

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF CASTILLO GONZÁLEZ *ET AL.* v. VENEZUELA

JUDGMENT OF NOVEMBER 27, 2012
(*Merits*)

In the case of *Castillo González et al.*,

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

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-President;
Leonardo A. Franco, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez Pérez, Judge;
Eduardo Vio Grossi, Judge, and

Also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 31, 32, 42, 65, and 67 of the Rules of Procedure of the Court¹ (hereinafter “the Rules of Procedure”), issues this Judgment, which is structured as follows:

¹ Rule of Procedure of the Court approved by the Court in its Eighty-fifth Regular Period of Sessions held on November 16-28, 2009.

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I
PURPOSE OF THE DISPUTE

1. This case, according to the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”), concerns the fact that on August 27, 2003, Jose Luis Castillo González (hereinafter also “Joe Luis Castillo” or “Joe Castillo” or “Mr. Castillo”) was allegedly the “victim of an attack carried out by two unidentified men riding a motorcycle who proceeded to shoot him repeatedly, while he was driving in his car in the company of his family.” As a result of this attack, Joe Luis Castillo lost his life, while his wife, Yelitze Lisbeth Moreno Cova (hereinafter, “Yelitze Moreno” or “Mrs. Moreno”), and his son Luis César Castillo Moreno (hereinafter also “Luis César Castillo” or “Luis Castillo”), who was one and a half years old, were seriously injured. According to the Inter-American Commission, the attack against Joe Luis Castillo remains in impunity because the investigation “had serious irregularities and was closed by the Public Prosecutor’s Office without taking any actions aimed at clarifying the facts, according to logical lines of investigation.” Moreover, it noted that in “the investigation there were indications of presumable connivance and/or collaboration on the part of State agents in the murder of Joe Luis Castillo [...] that were dismissed without the respective investigations.” According to the Commission, this case “involves issues of inter-American public interest such as the contexts of violence and harassment faced by human rights defenders, and the chilling effect that can be generated in the community of human rights defenders by the murder of someone like Joe Luis Castillo González.”

2. The proceeding before the Commission took place as follows: the initial petition was filed before the Commission on March 20, 2006 by the Episcopal Vicariate for Human Rights of Caracas (hereinafter “the Vicariate of Caracas”) and the Center for Justice and International Law (hereinafter “CEJIL”). On March 9, 2007 the Inter-American Commission approved Admissibility Report No. 22/07, declaring the case admissible, in accordance with the requirements established in Articles 46 and 47 of the American Convention. Subsequently, on October 22, 2010 it approved, under the terms of Article 50 of the Convention, Merits Report No. 120/10. The Bolivarian Republic of Venezuela (hereinafter “the State” or “Venezuela”) was duly notified on November 22, 2010 and was granted a period of two months to report on its compliance with the recommendations. At the same time, precautionary measure MC-619/03 was processed. On August 28, 2003 the petitioners submitted a request for precautionary measures to protect the lives and personal integrity of the survivors of the events of August 27, 2003: Yelitze Moreno and the child Luis César Castillo. On August 29, 2003 the Commission requested that the State adopt precautionary measures, pursuant to Article 5(1) of its Rules of Procedure.

3. The Commission considered that the State did not comply with its recommendations, and subsequently submitted the case to the Court. In its Merits Report No. 120/10, the

Commission declared the State responsible for the violation of the rights recognized in the following provisions of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights): the right to life (Article 4), to the detriment of Joe Luis Castillo González; the right to humane treatment and judicial protection (Articles 8 and 25), to the detriment of Yelitze Moreno and Luis César Castillo Moreno, and also of Yolanda Margarita González (hereinafter also “Yolanda González”), Jaime Castillo, Jaime Josué Castillo González (hereinafter also “Jaime Castillo González) and Julijay Castillo González, who are, respectively, the mother, father and siblings of Mr. Castillo; the right to humane treatment (Article 5(1)), to the detriment of Yelitze Moreno, Yolanda González, Jaime Castillo, Jaime Castillo González and Julijay Castillo González; the rights to humane treatment and rights of the child (Articles 5(1) and 19), to the detriment of the child Luis Castillo, and the right to freedom of association (Article 16), to the detriment of Joe Luis Castillo. Finally, the Commission asked the Court to order the State to implement specific measures of reparation.

4. For their part, the Vicariate and CEJIL (hereinafter “the representatives”) filed their brief containing pleadings, motions, and evidence (hereinafter “brief of pleadings and motions”).² In addition to agreeing in general, and according to their own assessments, with the violations alleged by the Commission, they argued that the State had also violated, in relation to its obligations under Article 1(1), the following rights enshrined in the Convention: the rights to privacy [protection of honor and dignity] (Article 11(2)) of the Convention; the right to freedom of thought and expression (Article 13) of the Convention, and the right to know the truth (Articles 8, 25, and 13) of the Convention.

II PROCEEDINGS BEFORE THE COURT

5. On February 22, 2011 the Commission submitted³ to the jurisdiction of the Court the case it had previously processed against Venezuela under N° 12.605 (*supra* para. 3), appointing as Delegates the then Commissioner and former Executive Secretary of the Commission, Paulo Sergio Pinheiro and James A. Canton, respectively, and as legal advisers, Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary, along with Silvia Serrano Guzmán and José María Veramendi Villa, attorneys of the Executive Secretariat.

6. On May 16, 2011 the State and the representatives were notified, respectively, of the submission of the case.

7. On July 16, 2011 the representatives submitted their brief of pleadings and motions, in which they requested, in addition to the above (*supra* para. 4), that the State be required to implement various measures of reparation, as well as to pay costs and expenses and to have access to the Victims’ Legal Assistance Fund of this Court (hereinafter “the Legal Assistance Fund”).

8. On November 15, 2011 the State submitted its brief of preliminary objections and its answer to the brief submitting the case and observations to the brief of pleadings and motions (hereinafter “answer” or “answer brief”). The preliminary objection filed referred to

² Articles 25 and 40 of the Rules of the Court.

³ Articles 51 and 61 of the Convention.

“the lack of impartiality” of certain judges of the Court and of its Secretary. It appointed Mr. Germán Saltrón Negretti as its Agent.

9. On November 25, 2011, the acting President of the Court issued a decision in which, *inter alia*, he ruled that the argument regarding lack of impartiality filed by the State as a preliminary objection was baseless and unfounded. He also stated that it was appropriate that the Court, in its entirety, continue hearing this case until its conclusion.⁴

10. On November 28, 2011 the President of the Court (hereinafter “the President”) issued an Order declaring admissible the request submitted by the alleged victims to have access to the Legal Assistance Fund and approved the financial assistance necessary for the presentation of a maximum of four statements.

11. On January 31, 2012 the President issued an Order in which he convened a public hearing to hear the statements of an alleged victim and an expert witness offered by the representatives, and a witness and an expert witness offered by the State, as well as the oral arguments of the parties and the observations of the Commission; ordered statements to be taken from three alleged victims, three witnesses and six expert witnesses rendered before a notary public (affidavit); made determinations regarding the Victims’ Legal Assistance Fund; and set a date for the presentation of the final written arguments and final written observations.⁵ On February 27, 2012 the representatives submitted the statements ordered via affidavit, without these being authenticated or notarized.

12. On March 2, 2012, the public hearing was held, during the 94th Regular Period of Sessions of the Court⁶

13. On April 3, 2012 the Commission filed its final written observations, the representatives filed their final written arguments, together with the attachments, and the State submitted its final written arguments to the Court. On April 10, 2012 the Court received documents attached to the final written arguments of Venezuela.

14. On April 30, 2012, the Secretariat, following the instructions of the President, granted the Commission and the parties a period of time to present any observations deemed pertinent to the documents forwarded by the representatives and the State along with their final written arguments. On May 9, 2012 the Commission reported that it had no observations to make. On May 18, 2012 the State and the representatives submitted their observations.

15. On May 25, 2012 the Secretariat, following the instructions of the President, notified the State of the expenses incurred in application of the Legal Assistance Fund in this case⁷,

⁴ Cf. *Case of Castillo González et al. v. Venezuela*. Order of the Acting President of the Court, Judge Alberto Pérez Pérez, on November 25, 2011.

⁵ Cf. *Case of Castillo González et al. v. Venezuela*. Order of the President of the Court of January 31, 2012. Available at: http://www.corteidh.or.cr/docs/asuntos/castillo_31_01_121.pdf

⁶ The following individuals appeared at the hearing: a) for the Inter-American Commission: Silvia Serrano Guzmán and Tatiana Gos, Advisers; b) for the representatives : Viviana Krsticevic, Anette Martínez of CEJIL, and Carlos Ayala Corao, José Gregorio Guarenas, and Alfredo Vázquez Loureda for the Vicariate and, c) for the State: Germán Saltrón Negretti, Agent, Alejandro Méndez Mijares, an expert on criminal procedural matters and the Seventy-sixth National Prosecutor of the Office of the Attorney General, and María Alejandra Díaz, lawyer.

granting a non-extendable period until June 26, 2012 to file any observations deemed pertinent. However, these were not submitted to the Court.

16. On July 5, 2012 the representatives once again presented, with the authenticated signature of the deponents and the seal of the Consulate of Costa Rica, the statements ordered in the first operative paragraph of the President's Order of January 31, 2012, which had already been submitted on February 27, 2012 (*supra* para. 11). On July 6, 2012 the Secretariat informed the representatives that said documents would be brought to the attention of the President for the appropriate action.

17. On September 10, 2012 the Secretariat, following instructions of the President, asked the State to clarify relevant points regarding the page numbers of file No. 24-F20-817-2003 of the 20th Prosecutor's Office of the Public Prosecutor's Office of the Judicial District of Zulia (hereinafter "20th Prosecutor's Office") No. 24-F20-817-03, which was filed with the answer brief and final written arguments. Also, given that the representatives argued that they had not been provided with Case File No. C – 585, which had been processed by the 83rd Prosecutor's Office of the Public Prosecutor's Office of the Judicial District of the Metropolitan Area of Caracas (hereinafter "83rd Prosecutor's Office"), it requested that it expressly indicate whether it had submitted to the Court a copy of all of the proceedings and case files related to the investigation of the facts of the case, either in connection with the aforementioned Prosecutors' offices as well as any other agency that may have been involved. If this were not the case, the Court asked the State to provide it with a copy of the missing files, pursuant to Article 58 of the Rules of Procedure, and granted the State an extension of the period, which expired on October 1, 2012.

18. On September 13, 2012 the State requested an extension until the October 15, 2012 to present the foregoing files. On September 14, 2012 the Secretariat, following the instructions of the President, granted the requested extension. On October 10, 2012 the State forwarded the clarification and a certified copy of Case File No. C-585 processed before the 83rd Prosecutor's Office. On October 11, 2012, upon the instructions of the President, the Secretariat granted a period for the representatives and Commission to file observations, if deemed relevant, to the documents provided by the State. On October 23, 2012 the representatives filed their observations. The Commission did not present any observations in this regard.

III JURISDICTION

19. Venezuela has been a State Party to the American Convention since August 9, 1977, and acknowledged the Court's contentious jurisdiction on June 24, 1981. Its jurisdiction in this case has not been contested.

IV EVIDENCE

20. Based on the relevant regulatory provisions⁸ and on its consistent case law⁹, the Court shall examine and assess the documentary evidence submitted by the parties,

⁷ Article 5 of the Rules of the Court on the Operation of the Victims' Legal Assistance Fund.

⁸ Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure.

including statements and expert reports, adhering to the principle of sound judgment and taking into account the body of evidence as a whole and the arguments in the case.

21. As to the newspaper articles submitted by the parties and the Commission along with their respective briefs, the Court has considered that these may be assessed insofar as they refer to well-known public facts or to statements made by State officials or when they corroborate aspects related to the case.¹⁰ The Court also admits documents that are complete, or at least, those whose source and date of publication can be verified.

A. Documentary, testimonial and expert evidence

22. The Court received documents submitted by the Inter-American Commission, the representatives and the State. In addition, it received the statements of three alleged victims, namely: 1) Yolanda Margarita González; 2) Jaime Josué Castillo González, and 3) Julijay Castillo González. Furthermore, it received statements from Luz Marina Márquez Frontado and Ricardo Soberón, proposed by the representatives, and Rafael Finol Ocando, proposed by the State, as well as the expert reports of Raúl Cubas, Alfredo Infante, Claudia Carrillo, Claudia Samayoa and Pedro Berrizbeitía, proposed by the representatives. As to the testimony rendered at the public hearing, the Court received the statements of Yelitze Lisbeth Moreno Cova, an alleged victim; Elvis José Rodríguez Moreno, a witness proposed by the State; Michael Reed Hurtado, an expert witness proposed by the representatives; and Antonio Uribarrí, an expert witness proposed by the State.

B. Admission of documentary evidence

23. The Court notes that the representatives and the State forwarded several documents with their final written arguments. Along with its answer, the State presented a copy of part of the record of the prosecutorial investigation No. 24-F20-817-2003, processed before the 20th Prosecutor's Office, and, upon submitting its final arguments, completed said file. The representatives also submitted documents with their final written arguments. The parties and the Commission were afforded the opportunity to submit observations. The Commission did not present any observations.

24. It should be noted that among the documents submitted with the closing arguments, there is a letter dated June 2, 2008 and signed by Antonio Uribarrí, the then Ombudsman of the State of Zulia, addressed to the 20th Prosecutor's Office, as well as two official letters dated July 27, 2010 and May 19, 2011 from the 20th Prosecutor's Office (*infra* para. 96); although the parties and the Commission were given the opportunity to comment on said letter, they did not do so.

25. Although according to the Rules of Procedure only documents submitted with the closing arguments are admissible and within the exceptional circumstances contemplated,¹¹ in this case, the representatives made a specific request in their pleadings and motions

⁹ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of Uzcátegui et al. v. Venezuela. Merits and Reparations*. Judgment of September 3, 2012. Series C No. 249, para. 23.

¹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 146 and *Case of Vélez Restrepo and relatives v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248, para. 62.

¹¹ Article 57 of the Rules of Procedure.

brief, which was reiterated on several occasions, that the State forward a complete copy of the files on the proceedings before the domestic courts related to the facts of this case. At the meeting prior to the public hearing¹² the State indicated that it would gather these for this case. In consideration of the foregoing, the Court admits the documentation attached to the closing arguments of the State, insofar as these relate to the request made at the pre-trial meeting, and provided that procedural fairness is not breached.

26. With regard to the transcripts of the police reports of September 10 and 15, 2003, mentioned in both the Merits Report and the brief of pleadings and motions, the State indicated that the Commission, upon examining these documents, did not identify them as transcripts, when “in order to carry out the analysis, it should have had the official recorded documents, at least, in photocopies.” Also, with regard to the transcript dated September 10, 2003, mentioned by the representatives in their pleadings and motions brief, the State pointed out that there was a mistake because the annex that supposedly contained it was not the one included. The State added that the document identified as “the representatives’ transcript of the police report of September 15, 2003” is not included among the certified copies of the case file examined by the counsel for the State.

27. In this regard, the Court points out that the aforementioned reports of September 10 and 15, 2003 have already been submitted by the State, the first one along with the attachments to the answer brief, and the second with the copies of File No. C-585 (*supra* paras. 8 and 18). Therefore, these reports form part of the body of evidence in this case.

28. Furthermore, considering that the representatives submitted, with their final written arguments, receipts for legal expenses related to this case, these shall be taken into account only insofar as they are relevant.

C. Admission of statements of the alleged victims and of the testimonial and expert evidence

29. As to the statements rendered by the alleged victims, the witnesses and the expert opinions presented via affidavit, on February 27, 2012, the representatives submitted the requested statements (*supra* para. 11), and explained that “it [had been] impossible to have a notary public legally authenticate the statements due to the fact that the Venezuelan authorities have refused to process documents containing written evidence.”¹³

30. On February 29, 2012 the State filed a brief in which it argued that, according to the Order of the Court of January 31, 2012 (*supra* para. 11), the statements should have been presented on February 22, 2012; however, at the request of the representatives, the deadline was extended until February 28, 2012, although, as of that date, the documents

¹² It is a constant practice of the Court to convene the Commission and the parties to a meeting prior to the public hearing, in order to discuss and clarify procedural aspects of the hearing.

¹³ According to the representatives, on “February 17, 2010” the testimonies of Yelitze Moreno Cova, Julijay Castillo González, Jaime Josué Castillo González and Yolanda González” were presented before the Notary Public of the Municipality Paz Castillo, State of Miranda, and “all these were purely and simply rejected and returned.” Likewise, the affidavits of the expert witnesses Claudia Ernestina Carrillo, Pedro Berrizbeitia, Lisandro Raúl Cubas and Alfredo Infante, were rejected as well as the testimony of Luz Marina Márquez Frontado, upon being presented to the Thirty-seventh Notary’s Office of the Municipio Libertador on “February 27, 2010” and to the Forty-third Notary’s Office on January 24, 2012. Consequently, they presented to the Court the signed statements of Yolanda Margarita González, Jaime Josué Castillo González, Julijay Castillo González, Luz Marina Márquez Frontado, Lisandro Raúl Cubas, Pedro Berrizbeitia, Alfredo Infante and Claudia Ernestina Carrillo, together with the statements of Claudia Samayoa and Ricardo Soberón authenticated by a Notary Public.

had not been received. Consequently, the State considered that the statements had been submitted extemporaneously and “reject[ed... the] excuse (given by the representatives) because it could not be verified.”

31. In response to this communication, that same day the Secretariat informed the State that on the morning of February 29, 2012 the representatives had forwarded the relevant statements via email. The Court finds that these statements were presented within the prescribed period, even though they had not been authenticated by a notary public due to the aforementioned attitude of the State authorities (*supra* paras. 11 and 29). Consequently, it considers that, in accordance with the provisions of the Rules of Procedure¹⁴, this failure to facilitate the production of evidence required by the Court¹⁵ was inappropriate conduct. Therefore, the Court admits the statements of three alleged victims, three witnesses and six expert witnesses rendered by affidavit and submitted by the representatives on February 27, 2012. Furthermore, the Court admits as evidence the testimonies and opinions rendered by one alleged victim, one witness and one expert witness at the public hearing. (*supra* paras. 11 and 12).

32. With regard to the expert opinion of Michael Reed Hurtado, the State argued that the expert “does not possess sufficient knowledge about the Colombian-Venezuelan border; [...] bases his opinion solely on theory [...], without any type of field study appropriate to social sciences,” and that the presentation delivered by the expert indicated he had never seen the court record in its entirety, “[...] clearly demonstrating his partiality when preparing his report.” Therefore, the State requested that the report be dismissed and that his conclusions not be taken into consideration,” since “[his] lack of knowledge and inexperience is evident.”

33. The Court notes that the State’s observations refer to the expert’s knowledge of the matter on which he is rendering his opinion, as well as the content and the sources he had when preparing his report. Likewise, it recalls that, unlike witnesses, experts may offer technical or personal opinions provided that these are related to their special knowledge or experience. It further recalls that experts may refer both to specific matters of the case or any other subject relevant to the litigation, so long as they limit themselves to the purpose for which they were summoned and their conclusions are well-founded.¹⁶ In this sense, the Court finds that the State’s observations do not challenge the admissibility of the expert testimony, but rather, to question the probative value of the opinion. Also, with regard to the alleged bias and partiality of the expert report, the Court notes that the expert said he had “review[ed] the procedural documents that were attached to the file submitted to the Commission and the Inter-American Court, which are the copies he [has], he has no others [...], this is what he was asked to review [...], which was attached to this process.” Thus, it appears that he prepared his opinion based on the information available to him. The Court admits the expert opinion and will consider its content in relation to specific situations of the investigations that he was aware of and were limited to his area of expertise; also, the opinion was consistent with the purpose for which it was requested (*supra* para. 11).

¹⁴ Article 26 of the Rules of Procedure of the Court.

¹⁵ Cf. *Case of Apitz Barbera et al. (“First Court for Contentious Administrative Matters”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs Judgment of August 5, 2008. Series C No. 182, para. 14, and Case of Uzcátegui et al. v. Venezuela, supra, para. 30.*

¹⁶ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 42, and Case of Vélez Restrepo and relatives v. Colombia, supra, para. 74.*

V FACTS

A. Context

34. Both the Commission and the representatives referred to the situation in the Colombian-Venezuelan border area; to the movements related to land claims and agricultural reforms in Venezuela; and to the situation of human rights defenders in that country, as background elements to the case. The Court will now refer to the first two points mentioned, and in Chapter VI will refer to situation of the defenders.

35. As to the general situation on the Colombian-Venezuelan border, during the period prior to the events in question, approximately between 1999 and 2003, a number of displacements occurred in Venezuela involving people from Colombia seeking refuge from the Colombian armed conflict¹⁷. These mobilizations occurred in several stages¹⁸, particularly towards the Venezuelan states of Zulia, Táchira, Apure and Amazonas¹⁹.

36. Also, during this period, the presence of irregular armed groups from Colombia was reported on the Colombian-Venezuelan border,²⁰ which created a climate of insecurity in the

¹⁷ Cf. Consultoría para los Derechos Humanos y el Desplazamiento (Consultancy for Human Rights and Displacement (hereinafter "CODHES"), *Al filo de la frontera: el impacto del conflicto armado colombiano en los estados fronterizos de Venezuela*, Bogotá, 2006 (File of attachments to the brief of pleadings and motions, Volume I, Annex 4, pages 1032 a 1071); Consejería en Proyectos, *Report: Protection and assistance to refugees in Venezuela* (File of attachments to the brief of pleadings and motions, Volume I, Annex 6, pages 1115 to 1156); Red de apoyo por la Justicia y la Paz de Venezuela (Support Network for Justice and Peace of Venezuela) Education Program entitled "Action on human rights" of Venezuela (hereinafter "PROVEA") and the Asociación para la Promoción Social Alternativa "Minga" of Colombia, *Informe Global: el derecho a buscar y recibir refugio en la zona fronteriza colombo-venezolana*, July 1999 (File of attachments to the brief of pleadings and motions, Volume I, Annex 12, pages 1369 to 1392); PROVEA, *Derechos de asilo and refugio*, October 2002-September 2003 (File of attachments to the brief of pleadings and motions, Volume II, Annex 65, pages 2043 to 2056), and Colombia, State Council, Administrative Chamber, Section Three, Number: AG-250002326000200100213-01, January 26, 2006 (File of attachments to the brief of pleadings and motions, Volume I, Annex 28, pages 1553 a 1621).

¹⁸ The Commission referred to the information provided by PROVEA: in the four years since 1999, the number of people displaced from Colombia into neighboring countries such as Ecuador, Panama and Venezuela doubled, rising from 11,700 in 1999 to 21,800 in 2002. Cf. CODHES. Monitoring 2002. Colombian Boarder area, 02, in PROVEA, Annual Report October 2002- September 2003. Available at http://www.rights.org.ve/pw/wpcontent/uploads/03_right_al_asilo_y_al_refugio.pdf (File of attachments to the Merits Report, Annex 5, pages 57 a 69). It also referred to information provided by the representatives, stating that according to the Ombudsman of Colombia, in 2003, 3,669 Colombians sought refuge in Venezuela (Cf. Merits brief of the petitioners received in the Commission on July 13, 2007, referring to the Report of the Ombudsman of Colombia to the National Congress for 2003. File of attachments to the Merits Report, Annex 22, pages 526 to 583). For their part, the representatives stated that between 1999 and 2003 the number of Colombian asylum seekers increased in the border zone, based on information from the United Nations High Commissioner for Refugees (hereinafter "UNHCR"). Cf. UNHCR, *El perfil de la población colombiana con necesidad de protección internacional: El caso de Venezuela*, 2008 (File of attachments to the brief of pleadings and motions, Volume I, Annex 11, pages 1320 a 1368).

¹⁹ Cf. UNHCR, *El perfil de la población colombiana con necesidad de protección internacional: El caso de Venezuela supra*; CODHES, *Al filo de la frontera: El impacto del conflicto armado colombiano en los estados fronterizos de Venezuela, supra*; Support Network for Justice and Peace of Venezuela, PROVEA and the Association for the Promotion of Social Alternatives "Minga" of Colombia, *Informe Global: el derecho a buscar y recibir refugio en la zona fronteriza colombo-venezolana, supra*; and Consejería in Proyectos, *Report: Protection and assistance to refugees in Venezuela, supra*.

²⁰ The presence of irregular armed groups on the Venezuelan side of the border has been documented by different sources. In this regard, in April 2003, UNHCR reported "incursions into Venezuela by Colombian armed

area, due to, *inter alia*, kidnappings, killings by hired gunmen, extortion, theft, and smuggling.²¹ In addition, there were murders of asylum seekers on the border area, and some involved individuals protected by precautionary measures.²² The State reinforced security in the area through increased police and military surveillance,²³ establishing a Strategic Command, consisting of five "Theaters of Operations"²⁴ and approximately one hundred border protection posts.²⁵

37. Furthermore, with the entry into force of the Law on Land and Agrarian Development in 2001, agrarian reform began to be implemented in Venezuela, which exacerbated tensions between landowners and 'campesinos' (peasant farmers)²⁶ and led to many

groups and clashes on the border between the two countries [which] caused the displacement of hundreds of people." Cf. UNHCR, *Incursiones al territorio venezolano desde Colombia* (File of attachments to the brief of pleadings and motions, Volume II, Annex 64, pages 2041 and 2042); CODHES, *Al filo de la frontera: el impacto del conflicto armado colombiano en los estados fronterizos de Venezuela*, *supra*; International Crisis Group, *Las Fronteras de Colombia: el Eslabón Débil de la Política de Seguridad de Uribe*, Report on Latin America No. 9, Quito/Brussels, of September 23, 2004 (File of attachments to the brief of pleadings and motions, Volume I, Annex 5, pages 1073 to 1114) and report in the *Nuevo Herald*, Bogotá, signed by G. Gillén, entitled "Colombia: secret history of a massacre" (Attachments to the brief of pleadings and motions, Volume I, Annex 25, pages 1537 to 1544).

²¹ The expert witness proposed by the State, Antonio Urribarrí, stated that "paramilitarism and the Colombian guerrillas have fought for control of the border and, in the case of Venezuela, this affects four states [,] Zulia, Apure, Táchira and Amazonas" and that "this has brought consequences such as kidnappings, murders, extortion, known there as "immunization", theft and stealing of vehicles, and contraband of food and gas toward Colombia" (Statement by Antonio Urribarrí rendered before the Court during the public hearing).

²² Precautionary measures were granted by the Commission on March 12, 2001, Cf. IACHR, Precautionary Measures for Colombian Refugees in Venezuela, *Manuel de Jesús Pinilla Camacho et al.* (File of attachments to the Merits Report, Annex 2, pages 25 a 41) and, according to the representatives, one year and a half after these were granted, Mr. Agustín Rodríguez died on August 11, 2002 (Merits file, brief of pleadings and motions, page 128), and on November 4, 2002 Manuel de Jesús Pinilla, and his son Nelson, who were also protected by the aforementioned precautionary measures, were murdered. According to the representatives, Mr. Pinilla and his son were found with signs of torture and numerous bullet wounds. Furthermore, the representatives referred to the death of Luis Ernesto Castro, who had worked with refugees on the border, Cf. information on the precautionary measures in favor of Jesús Pinilla Camacho and others, November 22, 2002 (File of attachments to the brief of pleadings and motions, Volume II, Annex 70, pages 2076 to 2082), and PROVEA, *Derechos humanos y coyuntura*, Newsletter No. 104, October 26 - November 8, 2002 (File of attachments to the brief of pleadings and motions, Volume III, Annex 96, pages 2888 to 2902). The Court further notes that in the course of several "interviews" held in the context of the investigation into the attack against Joe Luis Castillo and his relatives there were references to the aforementioned precautionary measures.

²³ Cf. Official letter AGEV/000574, of December 13, 2011, issued by Henry de Jesús Rangel Silva, Commander in Chief of Strategic Operations (Attachments to the brief of final arguments of the State, page 3485).

²⁴ According to the State, the Theaters of Operations "are military zones, with personnel trained to carry out special operations, who act in coordination with intelligence bodies of the State, the Attorney General's Office and the police forces", Cf. Observations presented by the State to the Commission, a letter dated January 21, 2008 – File of attachments to the Merits Report, Annex 6, pages 70 to 84). Official letter AGEV/000574 dated December 13, 2011, *supra*, mentions the establishment of "theaters of operations".

²⁵ In its answer brief the State referred to the establishment of a hundred bases, a fact that was not disputed (Merits file, response brief, page 305). For their part, in their brief of pleadings and motions, the representatives stated that the militarization of the area occurred between 1994 and 1999, following the decree suspending guarantees in the border zone. Cf. Support Network for Justice and Peace of Venezuela, PROVEA and the Association for the Promotion of Social Alternatives "Minga" of Colombia, *Informe Global: el derecho a buscar y recibir refugio en la zona fronteriza colombo-venezolana*, *supra*.

²⁶ The expert witness Antonio Urribarrí reported that "there have been cases of campesinos being killed [,] especially because of the land problem." In relation to this he added that "as a result of [the] new agrarian law in Venezuela there have been conflicts between cattle ranchers and campesino groups" (Statement by Antonio Urribarrí, *supra*). According to a communiqué issued by PROVEA, from 2002, "there was deep concern at the appearance of organized killings with the resulting increase in murders of peasant leaders [...]". Cf. PROVEA,

attacks against *campesino* leaders²⁷, carried out by “sicarios” or hired killers. A newspaper article in 2011 reports, *inter alia*, that “[s]ince the Land Law was approved in 2001, more than 200 peasant leaders have been murdered throughout the country, and specifically in the Sur del Lago area [approximately] 60 *campesinos* have been killed, due to their resistance and struggle against landowners who use force.”²⁸ In the border zone alone, between 2001 and 2002, at least five peasant leaders were murdered.²⁹

B. Attack against Joe Luis Castillo González, Yelitze Moreno and her son Luis César Castillo

B.1. Background

Derecho a la Tierra, September 27, 2002 (File of attachments to the brief of pleadings and motions, Volume II, Annex 80, page 2163).

²⁷ The State itself noted that, in this context, “[s]ome Venezuelan landowners began to hire Colombian paramilitaries to kill peasant leaders who were demanding compliance with the Land Law.” *Cf.* Observations submitted by the State to the Commission, in a letter dated January 21, 2008, *supra*. See also, Statement by Antonio Urribarrí, *supra*. It should also be noted that PROVEA reported that “[i]n several states in the country there were killings of peasant leaders. Contract murder was the most commonly used method to act against leaders. According to an investigation undertaken by the National Agrarian Coordinator, between January and September 2003, 20 peasant and indigenous leaders were murdered.” PROVEA, *Derecho a la tierra*, October 2002-September 2003 (File of attachments to the Merits Report, Annex 8, pages 87 to 102). Likewise, the representatives cited a press release stating that by 2011 “256 peasant leaders ha[d] lost their lives in the last eight years, carried out by hired killers”, given that as of May 2011 “only one person has been charged for the material or intellectual authorship of these crimes”, and that “just in the South of Lake Maracaibo, in the State of Zulia, 50 such killings of peasant leaders have occurred. On several occasions, social organizations denounced the links between hired killers and several landowners”, *Cf.* Press report published in Ciudad CCS on May 26, 2011, entitled “Killers of campesinos go unpunished” (File of attachments to the brief of pleadings and motions, Volume II, Annex 88, pages 2343 a 2347). The *Report on the Situation of Human Rights Defenders in Venezuela of 2007* of the Human Rights Vicariate of Caracas, in the section on “Situation of defenders of the right to land”, states that “[t]he violence in rural areas not only affects peasant leaders who defend their right to land, but also simple campesinos or farmers who make a living in the countryside and are immersed in the agrarian reform process.” It notes that in addition to the sixteen defenders of the right to land whose human rights have been violated, during the period covered by the report (from 1997 to 2007) 33 campesinos were murdered, one disappeared and sixteen were injured in different incidents (File of attachments to the brief of pleadings and motions, Volume III, Annex 90, pages 2351 to 2515).

²⁸ *Cf.* Press report published by the Banco Agrícola de Venezuela C.A., Banco Universal, on March 14, 2011 entitled “Chávez: Llegó la Revolución al Sur del Lago para liberar la tierra” (File of attachments to the brief of pleadings and motions, Volume II, Annex 87, page 2342).

²⁹ The killing on January 10, 2002 “of Merida leader Luis Mora, killed [by shots from firearms] in the border zone of the states of Mérida and Zulia”; the death of Pedro José Doria Castillo, a doctor and agrarian leader, who was murdered “by a group of gunmen with their faces hidden with balaclavas”, and the killing of Armando García, a peasant leader, which occurred on September 19, 2002, in the community of Encontrados, State of Zulia. According to PROVEA, Carlos Parra was killed in that same attack, “since he was in the line of fire of the gunmen who killed the leader Armando García”. *Cf.* PROVEA, *Asesinatos en el Sur del Lago*, September 27, 2002 (File of attachments to the brief of pleadings and motions, Volume II, Annex 82, pages 2172 to 2174) and PROVEA, *Violence in the South of Maracaibo: Killings of Activists in Zulia* (File of attachments to the brief of pleadings and motions, Volume II, Annex 81, pages 2168 to 2171). According to the representatives, these attacks against people dedicated to the defense of land rights, were first seen in the State Zulia, where the Law on Land and Development began to be implemented. *Cf.* Human Rights Vicariate of Caracas, *Report on the Situation of Defenders of Human Rights in Venezuela*, *supra*. The murder of Pedro Doria and his son, as a result of the land conflict, was also mentioned by expert witness Antonio Urribarrí, *Cf.* Statement of Antonio Urribarrí, *supra*. Por otro lado, PROVEA stated that the acts of violence during that period had an important precedent in the murder of Wilmer Avendaño, leader of most of the land committees from south of the lake, in Caño Caimán, on February 2, 2001. Likewise, the death of Licinio Lago, member of the Movimiento Quinta República (Fifth Republic Movement) (MVR) was reported and that of a local campesino leader, Caño Caimán, on October 30, 2001. *Cf.* PROVEA, *Report Anual 2002* (File of attachments to the brief of pleadings and motions, Volume II, Annex 71, page 2093).

38. The attorney Joe Luis Castillo González, his wife Yelitze Moreno, with a degree in education, and their son Luis César Castillo Moreno had lived in the city of Machiques, State of Zulia, since 1999. Mr. Castillo was the General Coordinator of the Office for Social Action and Human Rights of the Apostolic Vicariate of Machiques (“OASVAM” for its Spanish acronym), and worked on the border area between Venezuela and Colombia on issues related to indigenous peoples and refugees.³⁰ His work involved providing legal counseling to victims of the Colombian conflict and legal support to “campesinos” involved in land recovery processes. For her part, Yelitze Moreno was the Coordinator of OASVAM’s Department of Investigations, Communications and Promotion of Human Rights.

39. In 2001 Mr. Castillo requested the Inter-American Commission to grant precautionary measures on behalf of 52 asylum seekers.

40. Subsequently, on February 23, 2001, Joe Luis Castillo, participated on behalf of OASVAM, together with PROVEA, in a verification mission in the Río de Oro area of the Municipality of Jesús María Semprún, State of Zulia, to confirm the presence of groups of Colombian *campesinos* on the Venezuelan banks of the Río de Oro (River Oro), and also to provide a record [...] of the [...] geographic, social, economic, and health situation.”³¹

41. On July 15, 2003 Mr. Castillo and his wife Yelitze Moreno resigned from the OASVAM “in order to seek financial stability and dedicate [themselves] to [their] professions.”

B.2. Attack against Joe Luis Castillo González, his wife and his son

42. On August 27, 2003, at approximately 19:30 hours, Mr. Castillo, his wife and his son, at the time aged 32, 30 and one and half years old, respectively, were on their way home in a car driven by Mr. Castillo. Their house was located in the Tinaquillo II housing development, in the Municipality of Machiques de Perijá, State of Zulia. As they reached “L” street, two unidentified men riding a motorcycle, after examining the occupants of the vehicle driven by Mr. Castillo, stopped their motorcycle and began shooting at them. Mr. Castillo lost control of the vehicle, which crashed into the sidewalk. The car had bullet holes on the windshield and other parts, and Mr. Castillo suffered “several wounds caused by firearms.” Mrs. and Luis Castillo also suffered injuries due to gunshot wounds.

43. Mr. Joe Castillo was taken to the Hospital Rural Dos of Machiques, where he was admitted without vital signs. Mrs. Moreno and Luis Castillo were initially taken to the same hospital, and then transferred to the Hospital Clínico in the city of Maracaibo for surgery. Both suffered gunshot wounds to their left arms. Mrs. Moreno was hospitalized for almost one week.

³⁰ Cf. The State, in its response brief, confirmed the report as true, stating that “it confirms the facts recounted by the alleged victims [, indicated] in Report No. 22/07 [of the Inter-American Commission], Petition 259/06, Admissibility of the case of Joe Luis Castillo González et al. on [...]March 9, 2007, paragraph [12]”. Said paragraph 12 reads: “the petitioners report [ed] that one of the main tasks carried out by Joe Castillo was to help refugees and/or asylum seekers in the border area between Venezuela and Colombia” (Merits file, response brief, page 304). The reference to Mr. Castillo’s work was also mentioned in an interview held in the context of the investigation into the attacks suffered by him and his family.

³¹ PROVEA, *Report on the Verification Mission carried out on Friday February 23, 2001 in the Río de Oro area, Municipio Jesús María Semprún* (File of attachments to the brief of pleadings and motions, Volume II, Annex 63, pages 2036 to 2040).

B.3. Consequences of the killing of Joe Castillo for his family and workplace

44. Following the killing of her husband, Yelitze Moreno and her son moved to her sister's house in Santa Lucía del Tuy, State of Miranda, where they stayed throughout their recovery process, until December 2003. Subsequently, mother and son moved to Joe Luis Castillo's mother's house and later worked as a teacher at a school near their home. She currently works as an administrative employee at a school. In February 2004, she and her son required psychological treatment, which began that same month.

45. Following the death of Joe Luis Castillo, on September 1, 2003 the Office of the Vicariate received threats (*infra* para. 53), for which reason it closed down for two months. After that, it re-directed its activities toward strengthening community work, giving up its work with refugees and cases involving human rights violations.

C. Investigation of the facts³²

46. On the same day of the attack (*supra* para. 42), in the evening, a police official reported the facts to the 20th Prosecutor's Office. Said Office was informed that "police units were safeguarding the crime scene" and that officers from the Scientific, Criminal and Forensic Investigations Corps (hereinafter "CICPC") "had been to the site to conduct preliminary investigation procedures." The CICPC also reported that it had opened a criminal proceeding *ex officio*, Case No. G - 410 - 113, for "a crime against persons, (murder)" to the detriment of Mr. Joe Castillo, Mrs. Moreno and Luis Castillo.

47. On the same date, CICPC officials began initial investigation procedures, including a visit to "the crime scene where [they] proceed[ed] to collect evidence and locate eye witnesses to [take their] statements"; two site inspections which involved an examination of the crime scene and of the vehicle in which Mr. Castillo and his family were traveling, where "eight 9mm. bullet casings" were found, and another visual inspection of Mr. Castillo's body, followed by its removal and an "interview" with a person.

48. On August 28, 2003, the following procedures were carried out: a) medical examination and autopsy of the corpse; b) "expert appraisal of [Mr. Castillo's] vehicle to collect all evidence of forensic interest"; c) planimetric survey and ballistic trajectory tests at the scene of the attack; d) preparation of Mr. Castillo's death certificate, and e) "interviews" with two individuals. The first, who appeared of his own accord, testified that Mr. Castillo had problems with a builder, arising from a joint business venture. The other witness indicated that he was a builder who had worked with Mr. Castillo, that he had a grocery business with him and that on a Monday in August 2003, after an argument, Mr. Castillo had taken merchandise from the shop. Also on August 28, 2003 the CICPC ordered various procedures to be carried out by experts on the car used by Joe Luis Castillo, including a hematology test in the vehicle; an official letter was issued that day or the next, recording the fact that the hematology test had been carried out.

³² Specific details of the procedures carried out in the investigation recorded in the file of attachments to the answer of the State held by the Court are not mentioned.

49. On August 28, 2003, at 18:30 hours, the Office of the 20th Prosecutor, in response to "the steps taken in criminal case No. G-410 113" which were "forwarded" to it, opened file No. 24-F20-817-2003, ordering the start of an inquiry, aimed at investigating the crimes of "intentional aggravated homicide," to the detriment of Mr. Castillo, and "attempted aggravated homicide," to the detriment of Mrs. Moreno and Luis Castillo, stating that at that point "it had not yet identified anyone as a suspect." At the same time, the 20th Prosecutor's Office "instructed the criminal investigations body with knowledge of the facts" to carry out various investigative procedures.³³

50. Also on August 28, 2003, in the presence of the chief of the 20th Prosecutor's Office, "a medical examination and legal autopsy" was performed on Mr. Castillo's corpse, in which a bullet and a piece of shrapnel were collected, identified and labeled for expert assessment.

51. On August 29, 2003 the Office of the Attorney General ordered the 20th Prosecutor's Office, either jointly with or separately from the 11th Prosecutor's Office, to take part in the inquiry into Mr. Castillo's death.

52. That day the CICPC summoned an individual to an "interview". In addition, the authorities received from Mrs. Moreno a physical description of the perpetrators of the attack against her on August 27, 2003, and they "interviewed" an eyewitness to the incident. Furthermore, between August 29 and October 28, 2003, "the forensic medical examinations" were performed on Mrs. Moreno and Luis Castillo.

53. On September 2, 2003 the chief of the 20th Prosecutor's Office, accompanied by CICPC officials, visited "L" street of the "Tinaquillo Dos" residential area, in order to "interview" people with knowledge of the incident. They contacted three people, who were interviewed that same day. In addition, police officers and officials of the 20th Prosecutor's Office visited the premises of the Vicariate, where an employee of that organization reported that they had received a call the previous day in which threats were made against the Director and against the Vicariate of Machiques. The 20th Prosecutor's Office requested that the "prosecutor's unit" be provided with

the record of incoming calls to the telephone [number] [...], during the period between 11:30 [am. and] 12:30[pm.] on Monday [September 1, 2003, and that it be informed of the number [and] location of the subscribers to those phone numbers that appear listed.

³³ The following procedures were ordered: "1) [c]ollect from the Forensic Medicine unit the respective autopsy required by law, of the person who in life was named Joe Luis Castillo González[:] 2) [c]ollect the respective death certificates and [b]urial of the corpse of [Mr. Castillo:] 3) "interview" [Mrs.] Moreno [...] so that she can provide information on the facts, and officially submit it to the Forensic Medicine Service so that it can prepare the respective forensic report [:] 4) [s]end [Luis Castillo] to the Forensic Medicine Service to undergo the relevant medical examination [and,] once the legal reports have been prepared, collect the results [:] 5) [v]isit the Hospital Clínico of Maracaibo to "interview" the doctor (s) treating [Mrs. Moreno] and [Luis Castillo] to determine their state of health. Likewise, [...] collect any evidence of criminological interest obtained during the operations performed on the injured (bullet shells, fragments, etc.) which, observing appropriate [c]hain of [c]ustody standards, shall be deposited in the Recovered Objects Section of said criminal investigations unit [:] 6) [c]arry out a visual inspection and expert examination of the vehicle [in which Mr. Castillo, Mrs. Moreno and Luis Castillo were traveling:] 7) [t]ransfer to the Zulia Branch office [of the CICPC] the 9mm bullet casings collected at the scene of the crime, in order to conduct a ballistic comparison between these and determine whether they were fired by the same type of weapon [:] 8) "interview" the circle of people (friends, family members, work colleagues, etc.) closest to the victims [of the crimes] in order to investigate any element that could lead the Attorney General's Office to investigate the motive for the crime [, and] 9) [a]ny other action deemed pertinent to clarify the facts under investigation which, with prior coordination with the Attorney General's Office should be practiced in order to fully identify the alleged perpetrators of the attack."

54. On September 5, 2003, "interviews" took place with two employees of the Vicariate. Both said they had no knowledge of any threats made against Mr. Castillo or that he had been in contact with guerrilla groups or organizations involved in drug-trafficking. One employee mentioned that "on two occasions [they] received visits from the [Office of Intelligence and Prevention Services ([DISIP])], inquiring about [their] work." She added that the previous year a man who had worked with Mr. Castillo had been murdered, presumably by "Colombian paramilitaries." She said he had entered Venezuela as a "refugee" and that, according to information received by Mr. Castillo, following that person's absence from work, it was learned that he was the right-hand man of a commander of the Revolutionary Armed Forces of Colombia (hereinafter "FARC"). She also stated that Mr. Castillo had "a purely [...] working" relationship with that refugee. Coincidentally, the other employee of the Vicariate "interviewed" three days later, gave the same information.

55. On September 8, 2003 the Office of the Attorney General instructed the 83rd Prosecutor's Office to assist in the investigations.

56. On September 10, 2003 Mrs. Moreno was interviewed and provided information that enabled the CICPC to prepare an artist's sketch of a suspect. During the interview, Mrs. Moreno mentioned, *inter alia*, that in the days leading up to the death of her husband, he had not received threats and had not felt that he was being followed. She denied that, "in his work [Mr. Castillo] ha[d] been involved in any important case that would put his life at risk." She said that "the only [threatening] call that [they had] received was three years [earlier] to [her] husband's cell phone, whose number [she could] not recall." Mr. Castillo had told her that a man's voice had warned them "not to be *pajúos* [informers] and stop defending human rights." Moreover, on September 10, 2003 Mrs. Moreno requested "that the Public Prosecutor's Office request measures of protection in [her] favor and [for her] family, given that she was very fearful due to the events" that led to Mr. Castillo's death.

57. On September 10, 2003 the Assistant Police Commissioner of the Machiques office of the CICPC received a phone call from a person who

fear [ed] reprisals [and] reported [...] that [...] the recent murders in [the] area, including [...] that of [Mr.] Castillo [...] had involved members of a paramilitary group from the border city of Cúcuta, [...] who drive around] in a burgundy coupe, Cherokee pickup truck, [...] around the town of Machiques.

58. According to this report, the caller identified the vehicle's registration number and named four of the people who, he claimed, belonged to the "paramilitary group". That same day, the investigators carried out a number of inquiries to verify the information received by the Assistant Commissioner: they place the vehicle under surveillance and saw three unidentified individuals get into it. They also contacted the person registered as the owner of the vehicle who, according to the information gathered by the investigators, had reported a theft, but said he "had never owned a vehicle" of this type. Then, on September 16, 2003, a technical expert examined the vehicle and found that the security and chassis serial numbers were false. Three years and ten months later, on September 26, 2006, an official letter was issued containing an expert report on the "license plate or registration" of the truck, which concluded that it was "authentic."

59. Furthermore, on September 12, 2003 information was received that four people had been arrested "in an operation by the Police of Villa del Rosario," among them the alleged passengers of the aforementioned vehicle. These individuals were "interviewed" and identified. One was an alleged paramilitary, Emer Humberto Terán Méndez (hereinafter "Mr. Terán" or "alleged paramilitary"), and another a National Guard, Edgar Alfonso González

(hereinafter "Mr. González" or "National Guard"). These two individuals mentioned the involvement of paramilitary groups and state agents in the killing of Mr. Castillo. The alleged paramilitary, a Colombian national, stated that

[...] the guerrillas no longer have anyone to give them legitimacy, that man [Castillo] was on our target list [...] in all, there are around 20 people on the list targeted for elimination, because they were against honest people who are cattle ranchers in the area [...] the Mayor of this city [Machiques] is aware of their presence, as are several leaders of Gadema [(Ranchers of Machiques)] – their main contacts are with an intelligence unit of the National Guard.

60. For his part, Mr. González, "a distinguished active member of the National Guard [...] assigned to Intelligence Base No. 36 G.N of [Machiques]" stated, with regard to Mr. Terán, that

[...] these guys are *paracos* (paramilitaries) hired by various cattle ranchers in the area; Mayor Toto Márquez knows about it, and in fact his own drivers take these guys to and from different places; they have come to cleanse Machiques of all the scum; they are scary guys because they don't respect anybody.

The comments made by the alleged paramilitary and the National Guard were recorded in a "police investigation report" drafted on September 15, 2003.

61. On September 15, 16 and 17, 2003 documents were issued containing: a) the results of the "hematology and blood group" tests carried out on samples taken from the car driven by Mr. Castillo; b) the "medical examination and legal autopsy" performed on Mr. Castillo's corpse, and c) the results of the "expert examination and appraisal" carried out on the car driven by Mr. Castillo.

62. On September 18, 2003 the 20th Prosecutor's Office asked the CICPC to "appoint experts [...] to carry out urgent tests on the trajectory of the bullets." To this end, it sent the CICPC a "copy of the report on the autopsy" performed on Mr. Castillo's body.

63. That same day, the Chief of the 83rd Prosecutor's Office and the Assistant Attorney of the 20th Prosecutor's Office carried out several procedures, including: a) a meeting with the Senior Prosecutor of the State Zulia "exchanging views regarding the investigations carried out and/or to be carried out"; b) a meeting with the commissioners of the Machiques branch of the CICPC, in which they "established the guidelines to be followed in the investigation", and c) another "interview" with an employee of the Vicariate.

64. On September 19, 2003, at 9:00 am, members of the 20th and 83rd Prosecutor's Office appeared before the "Sixth Court on Criminal Control Matters of the Judicial District of the State of Zulia," in order to "verify the legality" of "the alternative measure of release on bail granted to the alleged paramilitary who was "interviewed" on 12th of the same month and year (*supra* para. 59), "given that [he] might allegedly be involved in the murder of [Mr.] Castillo."

65. On September 21, 2003 a report was published in the press about the incident, which suggested that Mr. Castillo had been murdered by people associated with Colombian paramilitary units because of his presumed ties to members of Colombian guerrilla groups. According to the report, these paramilitary groups had a list and were killing everyone in the area linked to the guerrillas. In this regard, the press reported that Mr. Castillo had provided lodging in his home for two Colombian citizens linked to Colombia's FARC guerrillas

in his home – including one who was nicknamed “the nurse” – and that both Colombian citizens were subsequently murdered.³⁴

66. On September 22 or 23, 2003³⁵ staff of the Third Court of First Instance of the Criminal Judicial Circuit of the State of Miranda telephoned the 83rd Prosecutor’s Office to report that “a precautionary measure in favor of [Mrs.] Moreno had been agreed.”

67. On September 23, 2003 an employee of the Vicariate expanded on her earlier statement made on September 5th (*supra* para. 54) and, after being shown photographs of the three presumed paramilitaries arrested on September 12, 2003 (*supra* para. 59), stated that she could not quite recognize them, but that one of them resembled a person who had “appeared at the offices of the Vicariate, asking for Joe [C]astillo [so that he] could process his Venezuelan identity card.”

68. On October 7, 2003, an individual was interviewed and made statements about his business relationship with Mr. Castillo.

69. On October 7, 2003, the task entrusted to the 20th Prosecutor’s Office on August 29 of that same year to “intervene in the investigation in relation to Mr. Castillo’s death” (*supra* para. 51) was annulled, because the Attorney General’s Office decided to assign follow-up of the case to the Human Rights Protection Office. The relevant communication was received by the 20th Prosecutor on November 3, 2003. Despite this, on October 21, 2003 the Attorney General’s Office forwarded to the 20th Prosecutor a copy of an official letter dated September 30, 2003, issued by the Office of the Ombudsman, in which it requested “the relevant procedures to grant measures to protect the life and personal integrity of [an employee] of the Vicariate”. Likewise, it required the 20th Prosecutor’s Office to “process, as soon as possible, before the Prosecutor’s Office of the State, the appropriate protective measures” and also “to coordinate all actions with [the] 83rd Prosecutor.”

70. On October 22, 2003 83rd Prosecutor’s Office issued an official letter instructing the CICPC to “carry out a medical examination [of Mrs. Moreno].” On November 24, 2003, the 83rd Prosecutor’s Office received an official letter containing the results of the “medical examination [performed] on [Mrs.] Moreno.”

71. On November 4, 2003, the 83rd Prosecutor sent an official letter to the Third Judge of First Instance of the Criminal Court of the Jurisdiction of the State of Miranda, concerning the measure of protection agreed on September 22 or 23 of the same year (*supra* para. 66). In this regard, he indicated that the agreed “custodial services” were “provided in an irregular manner [,] as [...] was reported by the beneficiary on several occasions.” He therefore asked the “Director General of [Region 5 of the Police of the State Miranda], to ensure faithful compliance with the agreed measures, as required by the Inter-American Commission.” On August 29, 2003, the Commission had requested that the State adopt precautionary measures in favor of Mrs. Moreno and Luis Castillo.

³⁴ Cf. Newspaper report published in “El Universal” on September 21, entitled “Joe Castillo: 11 gunshots (File of attachments to the Merits Report, Annex 16, page 375).

³⁵ Among the evidence forwarded to the Court are several documents that suggest that both the telephone information provided and the agreement on the measure of protection had been carried out on September 22 or 23 of the same year.

72. On November 20, 2003, according to the 20th Prosecutor's Office, several newspapers reported that the individuals who had allegedly murdered Mr. Castillo had been killed in a confrontation with security forces in Machiques de Perijá. The respective official letter issued by the 20th Prosecutor's Office on November 15, 2004, indicated that the "[aforementioned] incident [had not been] proven," and that the "information [had been] provided by a police captain [and] was only handled by that captain." In the incident, one man was unhurt.³⁶

73. On December 3, 2003 the 20th Prosecutor's Office received an official letter from the CICPC containing the "[e] xpert report on the planimetric survey."

74. On January 21, 2004, at the 83rd Prosecutor's Office, Mrs. Moreno examined photographs of the four men killed in the incident of November 20, 2003 (*supra* para. 72). Mrs. Moreno stated that "she could not be certain" whether any of these individuals was implicated in the murder of Joe Castillo and the injuries suffered by her and her son. Mrs. Moreno requested the following:

"photographs taken while alive of [those who] were killed [...]on November 20, 2003; [i]nvestigate the list [...] that was seized from the [...] deceased and verify its authenticity and ascertain whether the name of Joe Castillo and hers [or] that of any member or employee of the Vicariate was on the list[...] and [...entrust] the competent agencies with the task of providing the agreed [m]easures of [p]rotection in [their] favor [...] because the police force [of] Miranda that had been assigned [had] provided an irregular custodial service."

75. On May 27, 2004, the Support Network for Justice and Peace (hereinafter "Support Network"), which represented Mrs. Moreno before the domestic courts, requested the 20th Prosecutor's Office to provide "information [about] Case 24-F20-817-03, which was provided," according to the information supplied by this Prosecutor's Office.

76. On June 22, 2004, the 83rd Prosecutor's Office sent a letter to the 20th Prosecutor's Office requesting cooperation in certain investigative procedures: an expert ballistic comparison test of the eight spent bullet cartridges and lead fragments recovered from the scene of the incident with the firearms captured from the individuals who died in the confrontation on November 20, 2003 (*supra* para. 72); collect photographs taken while alive of those allegedly involved in the killing of Mr. Castillo so that Mrs. Moreno might examine them; and retrieve the list captured from the individuals killed in the clash with police on November 20, 2003.

77. On August 10, 2004 Mrs. Moreno requested that the 83rd Prosecutor's Office

speed up the investigation into the murder of [her] husband [...] and [that] the competent agencies take action in respect [of] the agreed [p]rotection measures in her favor [...] since the police unit assigned ha[d] completely failed to provide custodial services.

78. On August 20, 2004 the head of the 20th Prosecutor's Office contacted her counterpart at the 83rd Prosecutor's Office indicating that it was necessary to send the CICPC "the expert report on the composite sketch [...] in order to compare it" with a person allegedly involved in the attack against Joe Castillo and his family. The 83rd Prosecutor's Office had requested a photograph of this individual who was allegedly "involved in numerous cases of murder and kidnapping in the area, and who was [currently] detained and [...] there was a possibility that he was one of the perpetrators of the murder of Joe Castillo." This person had been arrested, having been linked to killings other than the death

³⁶ As stated by the representatives in their brief of pleadings and motions.

of Mr. Castillo and the wounding of Mrs. Moreno and Luis Castillo, and firearms had been seized from him. On that same day the Machiques Office of the CICPC sent a letter to the 20th Prosecutor's Office containing his photograph, which was received on August 27, 2004.

79. On August 20, 2004 the 20th Prosecutor's Office sent an official letter to the CICPC, containing copies "of the composite sketch prepared by the National Criminology Office [and] of the "interview" with [Mrs.] Moreno at the 83rd Prosecutor's Office." This communication also stated that the 83rd Prosecutor's Office and the 20th Prosecutor's Office "were jointly [...] charged with handling the content of Criminal Investigation No. 24-F20-817-2003 and the CICPC internal record No G-410-113."

80. On September 3, 2004 the 83rd Prosecutor's Office received an official letter from the CICPC indicating that a forensic medical examiner would forward a "medical report [...] on [Mrs.] Moreno".

81. On October 22, 2004 Mrs. Moreno appeared before the 83rd Prosecutor's Office and stated that the measure of protection in her favor was "not properly implemented." She also asked to be informed about "the results of the ballistics tests and other results of the investigation, given the time that had elapsed and because she had been informed that the perpetrator had allegedly been identified." She also stated that she was "unable, for personal reasons, to travel" to the city of Maracaibo to "carry out the line-up identification of [the person allegedly involved in the attack against Joe Castillo and his family]" (*supra* para. 78), and suggesting that "recent photographs be provided of [that person] to proceed to identify [him]." The 83rd Prosecutor accepted this suggestion, and said that the necessary procedures would be carried out by the 20th Prosecutor's Office. The 83rd Prosecutor also agreed to instruct state institutions to "immediately implement the security services related to the aforesaid [m]easure of [p]rotection."

82. On November 2, 2004 the 83rd Prosecutor's Office issued an official letter, received by the agency on the 12th of that same month and year, asking the 20th Prosecutor's Office to provide "photographs [...] of the individual allegedly involved in the attack against Joe Luis Castillo and his family] so that he could be duly identified by [Mrs.] Moreno."

83. On April 21, 2005 the *Red de Apoyo* organization and Mrs. Moreno, requested the 20th Prosecutor's Office to order a ballistic comparison test of the bullets removed from the body of Mr. Castillo with the weapons captured from the person allegedly involved in the attack. Furthermore, it requested "an immediate response" to the request of November 2, 2004 made by the 83rd Prosecutor's Office (*supra* para. 82).

84. On August 10, 2005 the 20th Prosecutor's Office issued a letter to the 83rd Prosecutor's Office, providing a copy of a color photograph of the aforementioned individual allegedly involved in the attack against Joe Luis Castillo and his family (*supra* para. 78), and the list seized from the individuals killed on November 20 (*supra* para. 74), who were under investigation for a matter different to the present case. That same day, the Office of the 20th Prosecutor asked the CICPC to appoint ballistics experts to conduct a forensic examination, examine marks left by erased serial numbers on metal and ballistic comparisons of the firearms seized from the citizens killed in the confrontation on November 20, 2003, with the shells of the bullets that struck Mr. Castillo and were recovered by the CICPC. Furthermore, it requested the appointment of ballistics experts to conduct a ballistic comparison between such shells and the weapons seized from the individual whose photograph had been sent to the 83rd Prosecutors Office. On July 6 and August 16, 2006, the CICPC issued reports on the ballistic tests carried out on the bullet fragments and

firearms. These showed negative results, that is, they noted that the bullets had not been fired by the weapons examined. Although the reports of July 6 and August 16, 2006, did not expressly state it, these referred to the weapons carried by the aforementioned person.³⁷ On October 16, 2006, the 11th Prosecutor's Office sent a letter to the 20th Prosecutor's Office forwarding the report on the ballistic comparison tests carried out on the "firearms seized from [the] same individual" and "the bullets extracted from the bodies of [Mr.] Castillo [and Mrs.] Moreno [...] and Luis Castillo, whose result was negative."

85. On August 10, 2005, two lawyers of the Vicariate of Caracas' legal department were granted a "Special Power, sufficiently broad" by Mrs. Moreno so that "they could act jointly or separately on [her] behalf and represent, defend and uphold [her] rights, actions and interests as a victim of the murder of her husband Joe Castillo." On August 15, 2005 the 83rd Prosecutor's Office "allowed access to the case file for a period of four hours" to Mrs. Moreno's attorney, who retired stating that she would continue examining it the following day.

86. On August 11, 2005 Mrs. Moreno informed the 83rd Prosecutor's Office that the *Red de Apoyo* would no longer be representing her in the case of the death of her husband Joe Castillo, and that henceforth it would be the Vicariate of Caracas.

87. On August 25, 2005³⁸, in response to a previous request by Mrs. Moreno's attorney for a simple copy of the file No. C-585, the Director of the General Secretariat of the Office of the Attorney General of the Republic sent a communication to the 83rd Prosecutor's Office requiring the original file mentioned, to be forwarded to the respective Office within three working days.

88. On October 19, 2006 the CICPC requested an "expert examination and ballistic comparison" of a "piece of metal from projectiles with bronze-colored armor," in relation to case "G-410[-] 113" opened in connection with the attack suffered by Mr. Castillo, Mrs. Moreno and Luis Castillo (*supra* para. 46). This document suggested that the results should be "compared with those obtained when firing" certain weapons "related to criminal case number G-694 743", which is the case against the person allegedly involved in the attack against Joe Luis Castillo and his family (*supra* para. 78). Regarding this request, two days earlier the "security manager" of the "Clinica Hospital, C.A." had provided the CICPC with a bullet that had been extracted from Mrs. Moreno, indicating that it was the "only one found in his archives" and expressing his "commit[ment] to continue searching for those [...] extracted from [...] Luis Castillo."

89. On November 28, 2006, the 20th Prosecutor's Office, invoking Article 315 of the Code of Criminal Procedure (hereinafter also "Procedural Code" or "COPP")³⁹, among others,

³⁷ This is evident from the comparison of the material examined and the official letters requesting the respective expert tests.

³⁸ From the files forwarded to the Court it is not clear that any procedures whatsoever were carried out between August 25, 2005 and October 19, 2006. Furthermore, it should be noted that during that period, on March 20, 2006 the petition was submitted to the Inter-American Commission (*supra* para. 2).

³⁹ The Inter-American Commission, in the Merits Report, states that "Article 80 of the COPP [indicates that]: "Case closure by the State Prosecutor. Where the outcome of an investigation is insufficient to bring charges, the Office of the Attorney General shall order the proceedings closed, without prejudice to their reopening should new facts come to light. The victim in the proceeding shall be notified of this measure. All provisional measures issued against the accused in whose favor the decision to close is made shall cease. The victim may, at any juncture, request the reopening of the investigation indicating the relevant investigative procedures" (Merits file, Merits Report, page 23).

decided to archive the proceedings related to the investigation, "on the grounds that these were insufficient to bring charges, without prejudice to their reopening, should new facts come to light." On that same date a "notification slip" was sent to Mrs. Moreno informing her of this decision. The section of this document entitled "substantiation" states that "it is considered fully proven that a punishable act was committed, which is prosecutable *ex officio* [based on] the crimes of homicide and injuries described in the Criminal Code," and that the victims of said incident were Mr. Castillo, Mrs. Moreno and Luis Castillo. It also stated that, having carried out the respective expert assessments, it appears that the gun used to shoot Mr. Castillo differs from the one seized from the person allegedly involved in the attack against him (*supra* para. 78). It then concluded that since "the investigative actions having been exhausted [...] it seems appropriate and lawful to order the archive of the [...] proceedings, without prejudice to their reopening if new facts come to light."

90. Mrs. Moreno was informed of the archive of the case on November 28, 2006.⁴⁰

91. On June 7, 2007 the attorneys of the Vicariate of Caracas representing Mrs. Moreno asked the Attorney General's Office for a copy of the proceedings of the prosecutor's file.

92. In a letter dated June 19, 2007 addressed to the 20th Public Prosecutor's Office, Mrs. Moreno stated that she had been "personally informed by [...] the 83rd Prosecutor's Office [...] that the [20th] Prosecutor had ordered the closure of the investigation." In the same letter, she requested that "the respective notification be issued as well as copy of the order to close the investigation in question." To this end, she "authorize[d] [an attorney ...] who work[ed in...] the Apostolic Vicariate of Machiques to obtain the copies in question."

93. On June 26, 2007 the 20th Prosecutor's Office sent a letter to Mrs. Moreno, in response to a previous request from her, containing the

notification slip dated November 28, sent by [the 20th Prosecutor's Office] to [Mrs. Moreno] in which she was notified of the case closure ordered by [the 20th Prosecutor's Office] in the [c]riminal [i]nvestigation under [number] 24-F20-817-2003.

The same official letter stated that "for the purposes of effective notification of the victim [Mrs. Moreno]" the 20th Prosecutor's Office "agreed to deliver the notification to [the name of the attorney who at the time was working in the Refugee Protection Unit] of the Apostolic Vicariate of Machiques."

94. On at least two occasions, between August 2005 and February 2009, the representatives or attorneys of the Vicariate of Caracas requested from the authorities copies of records of the domestic proceedings; however, these were not provided.⁴¹

⁴⁰ In their brief of pleadings and motions, the representatives stated the following: "[Mrs.] Moreno was informed of the order to archive the investigation in a notification slip dated November 28, 2006". They added that "on November 28, 2006 [Mrs.] Moreno knew about the decision to archive the case", explaining that "[s]aid knowledge resulted from a personal visit to the Prosecutor's Office." As evidence that Mrs. Moreno was aware of the order to archive the case on the date mentioned, they referred to documents presented by the Inter-American Commission as Attachments 19 and 20 of the Merits Report. Such documents are, entitled, respectively: "Notice", dated November 28, 2006, and "Official letter No. ZUL-20-1579-2007", of June 20, 2007. As proof of Mrs. Moreno's "personal visit" to the Prosecutor's Office, they cited a document issued by the representatives themselves, submitted in the context of the proceeding before the Commission. However, this document does not expressly refer to the fact in question. The State did not contest the fact that Mrs. Moreno was informed about the order to archive the case on November 28, 2006, and stated that she was "formally notified through a communication signed by the [20th Prosecutor's Office]," basing this affirmation on "Annexes 19 and 20 cited in the Merits Report No. 120/10", which were mentioned by the representatives.

⁴¹ The Inter-American Commission stated that "[it] can confirm [...] that the petitioners requested copies of the investigation files before the domestic courts on August 24, 2005 and September 25, 2008 and that these had

95. On September 29, 2008 and February 4, 2009 the attorneys of the Vicariate of Caracas, who represented Mrs. Moreno, again requested the Attorney General's Office to provide a copy of the minutes of the prosecutor's file.⁴² Mrs. Moreno obtained a simple copy of the order to archive the case. As of July 16, 2011 she had still not obtained a certified copy.⁴³

96. Following the decision to archive the case, on June 2, 2008 the representative of the Ombudsman's Delegate in the State of Zulia issued a letter addressed to the 20th Prosecutor's Office, which was received on June 10, indicating that "the 4th Prosecutor's Office has received a complaint made on [18 May 2007], in which a citizen named the Mayor of Machiques Alfonso Márquez as the mastermind behind the killing of [Mr.] Castillo". On July 27, 2010 and May 19, 2011, the 20th Prosecutor's Office issued communications requesting the appearance, on August 16, 2010 and May 26, 2011, respectively, of the accuser "in order to take a statement regarding Case 24-F20-817-2003, concerning the death of [Mr.] Joe Luis Castillo"⁴⁴.

VI MERITS

97. From the facts presented in the preceding chapter, the Court notes that the dispute between the parties centers around the possibility of attributing responsibility to the State for the loss of life of Joe Luis Castillo resulting from the injuries caused by gunshot wounds inflicted by two individuals, which caused his death, as well as the violation of the right to personal integrity as a result of the injuries suffered by Yelitze Moreno de Castillo and the child Luis César Castillo Moreno. Therefore, in this chapter, the Court will examine the State's responsibility for the alleged violation of the right to life,⁴⁵ personal integrity⁴⁶ and rights of the child⁴⁷, in relation to the obligation to respect and guarantee those rights⁴⁸,

not been issued as of October 22, 2010]". The representatives, for their part, pointed out that "copies of the files have not been issued to the petitioners, despite the fact that the attorneys of the Vicariate of Caracas have requested these from the authorities of the Attorney General's Office in letters dated September 29, 2008 and February 4, 2009." Neither the Commission nor the representatives specified which files were requested, nor did they provide a copy of the respective records.

⁴² As stated by the representatives in their brief of pleadings and motions, and not disputed by the State.

⁴³ As stated by the representatives in their brief of pleadings and motions, and not disputed by the State.

⁴⁴ These procedures were not mentioned by the Commission or by the parties in the Merits Report. Nevertheless, the Court considers them proven given that these are complementary to the factual framework described in the Merits Report in relation to the investigation of the facts, and that they appear in the evidence provided by the State.

⁴⁵ Article 4 of the American Convention, states:

"1. 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."

⁴⁶ Article 5 of the American Convention, states:

"1. Every person has the right to have his physical, mental, and moral integrity respected."

⁴⁷ Article 19 of the American Convention states: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

⁴⁸ Article 1 of the American Convention states:

with respect to Joe Luis Castillo, Yelitze Moreno and Luis César Castillo Moreno, as appropriate, in relation to the attack against them.

98. Moreover, the Court notes that both the Commission and the representatives indicated that the rights to life and personal integrity imply, as a corollary to the obligation to guarantee those rights, the duty to carry out a diligent investigation into any alleged violations thereof. As in other cases⁴⁹, the Court deems it appropriate to analyze the investigation of the facts together with the alleged violations of the right to judicial guarantees and judicial protection. Based on the assessment carried out in the relevant part of this Judgment (*infra* Chapter VI-2), the Court does not consider it pertinent to analyze the alleged violations of the rights to life and personal integrity in light of the duty to provide judicial guarantees in relation to the investigation of the facts.

99. Likewise, the alleged violations of the personal integrity of Yelitze Moreno, Luis Castillo and other relatives of Joe Luis Castillo stemming from the alleged lack of due diligence in the investigation of the facts will be examined subsequently (*infra* Chapter VI-2). Finally, the Court will analyze the alleged violations of the rights to honor and dignity, and freedom of thought and expression, argued by the representatives, as well as freedom of association mentioned both by the Commission and by the representatives (*infra* Chapter VI-3).

VI-1

RIGHTS TO LIFE, TO PERSONAL INTEGRITY AND OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

Position of the Commission and arguments of the parties

100. The Commission emphasized that in this case “analyzing the alleged responsibility of the State is most complex, given that there are different versions as to the background, motivations, and even the actors involved in the attack” against Joe Luis Castillo, Yelitze Moreno and Luis Castillo. For this reason, it conducted its analysis taking into account the following aspects: i) the duty to prevent violations and ii) indications of direct or indirect involvement of agents of the State agents; and, investigations at the domestic level.

101. Regarding the first hypothesis of responsibility, the Commission concluded that “it lacks sufficient evidence to attribute to the State responsibility” for violating the duty of prevention. It noted that, based on the evidence in the file, there were no “indications to suggest that Jose Castillo was the target of threats or intimidation prior to his death, nor was there any public complaint or report to the State authorities of a situation of danger or of the need to apply prevention measures.” The Commission further indicated that, even if the State recognized a broader situation of violence in the border zone of Zulia State, in its view, this broad context alone is not sufficient to attribute to the State responsibility for the violation of the duty of prevention. Moreover, the Commission considered that while there

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1. “1. 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.”

⁴⁹ Cf. *Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs* Judgment of January 31, 2006. Series C No. 140, para. 148, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, para. 104.

was evidence that Joe Luis Castillo González was under observation because of his work and was a target of certain groups in the area, that evidence only came to light after the investigation was opened.

102. Regarding the second supposition, the Commission pointed out that, faced with evidence that would appear to directly suggest the State's international responsibility through acquiescence, collaboration, or participation of State agents in the events, the authorities in charge of the investigation should have made every effort to clarify any possible responsibility or involvement on the part of the State authorities in a violation of the right to life. Thus, the State should have conducted a thorough, meaningful and diligent investigation to prove or disprove the evidence regarding the involvement of State agents, which did not happen in this case. Thus, the Commission considered that

the State did not meet the obligation to disprove the indicia of acquiescence or cooperation on the part of State agents. Owing to the shortcomings in the investigation, the Commission lacks evidence that might counter the aforesaid indicia [. T] herefore, [the Commission] finds that the State is responsible for the violation of the right to life [...] to the detriment of Joe Luis Castillo Gonzalez; of the right to humane treatment [...] to the detriment of Yelitze Moreno de Castillo and Luis César Castillo Moreno; and of the rights of the child [...] to the detriment of the latter, all in relation to the obligations set forth in Article 1(1) of that instrument.

103. The Commission held that despite the existence of "indicia and circumstantial evidence that pointed in some degree to the involvement of State agents in the killing" of Joe Castillo, this "did not warrant a proper investigation and follow-up by the Venezuelan authorities". According to the Commission such evidence "consisted mainly of statements from people implicating the local Mayor [...] and intelligence officers of the National Guard." To justify the possibility of considering such evidence as a reasonable basis upon which to conclude State responsibility for the violations listed, it cited the case law of this Court in the case of *Kawas Fernández v. Honduras*, in which the Court "consider[ed] it reasonable to grant probative value to [a] series of indicators contained in the [domestic] case file on the involvement of State agents in [the] facts".

104. The representatives disagreed with the Commission regarding the State's duty of prevention, arguing that the application of the "theory of objective risk" is not appropriate in this case, since it could limit the effective protection of the right to life against patterns of violence of a broader nature, where the existence of a "structural risk" should be taken into account. They explained that responsibility can be attributed to the State based on three elements: "1) the existence of group that is vulnerable or a situation of defenselessness [;] 2) the existence of a well-defined pattern of systematic violence against a specific group, and 3) the absence of a general State policy that is sufficient and effective to remedy this pattern of violence." In this respect, they indicated that the killing of Joe Castillo is not an isolated case, given that the border area of Venezuela was characterized by having several risk factors in the period prior to the attack, including the effects of the Colombian conflict, the presence of a large numbers of asylum-seekers and populations at risk moving through the area, coupled with the conflict over the land claims process that was taking place in the country. In this regard they held that

it is not true that the State's knowledge of the existing risk arose after the investigation began, given that the pattern of violence that existed against [activists] who worked on issues of land, refugees in the border area or alleged human rights violations was a well-known situation, of which State officials should have been aware.

105. They added that the "lack of measures of protection [...] against the danger that existed for Joe Luis Castillo resulted in serious harm to the personal integrity of Yelitze

[Moreno] and Luis [... Castillo]". Furthermore, they noted the "particular harm [caused] to the child Luis Castillo," considering the special protection that the State should have provided him, pursuant to Article 19 of the Convention.

106. For its part, the State, referring to the duty to prevent violations, argued that "the scale of Colombia's internal conflict and its spread to Venezuelan territory, means that incidents such as the killing of Joe Castillo González cannot always be avoided." According to the evidence provided, "there are no indications of threats or intimidation suffered by the Castillo González family prior to the attack, or to the staff who worked in the Apostolic Vicariate of Machiques." Moreover, "the victims never filed a public complaint or reported to State authorities a possible danger, nor did they request measures of protection." It further argued that "during the last ten years, surveillance has been reinforced in this border area of the State of Zulia, and a Strategic Command has been established consisting of five Theaters of Operations, and about one hundred border protection posts"⁵⁰, in order to provide protection and security to the population.

107. The State also pointed out that the case of Joe Castillo is not an extrajudicial execution and that the Commission incorrectly considered proven the involvement of State agents, based on statements by Edgar Alfonso González and Emer Humberto Terán (*supra* paras. 59 and 60), as well as press reports, which "cannot, *ipso facto*, be taken as true facts, as the Commission did." In this regard, it argued that such unproven evidence cannot be used to accuse the State of direct responsibility. Likewise, the State considered that from the investigations carried out, it was not possible to find elements to prove the involvement of State agents through acts of acquiescence, collaboration or connivance. It further considered that it does not have the obligation to prove or disprove negative facts, since it is not possible to prove a fact that has not actually taken place. Therefore, it argued that the State did not commit omissions in the investigation and rejected the findings of the Commission, due to lack of evidence and to failings in its analysis conducted to determine the Venezuelan State's responsibility for the violation of the right to life, personal integrity and the rights of the child.

Considerations of the Court

108. Based on the foregoing, and in order to determine whether the murder of Joe Luis Castillo González and the injuries caused to Mrs. Yelitze Moreno and to the child Luis César Castillo Moreno can be attributed to the State and, therefore, imply its international responsibility, the Court will first examine the arguments regarding the possible

⁵⁰ In that regard, it specified in its answer brief that "[t]he Theater of Operations No. 1, (TO1) covers the border municipalities in the State Zulia and Táchira". In addition, according to the evidence submitted to the Court, on December 13, 2011 the Commander Henry de Jesús Rangel Silva informed the State Agent, Mr. Germán Saltrón Negretti, that "since 1999 the National Bolivarian Armed Forces and other Security Organs of the State, [...] have contributed to the constant and permanent operations to combat drug-trafficking, killings, theft, extortion, kidnapping and different crimes committed on the Colombian-Venezuelan border, and most especially, in the border State of Zulia, in the town of Machiques." In that regard, he indicated that in order to "counteract the different scourges that afflict the local residents and displaced Colombian populations," different operations have been carried out, such as "Operation Sierra, Operation Sentinel, Operation Boquete, Dibise and [P]lan Escudo to reinforce Operation Sentinel, among others [...]". As regards these measures, it explained that "in the States, and particularly in the border areas, operations have been carried out to safeguard rural and border security and for immigration control: search of vehicles and boats, inspection of border markers, eradication of illegal crops and seizure of drugs and narcotics, recovery of livestock, capture of alleged guerrillas and paramilitaries and persons involved in extortion, kidnapping and other crimes." Cf. Official letter AGEV/000574, *supra*. For their part, the representatives stated that the militarization of the area occurred between 1994 and 1999, and that the "theaters of operations" established during that period continued operating afterwards.

acquiescence or tolerance of the State, and will subsequently consider the scope of the duty of prevention in this case.

A. Alleged attribution of State responsibility due to acquiescence, tolerance or involvement of State agents

109. The Commission pointed out that “there were indications of links between the local mayor’s office and paramilitary groups which, in turn, were reputedly in possession of a list on which Joe Luis Castillo Gonzalez appeared as a target for elimination [; along with] an alleged link between those groups and National Guard intelligence units [, and] there were even said to be cooperation ties, for instance, through the use of official vehicles.” The Court notes that the indications referred to by the Commission come from the statements of two people who were “interviewed” at police headquarters (*supra* paras. 59 and 60). In addition to these, an accusation was later made by a citizen (*supra* para. 96).

110. In relation to the foregoing, the Court has stated that, according to the basic principle of the law on international State responsibility⁵¹, every State is internationally responsible for acts or omissions that violate the human rights recognized in the Convention and that can be attributed, under international law, to any of its branches or organs.⁵²

111. The Court has also held that the international responsibility of the State may arise from human rights violations committed by individuals or third parties, in the context of the State's obligations to ensure respect for human rights among individuals.⁵³ What is decisive is to determine “whether a particular violation [...] has taken place with the support or acquiescence of the public administration, or if it has acted in a way that the violation occurred in the absence of prevention or with impunity.”⁵⁴

112. In order to determine whether a violation of the right enshrined in the Convention has occurred, it is not necessary to establish, as it is under domestic criminal law, the guilt of the perpetrators or their intention, nor is it necessary to individually identify the agents to

⁵¹ Draft Articles on Responsibility of States for internationally wrongful acts, in Resolution adopted by the General Assembly [based on the report of the Sixth Commission (A/56/589 and Corr.1)] 56/83. Responsibility of States for internationally wrongful acts, 85th plenary session, December 12, 2001, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrections (A/56/10 and Corr.1 and 2), Article 2: “Elements of an internationally wrongful act of a State- There is an internationally wrongful act of a State when conduct consisting of an action or omission: a) is attributable to the State under international law, and b) is a violation of an international obligation of State, and Article 4: “Conduct of Organs of a State. 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. Any organ includes any person or entity which has that status in accordance with the internal law of the State”.

⁵² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 170, and *Case of Vélez Restrepo and relatives v. Colombia, supra*, para. 125.

⁵³ Cf. *Case of the Massacre of Mapiripán v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 77. Draft Articles on Responsibility of States for Internationally Wrongful Acts, *supra*, Article 14.3: “The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”

⁵⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 173, and *Case of Vélez Restrepo and relatives v. Colombia, supra*, para. 186.

whom such violations are attributed.⁵⁵ It is sufficient to demonstrate that there has been support or acquiescence of the State in violation of the rights recognized in the Convention.⁵⁶

113. However, the attribution of responsibility to a State for the acts of State agents or individuals must be based on the specificities and circumstances of each case.⁵⁷ In this regard, the Court has stated that it must adhere to the principles of sound judgment, within the relevant regulatory framework.⁵⁸ Thus, under these terms, international Courts have broad powers to consider and assess the evidence, according to the rules of logic and based on experience, without being subject to the rules on weight of evidence.⁵⁹ Circumstantial evidence, indications and presumptions may be used provided that these lead to conclusions consistent with the facts.⁶⁰

114. Bearing in mind the above, the Court considers that the points mentioned suggest, in the case of the police “interviews” recorded in a report of September 15, 2003 (*supra*, paras. 59 and 60), that a public official was aware of the activities of paramilitary groups, which had presumably carried out the attack and, in the case of the public complaint filed on May 18, 2007 (*supra* para. 96), attribute the intellectual responsibility for the attack to the same official. Therefore, since there are no other elements in the body of evidence to demonstrate the possible involvement or knowledge of agents of the State regarding the attack, the Court considers that these comments are not entirely consistent with each other, nor sufficient and varied enough to arrive at the conclusion, based on the guidelines mentioned (*supra* para. 113), that State agents were involved in the attack, or regarding the State’s acquiescence or tolerance of such acts.⁶¹

⁵⁵ Cf. *Case of the “White Van (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 91, and *Case of the Massacre of Dos Erres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs* Judgment of November 24, 2009. Series C No. 211, para. 197

⁵⁶ Cf. *Case of the “White Van (Paniagua Morales et al.) v. Guatemala. Merits. supra*, para. 91, and *Case of Zambrano Vélez and et al. v. Ecuador. Merits, Reparations and Costs* Judgment of July 4, 2007. Series C No. 166, para. 104. In order to consider factors such as support, tolerance or acquiescence of the State toward conduct that violates human rights, the Court has considered various circumstances, including, for example, the following: the confirmation of links between government forces and paramilitary groups (Cf. *Case of the “Massacre of Mapiripán” v. Colombia, supra* para. 123); or “various actions and omissions carried out in a coordinated or concerted manner” by different State organizations and bodies, so as to enable the violation of rights (Cf. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs* Judgment of January 28, 2009. Series C No. 195, para. 149); or the State’s permission and protection in relation to activities that place human rights at risk (Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 248).

⁵⁷ Cf. *Case of the “Massacre of Mapiripán” v. Colombia. Merits, Reparations and Costs* Judgment of September 15, 2005. Series C No. 134, para. 113, and *Case of Perozo et al. v. Venezuela, supra*, para. 129.

⁵⁸ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of the Massacres of Río Negro v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 40.

⁵⁹ Cf. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 101, and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs* Judgment of May 26, 2010. Series C No. 213, para. 66.

⁶⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130, and *Case of Vélez Restrepo and relatives v. Colombia, supra*, para. 156.

⁶¹ In relation to the *Case of Kawas Fernández v. Honduras*, cited by the Commission, the Court notes that the number of elements resulting in the attribution of State responsibility was qualitatively diverse. Thus, for example, in that case of the Court took into consideration elements such as confirmation that a state official had tried to obstruct the investigation into the facts, and “technical-legal” opinions from state organs which found that other State entities had not taken any action whatsoever to arrest those responsible for the incident in question.

115. Consequently, the Court considers that it is not reasonable to infer, from all the evidence submitted and, in particular, from the “evidence” referred to by the Commission, that the State is responsible, through its tolerance, acquiescence or direct involvement, in the attack against Joe Castillo, Yelitze Moreno and Luis Castillo. Accordingly, in this case, the Court finds that there is insufficient evidence to determine the State’s international responsibility for the violation of Articles 4, 5 and 19 of the American Convention, in relation to Article 1(1) of that instrument.

116. Notwithstanding the foregoing and mindful that the Commission’s considerations are related to the investigation into the facts of the present case, the Court will examine these in light of due process in the aforesaid investigation, in section VI-2 of this Chapter of this Judgment.

B. Alleged attribution of State responsibility based on the duty to prevent violations

117. In this case, the argument put forward by the representatives regarding the alleged infringement of the duty to prevent violations is based on the combination of certain elements which, in their view, have been proven in this case, and which would amount to a “structural risk.” One of these elements is the existence of a pattern of systematic violence against human rights defenders. (*supra* para. 104).

118. In this regard, the representatives referred to the Inter-American Commission’s 2003 Annual Report on the Situation of Human Rights in Venezuela, the precautionary measures ordered by the Commission in favor of Colombian refugees in Venezuela, entitled: *Manuel de Jesús Pinilla Camacho et al.*, Newsletters 104 and 116 of PROVEA, and the Annual Report of PROVEA of November 22, 2002. These documents contain a general overview of the situation of refugees and describe the killing of at least three refugees protected by precautionary measures on the one hand, and, on the other, report on the appearance of hired killers with the ensuing increase in murders of “campesino leaders” during the period covered by the report (October 2001- September 2002), mentioning the attacks and killings carried out against them. In addition, they mentioned the 2003 Report of the Ombudsman of Venezuela, which describes the situation of campesino leaders.⁶²

119. The Commission likewise referred to its Report of October 24, 2003 on the human rights situation in Venezuela, which mentioned reports that human rights defenders had suffered different types of attacks and intimidation.⁶³ It also referred to the *Report on*

Cf. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs Judgment of April 3, 2009. Series C No. 196, paras. 84 to 94.

⁶² Ombudsman of Venezuela. *Annual Report 2003: Human Rights in Venezuela*. Caracas, 2004. In said report the Ombudsman of Venezuela expresses the view that a “pattern [of] attacks [exists] directed at agrarian leaders, political activists and human rights defenders”, but clarifies that “[d]espite the fact that during 2003 the murders of two human rights activists were particularly noteworthy, the sector most affected by this practice continued to be the campesinos” (File of attachments to the brief of pleadings and motions, Volume II, Annex 85, page 2197).

⁶³ IACHR, *Report on the Situation of Human Rights in Venezuela*. Chapter II. B. Situation of human rights defenders. OAS/Ser.L/V/II.118. Doc 4 rev. 1. October 24, 2003 (File of attachments to the Merits Report, Annex 10, pages 133-142). As to the nature of these attacks against human rights, it noted that these had developed from different perspectives. According to this report “some defenders have been victims of smear campaigns by people who hold public office.” It noted that acts of harassment against defenders “sometimes escalate into physical attacks on defenders”, and that there were various “mechanisms of intimidation” such as “threats and

Democracy and Human Rights in Venezuela of December 30, 2009, which stated that "Venezuelan human rights organizations have noted with concern that murders and executions of human rights defenders have been recorded for the first time in Venezuela's democratic history. The Vicariate of Human Rights of Caracas has documented six cases of violations of the right to life of human rights defenders in Venezuela between 1997 and 2007." This report also mentions the attack against Joe Luis Castillo, among others.⁶⁴

120. The representatives referred to the 2007 Report of the Vicariate of Caracas on the Situation of Human Rights Defenders in Venezuela, which contains an assessment of the situation of human rights defenders in Venezuela during the period covered in 1997-2007.⁶⁵ The report notes a significant deterioration in their working conditions during this "decade, particularly from 2004, when the political polarization in Venezuelan society reached its peak, and the attitude of the Venezuelan State changed with regard to NGOs and human rights defenders." This report also contains a record, *inter alia*, of threats, smear campaigns, assaults, monitoring and surveillance, arbitrary arrests, attacks, killings and executions of "defenders of land rights," "labor rights activists" and "defenders from NGOs or committees of relatives of victims of violations of the right to life", among others, during the period mentioned previously.

121. Finally, in the Commission's Annual Report for 2003, the period in which the events of this case occurred, in the section on the situation of human rights defenders, the Commission noted that

this situation [against defenders] d[id] not constitute a general practice; nevertheless, the existence of specific cases is a sign of serious impairment to human rights in the sense that in Venezuela the work of human rights defenders [had been] developing in a context free from setbacks of this nature.⁶⁶

122. In relation to the preceding paragraphs, it should be noted that the Court has held that the right to life plays a key role in the American Convention, as it is the essential corollary for realizing the other rights⁶⁷; that States have the obligation to ensure the creation of such conditions as may be required to avoid violations of this inalienable right

visits by unidentified persons near the premises where the defenders do their work." In a case against an NGO, it said that such threats had occurred "[c]uriously [...] after her work with refugees." Specifically, it said that they had reported the following cases: the murder of Jorge Nieves, human rights activist, which occurred on April 26, 2003 in Guaseadito, Apure; an attack on Estrella Castellanos, leader of the Civil Association of Women for Freedom, who was abducted on September 30, of the same year and later abandoned; the death of the leader Luis Alberto Alcalá, media and propaganda coordinator of the Civil Defenders Association of the New Republic, on September 25, 2002; and, as previously mentioned, the case of peasant leader, Douglas Armando García and his neighbor, Carlos Parra. The Report also mentioned the death of Joe Castillo.

⁶⁴ The Commission indicated that "[t]he other five killings of defenders referred to in the report of the Human Rights Vicariate of Caracas are related to the activities of relatives of victims of extrajudicial executions in Venezuela, and among them is José Ramón Rodríguez, presumably executed by regional police officers of Portuguesa on October 28, 2000 and Enmari Dahiana Cava Orozco, presumably killed by municipal police officers from Cagua on March 10, 2003". *Report on Democracy and Human Rights in Venezuela*, on December 30, 2009, paras. 623 and 626 (File of attachments to the Merits Report, Annex 14, pages 239 to 250).

⁶⁵ Cf. Human Rights Vicariate of Caracas, *Report on the Situation of Human Rights Defenders in Venezuela*, *supra*.

⁶⁶ Cf. IAHCR, *Report on the Situation of Human Rights in Venezuela*, *supra*.

⁶⁷ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs* Judgment of November 24, 2011. Series C No. 237, para. 48.

and, specifically, the duty to prevent attempts against it by agents of the State⁶⁸; that compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, 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 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.⁶⁹ Accordingly, the Court has also held that States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal standards and establishing a justice system 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 investigate these situations effectively.⁷⁰ The Court has also established that, along with the right to life, the right to personal integrity not only means that the State must respect this right (negative obligation), but that it must take all appropriate measures to guarantee it (positive obligation), in compliance with the general obligation in Article 1(1) of the American Convention.⁷¹

123. The Court has also indicated that, in addition to the general obligations to respect and guarantee the rights enshrined in Article 1(1) of the Convention, there are special duties that derive from these, which are determined on the basis of the particular needs for protection of the individual holder of the right, either owing to his personal situation or to the specific situation in which he finds himself.⁷²

124. Furthermore, the Court has established that in certain contexts, the work undertaken by human rights defenders can place them in a special situation of vulnerability, against which the State must take all necessary and reasonable measures to ensure their right to life, personal liberty and personal safety.⁷³ In this regard, it has emphasized that States have a duty to create the necessary conditions for the effective enjoyment of the rights established in the Convention, since compliance with this obligation is tied intrinsically to the protection and recognition of the importance of the role of human rights defenders, whose work is essential to strengthen democracy and the rule of law.⁷⁴ Likewise, it has

⁶⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, Merits, supra*, para. 144, and *Case of the Barrios Family v. Venezuela, supra*, para. 48.

⁶⁹ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs Judgment of June 7, 2003. Series C No. 99, para. 110, and Case of Penal Miguel Castro Castro v. Peru. Merits, Reparations and Costs Judgment of November 25, 2006. Series C No. 160, para. 237.*

⁷⁰ Cf. *Case of the Massacre of Pueblo Bello v. Colombia, supra*, para. 120, and *Case of the Massacres of Ituango v. Colombia. Preliminary Objection, Merits, Reparations and Costs Judgment of July 1, 2006. Series C No. 148, para. 131. Similarly, Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 98.*

⁷¹ Cf. *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations and Costs Judgment of May 19, 2011. Series C No. 226, para. 41.*

⁷² Cf. *Case of the Massacre of Pueblo Bello v. Colombia, supra*, para. 111, and *Case of Furlan and Relatives v. Argentina. Preliminary Objections, Merits, Reparations and Costs Judgment of August 31, 2012. Series C No. 246, para. 134.*

⁷³ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, paras. 81 to 91, and *Case of Fleury et al. v. Haiti. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, paras. 79 to 82.*

⁷⁴ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 87, and *Case of Fleury et al. v. Haiti, supra*, para. 80.

stated⁷⁵ that the obligation to protect human rights defenders has been recognized by the Organization of American States,⁷⁶ as well as in other international instruments.⁷⁷

125. Notwithstanding the foregoing, the Court recalls that it is not possible to ignore the particular seriousness of attributing to a State Party to the Convention responsibility for the practice of human rights violations. This “requires the Court to apply an assessment of the evidence that takes into account the gravity of the attribution of international responsibility to a State and that, despite this, is able to create a conviction of the truth of the facts alleged.”⁷⁸ Therefore, the analysis of the relevant background must be carried out having regard to its scope and characteristics, so as to be able to establish, if applicable, a pattern of violence against human rights defenders, of an allegedly flagrant and systematic nature.

126. In relation to this specific case, the Court notes that there is consensus between the parties and the Commission regarding the existence, at the time of the events, of a situation of insecurity and increased violence that affected the State of Zulia and particularly “campesino” leaders, as indicated by the uncontested and proven facts (*supra* paras. 34 to 37). Even the State acknowledged the general situation of insecurity in the area, and the fact that this had affected the “campesino” sector.⁷⁹ Accordingly, it stated that “[i]f the murdered “campesino” leaders are considered human rights defenders then, indeed, there was an increase in acts of aggression against human rights defenders in that area.”

127. However, the Court also notes that, on one hand, the references presented by the representatives and the Commission generally refer to the situation of human rights defenders in Venezuela and not exclusively to their situation in Zulia and, on the other, that, according to the evidence provided and beyond the complex situation of insecurity that

⁷⁵ Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 89 and footnote 48, and *Case of Fleury et al. v. Haiti*, *supra*, para. 80 and footnote 66.

⁷⁶ Cf. Organization of American States, “Human Rights Defenders in the Americas: Support for the individuals, groups and organizations of civil society working to promote and protect human rights in the Americas,” AG/Res. 1671 (XXIX-0/99) of June 7, 1999; AG/Res. 1711 (XXX-0/00) June 5, 2000, and AG/Res. 2412 (XXXVIII-0/08) of June 3, 2008.

⁷⁷ For example, Article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Institutions to promote and protect human rights and universally recognized fundamental freedoms, states that “[e]veryone has the right, individually or collectively, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Declaration on the Right and Responsibility of Individuals, Groups and Institutions to promote and protect human rights and universally recognized fundamental freedoms, A/RES/53/144, March 8, 1999, Article 1. See also United Nations, Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, UN Doc No. A/CONF.144/28/REV.1, September 7, 1990, Articles 16 to 22, and the Council of the European Union, *Draft on conclusions of the Council on EU guidelines for human rights defenders*, 100056/1/04 REV 1, June 9, 2004.

⁷⁸ Cf. *Case of Velázquez Rodríguez. Merits*, *supra*, para. 129, and *Case of Vélez Restrepo and relatives v. Colombia*, *supra*, para. 156.

⁷⁹ In this regard, the State indicated that at the time of the events in this case, “[s]ome Venezuelan landowners started hiring Colombian paramilitaries as hit men to murder peasant leaders who were enforcing the Law on Land and Agricultural Development.” Observations presented by the State to the Commission, in a communication dated January 21, 2008, *supra*. In its 2003 Report on Human Rights in Venezuela the Ombudsman of Venezuela did not refer to attacks against specific people, but pointed out that [i]n the case of the deaths in peasant areas, during 2003 a pattern emerged that had already come to light publicly the previous year, of attacks targeting farm leaders, political activists, and human rights defenders using hired killers. Although the murders of two human rights activists were particularly noteworthy during 2003, the most vulnerable sector remained the peasants, whose leaders have been victims of attacks due to their efforts to organize and promote the right to land. Cf. Bolivarian Republic of Venezuela, Ombudsman Report 2003: Human Rights in Venezuela, *supra*.

existed in the area, in which certain events occurred that involved attacks against human rights defenders, it was not proven that these constituted a widespread situation or a systematic practice. Therefore, it is unnecessary for the Court to consider the other alleged circumstances, as well as the relevance of conducting an analysis based on the aforementioned increased obligation of prevention, in light of the presumed situation of “structural risk” (*supra* para. 104).

128. Based on the foregoing, it is necessary to indicate the requirements for attributing responsibility, in this case, for the State’s failure to discharge its positive obligation to prevent human rights violations. To that end, it is necessary to establish that, at the time of the events, the authorities knew or should have known that a real and imminent danger existed to the life of a certain individual or group of individuals, and that it did not adopt the necessary measures within the scope of its authority which could be reasonably expected to prevent or avoid that risk.⁸⁰

129. In this regard, the Court has indicated that, according to its case law,

it is clear 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 by 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 be considered.⁸¹

130. However, as has been established, Joe Luis Castillo was a human rights defender whose work involved providing legal assistance to indigenous peoples, refugees and *campesinos* (*supra* para. 38), in the context of a complex situation of insecurity that existed in the border area, and particularly in Zulia (*supra* paras. 35 to 37). This situation was known to the State which, as was indicated, increased police and military surveillance in the area, establishing a Strategic Command, consisting of five Theaters of Operations⁸² (*supra* para. 36).

⁸⁰ Cf. *Case of the Massacre of Pueblo Bello v. Colombia*, *supra*, paras. 123 and 124, and also see the following decisions of the European Court of Human Rights: ECHR, *Case of Kiliç v. Turkey*, No. 22492/93. First Section. Judgment of March 28, 2000, para. 63, ECHR, *Case of Öneriyildiz v. Turkey*. No. 48939/99. Grand Chamber. Judgment of November 30, 2004, para. 93, and ECHR, *Case of Osman v. United Kingdom*. No. 23452/94. Grand Chamber. Judgment of October 28, 1998, para. 116.

⁸¹ Cf. *Case of the Massacre of Pueblo Bello v. Colombia*, *supra*, para. 123, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs* Judgment of November 16, 2009. Series C No. 205, para. 280.

⁸² Cf. Official letter AGEV/000574, *supra*. According to the State, the purpose of the Strategic Command was to provide security to the population. With regard to the State’s assertions, the Commission and the representatives agreed that Venezuela established the Strategic Command with five Theaters of Operations. However, the representatives stated that the Theaters of Operations TO1 and TO2, established between 1994 and 1999, “[years in which] constitutional guarantees were suspended in Venezuela’s border area,” had continued operating during the period after 1999, when the suspension of guarantees ended, and added that their activity has been characterized by their typical role related to the use of military force for border security (Merits file, brief of pleadings and motions, pages 120 and 121). During the public hearing, they stated that the militarization “shows the State’s lack of understanding of alternative or complementary, necessary and appropriate measures, which are essential to ensure the effective protection of human rights defenders in a risk area.”

131. Within that context, however, there are also some undisputed facts: on the one hand, that prior to the attack, Joe Luis Castillo was not subjected to threats or acts of intimidation and, on the other, that there was no public complaint or any report made to the State authorities regarding a risk to him or to his family, or regarding the need to provide measures of protection. Therefore, the Court concludes that, at the time of the attack, there were not sufficient elements to establish that Mr. Castillo was in a situation of particular risk, which would lead the State to adopt special measures of protection and prevention in his favor.

132. Therefore, the Court finds that the State is not responsible for the violation of the right to life enshrined in Article 4 of the Convention, in relation to the obligation to guarantee rights established in Article 1(1), to the detriment of Joe Luis Castillo González. For the same reason, the Court also considers that the State is not responsible for the violation of the right to personal integrity and rights of the child, enshrined in Articles 5(1) and 19 of the Convention, in relation to Article 1(1) of that instrument, to the detriment of Yelitze Moreno, with respect to the first right, and of Luis Castillo, with respect to both Articles.

VI.2 RIGHT TO A FAIR TRIAL [JUDICIAL GUARANTEES] AND JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

Position of the Commission and arguments of the parties

133. The Commission considered it pertinent to assess the investigation of the facts in accordance with the United Nations Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (hereinafter "Minnesota Protocol"), which "establishes a number of basic procedures." It also specified various omissions noted in the investigation of the facts, namely that: 1) no photographic identification was carried out of the person allegedly involved in the attack against Joe Castillo and his family (*supra* para. 78); 2) no photographs taken while alive were obtained of the individuals killed on November 20, 2003, who, according to some reports, were allegedly linked to the attack against Mr. Castillo, his wife and their son (*supra* para. 72), and 3) no ballistic comparison tests were carried out on the weapons captured from the individual linked to the attack against Joe Castillo and his family and those seized from those killed in the confrontation on November 20, 2003, and the bullet shells from the weapon that struck Joe Castillo.

134. It added that in its investigation the State should have considered Joe Luis Castillo's work as a human rights defender, and circumstances such as the murder of three beneficiaries of precautionary measures ordered by the Commission, whom Joe Luis Castillo represented, as well as the fact that he had been defending cases related to disputes over land ownership and that some of his clients were selectively killed. The Commission emphasized that the State should have taken into account the importance, in the context of the facts, that "with regard to violations of the rights [of human rights] defenders, an analysis be carried out of the possible participation of masterminds," because "several of the attacks [...] against them were executed using hired gunmen." It further indicated that the CICPC "did not investigate to a sufficient extent the allegations received [...] on September 10, 2003", concerning the involvement of paramilitaries from Cúcuta in the attack against the alleged victims. In this regard, the Commission noted that, despite having identified the car used by "the alleged perpetrators" and having monitored three individuals, they were not "identified" and although "it was found that the security and chassis serial numbers of the [vehicle] were false," the record shows that no "additional

procedures were carried out" to investigate the report. It further stated that the Office of the Attorney General was informed by witnesses, including "the alleged paramilitary group member Emer Terán and the national guardsman Edgar Alfonso González," that Joe Luis Castillo was on a "list of targets to be eliminated by the paramilitaries [...] hired by several cattle ranchers in the area and that the Mayor of Machiques had knowledge of this," and yet did not make sufficient inquiries based on this information.

135. It also argued that "the authorities [...] should have made every effort to clarify" the evidence regarding any possible State responsibility "by acquiescence, collaboration or participation" in the attack. It indicated that "[it] was up to the State to carry out a thorough, meaningful and diligent investigation about possible government involvement [...] before archiving the investigation." Despite the foregoing, the State ordered the closure of the case, "suspend[ing] the investigative procedures" without "pursuing logical lines of inquiry," and without taking "performing procedures that might lead to the identification of those responsible and, most particularly, without seriously examining the possible involvement of State authorities." Consequently, it considered that the decision to archive the case was unjustified. In this context, it said that the delay of "more than seven years" without clarification of the circumstances implied a delay that "in itself, unreasonable and unjustified."

136. The representatives pointed out that according to the Minnesota Protocol, there are certain procedures that must be followed so that the investigation of a violent death is properly handled. They stated that

[t]he violation of the duty of due diligence, has materialized, among other things, given the inactivity of the judicial authorities in carrying out basic actions in a timely manner that could have pointed to the perpetrators and masterminds of the event, as well as the absence of an investigation that from the beginning, should have been investigated regarding the existence of the manner of death for hire and the alleged involvement of irregular armed groups, organized crime, and/or agents of the State.

137. Among the procedures not carried out by the State, the representatives included: "the failure to analyze the bullet trajectory and carry out ballistic comparison tests", and "the lack of coordination between various judicial agencies," as well as "non-compliance with measures of protection in favor of Yelitze Lisbeth Moreno and her son", ordered by the Commission, "the failure to monitor and capture suspects" and "the absence of logical lines of inquiry" that took into account the context in which the events occurred or the "modus operandi [of] certain actors". They mentioned the lack of an investigation regarding judicial processes in Colombia, particularly on statements made soon after the attack against Joe Luis Castillo, by paramilitary leaders such as "Carlos Castaño [and] Salvatore Mancuso [...] concerning the massacre of La Gabarra and other violent incidents." They also denounced the failure to question a survivor of the police confrontation of November 20, 2003. They emphasized that lines of inquiry relating to regarding paramilitary involvement and even that of State agents in the attack were dismissed. In this regard, they stated that

[t]he prosecutors of the Attorney General's Office had [...] from the beginning, accurate information about the names of the members of the paramilitary group [...] [and] could have interviewed [...] a National Guard member who collaborated with the group. In spite of having received all this information, which included the identification of specific local government officials as potential partners in crime.

138. The representatives concluded that "[t]he closure of the case was ordered due to lack of evidence, a situation created by the lack of a proper investigation." They added that the authorities did not notify Mrs. Moreno, in a formal and timely manner, of the decision to archive the case. Along with the Commission, they pointed out that given the time elapsed

and the continued impunity in the case, the requirement of reasonableness in the proceedings was impaired.

139. The representatives added that they were not allowed access to the records of the proceeding in the criminal case. They reported that “from the case file handled by the 20th Prosecutor’s Office, they obtained copies, but under reservation, and this did not include the order to archive the investigation.” As for the case file of the 83rd Prosecutor’s Office, they reported that despite several requests, they were unable to obtain copies, and “did not have visual access [to the record] until 2007.” They stated that this contravenes an element of due process, that of “ensuring adequate participation by victims:” They added that “despite the precautionary measures granted by the C [ommission...], Venezuela has not adequately implemented measures in favor of [Mrs.] Moreno and her son.”

140. Finally, they argued that,

[t]he impunity [in the case] and lack of understanding of what happened [...] prevents both the victims as well as Venezuelan society from knowing who the perpetrators of the crime were, not only of the crime against Joe [Castillo], but of the whole context of violence that has seriously affected society.

Accordingly, they stated that Venezuela violated “the right to know the truth to the detriment of the family members of Joe Luis Castillo and Venezuelan society, resulting in violations of Articles 1(1), 8, 25, and 13 of the American Convention.”

141. For its part, Venezuela expressed “concern” that the investigation was being assessed on the basis of “the guidelines of the Minnesota Protocol,” as though it involved “an obvious case of extrajudicial execution in which State agents were undoubtedly involved.” Nevertheless, it argued that “all the guidelines of the Protocol were followed completely, except for the identification and arraignment of the perpetrators before a Court [given the complexity of the case]”. It argued that it initiated the relevant investigations in this case “from the outset”, explaining that “[the] CICPC [...] went to the crime scene to [...] gather evidence and question eyewitnesses”, and that “a comprehensive investigation was carried out in which logical lines of inquiry were sufficiently developed; however, due to the complexity of the case, it was unable to identify those responsible.”

142. The State further argued that the “alleged paramilitary Emer Humberto Terán and the National Guard member Edgar Alfonso González, who was on leave” were not witnesses in the investigation, “they were only interviewed routinely by a police officer, without [...]proceeding to make a formal, sworn and signed statement.” The State explained that “the content of everything said in an interview is investigated, and it cannot *ipso facto* be taken as [...] true.” It also considered that the information “presumably” provided

is very general and [did] not provide specific and concrete data to establish a causal link between the circumstances of the death of Joe [Luis] Castillo and the involvement or collaboration of State agents. The only specific information is that [...] he was killed by paramilitary groups.

The State explained that although Emer Humberto Terán and Edgar Alfonso Gonzalez “were arrested and brought before the Attorney General’s Office and the competent courts,” they were unable to “extract information” from them, by virtue of the guarantees of due process, established in Article 49 of the Venezuelan Constitution, which exempts a defendant from the obligation to testify against himself.⁸³

⁸³ Article states that “[t]he defendant shall be informed of the constitutional principle that exempts him from the obligation to testify against himself, even when he consents to make a statement, not to do so under oath.”

143. The State added, in relation to the arguments of the Commission and the representatives concerning “lines of investigation” not explored before the case was archived, that ballistic tests were carried out, but that the “results were negative”.

144. As for the decision to suspend the investigation, the State explained that this was “not synonymous with closing the case [, since] according to Article 315 of the Procedural Code, the case may be reopened [a]t any time [...] [provided that] the victim [so] requests [it...] indicating the appropriate steps.” Thus, it is also, in its view, “a guarantee for the victim.” The State recalled that the CICPC continues with its work of

collecting new evidence, even in cases where an order to archive the file has been issued. [T] these elements are obtained in the ongoing police work and investigations under way. As new evidence appears, there would be an immediate reactivation [of the case], resulting in new actions whose outcome would allow the Prosecutor to bring a formal indictment before the Judge.

145. It added that the victim of a criminal act can go before the Criminal Judge at any time, according to Article 316 of the Procedural Code “when the Public Prosecutor has decided to archive the case [...] asking him to examine the grounds [for the archive]” and if he or she finds elements, according to Article 317, “the court [...] will order the proceedings to be sent so [that the same Prosecutor or another] may act accordingly.” It noted that, in any case,

t]he alleged victims failed to exhaust the domestic remedies and legal rights established in [...] Article 316, in regard to lifting the order to archive a case before a Judge, after having been formally notified by way of a communication [of] the 20th prosecutor in charge of the case.

146. Despite this, the State indicated that the representatives “turned [to] the international courts” without having “sought a final and legal closure of the case”, which would only be possible “through a request for a stay of proceedings” processed before the Criminal Judge, according to Article 318 of said Procedural Code. Based on the foregoing, it explained, in the public hearing, that “the domestic remedies were not exhausted”, a point reiterated in its final written arguments, stating that for this reason it filed a “preliminary objection.”

147. Venezuela stated that there is “bad faith” on the part of the Commission, inasmuch as it declared the period of the investigation to be “unreasonable.” In this regard, it stated that said period should be counted “from the date of the start of the investigation, until the moment when the Attorney General’s Office [...] ordered the case to be archived.”

148. Finally, the State argued that the representatives “never reviewed the investigation or interviewed investigators or prosecutors [...] appointed [to the case].” Moreover, it indicated that on August 24, 2005 the representatives requested a simple copy of the file, but said request was not submitted to the “Office of the Public Prosecutor in Machiques [, but rather] it was sent to the General Secretariat of the Republic based in Caracas.”

Considerations of the Court

149. Bearing in mind the foregoing points, the Court will now examine the investigation conducted in the present case, based on its characteristics and the alleged violations of the right to a fair trial⁸⁴ and judicial protection⁸⁵. Thus, it will examine the investigative

⁸⁴ Article 8 of the American Convention states:

1. 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

procedures carried out following the attack on August 27, 2003 against Mr. Castillo, Mrs. Moreno and Luis Castillo. It will also consider the arguments made regarding the notification of the decision to archive the case and the alleged impairment of the participation of the alleged victims in the domestic proceedings, as well as the alleged violation of the right to know the truth.

150. First, in relation to the investigation, the Court deems it necessary to point out that the so-called “preliminary objection” regarding the failure to exhaust domestic remedies, as alleged by the State, is inadmissible according to Article 42 of the Rules of Procedure of the Court. Said provision clearly states that “preliminary objections may only be filed in the [State’s answer] brief.” Therefore, given that the State did not put forward that argument at that stage, but rather in the final written arguments (*supra* paras. 13 and 146), the Court cannot consider it since it is time-barred.

151. The Court has indicated in its consistent case law that “the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, and not as a simple formality predestined to be unsuccessful, or as a simple measure responding to private interests.”⁸⁶ The investigation must be “serious, impartial [...] effective [...] and [be] designed to determine the truth and to pursue, capture, prosecute and eventually punish the authors”⁸⁷ of the crime. This obligation remains “regardless of the agent to whom the violation may eventually be attributed, even private individuals, because if their acts are not properly investigated, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State.”⁸⁸

152. Similarly, the Court has stated that, in the context of an investigation into a violent death, efficiency should be evident from the first procedures carried out with full diligence.⁸⁹ Accordingly, the State authorities conducting the investigation

should at minimum try, *inter alia*, to: i) identify the victim; ii) recover and preserve evidence related to the death, in order to use it in any potential prosecution of those responsible, iii) identify possible witnesses and obtain statements in connection with the death under investigation iv) determine the cause, manner, place and time of death, and any pattern or practice which may have caused the death, and v) distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary to thoroughly investigate

nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
[...]

⁸⁵ Article 25 of the American Convention, states:

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.

⁸⁶ *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Vélez Restrepo and relatives V. Colombia, supra*, para. 247.

⁸⁷ *Case of Juan Humberto Sánchez v. Honduras, supra*, para. 127, and *Case of Vélez Restrepo and relatives V. Colombia, supra*, para. 247.

⁸⁸ *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Vélez Restrepo and relatives V. Colombia, supra*, para. 188.

⁸⁹ *Case of Servellón García et al. v. Honduras, supra*, para. 120, and *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 300, and *Case of Kawas Fernández V. Honduras, supra*, para. 102.

the crime scene, and autopsies and analyses of human remains should be performed rigorously by competent professionals using the most appropriate procedures.⁹⁰

153. However, the Commission and the representatives mentioned procedures which, in their view, should have been carried out.⁹¹ For the purposes of this analysis, only those ordered by the authorities will be taken into account (*infra* para. 158). The Court will not consider possible specific investigative measures which, according to the arguments of the Commission or the representatives, should have been carried out and that were not ordered by the authorities⁹². This is so because, in principle, it is not up to the Court to determine the appropriateness or utility of specific investigative actions or measures, unless the failure to take them is contrary to objective standards, or is manifestly unreasonable.

154. From the body of evidence it is clear that, in this case, the authorities in charge of the investigation carried out numerous procedures to clarify the facts. These include the following: a) gathering evidence at the scene of the incident (*supra* para. 47); b) identification of eyewitnesses (*supra* para. 47); c) two visual inspections of the scene of the crime and the vehicle in which the Castillo family were traveling (*supra* para. 47); d) a medical examination and autopsy of the corpse (*supra* para. 48); e) expert assessments, including planimetric survey, ballistic and hematological tests (*supra* para. 48); g) autopsy performed on Mr. Castillo's corpse (*supra* para. 50); h) several "interviews" conducted with eyewitnesses (*supra* para. 52 a 54); i) taking a statement from Mrs. Yelitze Moreno (*supra* para. 56); j) preparation of an artist's sketch (*supra* para. 56); k) photographic identification of three alleged paramilitaries by an employee of the Vicariate (*supra* para. 67), and l) a medical examination of Mrs. Moreno (*supra* para. 70).

155. Furthermore, as regards the perpetrators of the crime, investigators examined possible involvement of people associated with Mr. Castillo's personal activities. Thus, the day after the attack they "interviewed" a person who reported that Mr. Castillo had problems with a builder (*supra* para. 48). Then, that same day, a statement was taken from that builder (*supra* para. 48). In addition, a person who had business connections with Mr. Castillo was "interviewed" (*supra* para. 68).

156. As to the hypothesis regarding the possible involvement of Colombian paramilitary groups in Joe Castillo's murder, the authorities received several pieces of information and statements. Thus, on September 5 and 8, 2003 "interviews" were held which suggested that

⁹⁰ *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 127; *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 300, and *Case of González Medina and relatives v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs Judgment of February 27, 2012. Series C No. 24*, footnote 274, and the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

⁹¹ The omitted procedures mentioned by the Commission and the representatives are the following: 1) photographic identification of the person allegedly linked to the killing of Joe Luis Castillo; 2) ballistic comparison tests of the weapons seized from that person and shells from the bullets that struck Joe Castillo; 3) ballistic comparison between the weapons of the individuals who died on November 20, 2003 and the bullets that struck Joe Castillo; 4) obtaining photographs (taken when alive) of the individuals killed on November 20, 2003; 5) "additional procedures" to investigate the information received by telephone by a police officer which suggested the involvement of Colombian paramilitaries in the incident; 6) "surveillance and capture" of suspects; 7) failure to investigate judicial proceedings undertaken in Colombia, and 8) questioning a survivor of the confrontation with police on November 20, 2003 (*supra* paras. 133, 134, 136 and 137).

⁹² The measures that the representatives and the Commission argue should have been carried out and were not ordered by the domestic authorities are the following: 1) "additional procedures" to investigate information received by telephone by a police officer claiming the participation of Colombian paramilitaries in the events; 2) "surveillance and capture" of suspects; 3) failure to investigate judicial proceedings undertaken in Colombia, and 4) questioning a survivor of the confrontation with police on November 20, 2003 (*supra* paras. 134 and 137).

Mr. Castillo had working relations with a person who had links with the FARC and had been murdered, apparently by "Colombian paramilitaries" (*supra* para. 54). On September 10 of that year, staff of the CICPC received a phone call reporting that Colombian paramilitaries traveling in a particular truck had participated in the murder of Joe Luis Castillo (*supra* paras. 57, 58 and 59). On that occasion, they even gave the nicknames of the individuals who supposedly belonged to a paramilitary group. Also, in the context of the investigations, a police captain referred to information, also mentioned by the press, that on November 20, 2003, the individuals who had presumably murdered Mr. Castillo had died in a confrontation, and that one of them was a member of a group of people arrested on September 12, 2003 and linked to the information on paramilitaries who traveled around in a truck (*supra* para. 72).⁹³

157. In relation to the above, the authorities carried out the following actions: they monitored the truck mentioned, they contacted the person who appeared as its owner and carried out expert tests on the vehicle and its license plate (*supra* para. 58). Also, after the alleged passengers of the vehicle were arrested in a police operation, they were "interviewed". The statements taken on that occasion indicated that paramilitaries had allegedly participated in the events, that Mr. Castillo had been on a list of people to be "eliminated", and that the aforementioned paramilitaries had been in contact with Venezuelan State authorities, specifically with members of the National Guard and with the Mayor of Machiques (*supra* paras. 59 and 60). Subsequently, they "interviewed" an employee of the Vicariate, asking her if she knew the individuals who had been arrested (*supra* para. 67). Also, in relation to incident of November 20, 2003, the authorities showed photographs of the bodies of the individuals killed on that date to Mrs. Moreno, who said she could not be certain whether any of them took part in the attack against her husband, her son and herself (*supra* para. 74).

158. Among the investigative measures ordered by the authorities, and not carried out, are the following: 1) photographic identification of the individual allegedly involved in the attack against Joe Castillo and his family (*supra* paras. 81 and 82); 2) obtaining photographs taken while alive of the individuals killed on November 20, 2003 (*supra* para. 76), and 3) ballistic comparison between the weapons seized from the individuals killed in the confrontation on November 20, 2003, with the shells of the bullets that struck Joe Luis Castillo (*supra* paras. 76 and 84). As to the ballistic comparison of the weapons seized from the person allegedly involved in the attack against Joe Castillo and his family, with shells from the bullets that struck Joe Castillo, from the body of evidence it appears that this procedure was indeed carried out, and that the execution of such a measure is recorded in the expert reports issued nearly one year after it was requested (*supra* para. 84). It should be noted that the Commission stated that this procedure had not been carried out.

159. Furthermore, it is not apparent from the evidence that the authorities in charge of the investigation ordered actions to investigate the accusations made in the police "interviews" held in September 2003 (*supra* paras. 59 and 60). These accusations alleged links between the presumed perpetrators of the murder of Joe Castillo and certain persons: the Mayor of Machiques, members of the National Guard, "leaders" of a group of ranchers and people belonging to Colombian paramilitary groups presumably "hired by [...] cattle ranchers from the area." Furthermore, the Court takes note that following the order to archive the case on November 28, 2006, as mentioned by the then Ombudsman's Delegate in the State of Zulia in the respective official letter addressed to the 20th Prosecutor's

⁹³ The identity of one of the individuals arrested on September 12, 2003 and one of those killed on November 20, 2003 appears in a police report dated September 15, 2003.

Office, a person alleged on May 18, 2007, “that the [...] Mayor of Machiques was the mastermind behind the killing”, and that person was summoned to an “interview” nearly three years later, on July 27, 2010. Although this summons was reiterated nearly a year later, on May 19, 2011, there is no record that such an “interview” actually took place (*supra* para. 96).

160. Thus, bearing in mind both the facts outlined and the case law cited, it is appropriate for the Court, within the framework of its jurisdiction and functions, to determine whether or not the State’s actions in the course of the prosecutor’s investigation, considered as a whole, adhered to the standards of due diligence required to satisfy the right to have access to justice. In other words, it is for the Court to determine whether or not the actions of a State organ, such as those in charge of the investigations⁹⁴, constitute a wrongful international act in light of the provisions of the Convention. This does not mean that it substitutes it, but merely that it specifies the international consequences of their actions or omissions in this case and rules accordingly.

161. The Court has confirmed that, in the course of the prosecutor’s investigation, a large number of actions were carried out (*supra* paras. 154 to 157) in accordance with the standards of due diligence mentioned and that, in addition, there were certain omissions and delays in carrying out certain procedures (*supra* paras. 158 and 159). As noted previously, the investigation must be assessed as a whole, considering that it is an obligation of means and not of results, and bearing in mind that it is not up to the Court, in principle, to decide on the admissibility of investigative measures (*supra* paras. 153 and 160). Likewise, it is necessary to consider whether the occurrence of certain omissions or delays is sufficient to constitute international responsibility by the State. This must also be assessed in light of the matter that must be investigated, given that, in this case, the State’s role in the murder of Joe Castillo has not been proven.

162. Based on the foregoing, it may be inferred that the investigation in this case was conducted in a reasonable manner. The omissions and delays mentioned, which are related to specific aspects or proceedings of the prosecutor’s investigation, assessed in the context of the investigation as a whole, are not of a sufficiently serious nature to attribute to the State international responsibility for the violation of the rights to judicial guarantees and protection of the alleged victims.

163. Regarding the allegations of the Commission and the representatives on the decision to archive the prosecutor’s file and having regard to the points made by expert witness Pedro Berrizbeitia⁹⁵, the Court notes that at the time of ordering the case to be archived some procedures were still pending (*supra* para. 158). However, said decision, as was indicated by the representatives, was based on an assessment of the existing evidence by the prosecuting body. In this regard, the Court recalls that it cannot “settle differences that the parties may have on the specific scope of the evidence or the application of domestic law in matters that are not directly related to the fulfillment of international human rights obligations.”⁹⁶ Moreover, the Court considers that, since legal options existed to challenge

⁹⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 4.1, *supra*.

⁹⁵ The expert witness Pedro Berrizbeitia said that “the order to archive the case was legally inadmissible, [since] the investigation had not been exhausted” (Merits file, pages 585 to 605).

⁹⁶ *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of Palma Mendoza et al. v. Ecuador. Preliminary Objection and Merits*. Judgment of September 3, 2012. Series C No. 247, para. 102.

the decision to archive the case and request the continuation of the investigations⁹⁷, there is no record that this was done by the alleged victims.

164. Notwithstanding all the above, the Court points out that the State has indicated that the archive order is not “synonymous with the closure of the case” and that “new evidence [may] prompt [its] immediate reactivation.” Therefore, considering the State’s remarks, this Court finds that it is possible, insofar as domestic legislation allows, to proceed with the investigation of the facts.

165. It is pertinent to emphasize that Mrs. Moreno and Luis Castillo, as the next of kin of Joe Castillo and also as individuals against whom an unlawful act was committed, retain a legitimate interest, related to their right to have access to justice, in ensuring that the aforementioned crime is duly investigated.

166. Furthermore, according to what has been determined, the Court considers that it is not necessary to rule on the alleged lack of compliance with the obligation to carry out actions within a reasonable time.

167. Also, it is worth referring to certain arguments presented in relation to the participation of the alleged victims in the context of the investigation. In this regard, the Court has stated that the State must ensure that victims and their families have full access and capacity to act at all stages of the proceedings and that such participation must be aimed at securing access to justice and knowledge of the truth of what occurred.⁹⁸ Likewise, it has added that the State must avoid obstacles and adopt, in the course of the investigations, the measures necessary to protect the safety of the victims and others linked to the case, so as to enable them to exercise their rights to a fair trial and judicial protection without restriction.⁹⁹

168. Furthermore, the participation of victims in the process includes access to the respective case file.¹⁰⁰ And without prejudice to that, it is admissible that “in certain cases there may be reservation of the procedures carried out during the preliminary investigation in the criminal process, in order to guarantee efficacy in the administration of justice.”¹⁰¹

⁹⁷ In this regard, expert witness Pedro Berrizbeitia stated that “faced with an order to archive an investigation the victim may contest the suspension of the investigation in two different ways: [...] he may request the Prosecutor’s Office to carry out different [procedures] and thereby ensure a reopening of the investigation. This power is established in [...] Article 315 of the Code of Criminal Procedure[. Also, faced with a groundless or poorly founded order to archive a case, [the victim] may turn to the supervising judge to annul it and forward the records of the proceedings to a senior prosecutor so that the matter may be entrusted to a different prosecutor. This is established in Articles 316 and 317 of the Venezuelan Code of Criminal Procedure.” The expert added that in order to take these actions, the victim must know that the case has been archived. *Cf.* Statement by the expert witness Pedro Berrizbeitia, *supra*.

⁹⁸ *Cf. mutatis mutandi, Case of the Caracazo v. Venezuela. Reparations and Costs.* Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs* Judgment of April 27, 2012 Series C No. 241, para. 130.

⁹⁹ *Cf. mutatis mutandi, Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs* Judgment of August 30, 2010. Series C No. 215, para. 214, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 215.

¹⁰⁰ *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 252, and *Case of González Medina and relatives v. Dominican Republic, supra*, para. 253.

¹⁰¹ *Cf. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs* Judgment of November 17, 2009. Series C No. 206, paras. 54 and 55, and *Case of Radilla Pacheco v. Mexico, supra*, para. 252.

The Court has also stated that, notwithstanding such State power, “in no case can the reservation be invoked to prevent a victim from accessing the case file of a criminal process [and...], if this were the case, it shall be guaranteed by adopting the necessary measures compatible with the exercise of the victims’ procedural rights.”¹⁰²

169. In this case, the Court notes that, despite certain difficulties (*supra* para. 139), Mrs. Moreno and her representatives have been able to examine the files, maintain contact with the authorities in charge of the investigation, obtain information from them and request them to carry out procedures (*supra* paras. 56, 75, 81, 83, 86, 87, 90 and 92).

170. As to the alleged failings in the implementation of measures of protection in favor of Yelitze Moreno and her son, from the body of evidence, and from the statements of the parties or the Commission, it does not appear that these impeded or prevented the beneficiaries of the measures of protection from carrying out any action, or that they otherwise affected the course or results of the investigation.

171. Accordingly, the Court considers that in this case the rights to a fair trial and the judicial protection of the alleged victims have not been impaired. Consequently, the Court concludes that Venezuela is not responsible for the violation of such rights established in Articles 8 and 25 of the American Convention.

172. Finally, regarding the alleged violation of the right to know the truth, in accordance with the observations made previously regarding Articles 8 and 25 of the American Convention, the Court considers that it is not appropriate to issue any ruling on this point.

VI.3
RIGHTS TO PERSONAL INTEGRITY, TO THE PROTECTION
OF HONOR AND DIGNITY, FREEDOM OF THOUGHT AND EXPRESSION
AND FREEDOM OF ASSOCIATION,
IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

A. Right to Personal Integrity (Article 5(1))

Position of the Commission and arguments of the parties

173. The Commission alleged that both Yelitze Moreno and Luis Castillo, as the parents of Mr. Castillo, Yolanda González and Jaime Castillo, and the siblings of the former, Jaime and Julijay, both with the surnames Castillo González, suffered as a result of losing a loved one and over the absence of a full and effective investigation, which caused them suffering and distress at not knowing the truth about what happened. Consequently, it stated that their psychological and moral integrity was affected. Therefore, it asked the Court to declare that the State violated Article 5(1) of the Convention, to the detriment of the persons mentioned.

174. The representatives alleged a violation of Article 5(1) of the Convention, to the detriment of Yelitze Moreno and her son, given the suffering caused by the impunity in relation to the incident which has caused them emotional harm. They further alleged a

¹⁰² Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 252, and *Case of González Medina and relatives v. Dominican Republic*, *supra*, para. 253.

violation of Article 5(1) of the Convention, in relation to the parents and siblings of Joe Castillo for the psychological and moral harm that they have suffered as a result of his murder, and the additional suffering caused by the actions and omissions of the authorities in the investigation of the crime. They also argued that the personal integrity of Yelitze Moreno and Luis Castillo had been affected by “the lack of measures of prevention” in relation to the attack.

175. For its part, the State concluded that “it conducted a full investigation of the facts denounced [and] fulfilled the human rights of the alleged victims, and therefore is not responsible for the violation of the right to psychological and moral integrity [...] to the detriment of Yelitz[e] Moreno, [...] Luis César Castillo Moreno, [or] that of [their] relatives.”

B. Right to Protection of Honor and Dignity (Article 11.2¹⁰³)

Arguments of the Commission and of the parties

176. The representatives alleged that the attack against Joe Luis Castillo represented a significant change in the life plan of Yelitze Moreno and Luis César Castillo. They referred to the unexpected changes in the lives of both and emphasized that the child Luis Castillo lost his father and Mrs. Yelitze Moreno lost her husband, forcing her to abandon her life plan as a human rights defender, return to her city of origin, raise her son as a single mother and look for a new job as a school teacher. These events disrupted the normal course of their lives as individuals. Consequently, given the impact on the life plan of Mrs. Moreno and the child Luis Castillo, as a result of the murder of Joe Castillo, they asked the Court to declare the violation of the right to “privacy” established in Article 11(2) of the Convention.

177. The Commission did not allege the violation of Article 11(2) of the Convention, nor did the State present arguments in this regard.

C. Freedom of Thought and Expression and Freedom of Association (Articles 13¹⁰⁴ and 16(1)¹⁰⁵)

Arguments of the Commission and of the parties

178. The Commission did not allege the violation of the right to freedom of thought and expression and, in its Merits Report, determined that “[n]o factual or legal elements [were

¹⁰³ Article 11 of the American Convention, states:
[...]

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

¹⁰⁴ Article 13 of the American Convention, states:

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.[...]

¹⁰⁵ Article 16 of the American Convention, states:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

provided] to demonstrate or reasonably conclude that the murder sought to silence the freedom of expression of Joe Luis Castillo González."

179. With regard to freedom of association, the Commission emphasized that this case involves issues of "inter-American public interest" related to the "contexts of violence and harassment faced by human rights defenders," adding that the impunity surrounding the killing of Joe Castillo could have "a chilling effect" on this community. The Commission determined that the lack of a serious and effective investigation into the murder of Joe Castillo has had "a detrimental effect on those who work in defense of human rights in the area of Machiques, State of Zulia and, in particular, in the Apostolic Vicariate [of Machiques]," evidenced by the two-month closure of the Vicariate, which subsequently refocused its activities on community work. Consequently, it declared the violation "of the right to freedom of association (Article 16(1)) of the American Convention, in relation to the obligation to respect rights established in Article 1(1), to the detriment of Joe Castillo."

180. In their arguments, the representatives conducted a joint analysis of the violations of the right to freedom of association and freedom of expression. They recalled that both rights "impose both negative and positive obligations on the States," for which reason the State must protect and guarantee them, and that the exercise of such freedoms requires "the existence of social conditions and practices that favor them." They added that the State is must "adopt necessary and reasonable measures to prevent and protect the rights of [...] individuals who [find] themselves in situations of risk or vulnerability." The representatives referred to the "double dimension of the right to freedom of expression and to the fact that, without it, "efforts to protect and promote [human] rights would be jeopardized"; moreover, they noted that the State must "provide all the means necessary to ensure [that advocates] can carry out their activities freely". They argued that the State failed in its duty to provide "safety measures" to Joe Castillo and "other defenders" so that "they could do their work without fear of suffering an attempt on their life". They added that the exercise of these rights was essential for the performance of Mr. Castillo's work as a human rights defender.

181. They added that the State's omissions resulted in "a radical violation of his freedom of expression and [...] association, independent and separate from the right to life" affecting the social and individual dimensions of both rights. Therefore, they concluded that Venezuela violated Articles 13 and 16, in relation to Article 1(1) of the Convention [,] to the detriment of Joe Luis Castillo González.

182. For its part, in relation to the right to freedom of thought and expression the State agreed with the Commission that there are no "factual elements to demonstrate that the death of Joe Luis Castillo sought to limit his right to freedom of expression." It added that no complaints about threats were received from him, and therefore it is not possible "to claim [...] that the death of Joe [...] Castillo was an indirect form of curtailing the right to freedom of expression."

183. Finally, the State merely pointed out that it is not responsible for the violation of the right to association, given that it did carry out the relevant investigations. However the lack of evidence prevented the identification of the perpetrators of the crime, and given that an investigation is an obligation of means and not of results, in certain circumstances it is materially impossible to identify the perpetrators of an unlawful act.

Considerations of the Court

184. The Court notes that the arguments regarding the alleged violations of the rights to personal integrity, to the protection of honor and dignity, to freedom of thought and expression and to freedom of association, are based on the State's alleged responsibility for the murder of Joe Castillo and for harming the personal integrity of Yelitze Moreno and Luis Castillo, or on the alleged lack of a proper investigation of the facts. The Court considers that the State is not internationally responsible for the violation of the rights mentioned, enshrined in Articles 5, 11(2), 13, and 16 of the American Convention, since it was not demonstrated that the rights to life, personal integrity and of the child were violated through its tolerance, acquiescence or direct involvement in the attack suffered by Joe Castillo and his family, or that it failed in its obligation to prevent the events that took place against the aforesaid persons, or that their rights to judicial guarantees and judicial protection were violated.

VII OPERATIVE PARAGRAPHS

THEREFORE,

THE COURT

DECLARES:

Unanimously, that

1. The State did not violate the rights to life, to personal integrity and the rights of the child established in Articles 4, 5(1) and 19 of the American Convention on Human Rights, in relation to Article 1(1) of that instrument, under the terms of paragraphs 115 and 132 of this Judgment.
2. The State did not violate the rights to judicial guarantees and protection established in Articles 8 and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, under the terms of paragraphs 171 and 172 of this Judgment.
3. The State did not violate the rights to personal integrity, honor and dignity, freedom of thought and expression and freedom of association established in Articles 5, 11(1), 13 and 16, respectively, of the American Convention on Human Rights, in relation to Article 1(1) of that instrument, under the terms of paragraph 184 of this Judgment.
4. Given that the international responsibility of the State has not been established, it is not appropriate for the Court to rule on reparations, costs and expenses.

AND DECIDES:

Unanimously,

1. To close the case file.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on November 27, 2012.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary