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CASE 12.713

REPORT ON THE MERITS (PUBLICATION)

JOSE RUSBEL LARA ET AL.
COLOMBIA

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Organization of
American States

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I. SUMMARY

1. On March 1, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or the “IACHR”) received a petition lodged by *Asociación para la Promoción Social Alternativa* (MINGA) (hereinafter “the petitioners”) alleging that the Republic of Colombia (hereinafter, “the State” or “the Colombian State”) bore international responsibility for the death of José Rusbell Lara, a human rights defender murdered on November 8, 2002, by members of a paramilitary group known as *Bloque Vencedores de Arauca* in the Municipality of Tame, Arauca Department. The petition alleges that the State of Colombia is responsible on account of its failure to protect the life of José Rusbell Lara, despite the fact that the latter had been beneficiary of precautionary measures ordered by the IACHR since July 2002, and for its failure, after the murder, either to carry out a diligent investigation of the facts, or to punish all those responsible. In particular, the petitioners say that the decision on the part of Colombia to extradite one of the individuals included in the investigation to the United States of America had obstructed the progress of the inquiry, prompting a situation of impunity.

2. On August 5, 2009, the IACHR adopted Report 70/09,¹ in which it declared that the case was admissible with respect to the alleged violations of rights enshrined in Articles 2, 4(1), 8(1), and 25 of the American Convention on Human Rights (hereinafter the “American Convention”) taken in conjunction with Article 1(1) thereof, and inadmissible as regards the rights contained in Articles 13 and 16 of same.

3. In the stage on merits, the petitioners allege that the State is responsible for violation of the rights to life, a fair trial, and judicial protection, as well as the obligation to adopt domestic legal provisions, envisaged in Articles 2, 4, 8, and 25 of the American Convention, to the detriment of José Rusbell Lara and his family. The State rejected the arguments of the petitioners regarding the purported violations of rights protected by the American Convention and claimed that it provided due protection for the life of José Rusbell Lara, conducted an effective investigation of the facts, and tried and convicted one of the persons responsible.

4. Having examined the arguments as to fact and law offered by the parties, the Commission has concluded that the State is responsible for violation of Articles 4, 8, and 25 of the American Convention on Human Rights taken in conjunction with Article 1(1) of that instrument, as well as for infringement of the obligation to adopt domestic legal provisions contained in Article 2 of the Convention. Furthermore, invoking the principle of *iura novit curia*, the Commission finds that the State has also violated Article 5 of the American Convention to the detriment of José Rusbell Lara and his family, in connection with Article 1(1) of that treaty.

II. PROCESSING BY THE COMMISSION

A. Processing of the case

5. On March 29, 2006, the complaint alleging the murder of José Rusbell Lara was registered as petition No. 1514/05, and on August 5, 2009, after examining the petition for admissibility, the Commission adopted report 70/09 declaring the case admissible.² Specifically, it found that the case was admissible with regard to the alleged violations of the rights enshrined in Articles 2, 4(1), 8(1), and 25 of the Convention, taken in conjunction with Article 1 (1) thereof, but inadmissible in relation to the rights contained in Articles

¹ IACHR, Report No. 70/09, Petition 1514-05, Admissibility, José Rusbell Lara, Colombia, August 5, 2009.

² IACHR, Report No. 70/09, Petition 1514-05, Admissibility, José Rusbell Lara, Colombia, August 5, 2009.

13 and 16 of the American Convention. On August 24, 2009, the Commission transmitted the report on admissibility to the parties and granted the petitioners two months to submit their arguments as to merits. In the same communication, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, for which purpose it requested them to state their interest in that regard at their earliest convenience. The parties expressed no interest in attempting a friendly settlement procedure.

6. On November 4, 2009, the petitioners requested that Rusbell Dair Lara, the son of José Rusbell Lara, along with the members of the Joel Sierra Regional Human Rights Committee [*Fundación Comité Regional de Derechos Humanos "Joel Sierra"*] be recognized as alleged victims in the case. On September 7, 2009, the petitioners requested a hearing on the case at the 137th regular session of the IACHR, which the latter did not grant. In a written communication of June 8, 2010, the petitioners requested an extension of one month to submit their observations on merits. On July 21, 2011, the IACHR received the petitioners' observations on merits and relayed them to the State, giving the latter three months to present its response. On November 4, 2011, the State requested an extension of one month to submit additional observations, which extension was granted by the IACHR. On December 5, 2011, the State presented its observations on merits, which were conveyed to the petitioners so that they might offer such comments as they deemed appropriate within one month. The Inter-American Commission requested additional information from the State in a note of August 20, 2012. Responses from the State to this request were received on October 2, 2012 and October 30, 2012. That information was transmitted to the petitioners for their attention.

B. Precautionary measures

7. On July 29, 2002, the petitioners requested the adoption of precautionary measures to protect the lives and safety of 14 social leaders and human rights defenders in the Department of Arauca, among them José Rusbell Lara. That very day, the Commission issued a request to the Colombian State to adopt precautionary measures, which was processed as number MC 218/02. On November 8, 2002, the petitioners advised the IACHR that José Rusbell Lara had been killed that day in an attack with a firearm. The IACHR issued a press release on the incident on November 12, 2002.³

III. POSITIONS OF THE PARTIES ON MERITS

A. The Petitioners

8. The petitioners say that the Department of Arauca has long been gripped by humanitarian crisis as a result of the militarization of the zone and the presence there of guerrilla groups belonging to the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). They say that the situation grew worse in mid-2000 when paramilitary forces established a presence in Arauca and, with the consent and collaboration of the security forces controlled the municipal capitals of Tame, Puerto Rondón and Cravo Norte. They say that the paramilitaries aimed their activities at population groups considered "sympathetic to the insurgency and to social leaders in Arauca," who were known for their attempts to start a movement to combat impunity and demand respect for human rights.

9. They mentioned that in view of the risks to which social leaders and human rights defenders in Arauca were exposed, they requested the Inter-American Commission to order precautionary measures in favor of several individuals, one of whom was José Rusbell Lara, a member of the Joel Sierra Regional Human Rights Committee and well-known human rights defender in the municipality of Tame. They say that the precautionary measures are granted on July 29, 2002.

10. They say that the State promised to carry out studies to examine the risk to the beneficiaries of the measures but that no concrete measures were adopted on their behalf. They say that the State did not take effective steps to neutralize the paramilitary group that was committing crimes in the Tame area where Mr. Rusbell Lara resided.

³ See Press Release 45-02 at <http://www.cidh.org/Comunicados/English/2002/45.02.htm>

11. They say that at 1:00 p.m. on November 8, 2002, José Rusbell Lara was on his way to one of the civil works projects where he worked under contract as a construction foreman, when two members of a paramilitary group who regularly patrolled the town of Tame intercepted him on a motorcycle and shot him in the head, leaving him seriously injured. They say that Mr. Rusbell Lara lay dying in the road for close to 15 minutes before two individuals took him to Tame Municipal Hospital, where he died at approximately 2:00 p.m.

12. They say that a Colombian army battalion has its barracks and command post at Tame, which also has a police station and an office of the Security Administration Department (DAS), and yet no immediate steps were taken to capture the culprits.

13. They say that José Rusbell Lara was a 42-year-old widower when he died and that his children were left parentless following their father's murder.

14. Regarding the investigations into the death of Mr. Rusbell Lara, the petitioners hold that the Cúcuta office of the Human Rights and International Humanitarian Law Unit is pursuing case No. 1777, which has taken into account the voluntary testimony of two demobilized members of the paramilitary group known as *Bloque Vencedores de Arauca*, who had been arrested under the so-called Justice and Peace Law for crimes other than the murder of Mr. Lara and confessed to his murder as commanders of the paramilitary unit. However, they say that, to date, only one person has been punished for the murder of Mr. Rusbell Lara and that the State has failed to determine who ordered the killing and why it was carried out. In particular, they say that the decision to extradite one of the paramilitaries to the United States has impaired progress in the investigations.

15. The details about the facts and judicial proceedings will be referred to in the Commission's factual analysis based on information provided by both parties. This section contains a summary of the main arguments put forward by the petitioner with respect to the rights covered in the report on admissibility.

16. The petitioners argue that the State violated Article 4(1) of the American Convention by virtue of the fact that the perpetrators of Mr. Lara's murder belonged to paramilitary structures which were created and acted with the acquiescence and sponsorship of the Colombian security forces. They say that although the State was aware of the risk to the victim, given that he was a beneficiary of precautionary measures ordered by the IACHR, it took no effective steps to ensure his life and safety. In particular, they argue that during the period that the measures were in force, the State offered no material resources to guarantee his safety, nor did it disable the source of the risk by neutralizing the paramilitary group that was operating in the town of Tame. They say that the State merely provided the office of the president of the NGO to which Mr. Rusbell Lara belonged with a document suggesting steps that the beneficiaries should take to protect themselves. In any event, they say that the State did not arrange any security measures in Saravena. Moreover, Mr. Rusbell's domicile and residence were in the Municipality of Tame, where he worked as a human rights defender and where he was murdered without any system of protection available to him.

17. With respect to Articles 8 and 25 of the American Convention, the petitioners argue that in spite of the fact that several years have passed since Mr. Rusbell Lara's murder, so far only one conviction has been handed down specifically for this crime. They claim that persons who have been included in the investigation have not been arrested and that the outcome has helped neither to establish the truth nor identify the architects of the crime and its motive. They say that despite the existence of evidence of participation or collaboration on the part of agents of the state in the activities of the paramilitary group, their responsibility has not been investigated. They argue that Colombia's decision to extradite Miguel Ángel Melchor Mejía Munera, the leader of the paramilitary group known as *Bloque Vencedores de Arauca*, to the United States of America to answer to drug trafficking charges has obstructed progress in the investigation.

18. Finally, the petitioners argue, with respect to the alleged violation of Article 2 of the Convention, that as a result of the failure to adopt appropriate measures, the extradition of the paramilitary leader Miguel Ángel Melchor Mejía Munera has blocked judicial investigations and routine procedural acts,

such as notifications, giving rise to unwarranted delays in the proceeding and severely limiting contact between the country's justice sector operators and victims and the alleged culprit. They say that as a result of the foregoing, the victims' right to justice and to know the truth has been infringed. They say that the extradition is in response to a request from a foreign tribunal for an offense that was less serious and gave rise to less social harm than that caused in Colombia by the extradited paramilitary leader.

B. The State

19. The State holds that the report on admissibility in the case outlines the rights that are at issue; however, it does not clearly identify the facts that comprise the dispute in the case. Accordingly, the state says that in its observations it refers "to the facts that, in its opinion, gave rise to the instant case and only contests evidence put forward by the petitioners where appropriate."

20. The State asserts that it did not violate José Rusbell Lara's right to life, enshrined in Article 4 of the Convention, since it adopted effective measures of prevention and protection in the context of the difficult law-and-order situation in the zone. It also states that the petitioners have been unable to prove the existence of supposed collaboration or acquiescence by state agents in the facts surrounding the homicide.

21. As regards its duty to prevent violations, the State holds that in response to the precautionary measures granted by the IACHR, it adopted appropriate measures to protect Rusbell Lara, given the risk he faced, and that it had been taking steps even before the precautionary measures were granted. In that connection, it holds that it issued instructions to the commandant of Saravena police station to neutralize the threats from armed groups operating illegally in the zone and to carry out sporadic checks on the offices and places of residence of the beneficiaries. It says that it recommended security and self-protection measures to the beneficiaries, devised investigation plans aimed at gathering intelligence with which to identify and preemptively neutralize possible attacks, and carried out the appropriate security and risk assessments. The State also says that it implemented a "police godfather program" [*programa de padrinos policiales*] in order to maintain permanent contact in managing threats and security needs, and that it instructed police units to coordinate the convocation and holding of meetings on security with the authorities.

22. Specifically with regard to the measures adopted to protect the members of the Joel Sierra Regional Human Rights Committee, the State says that it provided Sr. José Rusbell Lara with means of communication and that, based on a risk assessment carried out according to the standards in force it was determined that they faced an "intermediate" risk, bearing in mind that groups operating outside the law had a powerful influence over the Arauca region, and that their modus operandi involved the use of intimidation and violence. The State says that it requested the command of the Arauca Police Department to instruct the members of the Joel Sierra Regional Human Rights Committee in the security measures that they should adopt and sent the Committee's regional executive president in the Municipality of Saravena a list of personal security measures and recommendations for its members to implement.

23. The State holds that on August 20, 2002, the commandant of Saravena police station and the municipal government representative held a meeting with the members of the Joel Sierra Regional Human Rights Committee, in which Mr. Rusbell Lara took part, at which they offered to collaborate effectively in meeting the requests of the members of the Committee. Those attending that meeting were asked to report any changes of residence or travel to different urban and rural areas of the Department, so that they might be provided with the necessary security. The State says that they were provided with the telephone numbers of the station command and other means of maintaining contact with them.

24. The State says that because the beneficiaries of the protection measures were constantly traveling to rural areas in the municipalities of Saravena and Tame, it was impossible for the police to offer alternative arrangements to those allocated. According to the State, the foregoing is relevant in this instance since Mr. Rusbell Lara worked in the Municipality of Saravena and was murdered in Tame. The State argues that the modus operandi of the armed groups exceeded what the state authorities could reasonably have prevented within the framework of their capabilities.

25. The State says that the Office of the Government Disciplinary Attorney for the Defense of Human Rights opened a disciplinary investigation into the facts in the case on November 4, 2002, and in an order issued on July 7, 2005, decided to close the proceedings and refrain from continuing the disciplinary inquiry for lack of evidence of responsibility of state officials in the facts concerning Mr. Lara's lack of protection. The State says that no appeal was filed against that decision, as a result of which it was declared final on July 25, 2005.

26. As regards the alleged acquiescence and sponsorship by military forces of the operations of criminal groups in Arauca, the State argues that orders were issued to Arauca Police Department as well as to "General Navas Pardo" 18th Army Engineers Battalion to conduct operations against illegal armed groups. The State says that those operations achieved significant results as well as the voluntary surrender of armed members of those groups through pressure from the security forces. The State contends that it is impossible to assert acquiescence and sponsorship in the murder of Rusbell Lara.

27. As regards the alleged violations of Articles 8 and 25 of the Convention, the State holds that in the stage on merits, the Commission should analyze only whether or not the process was conducted within a reasonable time. The state describes a series of proceedings that it has undertaken in the framework of the investigation which, in its opinion, shows that it was carried out in a serious, impartial, and effective manner, ensuring the participation of Mr. Rusbell Lara's family, thereby fulfilling its obligation to clarify the facts and identify, prosecute, and punish those responsible.

28. It holds that in the instant case there was no unwarranted delay in the criminal investigation since the authorities behaved diligently faced with a complex investigation, given the characteristics of the crime and the modus operandi of the criminal groups that were active in the zone. It says that those organizations typically resorted to measures designed to conceal or destroy evidence, making it difficult for the Colombian authorities to carry out their investigations. The State holds that, in spite of those difficulties, it managed to bring charges against several of the alleged culprits and that one of the perpetrators has been convicted.

29. The State says that in this case the victims never invoked the remedy of direct reparation in the contentious administrative jurisdiction, which is designed to provide redress at the domestic level for alleged acts and omissions attributable to agents of the State. It holds that under its domestic law, the possibility of invoking that remedy has lapsed, and that, therefore, the alleged victims had tacitly waived their right to seek financial reparations in the domestic legal system for conduct connected with acts or omissions on the part of the state.

30. As regards its duty to adopt domestic legal provisions (Article 2 of the Convention), the State argues that the procedure introduced by Law 975 of 2005 had made it possible through voluntary testimony from a number of detained individuals to identify the alleged perpetrators and punish one of the culprits. The State says that the extradition of one of the persons under investigation has not hampered the procedure established in the aforementioned law, nor the parallel investigation being pursued by the Office of the Prosecutor General's Human Rights and International Humanitarian Law Unit, which has made progress in the case.

31. Based on the foregoing, the State contends that it bears no international responsibility for the alleged violations of Articles 4, 8, and 25 of the Convention, taken in conjunction with Articles 1(1) and 2 of that international instrument.

IV. ANALYSIS

32. In accordance with Article 43(1) of its Rules of Procedure,⁴ the Commission will examine the facts alleged by the parties and the evidence submitted during the processing of this case.⁵ It will also take into account information in the public domain, including its own reports on petitions and cases and on the overall human rights situation in Colombia, reports of the Mission to Support the Peace Process in Colombia (MAPP/OAS), publications of nongovernmental organizations, as well as laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

33. The IACHR should also note, by way of a preliminary observation, that the standards of proof are more flexible in an international proceeding concerning human rights violations than in a domestic legal proceeding.⁶ In international proceedings “[c]ircumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.”⁷ In this respect, the Commission has established that it is appropriate to appraise the context and the history of the individual case and its impact on the determination of the truth of what occurred, within the framework of its competence.⁸ As a general practice, the Commission, in the cases before it and where relevant, makes use of information received in its visits to the states, thematic public hearings, annual reports, country and thematic reports, among other devices as a product of its monitoring function of the human rights situation in accordance with its mandate established in the different inter-American instruments.⁹

34. The IACHR also considers that the pertinent portions of the record concerning the precautionary measures (MC 218-02) granted to various social leaders in Arauca, including José Rusbell Lara, comprises part of the body of evidence in the matter under examination as it relates to the allegations with which this case is concerned.

A. Context

1. The situation in the Department of Arauca and the presence of the Bloque Vencedores de Arauca paramilitary group

35. The Department of Arauca is in Northeast Colombia, on the border with Venezuela, and is divided into seven municipalities: Arauca, Arauquita, Saravena, Cravo Norte, Fortul, Puerto Rondón, and Tame. Regarding the conflict situation in the zone, the Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law noted that “the dynamics of the armed conflict in Arauca and the significant influence that various outlawed groups in the department have traditionally

⁴ Article 43(1) of the Commission’s Rules of Procedure provides as follows:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

⁵ All the documentary evidence was submitted as an addendum to the petitioners’ observations on merits on July 25, 2011 and received by the Commission on July 28, 2011.

⁶ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 128.

⁷ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 130.

⁸ IACHR, Report No. 64/111 CASE 12.573, Merits, Marino Lopez et al. (Operation Genesis) Colombia, March 31, 2011, par. 101; IACHR, Report 62/08, *Manuel Cepeda Vargas*, July 25, 2008, pars. 70 and 71.

⁹ IACHR, Report No. 64/111 CASE 12.573, Merits, Marino Lopez et al. (Operation Genesis) Colombia, March 31, 2011, par. 103, referring to IACHR, Report No. 62/08, *Manuel Cepeda Vargas*, July 25, 2008, footnotes 102, 107, 108; Report No. 22/08, *Dos Erres Massacre*, March 14, 2008, footnotes 50, 72, 78; Report No. 46/10, *Community of Río Negro of the Maya Indigenous People and its Members*, July 14, 2010, footnotes 2, 12, 14, 22, 26, 37, 51; and Report No. 62/06, *Yvon Neptune*, July 20, 2006, pars. 62 and 63.

exercised and continue to exercise, create a situation in which both the civilian population and the civil authorities of the department are directly affected by frequent and gross violations of human rights.”¹⁰

36. The Commission notes that at the time of the alleged facts in this case, the so-called *Bloque Vencedores de Arauca* (BVA) paramilitary group had a presence in the zone. According to information in the record, in the 1990s, before the arrival of the BVA, a “CONVIVIR” by the name of “Renacer LTDA” was operating in the Department of Arauca,¹¹ where it provided protection to a number of ranchers’ properties. Subsequently, members of that CONVIVIR, banded together to form a self-defense brigade that went by the name of *Masetos* or *Mesetos*.¹² According to the testimony of the former leader of the BVA, the Masetos were a cleansing group; they were *paracos* [paramilitaries].”¹³

37. Information provided by the National Prosecution Unit for Justice and Peace in Colombia suggests that in mid-2000 Carlos and Vicente Castaño met with other leaders of the self-defense brigades to take the decision to enter the Department of Arauca.¹⁴ The Unit determined that in June 2001, the top leader of the AUC, Carlos Castaño, announced to the Spanish daily “EL MUNDO” that he was going to send 3,000 men to the Department of Arauca to fight the ELN and FARC guerrillas.¹⁵ At the meeting, a commitment was made to provide 200 men, 100 of whom were loaned by the *Frente Guaviare* and *Bloque Centauros*, with the remaining 100 recruited and trained in the Municipality of Barranca de Upia-Meta. The 200 men then deployed to the Department of Arauca.¹⁶

¹⁰ Human Rights Observatory of the Presidential Program on Human Rights and International Humanitarian Law, Indicators on the human rights situation in Arauca Department as of September 2004, available at: <http://www.derechoshumanos.gov.co/Pna/documents/2010/arauca/indicadoresarauca.pdf>

¹¹ The CONVIVIR were first created by Decree 356 of February 11, 1994, although the decree did not employ the name “CONVIVIR”. Decree 356 set forth the rules and regulations which would govern different guard and private security services (“servicios de vigilancia y seguridad privada”). These rules provided for the establishment of “special guard and private security services” (“servicios especiales de vigilancia y seguridad privada”) which would consist of groups of civilians who would be allowed to carry weapons and who would work with the Colombian Military Forces. In its *Third Report on the Situation of Human Rights in Colombia*, the IACHR considered that the status and activities of the CONVIVIR created serious difficulties under international humanitarian law. Based on the information available to the Commission, it appeared that members of some CONVIVIR had abused their status as civilians by assuming the role of a combatant, in violation of international humanitarian law, and the legal figure of the CONVIVIR had been utilized by paramilitary groups as cover for their illegal violent actions. The Commission considered that, by creating the CONVIVIR without a mechanism for adequate control by any supervisory authority, the State had created conditions which allowed for this type of abuse. See IACHR, *Third Report on the Situation of Human Rights in Colombia*, February 26, 1999, pars. 323 *et seq.* Available at: <http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm>

¹² Attached to the record was an affidavit, dated April 18, 2008, by Omar Sepúlveda (alias *El Chino-Santiago-El Dios de la Guerra*), who said that before joining the self-defense brigades in 1996, he served as a guide in the 16th Guide Troop located in Yopal as well as being an Army informant, which led him to be classed as a military target by the ELN. As a result, a man by the alias “Torres,” who was then the commander of the group known as LOS MASETOS or RENACER LTDA, invited him to join the group that he was involved with. He says that on January 15, 1997, he was sent to a hamlet called Jagüeyes in the Municipality of Nunchia, where there was a commander by the alias “Canario,” whose mission was to guard the Santana and San Felipe Ranches. We lived at Hato la Bendición. He said, “When we started it was a CONVIVIR called RENACER LTDA.” He said that around February 15, 1997, “they took me to a place called La Capa. ‘Diego’ took me for retraining. I joined them when I was 16. There were about 20 people on the training course and a retired army sergeant, alias ‘Nelson,’ was in charge of the instruction. He said that by 1997 he “no longer belonged to that CONVIVIR; we did not have a name but we called ourselves Masetos or *autodefensas* (members of the self-defense brigades).” Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 168. For his part, Miguel Ángel Mejía Múnera stated that the MASETOS were active in 97, 96 [*sic*]: “They were cleansing units; they were *paracos* [paramilitaries],” but they were cleansing groups.¹² Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 262.

¹³ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 262.

¹⁴ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 116.

¹⁵ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 116.

¹⁶ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 117. In this regard, according to the testimony of Omar Sepúlveda, a man known by the aliases *El Chino*, *El Loco Santiago*, and *Dios de la Guerra*, who had been part of the Convivir LTDA and a member of the Masetos, said that in 2000, with the arrival of the Urabeños, he joined a group known as the *Bloque Centauros*. He said that in June 2001, the zone commander told him that “a new self-defense group was being set up to fight the guerrillas and protect the civilian population of Arauca,” and that “they needed the best fighters from Casanare to form the new structure of the new bloc,” whereafter he joined the BVA. Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 170.

38. At the beginning of July 2001, there were intelligence reports of the presence of a self-defense group in the La Chapa sector of the Municipality of Hato Corozal “Casanare,” where its members received part of their training. Subsequently, the self-defense units entered the Department of Arauca via the municipality of Hato Corozal, at a place known as Puerto Gaitán on the Casanare River, in Tame District.¹⁷ According to declarations by members of the BVA, the entry to Arauca occurred on August 7, 2001, at the hamlet of Puerto Gaitán, Municipality of Tame, Arauca,¹⁸ and in mid-November, 200 men began to receive training under the command of alias “Juancho”; they arrived at the hamlet of Puerto Gaitán, Municipality of Tame, in mid-January 2002.¹⁹

39. The prosecution unit in charge of the investigation explained that, from the outset, the bloc was created to fight subversives and with that,²⁰ “a terrible military offensive was launched to dominate the territory, killing subversives and the guerrillas’ helpers.” During that offensive, people named as guerrilla collaborators were threatened and murdered.²¹ The BVA had a well-organized military structure with a clearly defined system of command, and it carried out sustained, systematic operations; it was able to maintain a territorial dispute in the Department of Arauca with groups belonging to the Revolutionary Armed Forces of Colombia (FARC) and the national liberation Army That (ELN).²² With respect to the group’s modus operandi, one of its members, “Alex”, said that “the way we operated was by carrying out the orders we received from commanders, capturing people, investigating, and killing the enemy, the FARC and ELN.”²³

40. As regards the Municipality of Tame, where Rusbell Lara was murdered, the National Prosecution Unit for Justice and Peace says that in late 2001 and during 2002 that zone became an important focus of the bloc’s operations since it succeeded in challenging the guerrillas’ control of the territory by attacking and killing individuals that it believed to be guerrilla collaborators.²⁴ According to information available in the record on Preliminary Proceeding 2121, the Municipality of Tame was one of the BVA’s centers of operations, where it exerted great influence. Operating in the urban area were a number of commandos known as “urbanos,” who would commit all manner of crimes in the armed group’s name, including selective murders, robbery, extortion, intimidation, and kidnappings, among other activities.²⁵ According to the declaration of Wilson Carrillo Antolinez, in the town of Tame there were “paramilitaries who charge traders 30,000 pesos per ton of merchandise; ranchers, 10,000 pesos per head of cattle; gas stations are also charged a “vacuna” [lit. “vaccination,” a euphemism for extortion payment].²⁶

41. The BVA took part in several operations in the Department of Arauca in which civilians and others persons who were identified as guerrilla collaborators were murdered.²⁷ According to testimonies in the record from different members of the BVA and other persons, in 2002, using various strategies that

¹⁷ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 116. That information is substantively consistent with the 2001 report of the Office in Colombia of the United Nations High Commissioner for Human Rights, which said that it had received “reports that during military operations, members of the army have threatened the civilian population by announcing the imminent arrival of the paramilitaries. The Office has received reports about this in reference to the military operations that were undertaken in the department of Arauca during July.” Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, E/CN.4/2002/17, 28 February 2002, para. 141.

