omnes). This obligation has been developed in legal writings, and particularly by the Drittwirkung theory, according to which fundamental rights must be respected by both the public authorities and by individuals with regard to other individuals." Cf. Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03, supra note 187, para. 140.

[FN194] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 112; Matter of the Mendoza Prisons. Provisional measures. Decision of June 18, 2005; Matter of the Pueblo Indigena de Sarayaku. Provisional measures. Decision of July 6 2004; Matter of the Pueblo Indigena Kankuamo. Provisional measures. Decision of July 5, 2004; Matter of the Communities of Jiguamiandó and the Curbaradó. Provisional measures. Decision of March 6, 2003. Series E No. 4, p. 169; Matter of the Peace Community of San José Apartadó. Provisional measures. Decision of June 18, 2002. Series E No. 4, p. 141, and Matter of the Urso Branco Prison. Provisional measures. Decision of June 18, 2002. Series E No. 4, p. 53.

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115. Colombia alleged that the violation of a State obligation entailing its responsibility should be decided based on what it called "rigorous attribution structures that underlie the obligations contained the Convention." Specifically, the State argued as follows:

The existence of a list of negative and positive obligations in the Convention implies the possibility of asserting responsibility when they are impaired or violated by the State in question. However, in order to establish the violation of the obligations embodied in the Convention, it is essential to take into consideration the attribution structures. In other words, the determination of the State's responsibility is strictly related to, or more exactly, conditioned by, verification of the specific violation of the obligation and not simply by the affirmation of this obligation.
[…] The structures for attributing responsibility to the State constitute numerus clausus; that is, they consist of a rigorous description of the events in which the violation of the treaty-based obligation can be attributed to the State in question. […] Outside of the attribution structures, it is impossible to make any kind of allegation of State responsibility. The State's right would be violated if the rigorous nature of these structures was ignored; once again, this characteristic is a guarantee of certainty, because, in this way, not only is the protection of the treaty-based rights maximized, but also the events that involve the State's international responsibility are verified. Certainty is also a confirmed right of the State. [FN195]

[FN195] Cf. final written arguments presented by the State (merits file, tome IV, pp. 17, 18 and 32, folios 898, 899 and 913).
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116. In this respect, the Court has already established that, at the international level, State responsibility under the American Convention can only be required after the State has had the opportunity to repair the damage it has caused. Moreover, the attribution of international responsibility to a State owing to the acts of State agents or individuals must be determined on the basis of the characteristics and circumstances of each case, [FN196] and also on the corresponding special obligations of prevention and protection that are applicable. Although this attribution is made on the basis of international law, the many different forms and characteristics that the facts may assume in situations that violate human rights makes it almost illusory to expect international law to define specifically – or rigorously or numerus clausus – all the hypotheses or situations – or structures – for attributing to the State each of the possible and eventual acts or omissions of State agents or individuals.

[FN196] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 113.
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117. Thus, when interpreting and applying the Convention, the Court must pay attention to the special needs for protection of the individual, the ultimate beneficiary of the provisions of the respective treaty. Owing to the nature erga omnes of the State's treaty-based protection obligations, their scope cannot be determined on the basis of a vision that focuses on the sovereign will of the States and merely on the effects of inter-State relations. These obligations

devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case.

118. Having indicated the State's obligations under the Convention and the general principles for attribution of international responsibility to the State, the Court will proceed to examine the possible violation of the rights to personal liberty, humane treatment and life of the alleged victims and their next of kin, in the context of the obligations of prevention, protection and investigation arising from Article 1(1) of the Convention in relation to the norms that embody these rights: Articles 7, 5 and 4 thereof.

b) The obligations of prevention and protection of the right to personal liberty, humane treatment and life of the alleged victims

119. The rights to life and to humane treatment are central to the Convention. According to Article 27(2) of the said treaty, these rights form part of the non-derogable nucleus, because they are established as rights that cannot be suspended in case of war, public danger or other threats to the independence or security of the States Parties.

120. This Court has indicated that the right to life plays a fundamental role in the American Convention, as it is the essential corollary for realizing the other rights. [FN197] The States have the obligation to guarantee the establishment of the conditions to ensure that violations of this inalienable right do not occur and, in particular, the obligation to prevent its agents from violating it. [FN198] In compliance with the obligations imposed by Article 4 of the American Convention, in relation to Article 1(1) thereof, this not only assumes that no one shall be deprived of his life arbitrarily (negative obligation), but also, in light of the State's obligation to guarantee the full and free exercise of human rights, it requires States to adopt all the appropriate measures to protect and preserve the right to life (positive obligation). This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those responsible for safeguarding security, whether they are members of its police forces or its armed forces. [FN199] Consequently, States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively (infra paras. 125 to 127 and 142 to 146).

[FN197] Cf. Case of the 19 Merchants. Judgment of July 5 , 2004. Series C No. 109, para. 153 citing the Case of Myrna Mack Chang, Judgment of November 25, 2003, Series C No. 101, para. 152; Case of Juan Humberto Sánchez, supra note 189, para. 110, and Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144.

[FN198] Cf. Case of the 19 Merchants, supra note 192, para. 153 citing United Nations Human Rights Committee, General Comments 6/1982, para. 3 in Compilation of General Recommendations adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 in 6 (1994); United Nations Human Rights Committee, General comment 14/1984, para. 1 in Compilation of General Recommendations adopted by Human Rights Treaty Bodies,

U.N.Doc.HRI/GEN/1/Rev 1 in 18 (1994); Cf. also, Case of Myrna Mack Chang. Judgment of November 25, 2003, Series C No. 101, para. 152; Case of Juan Humberto Sánchez, Judgment of June 7, 2003, Series C No. 99, para. 110, and Case of the "Street Children" (Villagrán Morales et al.), supra note 197, para. 144.
[FN199] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 232; Case of Huilce Tecse. Judgment of March 3, 2005. Series C No. 121, para. 66, and Case of the "Juvenile Reeducation Institute", supra note 17, para. 129.
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121. In this case, the State recognized that "the law enforcement personnel were guarantors of the respect, protection and guarantee of the human rights of the inhabitants of the jurisdiction of Pueblo Bello." However, it maintained that "the treaty-based obligations cannot be an unacceptable burden for States; the State cannot be the guarantor of everything everywhere[. …] The State's ability to react was limited by a critical situation of public order that made it impossible to cover all its territory, which is very extensive. [… T]here were military forces in the zone, so that the State […] had taken general measures of protection: precisely those in keeping with the State's reaction capability." In addition, the State alleged that:

The existence of a material, functional and territorial jurisdiction of the public servants in the area in which the incidents occurred is not in discussion, because the members of he Armed Forces were present with a base and a military roadblock in the zone. Thus, it is clear that, in relation to the facts under examination, the obligations of the members of the Colombian Armed Forces were to protect the population and to guarantee security in the region, obligations that must be defined in the context of personal attribution. [According to the State, although] the presence of the soldiers in the zone and their protection of security there (especially in the case of the roadblock, as regards the guarantee of the rights of those who traveled along that route), form the grounds in this specific case [for compliance] with the general obligation to respect and protect the rights of the population[,…] this [is not] sufficient to determine the responsibility of the State[, because] to be able to attribute some form of responsibility to the Army who was the guarantor [it is necessary to prove] that the subject has created a legally-unacceptable danger, the first element of the so-called theory of objective attribution, widely recognized in penal doctrine. [To know whether the State has violated its treaty-based obligations], because its agents have intervened, by act or omission, in the events concerning individuals and have thereby affected their rights and freedoms embodied in the Convention, the juridical logic is to establish personal attribution to the agent. [FN200]

In this regard, the Court is not a criminal court in which the criminal responsibility of individuals can be decided. [FN201] As mentioned above when referring to State responsibility under the Convention (supra paras. 111 to 118), State responsibility should not be confused with the criminal responsibility of private individuals. [FN202] Consequently, in this proceeding it is not possible to restrict the definition of the State's obligations to guarantee rights to structures that are specific for determining criminal responsibilities – individual by antonomasia. Moreover, it is not necessary to define the spheres of competence of each member or unit of the Armed Forces based in the zone, or the penal structures or criteria for attributing a crime to an individual, such as the creation of a legally-unacceptable danger, the individual nature of the position of guarantor, or the execution of a crime, as the State is claiming.

[FN200] Cf. final written arguments brief presented by the State (merits file, tome IV, pp. 36 and 51 to 53, folios 917 and 932 to 934).
[FN201] Cf. Case of Raxcacó Reyes. Judgment of September 15, 2005. Series C No. 133, para. 55; Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, paras. 61 and 62; Case of Castillo Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, para. 90; Case of the "Panel Blanca" (Paniagua Morales et al.). Judgment of March 8, 1998. Series C No. 37, para. 71, and Case uf Suárez Rosero. Judgment of November 12, 1997. Series C No. 35, para. 37.
[FN202] In this regard, Cf. European Court of Human Rights, Case of Adali v. Turkey, judgment of 31 March 2005, Application No. 38187/97, para. 216, and Avsar v. Turkey, judgment of 10 July 2001, Application No. 25657/94, para. 284.

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123. Also, the Court acknowledges that a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature erga omnes of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must considered.

124. In this regard, the European Court of Human Rights has understood that Article 2 of the European Convention also imposes on States a positive obligation to adopt measures of protection, as follows:

62. The Court recalls that the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the L.C.B. v. the United Kingdom, judgment of 9 June 1998, Reports 1998-III, p. 1403, para. 36). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose life is in danger from the criminal acts of another individual (see the Osman judgment [...] p. 3153, para. 115).
63. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed danger to life can entail for the authorities a Convention requirement to take operational measures to prevent that danger from materialising. For a positive obligation to arise, it must be established

that the authorities knew or ought to have known at the time of the existence of a real and immediate danger to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that danger (see the Osman judgment [...], pp. 3159-60, para. 116). [FN203]

[FN203] Cf. European Court of Human Rights, Kiliç v. Turkey, judgment of 28 March 2000, Application No. 22492/93, paras. 62 and 63; Osman v. United Kingdom judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paras. 115 and 116.

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125. In this case, the Court recognizes that the State adopted several legislative measures to prohibit, prevent and punish the activities of the self-defense or paramilitary groups (supra paras. 95(8) to 95(20)) and, in relation to the special situation in Urabá Antioqueño, the region where the jurisdiction of Pueblo Bello is located, awareness of the dangerous situation and of the need to control the zone was translated into the adoption of a series of measures to this end, such as: the creation in 1988 of the XIth Brigade in Montería and the No. 1 Mobile Brigade, and the issue of Decree No. 0678 of April 14, 1988, for the "re-establishment of public order" in this zone and creating the Military Headquarters of Urabá Antioqueño (supra paras. 95(6), 95(7) and 95(26)). Thus, it is evident that the State authorities knew about the possibility of specific danger owing to the activities of paramilitary groups or individuals that could materialize in situations that would affect the civilian population.

126. Nevertheless, these measures did not translate into the specific and effective deactivation of the danger that the State itself had contributed to creating. Owing to the interpretation given to the legal framework for many years, the State encouraged the creation of self-defense groups with specific objectives; however the latter exceeded these objectives and began to act illegally. Thus, by having encouraged the creation of these groups, the State objectively created a dangerous situation for its inhabitants and failed to adopt all the necessary or sufficient measures to avoid these groups continuing to commit acts such as those of the instant case. The declaration of the illegality of these groups should have translated into the adoption of sufficient and effective measures to avoid the consequences of the danger that had been created. While it subsists, this dangerous situation accentuates the State's special obligations of prevention and protection in the zones where the paramilitary groups were present, as well as the obligation to investigate diligently, the acts or omissions of State agents and individuals who attack the civilian population.

127. The lack of effectiveness in dismantling the paramilitary structures can be seen also from the rationale and characteristics of the laws adopted from 1989 to date (supra paras. 95(8) to 95(20)), as well as from an examination of the quantitative and qualitative intensity of the human rights violations committed by the paramilitary groups at the time of the facts and over the following years, acting on their own or in connivance or collaboration with State agents, vis-à-vis the high rates of impunity of this type of facts.

128. In this regard, the Court recalls that, in Colombia, the existence of numerous cases of links between the paramilitary groups and members of law enforcement bodies in relation to similar facts to those of the instant case have been documented for several years. [FN204] According to the 1994 joint report of the United Nations Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions, "while considering it inappropriate to affirm the existence of a planned policy of 'systematic violation' of human rights, the Procuraduría General in its third report on human rights, stated nevertheless that the violations had been so numerous, frequent and serious over the years that they could not be dealt with as if they were just isolated or individual cases of misbehavior by middle- and lower-rank officers, without attaching any political responsibility to the civilian and military hierarchy. On the contrary, even if no decision had been taken in the sense of persecuting the unarmed civilian population, the Government and the high military command were still responsible for the actions and omissions of their subordinates." [FN205] In turn, the 1989 report of the Special Rapporteur on summary or arbitrary executions stated that:

[…] Additional information received by the Special Rapporteur would appear to indicate that the main regions where the paramilitary groups operate are those with a strong military presence and that there have been no reports so far of confrontations between such groups and the forces of law and order. […]the information available shows that the increase in summary or arbitrary executions in recent years is closely linked to the increase in paramilitary group activities. […] Collective assassinations, in which the victims are usually defenseless peasants, are a very recent development and an indication of the alarming increase in violence in Colombia.
[…] the chief victims of the massacres in 1988 and 1989 have been the peasants. In 1988, 50 of the 73 massacres were massacres of peasants, in other words, almost 70 per cent of the total. In 1989, 11 of the 21 massacres were massacres of peasants [six of them were in Antioquia]. […] The rural areas are the ones most torn by the violence […] [FN206]

[FN204] Cf. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2001/15, March 20, 2001, paras. 131, 134 and 254; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005, paras. 9, 45, 61, 62, 73, 84, 87, 112 to 116; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2004/13, February 17, 2004, paras. 22, 24, 26, 59, 65 and 73; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2003/13, February 24, 2003, paras. 34, 74 and 77; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2002/17, February 28, 2002, paras. 202, 211, 356 and 365; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 25 and 111; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/1998, March 9, 1998/16, paras. 21 and 29; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/1998/16, March 9, 1998, paras. 27, 28, 29, 34, 42, 46 and 88.
[FN205] Cf. Joint report of the Special Rapporteur for torture, Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, submitted in

compliance with resolutions 1994/37 and 1994/82 of the Commission on Human Rights of the United Nations Economic and Social Council. Visit to the Republic of Colombia of the Special Rapporteurs from October 17 to 26, 1994, E/CN.4/1995/111 of January 16, 1995, para. 109.
[FN206] Cf. Commission on Human Rights of the United Nations Economic and Social Council. Report on the visit to Colombia by the Special Rapporteur on summary or arbitrary executions (October 11, 1989), January 24, 1990, E/CN.4/1990/22/Add.1, paras. 20 and 26.
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129. In addition, the United Nations High Commissioner for Human Rights makes a constant reference in his reports to the high level of impunity of the violations of human rights and international humanitarian law committed as a result of the criminal proceedings and disciplinary investigations opened against members of law enforcement bodies and paramilitary groups that failed to establish responsibilities or the respective sanctions. [FN207] The report on the situation of human rights in Colombia in 1997 stated that:

Both the Colombian authorities and the NGOs agree that the failure to investigate and try offences which constitute human rights violations and war crimes is one of the factors which has contributed most to the continuation of many and repeated forms of behaviour violating the rights protected by the international instruments. The People's Advocate has said that on the difficult human rights scene in Colombia "impunity is one of the basic ingredients, constituting a powerful feedback for violence and leading some people to take justice into their own hands, thus creating an almost unbreakable vicious circle". [FN208]

[FN207] Cf. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005, para. 92; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2004/13, February 17, 2004, paras. 26, 27, 28 and 77; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia in 2002, E/CN.4/2003/13, February 24, 2003, para. 77; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2002/17, February 28, 2002, para. 211, 212 and 365; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia in 2000, E/CN.4/2001/15, March 20, 2001, paras. 57, 142, 206 and 254, and Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2000/11, March 9, 2000, paras. 27, 47, 146 and 173.
[FN208] Cf. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia in 1997, E/CN.4/1998, March 9, 1998, para. 117.
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130. This situation was not perceived merely during that year. Already in the above-mentioned 1994 joint report on their visit to Colombia, the United Nations Special Rapporteurs had noted the existing weaknesses in the administration of justice system and pointed out that the highest levels of impunity were “in the system of criminal justice, both ordinary and military, while the Procuraduría General de la Nación, in relation to its disciplinary functions, and the administrative courts seem to be functioning fairly satisfactorily.” [FN209] Although impunity

affected the judicial system in general, the most significant problems arose in the investigatory phase of crimes, for which the Prosecutor General's Office was responsible. Also, the role played by the armed forces in the functions of the judicial police – created under an emergency law – was too important since they lacked the necessary independence to conduct investigations objectively.

[FN209] Cf. Joint report of the Special Rapporteur for torture, Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Barce Waly Ndiaye, submitted in compliance with resolutions 1994/37 and 1994/82 of the Commission on Human Rights of the United Nations Economic and Social Council. Visit to the Republic of Colombia of the Special Rapporteurs from October 17 to 26, 1994, E/CN.4/1995/111 of January 16, 1995, para. 78.

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131. The Court considers that it is in this context, in which the facts of the case occurred, that the State's compliance with its treaty-based obligations to respect and guarantee the rights of the alleged victims should be determined. The parties have discussed several specific hypotheses concerning how the State's responsibility in this case was constituted.

132. The State alleged a hypothetical conflict of rights that, according to the principles of reasonableness and proportionality, would nuance its treaty-based obligations to protect and respect human rights. It stated that the principle of proportionality should be taken into account when attributing international responsibility to the State, because, in order to confront "the difficulties resulting from the tension between constitutional rights it is necessary to weigh such rights in order to harmonize constitutional rights when they conflict." In addition, it indicated that this principle must be taken into consideration, because there could be a conflict of obligations in relation to a specific hypothetical fact; for example, in the hypothesis of simultaneous attacks of illegal armed groups on different villages. More specifically, the State argued that:

The armed forces present in the zone – those on the roadblock and those at the base – covered a specific area and provided security to specific roads, so that demanding greater coverage or simply another activity would adversely effect the security plan that had been designed for the zone, which had studied the different variants and possibilities of defense. The roadblock was located there and not in another place for a reason! If, for example, the armed forced had carried out monitoring visits to the nearby villages, they would have neglected the central surveillance point, which also served as protection for other rights, precisely those of the inhabitants of the zone where they were stationed. Moreover, they cannot be expected to implement a strategy that endangers their own life, because this would evidently be ineffective and incompatible with the State's purpose of security and control. [FN210]

[FN210] Cf. brief with final written arguments submitted by the State (merits file, tome IV, p. 108, folio 988).

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133. It is true that the principle of proportionality is an important criteria or tool for the application and interpretation of domestic laws and international instruments, to determine the attribution of responsibility to the State. This depends on the nature of the rights which are alleged to have been violated, the general or specific limitations allowed to its enjoyment and exercise, and the characteristics of each case. However, this case is not seeking a decision on the legitimacy of a State interference, restriction or limitation in the sphere of an individual right protected by the Convention in view of specific objectives in a democratic society. [FN211] Neither is it trying to determine the need for the use of force by the State's security forces, in cases in which the arbitrary nature of the death of individuals must be determined and it is necessary to estimate the proportionality of the measures taken to control a situation when the public order is affected or in a state of emergency. [FN212] In those hypotheses, the principle of proportionality would be clearly applicable.

[FN211] Likewise, cf., inter alia, Case of Palamara Iribarne, supra note 11, para. 197; Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 153; Case of Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 74; Case of Tibi, supra note 192, para. 180; Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paras. 84, 85 and 143; Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 45 and 54; Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 54-55. See also, European Court of Human Rights, Sunday Times v. United Kingdom, judgement of 26 April 1979, Series A 30; Observer and Guardian v. United Kingdom, judgement of 26 November 1991, Series A 216; Goodwin v. United Kingdom, judgement of 27 March 1996, Reports 1996-II 483; Jersild v. Denmark, judgement of 23 September 1994, Series A 298; Communist Party of Turkey and Others v. Turkey, judgement of 30 January 1998, Reports 1998; Handyside v. United Kingdom, Judgement of 7 December 1976, Series A, No. 24; (1979-80) 1 EHRR 737, para. 48; Müller and Others v. Switzerland, judgement of 24 May 1988, Series A 133; the "Belgian linguistic" case v. Belgium, judgement of 23 July 1968, Series A 6; Abdulaziz, Cabales and Balkandali v. United Kingdom, judgement of 28 May 1985, Series A 94; Hoffmann v. Austria, judgement of 23 June 1993, Series A 255-C; Marckx v. Belgium, judgement of 13 June 1979, Series A 31; and Vermeire v. Belgium, judgement of 29 November 1991, Series A 214-C.

[FN212] Cf. Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, paras. 79 and 108; Case of Neira Alegría et al. Judgment of January 19, 1995 (Series C No. 20, paras. 69 and 72; Right to a Fair Trial in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 107; Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 42. See also, European Court of Human Rights, McCann and Others v. United Kingdom, judgement of 27 September 1995, Series A 324, para. 149. See also, Andronicou and Constantinou v. Cyprus, judgement of 9 October 1997, Reports 1997; Osman v. United Kingdom, judgement of 28 October 1998, Reports 1998. Also, Cf. Human Rights Committee, General Comment No. 6/16; Suárez Guerrero v. Colombia, No. 45/1979; Herrera Rubio v. Colombia 161/1983; Sanjuán brothers v. Colombia, No. 181/1984; Baboeram et al. v. Suriname,

Nos. 146, 148-154/1983; Bleier v. Uruguay, No. 30/1978; Dermit Barbato v. Uruguay, No. 84/1981; Miango Muiyo v. Zaire, No. 194/1985.
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134. In this case, the State has not proved that its security forces were constrained by having to adopt measures to protect another village from an attack at the same time as the one that occurred in Pueblo Bello on the day of the facts. It merely alleged that "it did not have precise information on the existence of this group in that specific zone, although law enforcement personnel were conducting their operations against the FARC's 5th Front and an EPL front, which were carrying out extensive criminal activities in the zone." As was indicated (supra paras. 125 to 127), the declaration of the illegality of the paramilitary groups implied that the State would direct its control and security operations against them also, and not only against the guerrilla. So that if, as the State alleges, at that time and in that zone, its security forces directed all their operations against guerrilla groups, this meant that the State was neglecting its other obligations of prevention and protection of the inhabitants of that zone with regard to the paramilitary groups. In this type of situation of systematic violence and grave violations of the rights in questions, in an area that had been declared a zone of emergency and military operations (supra paras. 95(1) to 95(15), 95(21) to 95(29) and 127 to 131), the obligations of the State to adopt positive prevention and protection measures are accentuated and of cardinal importance within the framework of the obligations established in Article 1(1) of the Convention, so that this principle of proportionality is inapplicable and the hypotheses proposed by the State have not been proved.

135. It is true that, in this case, it has not been proved that the State authorities had specific prior knowledge of the day and time of the attack on the population of Pueblo Bello and the way it would be carried out. For example, no evidence has been provided to show that the inhabitants of this village had reported acts of intimidation or threats before this attack. Also, contrary to the State's arguments, it is irrelevant for these proceedings to determine whether or not the inhabitants of Pueblo Bello had reported the alleged theft of the cattle, which is alleged to have been the cause of the revenge of the paramilitary group led by Fidel Castaño Gil, because this could never condition the State's obligation to provide protection.

136. The Commission and the representatives have alleged that members of the Army and the Police took part in the raid on Pueblo Bello during the evening of January 14, 1990, specifically in the deprivation of liberty of the 43 individuals. This allegation is based principally on the statement of Mariano Martínez, who said that he had seen at least 12 soldiers attached to the military base located in San Pedro de Urabá, who had acted in conjunction with the paramilitary group in the raid on the village that evening. This hypothesis was not included in the application lodged by the Commission and the only element that refers to the presence of State agents together with the paramilitary group that evening in Pueblo Bello is this testimony that has been assessed by the Court (supra para. 70), which has reached the conclusion that it has not been corroborated by the testimonies or statements of any of the other people present that evening in Pueblo Bello.

137. In addition, there is a dispute between the parties with regarding to whether the trucks that transported the group of approximately 60 members of the paramilitary group and the

alleged victims from Pueblo Bello to the "Las Tangas" ranch in the Department of Córdoba, went through the military roadblock located in San Pedro de Urabá or whether they used alternate roads, trails or routes.

138. The Court observes that there is no dispute about the existence and location of a military roadblock at the entrance to San Pedro de Urabá and a military base in this locality, or that there are side roads and trails off the principal road between Pueblo Bello and San Pedro de Urabá. However, the evidence in the case file is inconclusive as to whether or not these other routes were drivable by trucks with the characteristics mentioned above (supra paras. 80 to 84, 95(130) to 95(132) and 95(135)). Irrespective of the route taken by these trucks, this Court considers that Colombia did not adopt sufficient prevention measures to avoid a paramilitary group of approximately 60 men from entering the municipality of Pueblo Bello at a time of day when the circulation of vehicles was restricted and then leaving this zone, after having detained at least the 43 alleged victims in the instant case, who were subsequently assassinated or disappeared. In brief, the mobilization of a considerable number of people in this zone, whatever route they took, reveals that the State had not adopted reasonable measures to control the available routes in the area.

139. The foregoing leads the Court to indicate that the State did not adopt, with due diligence, all the necessary measures to avoid operations of this size being carried out in a zone that had been declared "an emergency zone, subject to military operations," and the latter situation places the State in a special position of guarantor, owing to the situation of armed conflict in the zone, which had led the State itself to adopt special measures.

140. The Court observes that even though the January 1990 massacre in Pueblo Bello was organized and perpetrated by members of a paramilitary group, it could not have been carried out if there had been effective protection for the civilian population in a dangerous situation that was reasonably foreseeable by the members of the Armed Forces or State security forces. It is true that there is no evidence before the Court to show that the State was directly involved in the perpetration of the massacre or that there was a connection between the members of the Army and the paramilitary groups or a delegation of public functions from the Army to such groups. However, the responsibility for the acts of the members of the paramilitary group in this case in particular can be attributed to the State, to the extent that the latter did not adopt diligently the necessary measures to protect the civilian population in function of the circumstances that have been described. For the reasons set out in the previous paragraphs, the Court concludes that the State did not comply with its obligation to ensure the human rights embodied in Articles 4, 5 and 7 of the Convention, because it did not comply with its prevention and protection obligations to the detriment of those who disappeared and were deprived of life in this case.

141. It is also necessary to decide whether this situation was duly investigated in the domestic proceedings opened to this end, in light of the guarantee obligations in Article 1(1) of the Convention.

c) The obligation to investigate the facts effectively derived from the guarantee obligation

142. The obligation to ensure the human rights enshrined in the Convention is not exhausted with the existence of laws designed to make it possible to comply with this obligation, but entails the need for conduct by the Government that ensures the genuine existence of an effective guarantee of free and full exercise of human rights (supra para. 120). Thus, the obligation to investigate cases of violations of these rights arises from this general obligation of guarantee; in other words, Article 1(1) of the Convention, together with the substantive right that must be protected or ensured.

143. In particular, since full enjoyment of the right to life is a prior condition for the exercise of all the other rights (supra paras. 119 and 120), the obligation to investigate any violations of this right is a conditions for ensuring this right effectively. Thus, in cases of extrajudicial executions, forced disappearances and other grave human rights violations, the State has the obligation to initiate, ex officio and immediately, a genuine, impartial and effective investigation, [FN213] which is not undertaken as a mere formality predestined to be ineffective. [FN214] This investigation must be carried out by all available legal means with the aim of determining the truth and the investigation, pursuit, capture, prosecution and punishment of the masterminds and perpetrators of the facts, particularly when State agents are or may be involved. [FN215]

[FN213] Cf. Case of the "Mapiripán Massacre", supra note 7, paras. 219 and 223; Case of the Moiwana Community, supra note 7, para. 145, and Case of the Gómez Paquiyauri Brothers, supra note 188, para. 131.
[FN214] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 223; Case of the Moiwana Community, supra note 7, para. 146; Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 61, and Case of Bulacio, supra note 192, para. 112.
[FN215] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 237; Case of the Moiwana Community, supra note 7, para. 203, and Case of the Serrano Cruz Sisters, supra note 214, para. 170.

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144. Evidently, during the investigation procedure and the judicial proceedings, the victims of the human rights violations, or their next of kin, should have extensive opportunities to participate and be heard, both in the clarification of the facts and the punishment of those responsible, and in seeking fair compensation. [FN216] However, the investigation should be assumed by the State as an inherent juridical obligation and not merely as a reaction to private interests, which depend on the procedural initiative of the victims or their next of kin and on the contribution of evidence by private individuals, while the public authority is not making an effective effort to discover the truth. [FN217]

[FN216] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 219; Case ofhe Moiwana Community case, supra note 7, para. 147, and Case of the Serrano Cruz Sisters, supra note 214, para. 63.
[FN217] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 219; Case of the Moiwana Community, supra note 7, para. 146, and Case of the Serrano Cruz Sisters. supra note 214, para. 61.

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145. The execution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by these situations, such as, in the instant case, the rights to personal liberty, humane treatment and life. This assessment is valid whatsoever the agent to which the violation may eventually be attributed, even individuals, because, if their acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities, which would entail the State's international responsibility. [FN218]

[FN218] Cf. Case of the "Mapiripán Massacre", supra note 7, paras. 137 and 232; Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 66; Case of the " Juvenile Reeducation Institute", supra note 17, para. 158; Case of the Gómez Paquiyauri Brothers, supra note 188, para. 129, and Case of the 19 Merchants, supra note 192, para. 153.

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146. The Court appreciates the difficult circumstances that Colombia was and still is experiencing, and in which its population and its institutions are endeavoring to achieve peace. Nevertheless, the country's situation, however difficult, does not liberate the State Party to the American Convention from its obligations under this treaty, which subsist particularly in cases such as this. [FN219] The Court has maintained that by implementing or tolerating actions aimed at carrying out extrajudicial executions, failing to investigate them adequately and, when applicable, failing to punish those responsible effectively, the State violates its obligations to respect and ensure the rights established in the Convention to the alleged victims and their next of kin, prevents society from knowing what happened, [FN220] and reproduces the conditions of impunity for this type of acts to be repeated. [FN221]

[FN219] Cf. Case of García Asto and Ramírez Rojas, supra note 10, para. 170; Case of the "Mapiripán Massacre", supra note 7, para. 238, and Case of the Moiwana Community, supra note 7, para. 153.

[FN220] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 238; Case of the Moiwana Community, supra note 7, para. 153, and Case of Juan Humberto Sánchez, supra note 189, para. 134.

[FN221] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 238; Case of the Gómez Paquiyauri Brothers, supra note 188, para. 130, and Case of Myrna Mack Chang, supra note 197, para. 156.

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147. In this regard, in the context of the obligation to protect the right to life under Article 2 of the European Convention on Human Rights and Fundamental Freedoms, read together with Article 1 thereof, the European Court of Human Rights has developed the theory of the "procedural obligation" to carry out an effective official investigation in cases of violations of that right. In Ergi v. Turkey, the European court decided that, even though there was no hard evidence that the security forces had caused the death of the victim, the State had failed in its obligation to protect the right to life of the victim, taking into account the conduct of the security

forces and the absence of an adequate and effective investigation, so that it had violated Article 2 of the European Convention. [FN222] The European Court reached a similar conclusion in the Akkoç and Kiliç cases, both of them against Turkey, after determining the limited scope and duration of the official investigations made in relation to the death of the petitioner's wife. [FN223]

[FN222] Cf. European Court of Human Rights, (Chamber), Ergi v. Turkey, judgment of 28.07.1998, Reports of Judgments and Decisions, n. 81, paras. 85-86.
[FN223] Cf. European Court of Human Rights, Akkoç v. Turkey, judgment of 10 October 2000, paras. 77 to 99; Kiliç v. Turkey, judgment of 28 March 2000, paras. 78 to 83.

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148. In order to decide whether the obligation to protect the rights to life, humane treatment and personal liberty by carrying out a genuine investigation of the facts has been complied with fully, it is necessary to examine the proceedings opened at the domestic level destined to clarify the events that occurred in Pueblo Bello and to identify those responsible for the disappearances of 37 people and the deprivation of liberty and, subsequently, of life, of six people whose bodies have been identified. This examination must be carried out in light of the provisions of Article 25 of the American Convention and of the requirements imposed by its Article 8 on the whole process, and the Court will refer to it extensively in the next chapter of this judgment (infra paras. 169 to 212). In order to determine the violation of Articles 4, 5 and 7 of the Convention, which was examined in the preceding paragraphs, suffice it to say that the Court finds that the investigations into the Pueblo Bello events conducted in Colombia, in proceedings conducted by the ordinary and the military criminal justice system, and by the disciplinary and administrative justice systems were seriously flawed, and this has undermined the effectiveness of the protection established in the national and international norms applicable in this type of case, and resulted in the impunity of certain criminal acts that constitute, in turn, grave violations of the human rights embodied in the provisions of the Convention cited in this paragraph.

149. The Court must emphasize that the facts that are the object of this judgment form part of a situation in which a high level of impunity prevails for criminal acts perpetrated by members of paramilitary groups (supra paras. 129 and 130). The Judiciary has failed to provide an adequate response to these illegal actions of such groups in keeping with the State's international commitments, and this leads to the establishment of fertile ground for these groups, operating outside the law, to continue perpetrating acts such as those of the instant case.

150. In view of the above, the Court concludes that the State has not complied with its obligation to guarantee the human rights embodied in Articles 4, 5 and 7 of the Convention with regard to the persons disappeared and deprived of life in this case, because it has failed to conduct a genuine, complete and effective investigation into the facts that motivate this judgment.

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151. In addition to the situation described above of the lack of due diligence in the protection (including the preventive protection) of the inhabitants of Pueblo Bello, and in the respective investigations, it was the State itself that created a dangerous situation, which it then failed to control or dismantle (supra paras. 125 to 128). Thus, although the acts committed by the members of the paramilitary group against the alleged victims in this case are acts committed by private individuals, the responsibility for those acts may be attributed to the State, owing to its failure to comply by omission, with its treaty-based obligations erga omnes to guarantee the effectiveness of human rights in these relations between individuals. And this is implemented and aggravated by having failed to eliminate or effectively resolve the dangerous situation caused by the existence of those groups and by having continued to encourage their actions through impunity. Hence, the State is responsible for the arbitrary deprivation of the personal liberty and integrity, and also the life, of the 43 persons abducted in the jurisdiction of Pueblo Bello on January 14, 1990, and subsequently disappeared or murdered.

152. Regarding the determination of the violations committed in this case, it has been proved that the 43 persons were arbitrarily deprived of their liberty; that six of them were deprived of life, and that the other 37 are disappeared. It is true that there is no evidence of the specific acts to which each of these people were subjected before being deprived of life or disappeared. However, the very modus operandi of the facts of the case and the serious failures in the obligation to investigate allow us to infer that the persons abducted were tortured or subjected to extreme cruel, inhuman or degrading treatment, because it has been proved that some of them had had their veins, ears or genital organs severed, their eyes had been gouged out, and they had been "kicked and punched" to death (supra paras. 95(39) and 95(40)). In the least cruel scenario, they were subjected to grim violations of humane treatment by having to observe such acts against others and the assassination of the latter, which caused them to fear the same fate. Thus, it would be illogical to limit the determination of acts contrary to humane treatment to only some of the alleged victims.

153. This finding leads the Court to conclude that, because it failed in its prevention, protection and investigation obligations, the State is responsible for the violation of the rights to life, humane treatment and personal liberty embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in relation to Article 1(1) thereof, owing to failure to comply with its obligation to ensure these rights, to the detriment of the following six persons deprived of life: Andrés Manuel Peroza Jiménez, Juan Luis Escobar Duarte, José Leonel Escobar Duarte, Ovidio Carmona Suárez, Ricardo Bohórquez Pastrana and Jorge David Martínez Moreno, and of the following 37 disappeared: José del Carmen Álvarez Blanco, Fermín Agresott Romero, Víctor Argel Hernández, Genor Arrieta Lora, Cristóbal Manuel Arroyo Blanco, Diómedes Barrera Orozco, Urías Barrera Orozco, Jorge Fermín Calle Hernández, Jorge Arturo Castro Galindo, Benito Genaro Calderón Ramos, Juan Miguel Cruz (or Cruz Ruiz), Ariel Dullis Díaz Delgado, Camilo Antonio Durango Moreno, César Augusto Espinoza Pulgarín, Wilson Uberto Fuentes Miramón, Andrés Manuel Flórez Altamiranda, Santiago Manuel González López, Carmelo Manuel Guerra Pestana, Miguel Ángel Gutiérrez Arrieta, Lucio Miguel Úrzola Sotelo, Ángel Benito Jiménez Julio, Miguel Ángel López Cuadro, Mario Melo Palacio, Carlos Antonio Melo Uribe, Juan Bautista Meza Salgado, Pedro Antonio Mercado Montes, Manuel de Jesús Montes Martínez, José Encarnación Barrera Orozco, Luis Carlos Ricardo Pérez, Miguel Antonio Pérez Ramos, Raúl Antonio Pérez Martínez, Benito José Pérez Pedroza, Elides Manuel Ricardo Pérez,

José Manuel Petro Hernández, Luis Miguel Salgado Berrío, Célimo Arcadio Hurtado and Jesús Humberto Barbosa Vega.

d) The right to humane treatment of the next of kin of those disappeared and deprived of life

154. This Court has stated on many occasions, [FN224] that the next of kin of the victims of human rights violations may also be victims. In this regard, the Court has considered that the right to mental and moral integrity of the next of kin of the victims has been violated owing to their suffering as a result of the specific circumstances of the violations perpetrated against their loved ones and the subsequent acts or omissions of the State authorities with regard to the events. [FN225]

[FN224] Cf. Case of Gómez Palomino, supra note 10, para. 60; Case of the "Mapiripán Massacre", supra note 7, paras. 144 and 146, and Case of the Serrano Cruz Sisters, supra note 214, paras. 113 and 114.
[FN225] Cf. Case of Gómez Palomino, supra note 10, para. 60, Case of the "Mapiripán Massacre", supra note 7, paras. 144 and 146, and Case of the Serrano Cruz Sisters, supra note 214, paras. 113 and 114.

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155. In this case, the Court considers it has been proved that the paramilitary group that raided Pueblo Bello ransacked some of the houses, mistreating the occupants, and took an unknown number of men from their homes to the village square. Also, some members of the armed group entered the church in front of the square and ordered the women and children to remain inside and the men to go out into the square. Several of the villagers saw how the paramilitary group took their next of kin and witnessed how the latter were tied up, gagged and obliged to get into the two trucks used to transport the paramilitary group (supra paras. 95(33) and 95(160)). These facts constitute acts contrary to the humane treatment of the next of kin of those who disappeared or were deprived of life.

156. During the days following these events, the next of kin tried to find their loved ones and to denounce what had happened. They went to the roadblocks and to the military bases, and to the municipal authorities in Turbo, where they stayed for several days under very difficult conditions awaiting some kind of response. When they did not obtain this, they returned to Pueblo Bello.

157. More than three months after the facts of this case occurred, several of the alleged victims' next of kin went to the Montería hospital to identity some corpses. However, the authorities did not offer them any assistance and they were unable to identify their next of kin, because only six of the disappeared were identified (supra paras. 95(74) and 95(75)). The conditions in which they found the bodies, decomposed and in plastic bags on the floor, as well as the fact that they had observed the state of the bodies and the injuries, caused great suffering and anguish to the next of kin of the persons disappeared and deprived of life since they assumed their loved ones had suffered a similar fate.

158. The events of January 1990 have never been the subject of a complete and effective investigation. The case file shows that very few of the next of kin were summoned to make statements by the authorities and also that their participation in the domestic proceedings has been very limited (infra para. 185). On previous occasions, the Court has found that the absence of effective recourses is an additional source of suffering and anguish for the victims and their next of kin. [FN226]

[FN226] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 145; Case of the Moiwana Community, supra note 7, para. 94, and Case of the Serrano Cruz Sisters, supra note 214, paras. 113 to 115.

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159. It should also be emphasized that, following the events of January 1990, several of the inhabitants of Pueblo Bello have left Colombia or were displaced from this jurisdiction (supra para. 95(161) and infra para. 225), as a result of the fear and anguish caused by the facts and the subsequent situation; they have also suffered the effects of forced internal displacement. Some of them have had to return against their will, because they were unable to find means of subsistence elsewhere.

160. As can be seen, the next of kin of the individuals who allegedly disappeared and were deprived of life have suffered serious harm as a result of the events of January 1990, owing to the disappearance and/or deprivation of life of these persons, due to the failure to find the bodies of those who disappeared and, in some cases, to the fear of living in Pueblo Bello. All this, in addition to affecting their physical, mental and moral integrity, has had an impact on their social and labor relations, and has altered their family dynamics (supra paras. 95(160) and 95(161)).

161. In addition, the fact that today, 16 years after the events, 37 of the 43 persons continue disappeared means that the next of kin have not been able to honor their deceased loved ones appropriately. In cases involving forced disappearance, the Court has stated that the violation of the right to mental and moral integrity of the next of kin of a victim is a direct consequence of this phenomenon; [FN227] they suffer greatly as a result of the act itself, and their suffering is increased by not knowing the truth about the facts, which has the effect of ensuring partial impunity.

[FN227] Cf. Case of Blanco Romero et al., supra note 10, para. 59; Case of Gómez Palomino, supra note 10, para. 61, and Case of the 19 Merchants, supra note 192, para. 211.

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162. Hence, the Court considers that the immediate next of kin, who are individualized in this proceeding, must be considered victims of the violation of the right to humane treatment embodied in Article 5(1) of the Convention, in relation to Article 1(1) thereof.

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163. Regarding the alleged violation of Article 19 of the Convention (supra paras. 98 and 101), the Court finds that this has been considered within the failure to observe the obligations of prevention, protection and investigation that have been declared grounds for the violation of Articles 4(1), 5(1), 5(2), 7(1) and 7(2) (supra paras. 118 and 153).

IX. ARTICLES 8(1) AND 25 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHT TO A FAIR TRIAL AND TO JUDICIAL PROTECTION)

164. Arguments of the Commission

(a) The judicial actions taken by the State to clarify the responsibility of civilians and members of the military forces in the forced disappearance and extrajudicial execution of the alleged victims do not satisfy the requirements established in the American Convention regarding the guarantees of due process and judicial protection;
(b) Even though, on May 26, 1997, seven years after the facts, 10 individuals were convicted in first instance, the participation of around 60 persons can be inferred from the case file. Only three of the 10 persons convicted are serving their prison sentences; and most of the arrest warrants issued against those convicted in abstentia have not been executed. The failure to charge several of the participants in the facts, added to the failure to execute the capture of most of the persons convicted in abstentia, illustrates the delay in the administration of justice;
(c) Since the decision of the Tribunal Nacional of December 30, 1997, the investigation of the co-participants not included in the original indictment remains open, 14 years after the facts occurred. A criminal investigation should be carried out promptly, to protect the interests of the alleged victims, preserve the evidence and even safeguard the rights of all those who, in the context of the investigation, are considered to be suspects;
(d) The assignment of part of the investigation to the military criminal justice system violates the rights to judicial protection and the guarantees of due process. In the instant case, it was confirmed that the military justice system intervened in the trial of a member of the Army who was allegedly involved in the facts. The military criminal jurisdiction does not meet the standards of independence and impartiality required by Article 8(1) of the Convention, as a forum to examine, try and punish cases that involve human rights violations. The Court and other international bodies have ruled on this issue. The military justice system does not form part of the State's Judiciary; those who take decisions are not judges from the legal profession and the Prosecutor General's Office does not fulfill its accusatory role in the military justice system. Furthermore, the Constitutional Court of Colombia has ruled on the jurisdiction of the military courts to hear cases concerning human rights violations and, according to its rulings, the gravity of the violations committed in this case makes it inappropriate to hold the trials of the State agents involved in the military jurisdiction, and
(e) The State has not adopted the necessary measures to recover all the bodies of the alleged victims. These violations make it impossible to respect society's right to know the truth.

165. Arguments of the representatives

(a) The State has failed to comply with its obligation to investigate and punish impartially and within a reasonable time, all those responsible for the events of Pueblo Bello, pursuant to Articles 8, 25 and 1 of the Convention;

(b) Active protection of the rights embodied in the Convention falls within the State's obligation to guarantee the free and full exercise of the rights of all persons subject to its jurisdiction and requires the State to adopt the necessary measures to punish human rights violations and prevent the violation of any of these rights by its own forces or by third parties acting with its acquiescence;

(c) The mere existence of courts and laws designed to fulfill the obligations embodied in Articles 8 and 25 of the Convention is not sufficient; the obligations are affirmative and States must carry out an exhaustive investigation of all those responsible for human rights violations, both perpetrators and masterminds;

(d) The State has deprived the alleged victims' next of kin of access to a simple and prompt recourse. The ordinary jurisdiction has been extremely delayed and has shown that it has been ineffective in identifying, prosecuting and punishing all those responsible for the facts. The investigations have not been carried out genuinely in order to guarantee the alleged victims' next of kin the right to know the whereabouts of their loved ones;

(e) Regarding the proceedings before ordinary justice:

i. Only five people have been convicted. These results are insufficient, ineffective and inadequate in light of the State's obligations;

ii. The judgment delivered by the Tribunal Nacional on December 30, 1997 underscored the flaws in the investigation and, hence, declared part of it null. That finding of the domestic judicial authorities illustrates the inefficiency and lack of seriousness with which the domestic investigations were carried out. Despite the order to re-open the investigations, the domestic jurisdiction only did this two years after that decision;

iii. The investigation has still not complied with the Tribunal Nacional's order and there is little expectation that the investigation will be effective, given the length of time that has elapsed since the facts occurred, and

iv. The domestic authorities never undertook the investigations as an inherent duty, in compliance with their constitutional and legal obligations and with their international commitments concerning the prevention of human rights violations;

(f) Regarding the proceeding before the military criminal jurisdiction:

a. The military jurisdiction does not have the characteristics of independence and impartiality established in Article 8 of the Convention;

b. When the investigation of law enforcement personnel was assigned to the military jurisdiction, it deprived the alleged victims' next of kin of the right to have access to an effective judicial recourse that would guarantee them the exercise of their rights, clarify the facts and establish the State's responsibilities, and

c. This jurisdiction decided, without much investigation, to declare that there was no evidence to indicate the responsibility of law enforcement personnel in the facts, and

(g) The claims for compensation filed by the alleged victims' next of kin before the administrative courts have not concluded, so that, to date, they have not been compensated at the domestic level for the damage caused by the facts.

166. Arguments of the State

(a) The State has adequate jurisdictional instruments for the full exercise of judicial guarantees;

(b) A growing and progressive regime of State responsibility exists in Colombia and, in some cases, State responsibility has even been established, irrespective of guilt; in other words, an objective responsibility. The compensation system for damages is constantly evolving in favor of those who have been negatively affected, strengthened by the accumulation of responsibility between the official agent and the Administration, so that the person affected may prosecute either the legal or the natural person;(c) The State has a structured, systemic and comprehensive legal system with specific and complementary purposes and spheres of protection, which were activated and implemented immediately following the events of Pueblo Bello. They have still not been exhausted, not because of ineffectiveness, but due to complexity and the interest of the State and its judicial authorities in exhausting all possible measures to identify and find the bodies of the alleged victims, as well as those responsible for the illegal acts;

(d) Regarding the military criminal jurisdiction:

i. The military criminal justice system is an institution of the rule of law in Colombia and when referring to a violation of the treaty-based provisions in this jurisdiction, it is necessary to examine the circumstances and procedures in a specific case and not merely in general. The standard of effectiveness of a domestic recourse is established by its capacity to produce the result for which it was conceived. These conclusions require the validity of the whole procedure to be examined in order to determine whether the decisions taken were coherent and congruent with the facts proved during the investigation conducted by the military criminal justice system. Colombia's constitutional jurisdiction has made an effective contribution to the defense of human rights in this regard, redefining the boundaries of the legitimate conception of the military jurisdiction;

ii. According to the Constitution, the bodies that administer justice in Colombia include the military criminal justice system. The law can attribute jurisdictional functions concerning certain issues to specific administrative authorities. The Constitution establishes that the organs of administration of justice, including the military criminal justice system, are subject only to the rule of law. Equity, jurisprudence, the general principles of law and legal doctrine are auxiliary criteria for judicial activities; therefore, as an administrator of justice, the military criminal judge is independent, autonomous, permanent, and freely accessible, and his judgments are open to special resources such as cassation and review before the Supreme Court of Justice. Consequently, the mere fact that a case is heard by the military criminal justice system is not a cause of impunity, and

iii. In this case, it is not appropriate to question the activities of the military criminal justice system, particularly if the conclusions reached in different judicial instances coincide;

(e) Regarding the ordinary criminal jurisdiction:

i. From the start of the investigation, the State has tried to find the persons who were disappeared;

ii. In the ordinary jurisdiction, investigations have been conducted, decisions taken and sanctions imposed, according to the laws applicable at the time of the illegal acts. The investigations have sought to include all those responsible and all the alleged victims, to determine the social impact of the criminal acts and to identify the criminal intention. There is no impunity, because those directly responsible for the organization, planning and implementation of the facts were sentenced to exemplary penalties; the main perpetrator of the violations was brought to justice, tried and convicted, and the anticipated judgments are res judicata in relation

to the facts stated in the confession, although not in relation to facts that are new or different from those included in that judgment, and

iii. The jurisdiction has not been exhausted. The efforts to find those responsible, whatever their rank continues, as do the efforts to recover the bodies of the alleged victims. The investigation of this case is being conducted by the Special Investigations Committee, an administrative mechanism that represents the State's utmost effort and interest in investigating and sanctioning those responsible for grave human rights violations.

(f) The duration of the respective criminal proceedings is reasonable, because the case is extremely complex. The rights of the alleged victims to know the truth about what happened and to receive comprehensive reparation have also been guaranteed, in keeping with the State's possibilities and the status of the judicial proceedings that are still underway in the domestic jurisdictions.

(g) In the disciplinary proceedings, the charges against the State agents were based on omissions in performing their duties and on testimonial evidence, expert reports, and a visit to the military base of San Pedro de Urabá. During the proceedings, several specialized tests were carried out to prove whether there had been tolerant or acquiescent conduct by members of the Armed Forces; however, the judge considered that there was insufficient evidence to make a conviction and decided to absolve those subject to the disciplinary hearings, and

(h) The State has not failed to comply with the obligation to respect the rights to judicial guarantees and protection. Colombia has achieved specific and impressive results which illustrate its interest in the effective investigation and sanction of crimes that violate the human rights embodied in the Convention.

Findings of the Court

167. Article 8(1) of the American Convention establishes:

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.

168. Article 25 of the Convention stipulates:

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.

169. The Court has maintained that, according to the American Convention, the States Parties are obliged to provide effective judicial recourses to the victims of human rights violations

(Article 25), recourses that must be substantiated in accordance with the rules of due process of law (Article 8(1)), always in keeping with the general obligation of the States to ensure the free and full exercise of the rights recognized by the Convention to all those subject to their jurisdiction (Article 1(1)). [FN228]

[FN228] Cf. Case of Palamara Iribarne, supra note 11, para. 163; Case of the Moiwana Community, supra note 7, para. 142, and the Serrano Cruz Sisters case, supra note 214, para. 76.

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170. The Court has confirmed that, in relation to the facts of this case, criminal proceedings were opened in the military and the ordinary criminal jurisdictions, and that there were also administrative and disciplinary proceedings. Consequently, in this chapter, the Court will examine the due diligence in the conduct of these official actions to investigate the facts, as well as additional elements, in order to determine whether the procedures and proceedings were conducted respecting the right to a fair trial, within a reasonable time, and whether they constituted an effective recourse to ensure the rights of access to justice, to the truth about the facts and to the reparation of the next of kin.

171. Regarding reasonable time, this Court has indicated that the right of access to justice is not exhausted with the filing of domestic proceedings, but must also ensure, within a reasonable time, the right of the alleged victims or their next of kin for every necessary measure to be taken to know the truth about what happened and to sanction those who are eventually found to be responsible. [FN229] With regard to the principle of a reasonable time established in Article 8(1) of the American Convention, the Court has established that it is necessary to take into account three elements in order to determine the reasonableness of the time in which the proceedings are held: (a) the complexity of the case; (b) the procedural activity of the party concerned, and (c) the conduct of the judicial authorities. [FN230] However, the pertinence of applying these three criteria to determine the reasonableness of the time of the proceedings depends on the circumstances of each case. [FN231] Indeed, in view of the characteristics of this case, the Court will examine the reasonableness of the duration of each of the proceedings, when this is possible and pertinent.

[FN229] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 216; Case of the Serrano Cruz Sisters, supra note 214, para. 66, and Case of the 19 Merchants, supra note 192, para. 188.
[FN230] Cf. Case of García Asto and Ramírez Rojas, supra note 10, para. 166; Case of the "Mapiripán Massacre", supra note 7, para. 217, and Case of the Moiwana Community, supra note 7, para. 160. Likewise Cf. European Court of Human Rights. Wimmer v. Germany, No. 60534/00, § 23, 24 May 2005; Panchenko v. Russia, No. 45100/98, § 129, 8 February 2005, and Todorov v. Bulgaria, No. 39832/98, § 45, 18 January 2005.
[FN231] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 214. Likewise, Case of García Asto and Ramírez Rojas, supra note 10, para. 167.

Ordinary criminal jurisdiction

172. It has been established that several criminal courts of first instance and public order courts undertook investigations and "preliminary measures" with regard to the facts of the case (supra paras. 95(56) to 95(83)).

173. In the first place, in the context of this investigation, it is evident that there was a failure to use appropriate techniques for the recovery of the remains at the scene of the crime during the exhumation procedures on the "Las Tangas" and "Jaraguay" ranches, conducted based on information provided by the confessed member of the paramilitary group, Rogelio de Jesús Escobar Mejía (supra paras. 95(70) to 95(74)).

174. As a result of the exhumations carried out on those ranches between April 10 and 16, 1990, 24 bodies were found and transferred to the San Jerónimo hospital in Montería. Regarding these measures, the body of evidence contains only two official records and a note on the official procedure for the removal of the bodies (supra paras. 95(71) to 95(73)). Moreover, the official record of the exhumation of corpses of April 12, 1990, signed by the 19th Criminal Court of first instance, during the recovery of the remains found at "Las Tangas" that same day, stated that:

[…] When the work began, a bulldozer was used that apparently belonged to the owner of the ranch, operated by a member of the Elite Corps [of the National Police]; however, the use of this machine had to be suspended owing to mechanical problems. It should be noted that the place where the procedure was carried out is on the left bank of the Sinú River; work continued using picks and shovels to remove the earth […] [FN232]

It is clear that this procedure could have destroyed or lost evidence, even though there is no evidence to prove this.

[FN232] Cf. official record of the exhumation of corpses of April 12, 1990, issued by the 19th Criminal Court of first instance (file of attachments to the requests and arguments brief, tome V, attachment 7(2), folio 1643).

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175. In addition, the negligence of the authorities responsible for the exhumations and the hospital personnel is clear during the procedures for the identification of the bodies in the San Jerónimo Hospital in Montería. The next of kin of those who were disappeared in Pueblo Bello received little or no information or collaboration from these authorities, so that they had to proceed for themselves to examine the corpses which were decomposed and had been thrown on the floor of the "amphitheater" of this hospital (supra para. 95(74)). The State did not contest this fact. The testimonies of Leovigilda Villalba Sánchez, María Cecilia Ruiz de Álvarez, Euclides Manuel Calle Álvarez, Genaro Benito Calderón Ruiz and Manuel Dolores López Cuadro (supra para. 65(b), (d), (g), (h) and (i)) are more than eloquent in this regard.

