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REPORT ON MERITS (PUBLICATION)

VALENTIN BASTO CALDERON AND OTHERS
COLOMBIA

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I. SUMMARY

1. On August 11, 1989, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by the Comisión Colombiana de Juristas (hereinafter “the petitioners”) that alleged the international responsibility of the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”) in the extrajudicial execution of peasant leader and human rights defender Valentín Basto Calderón by unidentified individuals, perpetrated February 21, 1988, in the municipality of Cerrito, department of Santander; the wounds followed by death to the detriment of Pedro Vicente Camargo; the wounds suffered by his daughter, Carmenza Camargo Sepúlveda who was eight years old at the time; and the lack of any judicial clarification of these facts.

2. The petitioners alleged that the State was responsible for violating the rights to life and integrity, established in the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), considering the responsibility of its agents for the threats made to Valentín Basto Calderón to hush up his activity as a social leader and human rights defender in the municipality of Cerrito, for his extrajudicial execution, and for the subsequent acts of harassment of the alleged victim’s family members. They also alleged that more than 25 years after the extrajudicial execution –during which Pedro Vicente Camargo and his daughter Carmenza, who were near the scene, were seriously wounded, in Pedro’s case with a fatal outcome – the judicial investigation into the facts is still in a preliminary phase, without the victims and their family members having had an effective remedy to address the violations suffered. On July 12, 2010, the Commission declared the claim admissible in relation to the alleged violation of Articles 4(1), 5, 8(1) and 25, in conjunction with Article 1(1), of the American Convention, by means of admissibility report 68/10, ushering in the merits phase.

3. During the merits phase the petitioners submitted arguments and evidence on the responsibility of the State in the facts of the case, including new arguments regarding the alleged violation of the rights to security, honor, freedom of conscience, freedom of expression, the right to assemble, the rights of the child, and the right to political representation. In addition, they asked the Commission to recommend to the Colombian State that it undertake a diligent investigation of the alleged extrajudicial execution of Valentín Basto and Pedro Camargo; hold a ceremony acknowledging responsibility as a measure of satisfaction; adopt measures of rehabilitation in conjunction with the victims and petitioners; pay compensation that is fair, adequate, and proportional to the harm caused; and adopt measures to recover the historical memory of Valentín Basto and Pedro Camargo in conjunction with the victims and petitioners.

4. The State, for its part, made arguments on the scope of the characterization of the alleged violations of judicial guarantees and judicial protection in Report 68/10; the lack of state responsibility in relation to the alleged violation of the rights to life and integrity; and the lack of state responsibility in relation to judicial protection and judicial remedies. It also asked the Commission to declare its lack of competence to take cognizance of the petitioners’ arguments regarding the alleged violation of the rights to security, honor, freedom of conscience, freedom of expression, the right to assemble, the rights of the child, and the right to political representation, as they were not included in the admissibility report.

¹ In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Luis Vargas Silva, a Colombian national, did not participate in the discussion or decision in this case.

5. After analyzing the parties' positions, the Commission concluded that the State is responsible for violating the rights to life, integrity, freedom of association, political rights, honor and dignity, judicial guarantees, and judicial protection, established at Articles 4, 5, 16, 23, 11, 8 and 25 of the American Convention, in relation to Article 1(1) of that same instrument, to the detriment of the persons indicated throughout this report.

II. PROCESSING BEFORE THE COMMISSION

6. The IACHR recorded the petition under number 10,455 and after a preliminary analysis, on September 20, 1989, proceeded to transmit a copy of the pertinent parts to the State, which was given 90 days to submit information pursuant to Article 34(3) of the Regulations then in force. Both the State and the petitioners made several submissions with their observations between 1989 and 2009,² and after completing the procedure for determining the admissibility of the claim, on July 12, 2010, the IACHR issued Admissibility Report No. 68/10.³ On July 20, 2010, the Commission notified the parties of said report, and pursuant to Article 37(1) of its Regulations then in force set a three-month period for the petitioners to submit their additional observations on the merits. In addition, pursuant to Article 48(1)(f) of the Convention, the Commission placed itself at the parties' disposal to reach a friendly settlement.

7. On October 7, 2010, the petitioners requested an extension to submit their observations, which was granted by the IACHR until November 20, 2010, in keeping with Article 37(2) of the Regulations of the IACHR then in force. On April 12, 2012, the petitioners submitted their response. This submission was forwarded to the State for its observations, with a term of three months in keeping with Article 37(2) of the Regulations then in force. On May 16, 2012, the petitioners submitted powers of attorney granted to them by the children and wife of Valentín Basto. Subsequently, the powers of attorney of the next-of-kin of Pedro Camargo were filed.

8. On August 3, 2012, the State requested an extension to submit its observations, which was granted by the IACHR until September 4, 2012. On October 2, 2012, the response was received from the State; it was forwarded to the petitioners, who were asked to submit observations within one month. On November 13, 2012, the petitioners requested a 30-day extension, which was granted by the IACHR. On December 19, 2012, the petitioners submitted their response, which was forwarded to the State for its observations, to be presented within one month. On January 23, 2013, the State requested a one-month extension, which was granted by the IACHR.

9. On January 31, 2013, the International Justice Resource Center filed an amicus curiae brief with the IACHR in relation to the instant case. On March 5, 2013, the State requested an additional extension, which was granted by the IACHR. On April 8, 2013, the petitioners filed an additional brief requesting a conclusion to the merits phase, which was forwarded to the State. On April 25, 2013, the State requested a third extension for submitting its observations, which was granted by the IACHR. On June 7, 2013, the State filed its response, which was forwarded to the petitioners.

III. THE PARTIES' POSITIONS

A. The petitioners' position

10. The petitioners allege that Valentín Basto Calderón was a peasant leader, President of the Asociación Nacional de Usuarios Campesinos (ANUC) for the province of García Rovira, in the department of Santander, a member of the departmental and national ANUC, and Vice President of the Comité de Solidaridad y Defensa de los Derechos Humanos (Committee of Solidarity and Defense of Human Rights) of García Rovira.

² Full detail of the proceeding before the IACHR prior to the merits report is on Report No. 68/10 (Admissibility), Petition 10,455, Valentín Basto Calderón et al., Colombia, July 22, 2010, paras. 4-8.

³ IACHR, Report No. 68/10 (Admissibility), Petition 10,455, Valentín Basto Calderón et al., Colombia, July 22, 2010.

They indicate that he served as council member of the municipality of Cerrito for the Liberal Party and Vice President of the Municipal Council of Cerrito. They indicate that Pedro Vicente Camargo worked as a farmer in the district of Servitá, municipality of Cerrito, department of Santander, and that Carmenza Camargo Sepúlveda, who at the time was 8 years old, was his daughter.

11. By way of background, the petitioners allege that in the years and months period to his death Valentín Basto had been subject to accusations, threats, and harassment because of his work as a peasant leader in the region and because of his reports of the activities by the armed forces and National Police. They allege that the threats and harassment came mainly from members of the Police and National Army, and that family members of Valentín Basto and other persons from the community knew of and had even witnessed such incidents. The petitioners allege that the threats suffered by Valentín Basto were publicly denounced to local and national authorities, such as the mayor of Cerrito, the Office of the Procurator General of the Nation (Procuraduría General de la Nación), and then- President Virgilio Barco.

12. They allege that on February 21, 1988, at approximately 9:00 a.m., two unknown persons parked their vehicle 20 meters from the Police Sub-station in the municipality of Cerrito and killed Valentín Basto by gunshot wounds. They indicate that Carmenza Camargo Sepúlveda and her father Pedro Camargo were wounded in that same act; Pedro Camargo died as a result of the bullet wounds at 4:30 p.m. at the health post of the same municipality. They allege that despite having witnessed the events, the National Police refrained from preventing the escape of the perpetrators and failed to organize any pursuit operation to detain them on the route from the military base of Servitá or at the neighboring Police posts in Concepción, Málaga, and Enciso. They allege that the National Army also failed to act, and that the military checkpoint usually set up along the route from Cerrito to Málaga was suspended.

13. The petitioners allege that after the execution of Valentín Basto his family members were subjected to acts of harassment, persecution, and threats. They indicate that on February 23, 1988, the armed forces and National Police interfered with the religious ceremony of the burial of Valentín Basto. Subsequently, the priests who officiated were detained in the streets of the municipality of Cerrito and subjected to a meticulous search by the Army and Police. They allege that Manuel Menco, who was in the same vehicle as the priests, was interrogated, photographed, and subjected to acts of harassment by the armed forces and National Police. They allege that after the burial, members of the National Army went through the town shouting “long live the death of Valentín,” “Valentín’s brothers and sisters should come out so we can finished them off,” and “if Valentín were to come back to life, they would kill him again.” A few months after the burial, Heli Basto Salinas –Valentín Basto’s nephew— was threatened by members of the armed forces and National Police and tied to a post for several hours, after which he decided to leave the country and live abroad for several years.

14. As for the investigation into the facts, it is alleged that initially the armed forces and National Police obstructed the filing of the complaint. On February 22, 1988, the Municipal Mixed-Jurisdiction Court of Cerrito opened a preliminary inquiry to investigate the deaths of Valentín Basto and Pedro Camargo. It is alleged that over several years the case was transferred to several jurisdictions and was the subject of waivers of prosecution, provisional suspensions due to lack of evidence, reactivation, and the sporadic taking of some items of evidence until it was referred to the National Directorate of Prosecutorial Offices (Dirección Nacional de Fiscalías), which ordered the reassignment of the preliminary investigation to the National Human Rights and International Humanitarian Law Unit on January 10, 1997. It is alleged that despite this reassignment, the investigation remained inactive, said to be explained by the public order situation in the area where the events unfolded. They indicate that on November 28, 2005, the Comisión Colombiana de Juristas was recognized as a civil party, in representation of the wife and daughter of Valentín Basto. They indicate that in 2006 it was ordered that several items of evidence be collected, which ultimately were not collected, for procedural or logistical reasons. In any event, the petitioners allege that the action of the prosecution has been marked by unwarranted delays as well as the lack of timely responses on the part of the Army and National Police to the evidentiary requirements.

15. In terms of the disciplinary proceeding, they indicate that on April 7, 1988, the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira and the priests who celebrated the funeral

mass for Valentín Basto filed a complaint with the Office of the Procurator General of the Nation and the Office of the Presidential Adviser for Human Rights. On June 3, 1988, a Commission from the Public Ministry ordered by the Procurator General of the Nation issued a report on the steps taken to gather evidence and in its conclusions indicated that “as regards the measures ordered by the Police of Cerrito and the Army at the Servitá base, once the homicide of the peasants occurred, it was found that as a practical matter they were too late.” They indicate that said Commission also characterized as inexplicable the fact that the military checkpoint had been lifted precisely on that day.

16. They indicate that on August 23, 1988, the Procurator General ordered that a copy of the proceedings be forwarded to the Office of the Delegate Procurator for the National Police in order to proceed with the preliminary steps to clarify the measures taken by the Commander of the Police Sub-Station at Cerrito the days of the events in question and of the burial. In addition, it forwarded a copy of the preliminary investigative steps taken to the Office of the Delegate Procurators for the Military Forces in order to pursue the corresponding preliminary inquiry. They indicate that on November 8, 1988, the Delegate Procurator for the Military Forces concluded that there was no evidence whatsoever of responsibility of members of the Army in the events, and ordered that the proceeding be archived. They add that on March 12, 1991, the Office of the Delegate Procurator for the National Police issued a ruling not subject to appeal against a sergeant of the National Police and sanctioned him with suspension from his position for 10 days, on finding there had been negligence in the provision of the service and that he participated directly or indirectly with the Army to intimidate the population the day of Valentín Basto’s burial. They indicate that the sergeant filed a motion for reconsideration (*recurso de reposición*) and on August 29, 1991, the Office of the Delegate Procurator for the National Police ruled not to reconsider the measure, and subsequently archived the proceeding.

17. Based on the foregoing elements of fact, the petitioners allege that the State is responsible for violating the right to life of Valentín Basto and Pedro Camargo, in light of Articles 4 and 1(1) of the American Convention. They allege that state responsibility arises from the acts and omissions of members of the armed forces and National Police, and from the lack of due diligence with respect to the State’s duty to prevent. They also allege the violation of the right to integrity of the family members of Valentín Basto and Pedro Camargo, in light of Article 5 in conjunction with Article 1(1) of the American Convention. In the particular case of the family members Nelson Camargo Sepúlveda, Pedro Pablo Camargo Sepúlveda, and Javier Orlando Camargo Sepúlveda, the petitioners allege that this violation also occurred in conjunction with Article 19 of the American Convention.

18. The petitioners allege that the State is responsible for the violation of the right to security and integrity of Valentín Basto, in light of Articles 5 and 7 of the American Convention in connection with Article 1(1) of the same instrument, considering that in the years prior to his death he was said to have been subjected to harassment and threats by members of the armed forces and National Police. They also allege the violation of the obligation to respect and ensure the exercise of the rights of association and political rights, protected respectively by Articles 16 and 23 of the American Convention, in conjunction with Article 1(1), to the detriment of Valentín Basto.

19. The petitioners allege that the State is responsible for violating the right to integrity protected by Article 5 of the Americana Convention in connection with Article 19 of the same instrument, to the detriment of Carmenza Camargo, the daughter of Pedro Camargo, who was accompanying her father at the time of his death and suffered bullet wounds in the attack.

20. The petitioners allege that the State is responsible for violating the right of honor and dignity and the right to religious freedom, protected by Articles 11 and 12 of the American Convention, in conjunction with Article 1(1), to the detriment of Valentín Basto Calderón, Pedro Vicente Camargo, María Santos Carvajal, Hernán Basto, Israel Basto, Rosa Herminda Basto, Hilda Basto, Graciela Basto, and Araminta Basto.

21. The petitioners allege that the State is responsible for violating the right of access to information protected at Article 13 of the American Convention, in conjunction with Article 1(1), to the detriment of María Santos Carvajal, Hernán Basto, Israel Basto, Rosa Herminda Basto, Hilda Basto, Graciela

Basto, Araminta Basto, Carmenza Camargo Sepúlveda, Nelson Camargo Sepúlveda, Pedro Pablo Sepúlveda Camargo, and Javier Orlando Camargo Sepúlveda.

22. The petitioners allege that the State is responsible for violating the right to judicial guarantees and judicial protection established at Articles 8(1) and 25 of the American Convention in connection with Article 1(1) of the same treaty. They also allege that the State has breached the obligation to adopt provisions of domestic law, in light of Article 2 of the American Convention.

23. In addition, they asked the Commission to recommend to the Colombian State that it undertake a diligent investigation into the alleged extrajudicial execution of Valentín Basto and Pedro Camargo; hold a ceremony acknowledging responsibility as a measure of satisfaction; adopt measures of rehabilitation in coordination with the victims and the petitioners; pay compensation that is fair, adequate, and proportional to the harm caused; and adopt measures to recover the historical memory of Valentín Basto and Pedro Camargo in coordination with the victims and petitioners.

24. In response to the State's arguments on the merits (see B. The State's Position, *infra*), the petitioners allege that the context at the time effectively shows that peasant leaders such as Valentín Basto were characterized as enemies and persecuted by the armed forces and National Police; that Valentín Basto was considered a guerrilla because he was a peasant leader; that Valentín Basto and his family were threatened and harassed by the Army; that the night before the death of Valentín Basto an officer from the armed forces or National Police met with the civilians who perpetrated the deaths of Valentín Basto and Pedro Camargo; that the day the deaths were perpetrated an officer of the armed forces or National Police gave the order not to patrol; that the Army lifted the checkpoint that was usually in place along the road by which the perpetrators took flight; that the State has not proven that operations were carried out in order to determine the whereabouts of the perpetrators of the crime; that the next-of-kin and persons attending the burial of Valentín Basto were in effect harassed by members of the armed forces and National Police, and that days later they celebrated the peasant leader's death; that after the crime the persecution of Valentín Basto's family members continued; that in contrast to what was alleged by the State, there is no need to formally determine the individual criminal liability of the agents of the armed forces and National Police in order to establish the international responsibility of the State under the American Convention; that the authorities know that Valentín Basto's life was in danger, yet they did not take measures aimed at providing him protection; that it is not appropriate to limit the dispute over the violation of the right to judicial protection to the reasonable time in the administration of justice; that it has not been shown that the complexity of the case justifies the delay in the administration of justice; that the State has not proven that it conducted the investigation diligently; and that the Commission is authorized to consider, during the merits phase, arguments on the violation of rights that have not been formally admitted in the admissibility report.

B. The State's position

25. In its arguments on the merits the State presented arguments on the scope of the characterization of the purported violations of the American Convention in Admissibility Report 68/10; the lack of state responsibility in relation to Articles 4 and 5 of the American Convention in connection with Article 1(1); and the lack of state responsibility in relation to Articles 8 and 25 of the American Convention in connection with Article 1(1). It also asked the Commission to declare its lack of competence to take cognizance of the petitioners' arguments on the alleged violation of the rights protected by Articles 2, 7, 11, 12, 13, 16, 19, and 23 of the American Convention.

26. As regards the characterization of the facts in Admissibility Report No. 68/10, the State argues that it had not determined "with sufficient clarity the events subject to the debate on the merits," and that "... there being some very general ones presented by the petitioners that cannot be understood as alleged human rights violations, no connection whatsoever is established between each of these facts and any right set forth in the American Convention, and in that way, one cannot conclude with clarity what facts are part of the litigation in the merits phase ... and which right is said to have been violated." The State indicated that it was surprised by the factual arguments presented by the petitioners, prior to the decision on admissibility, in which they make reference to the incident said to have been carried out by members of the armed forces and

National Police during the burial of Valentín Basto which – in the State’s view – should have been formulated in the initial presentation, in 1989.

27. As regards the allegations of state responsibility for the violation of Articles 4 and 5 of the Convention, and the purported tolerance, acquiescence, or complicity of state agents with respect to the perpetrators of the deaths of Valentín Basto and Pedro Camargo and the wounds to Carmenza Camargo, or their lack of due diligence to present these incidents, the State alleges that: (1) no act or omission of state agents with the perpetrators has ever been shown; (2) it has never been shown that the Colombian State had not adopted effective measures of prevention and protection “in the face of the difficult public order situation.”

28. Specifically, the State alleges that at no time during the domestic criminal or disciplinary proceedings has it been shown that its agents provided the perpetrators with the means needed to perpetrate the crimes, nor that they acted in collusion with the direct perpetrators of the deaths of Valentín Basto and Pedro Camargo, accordingly it bears no responsibility whatsoever.

29. In addition, it rejects the petitioners’ arguments that the armed forces and National Police breached their duty to pursue the persons responsible. Citing an official note from the National Police’s Office of Inspector General (Inspección General de la Policía Nacional) of August 23, 2012, it reports that on hearing the shots fired, members of the National Police “took positions that enabled them to repel a possible attack, and then a few minutes later, when the danger ceased, they quickly advised the commander of the Málaga District ... who immediately deployed operations in the neighboring municipalities and at the exit from Málaga for the purpose of neutralizing automotive vehicles with the characteristics described in which it was suspected the perpetrators had fled.” It also mentions that there is no evidence whatsoever that would allow one to affirm “without any doubt” that the members of the Army did not act diligently to pursue the persons responsible. It adds that with the exception of the disciplinary sanction imposed on a member of the National Police for not having acted diligently in the pursuit of the perpetrators, there has been no determination of the responsibility of state agents in the events.

30. The State refutes the allegations regarding threats and acts of harassment by members of the armed forces and National Police prior to the death of Valentín Basto, with the argument that they rely on testimony and that there is a lack of official documentation showing that the peasant leader had sought protection from the authorities beyond a letter sent to the mayor of the municipality of Cerrito in 1985. In its opinion, this is evidence that the crime perpetrated against Valentín Basto was a totally unforeseen act and with respect to which it was impossible to have prior knowledge, which releases it of any attribution of responsibility. It also makes reference to the *modus operandi* of the illegal armed groups that is said to go beyond “what the state authorities could reasonably prevent in the context of its powers and capacities.”

31. In relation to the threats and harassment proffered by members of the armed forces and National Police against the family members of Valentín Basto after his death, the State considers that the facts are not very clear in view of the public order situation in the zone and the fact that the argument is based on the testimony of the Persons affected.

32. The State also casts doubt on the petitioners’ arguments concerning the historical context of widespread violence and impunity against the peasant population in the context of the which the facts of the case unfolded, considering that their sole support is in reports produced by the Comisión Colombiana de Juristas, Amnesty International, Human Rights Watch, and the Human Rights Committee of the United Nations. The State considers that the extent to which those reports can be said to demonstrate anything is limited.

33. It considers that “based on the probative material it is not possible to establish beyond a doubt that the State has breached its duty of guarantee. It therefore argues that in this case it is not possible to attribute to the Colombian State, not even presumptively, indirect responsibility for violating Article 4 or Article 5 of the American Convention, as there was no lack of due diligence to prevent the violation of the

Convention, for the State did not know of the situation of risk, and was not reasonably able to prevent the risk.

34. As regards the arguments on the lack of judicial guarantees and judicial protection in the context of this case, based on its own interpretation of Admissibility Report 68/10, the State affirms that the consideration of the alleged violation of Articles 8 and 25 of the American Convention should be limited to the alleged violation of the reasonable time in the criminal proceeding and its possible attribution to the State. It considers that said time should be analyzed, independent of its duration, in light of the complexity of the matter, the procedural activity of the interested person, and the conduct of the judicial authorities, and that based on these criteria, the criminal investigation in this case cannot be said to have entailed unwarranted delay.

35. As regards the procedural activity of the interested party, it alleges that the fact that the representatives of the wife and daughter of Valentín Basto became a civil party in 205 is very important for the State, for the victims or persons detrimentally impacted have the ability to request and produce evidence and in this way help give impetus to the domestic proceeding, which is the family members' wish.

36. It affirms that the conduct of the judicial authorities has been diligent, constant, and "without rest," in terms of giving impetus and initiative aimed at identifying the persons responsible. It presents a list with 33 actions, procedural steps beginning with the investigation on February 21, 1988, by the Mixed-jurisdiction Court of Cerrito and the subsequent referrals of the investigation to the Second Court of Criminal Investigation of Bucaramanga (March 1988), the Preliminary Inquiry Unit of Málaga (September 1988), the Regional Office of the Attorney General (Fiscalía Regional) of Cúcuta (August 1996), the Regional Office of the Attorney General, National Human Rights Unit (February 1997), the 17th Office of the Attorney General (Fiscalía 17) of the National Human Rights Unit (May 2006), and the 67th Specialized Office of the Attorney General, Human Rights Unit, based in Bucaramanga. The procedural steps also include a number of activities to collect witness evidence, judicial inspections (June 1999), intelligence work (January 1999), and collection of evidence aimed at identifying the Army personnel in the municipality of Cerrito (February 1999).

37. The State highlights that in keeping with what was requested by the IACHR in a note of March 7, 1997, that same year the Public Ministry assumed the status of special agent in the investigation. It also arises from the information provided that in February 2000 it was the Public Ministry that forwarded a request to suspend the investigation on grounds that more than 12 years had elapsed without any individual determination of the alleged perpetrators. It specified that the National Human Rights Unit did not respond to the request.

38. The State indicates that, as is apparent, since February 1988 the criminal investigation has been undertaken at its own initiative and in a serious, impartial, and effective manner, in keeping with its obligation of means, and that it is still in the preliminary phase without the persons allegedly responsible having been identified. It notes that the petitioners' argument regarding the international responsibility of the State based on the lack of results in the judicial investigation should be dismissed.

39. It alleges that it is a complex crime given the modus operandi of the illegal armed groups which, it says, limited the development of the investigations. In this respect, citing an Official Note from the Presidential Program for Human Rights of August 27, 2012, it mentions in detail the fronts of the FARC, the ELN, and the self-defense groups (grupos de autodefensa) that were presumably operating in the department of Santander at the time of the facts. It states that the degree of complexity of the facts created a scenario in which investigating is extremely difficult that is not attributable to the State. It argues that neither are the effects that the passage of time may have on the guarantee of clarification of the facts attributable to it.

40. As regards the proceedings in the context of the disciplinary jurisdiction, the State argues that three inquiries were begun. It indicated that an inquiry was begun in the Office of the Delegate Procurator for the Military Forces, which did not find a basis for formally opening a disciplinary inquiry against the personnel of the Fifth Brigade and was archived on November 8, 1988. It added that a proceeding was pursued by the Office of the Delegate Procurator for the National Police that culminated March 12, 1991,

with a disciplinary sanction of suspension of 10 days against the Commander of the Police Station of Cerrito for negligence in the arrest of the individuals who killed Valentín Basto and Pedro Camargo. Finally, it said that a preliminary inquiry had begun in the Office of the Second Delegate Procurator for the Judicial and Administrative Police, which was archived due to lack of evidence on June 29, 1990.

41. The State alleges that the petitioners did not file the action for direct reparation before the contentious-administrative jurisdiction. It alleges that it is a suitable remedy for obtaining reparation domestically for any harm caused by omission or operations attributable to state agents, as well as the delay in the administration of justice. It notes that the action has a limitations period of two years counted from the day after the incident that is the subject of the claim, and that therefore the direct reparation action lapsed in March 1990 without the victims' next-of-kin having invoked it. It considers that the failure to invoke this remedy before the domestic courts is tantamount to a tacit waiver of the right to claim reparation and, therefore, would disqualify the victims' representatives from claiming compensation for material and non-material damages before the inter-American system.

42. Finally, the State asks the Commission to declare its lack of jurisdiction to take cognizance of the petitioners' arguments on the alleged violation of the rights protected at Articles 2, 7, 11, 12, 13, 16, 19, and 23 of the American Convention. The State bases its request on the fact that Report No. 68/10 only declares the admissibility of the claims under Articles 4, 5, 8, 25, and 1(1) of the American Convention and that in its opinion this is equivalent to a pronouncement of inadmissibility in relation to all other provisions of the American Convention not expressly found admissible.

IV. ESTABLISHED FACTS

A. Context

43. As established in other decisions in the context of the Colombian armed conflict, in the 1960s legislation was adopted⁴ for the purpose of organizing "a coordinated effort by all the nation's law enforcement bodies and community leaders" and that in this respect it was stipulated as follows: "All Colombians, men and women, not affected by conscription to obligatory military service, may be used by the Government in activities and tasks contributing to re-establish normality." In addition, it provided: "The Ministry of National may, through the authorized commands, and when it deems it advisable, may authorize the use by private persons of armed considered to be for the exclusive use of the Armed Forces." The "self-defense groups" ("*grupos de autodefensa*") were formed legally, among the civilian population, under the provisions cited, thus they enjoyed the support of the state authorities for the purpose of assisting the armed forces and National Police in counterinsurgency operations and defending themselves from guerrilla groups. The State granted permits for bearing and possessing arms, as well as logistical support.⁵ They were developed first in the Magdalena Medio region and then spread to other regions of the country. Around the mid-1980s the groups known as autodefensas became criminal groups, commonly called "paramilitaries."⁶

⁴ Around 1960 a series of guerrilla groups arose in Colombia and as a result the government declared "a difficult public order situation and a state of siege in the national territory." In the face of this situation, on December 24, 1965, Legislative Decree No. 3398 was issued "by which the national defense is organized," which was in force on a transitory basis, but it was adopted as permanent legislation by Law 48 of 1968 (with the exception of Articles 30 and 34). Articles 25 and 33 of said Legislative Decree provided a legal foundation for the creation of "self-defense groups" ("*grupos de autodefensa*"). The considerations part of this law indicated that "the subversive activities carried out by the extremist groups to disturb the legal order, call for a coordinated effort by all the nation's law enforcement bodies and community leaders," and, in this respect, said Article 25 stipulated: "All Colombians, men and women, not affected by conscription to obligatory military service, [could] be used by the Government in activities and tasks contributing to re-establishing normality." In addition, paragraph 3 of Article 33 provided: "The Ministry of National Defense, through the authorized commands, may, when it deems it advisable, authorize civilians to use weapons generally considered to be for the exclusive use of the Armed Forces." See I/A Court H.R., Case of 19 Tradesmen v. Colombia, Judgment of July 5, 2004 (Merits, Reparations and Costs), Series C No. 109, para. 84.

⁵ Report of the United Nations Special Rapporteur on Summary or Arbitrary Executions on the visit to Colombia, October 11 to 20, 1989, E/CN.4/1990/22/Add.1, January 24 1990.

⁶ United Nations Special Rapporteur on Summary or Arbitrary Executions on the visit to Colombia, October 11 to 20, 1989, E/CN.4/1990/22/Add.1, January 24, 1990.

Although in the late 1980s they were gradually ceased to have effect, these provisions adopted in 1965 and 1968 were still in force as of the time of the events of the instant case.⁷

44. In its Second Report on the Situation of Human Rights in Colombia, released in 1993, the Inter-American Commission expressed its grave concern in the face of the grave and numerous violations of the right to life perpetrated against the civilian population by actors in the armed conflict during the preceding years in Colombia. The report makes reference in particular to the persecution and selective assassinations of social leaders by the armed forces and National Police as well as the illegal armed groups:

selective assassination is still the most frequent violation of the right to life in Colombia and has claimed the greatest number of victims. Although not detailed in this report, selective assassinations also include the many murders committed by the guerrillas to retaliate against any civilians considered to be army sympathizers, loyal to the army, army collaborators or informants; the murders committed by the armed forces against those same people because it suspects them of ties with the guerrilla movement; the many cases of persecution and assassination of union, university, religious, judiciary and other leaders....⁸

45. To illustrate the selective assassinations of social and peasant leaders by the armed forces and National Police, the Commission's Report makes reference precisely to the extrajudicial execution of Martín Calderón Jurado on October 8, 1988, in the municipality of Cerrito, as an emblematic case. Martín Calderón Jurado was Valentín Basto's cousin, and after the death of Valentín Basto in February 1988, he had replaced Valentín as president of the Asociación Nacional de Usuarios Campesinos of García Rovira, legal adviser to the Comité de Solidaridad y Defensa de los Derechos Humanos of the same locality, and president of the Municipal Council of Cerrito. The Report indicates that in 1987 both had publicly reported the death threats made by members of the armed forces and National Police and after the assassination of Valentín Basto Calderón, Martín Calderón Jurado once again received death threats because of his active cooperation with the investigation that the Office of the Procurator General was pursuing into the assassination of his cousin, before being extrajudicially executed.⁹ In its Second Report on Colombia, the Commission also makes reference to other emblematic cases of persecution and extrajudicial execution of peasants by the armed forces and National Police in that region of Colombia, which took place at the time of the facts of the instant case.¹⁰

46. The Commission's analysis of the persecution and extrajudicial execution of social leaders by the actors to the armed conflict¹¹ and in particular the armed forces and National Police, agrees with the

⁷ See Decree 0180 of January 27, 1988; Decree 0815, April 19, 1989; and Decree 1194, June 8, 1989.

⁸ IACHR. *Second Report on the Situation of Human Rights in Colombia*, October 14, 1993, Chapter VII: Right to Life, available at: <http://www.cidh.org/countryrep/Colombia93sp/indice.htm>.

⁹ For the complete pronouncement of the IACHR on the extrajudicial execution of Martín Calderón Jurado, see Report on Admissibility and Merits No. 32/92, Colombia, Martín Calderón Jurado, September 25, 1992, available at: <http://www.cidh.org/annualrep/92span/Colombia10.454.htm>.

¹⁰ IACHR. Report No. 23/93, Case 10,456, Irma Vera Peña, Colombia, October 12, 1993. Available at: <http://www.cidh.oas.org/annualrep/93span/cap.III.colombia10.456.htm>.

¹¹ In the 1960s revolutionary guerrilla groups mobilized such as the Fuerzas Armadas Revolucionarias de Colombia ("FARC") and the Ejército de Liberación Nacional ("ELN"). In this stage, other groups arose, including the Movimiento 19 de Abril ("M-19") the Ejército Popular de Liberación ("EPL"), Autodefensa Obrera ("ADO"), the Ricardo Franco group, and the indigenous guerrilla group Quintín Lame. At the same time as these groups began to gain strength in the 1970s, a national security doctrine was developed within the State. In addition, Decree 3398, approved as part of the state of emergency declared in 1965, became permanent legislation by Law 48 of 1968. This law authorized the creation of civilian patrols who received arms that are for the exclusive use of state security forces from the Ministry of Defense. These groups, sponsored or accepted by sectors of the military forces, sought to defend the interests of some individuals or groups by the use of violence. In large measure they were created as a response to the violence in rural areas of the country. Accordingly, the paramilitary groups had a counterinsurgent motivation. As a result they established ties with the Colombian Army. The paramilitary groups began to carry out "cleansing" operations in several regions of the country to eliminate the armed dissident groups and persons considered to be their sympathizers, among them peasant and social leaders. In the late 1980s and particularly during the administration of President Virgilio Barco, the Colombian State began to impose legal restrictions on the activities of the paramilitary groups, and eventually declared them illegal. The rejection of the paramilitary groups as illegal was confirmed by a decision of the Supreme Court, which declared the legal provisions by which the paramilitary groups were established to be

[continues ...]

analysis by the non-governmental organizations and intergovernmental agencies, in particular the reports of the special procedures of the United Nations that visited Colombia in 1988 and 1989.

47. In the conclusions of the Report on its visit to Colombia in 1988 the United Nations Working Group on Enforced or Involuntary Disappearances noted as follows in relation to the responsibility of the armed forces and National Police in the commission of serious human rights violations, the context of fear in which the complaints were lodged, and the impunity that impedes their clarification:

... even when abductions were actually observed by witnesses, the latter are often too afraid to testify or even to report the case. Frequently, abductions are carried out with surgical precision, leaving no trace whatsoever, while in many cases, the perpetrators wear civilian clothes. Paramilitary groups are often mentioned as the abductors, yet their links with elements of the armed forces could not be established with certainty across the board. For guerrillas, abductions - other than for ransom - do not seem to constitute an attractive method of eliminating adversaries. Assassination pure and simple, whether followed by clandestine disposal of the body or not, appears to be more characteristic of the way they operate. All in all, having carefully weighed the material available, the Working Group is of the view that, in the majority of the cases it has transmitted, circumstantial evidence strongly suggests or precise information clearly demonstrates involvement of units of the armed forces or security services in enforced or involuntary disappearances.

...

Not only violence but also the level of impunity which, by the Government's own account, prevails in Colombia, appear to have debilitated confidence in public institutions substantially and to have contributed appreciably to the decline of belief in peaceful solutions for Colombia's social conflicts. That is not only lamentable in itself; it may also accelerate the spiral of violence even further, as people may be tempted to take the law into their own hands and play the roles of judge and executioner themselves. Thus, coping with the problem of impunity may well be one of the major challenges the Colombian Government has to meet. As a corollary, the Government appears to be faced with a clear need to ensure the adequate functioning of State institutions that have a bearing on the maintenance of public order and the protection of the individual. As these are closely connected to the Working Group's mandate, they deserve more detailed comment.

In any country where the military has a prominent position in the conduct of State affairs and added responsibilities to combat social turmoil, extra care must be taken to ensure that the rule of law prevails. Colombia is no exception. By a series of decrees, issued under the state of siege by successive Governments, more and more powers have been granted to the armed forces and security services in the maintenance of public order.¹²

48. In the conclusions of the Report on his visit to Colombia in October 1989, then-Special Rapporteur on Summary or Arbitrary Executions, Amos Wako (E/CN.4/1990/22/Add.1), presented an analysis of the violations of the right to life in the context of the violence prevailing at that time; the identification of the sectors of the population that were especially vulnerable, in particular peasants and workers; the repercussions of the military campaign on the civilian population; and noted his special concern regarding the violations of the right to life perpetrated by paramilitary groups that acted in close cooperation with the Army and the Police; and the impunity of the members of paramilitary groups and security forces

[... continuation]

unconstitutional. In a similar vein, the Council of State held that individuals who were in possession of weapons of war had to return them to the Colombian Army. IACHR, *Third Report on the Human Rights Situation in Colombia* (1999), OEA/Ser.L/V/II.102 Doc. 9 rev. 1, paragraphs 13 to 33. Available at <http://www.cidh.org/countryrep/Colom99sp/capitulo-1.htm>.

¹² *Report of the United Nations Working Group on Enforced or Involuntary Disappearances on its visit to Colombia in 1988*, E/CN.4/1989/18/Add.1, paras. 126, 131, 132. Available at <http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/gtsdf/E-CN-4-1989-18-ADD-1.html>.

responsible for those violations, as well as the grave shortcomings of the administration of justice that contributed to the phenomenon of impunity. The Report's conclusions indicate:

Paramilitary groups are the greatest source of violations to the right to life in Colombian society today. Most of the killings and massacres have not only occurred at their hands but they have contributed to what has come to be known as impunity, that is the knowledge on the part of the perpetrators of these crimes that they will not be subject to the due process of law and punished for their misdeeds. Far reaching steps have to be taken to eliminate the prevailing climate of impunity and to curtail summary or arbitrary executions taking place as if they are part of everyday life.

...

There is bound to be resistance to such measures not only from within the military and the police but also from within the traditional political and economic elites who would rather have as priority the fight against the guerrillas.

...

Coupled with the disbanding of paramilitary groups, all persons in the armed forces and the police who have corroborated with or given support to such groups, hit men or drug traffickers, should be dismissed.

...

Another area which needs to be looked into as a matter of urgency is in the administration of justice. As can be seen from the report, very many judges, investigators and witnesses have either lost their lives or been threatened with death in the course of their duties. A climate of genuine fear exists among these groups of peoples which hampers the administration of justice and which contributes to the phenomena known as impunity. Witnesses cannot come forward to give evidence and even if they make statements, they are later retracted because of intimidation and fear of being killed. Proper investigations cannot be carried out and, therefore, many files are closed for lack of evidence. For those few files where there is evidence, a judge may not be able to mete out justice without fear or favour. The end result is that the guilty escape punishment because of lack of evidence. Adequate protection of all those involved in the administration of justice is, therefore, a matter of highest priority.

...

The promotion of criminal investigation mechanisms particularly by the Judicial Police should be regarded as a matter of utmost priority. The Special Rapporteur visited the Department of Criminal Investigation which is the Technical Unit of the Judicial Police.... A former director of the Department has said that the Government decrees requiring the police and the army to provide support and security for the judicial commissions of inquiry are not complied with, since the police and the army always say that they do not have enough staff, petrol or time or that their staff is on public order missions. This is a department that is pivotal in ensuring that people who commit crimes including crimes of murder do not escape prosecution.... It is vitally important that all cases of killings be properly investigated and the persons responsible whoever they are be disciplined and punished according to the law.

...

The worst hit groups of people have been peasants and workers. As somebody told the Special Rapporteur, every peasant is considered to be a potential guerrilla.... The role of groups which operate with peasants and workers, be they political parties, trade-unions, educators, non-governmental organizations dealing with economic, social, cultural and human rights issues, should be given due recognition and in a climate in which they can operate without intimidation from any quarter. There appears to be a systematic campaign by the paramilitary and extreme right-wing groups to eliminate or disrupt those organizations...¹³

¹³ United Nations Special Rapporteur on Summary or Arbitrary Executions, S. Amos Wako, Report on the visit to Colombia by the Special Rapporteur on Summary or Arbitrary Executions (11-20 October 1989), Doc. E/CN.4/1990/22/Add.1, January 24, 1990, [continues ...]

49. Accordingly, the IACHR considers that the facts of the case occurred in a historical context of persecution and violence against peasant leaders and human rights defenders by members of the armed forces and National Police, and also by paramilitary groups created by the State.¹⁴

B. Facts of the case

1. Background

50. Around 1988 Valentín Basto Calderón was president of the Asociación Nacional de Usuarios Campesinos (ANUC) of the province of García Rovira, department of Santander, a member of the departmental and national ANUC, and vice-president of the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira. He also served as a member of the Municipal Council of Cerrito, and at the time of the facts of the instant case was vice-chair of that Council. In serving in these positions he acted as a leader and spokesperson of the peasant sector for 25 years; he organized that sector in the region, and promoted and defended their fundamental rights. In particular, in the framework of his activities, he publicly denounced the harassment and threats by both the Army and the National Police in the zone, as well as the acts of violence committed in the municipality of Cerrito.¹⁵

51. Throughout the processing of the case the petitioners described as the latest activities carried out by Mr. Basto Calderón denouncing abuses by the Army and National Police, his participation and leadership in the civic strikes in the province of García Rovira, and organizing the First Regional Forum for Life and Human Rights in the municipality of Málaga, where he denounced the abuses and assassinations committed in the municipality of Cerrito by both the guerrilla forces and the Army.

52. In view of his role as a social leader Valentín Basto Calderón and his family were accused, threatened, and harassed. As appears from the evidence produced in the record before the Commission – in particular the testimony collected by the judicial authorities – the threats came mainly from members of the Army and Police. In effect, the testimony of family members and persons from the community indicated that they were aware of and even witnessed some of the incidents of threats and persecution that targeted him.

53. As appears in the record¹⁶, in 1985 Valentín Basto Calderón sent a letter to the mayor of the municipality of Cerrito, Crisanto Fernández Delgado, in which he stated his concern over the threats received because of his work against the crime of cattle-rustling in the region. The complaint indicates that the threat came from a person from the area by the name of Eliberto Ramírez, who accused him of being a member of the guerrilla forces.¹⁷

[... continuation]
 paragraphs 64, 66, 67, 68, 70, 72, 73. Available at:
<http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/reeex/E-CN-4-1990-22-Add-1.html>.

¹⁴ Economic and Social Council, United Nations, Mr. S. Amos Wako, Special Rapporteur, Report on the visit to Colombia by the Special Rapporteur on Summary or Arbitrary Executions (11-20 October 1989), Doc. E/CN.4/1990/22/Add.1., January 24, 1990, p. 15; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, paras. 30, 32, 50; Annual Report 2011, Chapter IV -Colombia, paras. 16-17, 117 ff.; IACHR, Third Report on the Human Rights Situation in Colombia (1999), Chapter VII- Human Rights Defenders, paras. 63 ff.; IACHR. Second Report on the Situation of Human Rights in Colombia, October 14, 1993, Chapter VII: Right to Life.

¹⁵ Letter from the ANUC to the Procurator General of the Nation, February 22, 1988. Annex 5 to the petitioners' communication of July 13, 2009, received July 17, 2009. Procedure for ratification received from Gabriel Angel Betancourt A., April 5, 1988. Statement by José Carlos Alberto Higuera of September 4, 1996. Annex 36 to the petitioners' communication of July 13, 2009 and received July 17, 2009. Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 96 of the petitioners' communication of July 13, 2009, received July 17, 2009.

¹⁶ Communication from the State of September 26, 2012, received October 10, 2012, para. 42.

¹⁷ Letter from Valentín Basto Calderón to the Local Municipal Mayor Crisanto Fernández Delgado of March 20, 1985. Annex 106 to the petitioners' communication of July 13, 2009 and received on July 17, 2009.

54. This accusation, which associated Valentín Basto Calderón with the guerrillas, was also promoted by members of the Army and Police, as indicated by the statements of former secretary of the ANUC, Esther Silva Antolínez¹⁸, and the agent at the Police Sub-Station in Cerrito, Juan Vicente Crispín Blanco.¹⁹ In particular, former council member Lelio Monsalva stated with regard to his situation and that of Valentín Basto Calderón that

“during that tough period of violence in this town we were all being intimidated by the Army, they considered the two of us to be guerrillas and therefore they persecuted us, at that time Valentín and I were council members, indeed Valentín was the vice-chair of the Council and we ... drew up a memorial directed to the Office of the Procurator General ... and we were asking for support for the army not to persecute us so much ... and nothing was known because they didn't answer.”²⁰

55. One year later Valentín Basto Calderón denounced the incident in which several armed men, some in civilian clothes and others wearing Army uniforms, arrived at the home of Jorge Basto (Valentín Basto Calderón's brother). At that moment Jorge Basto was there with his children Álvaro and Heli Basto. The men asked for Valentín Basto Calderón, forced them to prepare lunch, and treated them abusively.²¹ The local ombudsman (Personero) José Carlos Alberto Higuera said that Valentín Basto Calderón, on learning on this incident, organized “a meeting of the municipal council and the council of government of this town to present an official note to be sent to the President of the Republic, Virgilio Barco, denouncing several abuses.”²²

56. After denouncing another incident that occurred in September 1987, in which the Army assaulted his nephew Teodomiro Basto Bautista and his brother-in-law Deulides Basto²³, Valentín Basto Calderón continued receiving threats from the Police and Army.²⁴ In a statement received years later, Teodomiro Basto said:

My uncle Valentín received many threats against him for having denounced that case, he told me that he received death threats for having denounced the case, he was threatened by the Police and the Army too, that he had received threats from the commander of the Police, the threat was that they were going to kill him for having denounced.... They would say that he could not oppose things of the State.²⁵

57. It has also been shown consistently and uniformly, in several testimonies given by family members, that in the months leading up to the death of Valentín Basto armed men with their faces covered and in civilian clothes carried out acts of harassment, intimidation, and aggression. These armed men

¹⁸ Statement by Esther Silva Antolínez of June 10, 2009. Annex 98 of the petitioners' communication of July 13, 2009 and received July 17, 2009.

¹⁹ Statement by Juan Vicente Crispín Blanco of August 4, 2010. Annex 4 to the petitioners' communication of April 12, 2012, and received April 19, 2012.

²⁰ Statement by Lelio Monsalva Suárez of August 29, 1996. Annex 33 to petitioners' communication of July 13, 2009, received July 17.

²¹ Statement by Heli Basto Salinas of July 18, 2008. Annex 98 of petitioners' communication of July 13, 2009, received July 17, 2009.

²² Statement of José Carlos Alberto Higuera of September 4, 1996. Annex 36 to petitioners' communication of July 13, 2009, received July 17, 2009.

²³ Complaint by Carlos Arturo Duarte Calderón and Martín Calderón directed to the Regional Procurator for Santander. Annex 1 to the petitioners' communication of December 19, 2012, received on December 20, 2012; Statement by Valentín Basto Calderón to the Office of the Municipal Ombudsman, of November 8, 1986. Annex 2 to the petitioners' communication of April 12, 2012 and received April 19, 2012.

²⁴ Statement by Araminta Basto Carvajal of June 10, 2009. Annex 35 to petitioners' communication of July 13, 2009, received July 17, 2009.

²⁵ Statement by Teodomiro Basto of July 18, 2008. Annex 96 to the petitioners' communication of July 13, 2009 and received July 17, 2009.

questioned his family as to the whereabouts of Valentín Basto and as to when he would return. During these incidents, Army troops would surround the house and then leave along with the civilians.²⁶

58. These continuous and persistent acts of harassment by the Army have also been corroborated by persons and neighbors who had no family ties with Valentín Basto Calderón.²⁷ During the months prior to his death, Valentín Basto Calderón told friends and family members of his fear of leaving his residence in the rural area because of the persecution by the Army. On this point, Víctor Manuel Carvajal and María Antonia Reatiga de Bohórquez both note that the Army went to look for him at his house. Víctor Manuel Carvajal stated that Valentín Basto Calderón “had a period when he could not come here to town ... and he told me going out was a bit scary because the army had surrounded his house, in a threatening manner, and that they were going to do something to him.”²⁸ And María Antonia Reatiga indicated that Valentín Basto Calderón had told her about a week before his death that “he had to come to live in town because they persecuted him at the house in the rural area where he lived, he said that it was the army that was persecuting him.”²⁹

59. Similarly, María Santos Carvajal, the widow of Valentín Basto Calderón, indicated that approximately one month before the homicide the Army questioned her again as to the whereabouts of Valentín Basto Calderón and arbitrarily and illegally searched their residence in the rural area. In this respect she stated that

the last time they were at the house at the farm, it was the army captain whose name I don't remember and he told me that Valentín had authorized a search of their house and that if I didn't let them let him check he would have Valentín beat me. When Valentín returned the next day and I asked him and he told me it was a lie, and we then went with Valentín ... to file the complaint at the Personería [office of the local ombudsman] and at the court. That's where the complaint was lodged against the Army captain.³⁰

60. Regarding the night before the homicide of Valentín Basto Calderón and Pedro Vicente Camargo, according to police agent Juan Vicente Crispín Blanco

the only thing we found out was the encounter that Sergeant Espitia had, the Saturday night before the homicides, with some men who did not enter the barracks it is suspected they

²⁶ Statement by María Santos Carvajal Basto of February 24, 1988. Annex 6 to petitioners' communication of July 13, 2009, received July 17, 2009. Statement by María Santos Carvajal Basto of June 23, 2005. Annex 1 to the petitioners' communication of December 19, 2012, and received December 20, 2012. Statement by Hernán Basto Carvajal of March 8, 1988. Annex 8 to petitioners' communication of July 13, 2009, received July 17. Statement by Israel Basto Carvajal of March 8, 1988. Annex 9 to petitioners' communication of July 13, 2009, received July 17. Statement by Rosa Herminda Basto Carvajal of March 8, 1988. Annex 10 to petitioners' communication of July 13, 2009, received July 17. Statement by Graciela Basto Carvajal of March 8, 1988. Annex 11 to petitioners' communication of July 13, 2009, received July 17. Declaration of Manuel Basto Calderón of March 8, 1988. Annex 12 to petitioners' communication of July 13, 2009, received July 17. Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners' communication of July 13, 2009, received July 17.

²⁷ Statement by Lelio Monsalva Suárez of August 29, 1996. Annex 33 to petitioners' communication of July 13, 2009, received July 17. Amended statement by César Manuel Carrillo Martínez, March 16, 1999. Annex 41 to petitioners' communication of July 13, 2009, received July 17. Statement by Leonor Romero de Calderón of May 19, 1988. Annex 14 to petitioners' communication of July 13, 2009, received July 17.

²⁸ Statement by María Antonia Reatiga de Bohórquez of August 29, 1996. Annex 34 to petitioners' communication of July 13, 2009, received July 17.

²⁹ Statement by Víctor Manuel Carvajal of August 29, 1996. Annex 32 to petitioners' communication of July 13, 2009, received July 17.

³⁰ Statement by María Santos Carvajal Basto of June 23, 2005. Annex 1 to the petitioners' communication of December 19, 2012, received December 20, 2012.

were members of the military and the next day he invited these people to have breakfast at the place of the woman of the restaurant Doña Chela.”³¹

61. This coincides with the testimony of Graciela González Pavón, known as Doña Chela, and her daughter Liliana Pacheco González, who on that day served two persons not from the town who were looking for breakfast.³²

62. Valentín Basto’s concern over the threats received was evident even on the day of his death. In his testimony, former local ombudsperson (Personero) Carlos Higuera stated:

He told me that he was very nervous because of all those things, to the point that the day they killed him he wanted to tell me something because he went to my house to seek me out and unfortunately I wasn’t there. As soon as I found out he was looking for me I went to the my office (the Personería) and there they told me that Valentín had gone to the presbytery perhaps to say something to the priest I imagine that he had something, like a concern to communicate to us but unfortunately when I got to the presbytery he had already left....³³

63. In conclusion, it appears from the evidentiary elements available to the Commission – questioned but not controverted by other evidence introduced by the State – that members of the Police and Army made death threats again and harassed Valentín Basto Calderón, and accused him of being a collaborator of the guerrilla forces, and that these incidents had an impact on his personal security and that of his family.

2. The death of Valentín Basto Calderón and Pedro Carmenza Camargo and the wounds suffered by Carmenza Camargo Sepúlveda

64. On February 21, 1988, at approximately 9:00 a.m., two unidentified armed individuals got out of a yellow automobile, parked near the Police Sub-Station in the municipality of Cerrito and intercepted Valentín Basto Calderón, as he was walking along the street known as Calle Real in the built part of the municipality of Cerrito. Valentín Basto died after receiving 35 bullet wounds.³⁴ In that same occurrence Pedro Vicente Camargo and his eight-year-old daughter Carmenza Camargo Sepúlveda were wounded. Pedro Camargo died at 4:30 p.m. at the health post in the same municipality due to the bullet wounds.³⁵

65. The State alleges that it was not possible to identified the direct perpetrators and participants in the facts given that the persons from whom statements were taken initially are said not to have been eyewitnesses at the time the shots were fired, so they did not provide information of interest to the investigation.³⁶ Nonetheless, as appears in the record before the Commission, several eyewitnesses and other witnesses gave testimony relevant for the inquiry and for clarifying the facts alleged.

³¹ Statement by Juan Vicente Crispín Blanco of August 4, 2010. Annex 4 to petitioners’ communication of April 12, 2012, and received April 19, 2012.

³² Statement by Graciela González Pavón of May 19, 1988. Annex 5 to the petitioners’ communication of April 12, 2012, and received April 19, 2012. Statement by Liliana Pacheco González of May 19, 1988. Annex 6 to the petitioners’ communication of April 12, 2012, and received April 19, 2012.

³³ Statement by José Carlos Alberto Higuera of September 4, 1996. Annex 36 to petitioners’ communication of July 13, 2009, received July 17, 2009.

³⁴ Official act of removing the body of Valentín Basto Calderón of February 21, 1988. Annex 2 to petitioners’ communication of July 13, 2009, received July 17. Autopsy reports on the corpses of Valentín Basto Calderón and Pedro Vicente Camargo of February 22, 1988. Annex 4 to petitioners’ communication of July 13, 2009, received July 17. Statement by Carmenza Camargo Sepúlveda of July 22, 2009. Annex 7 to the petitioners’ communication of April 12, 2012, received April 19, 2012.

³⁵ Official act of removing the body of Pedro Vicente Camargo of February 21, 1988. Annex 3 to petitioners’ communication of July 13, 2009, received July 17. Autopsy reports on the corpses of Valentín Basto Calderón and Pedro Vicente Camargo of February 22, 1988. Annex 4 to petitioners’ communication of July 13, 2009, received July 17.

³⁶ Communication from the State of August 18, 2009, received August 26, 2009, para. 14.

66. As regards the vehicle of the direct perpetrators of the crime, parked at the main park a few meters from the Police Sub-Station of the municipality of Cerrito 37, the statements from eyewitnesses Liliana Pacheco González and Graciela González Pavón indicate that: (a) that automobile parked, with three persons inside, at approximately 7:00 a.m.; (b) two persons not from the region got out of the car, while the third person stayed, in the driver's seat; (c) the persons who got out of the car went to the restaurant and ordered three breakfasts; (d) one of them kept his hands under a white, striped ruana [a type of poncho], was antsy, getting up and sitting down repeatedly, looking towards the car and when finally he surprisingly left with his companion, and at that moment the shots were heard³⁸; (e) after attaining the objective, the individual who fired the shots got back in the car along with his companion; it turned around quickly and they left.³⁹ Indeed, the Office of the Attorney General and the Office of the Procurator General considered in their reports that Liliana Pacheco González "served [on the date of the events at her restaurant in Cerrito] two of the purported murderers before they carried out their criminal act."⁴⁰

67. Carmenza Camargo, as the surviving victim, was a direct witness of the shots fired. She indicated that the direct perpetrators were two unknown individuals, and she described the facts in the following terms:

I was walking along the sidewalk and my father was walking in the street like in the middle of the street when I saw that they began shooting at a man who was behind us and who was wearing a white *ruana* ... and they hit me first or my father, but then I saw when my father fell to the ground and the men who were shooting went by shooting on foot....⁴¹

68. While she did not know at the time that the man walking behind her was Valentín Basto, in her testimony she said:

Yes, I remember that the men were shooting were shooting at him....⁴²

69. One can clearly infer that the person to whom Carmenza Camargo refers was Valentín Basto who, precisely as one notes from the official act of removing the body was, at the time of his death, wearing a white ruana made of wool.⁴³

³⁷ Complaint filed by the President of the Comité de Solidaridad y Derechos Humanos of García Rovira César Carillo, the priest from the Outreach Committee of the Comité de Solidaridad Pedro Elías Joya, and Father Parochial Vicar of Málaga Luis Francisco Anaya to the Procurator General of the Nation Horacio Serpa Uribe, Presidential Adviser for Human Rights Alvaro Tirado Mejía, and the Regional Procurator for Santander Antonio Chaparro Vega, of April 7, 1988. Annex 16 to petitioners' communication of July 13, 2009, received July 17. Statement by Heli Basto Salinas of July 18, 2008. Annex 98 to the petitioners' communication of July 13, 2009, received July 17, 2009.

³⁸ Statement by Graciela González Pavón of May 19, 1988. Annex 5 to the petitioners' communication of April 12, 2012, and received April 19, 2012. Statement by Liliana Pacheco González of May 19, 1988. Annex 6 to petitioners' communication of April 12, 2012, and received April 19, 2012. Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners' communication of July 13, 2009, received July 17.

³⁹ Statement by Liliana Pacheco González of May 19, 1988. Annex 6 to petitioners' communication of April 12, 2012, and received April 19, 2012.

⁴⁰ Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners' communication of July 13, 2009, received July 17. Report 345-9 of July 29, 2009 of the CTI of the National Human Rights and IHL Unit. Annex 11, petitioners' communication of April 12, 2012, received April 19, 2012.

⁴¹ Statement by Carmenza Camargo Sepúlveda of July 22, 2009. Annex 7 to the petitioners' communication of April 12, 2012, received April 19, 2012.

⁴² Statement by Carmenza Camargo Sepúlveda of July 22, 2009. Annex 7 to the petitioners' communication of April 12, 2012, received April 19, 2012.

⁴³ Official act of removing the body of Valentín Basto Calderón of February 21, 1988. Annex 2 to petitioners' communication of July 13, 2009, received July 17.

70. Along with the witness statement of Luis Alberto Peña, the witness statements of Liliana Pacheco González and Gabriela González Pavón contributed to the composite sketches of the suspects. Nonetheless, this evidence did not lead to the effective identification of any of the direct perpetrators of the crime.⁴⁴

71. After the crime had been carried out the direct perpetrators went back to the yellow car in which they had arrived and went by the Police Sub-Station.⁴⁵ The events occurred 169 meters from the police headquarters.⁴⁶ Based on Photo Album No. 32 of the Office of the Attorney General, there does not appear to have been any obstacle to visibility or interruption of the line-of-sight to the crime scene.⁴⁷

72. According to the statement of eyewitness Teodomiro Basto Bautista, the Police did nothing to stop the perpetrators' escape⁴⁸, even though they were in a position to do so. According to this testimony, at that moment there was a tree trunk in the street, across from the Sub-Station, accordingly – after the crime – the car in which they took flight took off at high speed and had to stop in its tracks when it came to the trunk, to go into reverse.⁴⁹ According to the testimony, instead of stopping the direct perpetrators, the Police ran for cover while shouting “the guerrillas have arrived” (“bajó la guerrilla”).⁵⁰

73. According to the statement of eyewitnesses, the perpetrators fled shooting into the air⁵¹ and took the road that leads to Málaga.⁵² The communication from the municipal mayor of Cerrito to the governor of Santander, outlined in an Order from the Delegate Procurator for the National Police corroborates that the direct perpetrators of the crime shot into the air and got into the vehicle parked a few meters from the Sub-Station, after which they went past the police facility “without any of the agents doing anything to stop them, fleeing and shooting along the central road towards the municipality of Concepción or Málaga, without being intercepted by the military authorities of the Army or the Police.”⁵³

⁴⁴ Official Note 210 from the Departmental Bureau for Criminal Investigation, Technical Corps of the Judicial Police, Preliminary Inquiry Unit, Palacio de Justicia of Bucaramanga, September 12, 1990. Annex 24 to petitioners' communication of July 13, 2009, received July 17.

⁴⁵ Statement by Araminta Basto Carvajal of June 10, 2009. Annex 97 to petitioners' communication of July 13, 2009, received July 17.

⁴⁶ Photo Album No. 32 of the Office of the Attorney General of the Nation, Technical Investigation Corps, Criminalistics Section, of September 5, 1996. Annex 37 to petitioners' communication of July 13, 2009, received July 17.

⁴⁷ Photo Album No. 32 of the Office of the Attorney General of the Nation, Technical Investigation Corps, Criminalistics Section, of September 5, 1996. Annex 37 to petitioners' communication of July 13, 2009, received July 17.

⁴⁸ Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 97 to petitioners' communication of July 13, 2009, received July 17.

⁴⁹ Supplement to the Statement by César Manuel Carrillo Martínez of March 16, 1999. Annex 41 to petitioners' communication of July 13, 2009, received July 17.

⁵⁰ Complaint by the President of the Comité de Solidaridad y Derechos Humanos of García Rovira César Carillo, the priest of the Outreach Committee of the Comité Solidaridad Pedro Elías Joya, and Father Parrish Vicar of Málaga Luis Francisco Anaya before the Procurator General of the Nation Horacio Serpa Uribe, the Presidential Adviser for Human Rights Alvaro Tirado Mejía, and the Regional Procurator for Santander Antonio Chaparro Vega, of April 7, 1988. Annex 16 to petitioners' communication of July 13, 2009, received July 17.

⁵¹ Statement by Gloria Inés Calderón Basto of June 10, 2009. Annex 98 to petitioners' communication of July 13, 2009, received July 17. Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 97 to petitioners' communication of July 13, 2009, received July 17.

⁵² Statement by Luis Martín Guerrero of March 27, 1988. Annex 13 to petitioners' communication of July 13, 2009, received July 17. Statement by Luis Alberto Peña of April 18, 1988. Statement by Luis Alberto Peña of June 10, 2009. Annex 98 to petitioners' communication of July 13, 2009, received July 17.

⁵³ Official Note No. 43 from the mayor of Cerrito Heriberto Mejía to the governor of Santander, February 26, 1988. Annex 107, communication from the petitioners of July 13, 2009 and received July 17. Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners' communication of July 13, 2009, received July 17. Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 96 to petitioners' communication of July 13, 2009, received July 17, 2009.

74. As appears from the record before the Commission, on Sunday, February 21, 1988, market day, when the Police generally go out to patrol at approximately 8:00 a.m., did not patrol at the usual time.⁵⁴ The police agent at the Cerrito Sub-Station, Juan Vicente Crispín Blanco, testified that Sergeant Ernesto Espitia Díaz had ordered them not to go out to patrol, as they always did on the market day:

My sergeant Espitia gave the order, he gave the order orally and simply told us not to go out and patrol.⁵⁵

75. The State alleged in its communication of June 6, 2013, that as soon as the events occurred, the National Police took the appropriate measures to arrest the perpetrators of the homicides.⁵⁶ In its communication of September 26, 2012, the State alleged that the members of the National Police, on hearing shots, took up positions to repel a possible attack, and after a few minutes, when the danger had ceased, they advised the commander of the District of Málaga, Captain Arnulfo Castro Rincón, who immediately deployed operations in the neighboring municipalities and at the exit of Málaga for the purpose of neutralizing vehicles with the characteristics provided, in which it was suspected the perpetrators had fled.⁵⁷

76. Nonetheless, the record before the Commission does not include any information that appears to corroborate that any operation was carried out to track them down. Based on the information available it appears that the Police agents did not attempt to intercept or pursue the direct perpetrators of the crime but that to the contrary they went out long after the vehicle took flight.⁵⁸ This conduct was noted in the Evaluation Report of the Cerrito Commission (Santander) of the Office of the Second Delegate Procurator for Human Rights, which found that

as regards the measures ordered by the Police of Cerrito and the Army at the Servitá case, once the homicide of the peasants occurred, it was found that as a practical matter they were too late.⁵⁹

77. Such omissions were also ratified by the Delegate Procurator for the National Police in the disciplinary proceeding against Sergeant Ernesto Espitia Díaz in which he was in effect sanctioned with a 10-day suspension. The State recognized that the sanction “was imposed on a member of the National Police for not having acted diligently in the pursuit of the subjects who carried out the attack.”⁶⁰

78. In effect, the Office of the Procurator General called attention in its ruling to the fact that Sergeant Ernesto Espitia Díaz and his subordinates “had not perceived anything unusual – neither the vehicle nor the persons – and that is why they did not take the pertinent measures aimed at arresting the assassins.”⁶¹ It also added that

⁵⁴ Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 96 to petitioners’ communication of July 13, 2009, received July 17, 2009. Statement by Jairo Alberto Carvajal of August 4, 2010. Annex 8 to petitioners’ communication of April 12, 2012, and received April 19, 2012.

⁵⁵ Statement by Juan Vicente Crispín Blanco of August 4, 2010. Annex 4 to petitioners’ communication of April 12, 2012, and received April 19, 2012.

⁵⁶ Communication from the State of June 6, 2013, received June 17, 2013, para. 30.

⁵⁷ Communication from the State of September 26, 2012, received October 10, 2012, citing Official Note No. 223158/INSGE-ARDH-38-10 from the Office of Inspector General of the National Police, of August 23, 2012.

⁵⁸ Statement by Teodomiro Basto Bautista of July 18, 2008. Annex 96 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁵⁹ Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners’ communication of July 13, 2009, received July 17.

⁶⁰ Communication to the State of August 18, 2009, received August 26, 2009, para. 77.

⁶¹ Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners’ communication of July 13, 2009, received July 17.

when it comes down to it, one can infer that if Non-commissioned Officer Espitia Diaz, had deployed a timely operation, communicated by radio quickly, the roads leading out of the municipality of Cerrito and into the neighboring towns would have been blocked with checkpoints, securing the arrest of the criminals, but this was not done.⁶²

79. The place where these events occurred was also close to the Army base, situated three kilometers away and in the same direction as one finds the route from Cerrito to Málaga⁶³, the road by which the direct perpetrators of the crime took flight. The State alleged that there is no evidence whatsoever that allows one to affirm that the members of the National Army did not act diligently to pursue the persons responsible⁶⁴ and that

while the family members of Mr. Basto Calderón blamed the facts on members of the Army who were operating in the region at the time, there was no relevant information making it possible to identify them as suspects in the investigation.⁶⁵

80. Nonetheless, the evidence in the record indicates that at the time of the facts members of the Army base situated in the district of Servitá would generally establish a military checkpoint along the route from Cerrito to Málaga, approximately two kilometers from Cerrito, where they would search all cars and persons who inexorably must pass by. The record includes several statements that coincide in noting the existence of this checkpoint, in addition to the fact that it was habitually set up on Sunday mornings, as it is the market day in the area.⁶⁶

81. The Office of the Second Delegate Procurator for Human Rights characterized as “inexplicable” the fact that the checkpoint that was usually established was not operating given that –in addition to it being market day— the zone was under tension because of the kidnapping of the mayor of Cerrito.⁶⁷ As a result, the evidence indicates that on February 21, 1988, in the morning the checkpoint that would have prevented the direct perpetrators of the crime from escaping was not in place.

82. The information in the record also indicates that on that Sunday the Army did not have a presence in the town⁶⁸ and that it took more than half-an-hour to arrive despite the proximity of the detachment and that once there, its members harassed the civilian population.⁶⁹

⁶² Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners’ communication of July 13, 2009, received July 17.

⁶³ Photo Album No. 32 of the Office of the Attorney General of the Nation, Technical Investigation Corps, Criminalistics Section of September 5, 1996. Annex 37 to petitioners’ communication of July 13, 2009, received July 17.

⁶⁴ Communication from the State of September 26, 2012, received October 10, 2012, para. 39, citing Official Note of the Ministry of Defense No. 20128010773781 MDN-CGFM-CE-JEM-JEDIH-DIASC of July 26, 2012.

⁶⁵ Communication from the State of August 18, 2009, received August 26, 2009, para. 14. Office of the Attorney General of the Nation, Official Note DAI No. 006173 of May 27, 2009.

⁶⁶ Supplement to the Statement by César Manuel Carrillo Martínez of December 11, 1998. Annex 41 to petitioners’ communication of July 13, 2009, received July 17. Continuation of the declaration by César Manuel Carrillo Martínez of March 16, 1999. Annex 45 to petitioners’ communication of July 13, 2009, received July 17. Statement. Statement by Araminta Basto Carvajal of June 10, 2009. Annex 97 to petitioners’ communication of July 13, 2009, received July 17. Continuation of the Statement by Álvaro Quintero Ariza of March 17, 1999. Annex 47 to petitioners’ communication of July 13, 2009, received July 17, 2009. Statement by Luis Alberto Peña of June 10, 2009. Annex 98 to petitioners’ communication of July 13, 2009, received July 17, 2009. Photo Album No. 32 of the Office of the Attorney General of the Nation, Technical Investigation Corps, Criminalistics Section, of September 5, 1996. Annex 37 to petitioners’ communication of July 13, 2009, received July 17.

⁶⁷ Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners’ communication of July 13, 2009, received July 17.

⁶⁸ Statement by Juan Vicente Crispín Blanco of August 4, 2010. Annex 4 to petitioners’ communication of April 12, 2012, and received April 19, 2012.

⁶⁹ Complaint by the President of the Comité de Solidaridad y Derechos Humanos of García Rovira César Carillo, the priest of the Outreach Committee of the Comité Solidaridad Pedro Elías Joya, and Father Parrish Vicar of Málaga Luis Francisco Anaya before the Procurator General of the Nation Horacio Serpa Uribe, the Presidential Adviser for Human Rights Alvaro Tirado Mejía, and the Regional

[continues ...]

83. The State indicated in its arguments on the merits of September 26, 2012, that illegal armed groups were operating in the department of Santander as its mountainous terrain it was advantageous for their operations.⁷⁰ In its arguments of June 6, 2013, it indicates that the deaths of Valentín Basto and Pedro Camargo, as well as the wounds suffered by Carmenza Camargo, were caused by a group of armed civilians.⁷¹ In this respect, citing an Official Communication from the Presidential Program for Human Rights of August 27, 2012, it mentions in detail the fronts of the FARC, the ELN, and the autodefensas said to have been operating in the department of Santander at the time of the facts.⁷² In addition, the testimony collected at the time of the extrajudicial execution of Valentín Basto affirms that the guerrillas had not yet reached Cerrito, and that illegal armed groups were not known.⁷³ In any event, once the National Unit of Justice and Peace was consulted to determine whether there was any attribution of the facts of February 21, 1988, by any illegal armed group or former paramilitary members applying for benefits Under Law 975, it answered that it did not find any information on the homicides in the facts set forth, confessed, and certified under Law 975 of 2005.⁷⁴

3. Facts subsequent to the death of Valentín Basto Calderón

84. The burial of Valentín Basto Calderón took place on February 23, 1988. Several witness statements as well as the communication from the mayor of Cerrito report a context of harassment and intimidation of the persons attending the burial. From the witness statements it appears that members of the Police and Army intimidated the persons in attendance and obstructed the religious ceremonies, the funeral, and the burial.⁷⁵ The witness statements are corroborated by a ruling by the Delegate Procurator for the National Police, which describes the facts in the following terms:

The other charge attributed to Sergeant Espitia Díaz is proven, on acting beyond the scope of his authority in the performance of his functions on February 23, 1988, on collusion and collaborating with the army in the harassment and intimidation of the inhabitants of the urban center of Cerrito, Santander, at the moment when the funeral service Valentín Basto was being conducted by more than three priests, with some 2,000 peasants, on conducting

[... continuation]

Procurator for Santander Antonio Chaparro Vega, of April 7, 1988. Annex 16 to petitioners' communication of July 13, 2009, received July 17.

⁷⁰ Communication from the State of September 26, 2012, received October 10, 2012, paras. 68-71. Presidential Program for Human Rights. Official note No. OFI12-00091350/JMSC 34020, of August 27, 2012.

⁷¹ Communication from the State of June 6, 2013, received June 17, 2013, para. 17.

⁷² Note DIDHD/GOI No. 59500/2282 from the Ministry of Foreign Affairs of the Republic of Colombia, September 26, 2012, page 6, citing the Official Note from the Presidential Program for Human Rights OFI12-00091350/JMSC 34020 of August 27, 2012.

⁷³ Statement by Esther Silva Antolinez of June 10, 2009. Annex 98 to petitioners' communication of July 13, 2009, received July 17, 2009. Statement by Luis Alberto Peña of June 10, 2009. Annex 98 to petitioners' communication of July 13, 2009, received July 17.

⁷⁴ Report No. 414314-DNCTI-DH/DHI of the Human Rights Group of the CTI, Office of the Attorney General of the Nation, of August 14, 2008. Annex 95 to petitioners' communication of July 13, 2009, received July 17.

⁷⁵ Statement by José Menco Rojas of June 10, 1988. Annex 15 to petitioners' communication of July 13, 2009, received July 17. Continuation of the statement by César Manuel Carrillo Martínez of March 16, 1999. Annex 45 to petitioners' communication of July 13, 2009, received July 17. Official Note No. 43 from the mayor of Cerrito Heriberto Mejía to the governor of Santander of February 26, 1988. Annex 107, communication from the petitioners of July 13, 2009, received July 17. Statement by Araminta Basto Carvajal of June 10, 2009. Annex 97 to petitioners' communication of July 13, 2009, received July 17. Statement by Heli Basto Salinas of July 18, 2008. Annex 98 to the petitioners' communication of July 13, 2009, received July 17, 2009. Statement by Luis Francisco Anaya Pico of March 15, 2002. Annex 82 to petitioners' communication of July 13, 2009, received July 17, 2009. Complaint by the President of the Comité de Solidaridad y Derechos Humanos de García Rovira César Carillo, the priest of the Outreach Committee of the Comité Solidaridad Pedro Elías Joya, and Father Parrish Vicar of Málaga Luis Francisco Anaya before the Procurator General of the Nation Horacio Serpa Uribe, the Presidential Adviser for Human Rights Alvaro Tirado Mejía, and the Regional Procurator for Santander Antonio Chaparro Vega, of April 7, 1988. Annex 16 to petitioners' communication of July 13, 2009, received July 17. Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners' communication of July 13, 2009, received July 17.

unnecessary searches, allowing his subordinates to shoot into the air, and to pressure and intimidate the peasants to get them to disperse.⁷⁶

85. As appears from the ruling, the actions of the Army and Police were totally unjustified given that, in the words of the Office of the Procurator General, the persons in attendance at the funeral rites “fortunately conducted the burial march in a peaceful manner.”⁷⁷

86. The intimidation of and threats against the family members of Valentín Calderón Basto continued after his death. In effect, that same day Araminta Basto Carvajal declared that the Army captain had said that he would have to finish off the Basto Calderón family.⁷⁸ Other witness statements also stated that one week after the killing of Valentín Basto Calderón several soldiers went through the town shouting “long live the death of Valentín,” “Valentín’s brothers and sisters should come out so we can finish killing them,” and that “if Valentín were to come back to life, they would kill him again.”⁷⁹

87. Along the same lines, some three to four months after the killing of Valentín Basto Calderón and Pedro Camargo, Heli Basto Salinas (Valentín Basto Calderón’s nephew) stated that he saw and recognized one of the soldiers who had been at his father’s house asking about his uncle. The soldier then began to mistreat him and accuse him of being a guerrilla. He said that the same soldier told him that

the whole Basto Calderón family are guerrillas, he put the Galil to my neck, that they were going to drag me so that I would tell the truth. It was because I was a member of the Basto Calderón family and that they had to kill all of them.⁸⁰

88. He then added that the soldiers tied him to a post, and kept him there for several hours, abusively insulting him until they released him. After these events he was forced to leave the country to Venezuela, where he remained for eight years.⁸¹

89. Finally, as the Commission is aware, on October 8, 1988, eight months after the death of Valentín Basto Calderón, his cousin Martín Calderón Jurado –who had replaced him as legal adviser of the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira and member of the ANUC of that locality — was killed with 50 bullet wounds along the highway that runs from Cerrito to Chitagá. He was assassinated along with the driver Primitivo Silva. The IACHR established the participation of members of the Army in the fact, and found the State responsible for violating the American Convention.⁸²

⁷⁶ Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners’ communication of July 13, 2009, received July 17.

⁷⁷ Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners’ communication of July 13, 2009, received July 17.

⁷⁸ Statement by Araminta Basto Carvajal of June 10, 2009. Annex 97 to petitioners’ communication of July 13, 2009, received July 17.

⁷⁹ Statement by Leonor Romero de Calderón of May 19, 1988. Annex 14 to petitioners’ communication of July 13, 2009, received July 17. Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners’ communication of July 13, 2009, received July 17. Continuation of the statement by César Manuel Carrillo Martínez of March 16, 1999. Annex 45 to petitioners’ communication of July 13, 2009, received July 17.

⁸⁰ Statement by Heli Basto Salinas of July 18, 2008. Annex 98 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁸¹ Statement by Heli Basto Salinas of July 18, 2008. Annex 98 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁸² IACHR. Report 32/92. Case 10,454. Colombia. September 25, 1992. <https://www.cidh.oas.org/annualrep/92span/Colombia10.454.htm>.

4. The investigation by the military criminal justice system

90. A criminal investigation was initiated into the facts of this case; disciplinary proceedings were also conducted. As regards the judicial proceedings, it is in the record that on February 22, 1988, the Municipal Mixed-jurisdiction Court of Cerrito, Santander, ordered the opening of the preliminary inquiry, proceeding to take statements from family members and witnesses.⁸³ On March 3, 1988, the record in the case was forwarded to the Second Court of Criminal Investigation of Bucaramanga for the purpose of pursuing the investigation. It also ordered that new evidence be collected, including elaboration on the testimony received, and taking new statements from persons who were close to the crime scene.⁸⁴

91. On September 7, 1988, the Second Court of Criminal Investigation ordered the suspension of the preliminary inquiry on ruling it was impossible to individually identify the possible perpetrators.⁸⁵ On September 20, 1988, the Unit of Preliminary Inquiry of the Technical Corps of the Judicial Police for the Circuit of Málaga took over the investigation and ordered that inquiries be pursued and evidence collected to identify the perpetrators.⁸⁶

92. On March 8, 1991, the record was forwarded to the Departmental Bureau for Public Order in the city of Cúcuta.⁸⁷ On October 22, 1991, that Court waived prosecution in relation to initiating the investigation into the case based on Article 118 of Law No. 23 of 1991, which establishes that “preliminary inquiries or measures in which it has not been possible to determine or identify a person or persons accused after two years shall be subject to a waiver of prosecution with the force of *res judicata*.”⁸⁸ On October 28, 1991, the Public Order Prosecutor filed a motion for reconsideration against the judicial decision of October 22, 1991.⁸⁹ It was rejected on December 6, 1991 by the above-noted Public Order Judge, considering that the results of the investigations and collection of evidence did not merit opening a criminal proceeding.⁹⁰

93. On July 30, 1992, the Office of the Regional Prosecutor (Fiscalía Regional) of Cúcuta, Norte de Santander, ruled, “having exhausted the investigative probabilities without achieving a positive and objective result,” to provisionally suspend the investigation until such time as new evidence comes to light to reactivate it.⁹¹ This last decision was ordered even though the decision by Court of Public Order of Cúcuta of December 6, 1991, was appealed before the Superior Court of Public Order, which in turn had ruled, to the contrary, that the preliminary inquiry should continue.⁹²

⁸³ Communication from the State of September 26, 2012, and received October 10, 2012, para. 79. Mentioned in the Official Note from the Director for Human Rights and International Humanitarian Law Ángela Margarita Rey Anaya, DDHH. GOI No. 357873/1529, of June 5, 2009 and received on the same date.

⁸⁴ Communication from the State of September 26, 2012, received October 10, 2012, para. 79. Mentioned in the Official Note from the Director of Human Rights and International Humanitarian Law Ángela Margarita Rey Anaya, DDHH. GOI No. 357873/1529, of June 5, 2009, received the same date.

⁸⁵ Order of the Second Court of Criminal Investigation, September 7, 1988. Annex 20 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁸⁶ Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

⁸⁷ Order of the Preliminary Inquiry Unit of Málaga, March 7, 1991. Annex 24 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁸⁸ Waiver of Prosecution by the Court of Public Order of Cúcuta of October 22, 1991. Annex 27 to petitioners’ communication of July 13, 2009, received July 17, 2009.

⁸⁹ Motion for Reconsideration filed by the Public Order Prosecutor of October 28, 1991. Annex 28 to petitioners’ communication of July 13, 2009, received July 17.

⁹⁰ Order of the Public Order Court of Cúcuta of December 6, 1991. Annex 29 to petitioners’ communication of July 13, 2009, received July 17.

⁹¹ Order of the Office of the Regional Prosecutor of Cúcuta of July 30, 1992. Annex 31 to petitioners’ communication of July 13, 2009, received July 17.

⁹² Mentioned in the Order of the Office of the Regional Prosecutor of Cúcuta of August 6, 1996. Annex 30 to petitioners’ communication of July 13, 2009, received July 17.

94. On August 6, 1996, the Office of the Regional Prosecutor of Cúcuta, Unit for Prior Matters, reactivated the investigation, ordering that evidence be collected and commissioning the Municipal Mixed-jurisdiction Court of Cerrito to do so.⁹³ In its order it ruled as follows:

As by resolution of July 30, 1992 the provisional suspension of this investigation was decreed, totally repudiating the decision on appeal issued by the Superior Court of Public Order, ordering that the inquiry continue because there is sufficient merit, this office, in response to that pronouncement, reactivated the investigation.....⁹⁴

95. On January 10, 1997, the National Directorate of Prosecutorial Offices ordered the reassignment of the preliminary investigation, removing it from the Office of the Regional Prosecutor of Cúcuta to the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General.⁹⁵ On February 25, 1997, this Unit took cognizance of the investigation and ordered the collection of several items of evidence in Bucaramanga, Málaga, Cúcuta, Pamplona, and Bogotá⁹⁶; notice of the results was made in the report by the Technical Investigation Corps of said Unit of July 15, 1997.⁹⁷ In January and February 1999 the National Human Rights and International Humanitarian Law Unit ordered that several measures be taken to collect evidence.⁹⁸

96. On March 17, 1999, the Judicial Procurator for Criminal Matters, working in his capacity as Special Agent of the Public Ministry, forwarded a communication to the Prosecutor for the National Human Rights and International Humanitarian Law Unit requesting that several measures be taken to collect evidence including taking the statements of several witnesses who were aware of the threats to Valentín Basto and also for the judicial inspection into the procedures in the Office of the Delegate Procurator for Human Rights.⁹⁹ In the face of the silence and delay in response to his official note¹⁰⁰, on May 19, 1999, the Judicial Procurator for Criminal Matters called on the Prosecutor of the National Human Rights Unit to rule on the procedures requested on March 17, 1999, noting that “with the passage of time, evidence is lost that could point to the persons responsible for this crime, and in addition we are contributing to such lamentable occurrences remaining in impunity.”¹⁰¹

⁹³ Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

⁹⁴ Order of the Office of the Regional Prosecutor of Cúcuta of August 6, 1996. Annex 30 to petitioners’ communication of July 13, 2009, received July 17.

⁹⁵ Resolution 0007 of the National Directorate of Prosecutorial Offices of January 10, 1997. Annex 38 to petitioners’ communication of July 13, 2009, received July 17. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

⁹⁶ Resolution of the National Human Rights Unit of the National Directorate of Prosecutorial Offices of February 25, 1997. Annex 39 to petitioners’ communication of July 13, 2009, received July 17. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

⁹⁷ Report No. 01068 of the National Division of the Technical Investigation Corps of July 15, 1997. Annex 40 to petitioners’ communication of July 13, 2009, received July 17. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

⁹⁸ Order of the National Human Rights and IHL Unit of the Office of the Attorney General of the Nation of January 20, 1999. Annex 42 to petitioners’ communication of July 13, 2009, received July 17, 2009. Order of the National Human Rights and IHL Unit of the Office of the Attorney General of the Nation of February 16, 1999. Annex 44 to petitioners’ communication of July 13, 2009, received July 17.

⁹⁹ Official Note from the Judicial Procurator for Criminal Matters to the Regional Prosecutor of the National Human Rights and IHL Unit of March 17, 1999. Annex 46 to petitioners’ communication of July 13, 2009, received July 17.

¹⁰⁰ Official Note from the Judicial Procurator for Criminal Matters in Human Rights and IHL to the Regional Prosecutor of the National Human Rights and IHL Unit of April 19, 1999. Annex 49 to petitioners’ communication of July 13, 2009, received July 17, 2009.

¹⁰¹ Official Note from the Judicial Procurator for Criminal Matters in Human Rights and IHL to the Regional Prosecutor of the National Human Rights and IHL Unit of May 19, 1999. Annex 50 to petitioners’ communication of July 13, 2009, received July 17, 2009.

97. On June 2, 1999, the Regional Prosecutor of the National Human Rights and International Humanitarian Law Unit ordered new measures to collection evidence associated with obtaining witness statements and judicial inspections on an urgent basis.¹⁰² Nonetheless, on June 21, 1999, the Regional Prosecutor of the Human Rights Unit said that the Chief of the Investigations Section of the Technical Investigation Corps informed him orally that the zone in which the measure was to be carried out was affected by “grave alterations of public order” and so ordered suspension of those measures to collect evidence until such time as there were adequate security conditions.¹⁰³

98. On July 12, 1999, the office known as Judicial Assistance I of the National Unit of Human Rights Prosecutors asked that the measures ordered by the Regional Prosecutor on June 22, 1999, be carried out. On August 31, 1999, the judicial investigator of the Technical Investigation Corps reported on the measures taken.¹⁰⁴

99. On February 16, 2000, the Special Agent of the Public Ministry asked the Office of the Specialized Prosecutor of the National Human Rights Unit to “suspend the preliminary investigation” and to archive it, given “almost 12 years had elapsed [since February 22, 1988] without the individual determination or identification of the alleged perpetrators.” He based his decision on the domestic law of criminal procedure.¹⁰⁵

100. On March 23, 2000, the Specialized Prosecutor of the Human Rights Unit denied the petition of the Special Agent of the Public Ministry, since there were evidentiary steps pending and suspended allegedly for reasons of public order.

101. On June 6, 2000, the Special Agent of the Public Ministry asked the Office of the Specialized Prosecutor to take the statements that had been suspended “counting on the support of the armed forces and National Police” in view of the public order situation in the zone.¹⁰⁶ The Office of the Specialized Prosecutor of the Human Rights Unit indicated that the participation of the armed forces and/or National Police would be ill-advised given that the measures entailed taking witness statements, and members of the armed forces and National Police were accused of having been responsible for the facts.¹⁰⁷

102. On September 26, 2000, the Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit insisted on taking several items of evidence as ordered¹⁰⁸, which could only be done successfully in part due to several problems, including those associated with the impossibility of

¹⁰² Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹⁰³ Resolution of the Regional Prosecutor of the National Human Rights and IHL Unit of June 21, 1999. Annex 52 to petitioners’ communication of July 13, 2009, received July 17, 2009.

¹⁰⁴ Report of the Technical Investigation Corps on the execution of work mission No. 3148 GDH of August 31, 1999, on measures ordered on June 2, 1999. Annex 55 to petitioners’ communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹⁰⁵ Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of February 16, 2000. Annex 56 to petitioners’ communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹⁰⁶ Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of June 6, 2000. Annex 61 to petitioners’ communication of July 13, 2009, received July 17, 2009.

¹⁰⁷ Resolution of the Specialized Prosecutor of the National Human Rights and IHL Unit of June 22, 2000. Annex 62 to petitioners’ communication of July 13, 2009, received July 17, 2009. Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of July 26, 2000. Annex 64 to petitioners’ communication of July 13, 2009, received July 17, 2009. Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of September 25, 2000. Annex 65 to petitioners’ communication of July 13, 2009, received July 17, 2009. Resolution of the Specialized Prosecutor of the National Human Rights and IHL Unit of September 26, 2000. Annex 66 to petitioners’ communication of July 13, 2009, received July 17, 2009.

¹⁰⁸ Resolution by the Specialized Prosecutor of the National Human Rights and IHL Unit of September 26, 2000. Annex 66 to petitioners’ communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

finding the documentation on the date it was requested¹⁰⁹, and the impossibility of locating the persons whose statements should be taken due to the time elapsed¹¹⁰ and to the delays or lack of response from the public institutions from which information was sought.¹¹¹

103. On February 13, 2002, due to the impossibility of collecting all the evidence ordered in September 2000 by that date, other steps to gather evidence were ordered to give impetus to the investigation.¹¹² The Technical Investigation Corps gave a partial report on April 15, 2002 on the evidentiary steps entrusted, due in part to the lack of a response from the public institutions ordered to take them, and the loss of relevant documentation, among other causes.¹¹³

104. On May 31, 2006, the 17th Specialized Prosecutor's Office of the National Human Rights Unit took cognizance of the investigation. It recognized the time that had elapsed and the "lack of initiative" in the investigative effort, and commissioned the Coordinator of the Unit for the Support of Human Rights in Bucaramanga to collect the evidence.¹¹⁴ On January 22, 2007, the 17th Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit pointed out in a resolution that not having taken all the steps required to collect evidence due to "unfounded logistical justifications and procedural formalities" entailed "serious irregularities that compromised the action of the judiciary," it being a duty of the investigative unit designated to make the efforts necessary for the "effective" performance of the investigative tasks ordered. Finally, in that resolution the Specialized Prosecutor once again ordered the definitive performance, without delay, of the evidentiary measures required in her resolution of May 2006.

105. Such situations associated with the failure to carry out the measures ordered by the Office of the 17th Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit, and the unwarranted delays, were repeated on several occasions. Accordingly, on August 1, 2007, the Prosecutor issued a resolution observing that "no result of any initiative" ("ningún resultado de gestión") had been included in the record by the investigative unit commissioned.¹¹⁵ She denounced the same thing on October 9, 2007¹¹⁶ and October 19, 2007.¹¹⁷ In that context, it should be noted that there is documentation related to the

¹⁰⁹ Certification of judicial inspection conducted at the facilities of the Fifth Brigade of the National Army of December 7, 2000. Annex 72 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the Commander of the Fifth Brigade to the Human Rights Group of the CTI of December 14, 2000. Annex 74 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁰ Report of the Human Rights Group of the Technical Investigation Corps on Work Mission No. 4711.00 of December 15, 2000. Annex 75 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹¹ Report of the Human Rights Group of the Technical Investigation Corps on Work Mission No. 4711.00 of December 15, 2000. Annex 75 to petitioners' communication of July 13, 2009, received July 17, 2009. Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of May 17, 2001. Annex 128 to petitioners' communication of July 13, 2009, received July 17, 2009. Official Note from the Special Agent of the Public Ministry to the Specialized Prosecutor of the National Human Rights and IHL Unit of June 21, 2001.

¹¹² Resolution of the Specialized Prosecutor of the National Human Rights and IHL Unit of February 13, 2002. Annex 79 to petitioners' communication of July 13, 2009, received July 17, 2009. Writ delegating the authority to examine evidence No. 60 from the Judicial Assistant of the National Human Rights Unit of February 15, 2002. Annex 80 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹¹³ Report of the Technical Investigation Corps of April 15, 2002. Annex 133 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁴ Resolution to reassign the case and order the taking of evidence, by the 17th Specialized Prosecutor of the National Human Rights and IHL Unit of May 31, 2006. Annex 84 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79. Report of the Technical Investigation Corps No. 301691 of August 24, 2006. Annex 85 to petitioners' communication of July 13, 2009, received July 17, 2009. Report No. 221 of the National Human Rights and IHL Unit of September 7, 2006. Annex 86 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁵ Resolution of the 17th Specialized Prosecutor of the National Human Rights and IHL Unit of August 1, 2007. Annex 90 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁶ Certification of the 17th Specialized Prosecutor of the National Human Rights and IHL Unit of October 9, 2007. Annex 92 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁷ Official Note No. 3602 from the 17th Specialized Prosecutor of the National Human Rights and IHL Unit of October 19, 2007. Annex 93 to petitioners' communication of July 13, 2009, received July 17, 2009.

beginning of the disciplinary investigation into the investigator from the Technical Investigation Corps for the delay in collecting evidence.¹¹⁸

106. On June 17, 2008, the Office of the 17th Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit once again ordered a working mission, ordering that several evidentiary measures be carried out.¹¹⁹ Due to the long time that elapsed since the date of the facts, several of the evidentiary measures could not be carried out as it was impossible to find the documentation, or due to the death or lack of knowledge as to the whereabouts of the declarants.¹²⁰

107. On August 11, 2008, with the investigation still in the preliminary stage, the case was assigned to the Office of the 67th Specialized Prosecutor of the Human Rights Unit, based in Bucaramanga. On September 3, 2008, it took cognizance of the investigation and ordered that evidence-gathering measures be taken to give impetus to the investigation.¹²¹ The results of those measures were reported on June 23, 2009, though some could not be carried out due to the loss of the documentation needed.¹²²

108. On January 23, 2009, it was ordered that evidence be collected that was reported by the Technical Investigation Corps of the Office of the Attorney General in its reports of July 29, 2009 and September 29, 2009. In the first, witnesses of the facts were identified and the location of the Commander of the Police Station at the time of the facts was established.¹²³ In the second report, results were reported on the evidence-gathering measures in relation to the death of Martín Calderón Jurado.¹²⁴

109. From July 30 to September 1, 2010, the Office of the 67th Specialized Prosecutor of the National Human Rights and International Humanitarian Law Unit ordered that evidence be collected¹²⁵, where special note should be taken of the request to receive witness new statements most of which were carried out; as well as the inquiry into the whereabouts of the members of the armed forces and National Police at the time of the facts, and whose results are not in the record.

110. The information available indicates that the investigation continues in the preliminary phase and that no possible direct perpetrator of or mastermind behind the death of Valentín Basto Calderón has been identified.

¹¹⁸ Official Note No. 60 from the 17th Specialized Prosecutor the National Human Rights and IHL Unit of March 5, 2009. Annex 109 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹¹⁹ Writ delegating the authority to examine evidence No. 626 of the 17th Specialized Prosecutor of the National Human Rights and IHL Unit of June 17, 2008. Annex 94 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²⁰ Report of the Human Rights Group of the Technical Investigation Corps No. 414314 of August 14, 2008. Annex 95 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²¹ Resolution of the Office of the 67th Specialized Prosecutor of the National Human Rights and IHL Unit of September 3, 2008. Annex 102 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²² Report of the Technical Investigation Corps No. 275-9 of June 23, 2009. Annex 110 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²³ Report 345 of the Technical Investigation Corps of the National Human Rights and IHL Unit of July 29, 2009. Annex 11 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹²⁴ Report 462-9 of the Technical Investigation Corps of the National Human Rights and IHL Unit of September 29, 2009. Annex 12 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

¹²⁵ Resolution of the Office of the 67th Specialized Prosecutor of the National Human Rights and IHL Unit of July 30 2010. Annex 14 to petitioners' communication of July 13, 2009, received July 17, 2009. Resolution of the Office of the 67th Specialized Prosecutor of the National Human Rights and IHL Unit of September 1, 2010. Annex 15 to petitioners' communication of July 13, 2009, received July 17, 2009. Communication from the State of September 26, 2012, received October 10, 2012, para. 79.

5. The disciplinary proceeding

111. As for the disciplinary proceeding, on August 23, 1988, the Procurator General of the Nation ordered that a copy of the June 3, 1988 report by the Commission of the Public Ministry¹²⁶ be forwarded to the Office of the Delegate Procurator for the National Police in order to continue the preliminary evidence-gathering measures to clarify the measures taken by Police Sergeant Ernesto Espitia Díaz on the days of the death and burial of Valentín Basto. He also forwarded a copy of that record to the Office of the Delegate Procurator for the Military Forces to determine the alleged links of members of the Army in the visits and acts of harassment at Valentín Basto's house, and to establish the identity of the members of the Army who were said to have vociferously celebrated his death one week later.¹²⁷

112. On November 8, 1988, the Delegate Procurator for the Military Forces concluded that there was no evidence whatsoever that the military personnel perpetrated the deaths of Valentín Basto Calderón and Pedro Camargo. Therefore, he refrained from initiating a formal disciplinary inquiry against the military personnel of the Fifth Brigade, quartered in Cerrito, Santander del Sur, and ordered that it be archived.¹²⁸

113. On March 12, 1991, the Office of the Delegate Procurator for the National Police adopted a disciplinary sanction with the suspension from his post for 10 days of Sergeant Ernesto Espitia Díaz for his negligent action in the events subsequent to the death of Valentín Basto and the events during his burial.¹²⁹ The decision was appealed by the sergeant¹³⁰ and the case was archived.

V. LEGAL ANALYSIS

A. Preliminary matter

114. The Commission observes that the State objected to the competence of the Commission to examine the petitioners' arguments on the alleged violation of the rights established in Articles 2, 7, 11, 12, 13, 16, 19, and 23 of the American Convention. The State based its request on the fact that Report No. 68/10 only declares the admissibility of the claims under Articles 4, 5, 8, 25, and 1(1) of the American Convention and that in its opinion this was tantamount to a pronouncement of inadmissibility in relation to the other provisions of the American Convention not expressly declared admissible.

115. The Commission considers it relevant to clarify that neither the American Convention nor the Rules of Procedure of the IACHR requires a complete definition in the pronouncement of admissibility of the rights possibly applicable in the merits phase. Nor does it require the petitioner to make a legal characterization the specific rights allegedly violated to the exclusion of all other rights. The Commission delimits admissibility based on a preliminary evaluation to exclude some petitions or arguments that are manifestly unfounded. In other words, the factual and legal platform of the claim is presented with the petition and it is by processing it and based on the arguments and evidence produced by both parties that the Commission, in the merits phase, analyzes the whole case and reaches its definitive factual and legal determinations.

¹²⁶ Report of the Evaluation Commission Cerrito (Santander) of the Second Delegate Procurator for Human Rights entrusted to Hernando Llano Angel and Judicial Police Inspector Emiro Mahecha Riveros to the Procurator General of the Nation Horacio Serpa Uribe, June 3, 1988. Annex 17 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²⁷ Resolution of the Procurator General of the Nation of August 23, 1988. Annex 18 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²⁸ Resolution of the Office of the Delegate Procurator for the Military Forces of November 8, 1988. Annex 22 17 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹²⁹ Ruling by the Delegate Procurator for the National Police Tani Barrios Hernández of March 12, 1991. Annex 25 to petitioners' communication of July 13, 2009, received July 17, 2009.

¹³⁰ Ruling by the Delegate Procurator for the National Police of August 29, 1991. Annex 26 to petitioners' communication of July 13, 2009, received July 17, 2009.

116. In this regard, not invoking certain provisions in the admissibility report cannot be understood as a finding or determination that it is impossible to analyze the facts under other provisions that turn out to be applicable to the facts in the petition.

117. This standard has also been embraced by the Inter-American Court in the case of *Furlan v. Argentina*, in which it stated as follows in response to a similar argument by the State concerned:

First, regarding the inclusion of new rights in the Report on Merits that were not previously listed in the Commission's Report on Admissibility, the Court confirms that in the American Convention and in the Rules of Procedure of the Inter-American Commission there is no regulation indicating that all of the rights allegedly violated must be established in the Report on Admissibility. In this regard, Articles 46 and 47 of the American Convention exclusively establish the requirements whereby a petition may be declared admissible or inadmissible, but do not impose on the Commission the obligation to determine which rights will [be] subject to the proceedings. Indeed, Article 48 of the Convention allows the Commission, after the petition has been admitted, if necessary, "to carry out an investigation, for the effective conduct of which [it shall] request, and the States concerned shall provide, all necessary facilities." In this regard, the Court considers that the rights specified in the Report on Admissibility are the result of a preliminary assessment of the petition in progress, hence the possibility of including other rights or articles allegedly violated at subsequent stages of the proceedings is not limited, provided that the State's right to defend itself is protected in the factual background of the case under consideration.¹³¹

118. In view of the foregoing, the Commission will include in its analysis on the merits the provisions of the American Convention that apply to the facts established in the instant case.

B. The right to life and integrity with respect to Valentín Basto Calderón and Pedro Vicente Camargo; and the right to integrity and special protection of children with respect to the child Carmenza Camargo (Articles 4, 5, 19 and 1(1) of the American Convention)

119. Article 4(1) of the American Convention on Human Rights establishes: "Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life."

120. Article 5(1) of the American Convention establishes: "Every person has the right to have his physical, mental, and moral integrity respected."

121. Article 19 of the American Convention provides: "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."

122. Article 1(1) of the American Convention provides:

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.

123. The Commission will analyze the facts the parties' arguments in the following order: (i) General considerations on the analysis of possible international responsibility in the context in which the events of the case took place; (ii) General considerations on the state's obligations to human rights defenders; (iii) The death threats made to Valentín Basto Calderón in light of the rights to life and integrity; and (iv) The

¹³¹ Furlan, para. 52.

death of Pedro Vicente Camargo and the wounds suffered by the child Carmenza Camargo in light of the rights to life and integrity.

1. General considerations on the analysis of possible international responsibility in the context in which the facts of the case unfolded

124. In the instant case there is no controversy as to the death of Mr. Valentín Basto Calderón. The dispute is focused on whether it is attributable to the State of Colombia. In that regard, the Commission considers it pertinent to recall the different situations that give rise to the international responsibility of the State under the American Convention, based on the consistent case-law of the organs of the system.

125. The Commission recalls that “the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention,” independent of it acting beyond or outside of the competences established by domestic law.¹³² This includes possible situations of support or tolerance by the authorities of violations of rights established in the American Convention.¹³³ The case-law of the inter-American system has also extensively developed the international responsibility of the states for acts committed by non-state agents. It is clear that a state cannot be responsible for any violation of human rights committed as between private persons within its jurisdiction. As the Court has established,

the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger.¹³⁴

126. In the section on facts proven the Commission described a variety of facts that include threats and harassment, situations that arose the day of the death of Mr. Basto Calderón in the zone in which it occurred, the actual assassination of the peasant leader and human rights defender, as well as the assassination and wounds inflicted on two additional persons in the context of that same incident. As arises from the facts proven, in this sequence of events both direct actions and omissions of state authorities are described. It is also indicated that the shots were fired by persons who were not identified and who took flight.

127. In addition, the Commission has considered as proven a context in which the stigmatization of peasant and social leaders as guerrilla sympathizers was tantamount to making them the target of attacks by illegal armed self-defense groups. At the same time, with the interpretation that was given for years of the prevailing legal framework, the State objectively created a risk to the inhabitants of the zones in which this situation had a special impact, with implications for the analysis of the attribution of state responsibility. As the Court has established in other cases regarding Colombia¹³⁵, this situation of risk, while it subsisted, accentuated the special duties of the State to prevent and protect in the zones in which there was a presence of paramilitary groups, as well as the obligation to investigate with due diligence the acts or omissions of state agents and private persons who attack the civilian population. The Inter-American Court has recognized that this risk generated by the State aggravated the situation of vulnerability faced by human

¹³² Velásquez Rodríguez, 164 and 170.

¹³³ Velásquez Rodríguez, 173.

¹³⁴ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123.

¹³⁵ I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 126.

rights defenders in Colombia, in particular those who denounced abuses committed by the armed forces and National Police.¹³⁶

128. In that regard, the Commission will analyze whether in light of the obligations to respect and ensure the impacts on the life and integrity of Mr. Valentín Basto Calderón and Mr. Pedro Vicente Camargo, as well as the impacts on the integrity of the child Carmenza Camargo, are attributable to the State. This analysis will be done taking into account the sequence of facts established by the Commission, the context in which they occurred, and the specific acts and omissions of state agents that have been shown.

2. General considerations on the state obligations to human rights defenders

129. The Commission reiterates that the work of human rights defenders is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law.¹³⁷ The aim that motivates their work is a matter of interest for society in general, and seeks its benefit. Accordingly, the Commission has considered that attacks on human rights defenders have a multiplier effect that goes beyond the individual defender and extends to those who defend similar causes¹³⁸ and directly affects the rest of society.¹³⁹

130. Precisely because of the fundamental nature of their work, the Inter-American Commission has established that the public authorities are under an obligation to adopt the measures necessary to create the conditions that enable those persons who so desire to freely carry out their activities aimed at promoting and protecting human rights. This state obligation, as the Commission has indicated, requires that the states not hinder the work done by the defenders in any way.¹⁴⁰

131. In that respect, internationally the states recognized, in the Declaration on Human Rights Defenders of 1998¹⁴¹: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”¹⁴² Since this recognition by the UN General Assembly, the right to defend human rights has also been recognized in the regional systems for the protection of human rights.¹⁴³

¹³⁶ See I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 81.

¹³⁷ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para. 1.

¹³⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para. 43; I/A Court H.R., *Case of Kiwis Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009 Series C No. 196, para. 153; I/A Court H.R., *Case of Huila Tense v. Peru*. Judgment of March 3, 2005. Series C No. 121, para. 78.

¹³⁹ *Id.*, para. 34.

¹⁴⁰ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, para. 31.

¹⁴¹ Declaration approved by the UN General Assembly by resolution A/RES/53/144, of March 8, 1999. Available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.Sp?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.Sp?OpenDocument).

¹⁴² Article 1 of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, approved by the UN General Assembly by resolution A/RES/53/144, of March 8 1999. Available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.Sp?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.Sp?OpenDocument).

¹⁴³ Thus, for example, in the inter-American system the right to defend human rights has been recognized by both the Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”). The IACHR understands that the exercise of the right to defend human rights cannot be subject to geographic restrictions and implies the possibility of freely and effectively promoting and defending any right whose acceptance is unquestioned; the rights and freedoms contained in the Declaration on Human Rights Defenders; and also “new rights or components of rights whose formulation is still a matter of debate.” See IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2012., para. 16. The Inter-American Court has underscored that by the principle of the indivisibility and interdependence of human rights, the defense of human rights “rights is not limited to civil and political rights, but necessarily involves economic, social and cultural rights monitoring, reporting and education”) and has noted that the fear caused human rights defenders by the assassination of a human rights defender because of his or her activities could diminish the possibility of them exercising their right to defender human rights by reporting violations. See, I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96; *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para. 147; and *Case of Nogueira de* [continues ...]

132. As regards the state duties to guarantee the work of human rights defenders, the Inter-American Court has noted that

the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.¹⁴⁴

133. The foregoing state duties, as indicated by the Commission, are directly related to the enjoyment of several rights protected in the Convention such as life, integrity, association, judicial guarantees and judicial protection which, taken together, allow for the free exercise of the activities of defense and promotion of human rights. In that regard, a negative impact on a human rights defender in retaliation for his or her activities may entail the violation of many rights expressly recognized by the inter-American instruments.¹⁴⁵

134. In its *Second Report on the Situation of Human Rights Defenders in the Americas*, the Inter-American Commission established that “every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, has to be considered as a human rights defender.”¹⁴⁶ As the Office of the United Nations High Commissioner for Human Rights (hereinafter “OHCHR”) has indicated, the criterion for identifying who should be considered a human rights defender is the activity carried out by the person and not other qualities, for example, whether he or she receives a payment for his or her work or whether he or she belongs to a civil society organization.¹⁴⁷

135. In the instant case, the Commission observes that the work of Valentín Basto fits clearly within the concept of human rights defender, insofar as in his role as social and peasant leader he publicly promoted respect for human rights and denounced abuses perpetrated by members of the armed forces and National Police as well as private persons in the department of Santander, in a historical context of violence and weakness of the institutions entrusted with administering justice.

136. In this context, the Colombian State had an obligation to adopt all measures necessary and reasonable to ensure the right to life, personal liberty, and personal integrity of human rights defenders who,

[... continuation]

Carvalho and one other. Judgment of November 28, 2006. Series C No. 161, para. 77. In the European system the *European Guidelines on Human Rights Defenders* were adopted. They include within their purpose: “to support and strengthen on-going efforts ... to promote and encourage respect for the right to defend human rights.” Brussels, June 10, 2009. Available at: <http://register.consilium.europa.eu/pdf/es/08/st16/st16332-re02.es08.pdf>. In 1999 the African Union adopted the *Grand Bay Declaration* recognizing the UN Declaration on Human Rights Defenders and the importance of developing and energizing civil society as fundamental elements in the process of creating receptivity to human rights in Africa. See *Grand Bay Declaration and Plan of Action*, adopted at the Ministerial Conference on Human Rights of the African Union held April 12 to 16, 1999 in Grand Bay, Mauritius. Available at: http://www.achpr.org/english/declarations/declaration_grand_bay_en.html.

¹⁴⁴ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009 Series C No. 196, para. 145.

¹⁴⁵ IACHR. *Second Report on the Situation of Human Rights Defenders*, December 31, 2012, para. 19.

¹⁴⁶ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 12. Available at: <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, March 8, 1999, Article 1. The OAS General Assembly, by resolution of June 7, 1999, called on the member states to adopt the measures necessary to protect human rights defenders. AG/Res. 1671 (XXIX-0/99).

¹⁴⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Rights, Geneva 2004. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet29sp.pdf>.

like Mr. Valentín Basto, denounced human rights violations and were in a situation of special vulnerability, namely the context of the armed conflict.¹⁴⁸

3. The threats against and death of Valentín Basto Calderón in light of the rights to life and integrity

3.1 The State's responsibility for the situation of Mr. Basto Calderón before his death

137. The violations of the American Convention perpetrated against Valentín Basto should be considered in the context of a long series of threats and acts of harassment and persecution against him because of his activity as a social leader and human rights defender in the municipality of Cerrito. As was established, around 1988 he was the president of the Asociación Nacional de Usuarios Campesinos (ANUC) for the province of García Rovira, and vice president of the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira. In addition, he served as member of the municipal council of Cerrito and vice chair of the Council. According to the facts proven, as a leader and spokesperson of the peasant sector that organized and promoted the fundamental rights of the population in that part of the country, he denounced the acts of harassment and threats by the armed forces and National Police and the acts of violence committed in the municipality of Cerrito.

138. As appears from the determinations of fact, members of the Police and Army threatened him with death, harassed him, and accused him of being a collaborator of the guerrillas. These events had a clear impact on the personal security of Mr. Basto Calderón. The testimony of family members and community members indicates consistently and uniformly that in the months prior to the death of Valentín Basto armed men with their faces covered and in civilian dress perpetrated acts of harassment, intimidation, and aggression. During these incidents Army troops surrounded the house and then withdrew. As has been established, during the months prior to this death Valentín Basto Calderón told friends and family members of his fear of leaving his residence in the rural area due to the persecution by the Army. In addition, approximately one month before his death the Army again conducted an arbitrary and illegal search of his residence in the rural area.

139. The Commission considers that there are sufficient elements that indicate that the sources of this series of threats and harassment were state agents of both the Police and the Army. In that sense, the situation of insecurity and the consequent impairment of his psychological and moral integrity, given Mr. Basto Calderón's fear as he continued to carry out his work prior to his death, is attributable to the Colombian State.

3.2 The State's responsibility for the death of Mr. Basto Calderón

140. In the facts proven it was established that on February 21, 1988, Valentín Basto was the target of an attack with firearms perpetrated by three unidentified persons in civilian dress. He died as a result of the attack from multiple bullet wounds. As will be analyzed below, in the same incident Pedro Vicente Camargo was mortally wounded – and later died — when reached by the bullets, as he and his daughter Carmenza Camargo were walking along the same street as Valentín Basto.

141. In light of the standards for attributing state responsibility described supra, the Commission considers that in this case the analysis cannot be limited, as the State requests, to acts committed by non-state actors and to whether or not reasonable measures of prevention are in place. In the instant case, a context of grave risk to human rights defenders existed stemming from their stigmatization as alleged actors in the armed conflict. According to the context established, part of the risk was created in its origins by the State itself, which according to the inter-American case-law required special diligence of the Colombian State to dismantle it, and to protect those persons who were particularly affected. To the contrary, it is proven that in

¹⁴⁸ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 90.

the instant case the very security forces of the State, both the Police and the Army, not only breached that special obligation but moreover were directly involved in the threats to and harassment of Valentín Basto Calderón. In that regard, the analysis of state responsibility for the death of Mr. Basto Calderón should start from the basis that the source of risk, both in general and in the particular events against the alleged victim, came from the State itself.

142. In addition to the State itself having contributed to create the situation of risk faced by Mr. Basto Calderón, there are factual elements on omissions the very day of the assassination that also involve security agents of the State, specifically the Army and the Police. Accordingly, both the attack and the escape of the direct perpetrators occurred without the Police intervening, or displaying any intent to intervene. Specifically, the assassination took place a short distance from the Police station without, to this day, any explanation having been given on the lack of a timely response. Nor did the Army display its intention to intervene and even dropped habitual routines that would have made their arrest possible at the checkpoint usually set up on Sundays along the road from Cerrito to Málaga. These omissions were verified by state agencies with disciplinary jurisdiction and in one case they even merited a formal sanction. In addition, there is at least one witness statement indicating that a Police officer expressly ordered his subordinates not to patrol that day. The Commission considers that these elements, analyzed in light of the previous threats, allow one to infer a situation of collaboration that impacts directly on the international responsibility of the State.

143. In addition to all the foregoing is the evidence of the continuity of the threats and harassment after the death, the source of which continued to be the armed forces and National Police. One of the examples was what happened at the funeral for Mr. Basto Calderón.

144. In view of all the foregoing, the Commission considers that all the information on what happened before Mr. Basto Calderón's death, the very day of his assassination, and afterwards, together with the deficient investigation which after 26 years in the preliminary phase has been unable to clarify any responsibility whatsoever, makes it possible to conclude that the State is responsible for violating the rights to life and integrity, to the detriment of peasant leader and human rights defender Valentín Basto Calderón, pursuant to Articles 4(1) and 5(1) of the American Convention, in relation to the obligations established at Article 1(1) of the same instrument.

145. In relation to the petitioners' arguments about the alleged violation of the right to personal security, protected at Article 7 of the American Convention, the Commission considers that it is not necessary to make an independent pronouncement given the conclusions already reached with respect to Articles 4 and 5 of the American Convention.

4. The death of Pedro Vicente Camargo and the wounds suffered by the child Carmenza Camargo in light of the rights to life and integrity

146. As was shown, in the same attack in which Valentín Basto Calderón was assassinated, Pedro Vicente Camargo suffered a mortal wound, and his eight-year-old daughter Carmenza Camargo was wounded. After being taken to the health post in the municipality, Mr. Camargo died from his wounds. As appears from the foregoing determinations of fact and law, Pedro Camargo and his daughter were affected by these events merely because of walking down the same street in the line of fire of the direct perpetrators of the assassination of Valentín Basto. These acts of violence were perpetrated just meters from the offices of the National Police in the municipality of Cerrito and were clearly aimed at taking the life of Valentín Basto even at the cost of the security and integrity of the civilians who were walking near him, which could have included children, and indeed did.

147. The Commission already concluded that the State of Colombia is responsible for the attack perpetrated against Mr. Basto Calderón on February 21, 1988. In that regard, given its connection to the attack against Mr. Basto Calderón, in which the Commission established the existence of a situation of risk created by the State and found acts of collaboration of state agents the very day of the assassination, the Commission considers that the State is also responsible for the wounds followed by the death of Pedro

Vicente Camargo, as well as the wounds suffered by his daughter, Carmenza Camargo, pursuant to Articles 4(1), 5(1), and 19 of the American Convention, respectively, in relation to the obligations established at Article 1(1) of the same instrument.

C. The rights to integrity, to honor and dignity with respect to the family members of Valentín Basto Calderón; and the right to integrity with respect to the family members of Pedro Vicente Camargo (Articles 5(1), 11, and 1(1) of the American Convention)

148. As regards the right to integrity, the Court has indicated that victims' next-of-kin may be affected in their psychological and moral integrity as a result of the particular situations their loved ones suffered, and the subsequent acts or omissions of the domestic authorities vis-à-vis such acts.¹⁴⁹

149. Article 11 of the American Convention establishes in the pertinent part: "Everyone has the right to have his honor respected and his dignity recognized." The Commission has indicated that situations in which state authorities make statements or issue communiqués publicly incriminating a human rights defender for facts that have not been judicially verified constitutes a violation of his or her right to honor and dignity.¹⁵⁰ In this context, the IACHR in a contentious case established that the statements and communiqués of the State issued against a person for repeated criminal conduct that was not shown constituted an attack on his honor and reputation, since they directly harmed his good name and reputation, and particularly when there were judicial decisions that had acquitted him, making said conduct public harassment of him.¹⁵¹ In addition, the Commission has found that speech that discredits human rights defenders and their work has a negative impact on the credibility and integrity of activities related to the defense of human rights in the eyes of society at large.¹⁵²

150. As appears from the facts proven, Valentín Basto Calderón was threatened and harassed by members of the Army and Police, and often accused of being a member or collaborator of the guerrilla forces because of his work as a social leader. These accusations extended to his family and especially his children, whose honor, dignity, privacy and security were impaired, and as a result they have lived with fear in their day-to-day lives.

151. The family members of Valentín Basto suffered acts of harassment and persecution before and particularly after his extrajudicial execution. This revictimization affected, in the days following his burial, his wife, children, and all other relatives of the peasant leader. These events led to at least one member of the family becoming forcibly displaced from Cerrito and were the prelude to the extrajudicial execution of Martín Calderón Jurado, Valentín Basto's cousin, after he replaced Valentín in his functions as President of the local ANUC.

152. In addition, as has been established, four months after the extrajudicial execution of Valentín Basto, his nephew Heli Basto Salinas was the victim of threats, acts of intimidation, and even acts contrary to his integrity on having been tied to a post for several hours while abused and insulted by members of the Army because of belonging to the Basto family. Specifically, he testified that after he recognized one of the soldiers frequently involved in harassing his uncle, he was threatened with a firearm and tied to a post for several hours. After this incident he remained in exile in Venezuela for eight years. In addition, the family had to face another fatality in October 1988, when Martín Calderón Jurado was assassinated with the acquiescence and collaboration of state agents.

¹⁴⁹ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 96.

¹⁵⁰ IACHR, *Democracy and Human Rights in Venezuela*, para. 616.

¹⁵¹ IACHR, Report No. 43/96, Case 11,430, José Francisco Gallardo (Mexico), October 15, 1996, para. 76.

¹⁵² UN, Commission on Human Rights, Report submitted by the Special Representative of the Secretary General on human rights defenders, Ms. Hina Jilani, 2004 Annual Report, Doc. E/CN.4/2005/101, para. 55; see IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, para. 95.

153. As regards the family members of Pedro Vicente Camargo, the Commission considers that the fact of his death itself constitutes an impairment of their integrity due to the loss of a loved one.

154. In addition, in cases in which there was not a complete and effective investigation, the Court has indicated that:

... the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.¹⁵³

155. The Commission recalls that the Court has established that the lack of effective remedies constitutes a source of additional suffering and anguish for the victim's next-of-kin.¹⁵⁴ In the instant case, as will be analyzed subsequently, there has not been a complete investigation into the facts, nor an effective judicial proceeding that would make it possible to identify and punish the persons responsible for the assassination of Valentín Basto Calderón and Pedro Vicente Camargo, and the wounds suffered by Carmenza Camargo Sepúlveda.

156. In view of the foregoing, the Commission considers that the State is responsible for violating Article 5(1) of the American Convention to the detriment of María Santos Carvajal, Hernán Basto, Israel Basto, Rosa Herminda Basto, Hilda Basto, Graciela Basto, and Araminta Basto, in their capacity as family members of Valentín Basto. In addition, to the detriment of Carmenza, Nelson, Pedro Pablo, and Javier Orlando, all with the last names Camargo Sepúlveda, in their capacity as family members of Pedro Vicente Camargo.

157. Finally, as regards the petitioners' allegations of the violation of the freedom of conscience and religion in public and private, protected by Article 12 of the American Convention, the Commission considers that there are not sufficient indicia to make an independent pronouncement given the conclusions already reached in this section of this report.

D. The right to freedom of association and political rights with respect to Valentín Basto Calderón (Articles 16, 23, and 1(1) of the American Convention)

158. The Commission considers that the instant case has specific particularities since Valentín Basto Calderón was engaged in the defense of human rights at the time of his assassination both through his political leadership and by exercising the right of freedom of association on belonging to organizations dedicated to the defense of human rights.

159. In this regard, as has been established, Valentín Basto was the president of the Asociación Nacional de Usuarios Campesinos (ANUC) for the province of García Rovira, and vice president of the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira. The ANUC was originally created by President Carlos Lleras Restrepo in 1967 and in the 1970s became an independent peasant organization promoting land reform. Around 1987 it participated, along with other union, community, and student

¹⁵³ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 102; *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, para. 195; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146; and *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 102.

¹⁵⁴ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 261. See also I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 145; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 145; and *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 94.

organizations, in mobilizations that were called in the department of Santander to demand “the end of militarization, respect for human rights, and defense of the land.”¹⁵⁵

160. The Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira was founded in August 1987, at the Third Forum for Peace in Defense of Life, and it disseminated information and reports of human rights violations perpetrated against peasants in the province of García Rovira by means of a newsletter.

161. In addition, Valentín Basto, as of the date of his death, held an elective position in the municipality of Cerrito, where he served as council member and vice president of that Municipal Council.

162. In summary, considering that the activities carried out by Valentín Basto Calderón in defense of human rights were carried out in his work as a member of a civil society organization and by serving in public office, the Commission considers that the analysis of the right to political participation and freedom of association in the instant case should be mindful of the relationship those rights have with the promotion and defense of human rights.¹⁵⁶

163. As regards the freedom of association Article 16 of the American Convention establishes that:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
- ...

164. Regarding political rights, Article 23 of the Convention indicates that:

1. Every citizen shall enjoy the following rights and opportunities:
 - (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - (c) to have access, under general conditions of equality, to the public service of his country..
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

¹⁵⁵ Alfredo Molano, *En medio del Magdalena Medio*, PDPMM and Peace Program of CINEP, p. 55. Attached as petitioners’ annex of April 12, 2012.

¹⁵⁶ In this regard, the Commission recalls that the free exercise of human rights is directly related to the enjoyment of several rights protected in the Convention such as life, integrity, association, judicial guarantees and judicial protection which, taken together, allow for one to freely engage in activities of defending and promoting human rights. In this regard, an attack on a human rights defender in retaliation for his or her activities may entail a violation of multiple rights expressly recognized by the inter-American instruments. IACHR, Second Report on the Situation of Human Rights in the Americas, December 31, 2011, para. 19. IACHR, Report of Case 12,472 Carlos Antonio Luna López et al., July 22, 2011, para. 226. I/A Court H.R., Case of Kawas Fernández, Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

165. As the Commission has indicated above, the States are under an obligation to take positive actions that translate into the suppression of hostile or dangerous environments¹⁵⁷ and in the duty to bring about conditions to eradicate violations by state agents or private persons¹⁵⁸ such that they can freely perform their activities to defend and promote human rights.

166. Specifically, the Inter-American Court has mentioned, among the actions that should be taken by the States to guarantee the activities in defense of human rights, the duty to provide “the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”¹⁵⁹ As indicated, the Commission observes that the State had the obligation to ensure the exercise of the political rights and freedom of association of Valentín Bastos Calderón.

167. In the instant case, the Commission observes that the reports of human rights violations made by the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira, in the historical context of that region of Colombia turned its representatives into targets of threats by actors in the armed conflict, especially the Army, which constituted a serious impediment to his activities on behalf of human rights. In addition, both in his position as council member and vice president of the Municipal Council, and as member of an organization, Valentín Basto denounced the abuses, harassment, and intimidation committed by the armed forces and National Police against the peasant population.

168. In addition, according to what has already been proved by the Commission, the death of Valentín Basto – along with that of Martín Calderón Jurado, who served in similar positions in ANUC and the Committee – took place in a chain of attacks against members of these associations whose result was a negative impact on their activity and continuity. As appears from the witness statements in the record of the case, after the extrajudicial executions the Comité de Solidaridad y Defensa de los Derechos Humanos of García Rovira broke up and the local ANUC went into decline and was only able to preserve an irregular and low level of operations.

169. The Commission highlights the statement by Mr. César Carrillo, who indicated as follows: “The Committee broke up due to the deaths of Valentín Basto and Martín Calderón and due to the attacks on the priests who were members, Fredy Álvarez and Samuel Durán, and the death threat I received.”¹⁶⁰

170. In summary, the extrajudicial execution of Valentín Basto silenced that voice of protest, suppressed its effective mandate, and had a significant negative impact on the social and political organizing processes in the community.

171. In view of the foregoing, the Commission concludes that the State breached the obligation to adopt measures aimed at preserving and guaranteeing the right of association and political participation in representation of the community, in view of the role played by Valentín Basto as a peasant leader, human

¹⁵⁷ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 45. See also I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009 Series C No. 196, para. 74.

¹⁵⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 44. It should be noted that the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, has expressed her concern about the ongoing attacks on human rights defenders by state agents. For that reason she has decided to focus one of her thematic reports to the General Assembly on the question of human rights violations committed against human rights defenders by non-state actors and their consequences for the full enjoyment of their rights by defenders. See United Nations General Assembly, A/65/223, Report of the Special Rapporteur on the situation of human rights defenders, August 4, 2010. Available in its English-language version at: <http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>

¹⁵⁹ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145; I/A Court H.R., *Case of Nogueira de Carvalho and one other* Judgment of November 28, 2006. Series C No. 161, para. 77.

¹⁶⁰ Annex 45 to the petitioners’ brief of 2009, cited in the additional observations on the merits of April 12, 2012.

rights defender, and elected representative, in violation of Articles 16, 23, and 1(1) of the American Convention on Human Rights.

E. The rights to judicial guarantees and judicial protection (Articles 8, 25, and 1(1) of the American Convention)

172. Article 8(1) of the American Convention establishes:

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

173. Article 25(1) of the Convention establishes:

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.

174. The Inter-American Court has established that every person who has suffered a violation of his or her human rights has “the right ... to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”¹⁶¹

175. Specifically in the case of human rights defenders, the Commission has indicated that the most effective measures of protecting them is through a diligent and effective investigation of the acts of violence directed against them, and to punish the persons responsible.¹⁶² The Office of the United Nations High Commissioner for Human Rights has indicated that the failure to investigate and punish those responsible for violations against human rights defenders “is the factor that most increases the risk to human rights defenders, as it leaves them in a situation of defenselessness and lack of protection.”¹⁶³

176. The duty to investigate is a duty of means, and not of results, that must be assumed by the State as its own legal obligation and not a mere formality preordained to be ineffective.¹⁶⁴ In that regard, the investigation must be carried out with due diligence, in a diligent, effective, serious, and impartial manner¹⁶⁵, and within a reasonable time.¹⁶⁶ In the case of human rights defenders the IACHR has considered that as part of the due diligence required in the investigations, the investigative authority should take into account the

¹⁶¹ I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, para. 48.

¹⁶² IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006

¹⁶³ OHCHR. *Defender los derechos humanos: entre el compromiso y el riesgo*. Executive Summary, para.7. <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>

¹⁶⁴ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

¹⁶⁵ I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 130.

¹⁶⁶ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, para. 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382.

activity of the human rights defender attacked to identify the interests that could have been affected by that activity, so as to be able to establish lines of investigation and hypotheses regarding the crime.¹⁶⁷

177. Finally, the Commission recalls that the obligation to investigate and punish any act that might entail a violation of the rights protected by the Convention requires that one punish not only the direct perpetrators of the acts violative of human rights, but also the masterminds behind such violations.¹⁶⁸ The Inter-American Court has emphasized the special effect of impunity in the case of human rights defenders, indicating that it generates “an intimidating effect on other human rights defenders. The fear caused by such an event can directly reduce the possibility of human rights defenders exercising their right to perform their work by means of denunciations.”¹⁶⁹

178. Next, the IACHR will determine whether the activity undertaken by the organs of the State to judicially clarify the death of Valentín Basto, the wounds followed by the death of Pedro Camargo and the wounds suffered by Carmenza Camargo satisfy the standards established in the American Convention.

179. As has already been established, since the attack that resulted in two fatalities and wounds to an eight-year-old child on February 21, 1988, the criminal investigation has continued in the preliminary stage, currently entrusted to the Office of the 67th Specialized Prosecutor of the Human Rights and International Humanitarian Law Unit, without the criminal liability of any individual having been established, without any charges, and without having moved on to a more advanced procedural stage. The investigative steps that have been taken and that are in the record before the IACHR describe several removals from one jurisdiction to another, initiatives to suspend the procedure for lack of evidence, measures to collect testimonial evidence (with emphasis on the victims’ next-of-kin more than on fact witnesses), and judicial inspections that frequently went nowhere.

180. Specifically, the authorities failed to collect evidence that would be fundamental for determining the circumstances of the deaths of Valentín Basto and Pedro Camargo, and of the wounds to Carmenza Camargo; for determining the identity of the direct perpetrators of the crime; for determining the participants, collaborators, and masterminds of the crime against a peasant leader who had previously faced accusations, threats, and harassment by members of the armed forces and National Police; the connection between the conduct of the armed forces and National Police during and after the fact, and the crime against Valentín Basto.

181. As appears from the evidence produced, despite the early intervention of the Municipal Mixed-Jurisdiction Court of Cerrito, after the attack essential evidentiary measures were not taken nor was other evidence preserved that would be fundamental for the judicial clarification of the deaths of Valentín Basto Calderón and Pedro Camargo. Specifically, no photographs were taken of the corpses at the crime scene or afterwards. In addition, the judicial proceeding does not include the autopsy reports on the victims but rather certifications that they were done. The Office of the Attorney General of the Nation indicated in a report that in a conversation with the nurse Graciela Jurado Bohórquez – who worked at the center where the bodies of Valentín Basto Calderón and Pedro Vicente Camargo were taken — it was established that the autopsies were not performed, but only that a medical report was produced, nothing more.¹⁷⁰

182. The information produced into the record before the Commission indicates that there were other omissions in the investigation that contribute to the lack of determination of the means employed by the direct perpetrators of the crime and therefore of their identity. Specifically, there was no determination of

¹⁶⁷ IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 236.

¹⁶⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 109.

¹⁶⁹ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 96.

¹⁷⁰ Report No. 414314-DNCTI-DH/DHI of the Human Rights Group of the CTI, Office of the Attorney General of the Nation, of August 14, 2008. Annex 95 to petitioners’ communication of July 13, 2009, received July 17.

the caliber or type of weapon used in the attack. As appears from the official act of removing the body of Valentín Basto Calderón, no ballistics tests were performed, even though shrapnel and shells were found at the crime scene.¹⁷¹

183. The information available also indicates that in addition to the irreparable omissions in the production of evidence fundamental for clarifying the crime, efforts were made to produce other evidence that were doomed to fail. Specifically, it was ordered that an additional statement be taken from Martín Calderón Jurado on a date after his death.

184. From the time it was initiated in 1988 to the date of the adoption of this report the criminal justice investigation has remained at the preliminary inquiry stage. The analysis of the judicial proceedings and actions domestically reveal substantial periods of unexplained inactivity –among them from April 2002 to May 2006 – as well as delays in the collection of evidence or in carrying out or obtaining results in the judicial investigative measures, as well as initiatives to suspend the investigation.

185. While it has been alleged that the situation of public order in the area made it difficult to produce evidence at the crime scene, there is no clear indication of what additional evidence was to be collected there 15 years after the crime was perpetrated. Nor is there an indication of what other actions that did not involve activities incompatible with the public order situation in the municipality of Cerrito were carried out during that period to clarify the crime.

186. The delay in the administration of justice also impaired the collection of evidence and judicial tasks requested by the investigative entity. In some cases, the delays led the Delegate Prosecutor of the National Human Rights and International Humanitarian Law Unit to take note in the proceeding and to ask that disciplinary measures be adopted.

187. While the State affirms that the conduct of the judicial authorities has been diligent and steadfast in terms of giving impetus to and managing the criminal investigation and that circumstances have arisen which, from its point of view, are not attributable to it, and would impact the progress of the process, such as the situation of public order in the zone, it does not present information that specifically illustrates the diligence of the judicial authorities in relation to this case. In this respect, the Commission observes that the information produced by the State does not explain or justify the time elapsed from the outset of the investigation without any procedural advance whatsoever, nor has it indicated what actions are currently being taken to move towards the conclusion of the case.

188. The Inter-American Court has defined impunity as “the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for the violations of rights protected by the American Convention.”¹⁷² It has also indicated that in those cases in which certain results have been obtained, impunity subsists to the extent that the truth of what happened has not been clarified, and the persons responsible have not been established.¹⁷³

¹⁷¹ Official act of removing the body of Valentín Basto Calderón of February 21 1988. Annex 2 to petitioners’ communication of July 13, 2009, received July 17.

¹⁷² I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, para. 237; and the *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 203; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 170.

¹⁷³ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 320. In the *Gómez Paquiyauri* case the Court indicated that the impunity of those responsible has not been total, for two direct perpetrators have been prosecuted and found guilty for these acts. Nonetheless, as of the date of this judgment, after more than 13 years, the masterminds behind these facts have not yet been prosecuted or punished. Therefore, a situation of grave impunity has prevailed that constitutes a breach of the State’s duty to investigate and punish the persons responsible for those acts in violation of human rights in the instant case, injurious to the victims’ family members and that promotes the chronic repetition of the human rights violations in question. I/A Court H.R., *Case of the Gómez Paquiyauri brothers*. Judgment of July 8, 2004. Series C No. 110, para. 228.

189. The Court has also established that in the case of clarifying the responsibility of state agents and private persons for planning an extrajudicial execution, the state has the duty to initiate, sua sponte and without delay, a serious, impartial, and effective investigation that is not undertaken as a mere formality preordained to be ineffective.¹⁷⁴

190. In the case under review, as of the date of the instant report a quarter-century has elapsed since the extrajudicial execution of Valentín Basto, the death of Pedro Camargo, and the wounds suffered by Carmenza Camargo, without effective measures having been adopted to prosecute the direct perpetrators, the masterminds, their possible accomplices, and those who facilitated the crime by acts of omission.

191. Finally, the Commission observes that evidence was ordered, and numerous judicial inspections were carried out aimed at identifying the members of the National Police and the Army posted in the jurisdiction in which the facts occurred in order to collect evidence on their participation in the facts. Despite the fundamental nature of this evidence given the context and the potential to identify possible suspects, as appears from the judicial reports, that evidence either could not be collected, was incomplete, or was received with unusual delay. Indeed, it appears that the police authorities burned papers and documents that were relevant to the investigation, specifically the reports and investigations archived in the general departmental archive of the Police Department of Santander for 1988.¹⁷⁵ This obstruction of fundamental evidence has also contributed to the situation of impunity in this case.

192. Based on the foregoing considerations, the Commission concludes that the State has not deployed the means necessary to fulfill its duty to investigate, prosecute, and punish those responsible for the extrajudicial execution of Valentín Bastos and Pedro Camargo, and for inflicting the wounds on Carmenza Camargo, as per Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) of the same treaty, to the detriment of their family members María Santos Carvajal, Hernán Basto, Israel Basto, Rosa Herminda Basto, Hilda Basto, Graciela Basto, Araminta Basto, Carmenza Camargo Sepúlveda, Nelson Camargo Sepúlveda, Pedro Pablo Sepúlveda Camargo, and Javier Orlando Camargo Sepúlveda.

VI. EVENTS AFTER REPORT No. 4/14

193. On April 1, 2014, the Commission adopted merits report No. 4/14 and sent it to the State on May 14, 2014. In that report, the Commission recommended:

1. Ordering comprehensive reparations in favor of Carmenza Camargo and the family members of Messrs. Valentín Basto Calderón and Pedro Vicente Camargo for the violations of the American Convention established in this report.
2. Carrying out an impartial and exhaustive investigation in order to identify and punish the direct perpetrators and masterminds in the death of Valentín Basto Calderón; the wounds to Pedro Vicente Camargo followed by his death; and the wounds to Carmenza Camargo.
3. Holding ceremonies aimed at recovering the historical memory of Valentín Basto Calderón acknowledging his status as social leader, in light of the conclusions on state responsibility reached in the body of this report.

¹⁷⁴ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 296; *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, para. 223; and *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 146. See also I/A Court H.R., *Case of the Gómez Paquiyauri brothers*. Judgment of July 8, 2004. Series C No. 110, para. 229.

¹⁷⁵ Official Note No. 84 of the Department of Police of Santander, Archive and Correspondence Group. Annex 98 to petitioners' communication of July 13, 2009, received July 17.

4. Ordering the administrative, disciplinary, and criminal justice measures called for in response to the acts or omissions of the state officials who contributed to the denial of justice and impunity in relation to the facts of the case.

5. Adopting legislative, institutional, and judicial measures aimed at reducing the exposure to risk of the human rights defenders who are at risk. In this regard, the State should:

5.1 Strengthen the institutional capacity to combat the pattern of impunity in response to the threats to and deaths of human rights defenders by drawing up protocols for investigation which, taking into account the risks inherent in the work of defending human rights, would make it possible to conduct an exhaustive investigation under this hypothesis.

5.2 Strengthen the mechanisms for effectively protecting persons whose statements have a major impact in the investigations, and who are at risk due to their involvement.

5.3 Develop adequate and expeditious measures of institutional response that make it possible to provide effective protection to human rights defenders at risk.

194. In the proceeding subsequent to the notification of the report on the merits, the Commission received reports from the State and briefs from the petitioners on the status of compliance with the recommendations made by the IACHR. During this period, the Commission granted the State a total of 10 extensions to the deadline established in Article 51 of the American Convention. In its requests for extensions, the Colombian State expressly declined to raise preliminary objections of failure to comply with the aforementioned deadline should the case be submitted before the Inter-American Court.

195. After evaluating the information available on the status of compliance with its recommendations, the Commission ruled by an absolute majority on February 14, 2017, to not send the case to the Inter-American Court and proceeds to publish the report on the merits. In the next section, the Commission gives its conclusions on compliance with its recommendations.

VII. EVENTS AFTER REPORT No. 34/17

196. On May 21, 2017, the Commission adopted merits report No. 34/17 where it reiterated its recommendations of report No. 4/14.

197. The report was notified to the parties on April 12, 2017 and, based on Article 51 of the American Convention, the IACHR granted them a period of one month to submit information on compliance with the recommendations contained in the same. To date, the State has not submitted information on the status of compliance with the recommendations. The Commission notes that the petitioners also did not submit information subsequent to the issuance of Report No. 34/17.

VIII. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

198. Since the State did not submit information after the notification of report No. 34/17, the IACHR recapitulates the analysis of compliance with the recommendations already made.

199. First of all, the Commission highlights that on May 6, 2015, the State and the petitioners signed an agreement to comply with recommendations. This agreement was signed in the presence of the IACHR. Regarding this, the IACHR notes that the content of this agreement substantially incorporates the content of the recommendations established in report on the merits number 4/14.

200. **With regard to the first recommendation**, the State reported that it had complied by granting the victims the compensation it had agreed upon with the petitioners, with the exception of Mr. Nelson Camargo. With regard to Mr. Camargo it said that the Justice Ministry was preparing to make the corresponding payment. Likewise, the State reported that on April 17, 2016, an event was held in the main

plaza of the Cerrito municipality to recognize the State's international responsibility. The State added that it continues to take the steps necessary to ensure that the victims are provided with medical and psychological care. The petitioners agreed with the State's statements.

201. The Commission views positively the payment of the compensation to the victims and the public event held in coordination with the relatives of the direct victims to recognize international responsibility. The IACHR also appreciates the steps taken by the State to ensure that the victims are provided with medical and psychological care. Nonetheless, the Commission takes note that in its latest report, the State indicated that it has yet to pay the compensation to Mr. Camargo. The IACHR therefore finds that the State has partially complied with the first recommendation.

202. **Regarding the second recommendation**, the State reported on steps taken in the domestic criminal investigation. Regarding this, the Commission takes note of the actions taken by the State. However, the IACHR notes that the investigation has made no major progress toward punishing the individuals responsible. Consequently, the Commission finds that the State has not complied with the second recommendation. Despite this failure to comply with a measure that is essential for comprehensive reparation in a case such as this one, the Commission opted to move to publish taking into account the petitioners' express agreement with doing so.

203. **With regard to the third recommendation**, the State reported that on April 17, 2016, during an event held to recognize the State's international responsibility, a plaque was unveiled in the main plaza of the Cerrito municipality commemorating Mr. Basto Calderón. Likewise, the State indicated that it was conducting the corresponding consultations with the Office of the Ombudsman for creating and launching a human rights course of study that would be named after Mr. Basto.

204. The Commission views positively the plaque placed in the main plaza of the Cerrito municipality commemorating Mr. Basto, a measure that was agreed upon with the relatives of the victim. However, the IACHR notes that to date, the parties have not been able to reach an agreement on the implementation of a human rights course to bear Mr. Basto's name. The IACHR therefore finds that the State has partially complied with the third recommendation.

205. **Regarding the fourth recommendation**, the Commission notes that the parties did not provide any information. The IACHR concludes it therefore does not have enough information to determine whether it has been complied with.

206. **Regarding the fifth recommendation**, the State provided extensive information on the policies implemented to protect human rights defenders in Colombia, including: i) the creation and implementation of the National Protection Unit; and ii) the adoption of Decree 1066 of 2015 - Prevention program to protect the rights to life, liberty, integrity, and safety of certain persons. In its most recent report, the State did not provide information on this point.

207. The IACHR appreciates the policies implemented to protect human rights defenders in Colombia. Based on the foregoing, the IACHR finds that the State has adopted a number of relevant measures to protect human rights defenders. However, in the framework of its authorities to conduct thematic and geographic monitoring, the IACHR has continued to receive extremely concerning information on continual threats against and murders of human rights defenders in 2016 and 2017 thus far. In this regard, the IACHR understands the State to have partially complied with the fourth recommendation, but the specific impact of the measures it has implemented insofar as the non-repetition of incidents such as the ones in this case must continue to be monitored.

IX. FINAL CONCLUSIONS AND RECOMMENDATIONS

208. The Inter-American Commission finds that the State has made substantial progress toward complying with a number of the recommendations made in report 4/14. The Commission also appreciates the efforts made by both parties to conduct a constructive dialogue and process toward that compliance.

209. Based on the considerations of fact and law set forth throughout this report, the Commission reiterates its conclusions to the effect that the Republic of Colombia is responsible for:

- The violation of the rights to life, humane treatment, and freedom of association, and the right to participate in government, as established in articles 4, 5, 16, and 23 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Valentín Basto Calderón.
- The violation of the right to life and personal integrity established in articles 4 and 5 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Pedro Vicente Camargo.
- The violation of the right to personal integrity established in Article 5 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Carmenza Camargo.
- The violation of the rights to humane treatment and honor and dignity established in articles 5 and 11 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of the relatives of Valentín Basto Calderón.
- The violation of the right to personal integrity established in Article 5 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of the relatives of Pedro Vicente Camargo.
- The violation of the rights to fair trial and judicial protection established in articles 8 and 25 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Carmenza Camargo and the relatives of Valentín Basto Calderón and Pedro Vicente Camargo.

210. By virtue of the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA CONTINUE MAKING THE EFFORTS NECESSARY TO FULLY COMPLY WITH THE FOLLOWING RECOMMENDATIONS,

1. Order comprehensive reparations in favor of Carmenza Camargo and the family members of Messrs. Valentín Basto Calderón and Pedro Vicente Camargo for the violations of the American Convention established in this report.
2. Carry out an impartial and exhaustive investigation in order to identify and punish the direct perpetrators and masterminds in the death of Valentín Basto Calderón; the wounds to Pedro Vicente Camargo followed by his death; and the wounds to Carmenza Camargo.
3. Hold ceremonies aimed at recovering the historical memory of Valentín Basto Calderón acknowledging his status as social leader, in light of the conclusions on state responsibility reached in the body of this report.
4. Order the administrative, disciplinary, and criminal justice measures called for in response to the acts or omissions of the state officials who contributed to the denial of justice and impunity in relation to the facts of the case.
5. Adopt legislative, institutional, and judicial measures aimed at reducing the exposure to risk of the human rights defenders who are at risk. In this regard, the State should:

5.1 Strengthen the institutional capacity to combat the pattern of impunity in response to the threats to and deaths of human rights defenders by drawing up protocols for investigation which, taking into account the risks inherent in the work of defending human rights, would make it possible to conduct an exhaustive investigation under this hypothesis.

5.2 Strengthen the mechanisms for effectively protecting persons whose statements have a major impact in the investigations, and who are at risk due to their involvement.

5.3 Develop adequate and expeditious measures of institutional response that make it possible to provide effective protection to human rights defenders at risk.

X. PUBLICATION

211. Based on the foregoing considerations and pursuant to Article 47.3 of its Rules of Procedure, the IACHR has decided to publish this report and to include it in its Annual Report to the General Assembly of the Organization of American States. Pursuant to the provisions of the instruments governing its mandate, the Inter-American Commission will continue to evaluate measures adopted by Colombia in respect of the above-mentioned recommendations until it finds that they have been implemented in full.

Done and signed in Buenos Aires, Argentina, on the 25st day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, and James L. Cavallaro, Commissioners.