¹⁸ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 117.

¹⁹ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 117.

²⁰ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 282.

²¹ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 283.

²² Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 282.

²³ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 186.

²⁴ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 282.

²⁵ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 220.

²⁶ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 220.

²⁷ According to “Alex,” a member of the BVA, we killed about 20 people in the town; I received direct orders to kill people from CANTANTE or CERO TRES and I myself ordered people to be killed or captured. We would also go on patrol. I personally killed one or two men.” Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 186.

included financing and assassinations, the BVA helped the mayor of Tame and the gubernatorial candidate of Arauca to win their respective elections.²⁸ In addition, according to statements from members of the BVA, on a number of their operations they were supported by agents of the state and there was allegedly even a list of targets to be eliminated in order to facilitate the electoral process.²⁹

42. On December 23, 2005, the demobilization process began of the BVA through a list sent by Miguel Ángel Melchor Mejía Múnera, as the representative of the United Self-Defense Units of Colombia, which stated the will of the enlisted men to rejoin civilian life³⁰ under the provisions of the Justice and Peace Law.³¹

²⁸ In that regard, according to statements provided by Fraydell Reuto Manosalva "the candidates of the self-defense units won" the elections of October 26, 2005, in which Alfredo Guzman Tafur was elected mayor of Tame, and Julio Enrique Acosta Bernal, governor of Arauca. Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 54.

According to a declaration given by Ferney Alvarado Pulgarín, alias "Cúcuta", in October and November 2002, Commander "Mario" or "Martin" told him "that the mayoral and gubernatorial elections were approaching" and "that JULIO ACOSTA was the candidate who would be useful to them ... as the self-defense brigades." According to "Cúcuta," "as I was someone whom Commander MARIO or MARTIN trusted, he told me that he had some work for me in Arauca and he named several persons whom we would have to execute." According to his declarations, "on a day when I least expected it JULIO ACOSTA and MARCOS ATAYA brought me a list with the names of more left-wing politicians to be executed; for us that was a list but when you report to a civilian it is a communiqué [...]. In the first week in April I got the green light to start executing the people on the list. I was given the order by Commander MARIO; I asked him if there were any problems with the list of names that I had been given by MARCOS ATAYA and JULIO ACOSTA; he told me that I should assume that the list had come from him and that I should get on with it." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, pp. 10-12.

In the record there is a copy of the report of the criminalistic investigator of August 27, 2008, which contains the proceeding conducted in case 4051 that includes a free statement by MIGUEL ANGEL MELCHOR MEJIA MUNERA concerning the bloc's relationship with the candidate to the governorship of Arauca, Julio Acosta Bernal. He says that he contacted the governor on the orders of CARLOS CASTAÑO because Julio Acosta Bernal "was a personal friend of his." He said, "CASTAÑO asked me as a favor to help ACOSTA, JULIOS [sic] ACOSTA. He was not yet governor. He asked me to help him because he was his friend. I said that there was no problem. The favor he asked me was to lend him 500 million pesos, so I loaned the man 500 million pesos. Some years later, he paid me back 700 million pesos. I only met him four of five times: twice at Ralito and once in Comandante CUCO's zone." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 74.

According to statements by Fraydell Reuto Manosalva, on one occasion alias "CANTANTE" told him "to tell [his] brother JAIME [sic] ORLANDO not to run for mayor of Tame because the order given by RUBEN, alias "LA MONA," who was the maximum leader of the self-defense units at the time, was that ALFREDO GUZMAN TAFUR should be supported for the position of mayor of Tame as the candidate of Movimiento Cambio Radical, and JULIO ENRIQUE ACOSTA BERNAL, for the governorship of Arauca, also as a Movimiento Cambio Radical candidate. If he disobeyed, the order was to kill him." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, pp. 49-50.

²⁹ Thus, for example, William Chima Correa, a member of the BVA since May 1, 2001, said that he met the governor of Arauca in October 2005 in Arauca. The governor "gave [him] 180 million pesos through one of the engineers who belonged to the same circle as the governor. With that money I would work with the DAS people. They would take me into the town and bring me out with the money. I don't remember the exact location of the office because Arauca is big and several times they took me hidden in DAS cars." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 42.

For his part, Mejía Múnera says that according to interviews with members of the BVA, "all arrangements with the police and the army ... were made through the governor and the mayor of Tame. That was in September 2003, so what I am saying is clear: The governor and the mayor of Tame helps us to contact the police or the police commandant so that we could handle things like that." According to Mejía Múnera, "neither [t]he army nor the police were capable of handling things in that department [...] because of that the governor asked for help [...], in doing a job to finish the militia which was regularly attacking police posts." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 263.

Furthermore, according to "Cúcuta," María Liliana Castellanos, alias "La Flaca", "acted as the go-between with DAS and the Army. She was in and out of there all the time and she arranged everything between us and the DAS and the Army." I saw her meeting CANTANTE. She would go there to speak to him and give him information for liaising with Army and the DAS, about arms buying, and logistics for the organization. She negotiated with the Army. I do not know who was selling to her there. She also provided information about which of us had an outstanding arrest warrant and who did not. When we knew who had an arrest warrant pending, those people were pulled out when things heated up. That was what she would do." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 71.

³⁰ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 189.

³¹ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 189.

43. According to the report of the Justice and Peace Unit, which contains extracts of the voluntary statement of Mejía Múnera, Miguel Mejía Múnera's personally demobilized on August 27, 2005, at Santa Fe Ralito, and on December 23, 2005, the BVA demobilized at Puerto Gaitan (Arauca).³² Miguel Ángel Melchor Mejía Munera assumed direct responsibility for the acts committed by the BVA from December 2002 to January 2003, and again from December 2003 to June 2004.³³

2. The situation of human rights defenders in Arauca at the time of the facts

44. According to the Office of the United Nations High Commissioner for Human Rights in Colombia, "the situation of human rights defenders continues to be critical and worsened in late 2002." According to that agency, "members of these groups have been subjected to murder, threats, attacks, harassment, forced disappearances and hostage taking. Paramilitary groups have been blamed for most of these abuses."³⁴

45. In its 2002 Annual Report, the IACHR said that several AUC groups had extended their influence up to the Department of Arauca. The Commission said that that year human rights defenders continued to be the targets of assassinations, multiple threats and harassment to disrupt their task of the promotion and protection of human rights in Colombia.³⁵ As regards the risk to human rights defenders in Arauca, Sonia Milena López Tuta, a former director of the Joel Sierra Regional Human Rights Committee, the organization to which Rusbell Lara belonged, said that "when the paramilitaries arrived in Tame the first people they targeted were social leaders and human rights defenders." Social leaders were considered guerrilla collaborators and "fair game by those [paramilitares] groups and even the State."³⁶

B. José Rusbell Lara's work as a human rights defender

46. José Rusbell Lara was born on March 7, 1960, in the Municipality of Tame in Arauca.³⁷ He was 42 years old when he was murdered³⁸ and worked as a construction foreman contracted by the mayor's office³⁹ as well as a member of the Joel Sierra Regional Human Rights Committee.⁴⁰ According to the information available, Rusbell Lara "was a member of the Central Unitary Workers Union (CUT)."⁴¹

47. Sonia Milena López Tuta, a former director of the Joel Sierra Regional Human Rights Committee, said that the human rights organization existed since 1995 and was legally incorporated in July 1996 with the purpose of "defense and promotion of human rights."⁴² The Committee had its head office in Saravena, Department of Arauca, with the possibility of setting up sectionals in other municipalities in the Department.⁴³ José Rusbell Lara was "a human rights coordinator in Tame, a member of Asojuntas l... [and]

³² Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 253.

³³ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 254.

³⁴ Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, E/CN.4/2003/13, 24 February 2003, para. 102.

³⁵ IACHR, Annual Report 2001, OEA/Ser.L/V/II.117, Chapter IV, Colombia, March 7, 2003, par. 51. Available at: <http://www.cidh.org/annualrep/2002eng/chap.4.htm#COLOMBIA>

³⁶ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 161.

³⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 7.

³⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 7.

³⁹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 52.

⁴⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 113.

⁴¹ Tame Prosecutor's Office, Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 37.

⁴² Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 159.

⁴³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 118.

devoted to his three sons because his wife had passed away sometime previously.”⁴⁴ With respect to José Rusbell Lara's work as a human rights defender, she said:

He was the sectional coordinator. He arranged the events that were held in the town of Tame and in the outlying villages when information was needed about cases that had occurred there. He would be called out from here to go and investigate and to stay abreast of the human rights situation there, in order to file complaints and provide people with guidance in the event of violations of human rights and international humanitarian law. In addition, as regards *Asojuntas*, short for the Municipal Association of Community Action Boards, he was a member of the human rights Secretariat in Tame.⁴⁵

C. Events leading up to José Rusbell Lara's murder

48. Statements contained in the record indicate that in the months prior to his murder, José Rusbell Lara had assisted with a number of peasant protest marches held in Arauca in response to the paramilitary intervention in the zone.⁴⁶ In those marches, community-based organizations of Arauca denounced the "degradation of the conflict with the clear complicity, by act or omission, of State military forces in paramilitary dirty-war actions"⁴⁷ and they called for people to mobilize and join an indefinite civic strike starting on February 12, 2002.⁴⁸

49. On February 12, 2002, civil society organizations in Arauca denounced that during the peasant mobilization, the counter-guerrilla army force stationed at Corocito in the Municipality of Tame had used repressive measures in subjecting the marchers to a search that lasted six hours.⁴⁹ The organizations denounced that there were places along the road to Naranjitos army base from Puerto Gaitán that had been turned into hideouts for hired killers.⁵⁰

50. On February 13 that year, persons connected with the marchers and the then-Mayor of Tame, Jorge Antonio Bernal, held a meeting to analyze the situation in the Municipality of Tame.⁵¹ At the meeting, Ismael Pabón, a member of the Joel Sierra Regional Human Rights Committee, said that there were no subversives in the peasant marches; that the number of marchers is because the community-based organizations have members throughout the department ... that the protest [in defense] of human rights is

⁴⁴ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 160.

⁴⁵ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 160.

⁴⁶ In that regard, according to the testimony of Jaime Orlando Reuto Manosalva, "on one occasion there was a peaceful peasant protest march in which [José Rusbell Lara] was involved in the meetings held at the mayor's office with different civilian, military, and police authorities." Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 296-297. Similarly according to the statement of Sonia Milena López Tuta, José Rusbell Lara "had taken part in the recent strikes that were held in Tame and in the sit-in at the mayor's office. He was involved in everything, including the peasant protest marches against the dirty war being waged by the paramilitaries and the state, and the social protests for protection of lives and human rights and to stay in the territory." Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 161.

⁴⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 301.

⁴⁸ The denunciations included the murder of the leader Ángel Trifilo Riveros Chaparro, who had allegedly witnessed the massacre at Santo Domingo and been assassinated by hired killers in the wake of army and police patrolling. The killers had allegedly hidden at Naranjitos army base with the vehicle in which they traveled in order to commit the crime. The denunciations also referred to incidents associated with the economic interests of the Occidental and Repsol companies in the area. Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 302-303.

⁴⁹ Furthermore, according to the communiqué, during the search, Army personnel entered the vehicles, saying that the marchers were being compelled by the insurgents and calling on them to denounce the guerrillas and support the self-defense forces. One soldier was said to have left an antipersonnel mine on one of the bus seats, which the marchers complained vigorously about, whereupon the Army immediately recovered the dangerous artifact. The communiqué called on the merchants and transport workers of Tame and other municipalities to join the so-called civic strike. Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 300.

⁵⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 300.

⁵¹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 25.

against all sectors, including the ELN and FARC ... [and] the paramilitary groups.”⁵² For his part, José Rusbell Lara, who was at the meeting, complained that various acts that had occurred in Tame constituted human rights violations.⁵³

51. As regards the involvement of members of the Joel Sierra Regional Human Rights Committee in the peasant marches, he said that they were not part of the community-based organizations that were protesting but that their “mission ... was the protection of the human rights of all citizens.”⁵⁴ Rusbell Dair Lara Tuay, the son of José Rusbell Lara, said with respect to his father's involvement that the members of the Committee “had to be there with them; they gave the campesinos provisions so that they would come to the marches. He said that what he did was to collect the peasants who were coming to the marches, but [his] dad did not take part in the marches; he helped with the march, but that was all.”⁵⁵

52. In the days leading up to his death, José Rusbell Lara received death threats and an ultimatum to leave Tame. Thus, according to the statement of Sonia Milena López Tuta, José Rusbell Lara had been granted precautionary measures because “he was receiving threats from supposed paramilitaries around three months before he was killed.”⁵⁶ According to Rusbell Lara's son, “I knew that my dad was being threatened ... because I found a threatening letter; the letter was from paramilitaries and it said that he had 15 days or one month to get out of the Arauca region.”⁵⁷ According to testimony by Floro Ángel Matiz Luna, the son of Mr. Rusbell mentioned to him that his “dad was receiving threats and that he had been threatened by telephone ... and ... he was told that he had 15 days to leave.”⁵⁸ Likewise, Carlos Rafael Goyeneche Bello said that Mr. Rusbell had told him “that he had to leave Tame because he was receiving serious threats.”⁵⁹ Jaime Orlando Reuto Manosalva said that “the reason for the threats was that he was a human rights defender. He considered that [was] the reason for the threats,”⁶⁰ and he “personally told [him] that he had a certain amount of time to abandon the municipality.”⁶¹ Similarly, Hercila Lara said that Rusbell Lara, her son, told her that “he had received a call and been told that he should leave Tame, but he said that he was not leaving because the kids were in school and he could not leave because he had some work to finish, building work.”⁶² The Commission notes that the prosecution unit in charge of investigating the case determined that there was “strong evidence to suggest that the victim was receiving death threats from the self-defense groups engaged in criminal activities in that region.”⁶³

53. According to the inquiries conducted by the special prosecution unit into the murder of José Rusbell Lara, the municipal police inspector of Saravena,⁶⁴ the 18th Army Group,⁶⁵ the Saravena police

⁵² Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 28.

⁵³ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 28.

⁵⁴ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 27.

⁵⁵ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 54.

⁵⁶ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 160.

⁵⁷ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 40.

⁵⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 275.

⁵⁹ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 275.

⁶⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 296-297.

⁶¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 296-297.

⁶² Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 49-51.

⁶³ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 143.

⁶⁴ On December 22, 2003, the municipal police inspector of Saravena returned the investigations carried out in response to the request, which contains the reply of the municipal police inspector of Saravena-Arauca, stating that “at no time did the aforementioned particular member of the human rights NGO “Joel Sierra” report any possible threats or request protection services from this tactical unit.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 124.

commandant,⁶⁶the Saravena municipal government representative,⁶⁷and the chief of the Saravena Judicial and Investigation Police⁶⁸ said that they had no information in their records that Mr. José Rusbell Lara had requested protection because of those threats.

D. State response to the situation of José Rusbell Lara and precautionary measures granted by the IACHR to protect his life and well-being

54. In his 2002 annual report, the IACHR said that it had granted a series of precautionary measures in order to request the State to protect these communities, under constant threat from the paramilitary groups that control these areas.⁶⁹ *Inter alia*, on July 29, 2002, the IACHR granted precautionary measures for 14 human rights defenders and social leaders active in the Department of Arauca and requested the Colombian State to adopt special measures of protection in favor of the beneficiaries, including Mr. José Rusbell Lara, a member of the Joel Sierra Regional Human Rights Committee.⁷⁰ In the request for precautionary measures, the Commission asked the Government of Colombia:

To adopt the necessary measures to protect the lives and well-being of Samuel Morales Flores, José Murillo Toco, Alonso Campiño Bedoya, Héctor Alirio Martínez, Arévalo Cetina Enciso, Ismael Pabon Mora, **José Rusbell Lara**, Alirio Ramírez Poveda, Alberto Paez, Ismael Uncasia, Jhony Omar Díaz, Óscar García, Jorge Eduardo Prieto Chamucero, and Faustino Álvarez Esquea (emphasis added).⁷¹

55. As the Commission explained in its note, its decision was based on information that “the persons named as beneficiaries in the request ... are well-known social leaders and human rights defenders in the department of Arauca. These citizens have played a key leadership role in the region and some of them were on a list of “military targets” found by the Attorney General’s Office in the possession of paramilitary leader Jesús Emiro Pereira, who was captured in Bogota in December 2001. The petitioners feel that because of their high profile as spokespeople for their communities and negotiators with the government, and in view of the complaints that they have made ... they are presumed to be at serious risk of being attacked.”⁷²

56. According to information in the record, José Rusbell Lara and the rest of the Joel Sierra Committee’s management had received threats. Their additional stigmatization by the security forces mean that “the request to the Inter-American Committee on Human Rights was dealt with favorably and ... it protected José Rusbell Lara and other human rights defenders belonging to the Executive Committee of the Joel Sierra Regional Human Rights Committee, as well as other social leaders in Arauca.”⁷³

⁶⁵ On November 10, 2003, the commanding officer of the 18th Army Group told the specialized prosecutor that “no document was found concerning a request for protection from this tactical unit.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 80.

⁶⁶ On December 4, 2003, the Saravena police commandant said that Mr. Rusbell Lara “never requested protection because of risks to his well-being or life, and an examination of the Saravena SIJIN complaints books did not show that Mr. Rusbell Lara had filed a complaint as a result of said situation.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 125.

⁶⁷ On December 16, 2003, the municipal spokeswoman informed the police inspector that “this office has no information about the aforementioned man.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 126.

⁶⁸ The Chief of the Judicial and Investigation Police (SIJIN) of Saravena (Arauca) informed on November 12, 2003, that the requested information had not been found and, furthermore, that the head of individual protection at the station said that he did not know Mr. Rusbell Lara “much less received any request for protection from him.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 77.

⁶⁹ IACHR, Annual Report 2001, OEA/Ser.L/V/II.117, Chapter IV, Colombia, March 7, 2003, par. 27. Available at: <http://www.cidh.org/annualrep/2002eng/chap.4.htm#COLOMBIA>

⁷⁰ IACHR, Annual Report 2001, OEA/Ser.L/V/II.117, Chapter IV, Colombia, March 7, 2003, par. 53. Available at: <http://www.cidh.org/annualrep/2002eng/chap.4.htm#COLOMBIA>

⁷¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 114.

⁷² IACHR, Request for precautionary measures for social leaders in Arauca, July 29, 2002.

⁷³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 113.

57. Before the IACHR granted precautionary measures, the information available indicates that the Colombian State had adopted a number of measures on behalf of the members of the Joel Sierra Committee. In that regard, on March 13, 2002, the head of the Arauca Police Department ordered a security and risk assessment for the members of the Committee in Saravena. According to the available information, the National Police Intelligence Department "found an INTERMEDIATE INTERMEDIATE [sic] level of risk, ... bearing in mind that groups operating outside the law have a powerful influence over the territory of Arauca, where their modus operandi includes intimidation and violence to hold onto political, social, and economic power in the region."⁷⁴ Furthermore, on April 1, 2002, the regional executive president of the Joel Sierra Human Rights Committee was sent a list of security recommendations to distribute among the Committee members, together with the telephone numbers of the police station command, which would be available around the clock to meet their requirements.⁷⁵ According to a report by the Ministry of the Interior, José Rusbell Lara had one of the 10 means of communication that were approved by the Risk Evaluation and Regulation Committee on January 1, 2002."⁷⁶

58. Following the request for adoption of precautionary measures from the IACHR in July 2002, the National Police reported that it had taken the following steps:

- a) In July 2002 a meeting was held at the offices of the Arauca Police Department Command with trade union leaders from the Department of Arauca. The meeting was attended by various trade union leaders and the Arauca Regional Government Prosecutor (E). Orders and instructions were issued with the aim of neutralizing the threats from illegal groups.⁷⁷
- b) On August 20, 2002, the commandant of Saravena police station and the municipal government representative held a meeting with the members of the Joel Sierra Regional Human Rights Committee. At the meeting they were asked to report "any changes of residence or travel to rural areas of the Department."⁷⁸ According to information from the station commandant, José Rusbell Lara was present at the meeting.⁷⁹
- c) Without providing exact dates, inspections were carried out at the trade union offices in Saravena and residences of the leaders, following which security and self-protection recommendations were made.⁸⁰ Sporadic checks on the offices and places of residence of the trade union leaders were stepped up by police patrols in the capital of Arauca.⁸¹
- d) Through the sectional intelligence office investigation, plans were devised for gathering intelligence to identify and preemptively neutralize possible terrorist plans against the well-being of trade union leaders in the department, and the appropriate security and risk assessments are carried out.⁸²
- e) The "police godfather program" [*programa de padrinos policiales*] was implemented, placing them at officer rank. Units were instructed to coordinate with civilian, political, and military authorities in each jurisdiction in order to convoke and hold meetings on security with the aim of adopting joint administrative decisions on preventive measures.⁸³

⁷⁴ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 199.

⁷⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 199.

⁷⁶ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁷⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁷⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 200.

⁷⁹ Office of the Government Disciplinary Attorney for the Defense of Human Rights, Case 008-79780-02, July 7, 2005, p. 3. Copy requested by the IACHR from the State of Colombia on August 20, 2012.

⁸⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁸¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁸² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁸³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

- f) A company was officially retained so "that the necessary adjustments might be made" to implement a caller identification system in Arauca capital. Arauca police carried out operations aimed at neutralizing terrorist acts against trade union offices.⁸⁴

59. According to the report of the commandant of the Arauca Police Department, José Rusbell Lara "enjoyed preliminary preventive protection designed to minimize the risk and vulnerability to which he was exposed by his activities, without that being a 'personal escort,' and the threats identified in the security and vulnerability assessment were the same for all members of the organization."⁸⁵ According to reports, "his constant travel to rural areas of the municipality of Saravena and Tame precluded the allocation of a different arrangement than the one described, which was entirely at his disposal at all times."⁸⁶

60. As regards implementation of the precautionary measures granted by the IACHR, the Commission notes that, according to a document written by the Government Prosecutor for Prevention of Human Rights Violations and Ethnic Matters, after being informed of the adoption of precautionary measures on July 29, 2002, she requested on August 16, 2002, and August 28, 2002, respectively, the Human Rights Department of the Ministry of the Interior and the Office of the Human Rights Coordinator of the National Police to provide urgent reports on the protection measures adopted to protect the lives and well-being of the beneficiaries.⁸⁷

61. In reply to that request, on October 17, 2002, the Ministry of the Interior's Protection Group Coordinator informed with respect to Rusbell Lara that the DAS had been requested to conduct a technical risk assessment, and the National Police, to adopt preventive security measures.⁸⁸

62. According to information supplied by the DAS Sectional Office in Arauca, upon receiving the Interior Ministry's request, on August 2, 2002, by reason of the fact that it had no personnel stationed in any of the municipalities where the persons under threat were domiciled, the Protection Area sent an official communication "to the [Arauca] police commandant ... enclosing a copy of the communication from the Inter-American Commission on Human Rights with a view to the adoption of precautionary measures to ensure the safety of social leaders in the Department of Arauca ... among them, JOSE RUSSELL LARA in Tame." In that communication, the DAS says that it informed him of the "difficulty for their agency in contacting the aforementioned threatened persons and asking for his collaboration in requesting their presence at [the] offices in Arauca, in order to conduct the relevant interview and offer recommendations, as well as a risk assessment."⁸⁹

63. According to a statement by the commandant of Arauca Police Department, who received the request from the DAS on August 2, 2002, that day he forwarded the request from the DAS to the operational sub commandant.⁹⁰ According to testimony from the above commandant, on August 12, 2002, the operational sub commandant sent the commandant of Saravena police station an order to meet with the "trade union

⁸⁴ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 189-190.

⁸⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 199-200.

⁸⁶ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 199-200.

⁸⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 188.

⁸⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 193.

⁸⁹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 214-215.

⁹⁰ In his statement, he said, "That day I personally wrote to the Operational Sub Commandant, Major "CARO," who was responsible for carrying out the orders that I gave him as well as the duties pertaining to his position. While it is true that I dealt diligently with this official communication and gave the relevant orders, I wish to criticize the attitude of the DAS officials responsible for the brazen manner in which they shirked their duties, given that, for one thing, the police are not answerable to the DAS and, for another, they cannot divest themselves of their responsibilities with the argument that they passed on the official communications to the police. Based on my personal experience in Arauca, I find no justification for their staying in the Department's capital and not traveling to its municipal districts. Therefore, to now seek to evade their responsibility with the argument that the matter was transferred to the police seems unjust to me, in spite of having complied with the request." Cf. Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 226.

leaders--of whom there are seven in total, number five on the list being José Rusbell Lara--in order to discuss issues concerning their security.”⁹¹

64. On September 4, 2002, the president of the CUT and the president of the Joel Sierra Committee sent a letter to the President of the Republic, among other authorities, informing that precautionary measures had not yet been adopted for a number of the beneficiaries, and so they reiterated their request to the State to arrange the appropriate individual or collective protection measures with each one.⁹²

65. The Commission notes, further to the request from the DAS of August 2, 2002, that the record contains a later letter from the DAS, dated November 21, 2002, requesting the commandant of the Police Department for information on the status of the precautionary measures and technical risk and threat-level assessment.⁹³ The record also contains information regarding the January 29, 2003 response from the director of the DAS sectional office and the head of the DAS Intelligence Group to the coordinator of the DAS Protection Office in Bogotá, saying that "they are unable to carry out the security and threat-risk assessment because Mr. Rusbell Lara is in the Municipality of Tame, where the DAS does not have an office and it is too risky for their offices to travel"; it also requested that the "persons under threat travel to the Municipality of Arauca for their assessment."⁹⁴ The Commission notes that the latter two facts occurred after José Rusbell Lara's murder, which took place on November 8, 2002.

66. According to a communication from the Office of the Government Disciplinary Attorney for the Defense of Human Rights concerning the administrative proceeding opened at the time of Mr. Rusbell Lara's murder, "information supplied by the Government Prosecutor for Prevention of Human Rights Violations and Ethnic Matters suggests that no security assessment was ever carried out and that the protection measures that they were owed were never implemented."⁹⁵

67. The Commission notes that on September 11, 2003, the Office of the Government Disciplinary Attorney for the Defense of Human Rights opened a disciplinary investigation under case number 008-79780-02 for possible omissions by government officials that could have influenced José Rusbell Lara's murder. Specifically, the investigation was opened for a possible omission on the part of the commandant of Arauca Police Department for failure to instruct the police commandant of Tame to implement the protection measures that the Ministry of the Interior and the DAS had requested for José Rusbell Lara. In addition, an investigation was opened into the head of the DAS sectional office in Arauca for possible failure to carry out the risk and threat assessment in a timely manner.⁹⁶

68. On July 7, the Office of the Government Disciplinary Attorney for the Defense of Human Rights decided to close the proceedings and refrain from continuing the disciplinary inquiry for lack of evidence of responsibility of state officials in the facts concerning Mr. Lara's lack of protection.⁹⁷ According to a copy of that order, which the IACHR requested from the State of Colombia, the commandant of Tame Police

⁹¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 226.

⁹² Specifically, they noted, "To date, the measures have not been adopted, despite the fact that the unpunished activities of paramilitaries and subversive groups in the department of Arauca have increased, with the attendant adverse consequences for civil society and heightened risk to us, the beneficiaries of the measures ordered by the IACHR." Request for precautionary measures MC280-02. State's brief of September 4, 2002, submitted on September 13, 2002.

⁹³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 214-215.

⁹⁴ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 221 and 222. Also, in the letter of January 29, 2003 addressed to the Coordinator of the Office of DAS in Bogota Protection, states that the Special Protection Bureau said on January 27, 2003 that "the National Police to date has not given answers elevated to requests related to the case." See National Human Rights and International Humanitarian Law Unit, Original Notebook 1. Filed 1777, page 215.

⁹⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 208.

⁹⁶ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 221.

⁹⁷ Office of the Government Disciplinary Attorney for the Defense of Human Rights, Case 008-79780-02, July 7, 2005. Copy requested by the IACHR from the State of Colombia on August 20, 2012.

Station in Arauca stated that “José Rusbel [sic] Lara resided in Saravena, not in Tame, where he died, which is why it is essential that whenever a person under threat intends to travel from one municipality to another they inform the police station in their place of residence so that the latter may alert the police station in the place where they are going and the appropriate actions and security measures can be coordinated.” He also stated, “Neither were there police personnel, vehicles, means of communication, or other resources with which to travel with him from village to village.”⁹⁸ Consequently, the Office of the Government Disciplinary Attorney concluded that:

By imprudently and recklessly traveling from one municipality to another in an area well-known for its lack of law and order, José Rusbel [sic] Lara accepted the risks and consequences of his actions since the security measures that he took were not the most orthodox or conventional given that he failed to inform the authorities and traveled without any protection. The Government Disciplinary Attorney finds that he behaved imprudently and recklessly since, despite having received threats and been warned by the authorities, he failed to use any common sense, since in a country like Colombia with its internal armed conflict, by traveling as he did he was virtually asking to be murdered, which is indeed what happened.⁹⁹

69. No appeal was filed against that decision, as a result of which it was declared final on July 25, 2005.

E. Rusbell Lara’s murder

70. According to the inquiries made by the authority in charge of the investigation, there were no eyewitnesses to the events surrounding Rusbell Lara's murder.¹⁰⁰ What is known about the circumstances of his murder comes from a confession by a member of the BVA who admitted to having taken part in the crime, and from statements by persons who came upon the scene after the deed had been carried out. What follows is an account of the circumstances in which José Rusbell Lara was killed that the Commission has pieced together from information available in the record.

71. José Rusbell Lara was a building contractor who worked for the mayor's office and was doing some work at Inocencio Chincá School in the Municipality of Tame.¹⁰¹ On November 8, 2002, as he was walking toward the school¹⁰² along Calle 12, where it intersects with Carreras 13 and 14 in the Santander neighborhood,¹⁰³ men on a motorcycle in civilian clothes shot him, leaving him seriously wounded.¹⁰⁴

⁹⁸ Office of the Government Disciplinary Attorney for the Defense of Human Rights, Case 008-79780-02, July 7, 2005, p. 4. Copy requested by the IACHR from the State of Colombia on August 20, 2012.

⁹⁹ Office of the Government Disciplinary Attorney for the Defense of Human Rights, Case 008-79780-02, July 7, 2005, pp. 4 and 5. Copy requested by the IACHR from the State of Colombia on August 20, 2012.

¹⁰⁰ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 40.

¹⁰¹ According to testimony from Mr. Wolmar José Perico Sierra, the principal at Inocencio Chincá School, José Rusbell Lara had a “contract [...] with the mayor’s office; he had done about 50% of the work on the restrooms, more or less; he was killed two blocks from here. I know absolutely nothing about the death of JOSÉ RUSBELL LARA; one of his sons, RUSBELL, was studying here.” Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 4-8.

According to the testimony of Rusbell Lara Tuay, his father, José Rubel [sic] Lara, “as well as being involved in human rights, worked as a building contractor with the mayor's office. As a master builder, he would go to [Chincá] School to check the work.” Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 52.

¹⁰² According to the testimony of Rubel Dair Lara Tuay, José Rusbell Lara was murdered “when he was still about 100 meters from the school.” Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 52.

According to testimony from Asdrúbal Papamila “he was about two blocks and a half from Chincá School.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹⁰³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 7.

72. With regard to this crime, Julio Cesar Contreras Santos, alias “Alex” or “Chapulín”, an urban operative of the BVA, confessed to taking part in the deed:

It was around noon and he was coming out the school. The man was wearing black pants and a black hat, and carrying a satchel, so I realized that his name was RUSBELL. The kids were already leaving the school. I got [the order] to do the deed from AMISTAD by cell phone. He told me to find JAIME, as he had a little job for us to do. So JAIME said that we should go and look for him. I went with BRAYAN on the motorbike. JAIME told me that the man was in those schools. And was how we did it16:55 that conversation lasted no more than two minutes. The man was in Puerto Gaitan. You didn't understand me. We were in touch with Puerto Gaitan, but the people in Puerto Gaitan would call me and tell me to go to such and such a place, and that was someone who helped them. PSF: When they called you, you had already found RUSBELL RV: As far as I know. I don't know who told CANTANTE. PSF: Who goes out RV: BRAYAN, JAIME and I. JAIME went on the black DT by himself and me [with] BRAYAN on the white motorbike. PSF: You went straight to the school. RV: JAIME went as far as 11th. He told me to stay put. As soon as JAIME came out he told me that the man had to be killed. The man limped all the way down 12th. BRAYAN shot him. I was with BRAYAN on the bike, he was alone. The only thing I can remember is that he was wearing a black hat, black pants, and looked a little fat. No, I don't know how tall he was.¹⁰⁵

73. As regards the time at which the events occurred, the Commission notes that the different versions conclude that the deed was committed at some time between 10:30 a.m. and 12 noon.¹⁰⁶ After the murder was committed, according to the testimony of Sonia Milena López Tuta, she knew “that the men turned toward the side of the police station and that they were paramilitaries.”¹⁰⁷ For his part, “Alex” said “I headed toward 14th and told [alias Jaime] that we had carried out the order and he said yes because he did not walk by me. We went to ROSA and ROSITA’s house, but they did not know what we were up to.”¹⁰⁸

74. According to the information available, after José Rusbell Lara was attacked, the first person on the scene was José Asdrúbal Papamija Córdoba, who said he arrived around 10 minutes after hearing the shots.¹⁰⁹ He said that when he arrived at the scene, “at that time there was no one around. I could not see

¹⁰⁴ According to the testimony of Jaime Orlando Reuto Manosalva, “he found out that he was killed by two persons on a motorcycle and it was rumored that their aliases were CERÁMICA and MAZUDO, members of the AUC, MAZUDO belonging to the urban command unit.” Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 276.

Sonia Milena López Tuta said that “it was two men in civilian clothes on a motorcycle.” Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 161.

In his expanded statement, Floro Ángel Matiz said, “I know nothing, I do not know for sure but they say that it was a motorcycle, that's all. I do not know what kind.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 275.

¹⁰⁵ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

¹⁰⁶ According to the statement of Asdrúbal Papamija, the crime took place at around “11:15 in the morning, more or less.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

According to the statement by the Assigned Unit to Cútura Special Court, at the time “of the murder, 10:30 a.m., the street along which the victim was walking was deserted.” Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 40.

According to the record of the interrogation, “Alex” said, “I want to clarify that the events did not take place at 10 a.m., but at noon because the students were leaving the school.” Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 5.

¹⁰⁷ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 161.

¹⁰⁸ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

¹⁰⁹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

anyone. Later [...] people began to arrive and then the crowd formed.”¹¹⁰ José Asdrúbal Papamija says that upon recognizing Jose Rusbell Lara he went to find Floro Ángel Matiz Luna, who also knew him¹¹¹ and Rusbell Lara was taken to hospital, where he eventually died.¹¹²

75. According to Floro Ángel Matiz Luna, he rode “to 12th street on the motorbike [...] so I arrived and saw him lying on the ground, and saw that he was breathing through his mouth.”¹¹³ He said that he went to the place where Mr. José Rusbell Lara was wounded accompanied by a hairdresser called “Leidy.”¹¹⁴ He said, “CORPORAL CASAS arrived-- that's what they call him; he is with Civil Defense or something-- and I asked him what we should do with him, and he said that we should take him to hospital. We took him to the hospital and he died an hour later.”¹¹⁵

76. According to the record of the removal of the corpse, Rusbell Lara’s corpse had wounds at the left sphenoid and in the right temporal region, presumably caused by a firearm.¹¹⁶ According to the testimony of Floro Angel Matiz, José Rusbell Lara died at the hospital at approximately 1:00 p.m.,¹¹⁷ and according to Asdrúbal Papamija’s testimony, Rusbell Lara died at 1:30 p.m.¹¹⁸ According to the record in the domestic proceeding, the removal of the corpse took place at 2:00 p.m.¹¹⁹

77. The Commission notes that in a number of interrogation proceedings, the investigating officer referred to a police station that was supposedly near the scene of the crime.¹²⁰ The Commission notes that the perceived distance from the scene of the crime to the station varies.¹²¹ From the information available in the record, the Commission takes it as proven that the police station in the Municipality of Tame is situated at 14-44 15th Street opposite Santander Park.¹²²

¹¹⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹¹¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹¹² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹¹³ Testimony of Floro Ángel Matiz Luna, Human Rights and International Humanitarian Law Unit, Original Record 1 Case 1777, p. 17.

¹¹⁴ In her testimony, Ana Leidis Olivos Dulcey said, “As I work near where he was killed, I heard the shots and I can’t remember who it was who told me that Rusbell had been wounded. I went to see and there he was wounded. Then he was picked up in a truck and taken to hospital, where he died.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 276-277.

¹¹⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 274.

¹¹⁶ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 2.

¹¹⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 7.

¹¹⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹¹⁹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 2.

¹²⁰ The investigator noted in the record that there was information indicating that a police station was located two blocks from where Mr. Rusbell Lara was murdered and that two suspected paramilitaries had assassinated him. In that connection, the investigator determined that it was necessary to establish which competent authority was near the scene of the crime and who were the witnesses to the facts. Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 56 and 57.

¹²¹ José Asdrúbal Papamija said that “the police station is some four and a half blocks away, approximately 400 meters--he corrects himself: 450 meters. It is quite a way off, but neither the police nor the army came to the scene of the crime; no authorities went.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

According to Rusbell Dair Lara Tuay, “No authority has an office near where they killed him. It was some way off.” Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 52. Ana Leidis Olivos Dulcey said, “the nearest is the police station, about five blocks away.” As regards a competent authority that arrived at the scene of the crime, she replied, “None. When they picked him up to take him to hospital there were no authorities.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 276-277. Ms. Miryam Tuay Soto, said that the nearest authority to where Mr. Rusbell was killed was the police station, approximately 8 blocks away. Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 281-283.

¹²² Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 4-8.

F. Participation of the paramilitary group **Bloque Vencedores de Arauca** in the killing of **José Rusbell Lara**

78. Julio César Contreras Santos, alias “Alex,” “Chapulín,” or “Angelito,” who was an urban operative of the BVA in Tame around the time of the events, confessed to his participation in the murder of José Rusbell Lara.¹²³ In this regard, the Commission notes that in his statement of September 14, 2009, alias Alex stated:

I admit that I went with the man who killed him. I participated in the homicide by providing the motorbike to the man called BRYAN or ALESANDER; I do not know his real name ...Mr. RUSBELL was walking down the street and we passed by him on the motorbike ... BYAN [sic] fired but because of the noise made by the motorbike I do not know how many times, or where on his body. The [record of the] removal [of the body] supposedly says three.¹²⁴

79. In 2002, the year of Rusbell Lara's murder, according to the 40th Prosecution Unit, which was in charge of the investigation into Rusbell Lara's murder, the command structure of the paramilitary unit **Bloque Vencedores de Arauca**, assembled from statements given by all its demobilized operatives and documents collected by the National Unit for Justice and Peace, was as follows: “In order, EL PROFE: VICENTE CASTAÑO, supreme commander of the bloc; PABLO ARAUCA: MIGUEL ÁNGEL MELCHOR MEJÍA MÚNERA, military commander, together with SEBASTIAN: VICTOR MANUEL MEJÍA R.I.P., financial commander; RUBEN, the next most senior military commander; AMISTAD, who replaced EL CANTANTE (murdered), together with LUCAS, in charge of the PAYROLL.”¹²⁵ In addition, according to Julio César Contreras Santos (alias “Alex,” “Chapulín,” or “Angelito,”) “Amistad,” “Brayan,” and “Jaime” participated in Rusbell Lara's murder.¹²⁶ He also said that after the deed was carried out they fled to the home of alias “Rosa.”¹²⁷

80. According to the investigations at the domestic level and the statements from members of the BVA in the record, the aforementioned persons were linked to the BVA structure on the date of the events. Some of them admitted their connection to the murder of Rusbell Lara and others died while the inquiry was under way.¹²⁸

¹²³ Miguel Ángel Mejía Múnera said that “‘ALEX’ operated from mid-2002 until 2003—nearly all 2003. He was an urban operative in the Municipality of Tame. He was always an urban operative. He was under the command of AMISTAD and CANTANTE, who were a financial command unit.” Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, pp. 11-12.

¹²⁴ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 85.

¹²⁵ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. T81.

¹²⁶ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 62.

¹²⁷ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

¹²⁸ In this connection, the Commission notes the following:

Miguel Ángel Melchor Mejía Múnera, alias “el Mellizo,” identifies himself as a representative of the **Bloque de Vencedores de Arauca** general staff (Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 173). According to the report of the Unit for Justice and Peace, which contains extracts from the voluntary statement of Mejía Múnera, Pablo Arauca personally demobilized on August 27, 2005, at Santa Fe Ralito, and on December 23, 2005, the BVA demobilized at Puerto Gaitan (Arauca). (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 253). According to his voluntary statement to the Unit for Justice and Peace of the Office of the Prosecutor General, Mejía Múnera assumed responsibility for the murder of Rusbell Lara “through the chain of command” (Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, p. 40).

Víctor Manuel Mejía Múnera identifies himself as a representative of the BVA general staff (Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 173). Following the killing of José Rusbell Lara, Víctor Manuel Mejía Múnera was himself murdered on April 29, 2008, in a confrontation with the National Police (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 127-128).

Alias “Rubén”, according to information provided to the Prosecutor's Office, is Orlando Villa Zapata (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 75). According to his testimony, he belonged to the BVA from 2001 to 2003 as its second-in-command (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 2). According to Miguel Mejía Múnera, “while he was not there, RUBÉN was in charge, RUBÉN managed things and gave the orders there” (Human Rights Unit, Original Record 4. Case 1777, p. 282). In an interrogation, Orlando Villa Zapata said with respect to the murder of

Rusbell Lara that he "never gave the order, either directly or indirectly." However, he said that he was "accepting all these deeds on the basis of chain of command because they were committed by members of Bloque Vencedores de Arauca" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 13).

Alias "Lucas", according to information provided to the Prosecutor's Office, is José Luis Mejía Espinoza (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 76). According to "Rubén", Miguel Ángel Mejía Múnera brought him to work for the bloc in late 2001 and he functioned as payroll master. However, as he had military training he was used for supervising the military part of the bloc and "he could have a say in the bloc's decisions" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 10-11). According to the investigation carried out by the National Unit for Justice and Peace, alias "Lucas" did not demobilize and is suspected of being part of the so-called "emerging criminal groups" [*bandas emergentes*] that operate in Casanare (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 76).

Alias "Cantante" was Carlos Gardiel (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 78). According to Miguel Ángel Mejía Múnera, alias "Cantante" was a troop military commander and replaced by alias "Amistad" from 2001 to 2003 (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 114). According to alias "Rubén", "Cantante" was the bloc's financial officer and in charge of the urban operatives in Tame, having joined in late 2002 (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 12). Alias "Alex" says that on the date of Rusbell Lara's murder, he "was not there, [who] was there was AMISTAD" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 86). Alias Cantante was killed in fighting with the army in Casanare on January 28, 2004 (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 119-120).

Alias "Amistad", according to the National Unit for Justice and Peace, is Andrés Manuel Nambertinez Orozco (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 123-124). Alias "Alex" says that in 2002 the military commander was "Amistad" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 84-85). Alias "Rubén" says that "Amistad" was military commander from early 2002 until mid-2003 (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 11-12). Regarding his participation in the murder of Rusbell Lara, alias "Alex" says that he received a call from "Amistad" "by cell phone. He told me to find JAIME, as he had a little job for us to do" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 52). He said that after the murder was perpetrated, they reported to commander alias "Jaime" and he said, "I imagine he was ordered by commander AMISTAD, who was the military commander at the time" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 86-87). According to information in the record, "Amistad" was an applicant from the Bloque Héroes del Llano y del Guaviare, a paramilitary group, for which voluntary testimony proceedings had not yet begun" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 122). According to a report submitted in the investigation, alias Amistad, "was detained but then released, his whereabouts currently unknown" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 119-120).

Alias "Jaime" o "lobo" is Jesús Antonio Muñoz Jiménez. According to statements from Jaime Caicedo Ramos, alias "Jaime" was urban commander in Tame until January 10, 2003, and subsequently transferred to Saravena (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 188). A report by the specialized prosecutor states that he was convicted by the Criminal Chamber of Arauca District Court for criminal conspiracy by reason of his membership of the BVA (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 193). According to the National Identification Archive (ANI) he was held on the orders of Arauca Special Prosecution Unit as a result of Proceeding 477 on March 21, 2003 (Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, pp. 8 and 32). "Alex" says that he does not know if alias JAIME will demobilize. He says that he has no knowledge as to whether he or not he will demobilize or if he might be in jail (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 186). Regarding his participation in the murder of Rusbell Lara, alias "Alex" says that he received a call from "Amistad" "by cell phone. He told me to find JAIME, as he had a little job for us to do" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, p. 52). He says that after the murder was perpetrated they reported to commander alias "Jaime" (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 86-87).

Alias "Alex," "Chapulin," or "Angelito" is Julio César Contreras Santos and he had been an "urban operative," a position he was given in December 2002 by alias "Jaime." According to his testimony, he was an urban operative until March 6, 2003, when he was captured by the army. With regard to the murder of Rusbell Lara, he says that he drove the motorcycle from which alias "Brayan" shot him. Alias "Alex" admitted his part in Rusbell Lara's murder. He says that he demobilized "collectively" on December 24, 2005, and his application is being processed¹²⁸ Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 86-87)

Alias "Brayan" or "Bryan" is Alexander Rico Jaramillo, according to a report submitted in the investigation, and he was killed on August 22, 2003 in Arauca capital (Human Rights and International Humanitarian Law Unit, Original Record 5. Case 1777, pp. 119-120). The above was corroborated in the search of the National Identification Archive (Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, p. 8). According to the bloc's organizational chart drawn up by the prosecutor's office, in 2002, alias "Brayan" was an urban operative in Tame (Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, p. 3). Regarding his participation in the murder of Rusbell Lara, alias "Alex" says that Brayan shot Rusbell Lara from a motorcycle driven by alias "Alex" (Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52).

Alias "Rosa", according to alias Cúcuta, "was the alarm raiser or messenger in charge of tracking people down. She was the one who located people because she was from Arauca and new who they were" (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 15). According to a statement by Leonardo Corrales regarding alias "Rosa," "she was going to be killed because PABLO ARAUCA had ordered it." He says that on one occasion he "was waiting for breakfast and Rosa said that she was hungry and RATÓN told her that he would give her breakfast at another squad has further ahead, and that was the last I heard of her" (Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 70). As regards her connection with the murder of

81. As regards the bloc's reasons for murdering Rusbell Lara, Alias "Alex" says that he "was carrying out orders," that "Jaime" told him that "that man was working with the FARC", and that "[he] never knew who he was."¹²⁹

G. Consequences of Rusbell Lara's murder for his immediate family

82. According to a statement given in 2004 by Miryam Tuay Soto, Rusbell Lara's sister-in-law, Rusbell Lara's family consisted of 15-year-old Rusbell Dair, 13-year-old Ana Dirley, and eight-year-old Dubian Ferley. Rusbell Lara's wife, Ana Dolfelia Tuay Soto, had had cancer and died before Rusbell Lara was killed.¹³⁰ According to a statement by Floro Ángel Matiz, days before his death, Rusbell Lara told his son, Rusbell Lara Tuay, "that if anything happened to him, he should go to his brother Floro until Rusbell's brother, that is their uncle, came for them."¹³¹

83. After Rusbell Lara's murder, Floro Ángel Matiz said that the oldest boy, Rusbell, and the little three-year-old boy went to his house and Meta's grandmother came and took them.¹³² According to the statement of Miryam Tuay Soto, "Rusbell's sons and daughter were staying with Rusbell's aunt, Rubiela Fernández Lara."¹³³ Rusbell Dair Lara says that later he went to live at his aunt's house because he had also been threatened. In that regard, he said "I also received a call and was told that I should leave unless I wanted what happened to my father to happen to me. I came to San Martín. I was very frightened and I did not want to end up the next day being killed like my father."¹³⁴

H. The investigation of the crime¹³⁵

84. On November 8, 2002, the police inspector, together with army and national police personnel, carried out the formal removal of the corpse at the morgue of the central cemetery in Tame.¹³⁶ On the judicial inspection certificate drawn up at the removal of the corpse, in the identity box it says "17.547.250, Tame-Arauca" and under domicile, "Barrio la Unión."¹³⁷ The corpse had wounds at the left sphenoid and in the right temporal region. The head was wound with an elastic band and the body was dressed in undergarments without "documents or effects."¹³⁸ According to the decision of the special prosecution unit, no evidence was collected at the scene because the body was taken to the hospital. In addition, no projectiles were recovered in the autopsy because one of the orifices was the entry wound and the other, the exit wound. Had any been recovered ... it would have made it possible to carry out ballistics tests to determine the characteristics of the firearm and then make a comparison with those that have been seized in the Municipality of Tame."¹³⁹

Rusbell Lara, alias "Alex" said that after perpetrating the deed they fled "to ROSA and ROSITA's house, but they did not know what we were up to." (Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

¹²⁹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

¹³⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 281-283.

¹³¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 275.

¹³² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 275.

¹³³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 281-283.

¹³⁴ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 54.

¹³⁵ The Commission observes that according to information in the record, the investigation of the murder of Jose Rusbell Lara was first conducted in the ordinary courts and then in voluntary testimony proceedings involving a number of demobilized fighters in the framework of Law 975 of 2005 (Justice and Peace Law). Consequently, for the purposes of determining the legal implications of the facts in this case, the IACHR includes in this analysis the applicable legal framework governing both processes.

¹³⁶ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 2.

¹³⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 2.

¹³⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 2.

¹³⁹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 40.

85. On November 10, 2002, the commanding officer of “General Rafael Navas Pardo” 18th Army Engineers Battalion, reported the murder of José Rusbell Lara to the sectional prosecutor of Tame-Arauca Criminal Circuit.¹⁴⁰ In his complaint, he said that “based on intelligence obtained,” the deed was attributable to “NN. ALIAS RUBEN, NN. ALIAS LUCAS, NN. ALIAS AMISTAD, NN. ALIAS ESQUIRLA, NN. ALIAS DIOMEDEZ. NN, ALIAS SANTIAGO, belonging to the general staff of the AUI.”¹⁴¹ On November 15, 2002, the judicial police denounced the murder to the sectional prosecutor, saying that the “causes and perpetrators of the crime are unknown.”¹⁴² On November 15, 2002, the national coroner’s office [Instituto Nacional de Medicina Legal y Ciencias Forenses] sent the prosecutor’s office the autopsy report.¹⁴³

86. On November 26, 2002, the circuit court sectional prosecutor ordered the opening of preliminary investigation 2310 of persons unknown for the crime of homicide of José Rusbell Lara.¹⁴⁴

87. On April 22, 2003, it was ordered that the record of the preliminary investigation be sent to the Special Prosecutor’s Office of the Support Unit for the Human Rights and International Humanitarian Law Unit of Norte de Santander and Arauca (hereinafter Special Prosecution Unit) in view of the fact that Rusbell Lara “was a member of the Central Unitary Workers Union (CUT)” and a “member of the Joel Sierra Regional Human Rights Committee.”¹⁴⁵ The local sectional prosecutor forwarded the record of the investigations carried out on April 22, 2003.¹⁴⁶

88. On June 1, 2003, the National Police notified the sectional prosecutor’s office of the identity data of N.N. Alias Ruben, N.N. Alias Lucas, N.N. Alias Amistad, N.N. Alias Esquirla and N.N. Alias Santiago.”¹⁴⁷ On September 4, 2003, Tame Sectional Prosecutor’s Office ordered the record of the proceedings to be forwarded to the Human Rights and International Humanitarian Law Unit.¹⁴⁸

89. On October 2, 2003, the judicial investigator informed the special prosecutor that new measures were needed to clarify the facts, including a broader examination of the contents of the complaint lodged by the commanding officer of the 18th Engineers Battalion, who alluded to the suspected culprits of the crime.¹⁴⁹

90. On November 6, 2003, a judicial inspection was carried out of preliminary investigation 81265 of the 12th Prosecutor’s Office for the crime of forced displacement of Carlos Camilo Fernández Lara, brother of José Rusbell Lara.¹⁵⁰ According to the findings of the inspection, in December 2001, Carlos Camilo Fernández Lara was detained by members of the Bloque Centauro de Autodefensa, a paramilitary group, and taken to speak with a commander by the alias “Semáforó,” who demanded a sum of money. After negotiating, in order to regain his freedom Mr. Fernández agreed to deliver a sum of money. Mr. Fernández Lara said in his statement that subsequently, on August 19, 2002, members of the FARC arrived at his farm and took him to meet a commander with the alias “Alberto Pitufó,” who informed him that he had been identified as a paramilitary who provided funds to the self-defense groups. According to Mr. Fernández, he was detained by the FARC and later released. According to the statement in the record, one of the workers on Mr. Fernández’s

¹⁴⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 12.

¹⁴¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 12.

¹⁴² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 21.

¹⁴³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 15.

¹⁴⁴ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 17.

¹⁴⁵ Tame Prosecutor’s Office, Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 37.

Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 38.

¹⁴⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 40.

¹⁴⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 47.

¹⁴⁹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 56 and 57.

¹⁵⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 84.

farm told him that it would be best if he fled because he was going to be killed. Upon receiving the above news, Mr. Fernández reportedly traveled to a number of different places and while in Bogotá, on November 16, 2002, his sister received a note addressed to him telling him that he had been declared a military target. Finally, Mr. Fernández said that he heard that on November 8, 2002, his brother was murdered in Tame. He said that he did not know the reason, “but the commander, ‘Semáforo’ ... said that they knew the locations of [his] entire family.”¹⁵¹ On December 24, 2003, the 12th Prosecutor's Office ordered a preliminary investigation of the case, including José Omar Cifuentes Hernández, alias “Semáforo,” as a suspect in the crime of extortion and conspiracy to commit crimes, and requesting the judicial police to arrest him.¹⁵²

91. On December 23, 2003, the “General Rafael Navas Pardo” 18th Army Engineers Battalion supplied information concerning the suspected perpetrators of Rusbell Lara’s murder.¹⁵³ On December 30, 2003, the Support Structure Unit of the 18th Army Engineers Battalion provided additional information that it had found in its files regarding the suspected perpetrators.¹⁵⁴ On January 2, 2004, the 18th Brigade provided the chief of the judicial police of the DAS with artist’s impressions.¹⁵⁵

92. On October 15, 2004, the Special Prosecution Unit mentioned the need to take various steps to move the investigation forward.¹⁵⁶ On October 19, 2004, the Special Prosecutor requested that the real name and identity be determined of the individual known by the alias “Rubén,” who was in detention at Villa Hermosa Prison.¹⁵⁷

93. Between November 18 and 23, 2004, the following came forward to give statements: Floro Ángel Matiz Luna,¹⁵⁸ Ana Leidis Olivos Dulcey,¹⁵⁹ José Asdrúbal Papamija Córdoba,¹⁶⁰ José Gildor Reyes Olivos, and¹⁶¹ Miryam Tuay Soto, sister-in-law of Rusbell Lara.¹⁶²

94. On November 22, 2004, the Special Prosecutor of the Human Rights and International Humanitarian Law Unit requested the commanding officer of “Navas Pardo” 18th Battalion to advise him where the person who reported the murder of José Rusbell Lara was working, the purposes of a judicial inquiry.¹⁶³ On November 23, 2004, the commanding officer of “General Rafael Navas Pardo” 18th Engineers Battalion informed the special prosecution unit, that the commanding officer who had filed the complaint for

¹⁵¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 166-168.

¹⁵² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 179.

¹⁵³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 141.

¹⁵⁴ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp.153-158.

¹⁵⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 148-151.

¹⁵⁶ The steps are as follows: (a) Reiterate letters of request 048 of August 2, 2004 to the Sectional Prosecutor of Tema [sic] (Arauca) and letter of request 057 of August 30, 2004 to the sectional prosecutor of Saravena, Arauca; (b) locate, through the SIJIN of the Municipality of Tema [sic], the family and acquaintances of Mr. Rusbell Lara; (c) request from the SIJIN of the Municipality of Tame a “copy of the day book” for November 8, 2002, indicating which persons were on duty that day; and (d) with the support of the Information and Analysis Section of the City of Santiago de Cali, determine the real name and identity of the individual known by the alias “Rubén,” who is known to have been in detention from 1995 to 1998 at Villa Hermosa Prison, in the company of an individual known by the alias “Cuchilla.” Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 269.

¹⁵⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 270.

¹⁵⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 274.

¹⁵⁹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 276-277.

¹⁶⁰ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 278-280.

¹⁶¹ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 286-287.

¹⁶² Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 281-283.

¹⁶³ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 288.

the murder of Rusbell Lara was no longer an active member of the unit and he suggested that he address his request to the Personnel Department of the Army Command in Bogotá.¹⁶⁴

95. On November 24, 2004, the special prosecution unit asked the manager of the radio station *Voz del Río de Tame* if, on February 12, 2002, the station had broadcast threats made by the self-defense forces to the peasant population in connection with the protest marches.¹⁶⁵ On December 3, 2004, the Mayor of Tame forwarded the record of a meeting held on February 13 at which the situation of the peasant protest marches was analyzed.¹⁶⁶

96. On November 25, 2004, Carlos Rafael Goyeneche Bello gave his statement,¹⁶⁷ as did Jaime Orlando Reuto Manosalva, candidate to the governorship of Tame. The latter said that “the rumor on the street was that the individuals went by the aliases Caremica [sic] and Mazudo, that they were reputedly members of the AUC, and that MAZUDO was a member of the urban command.”¹⁶⁸

97. On November 25, 2004, the second judicial investigator presented his report identifying alias “Rubén”.¹⁶⁹ On November 22, 2004, the national prisons service [Instituto Nacional Penitenciario y Carcelario] reported that it did not have any records for him for 1999 at that time because on October 20, 1998, the inmates destroyed the records for previous years.”¹⁷⁰

98. On January 31, 2005, the prosecution unit in charge of the investigation decided not to open a formal investigation for the crime of aggravated homicide; to “disqualify itself” from initiating a preliminary proceeding and subsequently ordered the case closed.¹⁷¹ The prosecution unit explained that the investigation had only obtained a morphological description of the persons who planned the crime, which is not sufficient to engage the responsibility of the individuals mentioned.¹⁷² On February 11, 2005, the disqualification order officially became final.¹⁷³

99. On February 3, 2005, the Secretary of the Municipal Mixed Court delivered a letter of request to the special prosecution unit¹⁷⁴ which contained statements taken from Hercilia Lara, Rubiela Hernández Lara, and Rusbell Dair Lara Tuay.¹⁷⁵ On February 2, 2005, Sandra Sindy Rubiela Lara, Rusbell Lara’s sister, gave her statement.¹⁷⁶

100. On June 14, 2005, an interlocutory order was issued, vacating the disqualification order of January 31, 2005.¹⁷⁷ On the ground that the disqualification order had committed to specify the grounds

¹⁶⁴ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 1.

¹⁶⁵ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, p. 291.

¹⁶⁶ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 24.

¹⁶⁷ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 294-295.

¹⁶⁸ Human Rights and International Humanitarian Law Unit, Original Record 1. Case 1777, pp. 296-297.

¹⁶⁹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 17.

¹⁷⁰ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 19.

¹⁷¹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 41.

¹⁷² Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 40.

¹⁷³ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 45.

¹⁷⁴ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 46.

¹⁷⁵ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 47.

¹⁷⁶ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 55-56.

¹⁷⁷ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 61.

supporting the decision.¹⁷⁸ Based on the decision of the 40th Prosecution Unit of the Support Unit for Norte de Santander and Arauca, it was decided to vacate the disqualification order and continue the preliminary investigation.¹⁷⁹ On October 3, collective "Corporation "José Alvear Restrepo" in the character of a civil party requested information regarding the disqualification order¹⁸⁰.

101. In a brief of June 14, 2005, Cúcuta 40th prosecution unit requested that new investigative measures be adopted to continue the inquiry.¹⁸¹ As was noted in that brief, it had been learned that Jaime Orlando Reuto Manosalva had been murdered,¹⁸² purportedly by members of the Bloque Vencedores de Arauca self-defense units.¹⁸³

102. On July 26, 2005, a judicial inspection was requested of case 1656, the record of which was expected to contain information concerning deeds committed by paramilitaries in the zone.¹⁸⁴ On January 20, 2006, the 92nd prosecutor sent the 40th Prosecution Unit a copy of the order of December 28, 2005, designating his office as the special agent for the investigation in the case.¹⁸⁵

103. On April 10, 2007, the special prosecutor concluded that it was possible that the persons responsible for the homicide of José Rusbell were members of the BVA under the command of the brothers Miguel Ángel Melchor Mejía Múnera and Víctor Manuel Mejía Múnera.¹⁸⁶ On April 11, 2007, Cúcuta 40th Prosecution Unit tied the Mejía Múnera brothers to the investigation as co-authors of the homicide of Rusbell Lara, in their capacity as the commanders in chief of the BVA.¹⁸⁷ and requested information about the commanding officer in charge of Tame Police District on November 8, 2002, and where he was stationed.¹⁸⁸ On July 24, 2007, the order was given formally to open criminal proceedings against the Mejía Múnera brothers as the suspected authors of the murder of Rusbell Lara, and arrest warrants were issued for them; however, as yet those warrants have not been executed.¹⁸⁹

104. On May 18, 2007, Sonia Milena López Tuta, a former director of the Joel Sierra Regional Human Rights Committee gave her statement.¹⁹⁰

105. On July 31, 2008, the 40th special prosecutor mentioned that it had come to his attention that Miguel Ángel Melchor Mejía Múnera had been arrested.¹⁹¹ On August 11, 2008, an interrogation

¹⁷⁸ Article 327 of the Code of Criminal Procedure provides: The Prosecutor General or their representative shall refrain from initiating a preliminary proceeding when it appears that the conduct did not exist, is not classified as a criminal offense, criminal proceedings cannot be initiated, or there is demonstrable cause to conclude lack of responsibility¹⁷⁸. Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 62. In the opinion of the prosecution unit, none of the grounds set out in Article 327 of the Code of Criminal Procedure were present in the case of the Rusbell Lara investigation. Consequently, it was determined that the disqualification order, as presented, was legally inadmissible "and it should not have invoked that mechanism to order the proceedings closed." Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 63.

¹⁷⁹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 63.

¹⁸⁰ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 109-112.

¹⁸¹ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 67-68.

¹⁸² Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 106.

¹⁸³ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 149.

¹⁸⁴ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, pp. 119-120.

¹⁸⁵ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 147.

¹⁸⁶ Human Rights and International Humanitarian Law Unit, Original Record 2. Case 1777, p. 149.

¹⁸⁷ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 143.

¹⁸⁸ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 144.

¹⁸⁹ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 185.

¹⁹⁰ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 159.

¹⁹¹ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 205.

proceeding was held at Combitá Boyacá High-Security Prison.¹⁹² Miguel Ángel Melchor Mejía Múnera made no reply to any of the questions put by the prosecutor's office in connection with the murder of Mr. Rusbell Lara.¹⁹³

106. On October 27, 2008, the permanent parts of the record in case 4051 were transferred to case 1777 concerning the murder of José Rusbell Lara.¹⁹⁴ In that record Ferney Alvarado Pulgarín, alias "Cúcuta," testified about facts connected with the support that the BVA allegedly gave to the candidates who were elected Mayor of Tame and Governor of Arauca.¹⁹⁵ It was also indicated that the murder of Orlando Reuto supposedly had to do with his participation in a committee set up for the recall of Alfredo Guzmán Tafur, who was elected Mayor of Tame in 2003.¹⁹⁶ According to that record, José Fraydel Reuto Manosalva said that his reason for coming forward to testify was that he had received several threats for making statements to the prosecutor's office.¹⁹⁷ On August 27, 2008, the criminalistics investigator presented a report about the proceeding conducted in case 4051, which contains the voluntary statement of Miguel Ángel Melchor Mejía Múnera regarding the bloc's relations with Governor Julio Acosta Bernal.¹⁹⁸

107. On October 27, 2008, the 40th Special Prosecutor indicated the need to interrogate Orlando Villa Zapata, alias "Ruben", who had belonged to the BVA but demobilized, and whose case was being processed by the National Justice and Peace Unit. The prosecutor's office ordered "Ruben" to be included in the proceeding for suspected complicity in the aggravated homicide of José Rusbell Lara and aggravated criminal conspiracy.¹⁹⁹

108. On October 21, 2008, the Satellite Justice and Peace Unit of Cúcuta forwarded the voluntary testimony of Miguel Ángel Melchor Mejía Munera.²⁰⁰ Also included was the report of February 6, 2009, concerning case 4051 concerning the murder of the Registrar of the Department of Arauca, Alejandro Mónaco Plazas, which contains voluntary testimony given by Miguel Ángel Mejía Munera on January 20 to 22, 2009.²⁰¹ Contained in that record is a report that includes the testimony of applicant Orlando Villa Zapata, alias "Ruben," of October 30, 2008.²⁰²

109. On February 25, 2009, the 40th special prosecutor ordered the detention without the benefit of provisional release pending trial of Miguel Ángel Melchor Mejía Múnera for complicity in the murder of the

¹⁹² Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, p. 212.

¹⁹³ Human Rights and International Humanitarian Law Unit, Original Record 3. Case 1777, pp. 213-214.

¹⁹⁴ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 1.

¹⁹⁵ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, pp. 10-12.

¹⁹⁶ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 56.

¹⁹⁷ In that regard, he said that he "received a call from the Governor of Arauca, JULIO ENRIQUE ACOSTA BERNAL", who called [him] on [his] cellphone and said, 'LOOK, YOU SON OF A BITCH, I KNOW YOU'VE BEEN TESTIFYING TO THE PROSECUTOR'S OFFICE AGAINST ME. GET READY TO FACE THE CONSEQUENCES.' Then he hung up. In the last one was on Thursday, June 16, 2005." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 63.

¹⁹⁸ He said that he contacted the governor of Arauca on the orders of CARLOS CASTAÑO, as Julio Acosta Bernal "was a personal friend of his." He said, "CASTAÑO asked me as a favor to help ACOSTA. He was not yet governor." He said that he asked him "to lend him 500 million pesos," which he did and some years later, he paid him back 700 million pesos. He said that he was sympathetic toward "that political leader because he had recently served as consul in Singapore. CARLOS CASTAÑO recommended him to me and Commander TOLIMA brought him and introduced him to me; JULIO ACOSTA had been the target of several attacks by the guerrillas, which made me think that he would be a good anti-subversion candidate. The person in charge of the meetings with Mr. ACOSTA was commander RUBÉN. There were also other commanders who would meet him, such as ACEVEDO, MARTIN and TOLIMA, who before being a commander was JULIO ACOSTA's personal bodyguard." Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, pp. 74-75.

¹⁹⁹ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, pp. 110, 114 *et seq.*

²⁰⁰ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 114.

²⁰¹ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 260.

²⁰² Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 271.

protected person José Rusbell Lara and co-author of the crime of aggravated criminal conspiracy. The prosecutor ordered the detention order to be executed at the detention center where he had been deprived of his liberty on the orders of another authority.²⁰³

110. On April 2, 2009, the Second Prosecution Unit of Combita, Boyaca, returned the pretrial detention order, saying that “IT WAS NOT POSSIBLE TO SERVE THE ORDER since ... it was found that the inmate MEJIA MUNERA ANGEL MELCHOR was transferred to the DIJIN in Bogotá for extradition on March 3, 2009.”²⁰⁴ Decision 01575 issued by the Office of the Director General of INPEC, the national prisons service, is dated March 2, 2009, and the extradition was carried out on March 3, 2009.²⁰⁵

111. On April 13, 2009, an interrogation proceeding was held for Orlando Villa Zapata, alias “Ruben,” who said that he was aware that “Alex” had mentioned a homicide that occurred on that date.²⁰⁶ As regards his participation in the events, “Ruben” said “I do not accept [that] because I never gave the order, either directly or indirectly, but under the justice and peace process I am accepting all these deeds on the basis of chain of command because they were committed by members of Bloque Vencedores de Arauca.”²⁰⁷

112. On June 26, 2009, the 40th Special Prosecutor decided to issue an order for the detention without the benefit of provisional release pending trial of Orlando Villa Zapata, alias “Ruben”, for complicity in the murder of a protected person and co-author of the crime of aggravated criminal conspiracy. The order was issued at the detention center where he had been deprived of his liberty on the orders of another authority.²⁰⁸

113. According to a report presented to the prosecution unit on July 2, 2009, in the voluntary testimony of Miguel Angel Melchor Mejía Múnera of January 22, 2009, when he was asked in relation to Mr. Rusbell Lara's murder if the deed was “carried out ... with the collaboration of the army and the police,”²⁰⁹ he replied, “I do not know about those events. I am going to talk to the boys because none of them has spoken to me about this case.”²¹⁰

114. In testimony given on April 20, 2009, Julio Cesar Contreras Santos, alias “Chapulín” or “Alex,” confessed to having participated in the murder of José Rusbell Lara.²¹¹ On August 11, 2009, the 40th Special Prosecutor orders his inclusion in the proceeding²¹² and requested that a report and evidence be forwarded supporting the identities of aliases “Amistad,” “Bryan,” “Jaime,” and “el Cantante,” who were cited in the voluntary testimony of “Álex” as the persons responsible for the Rusbell Lara crime.²¹³ The prosecution unit also requested evidence of the death of alias “Bryan” and information as to whether or not alias “Lucas” exercised any commander authority at the time of the events.²¹⁴

115. On December 11, 2009, the 40th special prosecutor ordered the arrest and inclusion in the proceeding of Andrés Manuel Nambertínez Orozco, alias “Amistad,” named as a principal actor in the deed as

²⁰³ Human Rights and International Humanitarian Law Unit, Original Record 4. Case 1777, p. 286.

²⁰⁴ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 4.

²⁰⁵ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 5.

²⁰⁶ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 12.

²⁰⁷ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 13.

²⁰⁸ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 34.

²⁰⁹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 51.

²¹⁰ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 51.

²¹¹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 52.

²¹² Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 62.

²¹³ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 62.

²¹⁴ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 101.

a military commander of the group that committed the crime.²¹⁵ As it was found impossible to execute the arrest warrant, on February 22, 2010, the 40th prosecution unit included him in absentia.²¹⁶ On March 2, 2010, the order for his arrest was reissued to the Technical Investigation Corps and the National Police (SIJIN DENOR and DAS).²¹⁷

116. On August 11, 2009, the Secretary of the Justice and Peace Court informed the 40th Prosecution Unit that in a public indictment hearing held on August 10, 2009, the judge of oversight of procedural guarantees of the Justice and Peace Court ordered the suspension of the proceeding for alias “Ruben” or “La Mona” concerning the homicide of José Rusbell Lara with respect to the crime of criminal conspiracy.²¹⁸

117. On June 18, 2009, Miguel Ángel Melchor Mejía Múnera was notified in the United States of the contents of the interlocutory order in case 1777.²¹⁹ On August 26, 2009, the Director of International Affairs requested from the 40th Special Prosecution Unit a copy of the record in processing the letter of request notifying the order of February 25, 2009, which consisted of a pretrial detention order without the benefit of provisional release.²²⁰ After being notified in person, the order formally became final on September 3, 2009.²²¹

118. On September 14, 2009, and interrogation was held of alias “Alex” at which he admitted “that he went and killed ... RUSBELL.”²²² In the interrogation, alias “Alex” requested a reduced sentence for collaboration in this homicide.²²³

119. On November 3, 2009, the 40th special prosecutor issued a pretrial detention order for Julio César Contreras as co-author of the crimes of homicide of a protected person and aggravated criminal conspiracy.²²⁴

120. On December 4, 2009, field investigator No. 261 presented a report to the second assistant prosecutor of Cúcuta, saying that Víctor Manuel Mejía Múnera, alias “Pablo Mejía” or “Pablo Arauca,” was killed on April 29, 2008 in a confrontation with the DIJIN of the National Police.²²⁵ The report states that alias “Bryan” was killed on August 22, 2003, and that alias “Jaime” or “Chucho” is Jesús Antonio Muñoz Jiménez, who is under investigation for acts associated with the crime of murder for terrorist purposes and committed on December 19, 2002 in the bar known as El Llanerísimo in Tame, Arauca.²²⁶ Alias “El Cantante” was identified as Carlos Gardel Martínez Castillo, who was killed in fighting with the army on January 28, 2004. With respect to alias “Lucas,” it was reported that “he has not demobilized. His current whereabouts are unknown and this unit has been unable, based on the information it has collected, to ascertain if he exercised authority in the Municipality of Tame on November 8, 2002.”²²⁷

²¹⁵ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 150.

²¹⁶ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 160.

²¹⁷ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, pp. 170-172.

²¹⁸ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 65.

²¹⁹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 69

²²⁰ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 66.

²²¹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 73.

²²² Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit, Case 1777, p. 85.

²²³ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 87.

²²⁴ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 101.

²²⁵ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, pp. 127-128.

²²⁶ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 128.

²²⁷ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 129.

121. On March 2, 2010, the Human Rights and International Humanitarian Law Unit forwarded a copy of the judgment handed down on Julio César Contreras Santos for the crime of criminal conspiracy.²²⁸ According to information available in that decision, on June 29, 2007, Julio Cesar Contreras Santos was given a reduced sentence after being declared co-author of the crime of willful sedition.²²⁹

122. The record contains the report of the third assistant criminalistics investigator on the steps carried out to execute the arrest warrant for alias "Amistad." According to the report, the existing central databases were consulted and yielded information and observations on the requested person with regard to his name and national identity card. A search was also conducted of the database of the Solidarity and Health Insurance Fund of the Ministry of Social Welfare, which returned no results.²³⁰

123. On March 18, 2010, the prosecution unit ordered the arrest of José Antonio Muñoz Jiménez, alias "Jaime," for the crime of homicide of a protected person and aggravated criminal conspiracy in connection with the murder of Rusbell Lara.²³¹

124. On July 26, 2010, the Special Prosecution Unit of the Human Rights and International Humanitarian Law Unit informed that Julio César Contreras Santos admitted the charges against him, whereupon the separation of the case was ordered and a request was dispatched for copies to be forwarded of the record of the investigation before Arauca Special Criminal Circuit Court, stating that "proceedings will continue against ORLANDO VILLA ZAPATA, MIGUEL ÁNGEL MELCHOR MEJÍA MÚNERA, ANDRES MANUEL NANBERTINEZ OROZCO, and JESÚS ANTONIO MUÑOZ JIMÉNEZ."²³²

125. On August 5, 2010, the Technical Investigation Corps requested investigative assistance from Miranda Police Station in order to execute the arrest warrant for Jesús Antonio Muñoz Jiménez, alias "Jaime."²³³

126. On September 13, 2010, Julio César Contreras Santos was convicted of the crime of homicide of a protected person, among other offenses, and given a reduced sentence of 19 years and six months of imprisonment for his part in the murder of Rusbell Lara.²³⁴

127. On December 1, 2010, the secretary of the Justice and Peace Court informed the 40th Prosecution Unit that as a result of the hearing held on November 16, within the proceeding against the applicant Miguel Mejía Múnera the suspension of case was requested with regard to the events connected with the murder of Rusbell Lara in case 1777, which was at the preliminary proceeding stage. According to the motion, "the suspension of the aforesaid proceeding was requested solely and exclusively with respect to the demobilized person MIGUEL ÁNGEL MELCHOR MEJÍA MÚNERA, in connection with the crime of aggravated homicide and criminal conspiracy."²³⁵ This motion was reiterated on February 4, 2011.²³⁶

128. On January 7, 2011, the 40th special prosecutor of the Human Rights and International Humanitarian Law Unit ordered the detention without the benefit of provisional release pending trial of

²²⁸ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 174.

²²⁹ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 239.

²³⁰ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 36.

²³¹ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 43.

²³² Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 48.

²³³ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 51.

²³⁴ Arauca Special Criminal Circuit Court, Case 81-001-31-07-001-2010-00045, September 13, 2010.

²³⁵ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 52.

²³⁶ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 70.

Andres Manuel Nambertinez Orozco, alias “Amistad,” as co-author of the crimes of murder of a protected person—José Rusbell Lara—and aggravated criminal conspiracy.²³⁷

129. On March 16, 2011, Orlando Villa Zapata underwent further interrogation in which he said that he had not given the orders to do with the murder of José Rusbell Lara because he had “heard about it when [he] was in prison and the urban operatives were under the orders of the military commander, who had a free hand.”²³⁸

130. On April 19, 2011, it was decided to declare the investigation of Víctor Manuel Mejía Múnera precluded on account of his death,²³⁹ which decision became final on May 5, 2011.²⁴⁰

I. Continuation of proceedings against one of the accused following his extradition to the United States

131. According to the MAPP/OAS diagnostic assessment, as of August 2011, 31 applicants for the benefits of the Justice and Peace Law had been sought for extradition to the United States. Of those, 29 had actually been extradited to the United States and only six former military commanders continued to take part in the Justice and Peace process.²⁴¹ The Commission has concluded that, in general, the extradition of these paramilitary leaders for cases connected with drug trafficking also interferes with the obligation of the state to prosecute civilians and agents of the state involved in cases in which both the Commission and the Inter-American Court have established its responsibility with regard to gross violations of rights protected by the American Convention on Human Rights.²⁴²

132. As mentioned above, in this case the extradition of Miguel Ángel Melchor Mejía Múnera to the United States was carried out on March 3, 2009.²⁴³

133. Under Law 600 of 2000,²⁴⁴ which was applicable at the time of the events in this case, the government has the authority to offer or grant extradition subject to a favorable opinion of the Supreme Court of Justice.²⁴⁵ In issuing its opinion on extradition, in accordance with Article 520 of the aforesaid Law:

The Supreme Court of Justice shall base its opinion on the formal validity of the documentation submitted, the demonstration in full of the identity of the individual sought, the principle of double criminality, equivalence of the procedural order issued abroad and, as appropriate, compliance with public treaties.²⁴⁶

²³⁷ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 62.

²³⁸ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 75.

²³⁹ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 80.

²⁴⁰ Human Rights and International Humanitarian Law Unit, Original Record 6 Case 1777, p. 83.

²⁴¹ OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana* [Diagnostic Assessment of the Justice and Peace Process in the framework of Colombian transitional justice], MAPP/OAS, October 2011, pp. 145-155. Available [in Spanish] at: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf

²⁴² In this connection, the Inter-American Court of Human Rights has held that in the decisions regarding the application of certain procedural concepts to one person, the accusation of serious human rights violations must prevail. The application of concepts like the extradition must not serve as a means to favor, foster or guarantee impunity. Hence, based on the lack of agreement as to the judicial cooperation between the States that arranged such extradition, it falls upon Colombia to clarify the mechanisms, instruments and legal concepts that shall be applied to guarantee that the extradited person will collaborate with the investigations into the facts of the instant case, as well as, if applicable, to guarantee the due process. I/A Court H.R., Case of the Mapiripán Massacre v. Colombia. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, par. 41.

²⁴³ Human Rights and International Humanitarian Law Unit, Original Record 5. 40th Prosecution Unit. Case 1777, p. 5.

²⁴⁴ Criminal Cassation Chamber of the Supreme Court of Justice, Extradition case No. 30140, December 2, 2008.

²⁴⁵ Article 510. Ley 600 of 2000. Official Gazette No. 44.097 of July 24, 2000.

²⁴⁶ Article 520. Ley 600 of 2000. Official Gazette No. 44.097 of July 24, 2000.

134. In issuing its opinion in favor of extradition on December 2, 2008, the Cassation Chamber of the Supreme Court of Justice stated, “The Chamber has considered that there is no obstacle to reaching a favorable opinion on an extradition request, always provided that it is in circumstances that ensure the fundamental rights of the victims to truth, justice, reparation, and non-repetition.”²⁴⁷ Upon issuing its favorable opinion, it held,

the Colombian Government may extradite the Colombian citizen MIGUEL ÁNGEL MELCHOR MEJÍA MÚNERA, ... as requested by the Government of the United States since, as has been shown, the requirements under Colombian procedural law are met; however, in making its decision on whether or not to grant the petition formulated by the requesting country, it must take into account as a priority the rights of the victims vis-à-vis the applicant for the benefits of the Justice and Peace Law.²⁴⁸

135. According to the Supreme Court of Justice, the final decision in an extradition proceeding belongs exclusively to the country's government represented by the President of the Republic. However, in the transitional process designed by the Justice and Peace Law “the Colombian State may not turn its back on its internationally contracted obligations with respect to the victims of gross violations of human rights.”²⁴⁹

136. The extradition of Miguel Melchor Mejía Múnera proceeded in the absence of a specific judicial cooperation agreement between the State of Colombia and the United States for following up on proceedings instituted within the framework of the Justice and Peace Law.²⁵⁰

137. According to available information, from October 27 to 30, 2009, Miguel Ángel Mejía Múnera gave voluntary testimony from the testimony room at the Federal Court in Washington, D.C. The proceedings were broadcast in real time to the victims' chamber in Bogotá, and the Houses of Culture in the Municipalities of Arauca and Tame, Arauca Department.²⁵¹ In his testimony on October 29, 2009, Mejía Múnera accepted responsibility for the events connected with the murder of José Rusbell Lara, as the commander of the block, and he apologized to the families of the victims of the crime.²⁵² Following this event, the State has reported no subsequent voluntary testimony hearings held from the United States.

²⁴⁷ Criminal Cassation Chamber of the Supreme Court of Justice, Extradition case No. 30140, December 2, 2008. Available at: [http://190.24.134.69/sentencias/penal/2008/dr.yesid%20ram%C3%ADrez%20bastidas/diciembre/30140\(02-12-08\).doc](http://190.24.134.69/sentencias/penal/2008/dr.yesid%20ram%C3%ADrez%20bastidas/diciembre/30140(02-12-08).doc)

²⁴⁸ Criminal Cassation Chamber of the Supreme Court of Justice, Extradition case No. 30140, December 2, 2008. Available at: [http://190.24.134.69/sentencias/penal/2008/dr.yesid%20ram%C3%ADrez%20bastidas/diciembre/30140\(02-12-08\).doc](http://190.24.134.69/sentencias/penal/2008/dr.yesid%20ram%C3%ADrez%20bastidas/diciembre/30140(02-12-08).doc)

²⁴⁹ Criminal Cassation Chamber of the Supreme Court of Justice, Extradition case No. 30140, December 2, 2008.

²⁵⁰ According to the Inter-American Court's analysis in its monitoring of compliance in the case of the “Mapiripán Massacre,” Colombia did not have a specific agreement in this regard with the United States of America. I/A Court H.R., Case of the “Mapiripán Massacre” v. Colombia. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, par. 41

²⁵¹ Present at that hearing were the 22nd prosecutor, the judicial prosecutor, the applicant, and his counsel. A criminalistics investigator was present in the testimony room. In the victims' chamber in Bogotá there was a representative of the Attorney General's Office, the judicial prosecutor, the sectional prosecutor, and his assistant. Present at the House of Culture in the Municipality of Arauca were judicial investigators, and in the victims' chamber in the House of Culture of the Municipality of Tame there was a judicial investigator and his assistant. As regards victims in attendance for the testimony, present in Bogotá on October 29, 2009, were staff from the United States Embassy, a public defender, a representative of an NGO, and a journalist from the publication *Semana*. In the Municipality of Arauca there were 20 victims present along with two trusted attorneys. In the Municipality of Tame there were 45 victims in attendance. Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, pp. 38-39.

²⁵² In that testimony, Mejía Múnera said “RV: Yes, I assume responsibility by reason of chain of command because I was the commander, but I was not there at the time; that's according to an interview I had... PSF: Who gave ALEX his orders? RV: The commander who was there at the time. I think it was MARIO, unless I am mistaken. PSF: And who gave MARIO his? RV: Mario made the decisions. He was like the commander. To RUBEN, I don't think it was RUBEN, RUBEN. ISF: Mr. applicant, it is very important to clarify this deed. It is a highly relevant deed like those that we have documented as having been committed by the BVA. Because this deed is currently being investigated by the Inter-American Court of Human Rights. It is already a matter of international justice given the person in charge of verifying the deed. So everything that we manage to establish in this hearing is very important. RV: But I've already, RUBEN says he gave the order, didn't he? THE ATTORNEY INTERJECTS: Accepted by RUBEN and CHAPULIN. RV: Me, by chain of command. I was the commander, so I assume...” Human Rights and International Humanitarian Law Unit, Original Record 6. Case 1777, pp. 40-41.

138. According to the MAPP OAS report, given the lack of measures adopted for continuing justice and peace proceedings in relation to those who were extradited, in August 2009, the Supreme Court of Justice changed its tendency of adopting favorable opinions on extradition and began to issue negative opinions.²⁵³ According to one unfavorable opinion of the Court on extradition,

Recent experience has shown that when extraditions are granted and executed by the State, the possibility is thwarted of disclosing the truth in Justice and Peace proceedings because the extradited applicants had been unable to continue confessing the crimes they have committed. As a result, victims are being deprived of the truth, and society, of guarantees of non-repetition.²⁵⁴

V. LEGAL ANALYSIS

A. Preliminary matters

1. Request by the petitioners regarding inclusion of victims in the case

139. On November 4, 2009, the petitioners requested that Rusbell Dair Lara, the son of José Rusbell Lara, along with the members of the Joel Sierra Regional Human Rights Committee [*Fundación Comité Regional de Derechos Humanos "Joel Sierra"*] be recognized as alleged victims in the case. The Commission expresses its position below on the situation of Mr. Rusbell Lara's family in this case. With respect to the members of the Committee, the Commission considers that the petitioners have not supplied information setting out their situation in relation to the facts in the instant case. Furthermore, as regards some of the members of the Committee and the situation in Arauca, the Commission is currently processing petition 175-2004, which as of this writing is at the admissibility stage. Therefore, the IACHR does not consider an analysis of the rights of the members of the Joel Sierra committee to be one of the procedural objectives in this case.

2. Context and international responsibility of the State in this case

140. The Commission considers it pertinent to offer a number of observations regarding the paramilitary phenomenon in Colombia and its consequences with regard to the international responsibility of the State, in light of the ways in which the actions of paramilitary groups have impaired the enjoyment of human rights by persons who have been victims of their operations.

141. In that regard, as the IACHR established in 1999, in its Third Report on the Situation of Human Rights in Colombia, the Colombian State has played an important role in the rise of paramilitary or "self-defense" groups, which it permitted to act with legal protection and legitimacy in the 1970s and 1980s, as well as being responsible for their existence and growing strength.²⁵⁵ These groups, either sponsored or accepted by sectors of the Armed Forces, were in large part created with the aim of combating armed dissident groups.²⁵⁶

²⁵³ OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana* [Diagnostic Assessment of the Justice and Peace Process in the framework of Colombian transitional justice], MAPP/OAS, October 2011, pp. 149-150. Available [in Spanish] at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJP.pdf>.

²⁵⁴ Corte Suprema de Justicia, Sala de Casación Penal, Case No. 30451, August 19, 2009, M.P: Yesid Ramírez Bastidas. Cited in: OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana* [Diagnostic Assessment of the Justice and Peace Process in the framework of Colombian transitional justice], MAPP/OAS, October 2011, p. U49. Available [in Spanish] at: <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJP.pdf>.

²⁵⁵ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/III.102 Doc. 9 rev. 1, February 26, 1999, Ch. I, pars. 7-19, 236; IACHR, Report 64/11, Case 12.573, Merits, Marino López et al. (Operation Genesis), Colombia, March 31, 2011, par. 225.

²⁵⁶ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Ch. I, pars. 7-19. IACHR, Report 75/06 Jesús María Valle Jaramillo, October 16, 2006, par. 62.

142. The Court referred in the case of the *Mapiripán Massacre* to the “internal armed conflict in Colombia and the illegal armed groups called paramilitaries,” stating that:

96.1 Various guerrilla groups began to operate in Colombia since the 1960s, and due to their activities the State declared that there was a “disturbance of public order and established a state of siege in the territory of the country.” In face of this situation ... the State [introduced] the legal basis for the establishment of the “self-defense groups” [and] stated that “[a]ll Colombians ... c[ould] be used by the Government in activities and work that contributes to reestablishment of normality.” In addition it was provided that “[t]he Ministry of National Defense, through authorized command structures, may authorize the private use of weapons whose use is restricted to the Armed Forces.” The “self-defense groups” were legally established under said provisions, for which reason they had the support of State authorities.

96.2 In the framework of the struggle against the guerrilla groups, the State fostered the creation of said “self-defense groups” among the civilian population, and their main aims were to assist the security forces in counterinsurgency operations and to defend themselves from the guerrilla groups. The State granted them permits to bear and possess weapons, as well as logistic support.

96.3 During the 1980s ... it became obvious that many “self-defense groups” had changed their objectives and had become criminal groups, commonly called “paramilitary.”²⁵⁷

143. Even though the State has adopted certain legislative measures to prohibit, prevent and sanction the activities of the “self-defense” or paramilitary groups, these measures did not translate into the effective deactivation of the danger that the State helped create.²⁵⁸ As the Inter-American Court has held, the danger created by the State aggravated the situation of vulnerability of human rights defenders who denounced the violations committed by paramilitary groups and the armed forces.²⁵⁹ Furthermore, as a result of their counter-insurgency motivation, paramilitary groups formed ties with the military that strengthened over more than two decades.²⁶⁰ The Colombia's Constitutional Court itself recognized the gravity of the situation of human rights defenders resulting from the action of paramilitary groups²⁶¹.

144. On May 25, 1989, the Colombian Supreme Court of Justice declared unconstitutional Article 33(3) of Legislative Decree 3398 of 1968, which provided the legal basis for the creation of self-defense groups, thus eliminating the legal underpinning for their link to national defense.²⁶² Thereafter, the State adopted a series of legislative measures criminalizing these groups' activities and those of their supporters.²⁶³

²⁵⁷ *Case of the “Mapiripán Massacre” v. Colombia. Preliminary Objections* Judgment of March 7, 2005. Series C No. 122, pars. 96.1 to 96.3.

²⁵⁸ 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, par. 80.

²⁵⁹ 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, par. 81.

²⁶⁰ IACHR. *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Ch. I, pars. 7-19. IACHR, Report 75/06 Jesús María Valle Jaramillo, October 16, 2006, par. 62.

²⁶¹ Judgment T-590 of the Corte Constitucional de Colombia from October 20, 1998 stated that “despite the presidential orders, attacking human rights defenders continued [...] and there are state remiss conduct in their protection, especially when it is made aware of this the climate of threats against these activists.” Available at: <http://www.corteconstitucional.gov.co/relatoria/1998/T-590-98.htm>

²⁶² Articles 25 and 33 of Legislative Decree 3398 (National Defense Act) and Law 48 of 1968 constituted the legal foundations for the creation of “self-defense groups.” Cf. I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Judgment of July 5, 2004. Series C No. 109, par. 84(g).

²⁶³ Decrees 1194 of June 8, 1989 and 2266 of 1991. IACHR. Report 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62.

145. In spite of this, the State did little to dismantle the structure it had created and encouraged, particularly when the groups conducted counterinsurgency activities; in fact, the ties remained in place at several levels, with the paramilitaries being asked or allowed to carry out certain illegal acts on the understanding that they would not be investigated, prosecuted, or punished.²⁶⁴

146. From the foregoing, the Commission notes that initially the State encouraged the creation of “self-defense” groups with specific objectives, but these were overstepped, and they began to function outside the law, on occasion in collaboration with or with the acquiescence of agents of the State. The Court has observed that these paramilitary groups are responsible for numerous murders and many of the human rights violations committed in Colombia generally.²⁶⁵ In addition, “numerous links between paramilitary groups and members of the armed forces have been demonstrated before this Court in relation to facts similar to those of the present case, as have omissive attitudes by members of the armed forces in relation to the acts of such groups.”²⁶⁶ In such cases, where the State has not managed effectively to eliminate the danger that it helped to create, the Court has found the Colombian State to bear international responsibility for the actions of paramilitary groups on account of its failure to comply with “its obligation to ensure human rights.”²⁶⁷

147. Consequently, for the purposes of the analyzing the responsibility of the State in this case, the Commission observes that the measures adopted by it had not translated into the concrete and effective elimination of the danger that it created. According to the standard set by the Court, while it subsists, this dangerous situation accentuates the State’s special obligations of prevention and protection in the zones where the paramilitary groups are present and its obligation to investigate diligently, the acts or omissions of State agents and individuals who attack the civilian population, as well as engaging the State’s responsibility.²⁶⁸

B. Right to life and humane treatment in connection with Article 1(1) of the Convention

148. Article 4(1) of the American Convention on Human Rights provides, “Every person has the right to have his life respected [and] “[n]o one shall be arbitrarily deprived of his life.” Article 5(1) of the American Convention provides, “Every person has the right to have his physical, mental, and moral integrity respected.”

149. The Court has established that the rights to life and human treatment are of critical importance in the Convention. According to Article 27(2) of the said treaty, these rights form part of the non-derogable nucleus because they cannot be suspended in case of war, public danger or other threats to the independence or security of the States Parties.²⁶⁹ The Court reiterates that states should not merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law, either because of their personal situation or because of the specific circumstances in which they find themselves.²⁷⁰

²⁶⁴ IACHR. *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Ch. I, pars. 17-19. See also, Report of the United Nations High Commissioner for Human Rights on the Office in Colombia, April 2000, para. 30. See also, IACHR Report 75/06, Jesús María Valle Jaramillo, October 16, 2006, par. 62.

²⁶⁵ Cf. *Case of the “Mapiripán Massacre”*, *supra*, note 21, par. 96.18; *Ituango Massacres Case*, *supra* note 21, par. 125.23.

²⁶⁶ Cf. *Case of the “Mapiripán Massacre”*, *supra*, note 21, par. 96.19; *Case of the Massacre of Pueblo Bello v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, par. 128, and *Ituango Massacres Case*, *supra* note 21, par. 125.24.

²⁶⁷ Cf. *Case of the Massacre of Pueblo Bello*, *supra* note 30, pars. 126 and 140 and *Case of the “Mapiripán Massacre”*, *supra*, note 21, par. 123.

²⁶⁸ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 126. IACHR, Report 75/06 Jesús María Valle Jaramillo, October 16, 2006, par. 67.

²⁶⁹ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 119

²⁷⁰ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, par. 243. Cf. *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, par. 81; *Case of the Indigenous Community Sawhoyamaya v. Paraguay. Merits, Reparations and Costs*.

150. Specifically with respect to the duty to prevent, it “includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.”²⁷¹

151. Both the Court and the Commission have held that the duty to protect and prevent violations also applies, under certain circumstances, to the actions of third parties or private citizens. The international responsibility is 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.²⁷² However, even though the legal consequences of an act or omission of an individual is a violation of the human rights of another, that violation cannot be automatically attributed to the State, but must be considered in light of the particular circumstances of the case and the way the State has carried out its obligations as guarantor.²⁷³ In this connection, the Inter-American Court has cited the case-law of the European Court, which has found that:

not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see the *Osman* judgment, pp. 3159-60, § 116).²⁷⁴

152. In the specific case of human rights defenders, the duty of states to provide protection when they are in situations of danger as a consequence of their activities has been recognized at the universal level by the United Nations Declaration on Human Rights Defenders,²⁷⁵ and in the inter-American system, both by the IACHR,²⁷⁶ and by the Court in its case-law.²⁷⁷ The IACHR has held in the case of human rights defenders

Judgment of March 29, 2006. Series C No. 146, par. 154; and *Case of the Massacre of Pueblo Bello. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, par. 111.

²⁷¹ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 175.

²⁷² I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, pars. 123 and 124; European Court of Human Rights, *Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, §§ 62-63; *Osman v. The United Kingdom*, Judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, §§ 165-166.

²⁷³ 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, par. 78.

²⁷⁴ European Court of Human Rights, *Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, §§ 62-63; *Osman v. The United Kingdom*, Judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, §§ 115-16; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 124.

²⁷⁵ The Declaration on Human Rights Defenders provides, “The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.” Article 12 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 adopted by the United Nations General Assembly by resolution A/RES/53/144 of 8 March 1999. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

²⁷⁶ The IACHR recommended in its 2006 report that the states of the Hemisphere, “[i]mplement, as a priority matter, a comprehensive policy of protection for human rights defenders [and] [a]dopt an effective and exhaustive strategy of prevention in order to prevent attacks against human rights defenders. Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, recommendation 5

²⁷⁷ The Court has determined that “States have the particular obligation to protect those persons who work in non-governmental organizations, to provide effective and adequate guarantees to human rights defenders so that they may freely carry out their activities, and to avoid actions that limit or impede such work. Human rights advocacy constitutes a positive and complementary contribution to the State’s own efforts as guarantor of the rights of all persons under its jurisdiction.” I/A Court H.R., *Matter of the Colombian Commission of Jurists. Provisional Measures Regarding Colombia*. Order of the Court of November 25, 2010, considering 24; the Court has also held with respect to the obligations of states as regards human rights defenders that they “have the duty to ... protect

that the State's obligation to prevent is not limited to providing material measures to protect their lives and personal integrity or to ensuring that its agents do not interfere in the full exercise of their human rights²⁷⁸ but also entails the obligation to address the structural causes that affect the security of the persons threatened,²⁷⁹ in order to create the necessary conditions for the effective exercise and enjoyment of the rights established in the American Convention.²⁸⁰

153. As the Inter-American Court has established, under the American Convention, the international responsibility of States arises at the time of the violation of the general obligations erga omnes to respect and ensure respect for – guarantee – the norms of protection and also to ensure the effectiveness of all the rights established in the Convention in all circumstances and with regard to all persons, which is embodied in Articles 1(1) and 2 thereof.²⁸¹ As the Court has held:

There are special obligations that derive from these obligations, which are determined in function of the particular needs for protection of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself. In this regard, Article 1(1) is fundamental for deciding whether the full scope of a violation of the human rights established in the Convention may be attributed to the State Party. Indeed, this article imposes on States Parties the fundamental obligations to respect and guarantee rights, so that any violation of the human rights established in the Convention that can be attributed, according to the rules of international law, to the act or omission of any public authority, constitutes a fact attributable to the State, which involves its international responsibility in the terms established in the Convention and according to general international law.²⁸²

154. The international responsibility of the State is based on “acts or omissions of any of its powers or organs, irrespective of their rank, which violate the American Convention,”²⁸³ and it is engaged immediately with the international illegal act attributed to the State.²⁸⁴ In these conditions, in order to establish whether a violation of the human rights established in the Convention has been produced, it is not necessary to determine, as it is in domestic criminal law, the guilt of the authors or their intention; nor is it necessary to identify individually the agents to whom the acts that violate the human rights embodied in the Convention are attributed.²⁸⁵ It is sufficient that a State obligation exists and that the State failed to comply with it.²⁸⁶

them when they are subject to threats in order to ward off any attempt on their life or safety.” Cf. I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, par. 145.

²⁷⁸ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2011), par. 42; 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, par. 47.

²⁷⁹ 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, par. 47.

²⁸⁰ I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 111.

²⁸¹ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 111. See also, I/A Court H.R., *Case of the “Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 111, and *Judicial Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A, No. 18, par. 140.

²⁸² I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 111.

²⁸³ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 112. Cf. I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 110 and *Case of Juan Humberto Sánchez* Judgment of June 7, 2003. Series C No. 99, par. 142.

²⁸⁴ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 112.

²⁸⁵ Cf. I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 110; *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 141, and *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, par. 41.

²⁸⁶ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 112.

155. Specifically, the Commission notes that in the case of damages to human rights caused by the activity of paramilitary groups in Colombia, the Court has considered that while the risk created by the state subsists is also accented the special duties prevention and protection in areas where paramilitary groups are present, as well as the obligation to investigate diligently acts or omissions of State agents or individuals that could materialize in situations that would affect the civilian population²⁸⁷.

1. Analysis in the instant case

156. In its preliminary considerations the Commission determined that the Colombian state created a situation of danger that it subsequently failed to control or deactivate. Consequently, as the court has found in other cases, “although the acts perpetrated by members of the paramilitary groups against the alleged victims in this case are facts committed by individuals, the responsibility for those acts can be attributed to the State owing to its failure, by omission, to comply with its Convention obligations *erga omnes* to guarantee the effectiveness of human rights in these inter-individual relationships,” and “this was brought about and aggravated because the State failed to eliminate or satisfactorily resolve the dangerous situation created by the existence of these groups and because it had continued to encourage their actions by letting them go unpunished.”²⁸⁸

157. The following analysis is founded on the duty to ensure the rights to life and humane treatment in the light of the standards set out in the preceding paragraphs on the scope of that obligation. Accordingly, the Commission examines if the Colombian authorities were aware of the existence of a real and immediate danger to the life and safety of José Rusbell Lara, if there were reasonable possibilities of preventing that danger from materializing, and if the State adopted reasonable measures to prevent that danger, taking into account the actions and nature of the paramilitary groups. Furthermore, in this analysis, as the IACHR mentioned in its report on admissibility,²⁸⁹ the IACHR will give particular its consideration to the fact that at the time of his murder, Mr. Rusbell Lara was a beneficiary of precautionary measures granted by the IACHR. As to the function of precautionary measures within the context of the prevention obligations of the State, the Commission considers that granting precautionary measures enables the State to be aware of a situation of risk and, therefore, a special duty of protection exists to prevent the foreseeable acts of actors who contribute to that situation, with the result that effectively implementing the measures constitutes a reasonable means of prevention to stop the risk from materializing.²⁹⁰

a. Knowledge of the situation of risk

158. In the instant case, in July 29, 2002, the IACHR sent the State of Colombia a note in which it said that it had received information that several social leaders and human rights defenders were presumed to be at serious risk of being attacked “because of their high profile as spokespeople for their communities and negotiators with the government, and in view of the complaints that they have made .” Therefore, it

²⁸⁷ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 126; *Case of Valle Jaramillo and others V. Colombia*. Judgment of November 27, 2008. Series C No. 192, par. 80.

²⁸⁸ 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, par. 92. In the same connection, *Cfr. Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006. Series C No. 140, par. 151.

²⁸⁹ In its report on admissibility in this case, the IACHR said, “If true, the allegations on the right to life could constitute violations of Articles 4(1) of the American Convention in connection with the affirmative obligation to adopt measures for the protection of a beneficiary of precautionary measures granted by the IACHR.” IACHR, Report No. 70/09, Petition 1514-05, Admissibility, José Rusbell Lara, Colombia, August 5, 2009, par. 40.

²⁹⁰ In its *Application to the Inter-American Court of Human Rights in the Case of Luisiana Ríos et al.*, the IACHR noted the existence of a “special duty of the State to protect ... three ... individuals, given that they were under the protection of precautionary measures granted by the IACHR since January 2002 and July 2002, owing to the fact that they were RCTV social communicators and at risk.” Furthermore, it found that since the situation of risk was recognized by the inter-American system, “given the precautionary and provisional measures in place, ... the State was required to prevent violation of the beneficiaries’ rights and to take reasonable steps to ensure that prevention,” and “one reasonable prevention measure could have been to carry out the orders of the Commission and the Court.” See IACHR, *Application to the Inter-American Court of Human Rights in the Case of Luisiana Ríos et al. (Case 12.441) v. Republic of Venezuela*, April 20, 2007, pars. 245, 246, and 249, respectively.

requested the State of Colombia to guarantee as a matter of urgency the lives and safety of the persons who were the subject of the request, among them José Rusbell Lara.

159. The Commission underscores that, as the information available in the record corroborates, in light of the context at the time of the events, the situation that the IACHR brought to the attention of the State in its note was patently serious since it was framed by a broader situation of widespread violence committed by paramilitary groups against human rights defenders that, as mentioned in the preliminary considerations, the State was well aware of and was ongoing at the time of the events.

160. In that regard, the Commission notes, first, that the State had full knowledge of the situation of social conflict and violence caused by the particular presence of the BVA and its operations against the civilian population in Arauca. Thus, the IACHR notes: (i) The announcement by Carlos Castaño, the AUC leader, regarding the incursion of 3000 men into the Department of Arauca was published in a newspaper in 2001; (ii) The BVA's membership was recruited from other "self-defense" structures that were created by the State but subsequently overstepped their objectives and began to operate outside the law (*cf. supra*, 36 *et seq.*); (iii) The State was aware of the seriousness of the paramilitary incursion, particularly in Tame, which, according to the Justice and Peace Prosecution Unit, between 2001 and 2002 became an important hub for the bloc and where several attacks were carried out against the civilian population (*cf. supra*, par. 40); and (iv) The situation of systematic violence and constant violations is confirmed by several testimonies contained in the record and by the analysis made by the prosecution unit in charge of the investigation, which explained that with the arrival of the BVA "a terrible military offensive was launched to dominate the territory, killing subversives and the guerrillas' helpers." During that offensive, people named as guerrilla collaborators were threatened and murdered.

161. The IACHR also finds that the State knew about the extent of coordination of the BVA's operations in Arauca, given that various testimonies indicate that the bloc even conducted operations with the collaboration or acquiescence of agents of the state. In that respect, the Commission notes that, according to alias "Cúcuta," a woman who went by the alias "La Flaca", "acted as the go-between with DAS and the Army." "She also provided information about [who] had an outstanding arrest warrant and who did not." For his part, BVA member William Chima Correa said in his testimony, "I would work with the DAS people. They would take me into the town and bring me out with the money." He also said, "Several times they took me hidden in DAS cars." Furthermore, according to testimony given by BVA members, in 2002, the year of Rusbell Lara's murder, using various strategies that included financing and assassinations, the BVA helped the mayor of Tame and the gubernatorial candidate of Arauca to win their respective elections. Although, for the purposes of this case, the Commission cannot take as proven that agents of the state collaborated in those operations, a holistic reading of the testimonies of BVA members in the context that existed at the time does at least allow it to surmise that the State knew that the bloc carried out its operations in a coordinated and continuous manner since, moreover, state agents may have been involved in facilitating their operations.

162. Second, the IACHR notes that in addition to knowing about the general risk to the civilian population created by members of the BVA in the zone, the State was also aware of the specific, heightened risk that human rights defenders faced. In that regard, by 2002, both the Commission—through its annual reports—and the Office of the United Nations High Commissioner for Human Rights were reporting that the situation of human rights defenders had grown critical thanks to the activities of paramilitary groups. As the Commission mentioned, in 2002, it granted a series of precautionary measures to urge the State to protect these communities, which lived under constant threat from the paramilitary groups that were conducting intensified operations in the area. Furthermore, according to statements made by a former director of the Joel Sierra Committee, of which Rusbell Lara was a member, it was well known that the paramilitaries who entered Tame had social leaders and human rights defenders in their sights, since social leaders were considered guerrilla collaborators and "fair game by those [paramilitary] groups and even the State."

163. Finally, third, specifically regarding the danger to Rusbell Lara personally as a human rights defender, the Commission notes that, according to information in the record, the testimonies of Sonia Milena López Tuta, Flor Angel Matiz Luna, Carlos Rafael Goyeneche Bello, Jaime Orlando Reuto Manosalva, Hercila Lara, and Rusbell Dair Lara Tuay are consistent in saying that Jose Rusbell Lara was "under particular threat"

and had been given an ultimatum to leave Tame. According to Jaime Orlando Reuto Manosalva, the reason for those threats “was that he was a human rights defender.”

164. The Commission finds that although there is nothing in the record to suggest that the Colombian State specifically knew of the content of the threats against Mr. Rusbell Lara at the time, it was aware, through a note dated July 29, that an international body—the IACHR—had individually identified Mr. Rusbell Lara as one of the human rights defenders who was in danger as a result of the activities of paramilitary groups in Arauca, of which the State was also aware.

165. The Commission believes that had the State followed up on the situation with the seriousness, timeliness, and diligence that it warranted, it could have obtained a more specific knowledge of the content of the threats received. Nevertheless, notwithstanding the foregoing and for the purposes of its analysis of this element, the knowledge acquired through the granting of the precautionary measure is sufficient for the IACHR to consider that this requirement of the duty of prevention was met and that a specific, individual duty on the part of the State to Rusbell Lara was engaged. The State’s response to that duty engaged by the precautionary measure is analyzed in the following section.

b. Measures adopted by the State for Rusbell Lara's protection

166. Having confirmed that the State was aware of the situation of danger to the life and safety of José Rusbell Lara, the Commission will examine if there were reasonable possibilities of preventing that danger from materializing and if the State adopted reasonable measures to prevent it.

167. From a broad perspective, the Commission notes that the parties do not dispute the continuity of the BVA’s operations in the Tame area at the time of the events in this case or that attempts to deactivate the bloc and reduce the risk to the civilian population had not succeeded. The Commission has no information from the State regarding measures that it adopted to prevent the paramilitary incursion in Arauca publicly announced by the AUC leader, Carlos Castaño. Furthermore, as noted in the section on proven facts, the BVA managed to establish itself and operate in Arauca with an organized armed structure that had a clearly defined system of command and conducted sustained systematic operations (*cf. supra*, par. 39).

168. According to information in the record, at the time of the events, the State had not managed to effectively confront the dangerous situation generated by the operations of paramilitary forces in Arauca. On the contrary, according to information in the record, in the months leading up to José Rusbell Lara’s murder, several peasant protest marches were held, denouncing the “degradation of the conflict with the clear complicity, by act or omission, of State military forces in paramilitary dirty-war actions” (*cf. supra* par. 48). According to the record in the possession of the IACHR, the process of demobilization of the BVA under the provisions of the Justice and Peace Law only began in 2005.

169. With respect to the situation of human rights defenders, both the IACHR and the Office of the United Nations High Commissioner for Human Rights informed that in 2002 human rights defenders continued to be the victims of murder and multiple threats by paramilitary groups (*cf. supra*, par. 44 and 50). The State of Colombia has furnished no information about effective measures adopted to create secure conditions to guarantee the work of human rights defenders overall and deal effectively with the areas where it was dangerous for them to operate. On the contrary, according to the record, in the Municipality of Tame, a place that became an important hub for the bloc and where it held sway through its criminal activities, which included selective murders, robbery, extortion, intimidation, and kidnappings (*cf. supra*, par. 40), the DAS had no office and its personnel did not go there because “it [was] too risky for their officers to travel,” which made it necessary for the “persons under threat to travel to the Municipality of Arauca for their [risk] assessment.” (*cf. supra*, par. 65). Therefore, according to the information available, human rights defenders went about their work in a context of risk that the State had not suppressed and without specific protection measures in parts of Arauca.

170. As regards the particular situation of Rusbell Lara, the Commission notes, first, that, before the IACHR granted precautionary measures, the risk to the members of the Joel Sierra Regional Human Rights

Committee was rated as “Intermediate Intermediate” based on a security and risk assessment “bearing in mind that groups operating outside the law have a powerful influence over the territory of Arauca, where their modus operandi includes intimidation and violence to hold onto political, social, and economic power in the region.” The measures adopted by the State included the delivery of a list of security recommendations and the telephone numbers of the police station command. In addition, according to the information available, the members of the Committee, Rusbell Lara included, were given a means of communication (par. 57).

171. After the existence of a risk of serious and irreparable harm had been determined by the IACHR and brought to the attention of the State, according to the available parts of the record of the disciplinary proceeding, the National Police were requested to adopt preventive security measures, and the DAS, to perform a technical threat-level assessment.

172. With respect to preventive measures, the Commission notes that the National Police: (i) held a meeting with the municipal government representative and the members of the Joel Sierra Regional Human Rights Committee, including Rusbell Lara, at which it set out the law-and-order situation in the department of Arauca and asked them to report on their travel to rural areas of the Department; (ii) without specifying the dates, it conducted an inspection at trade union offices in Saravena and the residences of their leaders, after which it made security and self-protection recommendations; (iii) it adopted the “police godfathers” program so that the beneficiaries would be in contact with assigned police personnel; (d) devised plans for gathering “intelligence to identify and preemptively neutralize possible terrorist plans”; and (iv) officially retained a company to make “the necessary adjustments” to implement a caller identification system in Arauca capital. The Commission notes that according to the National Police, it had already been adopting the above measures--based on known information and the findings of the security stud--as “preliminary preventive protection designed to minimize the risk and vulnerability ... without being a 'personal escort.'”

173. The Commission finds that the parties disagree as to whether or not the above preventive measures had an effect in protecting Rusbell Lara. The State holds that the protection measures were assigned to the city of Saravena and that Rusbell Lara traveled imprudently from one municipality to another without informing the authorities. The State also said that Rusbell Lara’s constant travel to rural areas of the Municipalities of Saravena and Tame precluded a different arrangement than the one allocated For their part, the petitioners say that Rusbell Lara worked and resided in the Municipality of Tame where no protection system was assigned. Furthermore they say that Rusbell Lara was not killed in a rural area, but in the municipal seat of Tame.

174. The Commission underscores that a fundamental aspect of implementing protection measures is for the State and the beneficiaries to jointly design the type of protection measures to be provided.²⁹¹ In this regard, the IACHR considers that in the process of negotiating the measures to be provided, the State must ensure that the beneficiary human rights defender plays an active role in order to know their specific situation.²⁹²

175. As part of the arrangements to be made by the State, the IACHR has held that in order for the measures to be suitable, they must tailored to the work needs of the subject being protected and should be able to be modified as the danger that the activities of defending and promoting human rights poses at different times varies in intensity.²⁹³ On other occasions the Court has ordered the Colombian State to provide human rights defenders who are beneficiaries of measures granted by the inter-American system

²⁹¹ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* December 31, 2011, par. 522. Likewise, with respect to provisional measures ordered by the Inter-American Court, see I/A Court H.R., *Matter of “Globovisión” Television Station regarding Venezuela* Provisional measures, Provisional measures, Order of the Court, November 21, 2007, considering 11.

²⁹² IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* December 31, 2011, par. 522. Likewise, with respect to provisional measures ordered by the Inter-American Court, see I/A Court H.R., *Matter of “Globovisión” Television Station regarding Venezuela* Provisional measures, Provisional measures, Order of the Court, November 21, 2007, considering 11.

²⁹³ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* December 31, 2011, par. 524.

with protection during their movement and travels within or outside the area where they reside.²⁹⁴ The foregoing is necessary to ensure protection of human rights, which is fundamental for the universal implementation of those rights and for the full existence of democracy and the rule of law.²⁹⁵

176. In the instant case, the Commission notes that the prevention measures were assigned to the Committee in Saravena. However, the evidence shows that José Rusbell Lara had his domicile and mainly worked as a human rights defender and building contractor in Tame. In that regard, while one of the commanders in the proceeding instituted by the Attorney General's Office stated that Rusbell Lara resided in Saravena, not Tame, the information available to the IACHR does not support the testimony. In that regard, it was found that the identification section of the judicial inspection certificate drawn up at the removal of the corpse recorded "Barrio la Unión" as his domicile and "17.547.250, Tame-Arauca" as his ID number. Furthermore, in the communication of January 29, 2003, the State itself, through the Security Administration Department, mentioned that the precautionary measures applied to social leaders in the Department of Arauca, "among them, JOSE RUSBELL LARA in Tame." Finally, according to testimony by Sonia Milena López Tuta, a former director of the Joel Sierra Committee, Rusbell Lara was "a human rights coordinator in Tame" and "coordinated the events in Tame."

177. The Commission notes that the State has not supplied any information to show that, having been apprised of the situation of risk by the note sent by the IACHR, it made sufficient efforts to effectively arrange protection measures. There is nothing in the record to show that the State inquired about where Rusbell Lara lived, the threats he received, the ultimatum to leave Tame, or the nature of his work as a human rights defender and the specific travel needs attendant on his work. Also, the Commissions note that it is undisputed that the State had effectively disabled the sources of risk.

178. On the other hand, although State officials reported that it was impossible for the police to provide a different scheme of protection because of the travel of Rusbell Lara to rural areas, the Commission notes, that contrary to this position, the information available suggests that the State did have chances to protect Mr. Rusbell Lara in Tame, because at least a police station operated in the area where the incident occurred, and because the murder occurred in the county seat. Accordingly, it is not valid to say that Rusbell Lara was in a "rural" area, which made it impossible to provide protection measures other than those assigned.

179. Thus, the Commission notes that although state officials have required the Committee members in Saravena that they should report their movements to "rural areas", the information in the record indicates that officials were not willing to provide protection during transfers. According to the testimony of state officials, "neither were there police personnel, vehicles, means of communication, or other resources with which to travel with him from village to village."²⁹⁶

180. In addition, regarding the suitability of the protection measures, the Commission also notes that the protection measures which the State says could have protected Rusbell Lara consisted of a telephone and self-protection recommendations, which, considering their nature, could scarcely have saved José Rusbell Lara's life, given the circumstances in which his murder occurred. In addition, the Commission notes that the above prevention arrangement was not tailored to the specific situation of risk that Rusbell Lara faced, since on the date of the murder the State had yet to carry out a risk assessment to ascertain the situation of the beneficiary of the protection measures. This evinces a lack of diligence in the implementation of the precautionary measures and the defenseless situation in which was Mr. Rusbell Lara to face the action of paramilitary.

²⁹⁴ I/A Court H.R., *Matter of Mery Naranjo et al. regarding Colombia*. Provisional measures, Order of the Court, November 25, 2010, considering 57.

²⁹⁵ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, par. 1.

²⁹⁶ Office of the Government Disciplinary Attorney for the Defense of Human Rights, Case 008-79780-02, July 7, 2005, p. 4. Copy requested by the IACHR from the State of Colombia on August 20, 2012.

181. In that connection, the Commission notes that after receiving the request, on August 2, 2002, on the basis that it had no personnel stationed in any of the municipalities where the persons under threat were domiciled, the DAS Protection Area sent an official communication to the police commandant informing him of the “difficulty for their agency in contacting the aforementioned threatened persons and asking for his collaboration in requesting their presence at [the] offices in Arauca, in order to conduct the relevant interview and offer recommendations, as well as a risk assessment.”

182. According to information in a communication from the State to the IACHR dated August 26, 2002, almost a month after precautionary measures were granted, no technical risk assessment had been carried out. Furthermore, in a letter dated September 4, 2002, more than a month after the granting of the measures, the petitioners informed various authorities involved in the precautionary measures process that they had not been adopted.

183. The IACHR notes that even after the death of Rusbell Lara, the record contains a letter of the Head of the Intelligence Branch and the Director of DAS that indicates that on January 27, 2002 “Police were informed that ha[d] failed to respond to requests.” Also, in the record of the disciplinary proceedings there is a letter that refers that on November 21, 2002, the DAS inquired about the status of the precautionary measures and the risk assessment, and the reply from the sectional director of the DAS dated January 29, 2003, said that the Head of the Intelligence and the Director of DAS in Arauca reported that “was unable to carry out the security and threat-risk assessment because Mr. Rusbell Lara is in the Municipality of Tame, where the DAS does not have an office and it is too risky for their officers to travel.”

184. The IACHR considers that “[t]he risk assessment should be regarded as the means by which the State will study the best way to fulfill its obligation of protection; accordingly, the State must ensure that during the risk evaluation, the lines of communication with the applicant human rights defender are adequate and that he or she takes active part in the risk assessment.”²⁹⁷ The IACHR also holds that “[a] proper risk assessment should enable the State to propose the right security measures to safeguard the human rights defender’s rights and thereby enable him or her to continue his or her work.”²⁹⁸

185. In the instant case, the Commission finds from the information furnished by the parties that, following the request for precautionary measures and despite an express request from the Ministry of the Interior, the State did not conduct a new risk assessment in the light of the information that was brought to its attention, which significantly impacted the possibility of analyzing the specific danger and determining the nature of the protection measures that it could have adopted to protect the life and well-being of Rusbell Lara. Particularly troubling is the fact that the entity tasked with carrying out that assessment did not do so because Rusbell Lara was in a place that was “too risky” for its officers and that it did not find out about his murder until well after it had occurred. The foregoing only serves to highlight further the lack of diligence in implementing the protection measures.

186. The Commission notes that according to the Court's case law, a lack of protection may be said to have taken place whenever the State leaves an individual in a defenseless situation, thus permitting the occurrence of human rights violations, a clear noncompliance with the duty of prevention.²⁹⁹ Bearing in mind that the State's duties of prevention and protection are heightened in contexts where paramilitary groups are active, the IACHR considers, based on its observations in this section, that in this case the State: (i) was aware of the existence of a specific risk to social leaders and human rights defenders posed by the BVA in the Department of Arauca; (ii) it knew of the real and immediate risk of irreparable harm to the life and well-being of José Rusbell Lara from the request from the IACHR for precautionary measures; and, (iii) it could have adopted specific measures but did not do so, thereby failing its duty of prevention and leaving Rusbell Lara unprotected against the paramilitary groups in Tame.

²⁹⁷ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 505.

²⁹⁸ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 505.

²⁹⁹ IACHR, Report No. 24/98 Joao Canuto de Oliveira. Brazil. April 7, 1998, par. 53.

187. In light of the foregoing, the Commission finds that the State is responsible for violation of the right to life enshrined in Article 4 of the American Convention, in connection with the obligation to ensure the rights contained in Article 1(1) thereof, to the detriment of José Rusbell Lara.

188. Furthermore, invoking the principle of *iura novit curia*, the Commission finds that the facts also constituted a violation of the victim's right to humane treatment on two counts. On one hand, Rusbell Lara had been living under the cloud of threats and an ultimatum prior to being murdered. The information available suggests that, being aware of his danger, Rusbell Lara had taken steps to ensure the well-being of his children in the event that the threats materialized. The IACHR finds that it is reasonable to infer that these facts, in themselves, constituted an impairment of Rusbell Lara's mental and moral integrity, a situation attributable to the State given the lack of protection described above.

189. The Commission also cannot overlook that Rusbell Lara was not killed immediately in the attack. His death came some time later at the hospital where he was taken. In these circumstances, the commission considers that Rusbell Lara endured both physical suffering, and mental and moral anguish, incompatible with his right to humane treatment.

190. In making this consideration, the IACHR notes that although it did not pronounce on the alleged violation of Article 5 in its report on admissibility and the allegation was made by the petitioners after that report was adopted, the facts that support this alleged violation are an integral and indivisible part of this case and, moreover, have emerged from information and documents furnished by the parties as the proceedings before the IACHR have progressed. Furthermore, the IACHR finds that during the proceedings the State was aware of the facts on which the above argument is based and had the opportunity to present observations in that regard.

C. Right to a Fair Trial and Judicial Protection (Articles 8(1) and 25 of the American Convention in connection with Articles 1(1) and 2 thereof)

191. Article 8(1) of the American Convention provides,

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.

192. For its part, Article 25 of the Convention provides:

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

2. The States Parties undertake:

- a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b) to develop the possibilities of judicial remedy; and
- c) to ensure that the competent authorities shall enforce such remedies when granted.

193. The Inter-American Court has established that, under the above standards, anyone who has suffered a violation of their human rights "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.”³⁰⁰ The protection of these rights is reinforced by the general obligation to respect and ensure human rights imposed by Article 1(1) of the American Convention. In this regard, the court has held that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. ... Article 25 “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society.” That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature.³⁰¹

194. 187. As a result, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse.³⁰² Thus, in accordance with the case law of the Inter-American Court, the State has the obligation that “each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events.”³⁰³ In this regard, acts of obstruction of justice, hindrances, or problems of non-cooperation with the authorities that have hampered or are hampering clarification of the case constitute a violation of Article 1(1) of the Convention. For its part, article 25 (1) of the American Convention incorporates the principle of the effectiveness of the procedural instruments or means designed to guarantee human rights.³⁰⁴

195. The IACHR points out that the obligation to investigate is an obligation as to means, rather than as to results, a duty to be assumed by the State as a judicial obligation itself and not as a mere formality preordained to be ineffective.³⁰⁵ In this sense, the investigation should be undertaken with due diligence, effectively, seriously, impartially,³⁰⁶ and within a reasonable period of time.³⁰⁷ The IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.³⁰⁸

³⁰⁰ I/A Court H.R., *Barrios Altos Case v. Peru*. Judgment of March 14, 2001. Series C No. 75, par. 48.

³⁰¹ I/A Court H.R., *Loayza Tamayo Case, Reparations*. Judgment of November 27, 1998. Series C No. 42, par. 169; I/A Court H.R., *Velásquez Rodríguez Case. Preliminary Objections* Judgment of June 26, 1987. Series C No. 1, par. 91; I/A Court H.R., *Fairén Garbi and Solís Corrales Case Preliminary Objections* Judgment of June 26, 1987. Series C No. 2, par. 90.

³⁰² I/A Court H.R., *Barrios Altos Case v. Peru*. Judgment of March 14, 2001. Series C No. 75, par. 43.

³⁰³ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 101.

³⁰⁴ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987, Series A, No. 9, par. 24.

³⁰⁵ I/A Court H.R., *Velásquez Rodríguez Case. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 131.

³⁰⁶ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, par. 146; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 130.

³⁰⁷ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 382.

³⁰⁸ 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, par. 109.

196. The Commission reiterates that the most effective way to protect human rights defenders in the hemisphere is by effectively investigating the acts of violence against them, and punishing the persons responsible.³⁰⁹ For its part, the Office of the United Nations High Commissioner for Human Rights has stated that failure to investigate and punish those responsible for violations committed against human rights defenders “constitutes the factor that most increases the risk to defenders, because it leaves them in a situation of defenselessness and vulnerability.”³¹⁰

197. Specifically with respect to this case, like the Court in the case of the *Massacre of Pueblo Bello v. Colombia*, the Commission cannot overlook that the facts surrounding the killing of Rusbell Lara form part of a situation in which a high level of impunity prevails for criminal acts perpetrated by members of paramilitary groups. The Judiciary has failed to provide an adequate response to the illegal actions of such groups in keeping with the State’s international commitments, and this leads to the establishment of fertile ground for these groups, operating outside the law, to continue perpetrating acts such as those of the instant case.³¹¹ In this regard, bearing in mind the above-cited precedents, which establish that the obligation of the State to investigate is accentuated in cases of this type,³¹² the Commission will analyze if in the instant case the State of Colombia carried out a serious and diligent investigation within a reasonable time.

1. Analysis

198. The Commission has taken it as proven that in this case a criminal investigation was carried out in the regular jurisdiction of the alleged perpetrators of the murder of Rusbell Lara and that, in some instances, the investigation appears to be continuing in proceedings governed by the Justice and Peace Law based on voluntary testimony received.

a. Criminal proceedings in the regular jurisdiction

199. As regards the criminal investigation in the proceeding before the regular courts, as the IACHR points out below, a number of flaws have been identified, both in the early stages of the proceedings and as they have progressed, that reveal a lack of due diligence on the part of the Colombian state.

i. Due diligence in the initial proceedings

200. The IACHR reiterates that, as the Court has indicated, in keeping with the duty to investigate a violation of the right to life with due diligence, states have the obligation to act with all diligence from the very first stages of a proceeding.³¹³ In particular, with respect to the scene of the crime, based on the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol),³¹⁴ the Inter-American Court has held that investigators must, at a minimum, photograph that scene, any other physical evidence, and the body as found and after being moved; all samples of blood, hair, fibers, threads, or other clues should be collected and conserved; examine the area in search of

³⁰⁹ 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.

³¹⁰ OHCHR. *Defender los derechos humanos: entre el compromiso y el riesgo* [Defending human rights: Between commitment and risk] Executive Summary, par.7. <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>

³¹¹ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 149.

³¹² I/A Court H.R., *Case of the Massacre of Pueblo Bello v.* Judgment of January 31, 2006. Series C No. 140, par. 126. IACHR, Report 75/06 Jesús María Valle Jaramillo, October 16, 2006, par. 67.

³¹³ I/A Court H.R. *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166. par. 121.

³¹⁴ See U.N. Doc E/ST/CSDHA/.12 (1991). The Commission has relied on United Nations documents to evaluate basic procedures to be carried out in such cases in previous matters. See IACHR. Report 10/95, (Manuel Stalin Bolaños Quiñonez). Case 10.580. Ecuador. September 12, 1995, par. 53.

footprints of shoes or anything else in the nature of evidence; and make a report detailing any observation of the scene, the actions of the investigators, and the disposition of all evidence collected.³¹⁵

201. The Commission recalls that the first investigative steps are key components “for an appropriate development of the judicial investigation, especially in the face of a fact that has cost a person’s life.”³¹⁶

202. In the instant case, as has been established in the section on proven facts, the prosecutor’s office neither visited the scene of the crime, nor protected nor cordoned it off. They also failed to recover the projectiles that struck Rusbell Lara. Had they been recovered, it would have been possible to carry out ballistics tests to determine the characteristics of the firearm and then make a comparison with those that have been seized in the Municipality of Tame.” The IACHR considers that the fact that Rusbell died at the hospital did not excuse it from performing the appropriate procedures at the crime scene, since it became aware of the deed a few hours after it was committed. There is nothing in the record to suggest that the clothes that Rusbell Lara was wearing were recovered or that they were searched to see if they contained documents or other elements in the nature of evidence. The IACHR also notes that more than 11 months after the crime occurred, the State had still not carried out a reconstruction of the events or any other planimetric procedure. In addition, the prosecutor’s office failed to interview the personnel in charge of the police station near the scene of the crime or inquire as to why they neglected to go to the scene. Based on the foregoing, the Commission finds that the state committed omissions in the initial procedures that made it difficult to get at the truth of the events and punish those responsible.

203. The IACHR also notes that the murder complaint was made by the commanding officer of “General Rafael Navas Pardo” 18th Engineers Battalion, who accused aliases “Ruben”, “Lucas”, “Amistad”, “Esquirla”, “Diomedez,” and “Santiago” of responsibility for the deed “based on intelligence obtained.” The Commission notes that the complaint does not specify the reasons why the commanding officer believed that those persons participated in the crime. Although in her report of October 2, 2003, the judicial investigator mentioned the importance of requesting further declarations from the commanding officer on his allusion to the alleged culprits of the crime, the Commission notes that when the special prosecutor sought information from the Battalion about the commanding officer in order to interview him in December 2004, he was told that he was no longer an active member of the unit. The record shows that on January 31, 2005, the prosecution unit decided to disqualify itself from continuing the investigation because “there really is no evidence to prove the responsibility” of the persons named by the Battalion’s commanding officer.

204. The IACHR finds that more than a year after Jose Rusbell Lara’s murder, in spite of the fact that the commanding officer of the Battalion was an agent of the state, the prosecutor’s office had failed to effectively inquire as to the specific reasons why he reached the conclusion that the above paramilitaries had committed the act, thereby contributing, by virtue of a period of unjustified inaction, to the case being closed for more than four months for lack of information.

ii Due diligence in pursuing logical leads that emerged during the investigation

205. The Commission observes that in the course of the investigation, the State omitted to conduct procedures and probe investigative theories that have emerged since gathering the initial evidence during the first months of the inquiry. The IACHR finds that as things stand in the investigation, alias “Alex” said that José Rusbell Lara had been identified as someone who “worked for the FARC.” However, the State has still not clarified the reasons for that statement or settled on a formal hypothesis about José Rusbell Lara’s murder that might help to get at the truth of what happened, thereby contributing to the stigma attaching to the paramilitaries’ statements.

³¹⁵ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, par. 301. The Court refers to the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, U.N., Doc E/ST/CSDHA/.12 (1991).

³¹⁶ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala.* Judgment of November 25, 2003. Series C No. 101, par. 167. IACHR, Report No. 37/00, Case of 11.481, Monsignor Oscar Arnulfo Romero y Galdámez, El Salvador, April 13, 2000, par. 85. 85.

206. As regards the way in which the investigation is being conducted, the Inter-American Court has held that it is not its responsibility to replace the domestic jurisdiction by ordering concrete methods or forms for investigating and judging a specific case in order to obtain a better or more effective outcome; instead, its role is to find whether or not, in the steps actually taken domestically, the State's international obligations have been violated.³¹⁷ In cases where the facts concern a person's violent death, the Court has found that the investigation opened should be carried out in a manner such that it could guarantee the due analysis of the responsibility hypothesis thus arrived at.³¹⁸ Specifically with respect to human rights defenders, the IACHR has found that as part of the requisite due diligence in conducting investigations, the investigating authority should take into account the work of the defender attacked in order to identify which interests could have been harmed in the pursuit of that work in order, thus, to establish lines of inquiry and theories for the crime.³¹⁹

207. In the instant case, the investigation was assigned to the Special Prosecutor's Office of the Support Unit for the Human Rights and International Humanitarian Law Unit of Norte de Santander and Arauca in view of the fact that Rusbell Lara "was a member of the Central Unitary Workers Union (CUT)" and a "member of the Joel Sierra Regional Human Rights Committee." The IACHR regards as a positive measure the establishment of specialized investigation units to act in a coordinated fashion and respond with due diligence in investigating attacks on human rights defenders.³²⁰ Accordingly, the IACHR values the fact that, in assigning the case to this prosecution unit, the State has recognized José Rusbell Lara's profile as a human rights defender and the possible link between his activities and the crime committed against him.

208. Nonetheless, the IACHR notes that in carrying out procedures the State has not seriously and thoroughly investigated the possible motives that have emerged in the course of the investigation or put forward a formal hypothesis on the murder.

209. Thus, the Commission finds that the State has been aware since Floro Angel Matiz's statement, first given to the investigating authority, that José Rusbell Lara worked as a human rights defender. Furthermore, in the course of the investigation other witnesses have offered testimony stating that the motive for Rusbell Lara's murder stemmed from his work as a human rights defender.

210. The IACHR observes that the State has not carried out basic procedures to pursue this hypothesis in a meaningful and effective way, such as inquiring into the nature of the specific activities in which Rusbell Lara was engaged as a human rights defender at the time of the events and how those activities might have affected the interests of certain quarters. In that connection, although the prosecution unit said in its interviews with "Alex," "Ruben," and Mejía Múnera that Rusbell Lara was a human rights defender, it has not directed its efforts toward elucidating the motives for his murder under that hypothesis. Furthermore, in spite of the fact that Rusbell Lara had helped in the organization of several peasant protest marches against paramilitary activities and in defense of land rights, there is nothing in the evidence to show that the State asked the detainees if they knew about those mobilizations, if there was any strategy to contain protests of that nature, or even if they had identified certain individuals who, by virtue of their leadership in the community, could have been targeted by the bloc and which person or persons in the BVA were in charge of carrying out such a task. The Commission finds the foregoing particularly troubling since it notes that, according to the record, in some of the BVA's operations the bloc operated with the acquiescence or collaboration of agents of the Colombian State and, according to the responses of some of those who gave

³¹⁷ I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, par. 80.

³¹⁸ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, par. 96.

³¹⁹ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* December 31, 2011, par. 236.

³²⁰ 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, recommendation 23.

voluntary testimony, at the time of the events there was even a list of persons to be executed in order to make it easier for the candidate to the governorship of Arauca win the elections.

211. The State was also aware that José Rusbell Lara's brother, Carlos Camilo Fernández Lara, had been the object of harassment and intimidation from self-defense groups and members of the guerrilla forces that prompted his forcible displacement. According to the State, one individual known by the alias "Semáforo," an AUC urban commander, had allegedly threatened him, saying that they knew where his entire family was located. In November 2003, the prosecution unit in charge of the investigation into Rusbell Lara's murder carried out an inspection of the file on the preliminary investigation into the displacement of Rusbell Lara's brother. The IACHR notes that although there could have been a connection between these facts and the motive for the murder, since that inspection the prosecution unit has neither questioned the detained persons about Carlos Camilo Fernández Lara or about the situation of alias "Semáforo," nor kept the record updated about the status of that investigation.

212. Furthermore, the Commission notes that in granting precautionary measures, the IACHR made a reference to a list of "military targets" found by the prosecutor's office in the possession of Jesús Emiro Pereira, a paramilitary leader captured in Bogota in December 2001. According to the information available in the record, the State has not pursued inquiries in connection with that list as a possible motive for José Rusbell Lara's murder.

213. Based on the above, the IACHR finds that logical leads that have emerged during the proceedings have not been seriously and thoroughly investigated, and therefore, the State has not helped to uncover the truth about the motives behind José Rusbell Lara's murder or established a formal hypothesis based on its lines of investigation.

iii. Situation of risk for persons who have testified in the proceeding

214. According to its case-law, the Inter-American Court considers that, to fulfill the obligation to investigate, "pursuant to Article 1(1) of the Convention, the State should adopt *ex officio* and immediately sufficient investigation and overall protection measures regarding any act of coercion, intimidation and threat towards witnesses and investigators."³²¹

215. In the instant case, the Commission observes that Jaime Orlando Reuto Manosalva, who testified on November 24, 2004, about Rusbell Lara's murder and accused alias "Cerámica" or "Caremica" and "Mazudo" as the authors of the deed, was murdered in Tame, allegedly for taking part in an election recall process. The IACHR notes that Mr. Reto [sic] Manosalva was the only person in the proceeding who had testified about having heard about the direct participation of two paramilitaries in José Rusbell Lara's homicide. Therefore, his participation was critical for incriminating the individuals who took part in the crime and continuing the investigation. The Commission finds that there is nothing in the record to suggest that specific protection measures were adopted to keep this witness safe.

iv. Due diligence in investigating the responsibility of the authors of the murder

216. The IACHR recalls that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.³²²

217. In the instant case, as regards the overall status of the investigation, the Commission notes that none of the people detained in the proceeding in the regular jurisdiction were detained as a result of the

³²¹ I/A Court H.R., Case of Kawas-Fernández v. Honduras. *Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 107.

³²² 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, par. 109.

investigative procedures carried out in connection with Rusbell's murder, but for the commission of other deeds and by other authorities.

218. Of all the people who had been included in the investigation, only one of them, Julio César Contreras Santos (alias "Alex"), has been convicted; he was given a reduced sentence after admitting to taking part in the crime. As regards the other individuals included in the investigation: Víctor Mejía Múnera and Alexander Rico Jaramillo (alias "Brayan") died while the investigation was ongoing without being punished; In the cases of Andrés Nambertínez Orozco (alias "Amistad") and Jesús Antonio Muñoz Jiménez (alias "Lobo" or "Jaime"), their whereabouts are currently unknown, despite the fact that more than three years have passed since "Alex" mentioned their possible participation in the incident; Finally, with respect to Miguel Mejía Múnera (alias "el Mellizo") and Orlando Villa Zapata (alias "Ruben"), although they have admitted their participation in the events by virtue of their positions of command in the BVA, they have not been convicted and their cases remain pending under the Justice and Peace Law.

219. Specifically, with respect to "Jaime" and "Amistad," the Commission believes that the State has not taken concrete steps to effect their capture. In that connection, with respect to "Jaime," the IACHR notes that he was in detention on the orders of Arauca Special Prosecution Unit in connection with case 477 on March 21, 2003, a little more than four months after Rusbell Lara's murder. However, since being released the State has been unable to re-apprehend him. The IACHR notes that when he was detained, according to an identity document, his domicile was established as being in Miranda, Cauca. The Commission finds that although the record contains a communication dated August 5, 2010, requesting the police station commandant in that city to execute the detention order, the State has provided the Commission with no information about any procedures carried out to execute that order.

220. Similarly, as regards "Amistad," the IACHR observes that the investigation record contains a report about procedures carried out in May 2010; however, the State has offered no information about measures adopted since that time. Based on the foregoing, the Commission finds that in this instance too, the State has failed to demonstrate that it has adopted concrete measures to carry out the detention orders.

221. In relation to "Ruben" and "el Mellizo," the IACHR notes that pursuant to the provisions of Law 975 of 2005 (Justice and Peace Law), the suspension was requested of the proceeding in the regular jurisdiction connected with the murder of José Rusbell Lara.

222. In that regard, the Commission notes that under the Law 975 of 2005, proceedings under way in the regular jurisdiction can be suspended and joined with the proceeding conducted in the framework of the Justice and Peace Law when they concern acts committed by the demobilized individual during and as a result of their membership of an armed group organized outside the law.³²³ Law 975 of 2005 provides:

Article 22. If, when the demobilized individual invokes the benefits of this law, the prosecutor's office is pursuing an investigation or has presented an indictment against them, the accused or defendant, with the assistance of counsel, may, either orally or in writing, admit the charges set out in the order for his detention, charge sheet, in the indictment, as appropriate. Said admission shall be made before the judge of oversight of procedural guarantees under the conditions envisaged in this law.

223. Furthermore, where demobilized individuals partially admit charges, the acts not admitted shall continue under investigation and, as appropriate, be tried by the competent organs in the regular jurisdiction. In that regard, Law 975 of 2005 provides:

³²³ Article 16.- For procedural purposes of this law, proceedings under way in the regular jurisdiction for criminal offenses committed by the demobilized individual during and as a result of their membership of an armed group organized outside the law shall be joined. In no case shall joinder be admissible for punishable acts committed prior to the demobilized individual's membership of the armed group organized outside the law.

Article 21. If the accused or defendant partially admits the charges, procedural unity shall be broken with respect to those not admitted. In such cases, the investigation and trial of the charges not admitted shall proceed before the competent authorities and in accordance with the procedural laws in force at the time of their commission. Admitted charges shall be afforded the benefits available under this law.

224. In the instant case, the judge of oversight of procedural guarantees of the Justice and Peace Chamber ordered the suspension of the proceeding underway in the regular jurisdiction against Orlando Villa Zapata (alias “Rubén”) “solely and exclusively in relation to the aforesaid demobilized individual ORLANDO VILLA ZAPATA and with respect to the crime of criminal conspiracy.” The IACHR notes that the secretary of the Justice and Peace Chamber did not request suspension of the proceeding for the crime of homicide of a protected person for which a detention order had been issued for “Ruben.”

225. The IACHR sees that following the order to suspend the proceeding in the regular jurisdiction, the Special Prosecution Office apparently did not continue the investigation process and, as necessary, seek punishment for the crime of homicide of a protected person. In this regard, the IACHR notes that on July 26, 2010, in case 1777 it was stated that after the separation of the charges in the case, following the admission of the charges by Julio César Contreras Santos, the proceedings would continue with respect to the other persons included in the investigation, among them, Orlando Villa Zapata. The state of Colombia has furnished no information to the IACHR about the progress of the investigations in the regular jurisdiction. Neither has it informed it if the individual responsibility of Orlando Villa Zapata for the facts in the case have been determined.

226. In addition, concerning Miguel Mejía Múnera (alias “el Mellizo”), the detention order was based on the investigation of his participation in the crimes of homicide of a protected person and criminal conspiracy. The IACHR notes that, unlike the situation of “Ruben,” after the hearing held on November 16, 2009, the secretary of the Justice and Peace Chamber requested the suspension of the proceeding in the regular jurisdiction in relation to both crimes. Consequently, the IACHR finds that acceptance of that request would mean that the proceeding opened in the regular jurisdiction for the murder of Rusbell would continue in the voluntary testimony proceedings governed by the Justice and Peace Law.

227. Notwithstanding the analysis in the following section of the investigation in the special Justice and Peace jurisdiction, as regards the proceeding in the regular jurisdiction from a holistic viewpoint, the Commission finds that the results in the regular jurisdiction more than 10 years after the events occurred have been the conviction of one of the perpetrators, who confessed his part in the deed and requested a reduced sentence. The partial impunity and lack of effectiveness of the criminal proceeding in this case are also a reflection of the irregularities and inconsistencies identified in: (1) the scene of the crime, (2) the lack of protection for one of the witnesses who provided testimony in the case, (3) the lack of due diligence in investigating hypotheses for the crime, and (4) the lack of due diligence in the investigation in terms of apprehending and effectively punishing all those responsible. All of the foregoing clearly demonstrates a lack of due diligence in investigating the facts, as a result of which the State has perpetuated the impunity that surrounds José Rusbell Lara's murder.

b. Special jurisdiction of the Justice and Peace Law

228. The IACHR notes that after requesting the suspension of the proceedings in the regular jurisdiction, two of the alleged paramilitaries included in the investigation of the murder of José Rusbell Lara are being tried under voluntary testimony proceedings conducted in the framework of Law 975 of 2005, more commonly known as the Justice and Peace Law.

229. In the instant case, with regard to Orlando Villa Zapata (alias “Ruben”), the Commission observes that since the hearing for the presentation of charges was held and the suspension was ordered of the proceeding in the regular jurisdiction for the crime of criminal conspiracy in relation to the murder of José Rusbell Lara, the State has not managed, more than three years later, to determine the degree of his involvement in the events with which this case is concerned.

230. In relation to Miguel Mejía Múnera, the IACHR finds that he was extradited to the United States on March 3, 2009. The petitioners have argued that the extradition of Miguel Melchor Mejía Munera has blocked judicial investigations and routine procedural acts, such as notifications, giving rise to unwarranted delays in the proceeding, thereby infringing the victims' right to justice and to know the truth. They have also argued that say that the extradition for an offense that was less serious and gave rise to less social harm than that caused in Colombia. The State, for its part, has held that the extradition of one of the persons under investigation has not hampered the procedure established in the aforementioned law, nor the parallel investigation being pursued by the Office of the Prosecutor General's Human Rights and International Humanitarian Law Unit, which has made progress in the case.

231. In light of the considerations put forward by the parties, in the following section the Commission offers its findings on the extradition of Miguel Mejía Múnera and its impact on the investigation in this case.

i. The extradition of one of the persons allegedly responsible for the murder of José Rusbell Lara

232. The Inter-American Court has ruled that "it is in the interests of the community of nations that individuals who have been accused of specific offenses be brought to justice."³²⁴ In addition, on several occasions it has underscored the importance of extradition and the duty of states to collaborate with each other in that regard.³²⁵

233. In particular, the Court has had occasion to state its position on the legal concept of extradition in cases involving persons allegedly responsible for gross human rights violations. Thus, the Court has found that :

Access to justice is a peremptory norm of international law and, as such, gives rise to obligations *erga omnes* for the States to adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so. The Court points out that, under the collective guarantee mechanism set out in the American Convention, and the regional³²⁶ and universal³²⁷ international obligations in this regard, the States Parties to the Convention must collaborate with one another towards that end.³²⁸

³²⁴ I/A Court H.R. Matter of *Wong Ho Wing regarding Peru*. Order of the Court, May 28, 2010, considering 16.

³²⁵ See, for example, I/A Court H.R., *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, par. 132; *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, pars. 159 and 160; *Case of the Ituango Massacres v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 7, 2009, considering 19 and *Case of the "Mapiripán Massacre" v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 8, 2009, considering 40 and 41.

³²⁶ Cf. Charter of the Organization of American States, Preamble and Article 3.e; Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Persons; and Resolution No. 1/03 of the Inter-American Commission on Human Rights on the prosecution of international crimes. cited in: I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C No. 162, par. 160.

³²⁷ Cf. Charter of the United Nations signed June 26, 1945, Preamble and Article 1(3); Universal Declaration of Human Rights, adopted and proclaimed under General Assembly Resolution 217 A (iii) of December 10, 1948; United Nations International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI) of December 16, 1966; Geneva conventions of August 12, 1949 and its Protocols; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, General Assembly 2391 (XXIII) of November 26, 1968; Convention on the Prevention and Punishment of the Crime of Genocide, resolution 260 A (III), General Assembly resolution 260 A (III) of December 9, 1948; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46 of December 10, 1984; Declaration on the Protection of All Persons from Enforced Disappearances, *G.A. Res. 47/133, 47 U.N. GAOR Supp. (no. 49) at 207, U.N. Doc. A/47/49 (1992)*, Article 14; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, *E.S.C. Res. 1989/65, U.N. Doc. E/1989/89*, para. 18 (May 24, 1989); Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, *G. A. Res. 3074, U.N. Doc. A/9030 (1973)*; Resolution on the Question of the Punishment of

234. The Court has also held, with respect to the concept of extradition in proceedings where there are open investigations for human rights violations in the extraditing state, that

[...] the State cannot provide direct or indirect protection to the accused of crimes [sic] humanity by means of the improper application of legal concepts that threaten the pertinent international obligations. In this way, the concept of extradition cannot consist, either, in a means to favor, foster or guarantee impunity.³²⁹

235. With respect to the general obligation contained in Article 2 of the Convention, the Court has consistently held that

[u]nder the law of nations, a customary law prescribes that a State that has concluded an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken. This principle is universally valid and has been characterized in case law as an evident principle (*"principe allant de soi"*; *Exchange of Greek and Turkish populations, Advisory Opinion*, 1925, PCIJ, Series B No. 10, p. 20).³³⁰

236. The Court has found that the adaptation of domestic law to the Convention entails the adoption of measures following two main guidelines, to wit: i) the annulment of laws and practices of any kind whatsoever that may imply the violation of the rights protected by the Convention, and ii) the passing of laws and the development of practices tending to achieve an effective observance of such guarantees.³³¹

237. Concretely, regarding the concept of extradition, the Inter-American Court has determined that "in the decisions regarding the application of certain procedural concepts to one person, the accusation of serious human rights violations must prevail."³³² The Court has also ruled that no domestic legal provision of law can impede compliance by a State with the obligation to investigate and punish those responsible for human rights violations.³³³

War Criminals and of Persons who have Committed Crimes Against Humanity, G.A. Res. 2840, U.N. Doc. A/Res/2840 (1971); 1996 Draft Code of Crimes Against the Peace and Security of Mankind of the International Law Commission; Draft International Convention for the Protection of All Persons from Enforced Disappearance, United Nations Human Rights Council, 1st session, business No. 4 of the agenda, A/HRC/1/L.2, June 22, 2006; Declaration on Territorial Asylum, adopted by the United Nations General Assembly, resolution 2312 (XXII) of December 14, 1967; and United Nations Convention on the Statute of Refugees, 189 U.N.T.S. 150, adopted on July 18, 1951 by the United Nations Diplomatic Conference of Plenipotentiaries on the Statute of Refugees and Stateless, convened by the General Assembly through resolution 429 (V), of December 14, 1950. Cited in I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C No. 162, par. 160.

³²⁸ I/A Court H.R., *Case of La Cantuta v. Peru*. Judgment of November 29, 2006, Series C No. 162, par. 160

³²⁹ I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, par. 40

³³⁰ Cf. *Case of Almonacid Arellano et al.*, *supra* note 6, par. 117; *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, par. 205, and *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 140.

³³¹ Cf. *Case of Almonacid Arellano et al.*, *supra* note 6, par. 118; *Case of Ximenes Lopes*, *supra* note 6, par. 83, and *The Last Temptation of Christ" Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, par. 85.

³³² I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, par. 41

³³³ I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 304. Cf. *Case of Molina Theissen v. Guatemala. Reparations*. Judgment of July 3, 2004. Series C No. 108, pars. 83-84; *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, pars. 276-277; *Case of Bulacio v. Argentina*, *supra* note 193, par. 116; *Case of the Caracazo. Reparations*. Judgment of August 29, 2002. Series C No. 95, par. 119; *Trujillo Oroza Case v. Bolivia. Reparations*. Judgment of February 27, 2002. Series C No. 92, par. 106; *Barrios Altos Case v. Peru. Interpretation of the Judgment on the Merits*. Judgment of September 3, 2001. Series C No. 83, par. 15; *Castillo Páez Case v. Peru. Reparations*. Judgment of November 27, 1998. Series C No. 43, par. 105, and *Loayza Tamayo Case v. Peru. Reparations*. Judgment of November 27, 1998. Series C No. 42, par. 168.

238. Regarding the extradition of persons who were testifying in the framework of the procedure established by the Justice and Peace Law, the Commission considered that, in general,

extradition affects the Colombian State's obligation to guarantee victims' rights to truth, justice, and reparations for the crimes committed by the paramilitary groups; impedes the investigation and prosecution of such grave crimes through the avenues established by the Justice and Peace Law in Colombia and through the Colombian justice system's regular criminal procedures; and closes the door to the possibility that victims can participate directly in the search for truth about crimes committed during the conflict, and limits access to reparations for damages that were caused. Finally, the Commission observed that this action also interferes with efforts to determine links between agents of the State and these paramilitary leaders in the perpetration of human rights violations.³³⁴

239. In the instant case, the Commission notes that Miguel Mejía Múnera was wanted for extradition to the United States to stand trial for alleged drug trafficking-related offenses. In Colombia, on the other hand, he was under investigation both in proceedings in the regular jurisdiction and in a proceeding governed by the Justice and Peace Law, the purpose of the latter being to facilitate "the peace processes and the individual or collective reintegration into civilian life of members of illegal armed groups and, while ensuring the rights of the victims to the truth, justice, and reparation."³³⁵ Based on the foregoing, to begin with, the Commission notes that, in keeping with the above-mentioned position of the Court, the State's assessment in applying the procedural concept of extradition in this case should have given prevalence to the charges of gross human rights violations allegedly committed by the accused in his capacity as leader of the BVA.

240. As stated in the section on proven facts, the extradition procedure is governed by Law 600 of 2000, which empowers the government to offer or grant extradition subject to a favorable opinion of the Supreme Court of Justice based on an analysis of certain formal aspects; to wit, the formal validity of the documentation submitted by the requesting country, the demonstration in full of the identity of the individual sought, the principle of double criminality, and the equivalence of the procedural order issued abroad with the accusation under the Colombian procedural system.

241. The Commission notes that from a regulatory standpoint, the Supreme Court's analysis in issuing its opinion on extradition is subject to a formal analysis of the statutory requirements, wherein the prevalence of charges of gross human rights violations is not recognized as a factor of analysis in applying extradition. Neither are victims afforded an opportunity, either in proceedings in the regular jurisdiction or under the Justice and Peace Law, to state their opinion with respect to extraditions. Furthermore, the final decision on extradition is left to the discretion of the executive branch.

242. The Commission notes that at the time of the events, the Supreme Court of Justice was of the opinion that there was no incompatibility between the extradition process and the rights of victims in cases under the Justice and Peace Law since "[t]he Chamber has considered that there is no obstacle to reaching a favorable opinion on an extradition request, always provided that it is in circumstances that ensure the fundamental rights of the victims to truth, justice, reparation, and non-repetition." (*Cf. supra* 134). Accordingly, the Court issued a favorable opinion on extradition provided that the government adopted measures to ensure that cases continued to be heard in accordance with the provisions of the Justice and Peace Law.

243. In relation to the extradition of persons who were testifying in the framework of the procedure established by the Justice and Peace Law, the Inter-American Court has stated that

³³⁴ IACHR, *Annual Report 2008*, Ch. IV, Colombia, par. 34, February 25, 2009, available at: <http://www.cidh.org/annualrep/2008eng/Chap4eng.htm#COLOMBIA>

³³⁵ Article 4. Ley 975 of 2005. Official Gazette No. 45.980 of July 25, 2005

it falls upon Colombia to clarify the mechanisms, instruments and legal concepts that shall be applied to guarantee that the extradited person will collaborate with the investigations into the facts of the instant case, as well as, if applicable, to guarantee the due process. The State must guarantee that the proceedings conducted outside Colombia will not interfere or hinder the investigations into the serious violations committed in the instant case or affect the rights of the victims recognized in the Judgment.³³⁶

244. In the instant case, the IACHR finds that, as was mentioned in the section on proven facts, the extradition went ahead in the absence of a specific judicial cooperation agreement between the State of Colombia and the United States for following up on proceedings instituted within the framework of the Justice and Peace Law. Furthermore, the State has not provided any information on specific measures adopted by the government to ensure the continuity of proceedings.

245. The Commission finds that the absence of measures adopted by the State with respect to an extradited applicant to the benefits of the Justice and Peace Law has impeded verification of the facts in this case. In this respect, to begin with, according to information available in the record, Miguel Mejía Múnera has only offered voluntary testimony once in connection with the facts in this case. According to available information, although Miguel Ángel Mejía Múnera gave voluntary testimony from the testimony room at the Federal Court in Washington, D.C., and this was broadcast in real time to Bogotá and the houses of culture in the municipalities of Arauca and Tame in Arauca Department, the State does not say if the family of José Rusbell Lara were invited, were present when the testimony on the facts in this case were transmitted, or had the opportunity to speak or ask questions about how the events occurred. In that regard, the Commission finds that the family of José Rusbell Lara has not been taken into account in the process.

246. Second, the IACHR notes that in his voluntary testimony, Mejía Múnera said that alias “Mario” could have given the order; however, it was the prosecutor's office that corrected him, saying that it was “Amistad” and “Jaime.” The Commission believes that in order to uncover the truth, the State should arrange for the necessary procedures to be held in order to apportion the appropriate responsibilities. The lack of contact with the applicant to the Justice and Peace Law has impaired the possibility for Mejía Múnera to talk to other members of the BVA who might have information about the facts. In particular, the IACHR notes that Mejía Múnera has not spoken with “Alex” or “Ruben” following the extradition, in order to determine clearly who allegedly took the decision that José Rusbell Lara should be murdered.

247. Third, the IACHR notes that the extradition has impeded an thorough investigation of the possible involvement of agents of the State in the facts. In that regard, the IACHR notes that in his voluntary testimony of January 22, 2009, when Miguel Mejía Múnera was asked in relation to Mr. Rusbell Lara's murder if the deed was “carried out ... with the collaboration of the army and the police,” he replied, “I do not know about those events. I am going to talk to the boys because none of them has spoken to me about this case.” The IACHR notes that the prosecution unit has not inquired further on this issue and that because Mejía Múnera has been extradited, he has been unable to talk to members of the BVA to establish if agents of the State were involved.

248. Fourth, the IACHR observes that extradited persons do not have access to specific benefits in trials conducted in the United States in the framework of their participation in Justice and Peace proceedings, which deters applicants from continued participation in the process. The IACHR notes that under Law 975 of 2005, applicants participate voluntarily. According to the MAPP/OAS report, of the 29 extradited applicants, only six former commanders continue to participate in voluntary testimony proceedings. The Commission believes that the lack of incentives for applicants is seriously jeopardizing the possibility not only of applicants continuing to offer voluntary testimony, but also, as a result, of victims in cases such as this learning the truth, since that is contingent on the continuity of the voluntary testimony proceedings.

³³⁶ I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, par. 41

249. Finally, more than four years at his extradition, the State of Colombia has provided no information about subsequent testimonies and, to date, has also failed to say if Miguel Melchor Mejía Múnera's individual responsibility has been established for his participation in the facts in the case, or if reparations have been made to the family of José Rusbell Lara.

250. As the IACHR mentioned in the section on proven facts and as noted in the MAPP OAS report, given the lack of measures adopted for continuing justice and peace proceedings in relation to those who were extradited, the Supreme Court of Justice has changed its tendency of adopting favorable opinions on extradition and began to issue adverse ones, accepting that several proceedings under the Justice and Peace Law have stalled in terms of unveiling the truth because the extradited applicants have been unable to continue confessing to crimes committed. Furthermore, as the MAPP/OAS report reflects overall, voluntary testimonies by applicants have declined substantially since their extradition to the United States, mirroring what has happened in this case.

251. In light of the foregoing, the IACHR finds that the extradition of Miguel Mejía Múnera and the failure of the Colombian State to adopt appropriate measures to ensure the continuity of the proceedings have impaired the progress of the investigation in terms of disclosing the truth about Jose Rusbell Lara's murder and effectively punishing those responsible for the crime.

c. Reasonable time

252. Article 8(1) of the Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Therefore, a long delay may *per se* constitute a violation of the principle of due process.³³⁷ Therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.³³⁸ In that connection, reasonableness of time must be analyzed with regard to the total duration of the criminal process.³³⁹ Under the terms of Article 8(1) of the Convention, the Commission will consider, in light of the specific circumstances of the case, the three elements that it consistently takes into account in keeping with its case-law: a) the complexity of the case; b) the procedural activities of the interested party; and c) the conduct of the judicial authorities.³⁴⁰

253. In that regard, the Commission does not consider this case to be complex. It concerns a clearly identified victim, and from the start of the investigation there were clear indicia that ought to have served to carry out the necessary procedures to clarify the relevant facts and establish responsibilities. Furthermore, as regards the participation of the interested parties, the family of José Rusbell Lara have contributed actively by providing statements in the proceeding and appointing a civil party to follow up on and impel the investigation.

254. As regards the conduct of the judicial authorities, the Commission notes that the record of the investigation of the case reflects a number of delays caused by a lack of activity on the part of the authorities. In that connection, the Commission observes that the investigation was unduly closed for four months at its initial stage and that following a series of procedures carried out in 2005 the record shows no new procedures until 2007 when it was learned that the Mejía Múnera brothers had demobilized, during

³³⁷ I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; I/A Court H.R., *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, par. 85; and I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 160.

³³⁸ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, par. 142.

³³⁹ I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 129; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, par. 104; and I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, par. 168.

³⁴⁰ IACHR, Report on Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, par. 76. See also I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 132; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166.

which time the investigation was at a standstill. Furthermore, the record contains outstanding detention orders but no mention of any steps taken to execute them. In addition, the State has provided no information as to any measures adopted to continue the investigations after the extradition of one of the leaders of the BVA.

255. The State's delays in the investigation have also had serious repercussions on the possibility of punishing those responsible for the crime. The Commission notes that according to available information, in the course of the investigation a number of people have died who may have participated in the deed, a key witness in the case was murdered, and, as mentioned, the leader of the BVA has been extradited, and yet, to date, his legal situation with regard to Rusbell Lara's murder has not been analyzed.

256. To summarize, in spite of the fact that the State has had one of the perpetrators and the leader of the bloc at its disposal, more than 10 years after the events: (1) Only one of the people who participated in the murder of Rusbell Lara has been effectively punished; (2) neither the proceeding in the regular jurisdiction nor the one in the framework of the Justice and Peace Law has produced any results with respect to the other persons included in the investigation, in terms of administering justice in providing reparation, since no convictions have yet been handed down on those who have confessed to participating in the material acts in the instant case, with the result that, to date, those responsible have not been duly punished either; and finally, (3) by extraditing one of the individuals included in the investigation and failing to adopt appropriate measures to ensure the continuity of the investigations, the State has helped to obstruct disclosure of the truth and effective punishment of those responsible.

257. The Commission considers that the period of more than 10 years that the domestic justice system has taken exceeds what could be considered a reasonable time for the State to carry out the necessary investigative procedures and constitutes a denial of justice to the detriment of José Rusbell Lara's family.

258. Based on the foregoing, the Commission concludes that the investigations and internal proceedings have not amounted to effective remedies for ensuring access to justice, determining the truth of the events, investigating and punishing all those responsible, and providing redress for the consequences of the violations. Therefore, the IACHR finds that the State has violated Articles 8(1) and 25 of the American Convention, in connection with the obligation to observe rights and to adopt domestic provisions set forth, respectively, in Articles 1(1) and 2 thereof, to the detriment of José Rusbell Lara's family.

D. Right to humane treatment (Article 5(1) of the American Convention in connection with Article 1(1) thereof)

259. The IACHR did not pronounce on the alleged violation of Article 5 in its report on admissibility; the allegation was made by the petitioners after that report was adopted. The IACHR notes that the facts that support that alleged violation are an integral and indivisible part of this case and, moreover, have emerged from information and documents furnished by the parties as the proceedings before the IACHR have progressed. Furthermore, the IACHR finds that during the proceedings the State was aware of the facts on which the above argument is based and had the opportunity to present observations in that regard. Consequently, based on the principle of "*iura novit curia*," bearing in mind that the State has had the opportunity to examine the claims, and in the interests of consistency with other cases that concern similar situations, the IACHR will offer considerations in this regard³⁴¹.

Article 5 of the American Convention provides,

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

³⁴¹ The inclusion of the families of the alleged victims is taking into account the provisions of art. 35.1 of the Rules of Procedure of the Inter-American Court of Human Rights and its jurisprudence. I/A Court H.R., Radilla Pacheco v. Mexico. Judgment of november 23, 2009 and Order of January 19, 2009 Case González and others (Campo Algodonero), Request for extension of alleged victims, and refusal of documentary evidence.

260. The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, become victims.³⁴² Specifically, the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.³⁴³

261. Furthermore, the Inter-American Court has established that “[t]he obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible, try to reestablish a right that has been violated and, if applicable, repair the damage produced by human rights violations.”³⁴⁴

262. Concretely, the Commission has concluded in above that in the instant case a thorough and effective investigation of the facts was not conducted. In this regard, the Court has held:

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.³⁴⁵

263. Based on the foregoing, the Commission considers that the loss of a loved one in circumstances such as those described in this case, as well as the lack of a thorough and effective investigation which in turn causes pain and anguish if the truth is not revealed, in themselves constitute harm to the mental and moral integrity of the members of José Rusbell Lara's family.

264. In the instant case, the IACHR has taken it as proven that Rusbell Lara's family consisted of his sons, 15-year-old Rusbell Dair and eight-year-old Dubian Ferley; and his daughter, 13-year-old Ana Dirley. Following their father's murder, Rusbell Dair and Dubian Ferley fled to the home of Floro Ángel Matiz and afterwards were taking to their grandmother's home in Meta. For her part, Ana Dirley went to the house of one of her aunts and some time later was reunited with her brothers, with whom she went to live with an aunt of Rusbell Lara's in San Martín. The IACHR also notes that according to Rusbell Dair's testimony, he received threats and had to flee from Tame as a result.

265. In light of the foregoing, it is clear to the Commission that the anxiety that José Rusbell Lara's family experienced in their quest for justice for their father's murder, the lack of effective protection, and the profound suffering and the radical change to their lives as a result of their displacement from Tame have infringed their right to have their integrity respected. Based on the foregoing, the Commission concludes that the State violated the right to mental and moral integrity recognized in Article 5(1) of the American

³⁴² I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Bueno-Alves v. Argentina*. Judgment of May 11, 2007. Series C No. 164, par. 102.

³⁴³ I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

³⁴⁴ 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, par. 98. *Cf.* I/A Court H.R., *Velásquez Rodríguez Case. Honduras*. Judgment of July 29, 1988. Series C, No. 4, par. 166; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, par. 142, and I/A Court H.R., *Case of García-Prieto et al v. El Salvador*. Judgment of November 20, 2007, Series C No. 168, par. 99.

³⁴⁵ 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, par. 102; *Cf.* I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C, No. 163, par. 195; I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988. Series C, No. 4, par. 181; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, par. 146, and I/A Court H.R., *Case of García-Prieto et al v. El Salvador*. Judgment of November 20, 2007, Series C No. 168, par. 102.

Convention, in connection with duty to observe rights set out in Article 1(1) thereof, to the detriment of the family of the victim in this case.

VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 2/13

266. The Commission approved Report on the Merits No. 2/13 on March 19, 2013 and forwarded it to the State on April 5, 2013. In said report, the Commission recommended:

1. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects.
2. Conduct and complete a full, effective, impartial judicial investigation in a prompt manner in order to clarify the circumstances of José Rusbell Lara's death, investigate logical lines of investigation in connection with the case, identify all those who participated in the different decision-making levels and execution, and impose the appropriate penalties. As part of this recommendation, the State must adopt measures of a legislative, institutional and judicial character aimed at ensuring the continuity of proceedings conducted in the framework of the Justice and Peace Law with respect to demobilized individuals who have been extradited and ensure adequate participation for José Rusbell Lara's family.
3. Impose appropriate administrative, disciplinary or criminal sanctions for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.
4. Adopt measures of a legislative, institutional or judicial character aimed at reducing the exposure to risk of human rights defenders in a vulnerable situation. In that connection the State should:
 - 4.1 Strengthen the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of human rights defenders, by designing investigative protocols that, taking into account the risks attendant upon the work of human rights defenders, would enable the investigation to be carried out thoroughly under this hypothesis.
 - 4.2 Develop swift and adequate institutional response measures, which allow effective protection for human rights defenders in situations of risk. Concretely, take steps to effectively implement protection measures granted by the organs of the inter-American system.

267. On September 3, 2013, the State and the representative of the petitioning organization requested that the names of the victim and his next of kin be corrected in the merits report to match how they appear in their identification documents, which were attached to their communication. On September 19, 2014, the IACHR forwarded to the parties the merits report with the requested name corrections.³⁴⁶

268. In the proceedings following the notification of the merits report, the Commission received several reports from the State and some submissions from the petitioners about compliance with the recommendations set by the IACHR. Additionally, working meetings were held with the participation of the IACHR. During this period, the Commission granted the State a total of 13 extensions to the deadline set forth under Article 51 of the American Convention. In said requests for an extension, the Colombian State expressly waived its right to file preliminary objections because of its failure to comply with the aforementioned deadline, in the event the case were submitted to the Inter-American Court.

³⁴⁶ In the case file before the IACHR, different versions of the names of the victim and his next of kin appear throughout.

269. After evaluating the available information on compliance with the recommendations, the Commission decided on October 5, 2016, by absolute majority, to not refer the case to the Inter-American Court and to publish the merits report. In the section hereunder, the Commission sets forth its decisions on compliance with its recommendations.

VII. PROCEEDINGS SUBSEQUENT TO REPORT No. 49/16

270. On November 30, 2016, the Inter-American Commission adopted Report No. 49/16, reiterating the recommendations contained in Report No. 2/13.

271. The Parties were notified of said report on December 19, 2016 and, pursuant to Article 51 of the American Convention, the IACHR granted them two months to submit information regarding compliance with the final recommendations contained therein. On February 17, 2017, the State reported in writing on the status of compliance with the recommendations. The Commission notes that the petitioners did not provide information after Report No. 49/16 was issued.

VIII. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

272. **With regard to the first recommendation**, the State reported that on November 7, 2014, it had conducted, together with the next-of-kin and representatives of the victims, a "public ceremony acknowledging international liability and asking for public forgiveness." It indicated that the ceremony had taken place in the principal park in the municipality of Tame at the behest of the representatives of the family members. It said that the Minister of the Interior of Colombia had presided over that ceremony, which was attended by family members of Mr. Rusbel Lara. The State added that during the ceremony a commemorative plaque had been unveiled at that site in memory of Mr. Rusbel Lara as a human rights defender. It added that the inscription on the plaque was signed by the victim's son.

273. The Colombian State also indicated that on June 16, 2016, the Administrative Tribunal in Cundinamarca had approved a conciliatory compensation agreement in which the representatives of the victim's next-of-kin had participated. It states that that now final decision provided for compensation to the next-of-kin amounting to approximately US\$300,000, including material and intangible damages and harm done to health. In its latest report, the State indicated that the corresponding payments were made on December 27, 2016.

274. The Commission appreciates the public ceremony acknowledging international liability, organized jointly with Mr. Rusbel Lara's next-of-kin. The IACHR likewise appreciates the fact that the victim's next-of-kin received pecuniary compensation. In light of the above, the IACHR considers that the State has fully implemented the first recommendation.

275. **Regarding the second and third recommendations**, the State provided periodic reports on progress made with the investigations in Colombia. In its first reports, the State reiterated much of the information that the IACHR already had at its disposal when it issued its report on the merits. In subsequent written submissions, the State reported that priority had been accorded to the investigations at the behest of the Office of the Attorney General. From the information provided by the State, it transpires that three perpetrators of the killing of Mr. Rusbel Lara have been convicted. It further transpires that the senior commanders of the paramilitary squad associated with the death of the victim are currently included in criminal proceedings, most of them within the purview of the Justice and Peace Law. Separately, the State noted that there had been no indications in connection with the investigations under way of evidence confirming the alleged obstruction and denial of justice in the case at hand. The State added that, consequently, it had not been necessary to order administrative, disciplinary, or criminal proceedings in that regard. That being so, the IACHR considers that this recommendation has not been implemented.

276. The IACHR takes a positive view of the progress made with the investigations and criminal proceedings undertaken in response to the death of Mr. Rusbel Lara. Bearing in mind that the instigators are still

under investigation and proceedings are still under way with respect to them in Colombia and pending final judgment, the Commission considers that these recommendations have been partially implemented and it will continue to monitor their implementation.

277. **Regarding the fourth recommendation**, the State presented ample information about actions taken to protect human rights defenders in Colombia, including: 1) the establishment and implementation of the National Protection Unit; ii) the adoption of Decree 1066 of 2015 - Program to Prevent Violations of and to Protect the Rights to Life, Liberty, Integrity and Security of Certain Persons; iii) the establishment of the National Protection Unit, with programs designed to protect human rights defenders; iv) the updating of the Program to Protect Persons at Risk; v) the adoption of a Public Policy to Guarantee the Defense of Human Rights; and so on.

278. The State also indicated that on May 31, 2016, it had sent the representatives of the victim's next of kin a draft resolution of the National Protection Unit. The resolution aims to establish a protocol for providing notification and for lifting precautionary or provisional measures in the inter-American system in cases in which risk assessments of the beneficiaries determine an ordinary level of risk. In its latest report, the State indicated that it was awaiting the petitioners' observations on the draft resolution sent to them. The petitioners have not provided information since the aforementioned report, even though they were asked to do so in good time.

279. The IACHR appreciates the policies implemented to protect human rights defenders in Colombia. The Commission also notes that the State still looks forward to receiving the petitioners' comments on the draft resolution regarding the protocol referred to in the preceding paragraph.

280. In light of the above, the IACHR considers that the State has adopted pertinent measures for the protection of human rights defenders. Without prejudice to that progress, in performing its thematic and geographical monitoring functions, the IACHR has continued to receive extremely worrying information regarding ongoing threats against and murders of human rights defenders in 2016 and thus far in 2017. Accordingly, the IACHR considers that the State has complied partially with the fourth recommendation, but that supervision is still needed to ensure the concrete impact of such measures on preventing a repetition of acts such as those addressed in the instance case.

IX. CONCLUSIONS AND RECOMMENDATIONS

281. The Inter-American Commission finds that the State has substantially progressed in compliance with some of the recommendations in Report No. 2/13. Additionally, the Commission appreciates the efforts made by both parties to engage in dialogue and a constructive process toward said compliance.

282. Based on the factual and legal considerations throughout this report, the Inter-American Commission reiterates its conclusions, in the sense that the Republic of Colombia is responsible for:

- violation of the right to life enshrined in Article 4(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of José Rusbell Lara;
- violation of the right to humane treatment recognized in Article 5(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of José Rusbell Lara;
- violation of the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of the next of kin of José Rusbell Lara: Rusbell Dair, Dubian Ferley y, Ana Dirley, all of them surnamed Lara; Hercila Lara and Rubiela Fernández Lara.
- violation of the right to humane treatment recognized in Article 5(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of the next of kin of José Rusbell Lara: Rusbell Dair, Dubian Ferley and, Ana Dirley, all of them surnamed Lara; Hercila Lara y Rubiela Fernández Lara.

283. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE COLOMBIAN STATE TO CONTINUE TO MAKE EVERY EFFORT NEEDED TO ACHIEVE FULL IMPLEMENTATION OF THE FOLLOWING RECOMMENDATIONS WHICH WERE FOUND TO HAVE BEEN ONLY PARTIALLY IMPLEMENTED:

1. Conduct and complete a full, effective, impartial judicial investigation in a prompt manner in order to clarify the circumstances of José Rusbell Lara's death, investigate logical lines of investigation in connection with the case, identify all those who participated in the different decision-making levels and execution, and impose the appropriate penalties. As part of this recommendation, the State must adopt measures of a legislative, institutional and judicial character aimed at ensuring the continuity of proceedings conducted in the framework of the Justice and Peace Law with respect to demobilized individuals who have been extradited and ensure adequate participation for José Rusbell Lara's family.
2. Impose appropriate administrative, disciplinary or criminal sanctions for the acts or omissions of state officials that contributed to the denial of justice and impunity regarding the facts in the case.
3. Adopt measures of a legislative, institutional or judicial character aimed at reducing the exposure to risk of human rights defenders in a vulnerable situation. In that connection the State should:
 - 3.1 Strengthen the institutional capacity to combat the pattern of impunity surrounding cases of threats and murders of human rights defenders, by designing investigative protocols that, taking into account the risks attendant upon the work of human rights defenders, would enable the investigation to be carried out thoroughly under this hypothesis.
 - 3.2 Develop swift and adequate institutional response measures which allow effective protection for human rights defenders in situations of risk. Concretely, take steps to effectively implement protection measures granted by the organs of the inter-American system.

X. PUBLICATION

284. 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 Washington D.C., on the 21st day of the month of March, 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, Paulo Vannuchi, and James L. Cavallaro, Commissioners.