176. On April 19, 1990, four inhabitants of Pueblo Bello made statements and declared that they had identified the bodies of Ricardo Bohórquez, Andrés Manuel Peroza Jiménez, Juan Luis Escobar Duarte, José Leonel Escobar Duarte, Ovidio Carmona Suárez and Jorge David Martínez

Moreno (supra para. 95(75)). Even though they had not been recognized or identified, the rest of the corpses were buried in a common grave in the San Antonio cemetery in Montería. The authorities responsible for the investigation did not try to reinitiate the search for the bodies in this place or any other. The subsequent procedures were carried out between March 27 and April 7, 1995, when the Technical Investigation Corps of the Prosecutor General's Office exhumed and removed 12 bodies from this cemetery; however, the osseous remains were not examined until June 1997 (supra paras. 95(82) and 95(83)). Moreover, these procedures did not lead to the identification of any of those who disappeared from Pueblo Bello.

177. In this regard, based on the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, this Court has defined the guiding principles that should be observed when it is considered that a death may be due to extrajudicial execution. The State authorities that conduct an investigation must try, as a minimum, inter alia to: (a) identify the victim; (b) recover and preserve the probative material related to the death to contribute to any possible criminal investigation into those responsible; (c) identify possible witnesses and obtain their statements in relation to the death under investigation; (d) determine the cause, method, place and moment of death, as well any pattern or practice that could have caused the death, and (e) distinguish between natural death, accidental death, suicide and murder. In addition, the scene of the crime must be searched exhaustively, autopsies carried out and human remains examined rigorously by competent professionals using the most appropriate procedures. [FN233]

[FN233] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 224; Case of the Moiwana Community, supra note 7, para. 149, and Case of Juan Humberto Sánchez, supra note 189, para. 127 and 132. Likewise, the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

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178. The negligence of the judicial authorities responsible for examining the circumstances of the massacre by the opportune collection of evidence in situ, cannot be rectified by the belated probative measures to seek and exhume mortal remains in the San Antonio cemetery in Montería, and in other places, which the Prosecutor General's Office reinitiated as of February 2003; namely, more than 13 years after the events had occurred. The flaws indicated may be classified as serious failures to comply with the obligation to investigate the facts, because they have negatively affected an effective or better identification of the bodies that were found and determination of the whereabouts of 37 of the 43 alleged victims who remain disappeared.

179. In addition, during the investigation, probative elements were furnished that indicated or referred to the possible participation of members of the Army; for example, a report of the Technical Corps of the Judicial Police dated January 29, 1990, the statements of witnesses and, in particular, those of Rogelio de Jesús Escobar Mejía (supra paras. 95(63), 95(70), 95(78), 65(a) to (d), and 66(a)). Nevertheless, as has been indicated, there is nothing in the body of evidence to show that any of the courts have summoned an Army officer to appear, or any reasons why such an appearance was not ordered subsequently (supra para. 95(85)). The decisions issued in 1993 by the Medellín Delegate Regional Prosecutor only ordered preventive detention measures

against Fidel Castaño Gil and other alleged members of the paramilitary group and not against public officials. Even more relevant is the fact that on February 4, 1994, the Medellín Regional Directorate of the Prosecutor General's Office abstained from considering the possible responsibility of members of the Armed Forces in the facts owing to "the jurisdiction to which they are subject because they were on active service, especially if they were in the so-called public order [units] that require permanent active service. The prosecutor has therefore decided that the criminal responsibility should be determined by an official of the military justice system" (supra para. 95(97)).

180. As of October 19, 1990, the investigation into Fidel Castaño Gil and others being conducted by the Fourth Public Order Court was transferred to the First Public Order Court to be continued in conjunction with the investigation the latter was conducting into the abduction of Manuel Alfonso Ospina Ospina, because it was considered that "the different criminal episodes had the same final motivation." The Court does not consider that the joinder of the investigations for those facts, which occurred at very different times and in very different circumstances, helped improve results with regard to the clarification of the facts.

181. On May 26, 1997, the Medellín Regional Court delivered judgment in first instance, and convicted six individuals involved in the facts of Pueblo Bello for having committed several different crimes, and to different terms of imprisonment (supra para. 95(103)). The judgment was appealed and, on December 30, 1997, the Sentencing Chamber of the Tribunal Nacional confirmed it with some modifications; it was declared final when the Supreme Court of Justice delivered a cassation judgment in March 2001 (supra paras. 95(104) to 95(106)).

182. In its judgment of December 30, 1997, when deciding the appeal filed against the judgment in first instance, the Tribunal Nacional declared that there had been errors in the proceedings up until that time and decreed the partial annulment "concerning [...] the murder of the inhabitants of Pueblo Bello whose bodies have not been identified"; hence, the investigation remained open (supra para. 95(105)). Consequently, impunity reigns as regards the disappearance of the other 37 persons.

183. It is relevant to emphasize the partial impunity that continues in this case, because most of the approximately 60 members of the paramilitary group who took part in the raid on Pueblo Bello have not been investigated, identified or prosecuted. Preventive detention measures and arrest warrants have been issued without any results and, of the six persons convicted, only two are in prison. The State has not provided evidence of any concrete measures designed to capture the suspects or to implement the sentences of those convicted in absentia, or of the specific obstacles encountered. In this regard, the only relevant elements are the official communications from the Prosecutor General's Office reactivating the arrest warrants (supra para. 95(115)).

184. The Court recognizes that the matters under investigation by the domestic judicial bodies in this case are complex and that, to date, the investigations and the criminal proceedings have produced some concrete results, which, although insufficient, have led to the conviction of several members of the paramilitary group that carried out the massacre (supra paras. 95(103), 95(105) and 95(106)). It is true that the massacre was perpetrated in the context of the internal armed conflict that Colombia is experiencing, involved a large number of victims (who were

deprived of life or disappeared), and took place in a remote part of the country, among other factors. However, in this case, the complexity of the matter is related to the flaws that have been verified in the investigation.

185. It has also been proved that one of the next of kin of the disappeared and deprived of live became a civil party to this criminal proceeding and, like ASFADDES, has tried to advance the proceedings on several occasions (supra paras. 95(104), 95(108) to 95(113)). However, as indicated above with regard to the obligatory nature of investigations into this type of facts, it cannot be maintained that the procedural activity of the interested party should be considered determinant in defining the reasonableness of the time of the criminal proceedings in a case such as this one.

186. Moreover, although the cassation judgment of March 8, 2001, produced partial results concerning the deprivation of life of the six persons whose bodies were identified, the disappearance of the other 37 persons has remained at the investigation stage for more than 16 years.

187. In summary, the partial impunity and the ineffectiveness of the criminal proceedings in this case are reflected in two aspects: first, if it is considered that around 60 men took part in the massacre, most of them have not been investigated or have not been identified or prosecuted. Second, the impunity is reflected in the judgment and conviction in absentia of members of the paramilitary group, who have benefited from the action of the justice system that convicted them but has failed to execute the sentence.

188. The Court considers that the investigation and the proceedings conducted in the ordinary criminal jurisdiction have not represented an effective recourse that guaranteed, within a reasonable time, the right of access to justice of the next of kin of those who were disappeared or deprived of life, with full observance of judicial guarantees.

Military criminal jurisdiction

189. Regarding the nature of the military criminal jurisdiction, the Court has established that under the democratic rule of law this jurisdiction must have a restricted and exceptional scope and be designed to protect special juridical interests associated with the functions assigned by law to the military forces. Hence, it should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system, [FN234] irrespective of the fact that, at the time of the facts, the laws of Colombia allowed this jurisdiction to investigate facts such as those of the instant case.

[FN234] Cf. Case of Palamara Iribarne, supra note 11, para. 124; Case of the “Mapiripán Massacre”, supra note 7, para. 202, and Lori Berenson Mejía case. Judgment of November 25, 2004. Series C No. 119, para. 142.

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190. In this regard, the State itself mentioned a 2001 judgment of the Constitutional Court of Colombia when it referred to "the advances achieved in Colombia with regard to human rights, as regards the exercise and proper understanding of the military jurisdiction." [FN235] Already, in 1997, the Constitutional Court had ruled on the scope of the jurisdiction of the military criminal justice system and indicated, inter alia, that:

[…] For a crime to fall within the jurisdiction of the military criminal justice system […] the illegal act must stem from an abuse of power or authority that occurred within the framework of an activity directly associated with a function inherent to the armed forces. […I]f, from the outset, the agent has criminal intentions, and uses his official position to carry out the illegal act, the case corresponds to the ordinary justice system, even when there may be some abstract relationship between the purposes of the armed forces and the illegal act of the agent. [… T]he connection between the criminal act and the activity related to the armed forces is broken when the crime is unusually serious, such as in so-called crimes against humanity. In those circumstances, the case must be attributed to ordinary justice, given the total contradiction between the crime and the constitutional functions of the Armed Forces. [FN236]

[FN235] Cf. final written arguments presented by the State (merits file, tome IV, p. 129, folio 1009).
[FN236] Cf. judgment C-358 of August 5, 1997, issued by the Constitutional Court, p. 33.

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191. Regarding the preliminary inquiry opened in January 1990 by the 21st Military Criminal Trial Court "to determine where there had been a violation of the criminal laws by the troops based in San Pedro de Urabá," less than three months later, this court decided to abstain from opening a criminal investigation (supra para. 95(48)). Although the inquiry was re-opened in August 1990, based on a report made by an officer from this battalion (supra para. 95(49)), three months later the said court merely received this officer's statement and, once again, decided "to abstain from opening a criminal investigation because [it considered that] the fact under investigation had not been committed by a soldier." Finally, after the Prosecutor General's Office abstained from investigating any link between members of the Army and the facts in February 1994 (supra paras. 95(53) and 95(97)), the said court abstained once again in September 1995 from opening any investigation (supra para. 95(55)).

192. On examining the preliminary inquiries conducted by this military criminal body, the Court considers that these few investigatory actions, and the speed with which they were carried out, reflect little or no interest of the military criminal jurisdiction in carrying out a serious and exhaustive investigation into the events that occurred in Pueblo Bello. In that regard, the said court only considered one hypothesis about how the events took place, omitted relevant investigatory actions and did not open a formal criminal investigation. The body of evidence in the instant case does not show whether, during those preliminary procedures, that court received statements that might have been relevant, such as those of Rogelio de Jesús Escobar Mejía, or whether it ordered pertinent measures such as the search for the persons abducted or the exhumation and identification of the bodies buried on the "Las Tangas" ranch. Also, from the decisions taken by this court, it is unclear whether the statements and evidence provided in other

instances was assessed or considered when issuing the resolutions. The record only shows that the court restricted itself to receiving the statements of 12 soldiers, a few of the next of kin of the disappeared and deprived of life who lived in the area, a policeman and a Turbo councilor. Moreover, there is no evidence that the next of kin of the persons disappeared and deprived of life participated in these procedures. In view of the speed of this proceeding – inexplicable in view of the complexity of the matter – it is unnecessary to examine the reasonableness of the time taken by the investigations. In any case, the military criminal jurisdiction was not the appropriate channel for investigating acts such as those committed in this case, so that the investigation may have led to the impunity of some of those responsible for the facts.

193. Consequently, the case law of this Court, the case law of the Constitutional Court of Colombia, and the speed and total lack of interest with which the bodies of the military criminal jurisdiction acted to clarify the facts of the case, allow this Court to conclude that, in addition to this jurisdiction not being the appropriate channel, it did not constitute an effective recourse to investigate the grave violations committed to the detriment of the 43 Pueblo Bello victims, or to establish the truth of the facts and to prosecute and punish those responsible. The proceedings under this system were exceedingly negligent and members of the Armed Forces who could have been involved in the facts were not investigated genuinely.

Disciplinary proceedings

194. The Special Investigations Office of the Attorney General's Office ordered de oficio on January 19, 1990, the opening of a preliminary inquiry into the events of Pueblo Bello; it ordered that statements be received and visits be made to various sites, battalions, military bases and private homes; and on January 26, 1990, based on information provided by some of the next of kin, the Deputy Attorney General's Office requested the Military Headquarters of Urabá to carry out search operations at "Las Tangas" and other sites (supra paras. 95(125) and 95(126)).

195. On February 12, 1990, based on the measures taken up until that date, the Deputy Attorney General's Office decided to refer the preliminary inquiry to the Office of the Delegate Attorney for the defense of human rights, "so that it could order the necessary measures, since there had been a possible violation of Decree No. 085/89 [which established the Armed Forces Disciplinary Regime], by Captain Álvaro Gómez Luque, Commander of the San Pedro de Urabá military base." On April 30, 1990, the said Delegate Attorney's Office decided to open "a formal disciplinary inquiry" to clarify the conduct of the National Army officers who, at the time of the facts, were the commanders of the San Pedro de Urabá military base and the checkpoint in the same place (supra paras. 95(128) and 95(129)).

196. Subsequently, several investigatory measures were taken (supra paras. 95(1300 to 95(135)). On November 27, 1991, the Office of the Delegate Attorney for the defense of human rights decided to absolve the officers who had been the commanders of the San Pedro de Urabá military base and roadblock from the charges that had been filed, due to the "doubt that had arisen in the proceedings concerning the possible disciplinary responsibility of these officers." In this decision, the Office devoted a large part of its analysis to questioning and nullifying the probative value of the statement made by Rogelio de Jesús Escobar Mejía, despite which, it indicated that "it is not possible to reject the alleged participation of a lieutenant and other

soldiers to which he alluded completely, since his statement agrees in part with that of the witnesses […]" (supra para. 95(136)).

197. Later, on September 20, 1996, the Delegate Attorney's Office ordered the opening of a new preliminary inquiry into the possible active conduct of the officers investigated (supra para. 95(141)). On February 12, 1998, the Delegate Attorney's Office ordered a series of measures to be taken (supra para. 95(142)) and on August 16 that year it ordered the opening of a disciplinary investigation against Lieutenant Fabio Enrique Rincón Pulido. On July 31, 2000, the Office of the Delegate Disciplinary Attorney absolved this officer of all disciplinary responsibility, and this was confirmed on February 9, 2001 (supra paras. 95(145) and 95(147)).

198. It should also be noted that these procedures took approximately 11 years from the first procedural actions until the decision in consultation with the Disciplinary Chamber of the Attorney General's Office; this cannot be considered a recourse executed within a reasonable time.

199. It is also relevant to consider the nature of the offences investigated and the mandate of the body in charge of the investigation.

200. The Court appreciates the seriousness and diligence of the investigation carried out by the Office of the Delegate Attorney for the defense of human rights, when ordering the collection and reception of pertinent probative elements and thus becoming the sole national mechanism for investigating the possible connection of members of the Colombian military forces with the events in Pueblo Bello, even in the hypothesis of the forced disappearance of persons. However, the purpose of these investigations was limited to determining the individual responsibilities of a disciplinary nature of a total of three Army officers for the said facts. The investigations carried out did not categorically rule out the participation of members of the Armed Forces or other State security units in the massacre and even left open this possibility. Although, in both proceedings, the Attorney General's Office considered that Escobar Mejía's statement was insufficient evidence to attribute disciplinary responsibility to the officers investigated, who it absolved by according them the benefit of the doubt, it is clear that its decisions did not eliminate the possibility that the Armed Forces were involved in the facts. Even in the decision of July 31, 2000, the Office left open the possibility of the responsibility of the officer in charge of the roadblock based on Escobar Mejía's statement, even though it considered it could not continue the investigation (supra para. 95(145)). Despite this, the other jurisdictions did not consider these possibilities within their respective inquiries and investigations.

201. With regard to the nature of the offences investigated, the accusations formulated in the first part of the proceedings against the two officers in charge of the base and the military roadblock were for "omission by 'Failing to comply opportunely and with due diligence with the obligations and duties of service.'" In the second part of the investigation, it is worth noting that the Attorney General's Office investigated the possible forced disappearance of persons vis-à-vis Article 12 of the Colombian Constitution (prohibition of forced disappearances) and several international norms: the Universal Declaration of Human Rights, the American Convention on Human Rights and the International Covenant on Civil and Political Rights. Despite this, the specific norms on which this second investigation was based were several articles of the

abovementioned Decree No. 085 of 1989 (Armed Forces Disciplinary Regime); moreover, it did not contemplate possible torture or multiple homicide, since it considered that these conducts were time-barred.

202. In the disciplinary jurisdiction, the most significant difficulties encountered by the Attorney General's Office in its investigations, at the beginning of the 1990s, related to evidence, because "evidence was frequently hidden or efforts were made to try and sidetrack the investigation." [FN237] Also, when the armed forces were informed of facts that entailed a disciplinary sanction for any of its members, the military criminal jurisdiction "hastened to hear them and take a favorable decision, which prevented the Attorney General's Office from continuing its work in this respect. Once the internal control mechanisms of the Armed Forces had delivered a ruling, the latter was considered res judicata." [FN238]

[FN237] Cf. Joint report of the Special Rapporteur for torture, Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, submitted in compliance with resolutions 1994/37 and 1994/82 of the Commission on Human Rights of the United Nations Economic and Social Council. Visit to the Republic of Colombia of the Special Rapporteurs from October 17 to 26, 1994, E/CN.4/1995/111 of January 16, 1995, para. 98.
[FN238] Cf. Joint report of the Special Rapporteur for torture, Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Barce Waly Ndiaye, presented in compliance with resolutions 1994/37 and 1994/82 of the Commission on Human Rights of the United Nations Economic and Social Council. Visit to the Republic of Colombia of the Special Rapporteurs from October 17 to 26, 1994, E/CN.4/1995/111 of January 16, 1995, para. 99.

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203. The Court observes that the purpose of the proceedings in this administrative jurisdiction is to determine the individual responsibility of public officials for compliance with their obligations in relation to providing a service. Evidently, the existence of a unit within the Attorney General's Office for dealing with cases of human rights violations has an important protection element, and its results can be assessed to the extent that they contribute to clarifying the facts and establishing this type of responsibilities. However, an investigation of this nature tends to protect the administrative function and the correction and control of public officials, so that, in cases of grave human rights violations, it can complement but not substitute completely the function of the criminal jurisdiction.

204. In conclusion, since the disciplinary procedure carried out by the Office of the Delegate Attorney for the defense of human rights did not constitute a complete investigation into the facts and in view of the limitations inherent in this type of procedure – owing to the nature of the offences investigated and the mandate of the body in charge of the investigations – this procedure did not constitute a sufficient or effective recourse for the respective purposes.

Administrative proceedings

205. Since 2001, the next of kin of 39 of the victims of the Pueblo Bello massacre have filed claims for direct reparation before the Administrative Court of Antioquia, in Medellín, in relation

to the facts of the instant case. The purpose of these claims is for the court to declare "the Colombian Nation - Ministry of National Defense –National Army […] administratively responsible" for pecuniary and non-pecuniary damage, "including the damage arising from alterations in family, social and affective life," caused to the next of kin as a result of the violation of "the rights to life, humane treatment, security, liberty, [to effective judicial protection, judicial guarantees, to the truth and to justice] arising from the collective forced disappearance of the victims […]."

206. In the "Mapiripán Massacre" case, the Court found that the comprehensive reparation of a violation of a right protected by the Convention cannot be reduced to the payment of compensation to the next of kin of the victim. Hence, it took into account some of the results obtained in the administrative proceedings instituted by the next of kin of the victims in that case, considering that the compensation established by those instances for pecuniary and non-pecuniary damage was included in the broadest concepts of pecuniary and non-pecuniary reparations. Thus, the Court indicated that those results could be considered when establishing the pertinent reparations, "on the condition that what was decided in those proceedings has been considered res judicata and is reasonable in the circumstances of the case." [FN239] When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8(1) and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments were delivered at the national level or whether settlements were reached on the civil or administrative responsibility of a State body with regard to the violations committed to the detriment of the next of kin of the persons disappeared or deprived of life, but whether the domestic proceedings allowed real access to justice to be ensured, according to the standards established in the American Convention. [FN240]

[FN239] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 214.
[FN240] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 211.

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207. In this respect, the European Court of Human Rights examined the scope of civil responsibility in relation to the requirements of international protection in Yasa v. Turkey, and found that:

An administrative-law action is a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification is not, by definition, a prerequisite to bringing an action of this nature. However, the investigations which the
Contracting States are obliged [...] to conduct in cases of fatal assault must be able to lead to the identification and punishment of those responsible [...t]hat obligation cannot be satisfied merely by awarding damages [...] Otherwise, [...] the State's obligation to seek those guilty of fatal assault might thereby disappear. [FN241]

[FN241] Cf. European Court of Human Rights. Yasa v. Turkey [GC], judgment of 2 September 1998, Reports of Judgments and Decisions 1998-VI, § 74.

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208. Likewise, in Kaya v. Turkey, the European Court of Human Rights decided that the violation of a right protected by the Convention could not be remedied exclusively by the establishment of civil responsibility and the corresponding award of compensation to the relatives of the victims. [FN242]

[FN242] Cf. European Court of Human Rights. Kaya v. Turkey [GC], judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, § 105.

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209. In this case, the claims were filed starting in 2000 and there is no evidence that any of the proceedings have culminated with judgments, agreements or abandonment of the action. In other words, proceedings have been filed by the next of kin of the persons disappeared and deprived of life, 11 or 12 years after the acts occurred (a lapse of time that cannot be attributed to the State); therefore, it is irrelevant to examine the reasonableness of the time in relation to the time when the facts occurred. Also, in cases of human rights violations, the State has the obligation to make reparation, so that although the victims or their next of kin should have ample opportunity to seek just compensation, this obligation cannot rest exclusively on their procedural initiative or on the contribution of probative elements by private individuals. Thus, in the terms of the obligation to provide reparation that arises from a violation of the Convention (infra paras. 227 to 229), the administrative-law proceedings do not constitute per se an effective and adequate recourse to repair that violation comprehensively.

210. Consequently, since these administrative-law proceedings are still being processed and have not produced concrete results at the date this judgment is delivered, the Court considers it irrelevant, in the circumstances of the instant case, to examine more extensively the scope and characteristics of the administrative-law jurisdiction, as a useful and effective recourse for the effects of a case of this nature, or to assess its application in this case.

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211. Having examined each of the proceedings opened at the domestic level in relation to the events of Pueblo Bello, as well as the general interaction of these proceedings in the context of the impunity that reigned during the period in which they were applied, the Court concludes that the series of failures to comply with the established protection and investigation obligations have contributed to the impunity of most of those responsible for the violations committed. The military command could not have been unaware of an attack on the civilian population of the proportions underscored in this case, in a zone inhabited by paramilitary groups and where such groups were active. Although some of the members of the paramilitary group have been convicted, generalized impunity subsists in this case, since the whole truth about the facts has not been determined and all the masterminds and perpetrators of the facts have not been identified. Moreover, it is relevant that most of the members of the paramilitary group convicted are not serving their sentences because the arrest warrants against them have not been executed.

212. The Court concludes that the domestic procedures and proceedings have not constituted, either individually or as a whole, effective recourses to guarantee access to justice, determination of the whereabouts of the disappeared, the whole truth about the facts, the investigation and sanction of those responsible, and reparation of the consequences of the violations. Consequently the State is responsible for the violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of the persons disappeared and deprived of life in the instant case.

X. ARTICLE 13 OF THE AMERICAN CONVENTION (FREEDOM ON THOUGHT AND EXPRESSION)

Arguments of the Commission

213. The Commission did not allege the violation of Article 13 of the American Convention.

214. Arguments of the representatives

(a) The right to the truth is based on many of the rights enshrined in the Convention (Articles 13, 25 and 1(1)). The right to the truth is a basic and essential consequence for every State Party, and has been developed by international human rights law; its recognition can be a means of reparation;
(b) The right to the truth is also related to the right to freedom of expression, because, society has the non-derogable right to know the truth about what occurred, and the reasons for and circumstances in which hideous crimes are committed; also, nothing should prevent the alleged victims' next of kin from knowing what happened. This access to the truth entails not curtailing their freedom of expression, and
(c) Today, 14 years after the events, neither the next of kin nor society know the complete truth of what happened. Moreover, there has been no final judgment that identifies and sanctions all those responsible. This lack of information constitutes a violation of the State's obligation to inform society about matters that are of evident public interest and of the right to the truth of the alleged victims' next of kin.

Arguments of the State

215. Although the State did not refer to the alleged violation of Article 13 of the American Convention, in its final arguments it stated that it contested the allegation of the representatives that the State had violated the right of the alleged victims, their next of kin and society to know the truth about the facts, and the guarantee of the right to freedom of expression.

Findings of the Court

216. Article 13 of the American Convention establishes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

(a) respect for the rights or reputations of others; or

(b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

217. The Court observes that the representatives claimed that the State should be declared responsible for the violation of Article 13 of the Convention, in relation to Articles (1) and 25 thereof, on the grounds that the right to the truth of the victims and of Colombian society is included in these provisions.

218. As the Court has established previously, and reiterated recently in Palamara Iribarne v. Chile, Article 13 of the Convention may be violated under two different circumstances, depending on whether the violation results in the denial of freedom of expression or only imposes restrictions that are not authorized or legitimate. [FN243] Not every breach of Article 13 of the Convention constitutes an extreme violation of the right to freedom of expression, which occurs when the public authorities establish mechanisms to impede the free circulation of information, ideas, opinions or news. Examples of this are prior censorship, the seizure or prohibition of publications and, in general, any procedure that subjects the expression or dissemination of information to the State's control. In these circumstances, there is a violation of both the right of each individual to express himself and of the right of everyone to be well informed, so that one of the basic requisites of a democratic society is affected. [FN244]

[FN243] Cf. Case of Palamara Iribarne, supra note 11, para. 68; Case of Ricardo Canese, supra note 211, para. 77, and Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 del November 13, 1985. Series A No. 5, paras. 53 and 54.

[FN244] Cf. Case of Palamara Iribarne, supra note 11, para. 68; Case of Ivcher Bronstein. Judgment of February 6, 2001. Series C No. 74, para. 152, and Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, supra note 243, para. 54.

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219. Regarding, the so-called right to the truth, the Court has understood this as part of the right of access to justice, as a reasonable expectation that the State must satisfy to the victims of human rights violations and to their next of kin, and as a form of reparation. Consequently, in its case law, the Court has examined the right to truth in the context of Articles 8 and 25 of the Convention, and also in the chapter on other forms of reparation. [FN245] As the Court indicated recently in Blanco Romero v. Venezuela, it does not consider that the right to the truth is an

autonomous right embodied in Articles 8, 13, 25 and 1(1) of the Convention, as the representatives allege. The right to the truth is subsumed in the right of the victim or the next of kin to obtain from the competent State bodies the clarification of the illegal facts and the corresponding responsibilities, by investigation and prosecution. [FN246]

[FN245] Cf. Case of Blanco Romero et al., supra note 10, para. 95; Case of Gómez Palomino, supra note 10, para. 78, and Case of the "Mapiripán Massacre", supra note 7, para. 297.
[FN246] Cf. Case of Blanco Romero et al., supra note 10, para. 62; Case of the Serrano Cruz Sisters, supra note 214, para. 62, and Case of the Plan de Sánchez Massacre. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 97.

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220. In this case, the representatives have not proved specifically that the State curtailed the freedom of expression of the next of kin of the persons disappeared and deprived of life, by eliminating it or restricting it beyond what is legitimately allowed. In keeping with its case law, the right to the truth of the next of kin has been considered when declaring the violation of Articles 8(1) and 25 of the Convention in relation to Article 1(1) thereof (supra paras. 170, 171, 178, 182, 183, 187, 192, 204, 211 and 212), and also in the reparations (infra paras. 265 to 273). Consequently, the Court considers that the State has not violated Article 13 of the American Convention.

XI. ARTICLE 22 OF THE AMERICAN CONVENTION (FREEDOM OF MOVEMENT AND RESIDENCE)

Arguments of the Commission

221. The Commission did not allege the violation of Article 22 of the American Convention.

Arguments of the representatives

222. In their allegations during the public hearing, the representatives stated that:

(a) The facts of January 14, 1990, in Pueblo Bello have obliged the alleged victims' next of kin to undergo forced displacement from the place where they lived and worked and, 15 years after the facts occurred, they have been unable to return without fear to the jurisdiction and, in most cases, to their previous conditions and quality of life, and
(b) In the instant case, the State has not guaranteed the right of the alleged victims' next of kin to live and remain in Pueblo Bello and it has not re-established the conditions or provided the means that would allow them to return voluntarily to the jurisdiction, without fear, and with security and dignity.

223. In their final written arguments, in addition to confirming their allegations during the public hearing, the representatives alleged that:

(a) Although they had not referred to the displacement of the alleged victims' next of kin in their requests and arguments brief, the facts presented in the application, explained, clarified and proved by both the Commission and the representatives during the proceedings before the Court, allow it to be established that forced internal displacement occurred and, thus, Article 22(1) of the Convention was violated, which the Court can declare by applying the iura novit curia principle, and

(b) The way in which the paramilitary group raided Pueblo Bello, the absolute absence of a response from the authorities in the days immediately following the raid, and the subsequent illegal occupation by the paramilitary groups of the jurisdiction and region of Urabá in the context of the armed conflict, obliged the alleged victims' next of kin to leave the village, in many cases abandoning their belongings, their homes and their land. In other cases, the next of kin were obliged to sell or give away their property.

Arguments of the State

224. The State did not refer to the alleged violation of Article 22 of the American Convention.

Findings of the Court

225. The alleged violation of Article 22 of the Convention to the detriment of the next of kin of the persons disappeared and deprived of life, owing to their forced internal displacement, was alleged for the first time by the representatives during the presentation of their final oral arguments at the public hearing. The Court observes that the proven facts have established that several of the next of kin of those persons suffered different forms of displacement related to the facts of the case (supra para. 95(161)). However, this information was not included among the facts presented by the Commission in the application. These displacements took place at different times, although all of them occurred before the case was filed before the Court; hence, they cannot be classified as new facts in the proceedings and it cannot be considered that the representatives did not know about them when submitting their requests and arguments. Furthermore, although the alleged victims, their next of kin or representatives are able to submit their own requests, arguments and evidence in the proceedings before this Court (supra para. 54 to 56), respecting the adversarial principle, and the procedural principles of defense and due process, this possibility does not exempt them from presenting them at the first procedural opportunity granted to them for this purpose; that is, in their requests and arguments brief. Consequently, since the facts on which the allegation of the representatives is based are not contained in the application, and they did not submit this alleged violation of Article 22 of the Convention at the opportune procedural moment, the Court will not examine these allegations or rule on them.

XII. REPARATIONS (Application of Article 63(1) of the American Convention)

226. In accordance with the finding on merits set forth in the preceding chapters, and based on the facts of the case, the Court has declared the violation of Articles 4(1), 5(1), 5(2), 7(1) and 7(2), 8(1) and 25 of the American Convention, all in relation to Article 1(1) thereof. The Court has indicated repeatedly that any violation of an international obligation that has produced

damage entails the obligation to repair it adequately. [FN247] To this end, Article 63(1) of the American Convention establishes that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN247] Cf. Case of Blanco Romero et al., supra note 10, para. 67; Case of García Asto and Ramírez Rojas, supra note 10, para. 246, and Case of Gómez Palomino, supra note 10, para. 112.

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227. This article reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility. Thus, when an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN248]

[FN248] Cf. Case of Blanco Romero et al., supra note 10, para. 68; Case of García Asto and Ramírez Rojas supra note 10, para. 247, and Case of Gómez Palomino, supra note 10, para. 112.

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228. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (restitutio in integrum), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and, inter alia, compensation is established for the damage caused. [FN249] The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) is regulated by international law. [FN250]

[FN249] Cf. Case of Blanco Romero et al., supra note 10, para. 69; Case of García Asto and Ramírez Rojas, supra note 10, para. 248, and Case of Gómez Palomino, supra note 10, para. 113.
[FN250] Cf. Case of Blanco Romero et al., supra note 10, para. 69; Case of García Asto and Ramírez Rojas, supra note 10, para. 248, and Case of Gómez Palomino, supra note 10, para. 113.

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229. Reparations consist of measures tending to eliminate the effects of the violations that have been committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage that as been caused. Reparations should not make the victims or their successors either richer or poorer. [FN251]

[FN251] Cf. Case of Blanco Romero et al., supra note 10, para. 70; Case of Gómez Palomino, supra note 10, para. 114, and Case of Palamara Iribarne, supra note 11, para. 235.

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230. In light of these criteria and the circumstances of the instant case, the Court will proceed to examine the claims submitted by the Commission and the representatives regarding the reparations, so as to order measures designed to repair the damage in this case.

A) BENEFICIARIES

Arguments of the Commission and the representatives

231. The 43 victims (supra para. 95(35)) mentioned by the Commission in its application and also their next of kin are the beneficiaries.

232. Arguments of the State

(a) The State does not accept any responsibility for the facts on which this case is based and, therefore, does not recognize any procedural obligation to provide reparation;
(b) The State abides by the evidence provided to the Court regarding the identification of the beneficiaries, and
(c) The representatives have presented as possible beneficiaries persons who are not included in the Court's case law, based on the presumption of suffering. Therefore, since no specific evidence has been presented that proves the genuine suffering they underwent for the death or disappearance of the 43 inhabitants of Pueblo Bello, they should be excluded from any pecuniary compensation. In this regard, the State called for the compensation requested for distant relatives to be rejected, because no hard evidence had been offered proving damage caused based on a close family relationship.

Findings of the Court

233. The Court will proceed to determine who should be considered an "injured party" in the terms of Article 63(1) of the American Convention and, consequently, merit the reparations established by the Court for both pecuniary and non-pecuniary damage, when applicable.

234. First, the Court considers that the 37 persons disappeared and the six persons deprived of life are the "injured party" as victims of the violations indicated above (supra para. 95(35) and 153)).

235. Furthermore, the Court considers that the immediate family of the 43 victims are the "injured party" in their own capacity as victims of the violation of the rights embodied in Articles 5(1), 8 and 25 of the American Convention, in relation to Article 1(1) thereof (supra paras. 154 to 162 and 212). Pursuant to its case law, [FN252] the Court considers that the adequately identified immediate family of the persons disappeared and deprived of life includes

their mothers, fathers, sisters, brothers, wives, companions and children, whose names appear in a document issued by a competent authority proving their relationship, such as a birth certificate or a baptismal certificate, submitted to the Court.

[FN252] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 257; Case of the Moiwana Community, supra note 7, para. 178, and Case of the Plan de Sánchez Massacre, supra note 246, para. 63.

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236. The next of kin of the victims are beneficiaries of the reparations established by the Court for non-pecuniary and/or pecuniary damage as victims of the violations of the Convention that have been declared, and also of the reparations established by the Court as successors of the 37 victims disappeared and the six deprived of life.

237. With regard to the immediate next of kin, concerning whom no official documentation has been submitted or the documentation submitted does not confirm the relationship, the Court establishes that the compensation that corresponds to them for the non-pecuniary damage suffered will conform to the parameters established for the next of kin of the victims who have been duly identified (supra para. 236 and infra para. 240), provided they submit the official information necessary to identify themselves and prove their relationship to the competent authorities of the State, within 24 months of notification of this judgment.

238. Yoliva del Carmen Romero Benítez, Nayibe Romero Benítez and María Elena Jiménez Zabala, who were brought up by Ángel Benito Jiménez Julio, will be considered to be his daughters, for the effects of their participation in the distribution of the compensation. Luz Dary Delgado Pérez, niece of Raúl Antonio Pérez Martínez, was brought up with him, so that she will be considered a sister for the effects of her participation in the distribution of the compensation.

239. Also, Macrina Onelia Martínez Paternina, mother of Manuel de Jesús Montes Martínez; Dora Isabel Tuberquia Petro, companion of Genor José Arrieta Lora; Gloria de Jesús Petro Pérez, companion of Luis Miguel Salgado Berrío, and Dormelina Barba Monterrosa, companion of Andrés Manuel Perosa Jiménez, will receive additional compensation, because they were pregnant when their next of kin disappeared.

240. The compensation for pecuniary and non-pecuniary damage will be distributed among the next of kin of the persons deprived of life or disappeared as follows: [FN253]

a) Fifty per cent (50%) of the compensation will be shared in equal parts between the victim's children and the other fifty per cent (50%) of the compensation will be delivered to the person who was the wife or permanent companion of the victim at the time he disappeared or was deprived of his life. In the case of the wife and the permanent companion of Miguel Ángel Gutiérrez Arrieta and Ricardo Bohórquez Pastrana, and of the companions of Juan Miguel Cruz and Benito José Pérez Pedroza, the corresponding compensation will be shared between them in equal parts.

b) In the case of a victim who had no children, wife or permanent companion, the compensation will be distributed as follows: fifty per cent (50%) will be awarded to his parents. If one of them is deceased, the corresponding part will be added to the part awarded to the other. The other fifty per cent (50%) will be shared equally among the victim's siblings, and

c) Should a victim have no next of kin in any of the categories defined in the preceding subparagraphs, the amount that would have corresponded to the next of kin in these categories will be shared out proportionately to the part corresponding to the others.

[FN253] Cf. Case of Blanco Romero et al., supra note 10, para. 72; Case of the "Mapiripán Massacre", supra note 7, para. 259, and Case of the 19 Merchants, supra note 192, para. 230.

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241. In the case of the next of kin of the persons allegedly disappeared or deprived of life, who are beneficiaries of the compensation awarded in this judgment and who are deceased or who die before the respective compensation is delivered to them, the criteria for the distribution of the compensation indicated in the preceding paragraph apply.

242. In accordance with these considerations, the names and relationships of the persons disappeared and deprived of life and their next of kin who have been identified in these proceedings are indicated in Appendix II of this judgment.

B) PECUNIARY DAMAGE

Arguments of the Commission

243. The Commission requested the Court to establish, in equity, the amount of the compensation corresponding to indirect damage and loss of earnings. In this regard, it stated that the alleged victims' next of kin suffered multiple consequences owing to the loss of their sons, brothers, companions and fathers, who, in many case, supported the household financially. Moreover, the surviving next of kin became victims of displacement, persecution and fear. They also had to absorb financial losses and ceased receiving their usual income that was necessary for their survival.

244. Arguments of the representatives

(a) Regarding indirect damage, they requested the Court to order the State to pay compensation in favor of the next of kin of the alleged victims for the pecuniary damage suffered owing to the latter's detention, disappearance, torture and subsequent execution, because:

i. The next of kin took numerous measures to find the alleged victims and these measures involved transportation costs;

ii. The next of kin have taken many measures before different judicial and non-judicial authorities, to try and clarify the facts and recover their loved ones, and

iii. The next of kin of the six alleged victims whose bodies were found, also incurred burial expenses.

(b) Regarding loss of earnings, they stated that:

i. The alleged victims were peasants who cultivated the land and carried out other small-scale agricultural activities. Consequently, they did not keep rigorous accounting records in relation to the tax and accounting requirements usually required and accepted by the State;

ii. When there is uncertainty about the income earned by an individual, such as in the instant case, it is possible to use a method based on the minimum amount necessary for a person with a family to subsist. In Colombia a minimum wage is established that attempts to respond to the minimum income that a family requires to satisfy its basic needs. The salary that would have been earned at the time of the facts should be used, converted to its current value, and

iii. According to the calculation of the wages and the age of the alleged victims at the time of their detention, the total amount to be compensated is 10,536,596,944 pesos (US$4,100,991).

245. Arguments of the State

(a) The State requested the Court to abstain from ordering it to recognize and pay any compensation for reparations until the national judicial authorities before whom the pertinent proceedings were ongoing had delivered a ruling, because it would be illegal. It made this request aware of the fact that it was not possible to invoke provisions of domestic law to contest the decisions of the Court;

(b) Should the Court consider it admissible to quantify the pecuniary damage, the State would abide by the evidence it had provided to the Court, and

(c) The non-existence of wages should be presumed in the case of those who were minors at the time of their disappearance, in the absence of evidence to the contrary. Likewise in the case of those who, although adult, were under 25 years of age, which is when domestic legislation considers that a young person is completely free of the support provided by his parents. In the case of those who were over 25 years of age, it is possible to presume an income equivalent to the legally established minimum wage (updated each year), with regard to the income that the victims would presumably have received from the time of the facts until delivery of the judgment. In order to calculate future income, it would be necessary to apply the table of life expectancy in Colombia in rural areas, updating the value of the minimum salary in accordance with the national rate of inflation over the last two years, and bring the result to its current value. In both cases, 25 per cent should be subtracted, according to the Court's case law.

Findings of the Court

246. In this section, the Court will determine what should be awarded for pecuniary damage and will establish a amount that seeks to compensate the pecuniary consequences of the violations that have been declared in this judgment, [FN254] bearing in mind the circumstances of the case, the evidence provided, its case law, and the relevant arguments submitted by the Commission, the representatives and the State.

[FN254] Cf. Case of Blanco Romero et al., supra note 10, para. 78; Case of Gómez Palomino, supra note 10, para. 124; Case of Palamara Iribarne, supra note 11, para. 238.

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247. The Court considers that pecuniary damage should be calculated on the basis of probative elements that allow the real damage to be ascertained. [FN255] In the instant case, the Court is unable to determine the pecuniary damage caused to the next of kin of the persons disappeared and deprived of life because, in the circumstances of this case, some of the said next of kin had to leave Pueblo Bello, so that it is understandable that they do not have the necessary vouchers. It is possible that several of them were obliged to leave their homes abruptly taking only essential items. Also, there is insufficient evidence to determine the loss of income of most of the victims. Furthermore, in the case of the minors, Manuel de Jesús Montes Martínez, José Encarnación Barrera Orozco and Miguel Antonio Pérez Ramos, there is nothing to help establish what kind of activity or profession they would have exercised in the future.

[FN255] Cf. Case of he "Mapiripán Massacre", supra note 7, para. 276; Case of the "Juvenile Reeducation Institute", supra note 17, para. 288; Case of Molina Theissen. Judgment of May 4, 2004. Series C No. 106, para. 57, and Case of Bulacio, supra note 192, para. 84.

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248. Nevertheless, taking into account the context and the circumstances of the case, life expectancy in Colombia in 1990, and that the agricultural activities carried out by most of the persons disappeared and deprived of life contributed to the subsistence of their families, the Court establishes compensation for the next of kin for the loss of earning of those 43 persons, based on the principle of equity, [FN256] as set out in Appendix I of this judgment.

[FN256] Cf. Case of Blanco Romero et al., supra note 10, para. 80; Case of García Asto and Ramírez Rojas, supra note 10, para. 261, and Case of Gómez Palomino, supra note 10, para. 125.

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249. Moreover, the Court presumes that the next of kin of the six victims deprived of life and whose remains were returned to them, assumed the burial expenses, so the Court establishes, based on equity, a compensation of US$5,000.00 (five thousand United States dollars) to each family of the said victims. This amount has been added to the amounts detailed in Appendix I of this judgment.

250. The Court abstains from ordering compensation in favor of the next of kin of the 37 persons disappeared and the six deprived of life in this proceeding with regard to other losses of a material nature that they may have incurred. However, it indicates that the award of reparations in this international instance does not preclude the said next of kin from filing the pertinent claims before the national authorities.

251. Regarding the proceedings for direct reparation instituted by the next of kin of the persons disappeared and of those deprived of life that are still pending before the Colombian administrative-law jurisdiction (supra paras. 95(148) to 95(158)), the Court establishes the pertinent reparations in this judgment, irrespective of their current status. When the State pays

the compensation that has been established, it should inform the courts that are hearing the said proceedings so they can take the appropriate decisions.

C) NON-PECUNIARY DAMAGE

Arguments of the Commission and the representatives

252. They requested that, given the grave circumstances of the instant case, the Court should order the payment of compensation, based on equity and on the characteristics of the disappearance and death of the alleged victims.

253. Arguments of the State

(a) The State requested the Court to abstain from ordering it to recognize and pay any compensation for reparations until the national judicial authorities before whom the pertinent proceedings were ongoing had delivered a ruling, because it would be illegal. It made this request aware of the fact that it was not possible to invoke provisions of domestic law to contest the decisions of the Court;
(b) Should the Court consider that compensation was admissible, the State would abide by the evidence it had provided to the Court with regard to the quantification of non-pecuniary damage, and
(c) Colombia commends the Court's motives for incorporating norms on non-pecuniary damage. However, regarding the amounts for compensating damage deriving from to State responsibility, the Colombian Council of State has been establishing amounts that differ from those of the Inter-American Court when it finds that the State has caused an illegal damage to an individual, and these should be taken in account.

Findings of the Court

254. Non-pecuniary damage can include the suffering and hardship caused to the direct victims and their next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victims. Since it is not possible to allocate a precise monetary equivalent for non-pecuniary damage, it can only be compensated in two ways in order to provide comprehensive reparation to the victims. First, by the payment of a sum of money that the Court decides by the reasonable exercise of judicial discretion and based on the principle of equity, or by means of compensation such as granting or providing specific goods or services. And, second, by acts or projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure it does not happen again. [FN257] Such acts have the effect of acknowledging the dignity of the victims and consoling their next of kin.

[FN257] Cf. Case of Blanco Romero et al., supra note 10, para. 86; Case of García Asto and Ramírez Rojas, supra note 10, para. 267, and Case of Gómez Palomino, supra note 10, para. 130.

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255. As the Court has indicated in other cases, [FN258] the non-pecuniary damage inflicted on the victims is evident, because it is inherent in human nature that all those subjected to brutal acts in the context of this case experienced intense suffering, anguish, terror and insecurity, so that this damage does not have to be proved.

[FN258] Cf. Case of the "Mapiripán Massacre", supra note 7, para. 283; Case of Tibi, supra note 192, para. 244, and Case of the "Juvenile Reeducation Institute", supra note 17, para. 300.

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256. As has been established, before being disappeared and deprived of life, the 43 persons were deprived of liberty and subjected to inhumane treatment (supra para. 95(33)). The next of kin of the persons disappeared and deprived of life have suffered harm as a result of their disappearance or death, owing to the lack of support from the State authorities in an effective search for the disappeared and the fear to begin or continue their own search for their family members. Since most of the victims are disappeared, their immediate family have not been able to honor their loved ones appropriately. The absence of a complete and effective investigation into the facts and the partial impunity constitute an additional source of suffering and anguish for the next of kin. All the foregoing, in addition to affecting their mental integrity, has had an impact on their social and labor relations, altered the dynamics of their families and, in some cases, jeopardized the life and physical integrity of some of the family members (supra para. 95(161)).

257. With regard to the next of kin of the persons disappeared and deprived of life, the Court reiterates that the suffering caused to a victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim." [FN259] In addition, the Court has presumed that the suffering or death of a person causes their children, spouse or companion, mother, father and siblings a non-pecuniary damage that need not be proved. [FN260]

[FN259] Cf. Case of the Serrano Cruz Sisters, supra note 214, para. 159; Case of the Gómez Paquiyauri Brothers, supra note 188, para. 218, and Case of 19 Merchants, supra note 192, para. 249.

[FN260] Cf. Case of the 19 Merchants, supra note 192, para. 229; Case of Maritza Urrutia, supra note 190, para. 169; Case of Myrna Mack Chang, supra note 197, paras. 245 and 264, and Case of Bulacio, supra note 192, para. 98.

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258. International case law has established repeatedly that the judgment constitutes per se a form of reparation. However, owing to the gravity of the facts in the instant case and the situation of partial impunity, the intensity of the suffering caused to the victims, the alterations in their living conditions, and the other consequences of a non-pecuniary nature, the Court considers it necessary to order the payment of compensation for non-pecuniary damage, based on

the principle of equity, [FN261] which must be awarded as stipulated in paragraphs 236, 237 and 240 of this judgment, and in accordance with the following parameters:

(a) For each of the 37 victims disappeared and the six deprived of life, the Court established the amount of US$30,000.00 (thirty thousand United States dollars);
(b) At the time of their disappearance, three of the victims were minors: Manuel de Jesús Montes Martínez, José Encarnación Barrera Orozco and Miguel Antonio Pérez Ramos. Consequently, it can be presumed that the suffering caused by the facts of the case assumed particularly intense characteristics in their regard. Therefore, the damage referred to in the preceding paragraph must be compensated, based on equity, in each case, with the amount of US$5,000.00 (five thousand United States dollars), which will increase the amount indicated above;
(c) For the immediate next of kin of the victims, the Court considers that the corresponding damage must be compensated by payment in their favor of the amounts indicated below:
i. US$10,000.00 (ten thousand United States dollars) in the case of the mother, father, wife or permanent companion and each child of the 37 victims disappeared;
ii. US$8,000.00 (eight thousand United States dollars) in the case of the mother, father, wife or permanent companion and each child of the six victims deprived of life;
iii. US$500.00 (five hundred United States dollars) in the case of each sibling of the disappeared and deprived of life, and
iv. These amounts will be increased by the payment of US$2,000.00 (two thousand United States dollars) to Macrina Onelia Martínez Paternina, mother of Manuel de Jesús Montes Martínez, Dora Isabel Tuberquia Petro, companion of Genor José Arrieta Lora, Gloria de Jesús Petro Pérez, companion of Luis Miguel Salgado Berrío, and Dormelina Barba Monterrosa, companion of Andrés Manuel Perosa Jiménez, who were pregnant when the men disappeared.

[FN261] Cf. Case of Blanco Romero et al., supra note 10, para. 87; Case of García Asto and Ramírez Rojas, supra note 10, para. 268, and Case of Gómez Palomino, supra note 10, para. 131.
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259. Based on the above, the amounts to be paid as compensation for the non-pecuniary damage caused by the violations declared in this case, in favor of the persons disappeared or deprived of life and of their next of kin, are indicated in Appendix II of this judgment.

D) OTHER FORMS OF REPARATION (Measures of satisfaction and guarantees of non-repetition)

Arguments of the Commission

260. It requested the Court to order the State to:

(a) Adopt the necessary measures to find the remains of the alleged victims so that the next of kin could complete the mourning process for their loved ones; thus, to some extent helping repair the damage caused;

(b) Conduct an exhaustive judicial investigation into the facts of this case, which identifies all those responsible, both perpetrators and masterminds, as well as the State agents whose acquiescence made it possible to commit the violations of the Convention; and, as a result of this judicial investigation, criminally sanction those responsible;
(c) Publicize the result of the judicial proceedings to contribute to the right to the truth of the alleged victims' next of kin and of Colombian society as a whole;
(d) Promote the effective execution of the arrest warrants issued by the judicial authorities, and
(e) Organize, in consultation with the next of kin, a symbolic act of acknowledgement designed to recover the historical memory of the disappeared victims.

Arguments of the representatives

261. They requested the Court to order the State to:

(a) Conduct an investigation that clarifies the facts, and identifies the participants and allows them to be brought to trial in a hearing that establishes responsibilities and imposes sanctions that correspond to the gravity of the facts;
(b) Carry out any necessary action to establish the whereabouts of all the persons disappeared and to return their remains to their next of kin;
(c) Complete the investigation initiated in the ordinary justice system effectively and in accordance with the international obligations that it has assumed freely;
(d) Apologize to the next of kin, through the President of the Republic, in a public act broadcast on the State television channels with national coverage and in two channels with regional coverage in the departments of Córdoba and Antioquia. The most high-ranking military, police, and judicial authorities should take part in this act, together with the next of kin of the alleged victims, the members of the community affected, the petitioners, the national human rights community, and also the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights;
(e) Guarantee sufficient resources to build a sports center in the jurisdiction of Pueblo Bello in memory of the alleged victims and to help re-establish the community following the damage caused. The sports center should contain a plaque with the names of the alleged victims reading "In memoy of the victims of Pueblo Bello," and indicating the date of the facts, a general mentioned that members of paramilitary groups participated in them with the acquiescence and collaboration of members of the Armed Forces and law enforcement personnel, and recording that the Inter-American Court found the State responsible for the massacre, with the date of the judgment;
(f) Take the opportune and necessary measures to ensure that the land where the alleged victims were tortured and murdered is converted into national parks belonging to the public to recall the facts, the authors, at least in general, mentioning that members of paramilitary groups with the acquiescence and collaboration of members of the Armed Forces and law enforcement personnel committed the acts and that these actions gave rise to the State's responsibiity for the violations, and to preserve the memory and dignity of the alleged victims. If the ownership, possession or legimate tenure of the ranches where the facts occurred does not correspond to the members, next of kin or "front" men of the paramilitary group led, among others, by Fidel Castaño, Carlos Castaño and Salvatore Mancuso, the State should compensate the owners,

possesors and titleholders in good faith in order to obtain possession and control of this land. Before dedicating the land to any use, the State must ensure that the search for the 37 Pueblo Bello peasants who were detained and disappeared is carried out in conditions of adequate security, and

(g) Publicize this judgment of the Court in print and audio-visual media so that the facts that occurred will not be repeated. The State must commit to divulge and disseminate it, because this will ensure society's right to know the truth.

262. The representatives also alleged that the Court should order the State to undertake to guarantee non-repetition of the facts, and to this end, it should:

(a) Create a truth commission or group composed of experts with recognized credibility that will contribute to clarifying the scope and extent of the paramilitary phenomenon in the region of Urabá, suggest measures to eliminate the paramilitary groups so that they are never used again under any circumstances, and help unravel the connections and support these groups have in the zone. This group should be given six months to perform these tasks, after which they should report to the Court in a public hearing in the presence of the parties;

(b) Carry out the necessary legislative, administrative and public order measures to:

i. Dismantle the paramilitary groups, particularly those led by Carlos Castaño, Fidel Castaño and Salvatore Mancuso. In this regard, the State should be ordered to promote the dismissal from the Army or law enforcement bodies of any member regarding whom there are credible and consistent accusations of connections with paramilitary groups;

ii. Guarantee that it will keep open the investigations in the ordinary jurisdiction until the bodies of the 37 victims who have not yet been identified are found and also ensure that all the perpetrators are individualized and prosecuted, in proceedings with full guarantees and, if found guilty, sentenced to penalities that are proportionate to the gravity of the violations committed, and

iii. Guarantee, by means of mechanisms and procedures that are respectful of human rights, the restitution of the property, both movables and immovables, that was abandoned by the owners, possessors or holders, who were obliged to displace.

(c) Process the criminal cases in keeping with the standards established in the American Convention and the Inter-American Convention on Forced Disappearance of Persons and, in particular, undertake to process them in the civil rather than the military jurisdiction. In this regard, they also requested the Court to recommend that the State deposit the instrument ratifying the Inter-American Convention on Forced Disappearance of Persons;

(d) Avoid the use of mechanisms such as amnesty, the statute of limitations, and creating excuses to avoid responsibility, as well as measures that seek to prevent criminal prosecution or eliminate the effects of final judgments, and

(e) Guarantee to the next of kin that it will undertake a genuine and exhaustive search for the alleged victims so that they can return to their families or their remains can be returned to the latter.

263. Arguments of the State

(a) The criminal investigations continue, monitored by the petitioners in their capacity as the claimant, and important measures have been taken to achieve the full identification of the alleged victims and to locate their mortal remains;
(b) Those responsible have been fully identified and recognized as such by society, taking into account the publicity given to the judgments convicting them in the proceedings relating to the case;
(c) The authorities are making every possible effort to capture the individuals who have been declared responsible for these facts by the judicial authorities, and
(d) Every State institution is utterly determined to combat all illegal armed groups. The effectiveness of the law enforcement bodies is reflected by the operational results obtained, strictly respecting human rights, humanitarian principles, constitutional mandates and legal procedures.

Findings of the Court

264. In this section the Court will determine the measures of satisfaction, which are not of a financial nature, that seek to repair the non-pecuniary damage, and will order measures of a public scope or repercussion. [FN262] These measures have special relevance in this case owing to the extreme gravity of the facts.

[FN262] Cf. Case of Blanco Romero et al., supra note 10, para. 93; Case of García Asto and Ramírez Rojas, supra note 10, para. 276, and Case of Gómez Palomino, supra note 10, para. 136.

(a) Obligation of the State to investigate the facts of the case and identify, prosecute and sanction those responsible

265. The Court has established in this judgment that the investigations conducted by Colombia into the Pueblo Bello massacre which took place on January 14, 1990, have not complied with the standards of access to justice and judicial protection established in the American Convention (supra para. 169 to 212).

266. The Court reiterates that the State is obliged to combat this situation of impunity by all available means, since it fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin, who have the right to know the truth about the facts. [FN263] When this right to the truth is recognized and exercised in a specific situation, it constitutes an important measure of reparation, and is a reasonable expectation of the victims that the State must satisfy. [FN264]

[FN263] Cf. Case of Gómez Palomino, supra note 10, para. 76; Case of the “Mapiripán Massacre”, supra note 7, para. 297, and Case of the Moiwana Community, supra note 7, para. 203.

[FN264] Cf. Case of Blanco Romero et al., supra note 10, para. 95; Case of the "Mapiripán Massacre", supra note 7, para. 297, and Case of the Moiwana Community, supra note 7, para. 204.

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267. In light of the above, the State must implement forthwith the necessary measures to activate and complete effectively, within a reasonable time, the investigation to identify all the masterminds and perpetrators of the massacre and those responsible, by act or omission for the failure to comply with the State's obligation to ensure the violated rights. The State should complete the criminal proceedings in the ordinary criminal jurisdiction, in a way that allows all the facts to be clarified and those responsible to be sanctioned, and ensures that the sentences that have already been imposed are served. The results of the proceedings must be publicized by the State, so that Colombian society may know the truth about the facts of this case.

268. To comply with the obligation to investigate and sanction those responsible in the instant case, Colombia must: (a) remove all the obstacles, de facto and de jure, that maintain impunity; (b) use all available means to expedite the investigation and the respective proceedings, and (c) grant adequate guarantees of security to the next of kin of the persons disappeared and deprived of life, investigators, witnesses, human rights defenders, judicial employees, prosecutors and other agents of the justice system, as well as to the former and actual inhabitants of Pueblo Bello.

269. The State must adopt the administrative, legislative and any other pertinent measures to ensure that the human rights violations committed are investigated effectively in proceedings in which all judicial rights are granted so as to combat the partial impunity that exists in this case and, thus, avoid the repetition of such serious events as those that occurred in the Pueblo Bello massacre. Every six months, the State must inform the Court of the measures adopted in this respect and, in particular, about the results.

(b) Search for, identification and burial of the victims of the Pueblo Bello massacre

270. The Court considers it essential, for the effects of reparation, that the State should seek and identify the disappeared victims. The Court has taken into consideration the actions undertaken by the State to recover the remains of the disappeared, but they have not been either sufficient or effective. The State must complete this task, as well as any other that may be necessary and, to this end, it must use all possible technical and scientific means, in keeping with the pertinent norms, such as those established in the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, and also the Report of the Secretary-General on human rights and forensic science presented in accordance with resolution 1992/24 of the Commission on Human Rights of the United Nations Economic and Social Council.

271. Irrespective of these specific actions, the State must guarantee that the respective official entities use these norms as part of their equipment in the search and identification of persons disappeared or deprived of life.

272. To ensure that the identification of the Pueblo Bello massacre victims who are disappeared is viable and effective, as well as the recovery of their remains and the return of the remains to their next of kin, the State must broadcast on one radio station and one television channel and publish in one newspaper, all with national and regional coverage in the departments of Córdoba and Urabá, an announcement requesting the public to provide pertinent information and indicating the authorities in charge of these measures.

273. When the mortal remains are found and identified, the State must return them to their next of kin as soon as possible, after having proved the relationship genetically, so that they can be honored according to their respective creeds. The State must also cover the burial expenses, in agreement with the next of kin.

(c) Adequate medical or psychological care for the next of kin

274. The Court considers it necessary to provide a measure of reparation that seeks to reduce the physical and mental ailments of the immediate next of kin of those who disappeared or were deprived of life. To this end, the Court orders the State to provide, free of charge and through the national health service, the appropriate treatment these persons require, after they have given their consent, and following notification of this judgment to those who have been identified, and as soon as the identification is made in the case of those who are not identified at this time. This treatment must be provided for the necessary time and include medication. In the case of psychological care, the specific circumstances and needs of each person should be considered, so that they are provided with collective, family or individual treatment, as agreed with each of them and following individual assessment.

(d) State guarantees of security for the next of kin and former inhabitants of the municipality of Pueblo Bello who decide to return

275. The Court is aware that some of the former inhabitants of Pueblo Bello do not wish to return because they are afraid they will continue to be threatened by the paramilitary groups. It is possible that this situation will not change until an effective investigation and judicial proceedings have been completed, resulting in the elucidation of the facts and the punishment of those responsible. When the former inhabitants decide to return to Pueblo Bello, the State must guarantee their security. To this end, the State should send official representatives to this jurisdiction from time to time to verify public order and consult with the residents. If, during these meetings, the inhabitants of the jurisdiction express concern about their security, the State should adopt the necessary measures to guarantee it; such measures must be designed in consultation with the beneficiaries.

276. Furthermore, since many of the inhabitants of Pueblo Bello lost their possessions as a result of the facts of this case (supra para. 95(161)), the Court considers that, as it has in other cases, [FN265] the State should implement a housing program for the next of kin who return to Pueblo Bello.

[FN265] Cf. Case of the Plan de Sánchez Massacre, supra note 246, para. 105.

(e) Public apology and acknowledgement of international responsibility

277. As a measure of satisfaction for the victims and a guarantee of non-repetition of the grave human rights violations that occurred, the State should acknowledge publicly, with the presence of high-ranking authorities, its international responsibility for the facts of the instant case. The State should also issue an apology to the next of kin of the persons disappeared and deprived of life for failing to comply with its obligation to guarantee the rights to personal liberty, humane treatment and life of these persons, as a result of its failure to comply with its prevention, protection and investigation obligations, and also for the violation of the rights of access to justice, judicial protection and judicial guarantees to their detriment.

(f) Monument

278. The State must erect an appropriate and proper monument to recall the facts of the Pueblo Bello massacre, as a measure to prevent the recurrence of such grave events in the future. This monument must be installed in an appropriate public place in Pueblo Bello, within one year of notification of this judgment.

(g) Publication of the pertinent part of this judgment

279. The Court considers that, as a measure of satisfaction, [FN266] the State must publish once, within six months of notification of this judgment, in the official gazette and in another daily newspaper with national circulation, the section of this judgment entitled Proven Facts, without the corresponding footnotes, and also the operative paragraphs.

[FN266] Cf. Case of Blanco Romero et al., supra note 10, para. 101; Case of García Asto and Ramírez Rojas, supra note 10, para. 282, and Case of Gómez Palomino, supra note 10, para. 142.

XIII. COSTS AND EXPENSES

Arguments of the Commission

280. It requested the Court that, when it had heard the representatives, it should order the State to pay their duly authenticated costs and expenses, bearing in mind the special characteristics of the instant case.

281. Arguments of the representatives

a) The Comisión Colombiana de Juristas has incurred expenses for its work since 1997, at both the national and the international level, amounting to US$36,023.69 (thirty-six thousand and twenty-three United States dollars, and sixty-nine cents);

b) ASFADDES has incurred expenses since April 1994, which include the costs of legal evidence, exhumation measures and the fees of lawyers who have acted as the civil party in the criminal proceedings, amounting to 61,500,000 Colombian pesos or US$26,287.11 (twenty-six thousand two hundred and eighty-seven United States dollars, and eleven cents), and
c) CEJIL has incurred expenses during the four years of litigation before the inter-American system, amounting to US$25,503.23 (twenty-five thousand five hundred and three United States dollars and twenty-three cents).

Arguments of the State

282. Although it asked the Court to determine that the payment of costs and expenses should be assumed by each of the parties to the case, it alleged that, when awarding costs and expenses, the Court has established the condition that they should be only the necessary and reasonable expenses, according to the characteristics of the case and effectively incurred by or caused to the victim or his representatives. In any case, the award should be based on the principle of equity.

Findings of the Court

283. As the Court has indicated previously, [FN267] costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention. Regarding their reimbursement, the Court must prudently assess their scope, which includes the expenses incurred in both the domestic and the inter-American jurisdiction, taking into account the authentication of the expenses incurred, the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity and taking into account the expenses indicated and authenticated by the parties, provided the quantum is reasonable.

[FN267] Cf. Case of Blanco Romero et al., supra note 10, para. 114; Case of García Asto and Ramírez Rojas, supra note 10, para. 286, and Case of Gómez Palomino, supra note 10, para. 150.

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284. The Court bears in mind that some of the next of kin of the victims disappeared and deprived of life during the events of Pueblo Bello acted through representatives, before both the Commission and the Court. In this case, it has been established that only some relatives have testified during the criminal proceedings and that only José Daniel Álvarez, the son of one of the victims, is a claimant in the criminal proceedings.

285. Based on the above, it is not possible to assign compensation for costs and expenses directly to the victims' next of kin for them to distribute among those that have provided them with legal assistance, as has been the Court's practice in some recent cases. [FN268] Consequently, it considers it equitable to order the State to reimburse US$15,000.00 (fifteen thousand United States dollars) or the equivalent in Colombian currency to the Comisión Colombiana de Juristas for the costs and expenses they incurred in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights; US$10,000.00 (ten thousand United States dollars) to ASFADDES for the costs and expenses

they incurred in the domestic and the international spheres and US$8,000.00 (eight thousand United States dollars) or the equivalent in Colombian currency to CEJIL for the cost and expenses incurred in the international proceedings.

[FN268] Cf. the "Mapiripán Massacre" case, supra note 7, para. 325; Yatama case. Judgment of June 23, 2005. Series C No. 127, para. 265, and Carpio Nicolle et al. case. Judgment of November 22, 2004. Series C No. 117, para. 145.

XIV. METHOD OF COMPLIANCE

286. To comply with this judgment, Colombia must make the payment for compensation for pecuniary and non-pecuniary damage (supra paras. 248, 249, 258 and 259) and reimbursement of costs and expenses (supra para. 285), organize the act of public apology and acknowledgement of responsibility, and erect an appropriate and proper monument to recall the facts of the Pueblo Bello massacre (supra paras. 277 and 278), within one year of its notification. The State must also publish the pertinent parts of this judgment (supra para. 279), within six months of its notification.

287. Colombia must also take forthwith the necessary measures to activate and complete effectively, within a reasonable time, the investigation to identify, prosecute and punish those responsible for the facts of the massacre (supra paras. 265 to 268). In addition, it must take forthwith the steps required to find and identify the victims deprived of life or disappeared (supra paras. 270 to 273). Within a reasonable time, the State must take the necessary measures to guarantee conditions of security so that the next of kin of the persons allegedly disappeared and deprived of life, as well as other former inhabitants of Pueblo Bello, who have been displaced, may return, should they so wish (supra paras. 275 and 276). The State must also adopt pertinent measures to ensure that the human rights violations are effectively investigated in proceedings which respect all judicial rights and, every six months, it must inform the Court of the measures adopted and the results achieved. Lastly, with regard to the medical care for the next of kin, this must be provided immediately to those who have already been identified, and as of the time that the State makes the identification in the case of those who have not yet been identified, and for the time necessary (supra para. 274).

288. The payment of the compensation established in favor of the persons disappeared and deprived of life and of their next of kin shall be made directly to the latter, as established in paragraphs 247, 248 and 258, and in Appendixes I and II of this judgment.

289. The payments corresponding to the reimbursement of costs and expenses shall be made as established in paragraph 285 of this judgment.

290. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in national currency, using the exchange rate between the two currencies in force on the New York, United States of America, market the day prior to payment to make the respective calculation.

291. The amounts allocated in this judgment for compensation for pecuniary and non-pecuniary damage, and for reimbursement of costs and expenses may not be affected, reduced or conditioned by current or future taxes or charges. Consequently, they must be delivered to the beneficiaries integrally, as established in this judgment.

292. In the case of the compensation ordered in favor of minors, the State shall deposit it in a solvent Colombian banking institute. The investment must be made within one year, in United States dollars, and in the most favorable financial conditions permitted by law and banking practice, until the beneficiaries come of age. It may be withdrawn by any of them when they come of age or previously, if this is in the best interests of the child, as established by a decision of a competent judicial authority. If the compensation has not been claimed 10 years after each child has come of age, it shall revert to the State with the accrued interest.

293. If, for reasons attributable to the next of kin of the persons disappeared and deprived of life who are the beneficiaries of the compensation, it is not possible for them to receive it within the period indicated, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Colombian banking institute in United States dollars and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, it shall revert to the State with the accrued interest

294. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Colombia.

295. In accordance with its consistent practice, in exercise of its attributes and in compliance with its obligations deriving from the American Convention, the Court shall exercise the authority inherent in its attributes to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with all its terms. Within one year of notification of the judgment, Colombia shall provide the Court with a first report on the measures adopted to comply with the judgment.

XV. OPERATIVE PARAGRAPHS

296. Therefore,

THE COURT

DECLARES,

unanimously that:

1. The State violated, to the detriment of Juan Luis Escobar Duarte, José Leonel Escobar Duarte, Andrés Manuel Peroza Jiménez, Jorge David Martínez Moreno, Ricardo Bohórquez Pastrana and Ovidio Carmona Suárez, the rights to life, humane treatment and personal liberty embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in relation to the general obligation to respect and ensure the rights, established in Article 1(1) thereof, owing to the

failure to comply with its obligation to ensure these rights, since it failed to comply with its prevention, protection and investigation obligations, in the terms of paragraphs 111 to 153 of this judgment.

2. The State violated, to the detriment of Manuel de Jesús Montes Martínez, Andrés Manuel Flórez Altamiranda, Juan Bautista Meza Salgado, Ariel Dullis Díaz Delgado, Jorge Fermín Calle Hernández, Santiago Manuel González López, Raúl Antonio Pérez Martínez, Juan Miguel Cruz, Genor José Arrieta Lora, Célimo Arcadio Hurtado, José Manuel Petro Hernández, Cristóbal Manuel Arroyo Blanco, Luis Miguel Salgado Berrío, Ángel Benito Jiménez Julio, Benito José Pérez Pedroza, Pedro Antonio Mercado Montes, Carmelo Manuel Guerra Pestana, César Augusto Espinoza Pulgarín, Miguel Ángel López Cuadro, Miguel Ángel Gutiérrez Arrieta, Diómedes Barrera Orozco, José Encarnación Barrera Orozco, Urías Barrera Orozco, José del Carmen Álvarez Blanco, Camilo Antonio Durango Moreno, Carlos Antonio Melo Uribe, Mario Melo Palacio, Víctor Argel Hernández, Fermín Agresott Romero, Jesús Humberto Barbosa Vega, Benito Genaro Calderón Ramos, Jorge Arturo Castro Galindo, Wilson Uberto Fuentes Marimón, Miguel Antonio Pérez Ramos, Elides Manuel Ricardo Pérez, Luis Carlos Ricardo Pérez and Lucio Miguel Urzola Sotelo, the rights to life, humane treatment and personal liberty embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in relation to the general obligation to respect and ensure these rights established in Article 1(1) thereof, owing to the failure to comply with its obligation to ensure these rights, since it failed to comply with its prevention, protection and investigation obligations, in the terms of paragraphs 111 to 153 of this judgment.

3. The State violated, to the detriment of the next of kin of the persons disappeared and deprived of life, the right to humane treatment, embodied in Article 5(1) of the Convention, in relation to the general obligation to respect and ensure this right established in Article 1(1) thereof, for the reasons set out in paragraphs 154 to 162 of this judgment.

4. The State violated, to the detriment of the next of kin of the persons disappeared and deprived of life, the rights to a fair trial and to judicial protection, ensuring access to justice, embodied in Articles 8(1) and 25 of the Convention, in relation to the general obligation to respect and ensure these rights established in Article 1(1) thereof, in the terms of paragraphs 169 to 212 of this judgment.

5. The State did not violate, to the detriment of the next of kin of the persons disappeared and deprived of life, the right to freedom of thought and expression embodied in Article 13 of the American Convention, for the reasons set out in paragraphs 217 to 220 of this judgment.

6. This judgment constitutes per se a form of reparation.

AND DECIDES,

unanimously that:

7. The State must take forthwith the necessary measures to activate and complete effectively, within a reasonable time, the investigation to determine the responsibility of all the participants in the massacre, as well as that of those responsible, by act or omission, for the failure to comply with the State's obligation to guarantee the violated rights, in the terms of paragraphs 265 to 268 and 287 of this judgment.

8. The State must adopt the pertinent measures to ensure that the human rights violations committed are effectively investigated in proceedings that guarantee judicial rights, in order to

avoid the repetition of such grave facts as those that occurred in the Pueblo Bello massacre. Every six months, the State must inform the Court about the measures adopted and results achieved, in the terms of paragraphs 269 and 287 of this judgment.

9. The State must adopt forthwith the pertinent measures to seek and identify the disappeared victims and return their mortal remains to their next of kin and also pay their burial expenses, within a reasonable time. To this end, it must complete the actions undertaken to recover the remains of the persons disappeared, as well as any others that are necessary and, to this end, it must use all possible technical and scientific measures, taking into account the pertinent international norms, in the terms of paragraphs 270 to 273 and 287 of this judgment.

10. The State must guarantee that, irrespective of the actions indicated in the preceding operative paragraph, the respective official entities use these international norms as part of their equipment in the search for and identification of persons disappeared or deprived of life, in the terms of paragraphs 270 and 271 of this judgment.

11. The State must provide medical and psychological care, as applicable, to all the next of kin of the 37 persons disappeared and the six deprived of life who require this, as of notification of this judgment to those who have already been identified and, as of the time when they are identified, in the case of those who have not yet been identified, and for the time necessary, in the terms of paragraphs 274 and 287 of this judgment.

12. The State must take the necessary measures to guarantee security conditions so that the next of kin of the persons disappeared and deprived of life, and other former inhabitants of Pueblo Bello who have been displaced, can return there, if they so wish, in the terms of paragraphs 275, 276 and 287 of this judgment.

13. The State must organize, within one year of notification of this judgment, a public act of apology and acknowledgment of international responsibility, with the presence of high-ranking State authorities, concerning the violations declared herein and in reparation to the persons disappeared, deprived of life, and their next of kin, because it failed to comply with its obligation to guarantee the rights to life, humane treatment and personal liberty of those persons, as a result of its failure to comply with its prevention, protection and investigation obligations, and also due to the violation of the rights of access to justice, judicial protection and judicial guarantee committed to their detriment, in the terms of paragraphs 277 and 286 of this judgment.

14. The State must erect, within one year of notification of this judgment, an appropriate and proper monument recalling the facts of the Pueblo Bello massacre, in the terms of paragraphs 278 and 286 of this judgment.

15. The State must publish once, within six months of notification of this judgment, in the official gazette and in another daily newspaper with national circulation, the section of this judgment entitled Proven Facts, without the corresponding footnotes, and also these operative paragraphs, in the terms of paragraphs 279 and 286 of this judgment.

16. The State must pay the amounts established for pecuniary damage in Appendix I of this judgment to the next of kin of the persons disappeared and deprived of life, in the terms of paragraphs 234 to 241, 246 to 251, 286, 288 and 290 to 294 hereof.

17. The State must pay the amounts established for non-pecuniary damage in Appendix II of this judgment to the next of kin of the persons disappeared and deprived of life, in the terms of paragraphs 234 to 241, 254 to 259, 286, 288 and 290 to 294 hereof.

18. The State must pay the amounts established for costs and expenses, in the terms of paragraphs 283 to 286, 289, 291 and 294 of this judgment.

19. The Court shall monitor full compliance with this judgment and shall consider the case closed when the State has executed its operative paragraphs. Within a year of notification of this judgment, the State must send the Court a report on the measures adopted to comply with it, in the terms of paragraph 295 thereof.

Judge Antônio A. Cançado Trindade informed the Court of his separate concurring opinion, which accompanies this judgment.

Done in San José, Costa Rica, on January 31, 2006, in Spanish and in English, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

Juan Carlos Esguerra-Portocarrero
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

Appendix I

Pecuniary Damage

	Name of the missing or deceased person	Amount
1	Manuel de Jesús Montes Martínez	US $ 80.400,00
2	Andrés Manuel Flórez Altamiranda	US $ 57.300,00
3	Juan Bautista Meza Salgado	US $ 74.100,00
4	Juan Luis Escobar Duarte	US $ 74.500,00
5	José Leonel Escobar Duarte	US $ 84.800,00
6	Ariel Dullis Díaz Delgado	US $ 73.500,00

7	Jorge Fermin Calle Hernández	US $ 68.100,00
8	Santiago Manuel González López	US $ 39.300,00
9	Raúl Antonio Pérez Martínez	US $ 67.800,00
10	Andrés Manuel Peroza Jiménez	US $ 75.100,00
11	Juan Miguel Cruz	US $ 49.400,00
12	Genor José Arrieta Lora	US $ 73.500,00
13	Célimo Arcadio Hurtado	US $ 47.500,00
14	José Manuel Petro Hernández	US $ 43.500,00
15	Cristóbal Manuel Arroyo Blanco	US $ 63.400,00
16	Luis Miguel Salgado Berrío	US $ 62.800,00
17	Ángel Benito Jiménez Julio	US $ 32.300,00
18	Benito José Pérez Pedroza	US $ 49.400,00
19	Pedro Antonio Mercado Montes	US $ 63.000,00
20	Carmelo Manuel Guerra Pestana	US $ 43.300,00
21	César Augusto Espinoza Pulgarín	US $ 67.000,00
22	Miguel Ángel López Cuadro	US $ 53.200,00
23	Miguel Ángel Gutiérrez Arrieta	US $ 55.700,00
24	Diómedes Barrera Orozco	US $ 67.100,00
25	José Encarnación Barrera Orozco	US $ 81.100,00
26	Urías Barrera Orozco	US $ 67.900,00
27	José del Carmen Álvarez Blanco	US $ 40.200,00
28	Camilo Antonio Durango Moreno	US $ 76.300,00
29	Jorge David Martínez Moreno	US $ 78.700,00
30	Carlos Antonio Melo Uribe	US $ 75.900,00
31	Mario Melo Palacio	US $ 60.400,00
32	Víctor Argel Hernández	US $ 69.200,00
33	Fermín Agresott Romero	US $ 74.100,00
34	Jesús Humberto Barbosa Vega	US $ 62.900,00
35	Ricardo Bohórquez Pastrana	US $ 35.800,00
36	Benito Genaro Calderón Ramos	US $ 73.800,00
37	Ovidio Carmona Suárez	US $ 78.300,00
38	Jorge Arturo Castro Galindo	US $ 61.800,00
39	Wilson Uberto Fuentes Marimón	US $ 43.600,00
40	Miguel Antonio Pérez Ramos	US $ 80.100,00
41	Elides Manuel Ricardo Pérez	US $ 67.600,00
42	Luis Carlos Ricardo Pérez	US $ 70.200,00
43	Lucio Miguel Urzola Sotelo	US $ 75.500,00

Appendix II

Non-pecuniary Damage

Name	Kinship	Amount
1. Manuel de Jesús Montes Martínez	Missing	US $ 35.000,00

Jorge Adalberto Montes Berrío	Father	US $	10.000,00
Macrina Onelia Martínez Paternina	Mother	US $	12.000,00
Noemí del Carmen Montes Martínez	Sister	US $	500,00
Javier Donais Montes Martínez	Brother	US $	500,00
Ana Carmela Montes Martínez	Sister	US $	500,00
Libia Esther Montes Martínez	Sister	US $	500,00
Nilson Montes Cruz	Brother	US $	500,00
Neder de Jesús Montes Cruz	Brother	US $	500,00
2. Andrés Manuel Flórez Altamiranda	Missing	US $	30.000,00
Eridia Gutiérrez Mesa	Spouse	US $	10.000,00
César Eliecer Flórez Gutiérrez	Son	US $	10.000,00
Melkin Flórez Gutiérrez	Son	US $	10.000,00
Eduardo Manuel Flórez Gutiérrez	Son	US $	10.000,00
José de los Santos Flórez Tavera	Father	US $	10.000,00
Albertina Altamiranda Ramos	Mother	US $	10.000,00
Emilse del Carmen Flórez Altamiranda	Sister	US $	500,00
Enilda Ester Flórez Altamiranda	Sister	US $	500,00
Mónica Flórez Altamiranda	Sister	US $	500,00
Miriam Edith Flórez Altmiranda	Sister	US $	500,00
Eberto Flórez Altamiranda	Brother	US $	500,00
Manuela Flórez Altamiranda	Sister	US $	500,00
3. Juan Bautista Meza Salgado	Missing	US $	30.000,00
Eliécer Manuel Meza Acosta	Father	US $	10.000,00
Sara Faustina Salgado Ramírez	Mother	US $	10.000,00
Víctor Manuel Meza Salgado	Brother	US $	500,00
José Nemecio MezaSalgado	Brother	US $	500,00
María Mercedes Meza Salgado	Sister	US $	500,00
Samuel Antonio Meza Salgado	Brother	US $	500,00
Orfa Rosa Meza Salgado	Sister	US $	500,00
Daniel Enrique Meza Salgado	Brother	US $	500,00
Eliécer Manuel Meza Salgado	Brother	US $	500,00
Elsa Meza Salgado	Sister	US $	500,00
4. Juan Luis Escobar Duarte	Deceased	US $	30.000,00
5. José Leonel Escobar Duarte	Deceased	US $	30.000,00
Pedro Luis Escobar Bedoya	Father	US $	12.000,00
Virgelina Duarte Giraldo	Mother	US $	12.000,00
Pedro Luis Escobar Duarte	Brother	US $	1,000,00
Fanny del Socorro Escobar Duarte	Sister	US $	1,000,00
Luz Emilce Escobar Duarte	Sister	US $	1,000,00
Ovidio de Jesús Escobar Duarte	Brother	US $	1,000,00
6. Ariel Dullis Díaz Delgado	Missing	US $	30.000,00

Rubén Díaz Romero	Father	US $	10.000,00
Amira Luisa Delgado Mestra	Mother	US $	10.000,00
José Elías Díaz Delgado	Brother	US $	500,00
Sara María Díaz Delgado	Sister	US $	500,00
David Euclides Díaz Delgado	Brother	US $	500,00
Abner Díaz Delgado	Brother	US $	500,00
Gladys Díaz Delgado	Sister	US $	500,00
Eneyda Díaz Delgado	Sister	US $	500,00
7. Jorge Fermin Calle Hernández	Missing	US $	30.000,00
Euclides Manuel Calle Álvarez	Father	US $	10.000,00
Nilda del Carmen Hernández	Mother	US $	10.000,00
Jorge Enrique Calle Hernández	Brother	US $	500,00
Herminia Edit Calle Hernández	Sister	US $	500,00
Amaury Alfonso Calle Hernández	Brother	US $	500,00
Marta Lina Calle Hernández	Sister	US $	500,00
Guillermo Enrique Calle Hernández	Brother	US $	500,00
María Patricia Calle Hernández	Sister	US $	500,00
Rafael Andrés Calle Hernández	Brother	US $	500,00
Alfonso Ramón Calle Hernández	Brother	US $	500,00
Nilda Rosa Calle Hernández	Sister	US $	500,00
8. Santiago Manuel González López	Missing	US $	30.000,00
Manuel José González Díaz	Father	US $	10.000,00
Delfina Lucía López Ruíz	Mother	US $	10.000,00
Leovigilda Rosa Villalba Sánchez	Spouse	US $	10.000,00
Debier Antonio González Villalba	Son	US $	10.000,00
Onasis José González Villalba	Son	US $	10.000,00
Delia Lucía González Villalba	Daughter	US $	10.000,00
Leda González Villalba	Daughter	US $	10.000,00
Luz Gladys González Salgado	Daughter	US $	10.000,00
Enil Antonio González López	Brother	US $	500,00
Rafael Antonio González López	Brother	US $	500,00
Rosa Isabel González López	Sister	US $	500,00
Manuel José González López	Brother	US $	500,00
Celso Manuel González López	Brother	US $	500,00
Nely del Carmen González López	Sister	US $	500,00
Elio José González López	Brother	US $	500,00
Ena Luz González López	Sister	US $	500,00
9. Raúl Antonio Pérez Martínez	Missing	US $	30.000,00
Ginibeldo Pérez García	Father	US $	10.000,00
Islia María Martínez Cubillo	Mother	US $	10.000,00
Alfaima Romero Arrieta	Partner	US $	10.000,00
Yesica Andrea Pérez Romero	Daugter	US $	10.000,00

Inelta María Pérez Martínez	Sister	US $	500,00
Enriqueta Pérez Martínez	Sister	US $	500,00
Luz Dary Delgado Pérez	Sister	US $	500,00
Lázaro Maria Pérez Palencia	Brother	US $	500,00
Luis Arturo Pérez Martínez	Brother	US $	500,00
Giniveldo Pérez Martínez	Brother	US $	500,00
Gloria Ester Pérez Martínez	Sister	US $	500,00
Marcos Fidel Pérez Martínez	Brother	US $	500,00
Antonio María Pérez Martínez	Brother	US $	500,00
10. Andrés Manuel Peroza Jiménez	Deceased	US $	30.000,00
Leonidas Manuel Peroza Meza	Father	US $	6.000,00
Dioselina María Jiménez Ortega	Mother	US $	6.000,00
Dormelina del Carmen Barba Monterrosa	Partner	US $	8,000.00
Cleider Duban Peroza Barba	Son	US $	6.000,00
Ismael Antonio Osorio Jiménez	Brother	US $	500,00
Emerita del Carmen Osorio Jiménez	Sister	US $	500,00
Nafer Enrique Osorio Jiménez	Brother	US $	500,00
Matilde Esther Osorio Jiménez	Sister	US $	500,00
María del Carmen Morelo Jiménez	Sister	US $	500,00
Nora Isabel Jiménez Barbas	Sister	US $	500,00
11. Juan Miguel Cruz	Missing	US $	30.000,00
Zunilda Peralta	Partner	US $	5,000.00
Digna Peralta	Partner	US $	5,000.00
Jaime Miguel Cruz Peralta	Son	US $	10.000,00
Uberney Cruz Peralta	Son	US $	10.000,00
Aydeth del Carmen Cruz Peralta	Daughter	US $	10.000,00
Judith del Carmen Cruz Peralta	Daughter	US $	10.000,00
12. Genor José Arrieta Lora	Missing	US $	30.000,00
Dora Isabel Tuberquia Petro	Partner	US $	12.000,00
Jose Calazans Arrieta Marimón	Father	US $	10.000,00
Josefa Lora Erazo	Mother	US $	10.000,00
Clímaco Emiro Arrieta Lora	Brother	US $	500,00
Fanny de Jesús Arrieta Lora	Sister	US $	500,00
Arcelio Arrieta Lora	Brother	US $	500,00
Ana Arcilia Arrieta Lora	Sister	US $	500,00
Gil de Jesús Arrieta Lora	Brother	US $	500,00
Argenida Arrieta Lora	Sister	US $	500,00
Luz Eneida Arrieta Lora	Sister	US $	500,00
Cehima Arrieta Lora	Sister	US $	500,00
Ana Delfa Arrieta Lora	Sister	US $	500,00
Nabor Enriques Arrieta Lora	Brother	US $	500,00

13. Célimo Arcadio Hurtado	missing	US $	30.000,00
Manuel Luciano Hurtado Largo	Son	US $	10.000,00
Lina Fabiola Hurtado Largo	Daughter	US $	10.000,00
Doris Celina Largo	Spouse	US $	10.000,00
Otalvaro Hurtado Largo	Son	US $	10.000,00
14. José Manuel Petro Hernández	Missing	US $	30.000,00
Rafaela Josefa Pérez Pedroza	Partner	US $	10.000,00
Gloria de Jesús Petro Pérez	Daughter	US $	10.000,00
Jhon Jader Petro Pérez	Son	US $	10.000,00
Robinson Petro Pérez	Son	US $	10.000,00
Luz Erley Petro Pérez	Daughter	US $	10.000,00
Yarley Petro Pérez	Daughter	US $	10.000,00
Yeimy Luz Petro Pérez	Daughter	US $	10.000,00
15. Cristóbal Manuel Arroyo Blanco	Missing	US $	30.000,00
Clímaco Arroyo Díaz	Father	US $	10.000,00
María Concepción Blanco Yèpes	Mother	US $	10.000,00
Diva del Soccorro Arroyo Blanco	Sister	US $	500,00
16. Luis Miguel Salgado Berrío	Missing	US $	30.000,00
Gloria de Jesús Petro Pérez	Partner	US $	12.000,00
José María Salgado Sotelo	Father	US $	10.000,00
Eleodora Isabel Berrío Plaza	Mother	US $	10.000,00
Roberto Antonio Salgado Berrío	Brother	US $	500,00
Luis Alberto Salgado Herrera	Brother	US $	500,00
Miriam Rosa Patron Berrío	Sister	US $	500,00
Lucina Salgado Berrío	Sister	US $	500,00
Elizabeth Salgado Berrío	Sister	US $	500,00
María Magdalena Salgado Berrío	Sister	US $	500,00
17. Ángel Benito Jiménez Julio	Missing	US $	30.000,00
Ana Eloína Romero Mercado	Spouse	US $	10.000,00
Bartolo Jiménez Guerra	Father	US $	10.000,00
Amada Villadiego Julio	Mother	US $	10.000,00
Yoliva del Carmen Romero Benitez	Daughter	US $	10.000,00
Adalberto José Jiménez Romero	Son	US $	10.000,00
Alonso Jiménez Romero	Son	US $	10.000,00
Ana Daicet Jiménez Romero	Daughter	US $	10.000,00
Aída Luz Jiménez Romero	Daughter	US $	10.000,00
Arbiris de Jesús Jiménez Romero	Son	US $	10.000,00
Nayibe Romero Benítez	Daughter	US $	10.000,00
María Elena Jiménez Zabala	Daughter	US $	10.000,00
Ángel Benito Jiménez Toro	Son	US $	10.000,00
Graciela del Carmen Jiménez Julio	Sister	US $	500,00

Florencia del Carmen Jiménez Villadiego	Sister	US $	500,00
18. Benito José Pérez Pedroza	Missing	US $	30.000,00
Norma Elisa Machado Petro	Partner	US $	5.000,00
Norbey Enrique Pérez Machado	Son	US $	10.000,00
Laureana María Peralta Cuava	Partner	US $	5.000,00
Arbey Antonio Pérez Peralta	Son	US $	10.000,00
19. Pedro Antonio Mercado Montes	Missing	US $	30.000,00
Jesús María Mercado Mejía	Father	US $	10.000,00
Julia Rosa Montes Molina	Mother	US $	10.000,00
Jorge Eliécer Mercado Montes	Brother	US $	500,00
Elizabeth Mercado Montes	Sister	US $	500,00
Jesús María Mercado Montes	Brother	US $	500,00
Lucelly del Carmen Mercado Montes	Sister	US $	500,00
Nelson Enrique Mercado Montes	Brother	US $	500,00
Otoniel Mercado Montes	Brother	US $	500,00
Edelma Mercado Montes	Sister	US $	500,00
Luz Senaida Mercado Montes	Sister	US $	500,00
20. Carmelo Manuel Guerra Pestana	Missing	US $	30.000,00
José Miguel Guerra Sierra	Father	US $	10.000,00
Margarita Pestana Luna	Mother	US $	10.000,00
Marlene Antonia Velásquez Carvajal	Partner	US $	10.000,00
Nancy Amparo Guerra López	Daughter	US $	10.000,00
Carmen Guerra Márquez	Daughter	US $	10.000,00
21. César Augusto Espinosa Pulgarín	Missing	US $	30.000,00
Ligia Margarita Pulgarín González	Mother	US $	10.000,00
José Javier Espinosa Restrepo	Father	US $	10.000,00
Wilder Frank Espinosa Pulgarín	Brother	US $	500,00
Johan Albeiro Espinosa Hernández	Son	US $	10.000,00
Celia del Carmen Hernández Orozco	Partner	US $	10.000,00
Adriana Patricia Espinosa Pulgarín	Sister	US $	500,00
Zulema Ivone Espinosa Pulgarín	Sister	US $	500,00
Bibiana Farley Hernández Pulgarín	Sister	US $	500,00
22. Miguel Ángel López Cuadro	Missing	US $	30.000,00
Ester María Cuadro Prieto	Mother	US $	10.000,00
Daniel López Galarcio	Father	US $	10.000,00
Mery de Jesús López Cuadro	Sister	US $	500,00
23. Miguel Ángel Gutiérrez Arrieta	Missing	US $	30.000,00
Juan Gutiérrez Salgado	Father	US $	10.000,00
Elena Emperatriz Arrieta Marimón	Mother	US $	10.000,00

Miguel Ángel Guitiérez Garnaud	Son	US $	10.000,00
Ediltrudis Sofía Garnaud Causil	Partner	US $	5.000,00
Carmen Elina Gutiérrez Flórez	Daughter	US $	10.000,00
Manuela Del Rosario Flórez Altamiranda	Spouse	US $	5.000,00
Francisca Gutiérrez Arrieta	Sister	US $	500,00
Josefa del Carmen Gutiérrez Arrieta	Sister	US $	500,00
María Soledad Gutiérrez Arrieta	Sister	US $	500,00
Alina Elena Gutiérrez Arrieta	Sister	US $	500,00
Emperatriz del Carmen Gutiérrez Arrieta	Sister	US $	500,00
Erasmo Manuel Gutiérrez Arrieta	Brother	US $	500,00
24. Diómedes Barrera Orozco	Missing	US $	30.000,00
25. José Encarnación Barrera Orozco	Missing	US $	35.000,00
26. Urías Barrera Orozco	Missing	US $	30.000,00
Benjamín Torcuarto Barrera Morelo	Father	US $	30.000,00
María de las Mercedes Orozco Cabrera	Mother	US $	30.000,00
Elizabeth Barrera Orozco	Sister	US $	1.500,00
Astrid María Barrera Orozco	Sister	US $	1.500,00
Enor Javier Barrera Orozco	Brother	US $	1.500,00
Leida Barrera Orozco	Sister	US $	1.500,00
William Barrera Orozco	Brother	US $	1.500,00
María Antonia Barrera Orozco	Sister	US $	1.500,00
Rita Inés Barrera Páez	Sister	US $	1.500,00
Arol Isacc Barrera Orozco	Brother	US $	1.500,00
Benjamín Ernesto Barrera Gómez	Brother	US $	1.500,00
Pabla del Socorro Barrera Gómez	Sister	US $	1.500,00
27. José del Carmen Álvarez Blanco	Missing	US $	30.000,00
Juan Álvarez	Father	US $	10.000,00
Maria Blanco Yepes	Mother	US $	10.000,00
María Cecilia Ruiz Romero	Spouse	US $	10.000,00
José Daniel Álvarez Ruiz	Son	US $	10.000,00
Joel David Álvarez Ruiz	Son	US $	10.000,00
Richard Ned Álvarez Ruiz	Son	US $	10.000,00
Emilse Álvarez Ruiz	Daughter	US $	10.000,00
Álvaro Antonio Álvarez Saya	Son	US $	10.000,00
Benicio Javier Álvarez Ruiz	Son	US $	10.000,00
Juana Benita Álvarez Blanco	Sister	US $	500,00
Ramón Antonio Álvarez Blanco	Brother	US $	500,00
Ana María Álvarez Blanco	Sister	US $	500,00
28. Camilo Antonio Durango Moreno	Missing	US $	30.000,00
Abel Ángel Durango Rueda	Father	US $	10.000,00
Blanca Libia Moreno Cossio	Mother	US $	10.000,00

29. Jorge David Martínez Moreno	Deceased	US $	30.000,00
Mariano Manuel Martínez Pacheco	Father	US $	6.000,00
Servia Cecilia Álvarez Moreno	Mother	US $	6.000,00
Teresa Isabel Martínez Moreno	Sister	US $	500,00
Loida Cecilia Martínez Álvarez	Sister	US $	500,00
Ismael Emiro Martínez Moreno	Brother	US $	500,00
Ledys Judith Martínez Álvarez	Sister	US $	500,00
30. Carlos Antonio Melo Uribe	Missing	US $	30.000,00
31. Mario Melo Palacio	Missing	US $	30.000,00
Ana Graciela Uribe	Carlos' Mother	US $	10.000,00
Luis Antonio Melo	Father	US $	20.000,00
Ana Sofía Palacio	Mario's Mother	US $	10.000,00
María Esperanza Melo Uribe	Sister	US $	1.000,00
Eurípides Melo Uribe	Brother	US $	1.000,00
Rosa Elena Melo Uribe	Sister	US $	1.000,00
Alfonso Melo Palacio	Brother	US $	1.000,00
Eligio Melo Palacio	Brother	US $	1.000,00
32. Víctor Argel Hernández	Missing	US $	30.000,00
33. Fermín Agresott Romero	Missing	US $	30.000,00
Sonia Isabel Puentes	Partner	US $	10.000,00
Rosa Agresott Romero	Sister	US $	500,00
Ana Petrona Romero Torres	Mother	US $	10.000,00
Juan Agresott Hernández	Father	US $	10.000,00
Yicelis Smith Agresott Puentes	Daughter	US $	10.000,00
Gredit del Carmen Agresott Puentes	Daughter	US $	10.000,00
Gaminso Oscar Agresott Romero	Brother	US $	500,00
Carlos Arturo Agresott Romero	Brother	US $	500,00
34. Jesús Humberto Barbosa Vega	Missing	US $	30.000,00
Wilmer Alberto Barbosa Martínez	Son	US $	10.000,00
Ana Mercedes Martínez López	Spouse	US $	10.000,00
Andreina Barbosa Martínez	Daughter	US $	10.000,00
Alcides Barbosa	Father	US $	10.000,00
Ana Edilma Vega Alvernia	Mother	US $	10.000,00
Wilson Barbosa Vega	Brother	US $	500,00
Edgard Barbosa Vega	Brother	US $	500,00
Ana Delia Barbosa Vega	Sister	US $	500,00
35. Ricardo Bohórquez Pastrana	Deceased	US $	30.000,00
Domingo Manuel Bohórquez Meza	Son	US $	6.000,00
Lila Meza Meza	Spouse	US $	3.000,00
Rosa Elena Orozco Cabrera	Partner	US $	3.000,00

Ricardo Manuel Bohórquez Orozco	Son	US $	6.000,00
Ismael José Bohórquez Pastrana	Brother	US $	500,00
Manuel Bohórquez Arias	Father	US $	6.000,00
Josefa Pastrana Medrano	Mother	US $	6.000,00
Rita María Bohórquez Pastrana	Sister	US $	500,00
36. Benito Genaro Calderón Ramos	Missing	US $	30.000,00
Genaro Benito Calderón Ruiz	Father	US $	10.000,00
Ana Dominga Ramos Noble	Mother	US $	10.000,00
Solfaro Elías Calderón Ramos	Brother	US $	500,00
Juan Carlos Caldrón Ramos	Brother	US $	500,00
Robert Quinto Calderón Ramos	Brother	US $	500,00
Martha Cecilia Calderón Ramos	Sister	US $	500,00
Rodolfo Antonio Calderón Ramos	Brother	US $	500,00
Justo Segundo Calderón Herrera	Brother	US $	500,00
37. Ovidio Carmona Suárez	Deceased	US $	30.000,00
38. Jorge Arturo Castro Galindo	Missing	US $	30.000,00
Daniel Antonio Castro Polo	Father	US $	10.000,00
Dálida María Galindo Verona	Mother	US $	10.000,00
Daniel Antonio Castro Galindo	Brother	US $	500,00
Alfonso Policarpo Castro Galindo	Broter	US $	500,00
Tomás Andrade Castro Galindo	Brother	US $	500,00
39. Wilson Uberto Fuentes Marimón	Missing	US $	30.000,00
Ely Calixto Fuentes Martínez	Father	US $	10.000,00
Margarita Marimón Muñoz	Mother	US $	10.000,00
Nasly Cecilia Fuentes Macea	Daughter	US $	10.000,00
Katy Milena Fuentes Macea	Daughter	US $	10.000,00
Sofía del Carmen Macea Álvarez	Spouse	US $	10.000,00
Elsa Primitiva Fuentes Marimón	Sister	US $	500,00
Nora Sofía Fuentes Marimón	Sister	US $	500,00
Estrella Margarita Fuentes Marimón	Sister	US $	500,00
Armando Calixto Fuentes Marimón	Brother	US $	500,00
Betty del Socorro Fuentes Marimón	Sister	US $	500,00
Eliy Calixto Fuentes Marimón	Sister	US $	500,00
40. Miguel Antonio Pérez Ramos	Missing	US $	35.000,00
Daniel Antonio Pérez Muentes	Father	US $	10.000,00
María de la Cruz Ramos Fajardo	Mother	US $	10.000,00
Enilda Isabel Pérez Ramos	Sister	US $	500,00
Hernán José Pérez Ramos	Brother	US $	500,00
Teofila María Pérez Ramos	Sister	US $	500,00
Enady del Carmen Pérez Ramos	Sister	US $	500,00

Álvaro de Jesús Pérez Ramos	Brother	US $	500,00
Luis Alberto Pérez Ramos	Brother	US $	500,00
Gloria Luz Pérez Ramos	Sister	US $	500,00
Olfy Yaneth Pérez Ramos	Sister	US $	500,00
Aída de la Cruz Pérez Ramos	Sister	US $	500,00
		US $	
41. Elides Manuel Ricardo Pérez	Missing	US $	30.000,00
42. Luis Carlos Ricardo Pérez	Missing	US $	30.000,00
Benildo José Ricardo Herrera	Father	US $	20.000,00
Bertha Antonia Pérez López	Mother	US $	20.000,00
Carmenza Velásquez Estitt	Elides' Spouse	US $	10.000,00
Elquin Darío Ricardo Velásquez	Elides' Son	US $	10.000,00
Elber José Ricardo Velásquez	Elides' Son	US $	10.000,00
Mirian Luz Ricardo Pérez	Sister	US $	1,000,00
Magalis Del Carmen Ricardo Pérez	Sister	US $	1,000,00
Marivel Ricardo Pérez	Sister	US $	1,000,00
Marina del Carmen Ricardo Pérez	Sister	US $	1,000,00
Modesta Antonia Ricardo Pérez	Sister	US $	1,000,00
Madis de Jesús Ricado Pérez	Sister	US $	1,000,00
Miladys de Jesús Ricardo Pérez	Sister	US $	1,000,00
43. Lucio Miguel Urzola Sotelo	Missing	US $	30.000,00
Francisco Miguel Urzola Figueroa	Father	US $	10.000,00
Margarita Cecilia Sotelo Padilla	Mother	US $	10.000,00
Everlides María Urzola Sotelo	Sister	US $	500,00
Guido de Jesús Urzola Sotelo	Brother	US $	500,00
Marledis del Carmen Urzola Sotelo	Sister	US $	500,00
Edinso Emilio Urzola Sotelo	Brother	US $	500,00
Aliza Margod Urzola Sotelo	Sister	US $	500,00

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have voted in favor of the judgment that the Inter-American Court of Human Rights has just adopted in the Pueblo Bello Massacre v. Colombia. Given the importance of the case and the complexity of the issue dealt with in this judgment, I feel obliged to record my observations, to explain my position on its many aspects. The central element relates to the right of access (lato sensu) to justice and guarantees of due process of law, necessarily considered together. Before continuing to the substantive part of my considerations, I wish to refer briefly to the broad scope of the general obligation of guarantee (Article 1(1) of the American Convention) and the obligations erga omnes to protect the rights embodied therein.

I. Prolegomenon: The Broad Scope of the General Obligation of Guarantee (Article 1(1) of the American Convention) and the Obligations Erga Omnes of Protection

2. The facts of this case, and even some gaps in the body of evidence, have further emphasized the relevance of the general obligation of protection embodied in Article 1(1) of the American Convention, particularly in the situation of chronic violence which forms the backdrop to the case. In this judgment in the Pueblo Bello Massacre case, the Court has underscored the broad scope of the general obligation of guarantee of Article 1(1) of the American Convention, so that "the act or omission of any public authority constitutes a fact attributable to the State, which involves its international responsibility in the terms established in the Convention and according to general international law" (para. 111). [FN1]

[FN1] Cf., on this specific point, recently, A.A. Cançado Trindade, "La Convention Américaine relative aux Droits de l'Homme et le droit international général", in Droit international, droits de l'homme et juridictions internationales (eds. G. Cohen-Jonathan and J.-F. Flauss), Bruxelles, Bruylant, 2004, pp. 59-71.

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3. One of the expert opinions given before the Court in this case indicated that:

"With the increase in drug-trafficking, the irregular war found an inexhaustible source of logistic resources, which introduced another model: outright paramilitarism, financed by the drug-traffickers, and assessed by (...) intelligence forces (...)" (para. 65(k)).

The generalization of the conflict has resulted in the forced displacement of the population (paras. 65(l) and 66(c)), and the Court, in this judgment, has accepted as a proven fact that "between 1988 and 1990 the paramilitary groups carried out more than 20 massacres of peasants and trade unionists" (para. 95(27)). Throughout the judgment, the Court has emphasized the State's obligation of due diligence, even to have ensured that this situation (which was extremely complex and an authentic tragedy severely affecting Colombia – a country with a very respectable juridical tradition [FN2]) should never have happened.

[FN2] This juridical tradition is such that, amidst all the conflicts that affect the country, it continues alive in the research carried out by the new generations of Colombian jurists, who are studying extremely relevant issues such as transitional justice (including the collective memory, reparation, justice and democracy); cf., e.g., the essays of several authors in this regard, in: 7 Revista Estudios Socio-Jurídicos - Universidad del Rosario/Bogotá (August 2005) - special edition, pp. 21-40 and 200-543.

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4. A situation like this clearly underscores the nature erga omnes of the Convention obligations to protect the individual. The Court has expressly and wisely recognized this in its judgment (paras. 117, 123 and 151). It has also determined the exact moment when the international responsibility of the State arose under the American Convention:

"(...) under the American Convention, the international responsibility of the States arises at the time of the violation of the general obligations erga omnes, to respect and ensure respect for –

guarantee – the norms of protection and to ensure the effectiveness of all the rights established in the Convention in all circumstances and with regard to all persons, which is embodied in Articles 1(1) and 2 thereof" (para. 111). [FN3]

[FN3] In my separate opinion in the well-known "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile (merits, judgment of February 5, 2001), I stated that "the international responsibility of a State Party to a human rights treaty arises from the moment that an internationally wrongful event - whether act or omission - occurs (tempus commisi delicti), which can be attributed to that State, in violation of the respective treaty" (para. 40). Likewise, in my dissenting opinion in the El Amparo case (interpretation of judgment, 1997), while sustaining the thesis of the objective international responsibility of the State, I maintained my position that the tempus commisi delicti is at the very beginning of a situation of human rights violation (para. 5).

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5. The general obligation of guarantee (Article 1(1)), as well as the general obligation to adapt domestic laws to the Convention (Article 2) encompass all the rights protected by the Convention and reveal the nature erga omnes of protection of the specific obligations to safeguard each of those rights. The general obligation of guarantee contained in Article 1(1) of the Convention also reveals that human rights treaties such as the American Convention provide the legal framework for requiring compliance with obligations erga omnes, as I indicated in my separate opinion in the Las Palmeras case (judgment on preliminary objections of February 4, 2000), with regard to Colombia. [FN4]

[FN4] Paras. 14, 2 and 6-7 of the said opinion.

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6. And, as I have long sustained in this Court, it is urgent to promote the doctrinal and jurisprudential development of the legal regime of the obligations erga omnes of protection of human rights. [FN5] As I observed in my concurring opinions in the Court's orders on provisional measures in the Peace Community of San José de Apartadó v. Colombia (of June 18, 2002) and the Urso Branco Prison v. Brazil (of July 7, 2004), it is clearly necessary to enforce recognition of the effects of the American Convention vis-à-vis third parties (Drittwirkung), without which the Convention obligations of protection would be reduced to little more than the written word.

[FN5] Cf., e.g., my separate opinions in the judgments on merits of January 24, 1998 (para. 28), and on reparations of January 22, 1999 (para. 40), in Blake v. Guatemala; and cf. A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, vol. II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, pp. 412-420.

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7. Thus, the thesis of the objective international responsibility of the State subsists in circumstances such as those of the Pueblo Bello Massacre v. Colombia and, particularly, in these circumstances, when it was the State itself that helped create the chronic high-risk situation (with the establishment of the so-called "paramilitary groups"). In my concurring opinion in the Jiguamiandó and the Curbaradó Communities v. Colombia (order on provisional measures of March 6, 2003), I also insisted in the need for "acknowledgement of the effects of the American Convention vis-à-vis third parties (Drittwirkung)," [FN6] and added that

"In order to be effective, the protection of human rights determined by the American Convention encompasses not only the relations between individuals and the public authorities, but also their relations with third parties (clandestine or paramilitary groups or other groups of individuals). This reveals the new dimensions of international human rights protection, and also the vast potential of the existing protection mechanisms - such as the American Convention - used to protect collectively the members of a whole community, even though the grounds for the proceedings may be the harm - or the probability or imminence of harm - of individual rights" (para. 4).

[FN6] Cf. paras. 2-3 of the said opinion.

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8. It is worth recalling that, in its transcendent Advisory Opinion No. 18 on The Juridical Status and Rights of Undocumented Migrants (of September 17, 2003), the Inter-American Court correctly maintained that the rights protected by the American Convention must be respected in both relations between individuals and State authorities, and in inter-individual relations, and the obligation to guarantee may also be required of the States Parties in that regard (para. 140) under Article 1(1) of the Convention. Thus, the Convention provisions of protection have effects in relation to third parties (individuals), thereby establishing the nature erga omnes of the protection obligations (Drittwirkung). In my concurring opinion to that Advisory Opinion N.18, I recalled that these obligations erga omnes, characterized by jus cogens (from which they derive) [FN7] are endowed with a necessarily objective nature and therefore encompass all the beneficiaries of the juridical norms (omnes), both the members of the State's bodies and individuals (para. 76). And I continued:

"In my view, we can consider such obligations erga omnes from two dimensions, one horizontal and the other vertical, which complement each other. Thus, the obligations erga omnes of protection, in a horizontal dimension, are obligations pertaining to the protection of the human beings due to the international community as a whole [FN8]. In the framework of conventional international law, they bind all the States Parties to human rights treaties (obligations erga omnes partes), and, in the ambit of general international law, they bind all the States which compose the organized international community, whether or not they are Parties to those treaties (obligations erga omnes lato sensu). In a vertical dimension, the obligations erga omnes of protection bind both the organs and agents of (State) public power, and the individuals themselves (in the inter-individual relations).

For the conformation of this vertical dimension have decisively contributed the advent and the evolution of the International Law of Human Rights. But it is surprising that, until now, these

horizontal and vertical dimensions of the obligations erga omnes of protection have passed entirely unnoticed from contemporary legal doctrine. Nevertheless, I see them clearly shaped in the legal regime itself of the American Convention on Human Rights. Thus, for example, as to the vertical dimension, the general obligation, set forth in Article 1(1) of the American Convention, to respect and to ensure respect for the free exercise of the rights protected by it, generates effects erga omnes, encompassing the relations of the individual both with the public (State) power as well as with other individuals (particuliers)" (paras. 77-78).[FN9]

[FN7] In the same opinion, I clarified that "By definition, all the norms of jus cogens necessarily generate obligations erga omnes. While jus cogens is a concept of material law, the obligations erga omnes refer to the structure of their performance on the part of all the entities and all the individuals bound by them. In their turn, not all the obligations erga omnes necessarily refer to norms of jus cogens" (para. 80).

[FN8] IACourtHR Case of Blake versus Guatemala (merits), Judgment January 24, 1998. Separate Opinión of Judge A.A. Cançado Trindade, para. 26, and cf. para. 27-30.

[FN9] Cf. In this regard, in general, the resolution adopted by the Institute of Internacional LAw (IIL) at the 1989 session in Santiago de Compostela (Article 1), in: IDI, 63 Annuarie de l'Institut de Droit International (1989)-II, pp. 286 and 288-289

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9. It is not my intention to reiterate here everything I have written on this issue in my numerous opinions within this Court, but rather to make my position very clear as regards the broad scope of the general obligation to guarantee rights of Article 1(1) of the Convention. I would like to conclude this introduction referring to two additional and very specific elements. The first refers to what is called the broad and autonomous scope of the general obligations of Articles 1(1) and 2 of the American Convention, which are supplementary to the Convention obligations that specifically relate to each of the rights that it protects. On this specific point, in my said separate opinion in the Mapiripán Massacre v. Colombia (judgment of September 15, 2005), I indicated that:

"The general obligation of Article 1(1) of the Convention - to respect and ensure respect for the right that it protects, without any discrimination - is not 'accessory' to the provisions concerning the rights embodied in the Convention, taken one by one, individually. The American Convention is not violated only and to the extent that a specific right that it protects is violated, but also when there is a failure to comply with one of the general obligations (Articles 1(1) and 2) that it stipulates.

Article 1(1) of the American Convention is much more than a simple 'accessory'; it is a general obligations imposed on State Parties, which encompasses all the rights protected by the Convention. Its continued violation can lead to additional violations of the convention, which add to the original violations. In this way, Article 1(1) is endowed with a broad scope. It refers to a permanent obligation of the State, the failure to comply with which may result in new victims, leading per se to additional violations, without it being necessary to relate them to the rights originally violated. Within the Court, I have been insisting in my interpretation of Article 1(1) - and also of Article 2 - of the Convention, which maximizes the protection of human rights under

the Convention, since my dissenting opinion in Caballero Delgado and Santana v. Colombia (reparations, judgment of January 29, 1997). [...]
To deny the broad scope of the protection obligations under 1(1) and 2 of the Convention - or minimize them by an atomized and disaggregated interpretation of these rights - would be equal to depriving the Convention of its effect utile. The Inter-American Court cannot depart from its consistent case law in this respect and has the obligation to ensure that the high standards of protection built up over the years by its case law are preserved. This notable case law[FN10] in this regard cannot be halted, and I would be firmly opposed to any intent to do so. This construct gives expression to law in evolution, which does not permit retrogression" (paras. 2-3 and 5).

[FN10] Which I have sought to summarize recently; cf. e.g., A.A Cancado Trindades, "The Case-Law of the Inter-American Court of Human Rights: An Overview", in Studi di Diritto Internazionale in Onore di G. Arangio-Ruiz, vol. III, Napoli, Edit. Scientifica, 2004, pp. 1873-1898.

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10. It is my understanding, in relation to Article 1(1) of the Convention, that the Pueblo Bello Massacre v. Colombia provides eloquent testimony of the interpretation I formulated in the above case, as regards the broad and autonomous scope of that general obligation. In brief, the objective international responsibility of the State is constituted in the same way in cases such as the Pueblo Bello Massacre, in which the necessary acknowledgment of Drittwirkung is required, clearly emphasizing the nature erga omnes of the Convention's protection obligations.

11. The second element relates to another argument of the defendant State - that "the structures for attributing responsibility" to the State would constitute numerus clausus (cf. para. 103(c) of this judgment) - which, in my opinion, is untenable. The Court has very properly rejected it (para. 116). I consider that it is the specific list of ways of accepting the contentious jurisdiction of the Inter-American Court that is numerus clausus (other restrictions not established in Article 62 of the Convention are inadmissible),[FN11] rather than the process of attributing international responsibility to the defendant State.

[FN11] Cf. IACourtHR, judgments in Hilaire, Benjamin et al., and Constantine et al. v. Trinidad y Tobago (of September 1, 2001), separate opinions of Judge A.A Cancado Trindade, para. 21-33 (in the three opinions).

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12. This attribution should take into account the factual circumstances which vary from case to case. It is not, therefore, a mechanical process that can be regulated by numerus clausus. On this issue, I observed in my above-mentioned separate opinion in the Mapiripán Massacre case (2005) that:

"International responsibility is attributed to a State following prudent assessment by members of the competent judicial body, after they have carefully determined the facts of each specific case;

it is not merely the mechanical application of specific formulations of precepts that are, in any case, of a supplementary nature" (para. 10).

13. With these brief prior considerations in mind, I will now continue on to the substance of my observations in this separate opinion concerning the correct decision made by the Court in the Pueblo Bello Massacre case to rule on the violations of Articles 8 and 25 of the American Convention together, in keeping with its consistent case law. My reflections in this respect encompass the following aspects: (a) Articles 25 and 8 of the Convention at the ontological and hermeneutic levels; (b) the genesis of the right to an effective recourse before the national courts in the corpus juris of international human rights law; (c) the irrelevance of the allegation of difficulties arising from domestic law; (d) the right to an effective recourse in the case law of the Inter-American Court; (e) the indivisibility of access to justice (the right to an effective recourse) and the guarantees of due process of law (Articles 25 and 8 of the American Convention); (f) the indivisibility of Articles 25 and 8 of the American Convention in the consistent case law of the Inter-American Court; (g) the indivisibility of Articles 25 and 8 of the American Convention as an inviolable advance in case law; (h) overcoming the difficulties concerning the right to an effective recourse in the case law of the European Court; (i) the right of access to justice lato sensu; and (j) the right of access to justice as an imperative of jus cogens.

II. Articles 25 and 8 of the American Convention at the ontological and hermeneutic levels

14. It is axiomatic that each of the rights protected by the human rights treaties has its own content, from which the different formulations arise - as is the case of Articles 25 and 8 of the American Convention. Here, we are on an essentially ontological level. Although they are endowed with their own material content, some of these rights have had to undergo a long jurisprudential evolution until they achieved autonomy. This is the case, for example, of the right to an effective recourse in Article 25 of the American Convention and Article 13 of the European Convention on Human Rights (cf. infra). It is also the case of Article 8 of the American Convention and Article 6 of the European Convention.

15. Nowadays, the meaning given to the treaty-based provisions is the result of the development of case law and they are understood and should be appreciated in light of this development, in keeping with the principle of inter-temporal law - and not statically - abiding only by what motivated their original formulation some years ago. The fact that the protected rights are endowed with autonomy and their own material content does not mean that they cannot or should not be interrelated owing to the circumstances of each case. To the contrary, in my opinion this interrelation is the element that provides more effective protection, in light of the indivisibility of all human rights. Here we pass from the ontological to the hermeneutical level. Having made this distinction, I will now continue to the route that the right to an effective recourse has followed over time.

III. The genesis of the right to an effective recourse before the national courts in the corpus juris of international human rights law

16. The travaux préparatoires of the Universal Declaration of Human Rights were conducted in different stages. The United Nations Commission on Human Rights decided to elaborate a

draft in April/May 1946, when it appointed a "nuclear commission" to make the initial studies. In parallel, in 1947, UNESCO consulted scholars of the time regarding the bases of a future Universal Declaration.[FN12] The draft Declaration was prepared within the framework of the United Nations Commission on Human Rights, by a Working Group which drafted it between May 1947 and June 1948. As of September 1948, the draft Declaration was examined by the Third Committee of the United Nations General Assembly, and adopted on December 10 that year by the Assembly.[FN13] One of the most relevant provisions of the 1948 Universal Declaration is to be found in Article 8, according to which everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.

[FN12] UNESCO, Los Derechos del Hombre - Estudios y Comentarios en torno a la Nueva Declaración Universal, México/Buenos Aires, Fondo de Cultura Económica, 1949, pp. 233-246.
[FN13] For a full report, cf. A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, vol. I, 2a. ed., Porto Alegre/Brazil, S.A. Fabris Ed., 2003, chapter I, pp. 51-77.

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17. In the final analysis, this Article 8 of the Universal Declaration embodies the right of access to justice (under domestic law), an essential element in any democratic society. Despite its relevance, the draft article that became Article 8 of the Universal Declaration was only inserted in the text during the final stages of the travaux préparatoires, when the matter was being examined by the Third Committee of the United Nations General Assembly. However, significantly, no objections were raised to it, and the Third Committee adopted it by 46 votes to zero, with three abstentions, while in the General Assembly it was adopted unanimously. The initiative, delayed but very successful, was proposed by the delegations of the Latin American States. It may even be considered that Article 8 (on the right to an effective remedy) represents the Latin American contribution par excellence to the Universal Declaration.

18. Indeed, Article 8 of the 1948 Universal Declaration was inspired by the equivalent provision of Article XVIII of the American Declaration of the Rights and Duties of Man eight months earlier (April 1948).[FN14] The basic argument that led to the insertion of this provision in the 1948 American and Universal Declarations was the acknowledgement of the need to fill a gap in both declarations: to protect the rights of the individual against the abuses of the public authorities, to submit any abuse of individual rights to a decision of the Judiciary under domestic law.[FN15]

[FN14] This Latin American initiative was strongly influenced by the principles that govern the remedy of amparo, which had been embodied in the national laws of many countries of the region. To such an extent that, at the Bogotá Conference of April 1948, Article XVIII of the said American Declaration was adopted unanimously by the 21 delegations present. Regarding the legacy of the 1948 American Declaration, cf. A.A. Cançado Trindade, "O Legado da Declaração Universal de 1948 e o Futuro da Proteção Internacional dos Direitos Humanos", 14 Anuario Hispano-Luso-Americano de Derecho Internacional (1999) pp. 197-238

[FN15] Cf. A. Verdoodt, Naissance et signification de la Déclaration Universelle des Droits de l'Homme, Louvain, Nauwelaerts, [1963], pp. 116-119; A. Eide et alii, The Universal Declaration of Human Rights - A Commentary, Oslo, Scandinavian University Press, 1992, pp. 124-126 and 143-144; R. Cassin, "Quelques souvenirs sur la Déclaration Universelle de 1948", 15 Revue de droit contemporain (1968) No. 1, p. 10; R. Cassin, "La Déclaration Universelle et la mise en oeuvre des droits de l'homme", 79 Recueil des Cours de l'Académie de Droit International de La Haye (1951) pp. 328-329.

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19. In brief, the original enshrinement of the right to an effective remedy before the competent national judges or courts in the American Declaration (Article XVIII) was transplanted to the Universal Declaration (Article 8) and, from this, to the European and American Conventions on Human Rights (Articles 13 and 25, respectively), and also to the United Nations Covenant on Civil and Political Rights (Article 2(3)). Article 8 of the Universal Declaration and the corresponding provisions of human rights treaties in force, such as Article 25 of the American Convention, establish the State's obligation to provide adequate and effective domestic remedies. I have always maintained that this obligation should constitute a basic pillar not only of these treaties but of the rule of law itself in a democratic society, and its proper application is a means of optimizing the administration of justice (in substance and not only in form) at the national level.

20. This key provision is also closely bound to the general obligation of States (also embodied in the human rights treaties) to respect the rights enshrined in them, and to ensure their free and full exercise to all persons subject to their respective jurisdictions.[FN16] It is also linked to the guarantees of due process of law (Article 8 of the American Convention),[FN17] inasmuch as it ensures access to justice. Thus, by enshrining the right to an effective remedy before the competent national judges or tribunals, the guarantees of due process of law, and the general obligation to guarantee the protected rights, the American Convention (Articles 25, 8 and 1(1)), and other human rights treaties attribute protection functions to the domestic law of the States parties.

[FN16] American Convention on Human Rights, Article 1(1); European Convention on Human Rights, Article 1; United Nations Covenant on Civil and Political Rights, Article 2(1).

[FN17] With regard to judicial protection and guarantees of due process of law under the American Convention, cf. A. A. Cançado Trindade, "The Right to a Fair Trial under the American Convention on Human Rights", in The Right to Fair Trial in International and Comparative Perspective (ed. A. Byrnes), Hong Kong, University of Hong Kong, 1997, pp. 4-11; A.A. Cançado Trindade, "Judicial Protection and Guarantees in the Recent Case-Law of the Inter-American Court of Human Rights", in Liber Amicorum in Memoriam of Judge J.M. Ruda, The Hague, Kluwer, 2000, pp. 527-535.

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21. For the benefit of those protected, it is important that the corresponding developments in case law achieved by the Inter-American Court of Human Rights to date should be preserved and developed further in future - and never halted by a disaggregative interpretation. The relevance

of the State's obligation to provide adequate and effective remedies must never be diminished. The right to an effective recourse before the competent national judges or tribunals in the sphere of judicial protection - to which the 1948 Universal Declaration gave global scope - is much more relevant that was previously imagined. The obligation of States Parties to provide such remedies within their national laws and to ensure to all persons subject to their jurisdiction the guarantee of the free and full exercise of all the rights embodied in the human rights treaties, and also the guarantees of due process of law, assume an even greater importance in a continent such as ours (which includes the three Americas), marked by casuistry, which often deprives the individual of the law's protection.

IV. The irrelevance of the allegation of difficulties arising from domestic law

22. It should always be recalled that, when ratifying human rights treaties, the States Parties assume the general obligation to adapt their domestic laws to the international protection norms, in addition to the specific obligations relating to each of the protected rights. The 1969 and 1986 Vienna Conventions on the Law of Treaties prohibit a Party from invoking the provisions of its internal law as justification for its failure to perform a treaty (Article 27). This is a principle, above and beyond the law of treaties, of the law of the State's international responsibility, firmly established in international case law. According to this case law, the alleged difficulties arising from domestic law are a simple fact, and do not exempt the States Parties to international human rights treaties from international responsibility for failure to comply with the international obligations assumed.[FN18] This basic legally-recognized principle is duly codified, precisely in Article 27 of the two Vienna Conventions mentioned above.

[FN18] The case law of both the former Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ) indicates that international obligations must be complied with in good faith, and the State may not invoke provisions of constitutional or domestic law in order to justify failure to comply with them. PCIJ, Greco-Bulgarian Communities (1930), Series B, No. 17, p. 32; PCIJ, Treatment of Polish Nationals in the Danzig Territory (1931), Series A/B, No. 44, p. 24; PCIJ, Free Zones of Upper Savory and District of Gex (1932), Series A/B, No. 46, p. 167; ICJ, Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement, ICJ Reports (1988) p. 31-32, para. 47.

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23. Thus, the States in question cannot invoke alleged difficulties or gaps in domestic law, since they are obliged to harmonize the latter with the provisions of the human rights treaties to which they are a party (such as the American Convention on Human Rights, Article 2, and the United Nations Covenant on Civil and Political Rights, Article 2(2)). Therefore, if they invoke alleged difficulties or gaps in domestic law for failing to provide simple, prompt and effective domestic remedies so as to implement effectively the international norms for the protection of human rights, they are incurring in an additional violation of the human rights treaties to which they are a party.

V. The right to an effective recourse in the case law of the Inter-American Court.

24. Almost 10 years ago, in my dissenting opinion in Genie Lacayo v. Nicaragua (Request for review of judgment, order of September 13, 1997),[FN19] I analyzed the material content and the scope of Article 25 (right to an effective recourse) of the American Convention on Human Rights, in relation to Article 8(1) (due process of law) of the Convention, and also to the general obligations (to guarantee the exercise of the protected rights and to harmonize domestic law to international treaty-based law) embodied, respectively, in Articles 1(1) and 2 of the Convention (paras. 18-23 of the said opinion). Contrary to the Court's ruling in that case - which looked at these treaty-based provisions from the viewpoint of formal and not material justice - I concluded that the defendant State had violated Articles 25, 8(1), 1(1) and 2 of the Convention "considered jointly" (para. 28).

[FN19] Inter-American Court of Human Rights, Series C, No. 45, Application for judicial review of the judgment on merits, reparations and costs, of January 29, 1997, Order of September 13, 1997, pp. 3-25.

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25. Following the same reasoning, in my dissenting opinion in Caballero Delgado and Santana v. Colombia (reparations, Judgment of January 29, 1997),[FN20] I also developed a hermeneutics that integrated Articles 8, 25, 1(1) and 2 of the American Convention, once again considering them together (paras. 2-4 and 7-9 of the said opinion), and maintained, contrary to the Court, that the defendant State had violated these four interrelated treaty-based provisions. Regarding the right to an effective recourse under Article 25 of the Convention, in particular, I indicated the following in my said dissenting opinion in Genie Lacayo v. Nicaragua:

“The right to a simple, prompt and effective remedy before the competent national judges or tribunals, enshrined in Article 25 of the Convention, is a fundamental judicial guarantee far more important than one may prima facie assume,[FN21] and which can never be minimized. It constitutes, ultimately, one of the basic pillars not only of the American Convention on Human Rights, but of the rule of law (État de Droit) itself in a democratic society (in the sense of the Convention). Its correct application has the sense of improving the administration of justice at national level, with the legislative changes necessary to the attainment of that purpose.

The origin - little-known - of that judicial guarantee is Latin American: from its insertion originally in the American Declaration of the Rights and Duties of Man (of April 1948),[FN22] it was transplanted to the Universal Declaration of Human Rights (of December 1948), and from there to the European and American Conventions on Human Rights (Articles 13 and 25, respectively), as well as to the United Nations Covenant on Civil and Political Rights (Article 2(3)). Under the European Convention on Human Rights, in particular, it has generated a considerable case-law,[FN23] apart from a dense doctrinal debate.

It could be argued that, for Article 25 of the American Convention to have effects vis-à-vis acts of the Legislative Power, for example, the incorporation of the American Convention into the domestic law of the States Parties would be required. Such incorporation is undoubtedly desirable and necessary, but, by the fact of not having incorporated it, a State Party would not thereby be dispensed from applying always the judicial guarantee stipulated in Article 25. Such guarantee is intimately linked to the general obligation of Article 1(1) of the American

Convention, which, in turn, confers functions of protection onto the domestic law of the States Parties.

Articles 25 and 1(1) of the Convention are mutually reinforcing, in the sense of securing the compliance with one and the other in the ambit of domestic law. Articles 25 and 1(1) require, jointly, the direct application of the American Convention in the domestic law of the States Parties. In the hypothesis of alleged obstacles of domestic law, Article 2 of the Convention comes into operation, requiring the harmonization with the Convention of the domestic law of the States Parties. These latter are obliged, by Articles 25 and 1(1) of the Convention, to establish a system of simple and prompt local remedies, and to give them effective application.[FN24] If de facto they do not do so, due to alleged lacunae or insufficiencies of domestic law, they incur into a violation of Articles 25, 1(1) and 2 of the Convention (paras. 18-21).

[FN20] ICourtHR, judgment of January 29, 1997 (reparations), Series C, No. 31, pp. 3-43.

[FN21] Its importance was pointed out, for example, in El Informe de la Comisión de Juristas de la OEA para Nicaragua, of February 4, 1994, pp. 100 and 106-107, paragraphs 143 and 160, published six years later, cf. A.A Cançado Trindade, E. Ferrero Costa and A. Gomez Robledo "Gobernabilidad Democrática y Consolidación Institucional: El Control Internacional y Constitucional de los Interna Corporis – Informe de la Comisión de Juristas de la OEA para Nicaragua (February 4, 1994)" (Boletín de la Academia de Ciencias Políticas y Sociales) (2000) n. 137, p. 603-669.

[FN22] At a moment when, in parallel, the United Nations Commission on Human Rights was still preparing the draft Universal Declaration (from May 1947 until June 1948), as recalled in a memoir by the rapporteur of the Commission (René Cassin); the insertion of the provision on the right to an effective remedy before national jurisdictions in the Universal Declaration (Article 8), inspired by the corresponding provision of the American Declaration (Article XVIII), took place in subsequent discussions (1948) of the Third Committee of the United Nations General Assembly. Cf. R. Cassin, "Quelques souvenirs sur la Déclaration Universelle de 1948", 15 Revue de droit contemporain (1968) No. 1, p. 10.

[FN23] Cf. infra. In its beginnings, such case-law maintained the "accessory" nature of Article 13 of the European Convention, considered – as of the 1980s - as guaranteeing a subjective individual substantive right. Gradually, in its judgments in Klass v. Germany (1978), Silver and Others v. United Kingdom (1983), and Abdulaziz, Cabales and Balkandali v. United Kingdom (1985), the European Court of Human Rights began to recognize the autonomous nature of Article 13. Finally, after years of hesitation and oscillation, in its recent judgment in Aksoy v. Turkey of 18 December 1996 (paragraphs 95-100), the European Court determined that an "autonomous" violation of Article 13 of the European Convention had occurred.

[FN24] The question of the effectiveness of local remedies is intimately linked to the administration of justice and to the action of the competent national organs to redress the violations of the protected rights.

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26. Shortly after the above-mentioned cases of Genie Lacayo and Caballero Delgado and Santana, the Inter-American Court, for the first time in Castillo Páez v. Peru (judgment on merits of November 2, 1997), defined the content and scope of Article 25 of the Convention, which, it

concluded had been violated in relation to Article 1(1) thereof, by the defendant State. In the words of the Court, the provision contained in Article 25 on the right to effective recourse to a competent national court or tribunal “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention" (para. 82).[FN25]

[FN25] Emphasis enhanced.

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27. Since then, this has been the Court's position in that regard, reiterated in its judgments on merits in Suárez Rosero v. Ecuador (judgment of November 12, 1997, para. 65), Blake v. Guatemala (judgment of January 24, 1998, para. 102), Paniagua Morales et al. v. Guatemala (judgment of March 8, 1998, para. 164), Castillo Petruzzi et al. v. Peru (Judgment of May 30, 1999, para. 184), Cesti Hurtado v. Peru (judgment of September 29, 1999, para. 121), the "Street Children" (Villagrán et al.) v. Guatemala (judgment of November 19, 1999, para. 234), Durand and Ugarte v. Peru (judgment of May 28, 1999, para. 101), Cantoral Benavides v. Peru (judgment of August 18, 2000, para. 163), Bámaca Velásquez v. Guatemala (judgment of November 25, 2000, para. 191), the Mayagna (Sumo) Awas Tingni Community v. Nicaragua (judgment of August 31, 2001, para. 112), Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago (judgment of June 21, 2002, para. 150), Cantos v. Argentina (judgment of November 28, 2002, para. 52), Juan Humberto Sánchez v. Honduras (judgment of June 7, 2003), Maritza Urrutia v. Guatemala (judgment of November 27, 2003, para. 117), the 19 Tradesmen v. Colombia (judgment of July 5, 2004, para. 193), Tibi v. Ecuador (judgment of September 7, 2004, para. 131), the Serrano Cruz Sisters v. El Salvador (judgment of March 1, 2005, para. 75), Yatama v. Nicaragua (judgment of June 23, 2005, para. 169), Acosta Calderón v. Ecuador (judgment of June 24, 2005, para. 93), and Palamara Iribarne v. Chile (judgment of November 22, 2005, para. 184).

VI. The indivisibility of access to justice (the right to an effective recourse) and the guarantees of due process of law (Articles 25 and 8 of the American Convention)

28. On the day the Inter-American Court adopted the judgment on merits in the Castillo Páez case (November 3, 1997) - the starting point of this lucid consistent case law of the Court - I experienced the satisfaction of knowing that significant progress had been made in the Court’s case law, which advanced to place the right to an effective recourse in the prominent position that corresponds to it, as an expression of the right of access to justic, lato sensu, understood as the right to the availability of justice, thus unavoidably encompassing the guarantees of due process of law, and authentic execution of judgment. How, then, can we fail to relate Article 25 to Article 8 of the Convention? After all, how could the guarantees of due process be effective (Article 8) if the individual did not have the right to an effective recourse (Article 25)? And how could the latter be effective without the guarantee of due process of law?

29. The fact is that they complement and complete each other within the legal framework of the rule of law in a democratic society. This is the sound interpretation of these two treaty-based provisions. Also, on the day the Court adopted the judgment on merits in the tragic Castillo Páez

case, I was gratified to see that this advance in the Court's case law had liberated Article 25 of the American Convention - in the tradition of the most lucid Latin American juridical though[FN26] - from the vicissitudes experienced by the corresponding Article 13 of the European Convention (cf. infra). The Inter-American Court correctly underscored the essential connection between Articles 25 and 8 of the American Convention when finding, in its judgment in the Mapiripán Massacre v. Colombia of September 15, 2006, that, as I have been maintaining for some time:

"According to the American Convention, the States Parties are obliged to provide effective judicial recourses to the victims of human rights violations (Article 25), recourses that must be substantiated according to the rules of due process of law (Article 8(1)), all within the general obligation of the States to ensure to all persons subject to their jurisdiction the free and full exercise of the rights embodied in the Convention (Article 1(1))" (para. 195).

[FN26] Cf. note (4) supra.

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30. Recently, on December 1, 2005, during the public hearing before this Court in Ximenes Lopes v. Brazil, both the Inter-American Commission on Human Rights and the representatives of the alleged victim and his next of kin proposed an integrated interpretation of Articles 8(1) and 25 of the American Convention, which, they considered, should necessarily be considered together. The Commission stated that:[FN27]

"Article 8(1) cannot be disconnected from Article 25 or vice versa, given that they respond definitively to the same concept of responsibility in the judicial sphere (...)."

According to the Commission - recalling the "firm" and, today, converging case law on this point of the Inter-American and European Courts - the "reasonable time" mentioned in Article 8 of the American Convention is closely linked to a the effective, simple and prompt recourse mentioned in its Article 25. The representatives of the alleged victim and his next of kin also acknowledged the consistent case law of the Inter-American Court on this point to date and their support for it, which they are determined to continue expressing because "the most obvious interpretation of this provision within the inter-American system is that the two articles [Articles 8 and 25 of the Convention] should be examined together." This is the opinion of the beneficiaries of the inter-American protection system, as both they and the Commission clearly stated during the proceedings before this Court in the Ximenes Lopes case.

[FN27] As may be seen from the transcript of the said hearing, deposited in the files of the Court and sent to the parties in the instant case.

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31. In a study on due process of law that I presented during an international seminar of the International Committee of the Red Cross (ICRC), in Hong Kong, China, a few years ago, I recalled the words of Advisory Opinion OC-9/87 of the Inter-American Court[FN28] of October

6, 1987, with regard to effective recourses before competent national courts or tribunals (Article 25(1) of the Convention) such as habeas corpus and amparo, and any other recourses that are essential to ensure respect for non-derogable rights (those that may not be derogated under Article 27(2) of the Convention), which are "essential" judicial rights that must be exercised within the framework and in light of the principles of due process of law (under Article 8 of the American Convention).[FN29] Thus, in Advisory Opinion OC-9/87, the Court considered the provisions of Articles 25 and 8 of the American Convention as an indivisible whole.

[FN28] ICourtHR., Series A, No. 9, 1987, pp. 23-41.
[FN29] Paragraph 41.

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32. In this same seminar in China, I referred to the case law developed by the Court (at the end of 1997 and the beginning of 1998), particularly as of Loayza Tamayo v. Peru, Blake v. Guatemala and Suárez Rosero v. Ecuador, on relevant aspects of due process of law and the right to an effective recourse (Articles 25 and 8 of the American Convention), which, in the "second generation" of cases submitted to the consideration of the Court (after the initial cases on the fundamental right to life), occupied a central position when considering the applications lodged with the Inter-American Court.[FN30]

[FN30] Cf. A.A. Cançado Trindade, "The Right to a Fair Trial under the American Convention on Human Rights", in The Right to Fair Trial in International and Comparative Perspective (ed. A. Byrnes), Hong Kong/China, University of Hong Kong, 1997, pp. 4-11.

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33. I consider that this evolution in case law is the legal heritage of the inter-American protection system and of the peoples of our region, and I am firmly opposed to any attempt to dismantle it. The Court has been faithful to its position in the vanguard to date. In its notable Advisory Opinion OC-16/99 on The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law (of October 1, 1999), which has inspired international case law in statu nascendi on the matter (as widely recognized in the specialized bibliography), the Court once again considered as a whole the right to an effective recourse and the guarantees of due process of law (Articles 25 and 8 of the Convention). After emphasizing the need to interpret the Convention in such a way that "the system for the protection of human rights should have all its appropriate effects (effet utile)" (para. 58), according to the necessarily evolutive interpretation of all the corpus juris of international human rights law (paras. 114-115), the Court stated clearly and categorically that:

"In the opinion of this Court, for “the due process of law,” a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants." (para. 117).

34. Thus, according to the Court - in a luminous advisory opinion which is, today, a benchmark in its case law and in its history (together with Advisory Opinion OC-18/03 on The

Juridical Status and Rights of Undocumented Migrants of 2003) - there is simply no due process without an effective recourse before competent national courts or tribunals, and the provisions of Articles 25 and 8 of the Convention are unavoidably linked, not only at the conceptual level, but also - and above all - in hermeneutics. The Court added, in the said Advisory Opinion OC-16/99 on The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law, that it is necessary to be attentive to ensure and confirm that all defendants:

"Enjoy a true opportunity for justice and the benefit of due process of law (...)" (para. 119).

VII. The indivisibility of Articles 25 and 8 of the American Convention in the consistent case law of the Inter-American Court

35. In its consistent case law, the Inter-American Court has, with the appropriate reasoning, always combined its consideration of alleged violations of Articles 8 and 25 of the American Convention, as exemplified by its judgments in Barrios Altos (Chumbipuma Aguirre et al.) v. Peru (of March 14, 2001, paras. 47-49), Las Palmeras v. Colombia (of December 6, 2001, paras. 48-66), Baena Ricardo et al. v. Panama (of February 2, 2001, paras. 119-143), Myrna Mack Chang v. Guatemala (of November 25, 2003, paras. 162-218), Maritza Urrutia v. Guatemala (of November 27, 2003, paras. 107-130, the 19 Tradesmen v. Colombia (of July 5, 2004, paras. 159-206), the Gómez Paquiyauri Brothers v. Peru (of July 8, 2004, paras. 137-156), the Serrano Cruz Sisters v. El Salvador (of March 1, 2005, paras. 52-107), Caesar v. Trinidad and Tobago (of March 11, 2005, paras. 103-117), the Moiwana Community v. Suriname (of June 15, 2005, paras. 139-167), the Yakye Axa Indigenous Community v. Paraguay (of June 17, 2005, paras. 55-119), Fermín Ramírez v. Guatemala (of June 20, 2005, paras. 58-83), Yatama v. Nicaragua (of June 23, 2005, paras. 145-177), the Mapiripán Massacre v. Colombia (of September 15, 2005, paras. 193-241), and Gómez Palomino v. Peru (of November 22, 2005, paras. 72-86)[FN31]

[FN31] And cf. also, likewise, its judgments in the Case of the Girls Yean and Bosico v. the Dominican Republic (of September 8, 2005, para. 201), and Palamara Iribarne v. Chile (of November 22, 2005, paras. 120-189).

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36. In addition to the above-mentioned judgments, the Court has been particularly emphatic in others about the need to follow an integrating (and never disaggregating) interpretation of Articles 8 and 25 of the American Convention, considering them together. For example, in Cantos v. Argentina (Judgment of November 28, 2002), the Court underscored the importance of the right of access to justice, embodied, lato sensu, in both Article 25 and Article 8(1) of the Convention, and added that:

"Any domestic law or measure that imposes costs or in any other way obstructs the individuals' access to the courts [...] must be regarded as contrary to Article 8(1) of the Convention."[FN32]

[FN32] Paras. 50 and 52 of this judgment.

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37. Article 8(1) is thus correctly understood by the Court to be inextricably linked to the right to an effective recourse under Article 25 of the Convention. In keeping with this reasoning, in Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago (Judgment of June 21, 2002), the Court recalled its obiter dictum in Advisory Opinion OC-16/99 to the effect that there is no "due process of law" if a defendant is unable to assert his rights "effectively" (i.e. in the absence of genuine access to justice) and added that, "for due process of law" it is necessary to observe "all the requirements" that are designed "to ensure or assert the entitlement to a right or the exercise thereof" (paras. 146 and 147).

38. This is the significant consistent case law of the Court to emancipate the individual, patiently developed over recent years. And this is why I defend it so staunchly (because I have spent a long time considering it and it has benefited many cases), in the same way that I am firmly opposed to current attempts within the court to dismantle it, disassociating Article 8 from Article 25, apparently due to mere dilettantism or some other reason that I am unable to understand. The Court's case law in line with the position I maintain is not exhausted on that point. In Bámaca Velásquez v. Guatemala (judgment of November 25, 2000), the Court expressly considered "the guarantees embodied in Article 8 and the judicial protection established in Article 25 of the Convention" together, in order to examine the alleged violations of rights in that case (para. 187). And, in Myrna Mack Chang v. Guatemala (judgment of November 25, 2003), it stated very significantly that:

"[...] The Court must examine the domestic judicial proceedings as a whole to attain a comprehensive perception of them and to establish whether the said actions contravene the standards on the right to fair trial and judicial protection and the right to an effective remedy, derived from Articles 8 and 25 of the Convention." [FN33]

[FN33] Para. 201 of this judgment (emphasis added).

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39. Only an integrating interpretation, such as the one that I have been maintaining and developing within the Court for more than a decade can provide the necessarily comprehensive vision of the violation of one or more rights protected by the Convention, with direct consequences for the appropriate determination of reparations. This is an additional point that should not be overlooked. In another well-known case, which has already been examined in books specifically dedicated to it[FN34] - the "Street Children" (Villagrán Morales et al.) v. Guatemala (judgment of November 19, 1999) - the Court again maintained that:

"The Court must examine all the domestic judicial proceedings in order to obtain an integrated vision of these acts and establish whether or not it is evident that they violated the norms on the obligation to investigate, and the right to be heard and to an effective recourse, which arise from Articles 1(1), 8 and 25 of the Convention."[FN35]

[FN34] Cf., regarding the Case of the “Street Children", e.g.: CEJIL, Crianças e Adolescentes - Jurisprudência da Corte Interamericana de Direitos Humanos, Rio de Janeiro, CEJIL/Brazil, 2003, pp. 7-237; Casa Alianza, Los Pequeños Mártires..., San José, Costa Rica, Casa Alianza/A.L., 2004, pp. 13-196; among several other publications on the case mentioned.
[FN35] Para. 224 of the said judgment (emphasis added), and cf. para. 225.
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40. In this judgment in the historic "Street Children" case, the Court added:

"Regarding acts or omissions of domestic judicial bodies, Articles 25 and 8 of the Convention define the scope of the [...] principle of generation of responsibility for the acts of all State organs” (para. 220).

In other words, the provisions of Articles 25 and 8 of the Convention, considered together, are fundamental for determining the scope of State responsibility, including for the acts or omissions of the Judiciary (or any other State agent or branch).

41. In Juan Humberto Sánchez v. Honduras (judgment of June 7, 2003), the Court stated that recourses that “are illusory,” owing to the “general conditions of the country” in question or even “the specific circumstances” of a particular case, cannot be considered “effective” (para. 121). In other words, access to justice and the effective exercise of a right (with strict respect for judicial rights) are inevitably linked. And the Court added in that case:

"(...) In the case under discussion it has been proven that the death of Juan Humberto Sánchez was set within the framework of a pattern of extra-legal executions [...], one characteristic of which is that there has also been a situation of impunity [...] in which judicial remedies are not effective, the judicial investigations have serious shortcomings, and the passing of time plays a fundamental role in erasing all traces of the crime, thus making the right to defense and judicial protection an illusion, as regards the terms set forth in Articles 8 and 25 of the American Convention (para. 135).

42. In addition, in Durand and Ugarte v. Peru (judgment of August 16, 2000), the Court recalled the pleadings of the Inter-American Commission on Human Rights to the effect that “the exclusive military justice system does not offer the minimum guarantees of independence and impartiality required according to the provisions of Article 8(1) of the Convention and, therefore, does not constitute an effective recourse to protect the rights of the victims and their next of kin and to repair the damage caused, also violating the provisions of Article 25 of the Convention" (para. 120). Thus, when determining the violation of Articles 8(1) in connection with 25(1) of the Convention in the Durand and Ugarte case, the Court concluded that:

"As a consequence, Article 8(1) of the American Convention, in connection with Article 25(1) thereof, confers on the next of kin of the victims the right that the latter’s disappearance and death should be investigated by State authorities; that those responsible for these illegal acts should be prosecuted and, if applicable, the corresponding sanctions should be imposed, and that the damages suffered by the next of kin should be compensated. None of these rights was

guaranteed in the instant case of the next of kin of Mr. Durand Ugarte and Mr. Ugarte Rivera" (para. 130).

43. In the judgment that the Inter-American Court has just adopted in the Pueblo Bello Massacre case, it has adhered to its best case law, by examining together the alleged – and proven – violations of Articles 25 and 8(1), in relation to Article 1(1) of the American Convention (paras. 206 and 212). Access to justice and the guarantees of due process of law are unavoidably interrelated. This is clear from, inter alia, the Court's deliberations in this case,

"The investigation and the proceedings conducted in the ordinary criminal jurisdiction have not represented an effective recourse that guaranteed, within a reasonable time, the right of access to justice of the next of kin of those who were disappeared or deprived of life, with full observance of judicial rights" (para. 188).

VIII. The indivisibility of Articles 25 and 8 of the American Convention as an inviolable advance in case law

44. However, it cannot be assumed that there will be a linear, constant and inevitable advance in the relevant international case law, because institutions are the people who run them and, like clouds or waves, they vacillate as is inherent to the human condition. Today, I can see clearly that working for the international protection of human rights is like the myth of Sisyphus, an unending task. It resembles constantly pushing up the side of a mountain a rock that continually falls back down and must be pushed up again. The work of protection continues with advances and setbacks.

45. When descending the mountain in order to push the rock upwards once again, one is aware of the human condition and of the tragedy encompassing it. But the struggle must continue; there is no alternative:

"Sisyphe, revenant vers son rocher, contemple cette suite d'actions sans lien qui devient son destin, créé par lui, uni sous le regard de sa mémoire et bientôt scellé par sa mort. (...) Sisyphe enseigne la fidélité supérieure qui (...) soulève les rochers. (...) La lutte elle-même vers les sommets suffit à remplir un coeur d'homme. Il faut imaginer Sisyphe heureux."[FN36]

I consider that halting the progress achieved by the Inter-American Court's integrating hermeneutics on this issue, starting with the Castillo Páez judgment, would be comparable to allowing the rock to roll back down the mountain. Regarding the issue being examined, it is necessary to look at it as a whole before considering the details, and not vice versa; otherwise, there is a risk of seeing only a few of the nearest trees and losing sight of the forest.

[FN36] A. Camus, Le mythe de Sisyphe, Paris, Gallimard, 1942, p. 168.

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46. Fortunately, in this Pueblo Bello Massacre case, there was consensus within the Court to examine Articles 8(1) and 25 of the American Convention together, as is correct, in relation to

Article 1(1). The Court's reasoning in this regard was never questioned. Shortly after the advance described above concerning the integrating hermeneutics in the Inter-American Court's case law, I wrote in an almost premonitory tone, in my Tratado de Derecho Internacional de los Derechos Humanos (tome II, 1999), that:

"É importante que este avanço na jurisprudência da Corte Interamericana seja preservado e desenvolvido ainda mais no futuro. (...) No sistema interamericano de proteção, a jurisprudência sobre a matéria encontra-se em sua infância, e deve continuar a ser cuidadosamente construída. O direito a um recurso efetivo ante os tribunais nacionais competentes no âmbito da proteção judicial (artigos 25 e 8 da Convenção Americana) é muito mais relevante do que até recentemente se supôs, em um continente, como o nosso, marcado por casuísmos que muito freqüentemente privam os indivíduos da proteção do direito. Requer considerável desenvolvimento jurisprudencial nos próximos anos."[FN37]
[It is important that this advance in the case law of the Inter-American Court is preserved and developed even further in the future [...] In the inter-American protection system, the case law on this issue is still in its infancy, and must continue to be carefully developed. The right to an effective recourse before competent national courts in the sphere of judicial protection (Articles 25 and 8 of the American Convention) is much more relevant that was supposed until recently, in a continent such as ours, known for casuistry that often deprives individuals of the protection of the law. It will call for significant case law development over the coming years.]

[FN37] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, tome II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, p. 67, para. 70.
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47. Despite this, I thought that I would not have to examine in detail this issue (particularly the close relationship between Articles 25 and 8 of the American Convention), which I considered had been established in the most lucid writings of international law – and to which I have even dedicated a 177-page chapter in my Tratado[FN38] (concerning the interpretation and application of the human rights treaties. Today, at the onset of 2006, I see this is not the case, not even within this Court. Once again the rock must be pushed up the mountain, even in the knowledge that it may fall down anew.

[FN38] Cf. ibid., chap. XI, pp. 23-200.
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48. Conceptually, judicial protection (Article 25) and judicial guarantees (Article 8) form an organic whole, and constitute the rule of law in a democratic society. Effective recourses before competent national courts and tribunals (such as, habeas corpus, amparo in most countries of Latin America, and the mandado de segurança in Brazil, all in accordance with Article 25 of the American Convention) should be exercised within the framework, and according to the principles, of due process of law (embodied in Article 8 of the Convention).[FN39]

[FN39] Cf., in this regard, the Inter-American Court's Advisory Opinion OC-09/87 on Judicial Guarantees in States of Emergency (1987).

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49. In a specific case, there may be a violation of only one of the elements of this form of judicial protection and juridical guarantees – but this does not detract from the validity of the integrating hermeneutics that I maintain, in the sense that, in principle, it is necessary to consider together the provisions of Articles 8 and 25 of the American Convention – which constitute, I reiterate, the rule of law in a democratic society – in relation to the general obligations stipulated in Articles 1(1) and 2 of the Convention. I consider that any affirmation to the contrary would require a justification that, in my opinion, simply does not exist and could not be even remotely convincing.

50. Without deviating from the general rules of interpretation of treaties (Article 31(1) of the 1969 and 1986 Vienna Conventions on the Law of Treaties), the international supervisory mechanisms for human rights have developed a teleological interpretation, emphasizing the realization of the object and purpose of human rights treaties as the most appropriate factor to ensure an effective protection of these rights. Ultimately, underlying the said general rule of interpretation stipulated in the two Vienna Conventions (Article 31(1)), is the principle, widely supported by case law, according to which it is necessary to ensure that the treaty-based provisions produce the pertinent effects (the so-called effet utile). This principle, ut res magis valeat quam pereat, by which the interpretation should promote the appropriate effects of a treaty has (with regard to human rights) assumed particular importance in determining the broad scope of the treaty-based protection obligations.[FN40]

[FN40] A.A. Cançado Trindade, Tratado..., tome II, op. cit. supra No. (11), pp. 32-33 and 192.

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51. Indeed, this interpretation is the one that most faithfully reflects the special character of human rights treaties, the objective nature of the obligations they establish, and the autonomous meaning of the concepts they embody (distinct from the corresponding concepts in the context of national juridical systems). Since human rights treaties incorporate concepts with an autonomous meaning, deriving from the evolution of case law, and since the object and purpose of human rights treaties are distinct from the classic treaties (because they relate to relations between the State and the persons subject to its jurisdiction), the classic principles of interpretation of treaties in general adapt to this new reality.[FN41]

[FN41] Ibid., pp. 32-34; and cf. also R. Bernhardt, "Thoughts on the Interpretation of Human Rights Treaties", in Protecting Human Rights: The European Dimension - Studies in Honour of G.J. Wiarda (eds. F. Matscher and H. Petzold), Köln, C. Heymanns, 1988, pp. 66-67 and 70-71; Erik Suy, "Droit des traités et droits de l'homme", in Völkerrecht als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte - Festschrift für H. Mosler (eds. R. Bernhardt et alii), Berlin, Springer-Verlag, 1983, pp. 935-947; and J. Velu and R. Ergec, La Convention européenne des droits de l'homme, Bruxelles, Bruylant, 1990, p. 51.

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52. Moreover, Article 29(b) of the American Convention expressly prohibits any interpretation that restricts the exercise of the protected rights. Thus, any reorientation of the Court's consistent case law, which integrates Articles 8 and 25 of the American Convention, would only be justified to the extent that it provided greater protection to the rights embodied therein, which is not the case. Until today, in the deliberations on this issue within the Court that are causing me concern (which, fortunately, did not occur in this case), I have never heard any evidence that de-linking or "separating" Article 8 from Article 25 would provide more effective protection for the rights enshrined in the American Convention. Rather, this would lead to an unfortunate and unjustifiable setback in the Court's case law, particularly in view of the current general trend to the contrary of international case law on this issue.

IX. Overcoming the difficulties concerning the right to an effective recourse in the case law of the European Court

53. Even if other international mechanisms for the supervision of human rights have labored under the uncertainties of a fragmenting interpretation, why should the Inter-American Court follow this path, abdicating its progressive case law – which has earned it the respect of the beneficiaries of our protection system as well as of international academic circles – and assume a different stance which has even been abandoned by other bodies that erroneously used to follow it? In my opinion, this makes no sense.

54. Allow me to illustrate this point with an example taken from the experience, trial and error of the European system for the protection of human rights. Initially, the case law of the European Court of Human Rights supported the "accessory" nature of Article 13 (right to an effective recourse) of the European Convention on Human rights, understood, as of the 1980s, as guaranteeing a subjective individual substantive right. Gradually, in its judgments in Klass v. Germany (1978), Silver and Others v. United Kingdom (1983), and Abdulaziz, Cabales and Balkandali v. United Kingdom (1985), the European Court began to recognize the autonomous nature of Article 13. Finally, after years of hesitation and indecisiveness, in its judgment of December 18, 1996, in Aksoy v. Turkey (paragraphs 95 to 100), the European Court decided that there had been an "autonomous" violation of Article 13 of the European Convention.

55. In a pioneering study on the issue published in 1973, Pierre Mertens criticized the "poverty" of the initial case law of the European Court, as well as the vague nature of the European legal writings on the issue at the time – very different from the more advanced Latin American legal writings and practice, following the adoption of the 1948 American Declaration; the first international instrument to enshrine the right to an effective recourse.[FN42] Thus, P. Mertens stated more than 30 years' ago that it was necessary to pave the way to ensuring that the right an effective recourse (Article 13 of the European Convention) gave rise to all its effects in the domestic law of the States Parties. In reality, the "effectiveness" of that right is measured in light of the criteria of the guarantees of due process of law (Article 6 of the European Convention); thus, the conclusion of P. Mertens that Articles 6 and 13 of the European Convention - which correspond to Articles 8 and 25 of the American Convention – should frequently "be invoked together."[FN43]

[FN42] P. Mertens, Le droit de recours effectif devant les instances nationales en cas de violation d'un droit de l'homme, Bruxelles, Éd. de l'Univ. de Bruxelles, 1973, pp. 19-20, 24-25 and 27-29, and cf. pp. 37-39.
[FN43] Ibid., p. 93.

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56. Indeed, as time has passed, attention has again been paid to the relationship between Articles 13 and 6(1) of the European Convention, the latter (the right to a fair trial) constituting the object of extensive case law of the European Court, together with intense doctrinal debate.[FN44] In an emphatic ruling in Kudla v. Poland (judgment of October 18, 2000), the European Court of Human Rights stated that the time had come to end the uncertainty of the past and to accept the direct relationship between Articles 6(1) and 13 of the European Convention (cf. paras. 146-149 and 151). And, in a significant obiter dictum, the European Court indicated that:

"(...) Article 13, giving direct expression to the State's obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the travaux préparatoires [of the European Convention on Human Rights], is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6(1), rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings" (para. 152).

[FN44] L.-E. Pettiti, E. Decaux and P.-H. Imbert, La Convention Européenne des droits de l'homme, Paris, Economica, 1995, pp. 455-474.

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57. And the European Court concluded, in this regard, in the said Kudla v. Poland, that "the correct interpretation of Article 13 is that that provision guarantees an effective recourse before a national authority for an alleged breach of the requirement under Article 6(1) to hear a case within a reasonable time" (para. 156). Consequently, the Court determined that in the specific case, "there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a 'hearing within a reasonable time' as guaranteed by Article 6(1) of the Convention" (para. 160).

58. In reality, in recent years (since the end of the 1960s), in successive cases, the European Court has taken into account the requirements of due process of law (Article 6 of the European Convention) in direct correlation with those of the right to an effective recourse (Article 13 of the Convention).[FN45] The right to an effective recourse in developing European case law

incorporates the rule of law, and cannot be disassociated from the rule of law in a democratic society.[FN46] Its material content as a subjective and autonomous right characterizes it as “a fundamental instrument for the implementation of the protection of human rights."[FN47]

[FN45] For example, cf. M. de Salvia, Compendium de la CEDH - Les principes directeurs de la jurisprudence relative à la Convention européenne des droits de l'homme, Kehl/Strasbourg, Éd. Engel, 1998, p. 280. - From the outset, the European Court has rejected a restrictive interpretation of Article 6 of the European Convention, based on its "central" and "prominent" position in the Convention and because it is linked to the general principles of law, including "the fundamental principle of the rule of law"; A. Grotrian, Article 6 of the European Convention on Human Rights - The Right to a Fair Trial, Strasbourg, C.E., 1994, p. 6.
[FN46] D.J. Harris, M. O'Boyle and C. Warbrick, Law of the European Convention on Human Rights, London, Butterworths, 1995, p. 461.
[FN47] A. Drzemczewski and C. Giakoumopoulos, "Article 13" in La Convention européenne des droits de l'Homme - Commentaire article par article (eds. L.-E. Pettiti, E. Decaux and P.-H. Imbert), Paris, Economica, 1995, pp. 474.
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59. Fortunately, the case law of the Inter-American Court has dispensed with the vicissitudes of the case law of its European namesake, whose actual position on this matter is, as we have seen, similar to that of the Inter-American Court. To try and disassociate Articles 25 and 8 of the American Convention would be inadmissible, for this reason also, and would constitute a return to the pre-history of the case law of our Court. It is unfortunate that, within the Inter-American Court, I am obliged to continue trying to avoid a serious setback in the Court’s case law, rather than the Court following its advanced case law in this respect.

X. The right of access to justice lato sensu.

60. During a 1996 Colloquium held by Strasbourg University and the Cour de Cassation on "Les nouveaux développements du procès équitable" within the framework of the European Convention on Human Right, J.-F. Flauss underscored correctly, the close relationship between access to a court (by means of an effective recourse) and the procès équitable [right to a fair trial], and added that the right to a fair trial encompassed even the effective execution of the judgment in favor of the victim.[FN48] On this point, the Colloquium concluded by expressly recognizing “the close relationship” between access to justice (through an effective, simple and prompt recourse) and the right to a fair trial (the guarantees of due process of law) within the framework of the rule of law in a democratic society.[FN49]

[FN48] J.-F. Flauss, "Les nouvelles frontières du procès équitable," in Les nouveaux développements du procès équitable au sens de la Convention Européenne des Droits de l'Homme (Proceedings of the Colloquium of March 22, 1996), Bruxelles, Bruylant, 1996, pp. 88-89.
[FN49] G. Cohen-Jonathan, "Conclusions générales des nouveaux développements du procès équitable au sens de la Convention Européenne des Droits de l'Homme", in ibid., p. 172.

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61. In the Reports I submitted to the competent organs of the Organization of American States (OAS) when President of the Inter-American Court, e.g., on April 19, 2002, and October 16, 2002, I emphasized my understanding as regards the broad scope of the right of access to justice at the international level; the right of access to justice lato sensu.[FN50] This right is not reduced to formal access, stricto sensu, to the judicial instance (both domestic and international), but also includes the right to a fair trial and underlies interrelated provisions of the American Convention (such as Articles 25 and 8), in addition to permeating the domestic law of the States Parties.[FN51] The right of access to justice, with its own juridical content, means, lato sensu, the right to obtain justice. In brief, it becomes the right that justice should be done.

[FN50] Cf. also A.A. Cançado Trindade, "El Derecho de Acceso a la Justicia Internacional y las Condiciones para Su Realización en el en el Sistema Interamericana para la Proteccion de los Derechos Humanos," 37 Revista del Instituto Interamericano de Derechos Humanos (2003) pp. 53-83; A.A. Cançado Trindade, "Hacia la Consolidación de la Capacidad Jurídica Internacional de los Peticionarios en el Sistema Interamericana para la Proteccion de los Derechos Humanos," 37 Revista del Instituto Interamericano de Derechos Humanos (2003) pp. 13-52.

[FN51] In this regard, cf. E.A. Alkema, "Access to Justice under the ECHR and Judicial Policy - A Netherlands View," in Afmaelisrit pór Vilhjálmsson, Reykjavík, Bókaútgafa Orators, 2000, pp. 21-37.

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62. One of the main components of this right is precisely direct access to a competent court, by means of an effective, prompt recourse, and the right to be heard promptly by this independent, impartial court, at both the national and international levels (Articles 25 and 8 of the American Convention). As I indicated in a recent publication, here we can visualize a true right to law; that is, the right to a national and international legal system that effectively safeguards the fundamental rights of the individual.[FN52]

[FN52] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, tome III, Porto Alegre/Brazil, S.A. Fabris Ed., 2002, cap. XX, p. 524, para. 187.

XI. Epilogue: the right of access to justice as an imperative of jus cogens

63. In its above-mentioned Advisory Opinion OC-18/03 on the Juridical Status and Rights of Undocumented Migrants (of September 17, 2003), the Inter-American Court stated correctly that "the State must guarantee that access to justice is genuine and not merely formal" (para. 126), which, in my opinion, includes the said access by means of an effective recourse, and all the guarantees of due process of law up until the effective and final execution of judgment. The same Advisory Opinion OC-18/03 stated lucidly that the principle of equality and non-discrimination is today part of jus cogens (paras. 111-127).

64. The indivisibility between Articles 25 and 8 of the American Convention that I maintain (supra) leads me to characterize access to justice, understood as the full realization of justice, as forming part of the sphere of jus cogens; in other words, that the inviolability of all the judicial rights established in Articles 25 and 8 considered together belongs to the sphere of jus cogens. There can be no doubt that the fundamental guarantees, common to international human rights law and international humanitarian law,[FN53] have a universal vocation because they are applicable in any circumstance, constitute a peremptory right (belonging to jus cogens), and entail obligations erga omnes of protection.[FN54]

[FN53] E.g. Article 75 of Protocol I (1977) to the 1949 Geneva Conventions on international humanitarian law.

[FN54] Cf., likewise, see, e.g., M. El Kouhene, Les garanties fondamentales de la personne en Droit humanitaire et droits de l'homme, Dordrecht, Nijhoff, 1986, pp. 97, 145, 148, 161 and 241.

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65. Following its historic Advisory Opinion OC-18/03 on the Juridical Status and Rights of Undocumented Migrants, the Court could and should have given this other qualitative step forward in its case law. I dare hope that it will do so as soon as possible, if it truly continues with its forward-thinking case law – instead of trying to halt it – and extends the advance courageously achieved in this Advisory Opinion with the continuing expansion of the material content of jus cogens.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary