

REPORT No. 77/12
CASE 11.581
MERITS
ZULEMA TARAZONA ARRIETA AND OTHERS
REPUBLIC OF PERU
November 8, 2012

I. SUMMARY

1. On January 22, 1996, the Association for Human Rights (*Asociación Pro Derechos Humanos*, APRODEH) and Messrs. Víctor Tarazona Hinojosa and Santiago Pérez Vela (hereinafter "the petitioners") lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") against the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") in connection with the murder of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and with the injuries suffered by Mr. Luis Alberto Bejarano Laura, at the hands of members of the Peruvian Army in an incident on August 9, 1994. The petitioners claim that the Peruvian State violated the right to life, to humane treatment, to a fair trial, and to judicial protection, enshrined in Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), together with its obligation to respect rights as set out in Article 1.1 thereof.

2. The petitioners state that at around 8:30 p.m. on August 9, 1994, Ms. Zulema Tarazona Arrieta, Ms. Norma Teresa Pérez Chávez, and Mr. Luis Alberto Bejarano Laura were headed toward their respective homes on a public bus when the vehicle stopped to let another passenger alight. As the bus pulled away, two soldiers from the Peruvian Army approached it from behind and tried to get it to stop. They claim that since the bus driver was unaware of the soldiers' presence and continued on his way, Army Sergeant Second-Class Antonio Mauricio Evangelista Pinedo discharged his weapon at the vehicle, causing the deaths of Ms. Zulema Tarazona Arrieta and Ms. Norma Teresa Pérez Chávez and injuring Mr. Luis Alberto Bejarano Laura. They state that the sergeant fled the area and concealed the incident from his superiors.

3. On October 10, 2001, the IACHR adopted Admissibility Report No. 83/01, in which it concluded that it was competent to hear the complaint presented by the petitioners and it decided, based on the factual and legal arguments and without prejudging the merits of the case, to rule the complaint admissible for the alleged violation of Articles 2, 4, 5, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

4. In their comments on the merits, the petitioners allege that as a result of an unnecessary, deliberate, and disproportionate action by a member of the Army, two people were killed and another seriously injured, and that the State is therefore responsible for violating the alleged victims' right to life and to humane treatment. They claim that the State initially failed to conduct an investigation before an independent and impartial judge, since the case was brought before the military courts, which sent the proceedings to the archive under amnesty laws in 1995, in clear violation of Article 2 of the American Convention. They state that finally, in the year 2003 – in other words, eight years later – the case was taken from the archive at the request of the victims' families and was closed in November 2008: that is, 14 years after the incident, on account of which the State is responsible for having failed to conduct an investigation within a reasonable time.

5. The State, in turn, says that it has been established that the incident of August 9, 1994, in which Zulema Tarazona Arrieta and Norma Pérez lost their lives and Alberto Bejarano Laura

was injured, was the consequence of the shot fired by Sergeant Second-Class Antonio Evangelista Pinedo, whose intention was to fire into the air. It maintains that the State has an institutional and regulatory framework that allows the investigation and prosecution of those suspected of human rights violations and that framework led, in the case at hand, to the conviction of Sgt. Antonio Evangelista Pinedo. Regarding the topic of redress for the victims and their next-of-kin, it states that in 2006, by means of Law No. 28592, "Law Creating the Comprehensive Reparations Plan," a regulatory framework was established for the Comprehensive Reparations Plan for the victims of the violence that took place between May 1980 and November 2000, in accordance with the conclusions and recommendations of the report published by the Truth and Reconciliation Commission.

6. After analyzing the positions of the parties, the Inter-American Commission concludes that the Peruvian State is responsible for violating the rights to life, to humane treatment, to a fair trial, and to judicial protection, enshrined in Articles 4, 5, 8, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to the individuals identified in this report. However, the Commission believes that since the competent courts convicted the perpetrator of those actions and enforced the payment of compensation to the families of the deceased victims and to Alberto Bejarano Laura, as provided for in the judgment of July 23, 2008, the violation of articles 4 and 5 of the American Convention with respect to Zulma Tarazona Arrieta, Norma Teresa Perez y Alberto Bejarano Laura was remedied in part.

7.

II. PROCESSING BY THE IACHR

8. The petitioners lodged the complaint with the Commission on January 22, 1996. Developments taking place between the lodging of the petition and the adoption of the admissibility decision are set out in detail in Admissibility Report No. 83/10, adopted on October 10, 2001.

9. On October 24, 2001, the Commission notified the parties of that report and, in accordance with Article 38.1 of the Rules of Procedure then in force, set a period of two months for the petitioners to submit additional comments on the merits and, pursuant to Article 38.2 of the Rules of Procedure, made itself available to the parties with a view to reaching a friendly settlement.

10. On November 19, 2001, the IACHR received a communication from the petitioners stating their willingness to begin a friendly settlement procedure; this was conveyed to the State on January 17, 2002, with a deadline of one month for returning its comments. In a communication of February 15, 2002, the State noted its willingness to begin the friendly settlement procedure. The Commission forwarded that communication to the petitioners on February 26, 2002, with a deadline of 7 days for returning their comments, and again on March 18, 2002, with a deadline of 15 days for returning their comments. On March 20, 2002, the IACHR sent the petitioners the annexes to the State's submission of February 15, 2002.

11. In a communication dated May 10, 2004, the IACHR asked the State and the petitioners to send up-to-date information on the case and on the progress, if any, made with the friendly settlement procedure. The State requested an extension on June 15, 2004, which the IACHR granted on August 4, 2004. In turn, the petitioners sent the Commission up-to-date information in a submission dated June 18, 2004. On September 9, 2004, the State requested an additional extension, which the Commission granted on September 23, 2004. The State submitted up-to-date information on November 16, 2004, and it sent the annexes to that communication on December 15, 2004.

12. On May 31, 2005, the IACHR asked the petitioners to submit their additional comments on the merits, in accordance with Article 38.1 of its Rules of Procedure in force at the

time; those comments were presented in a communication dated August 3, 2004. On August 1, 2006, the IACHR forwarded those comments to the State, with a deadline of two months for it to return its comments. The State submitted those comments in a communication of October 2, 2006, and they were conveyed to the petitioners on October 31, 2006.

13. The Commission received a submission the from State on May 18, 2011, which it forwarded to the petitioners on June 23, 2011, with a deadline of one month for returning their comments. The petitioners sent comments on July 27, 2011; these were forwarded to the State on August 15, 2011, and to date the State has returned no comments. In a communication of August 15, 2011, the Commission also made itself available to the parties with a view to reaching a friendly settlement in the matter; to date, neither of the parties have responded to that offer.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

14. The petitioners state that at about 8:30 p.m. on August 9, 1994, Ms. Zulema Tarazona Arrieta, Ms. Norma Teresa Pérez Chávez, and Mr. Luis Alberto Bejarano Laura were returning to their respective homes on a public-transport vehicle of Line 165 (the Lima-Chosica route), when they stopped at km 7.8 of the Central Highway, at a location known as La Esperanza (Ate-Vitarte district), to let one of the other passengers alight. They claim that when the vehicle pulled away, two Army soldiers, Sergeant Second-Class Antonio Evangelista Pinedo and Corporal José Arica López, aged 18 and 19 respectively, approached it from behind and, unbeknown to the driver, tried to get it to stop. They state that one of the soldiers, Peruvian Army Sergeant Second-Class Antonio Mauricio Evangelista Pinedo, proceeded to fire directly on the vehicle, causing the deaths of Ms. Zulema Tarazona Arrieta¹ and Ms. Norma Teresa Pérez Chávez,² and injuries to Mr. Luis Alberto Bejarano Laura.

15. The petitioners report that Ms. Zulema Tarazona Arrieta was a native of Huancayo (Junín department), 22 years of age, unmarried, lived with her parents and siblings, worked as a secretary at the Oscar Benavides Funeral Home, and was studying computer science at the CIMAS Higher Technological Institute; that Ms. Norma Teresa Pérez Chávez was a native of Lima, 22 years old, unmarried, lived with her parents and siblings, and was studying nursing at the CIMAS Higher Technological Institute; and that Mr. Luis Alberto Bejarano Laura was a native of Lima, 27 years old, unmarried, lived with his parents and siblings, and worked as a security guard at the company Vigilia Peruana.

16. They claim that following this incident, the two soldiers fled and failed to inform their superiors about it. They report that the bus driver took Ms. Zulema Tarazona and Ms. Norma Teresa Pérez Chávez to the Vitarte Health Center, where their deaths were recorded. The shift physician's preliminary diagnosis certified that Mr. Luis Alberto Bejarano had an open abdominal gunshot wound and "in addition, acute abdomen requiring surgery."

17. The petitioners state that after the incident, one of the bus passengers reported to the Vitarte Police Station to give a statement to the effect that there were two soldiers with FAL rifles, one of whom opened fire on the vehicle from an approximate distance of 10 meters and hit

¹ In their initial petition of January 22, 1996, the petitioners stated that Ms. Zulema Tarazona Arrieta was hit in the head by the gunshot, causing a large wound with a loss of skin, scalp, and part of the cranium, and that she died from brain injury.

² In their initial petition of January 22, 1996, the petitioners stated that Ms. Norma Teresa Pérez Chávez was hit in the chest by the gunshot, injuring her cardiovascular system and causing her death from hypovolemic shock.

several passengers, and then fled by getting into an Army "Comandcar" vehicle, without registration plates, that was carrying other soldiers who merely observed the scene. They claim that according to the statement of Sergeant Major Antonio Vivas Chipillequen, who was commanding an operation with 15 soldiers from the Micaela Bastidas Army Base, including Sergeant Second-Class Antonio Evangelista Pinedo and Corporal José Arica López, they were at the site of the incident on the orders of their command to recruit young men for their obligatory military service.

18. They state that 2nd Sgt. Antonio Mauricio Evangelista Pinedo admitted having accidentally fired the weapon that killed two of the alleged victims and left a third seriously injured and having fled upon realizing the consequences of his actions. In the statement given by José Carlos Arica López, he said that his companion accidentally shot his weapon and that there was enough light and visibility at the time that they signaled the bus to stop.

Proceedings brought

19. The petitioners report that on November 2, 1994, the Public Prosecution Service (MP) filed a criminal complaint against Antonio Mauricio Evangelista Pinedo for the crime of homicide against Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez and for the crime of criminal wounding against Luis Alberto Bejarano Laura, and that on November 25 the judicial proceedings began before the 27th Criminal Court of Lima. They note that the alleged victims' next-of-kin registered in the proceedings and requested civil redress in accordance with Article 92 of the Criminal Code³ and Article 54 *et seq.* of the Code of Criminal Procedure.⁴

20. They report that on June 14, 1995, Amnesty Law No. 26479 was enacted, which awarded amnesty to military, police, and civilian personnel involved in human rights violations committed between 1980 and the date of the Law's enactment. On June 26, 1995, the petitioners state, Antonio Evangelista Pinedo requested the benefit of the amnesty provided for in Law 26479. They report that on June 20, 1995, the Supreme Military Justice Council, pursuant to Amnesty Laws Nos. 26479 and 26492, awarded the defendant amnesty; it also ordered the proceedings to be sent to the archive and the detainees to be released, in spite of there being an ongoing jurisdiction dispute between the civilian and military courts, which the Supreme Court of Justice was required to resolve in compliance with Article 361 of the Code of Military Justice.

21. In addition, they state that in October 1994, the Ministry of Defense informed the nation's Attorney General that the Permanent Court-Martial of the Second Army Judicial District had begun judicial proceedings for the crime of negligent homicide against the same person, and that on November 24, 1994, the Permanent Military Judge requested the disqualification of the Judge of the 27th Criminal Court of Lima, a motion that was ruled groundless at the first instance on December 12, 1995.

22. They add that the accused filed a motion of *res judicata* with the 27th Criminal Court of Lima, under the resolution of the Supreme Military Justice Council of June 20, 1995, whereby the judicial proceedings it had been hearing were sent to the archive on September 11, 1995, and the civil redress requested by the alleged victims' families was rendered unavailable.

³ Criminal Code, Article 92: "Civil redress shall be set in conjunction with sentencing."

⁴ The petitioners state that Articles 54 and 57 of the Code of Criminal Procedure provide that: "The victim, his forebears or progeny, his spouse, his relatives by blood and marriage up to the second degree... may appear as civil complainants." "Civil complainants may submit the evidence they deem useful to cast light on the crime, and they may also appoint counsel for the oral proceedings and attend the hearing. Their attendance shall be obligatory when so ordered by the Court."

23. The petitioners report that on April 19, 2001, they asked the 27th Criminal Court of Lima to reopen the criminal trial against Mauricio Evangelista Pinedo, based on the Inter-American Court's judgment in the *Barrios Altos Case* of March 14, 2001, which voided the amnesty laws of all effect; that request was made afresh on May 21, 2001. They state that the 27th Criminal Court of Lima, in order to rule on that request, then asked the military justice system for information on the status of the case file; they also requested copies of the *Barrios Altos* judgment from the Ministry of Foreign Affairs, which were presented on September 2, 2002.

24. The petitioners report that on August 8, 2001, they asked the Supreme Military Justice Council to void the amnesty and overturn the proceedings and disqualification, pursuant to the resolutions of the Inter-American Court in its judgment in the *Barrios Altos Case*. They state that on August 26, 2002, the Supreme Council resolved that in this specific case, the amnesty was not in conflict with the Inter-American Court's judgment.

25. They report that on November 26, 2002, the 27th Criminal Court recused itself from further hearing the proceedings, under Administrative Resolution No. 132-P-CSIJL of October 28, 1997, which stated that it could only hear cases brought under summary proceedings, which meant an unnecessary delay in processing the criminal trial.

26. They state that on January 21, 2003, pursuant to the Inter-American Court's judgment in the *Barrios Altos Case*, the 16th Criminal Court of Lima ordered the removal from the archive of the proceedings against Mauricio Evangelista Pinedo for crimes against "the life, body, and health (homicide) of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez and for the crime against the life, body, and health (grievous bodily harm) against Luis Alberto Bejarano Laura."

27. The petitioners report that in 2004 the case file was referred to the Third Criminal Chamber for Released Prisoners of the Lima Superior Court of Justice, which extended the deadline for the committal stage on three occasions, at the request of the Third Superior Criminal Prosecutor.

28. The petitioners claim that the 21 months that passed between the request for the proceedings to be reopened and their actual reopening cannot be explained, in that the 27th Criminal Court of Lima took more than 19 months to process the case before recusing itself from the trial under the terms of a much earlier law. They claim that this slowness was repeated, albeit to a lesser extent, in the 16th Criminal Court of Lima's processing of the case, when that Court took two months to hear the judicial investigations.

29. The petitioners further claim there was an unjustified delay at the criminal investigation stage, in that under Peruvian law in force at the time, the committal period in regular proceedings was limited to four months, with the possibility of up to an additional 60 days in exceptional circumstances (Code of Criminal Procedure, Article 202). They state that although Article 202 of the Code of Criminal Procedure provided that exceptionally, in dealing with complex cases with large amounts of evidence, several defendants or victims, criminal gangs or organizations, need for expert testimony, or other special considerations, judges could, by means of a grounded resolution, extend the committal deadline for up to an additional eight months, in the case at hand no such extension was ordered because none of the grounds indicated in that provision had been triggered.

30. They claim that at the end of the investigation stage, the court had not performed the formalities necessary to clear up the incident and for the Ministry of Defense to locate the defendant Antonio Evangelista Pinedo, who had not yet been brought before the 16th Criminal Court of Lima even though, on February 4, 2005, he had submitted a document appointing his defense counsel.

31. They report that on September 21, 2005, the 16th Criminal Court of Lima recused itself from hearing the case. They state that the criminal proceedings were referred to the Fourth Supraprovincial Criminal Court which, on December 19, 2005, issued a final expansion report, indicating that the suspect Antonio Mauricio Evangelista Pinedo was a fugitive from justice and requesting an exceptional extension of the deadline, since formalities of vital importance for casting light on the incident had not been carried out.

32. They report that on May 30, 2006, the Fourth National Superior Criminal Prosecutor issued his report No. 09-2006-4 FSPN-MP/FN, requesting an additional exceptional 20-day extension of the committal stage; this was denied, as a result of which the Superior National Criminal Prosecutor filed charges against Antonio Mauricio Evangelista Pinedo, requesting that he be given a 10-year custodial sentence and make a payment with the responsible third party of S 30,000.00 (thirty thousand new sols) as civil redress for each of the victims. They state that later, on October 3, 2006, the National Criminal Chamber ordered the commencement of the trial, finding that there were grounds to begin oral proceedings against Antonio Mauricio Evangelista Pinedo for the crime against the life, body and health (simple homicide) of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez and for the crime of grievous bodily harm against Luis Alberto Bejarano Laura, and declaring the accused a fugitive from justice.

33. The petitioners claim that although they insisted on the performance of necessary and effective formalities to locate and arrest Antonio Mauricio Evangelista Pinedo during 2007 and part of 2008, those efforts were insufficient. Regarding this point, they report that the accused Antonio Mauricio Evangelista Pinedo, while a warrant for his arrest was in force, exercised his right to vote in the 2006 general election, in both the first and second rounds, held on April 9 and June 4, 2006.

34. They state that later, in June 2008, they learned that the suspect Antonio Mauricio Evangelista was in detention at the Lurigancho Penitentiary for the commission of another crime, as a result of which he was brought before the National Criminal Chamber and the commencement of oral proceedings was ordered for July 21, 2008.

35. They report that on July 23, 2008, the Criminal Chamber issued judgment against Antonio Mauricio Evangelista Pinedo, finding him guilty of crimes against life, body and health (simple homicide) with respect to Zulema Tarazona Arrieta and Norma Teresa Pérez, and of the crime of grievous bodily harm with respect to Luis Alberto Bejarano Laura; he received a six-year custodial sentence and was required to pay S 30,000.00 (thirty thousand new sols), to be paid jointly by him and by the State and Peruvian Army, to the families of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and of S 10,000.00 (ten thousand new sols) as civil redress payable to Luis Alberto Bejarano Laura.

36. They state that at the start of the oral proceedings, the defendant said he admitted the charges against him and admitted responsibility for the crime with which he was accused and for payment of the civil redress, and so an early conclusion of the proceedings was ordered in compliance with Article 5 of Law No. 28122.

37. Under the judgment, Antonio Mauricio Evangelista Pinedo's actions were ruled to be a disproportionate use of force by a member of the armed forces over whom the military exercised no effective control. As for the civil redress, the petitioners report that the Criminal Chamber rejected, on grounds of untimeliness, the increase requested by the victims' families and dismissed compensation for future lost earnings that the victims would have received had they been alive up to the date of judgment, on the grounds that any hypothetical future losses would be infinite. They report that the Criminal Chamber found that the pain and suffering experienced by the next-of-kin or assigns could be repaired with a sum of money and, in the case of Luis Alberto Bejarano Laura, the

Criminal Chamber only took into account the injury that endangered his life at the time, together with the days he was unable to work.

38. The petitioners state that on July 24, 2008, they filed for the annulment of this judgment's civil redress provisions; this filing was resolved on November 4, 2008, by the First Temporary Criminal Chamber of the Supreme Court, which upheld all aspects the first-instance judgment.

39. Regarding the execution of the Criminal Chamber's judgment of July 23, 2008, the petitioners report that on December 24, 2008, the Criminal Chamber ordered the case file referred to the clerk of the Supraprovincial Criminal Courts for execution of sentence and, on March 4, 2009, the Fourth Supraprovincial Criminal Court ordered the convict, Antonio Mauricio Evangelista Pinedo, and the State, as a third party with civil responsibility, to pay the civil redress ordered, but set no deadline by which said payment had to be completed. They report that after asking the Court on repeated occasions to order the payment of the civil redress, in a resolution of December 15, 2009, the Fourth Supraprovincial Criminal Court notified them that the third party with civil responsibility had deposited only 50% of the amounts set as civil redress, which were later paid to the legal heirs of Zulema Tarazona Arrieta and to Luis Alberto Bejarano Laura.

40. They state that on January 6, 2010, the Fourth Supraprovincial Criminal Court ordered the civilly responsible third party to pay the full amount of civil redress as established in the judgment of July 23, 2008. They report that on January 20, March 16, and August 16, 2010, the petitioners requested the Fourth Court to order payment of the remaining 50% of the civil redress, which was later enforced.

Legal grounds

41. The petitioners claim that as a consequence of the unnecessary, deliberate, and disproportionate actions of a member of the Army, two people were killed and another seriously injured and that the State is therefore responsible for violating the alleged victims' right to life and to humane treatment. They thus contend that the State violated Articles 4 and 5 of the American Convention, in conjunction with Article 1.1 thereof, in that it had the positive obligation of protecting its citizens' lives through the actions of its police and armed forces. They maintain that not only must the State prosecute and punish those actions, it must also take all steps to prevent the occurrence of such attacks on citizens' lives.

42. The petitioners note that during the processing of the case before the IACHR, the State acknowledged the alleged facts. They hold that although the State's international responsibility for the violations of Articles 4 and 5 of the American Convention has been fully established, the agencies of the judiciary have not met their obligation of providing full compensation for the harm suffered by the victims by ruling that the redress not take into account future losses arising from the earnings the two deceased victims would have received and, with respect to Luis Alberto Bejarano Laura, by only taking into account the type of injury that threatened his life, together with the days he was unable to work.

43. The petitioners note that they are not seeking for the IACHR to serve as a court of appeal. They state that according to precedent established by the Inter-American Court, the parameters used to set financial compensation by the local courts may be assessed,⁵ when said

⁵ The petitioners cite the judgment of the Inter-American Court of Human Rights in: *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 163, para. 266.

redress is inconsistent with the principles established by the Court. They hold that in such cases, additional redress must be ordered.⁶

44. The petitioners hold that the State is also responsible for violating Article 5 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the victims' next-of-kin, in that they suffered intensely in the case at hand from the unexpected loss of their loved ones and from the serious injuries inflicted on one of the victims by the actions of state agents. They contend that the suffering of the alleged victims' next-of-kin has increased on account of the numerous obstacles encountered during the processing of the criminal trial for the murder and injuring of their loved ones, on account of the sending of the proceedings to the archive under the amnesty law, and on account of the difficulties in reopening the proceedings and in locating and arresting the defendant.

45. The petitioners state that the facts alleged in the case at hand gave rise to criminal proceedings before the military justice system, a venue that clearly lacked jurisdiction. They hold that the military courts were not competent to hear the case, since the crime committed was a common offense and not a military one, thus violating the right to an impartial trial before a competent venue. They contend that according to precedent established by the Inter-American Court, criminal proceedings brought before the military justice system are intended to protect the perpetrators of serious human rights violations, which undermines the right of access to justice.⁷ They hold that the State violated the right to be heard by one's natural judge and, consequently, to due process, through the military courts assuming competence over a matter that should have been dealt with by the regular courts.

46. The petitioners claim that by enacting Laws 26479 and 26492 and applying their provisions in the criminal trial before the military courts, the State violated Article 2 of the American Convention. They further hold that those laws affected the victims' next-of-kin by preventing them from participating in the criminal trial.

47. The petitioners contend that the State failed to conduct an investigation within a reasonable time. They hold that the State violated the rights enshrined in Articles 8 and 25 of the Convention, in conjunction with the obligation to respect rights set forth in Article 1.1 thereof, through its unjustified delay in settling the questions of competence and merits, and through its lack of willingness to investigate and punish the facts alleged in the case at hand. They note that in this case 14 years went by between the commencement of the criminal trial before the civilian courts on November 25, 1994, and the conclusion of the proceedings on November 4, 2008, with the issuing of the writ of supreme execution upholding the judgment of July 23, 2008.

48. They note that the Inter-American Court has ruled that a State cannot ignore periods of procedural inactivity or the total failure to conduct an investigation and must assume the consequences of such obstructions.⁸ In this regard, they note that the archiving of the proceedings before the military courts was carried out under Amnesty Law No. 26492. They report that the motion of *res judicata* was upheld by the regular courts, which allowed the proceedings to be archived based on the resolution of the military justice system under the Amnesty Law, on account of which that resolution was illegitimate and contrary to the Convention. They note that as a result, for eight years, from 1995 to 2003, the case was archived.

⁶ The petitioners cite the following judgment: I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 163, paras. 246 and 288.

⁷ The petitioners cite the Inter-American Court's judgment in the *La Cantuta Case*, Judgment of November 29, 2006, para. 142.

⁸ The petitioners cite the Inter-American Court's judgment in the *La Cantuta Case*, Judgment of November 29, 2006, para. 149.

49. They contend that it was at the request of the victims' next-of-kin that the proceedings were reopened before the civilian courts on January 21, 2003, and that once the case had recommenced, a series of incidents occurred that caused excessive delays in its processing: the ineffective pursuit of formalities, deficiencies in locating and arresting the sole accused, and, finally, delays in making good on the civil redress payments.

50. Based on the foregoing arguments, the petitioners ask the IACHR to declare that the State of Peru violated Articles 4, 5, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Zulema Tarazona Arrieta, Norma Teresa Pérez Chávez, and Luis Alberto Bejarano Laura, and that it failed to meet its obligations under Article 2 of the American Convention; and that it violated Articles 5, 8, and 25 of the Convention, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of Zulema Tarazona Arrieta, Norma Teresa Pérez Chávez, and Luis Alberto Bejarano. They further ask the IACHR to recommend that the State adopt the measures necessary to provide timely and appropriate redress for the established violations suffered by the alleged victims and their next-of-kin.

B. Position of the State

51. Initially, in the year 1998, the State said that the incident in the complaint had occurred during a countersubversive operation, as a result of which the Commander of the First Special Forces Division reported Sergeant Second-Class Antonio Evangelista Pinedo to the Permanent Court-Martial of the Second Army Judicial District as the alleged perpetrator of the crime of negligent homicide, and that the accused later benefited from the Amnesty Law under the deed of execution of the Supreme Military Justice Council of June 20, 1995, pursuant to the Constitution and special provisions. The State noted that the Constitutional Court, in its judgment of April 29, 1997, ruling on the enforcement of Laws Nos. 26479 and 26492, stated that "should there still be victims who have not yet obtained that [civil] redress, they may assert that right before the competent authorities"; Peru thus held that if the petitioners did not secure redress during the proceedings that were sent to the archive, they could have done so through the civil courts.

52. Later, in 2002, the State reported on the proceedings brought before the military justice system and regular courts against Sgt. Antonio Evangelista Pinedo. It said that after the civil complainants had lodged the motion to void the effects of the Amnesty Law pursuant to the Inter-American Court's *Barrios Altos* judgment, the 27th Provincial Criminal Prosecutor's Office proposed that the motion be ruled inadmissible, on the grounds that the applicants had not met the formalities required for the execution of international judgments established in Article 151 of the Consolidated Text of the Organic Law of the Judiciary. It stated that after the Inter-American Court issued its judgment interpreting the judgment on the merits in the *Barrios Altos Case* on September 3, 2001, indicating that the resolutions of that judgment were to enjoy general effects, the Supreme Military Justice Council set about reviewing all proceedings in which the Amnesty Law had been applied and all those involving human rights violations.

53. In 2004 and 2006, the State informed the IACHR about the status of the criminal trial brought against Sergeant 2nd-Class Antonio Mauricio Evangelista Pinedo, which had been reopened on January 21, 2003. It said that the expansion report issued by the Judge of the Fourth Supraprovincial Criminal Court on December 19, 2005, indicated that the accused's legal status was that of a fugitive and that, as of that date, important formalities for casting light on the incident were pending, for which reason an exceptional extension of the deadline was requested. The State maintained that it was pursuing investigations through the Public Prosecution Service in order to be able to punish the guilty.

54. Regarding comprehensive redress for the victims and their next-of-kin, in 2006 the State reported that under Law No. 28592, "Law Creating the Comprehensive Reparations Plan," it had established the regulatory framework of the Comprehensive Reparations Plan for the victims of the violence that took place between May 1980 and November 2000, in compliance with the conclusions and recommendations of the Truth and Reconciliation Commission's report.

55. The State also indicated that it had also been established that the incident of August 9, 1994, in which Zulema Tarazona Arrieta and Norma Pérez were killed and Alberto Bejarano Laura was injured, was caused by the gunshot fired by Sergeant Second-Class Antonio Evangelista Pinedo with the intention of firing into the air. It stated that after the incident, the Second Sergeant and Corporal Carlos Arica López fled the scene without assisting the victims and failed to report the facts to their patrol commander. The Peruvian State contends that it has an institutional and regulatory framework that allows it to investigate and prosecute those suspected of human rights violations, which includes the investigation undertaken by the Public Prosecution Service into the incident in the case at hand.

56. In addition, the State recalls that within the inter-American system for the protection of human rights, the Inter-American Commission is not authorized to serve as a "fourth instance" and, in this regard, that the Commission itself has stated that the international protection with which the Convention charges the supervisory bodies is of a "subsidiary, reinforcing, and complementary" nature.

VI. ANALYSIS OF MERITS

A. Appraisal of the evidence

57. The Inter-American Commission, in accordance with Article 43.1 of its Rules of Procedure, will examine the claims and evidence presented by the parties. It will also take information that is a matter of public knowledge into account.⁹

B. Considerations of fact

Regarding the incident of August 9, 1994 (deaths of Ms. Zulema Tarazona and Ms. Norma Teresa Pérez Chávez and personal injuries to Mr. Alberto Bejarano Laura)

58. The Commission notes that in accordance with the claims presented by the parties during the processing of the case, and according to the grounds of the final judgment issued by the National Criminal Chamber on July 23, 2008,¹⁰ which the petitioners did not appeal the criminal punishment imposed,¹¹ there is no dispute between the parties regarding the events of August 9, 1994, that led to the deaths of Ms. Zulema Tarazona Arrieta and Ms. Norma Teresa Pérez Chávez

⁹ Article 43.1 of the IACHR's Rules of Procedure states: "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." In particular, as it has done in other cases, the IACHR will take into account reports issued both by the United Nations and by itself.

¹⁰ Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

¹¹ Annex 2: Grounds of the remedy for annulment presented by the civil complainants on August 6, 2008, against the judgment of July 23, 2008, with respect to its provisions regarding redress. Annex to the petitioners' submission of July 27, 2011.

and the injuring of Mr. Luis Alberto Bejarano Laura as a consequence of the gunshot fired by Sergeant Second-Class Evangelista Pinedo with his service weapon (FAL rifle).¹²

59. On August 9, 1994, at around 8:40 p.m., a military patrol comprising 15 members of the Army, commanded by Sergeant Major Antonio Vivas Chapillequen and belonging to the 40th motorized infantry battalion from the La Pólvara – El Agustino barracks, was patrolling and conducting security operations in the streets of Ate Vitarte in a Comandcar military vehicle.¹³ After detecting the presence of a group of suspicious individuals near the La Esperanza stop, the commander of the military patrol decided to continue on foot and divided his 14 soldiers into seven groups of two, in order to check the identities of the passersby in the vicinity by asking them for their papers.¹⁴ The patrol was not ordered to intercept any motor vehicles.¹⁵ Sergeant Second-Class Evangelista Pinedo, aged 18 and with eighteen months of military service, made up one of the patrol groups with Corporal Arica López.¹⁶

60. Around the same time on August 9, 1994, a public transport vehicle (Kombi bus), registration plate VE-12-05, driven by Galino Ambolaya, was covering the Lima-Chosica route and stopped at La Esperanza to allow a passenger to alight.¹⁷ As the vehicle pulled away, two members of the Army – later identified as 2nd Sgt. Evangelista Pinedo and Cpl. Arica López – burst onto the road, their faces covered with balaclavas, with the intention of stopping the bus. The driver apparently did not see them, and continued on his way.¹⁸ As the bus failed to stop, Sergeant Second-Class Evangelista Pinedo pointed his FAL rifle at the public transport vehicle and fired, causing the deaths of Ms. Zulema Tarazona Arrieta and Ms. Norma Teresa Pérez Chávez and wounding Mr. Luis Alberto Bejarano Laura.¹⁹

61. When the commander of the military patrol heard a shot in the distance, he counted his troops and found that two members were missing: Sergeant Second-Class Antonio Evangelista Pinedo and Corporal José Carlos Arica López.²⁰ Moments later, a civilian approached the commander to inform him that one of his soldiers had fired on a public transport vehicle and that, as

¹² Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

¹³ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006. Annex to the State's communication of October 12, 2006.

¹⁴ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006. Annex to the State's communication of October 12, 2006.

¹⁵ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006. Annex to the State's communication of October 12, 2006.

¹⁶ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006; Annex to the State's communication of October 12, 2006; and Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo; Annex to the petitioners' submission of July 27, 2011.

¹⁷ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006. Annex to the State's communication of October 12, 2006.

¹⁸ Annex 3: Report No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006; Annex to the State's communication of October 12, 2006; and Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo; Annex to the petitioners' submission of July 27, 2011.

¹⁹ Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

²⁰ Annex 11: Statement given by Antonio Vivas Chapillequen of the Peruvian Army to the representative of the Public Prosecution Service on August 17, 1994. Annex to the petitioners' communication of January 22, 1996.

a result, two people had been injured.²¹ The patrol commander then got into the military vehicle to visit the scene of the incident, where he saw the two soldiers who were missing from the patrol. He ordered them into the vehicle and asked whether it was they who had fired; they replied in the negative.²²

62. At around 9:15 p.m. on August 9, 1994, the military patrol led by Sgt. Maj. Antonio Vivas Chapillequen reported to the police station in Ate Vitarte and, with the consent of the patrol commander, a National Police Specialist Second-Class carried out a partial disassembly of the 15 soldiers' weapons, noting that the FAL rifle belonging to one of the soldiers was giving indications of having been recently discharged.²³ Later, at around 11:00 p.m. that same day, the commander of the military detachment where the patrol was based reported to the Ate Vitarte police station and stated that the rifle that had been discharged was in safekeeping at the military base and that the soldier who had fired it was under arrest.²⁴

63. Ms. Zulema Tarazona Arrieta was 22 years of age, worked as a secretary at the Oscar Benavides M. SR. Ltda. funeral home, was studying computer science, was unmarried, and lived with her parents, Maria Lucila Arrieta Villenas and Víctor Tarazona Hinostroza, and five older siblings (Nelly, Moisés, Jorge, Nora, and Luzmila Tarazona Arrieta).²⁵ She died as a consequence of "brain injury"²⁶ and her corpse had a "large open wound, with a loss of skin tissue, scalp, and bone, affecting the left side face and cranium; also, bruising on the front of the chest, on the left leg, with indications of severe traumatic impact."²⁷ Ms. Norma Teresa Pérez Chávez was 21 years old, lived with her parents, Santiago Pérez Vela and Nieves Emigdia Chávez Rojas, and three younger siblings (Jorge Richard, Jaime William, and Giovanna Edith Pérez Chávez), was a 5th-semester student of nursing at the Ramiro Prialé Prialé-Chosica Institute, and was carrying out nursing practice at the Vitarte Medical Center.²⁸ She died as a result of a "firearm penetration wound (1) in the chest."²⁹

²¹ Annex 11: Statement given by Antonio Vivas Chapillequen of the Peruvian Army to the representative of the Public Prosecution Service on August 17, 1994. Annex to the petitioners' communication of January 22, 1996.

²² Annex 11: Statement given by Antonio Vivas Chapillequen of the Peruvian Army to the representative of the Public Prosecution Service on August 17, 1994. Annex to the petitioners' communication of January 22, 1996.

²³ Annex 5: National Police of Peru statement No. 450-IC-H-DDCV, National Criminal Investigation Directorate, October 7, 1994. Annex to the petitioners' communication of January 22, 1996.

²⁴ Annex 5: National Police of Peru statement No. 450-IC-H-DDCV, National Criminal Investigation Directorate, October 7, 1994. Annex to the petitioners' communication of January 22, 1996.

²⁵ Annex 4: Statement given by Ms. Lucila Arrieta Bellena, mother of Zulema Tarazona, to the 27th Criminal Court of Lima on January 11, 1995. Annex to the State's communication of July 1, 1996. Annex 2: Grounds of the remedy for annulment presented by the civil complainants on August 6, 2008, against the judgment of July 23, 2008, with respect to its provisions regarding redress. Annex to the petitioners' submission of July 27, 2011; Annex 9: Death certificate of Zulema Tarazona Arrieta, signed by the registrar of Ate-Vitarte municipality. Annex to the State's communication of December 14, 2004. Annex 10: Autopsy record of Zulema Tarazona, Legal Medicine Institute of Peru, August 10, 1994. Annex to the State's communication of December 14, 2004, and reported by the petitioners in their communication of August 3, 2005.

²⁶ Annex 5: National Police of Peru statement No. 450-IC-H-DDCV, National Criminal Investigation Directorate, October 7, 1994. Annex to the petitioners' communication of January 22, 1996.

²⁷ Annex 6: Complaint lodged by APRODEH with the Attorney General on October 25, 1994, with reference to Forensic Medical Report No. 7834. Annex to the petitioners' submission of January 22, 1996.

²⁸ Annex 2: Grounds of the remedy for annulment presented by the civil complainants on August 6, 2008, against the judgment of July 23, 2008, with respect to its provisions regarding redress. Annex to the petitioners' submission of July 27, 2011, and reported by the petitioners in their communication of August 3, 2005.

²⁹ Annex 7: Autopsy report of Norma Teresa Pérez Chávez, August 10, 1994, Public Prosecution Service, Legal Medicine Institute of Peru. Annex to the petitioners' communication of January 22, 1996.

64. Mr. Luis Alberto Bejarano Laura was 27 years old at the time of the facts, was single, lived with his parents, Wenceslao Bejarano Valenzuela and Victoria Laura Huaqui, and two sisters (Ana Isabel and Gladys Victoria Bejarano Laura), and worked as a security guard at the company Vigilia Peruana.³⁰ Mr. Bejarano received emergency treatment at the Vitarte II Hospital on August 9, 1994, for a penetrating gunshot wound (bullet) to the abdomen and underwent surgery that same day; the procedure was an "exploratory laparotomy, repairs to lacerations of the transverse colon wall, and extraction of bullet shrapnel."³¹ Mr. Bejarano Laura remained hospitalized at the hospital's surgical service for three days and received outpatient care until August 31, 1994, when he was given a clean bill of health.³²

Proceedings brought before the regular and military courts

65. At around 11:15 p.m. on August 9, 1994, the on-duty prosecutor at the office of the 27th Provincial Criminal Prosecutor of Lima ordered the homicide division of the National Police to take charge of the investigation; consequently, a team from that division reported to the Ate Vitarte police station at around 1:20 a.m. on August 10, 1994.³³

66. On August 10, 1994, the Chief of the National Police of Peru in Ate Vitarte sent a report to his superiors informing them of "the preliminary formalities carried out in connection with the firearm killing of Zulema Tarazona Arrieta (22) and Norma Pérez Chávez (21), and the gunshot wounding of Luis Alberto Bejarano Laura (26), which took place in this precinct at km 8 of the central highway, presumably committed by members of the Peruvian Army."³⁴

67. Parallel to this, on August 10, 1994, the Brigadier was sent a report on the events of August 9, 1994.³⁵ The report states that "direct responsibility for the incident lies with Sergeant Second-Class Evangelista Pinedo Antonio, for disobeying orders and negligence leading to the deaths of two civilians. In addition, Sgt. Maj. Vivas Chapilliquen Antonio failed in his command and control of the personnel under his direct orders."³⁶ In connection with the steps taken by the patrol after learning of the incident, the report states: (1) personal and immediate presence at the scene of the incident and, later at the Ate-Vitarte police station; (2) entire patrol with weapons and equipment sent to the National Police's homicide division on August 10 for the pertinent ballistic testing; (3) upon identification by the homicide division of Sgt. Evangelista Pinedo, he was immediately placed in detention; (4) contact was made with the families of the deceased, and their funeral expenses were paid; (5) a lieutenant was appointed to purchase a perpetual niche in Chosica cemetery, in accordance with the request made by the next-of-kin; (6) a captain was appointed to

³⁰ Reported by the petitioners in their communication of January 22, 1996, and reported by the petitioners in their communication of August 3, 2005.

³¹ Annex 8: Medical report on patient Alberto Bejarano Laura, addressed to Dr. Luis Podesta Gavilano, Chief of Surgery, September 17, 1994. Annex to the petitioners' communication of January 22, 1996.

³² Annex 8: Medical report on patient Alberto Bejarano Laura, addressed to Dr. Luis Podesta Gavilano, Chief of Surgery, September 17, 1994. Annex to the petitioners' communication of January 22, 1996.

³³ Annex 5: National Police of Peru statement No. 450-IC-H-DDCV, National Criminal Investigation Directorate, October 7, 1994. Annex to the petitioners' communication of January 22, 1996.

³⁴ Annex 24: Report No. 232-AP-07-DV of August 10, 1994, signed by Luis Valuez Celestino, National Police, chief of Ate-Vitarte precinct. Annex to the State's communication of February 27, 2002.

³⁵ Annex 28: Report No. 005/MBM/BIM 40, addressed to the Brigadier in command of the 1st DIFFE Las Palmas. Annex to the State's communication of February 27, 2002.

³⁶ Annex 28: Report No. 005/MBM/BIM 40, addressed to the Brigadier in command of the 1st DIFFE Las Palmas. Annex to the State's communication of February 27, 2002.

visit the injured victim, Bejarano Laura, at the Vitarte Hospital, and to establish contact with him to resolve his immediate needs.³⁷

68. On August 10, 1994, the military authorities took a statement from Sgt. Evangelista Pinedo.³⁸ In his statement, Sgt. Evangelista Pinedo acknowledged that his gun had fired as he was pulling it around in an attempt to stop the bus, even though the patrol commander had at no time ordered him to stop vehicles, and that he later fled the scene, that he did not report the incident to his patrol commander because he was afraid of the consequences, and that he became extremely nervous.³⁹

69. On August 10, 1994, the commanding officer of the First Division of the Armed Forces, Brig. Marco Antonio Rodríguez Huerta, sent charges to the presiding colonel of the Permanent Court-Martial of the Army's 2nd Judicial District, referring Sergeant Second-Class Evangelista Pinedo to him "for the alleged crime of negligent homicide; in addition to any others who may be found responsible for the crime of negligence in performing their duties."⁴⁰ According to the charge sheet, "the incident described [...] appears to constitute the crime of negligent homicide, covered by the Criminal Code and by Article 744 of the Code of Military Justice."⁴¹ The same document reports that Sergeant Second-Class Evangelista Pineda was placed before the President of the Court-Martial and that the weapon involved in the incident was handed over.⁴²

70. On August 31, 1994, the Permanent Court-Martial resolved to open committal proceedings against Sergeant Second-Class Antonio Evangelista Pineda "for the crimes of culpable homicide with respect to Zulma Tarazona Arrieta and Norma Pérez Chávez and the crime of grievous bodily harm with respect to Alberto Bejarano Laura," enabling for that purpose the jurisdiction of the Third Permanent Military Court of Lima.⁴³ In addition, this resolution ordered the investigating magistrate to address the conflict of jurisdiction with the regular justice system, "if proceedings are open before the regular courts in connection with the same incident."⁴⁴

Civilian jurisdiction

³⁷ Annex 28: Report No. 005/MBM/BIM 40, addressed to the Brigadier in command of the 1st DIFFE Las Palmas. Annex to the State's communication of February 27, 2002.

³⁸ Annex 29: Witness statement of Sergeant Second-Class Evangelista Pinedo Antonio at the office of S-2 of BIM no. 40, taken on August 10, 1994, at 2:20 p.m. Annex to the State's communication of February 27, 2002.

³⁹ Annex 29: Witness statement of Sergeant Second-Class Evangelista Pinedo Antonio at the office of S-2 of BIM no. 40, taken on August 10, 1994, at 2:20 p.m. Annex to the State's communication of February 27, 2002.

⁴⁰ Annex 30: Document No. 402 K-1/1ra Div FFEE/20.04, to the presiding colonel of the Permanent Court-Martial of the 2nd Army Judicial District, August 10, 1994. Annex to the State's communication of February 27, 2002.

⁴¹ Annex 30: Document No. 402 K-1/1ra Div FFEE/20.04, to the presiding colonel of the Permanent Court-Martial of the 2nd Army Judicial District, August 10, 1994. Annex to the State's communication of February 27, 2002.

⁴² Annex 30: Document No. 402 K-1/1ra Div FFEE/20.04, to the presiding colonel of the Permanent Court-Martial of the 2nd Army Judicial District, August 10, 1994. Annex to the State's communication of February 27, 2002.

⁴³ Annex 31: Proceedings 270-94, document dated August 31, 1994 signed by Carlos Roman la Hoz, Infantry Colonel, President of the Permanent Court-Martial of the 2nd Army Judicial District, and others. Annex to the State's submission of February 27, 2002.

⁴⁴ Annex 31: Proceedings 270-94, document dated August 31, 1994 signed by Carlos Roman la Hoz, Infantry Colonel, President of the Permanent Court-Martial of the 2nd Army Judicial District, and others. Annex to the State's submission of February 27, 2002.

71. During August 1994, the National Police of Peru's Directorate of Criminal Investigations took statements from three eyewitnesses of the incident,⁴⁵ from Cpl. José Carlos Arica López, who was on patrol with Sgt. Evangelista Pinedo,⁴⁶ from Sergeant Second-Class Evangelista Pinedo,⁴⁷ and from Luis Alberto Bejarano Laura, who was injured by the gunshot.⁴⁸

72. According to the statement given by Cpl. José Carlos Arica on August 17, 1994, the plan of operations carried out on August 9, 1994, was to "patrol the Ate Vitarte area, inspecting the location," and he said that normally they did not detain civilians, block traffic, inspect vehicles or homes, but that "when the situation warrants and an order has been given, we ask to check papers, and civilians without documentation are referred to the NCO, who orders their release or referral to the police authorities. Traffic is blocked and vehicles are inspected by ordering them to stop."⁴⁹ He stated that on the day in question, he was with Sgt. Antonio Evangelista Pinedo, "who fired the shot that hit the passenger bus." The order given by Sgt. Maj. Vivas Chapilliquen was to ask for papers in the area where we were with all the patrol; Sgt. Evangelista and I, on our own initiative, went somewhat further away, approximately two or three blocks."⁵⁰ Asked about the reasons why the vehicle was fired on, Cpl. Arica stated "I believe Sergeant Evangelista fired accidentally: his intention was to raise his weapon but unfortunately it discharged."⁵¹

73. In turn, Second Sergeant Antonio Mauricio Evangelista Pinedo said that he intercepted the bus because Cpl. Arica told him that he had ordered it to stop but that the vehicle did not, so he gave the same order, after which it also failed to stop; then, he moved to the side of the road because he was in danger of being knocked down, and he pulled his weapon round to shoot in the air and, as he was raising it, it discharged and hit the bus.⁵² He said that it was never

⁴⁵ Annex 12: Statement given by Vicencio Moisés Tolentino Anaya on August 10, 1994, to the Associate Prosecutor of the 27th Criminal Prosecutor's Office FPPL and the investigating magistrate, Capt. Carlos Omar Arquedas Salinas of the National Police; Annex to the petitioners' communication of January 22, 1996; Annex 13: Statement given by Miguel Ángel Sáez Ruiz on August 10, 1994, to the investigating magistrate, Capt. Carlos Omar Arquedas Salinas of the National Police; Annex to the petitioners' communication of January 22, 1996; Annex 14: Statement given by Jorge Luis Bernaola Palomino in August 1994 to the investigating magistrate, Capt. Carlos Omar Arquedas Salinas of the National Police; Annex to the petitioners' communication of January 22, 1996; Annex 15: Statement given by Galino Rodolfo Ambolaya on August 10, 1994, to the investigating magistrate, Capt. Carlos Omar Arquedas Salinas of the National Police; Annex to the petitioners' communication of January 22, 1996.

⁴⁶ Annex 16: Statement given by José Carlos Arica López on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁴⁷ Annex 17: Statement given by 2nd Sgt. Antonio Mauricio Evangelista Pinedo on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁴⁸ Annex 18: Statement given by Luis Alberto Bejarano Laura on August 19, 1994, to the investigating magistrate, Capt. Carlos Omar Arquedas Salinas of the National Police. Annex to the petitioners' communication of January 22, 1996.

⁴⁹ Annex 16: Statement given by José Carlos Arica López on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵⁰ Annex 16: Statement given by José Carlos Arica López on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵¹ Annex 16: Statement given by José Carlos Arica López on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵² Annex 17: Statement given by 2nd Sgt. Antonio Mauricio Evangelista Pinedo on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

his intention to fire on the vehicle.⁵³ He said that after approaching the bus to see what had happened, he saw people screaming and the bullet's impact to the rear window; he therefore walked away with Cpl. Arica and did not inform Sgt. Maj. Vivas "out of fear that something would happen to me."⁵⁴ Asked whether he had received instructions to inform his immediate superior after discharging his weapon, he replied in the affirmative.⁵⁵

74. On August 12, 1994, the office of the Attorney General received a complaint from the National Coordinator for Human Rights for the killing, injuring, and abandonment of persons committed by members of the Army with respect to Norma Pérez, Zulema Tarazona, and other unidentified persons,⁵⁶ and, on August 15, 1994, the Attorney General informed the 27th Prosecutor that that complaint had been received.⁵⁷

75. On October 19, 1994, Mr. Santiago Pérez Vela, Norma Teresa Pérez Chávez's father, appeared as a civil complainant before the Specialized Criminal Judge,⁵⁸ as did, on October 25, 1994, Mr. Víctor Tarazona Hinostrosa, Zulema Tarazona Arriate's father;⁵⁹ the application was accepted by the 27th Criminal Court of Lima on January 11, 1995.⁶⁰

76. On November 2, 1994, the 27th Provincial Criminal Prosecutor filed criminal charges with the 27th Criminal Court of Lima against Sergeant Second-Class Antonio Mauricio Evangelista Pineda "for crimes against life, body and integrity (homicide) with respect to Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez," and for the crime of bodily harm against Luis Alberto Bejarano Laura.⁶¹

77. On November 25, 1994, the 27th Criminal Court of Lima opened committal proceedings against Antonio Mauricio Evangelista Pinedo and, as requested by the prosecutor,

⁵³ Annex 17: Statement given by 2nd Sgt. Antonio Mauricio Evangelista Pinedo on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵⁴ Annex 17: Statement given by 2nd Sgt. Antonio Mauricio Evangelista Pinedo on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵⁵ Annex 17: Statement given by 2nd Sgt. Antonio Mauricio Evangelista Pinedo on August 17, 1994, to Capt. Carlos Omar Arquedas Salinas of the National Police and Dr. Fara Cubillas Romero, Associate Prosecutor of the 27th Prosecutor's Office. Annex to the petitioners' communication of January 22, 1996.

⁵⁶ Annex 33: Submission from the National Coordinator for Human Rights to the Attorney General of August 10, received by the secretary of the Attorney General's Office on August 12, 1994. Annex to the State's submission of February 27, 2002.

⁵⁷ Annex 23: Document of the Public Prosecution Service, office of the Attorney General of the Nation, August 15, 1994, signed by Blanca Nélica Colan Maguiño, Attorney General. Annex to the State's communication of February 27, 2002.

⁵⁸ Annex 19: Summary: Appearing as civil complainant, appointing defense counsel, and indicating legal address, to the Specialized Criminal Judge, October 19, 1994. Annex to the petitioners' submission of August 12, 1998.

⁵⁹ Annex 20: Annex 19: Summary: Appearing as civil complainant, appointing defense counsel, and indicating legal address, to the Specialized Criminal Judge, October 25, 1994. Annex to the petitioners' submission of August 12, 1998.

⁶⁰ Annex 21: Resolution of January 11, 1995, signed by María Teresa Jara García, Criminal Judge, and Alejandro Huaman García, Secretary, of the 27th Criminal Court of Lima. Annex to the petitioners' submission of August 12, 1998.

⁶¹ Annex 23: Complaint No. 455-94, addressed to the Criminal Judge on November 2, 1994. Annex to the State's submission of July 1, 1996.

ordered that the accused's statement be taken, that a warrant for his arrest be issued, and various other formalities.⁶²

78. On November 30, 1994, the Third Permanent Military Court asked the 27th Criminal Court of Lima to recuse itself from hearing the case because there was a criminal trial before that Military Court, on the grounds that the offense had been committed when the accused was following an operations and patrol plan in accordance with orders from a superior.⁶³ This document reports that the military justice system had opened committal proceedings against Sergeant Second-Class Mauricio Antonio Evangelista Pinedo on August 31, 1994, and that the Third Permanent Military Court had ordered the accused's arrest on September 13, 1994, and that as of the date of the document, he was in custody at the Rimac Military Prison.⁶⁴

79. On April 25, 1995, the 27th Provincial Criminal Prosecutor's Office of Lima asked the Criminal Judge for a 30-day extension to conduct a series of formalities and proposed, among other things, taking a statement from the suspect and insisting on the appearance of the soldiers stationed with the Motorized Infantry Battalion B.I.M. No. 40 at La Pólvara Barracks.⁶⁵ On May 2, 1995, the Criminal Judge of the 27th Criminal Court of Lima extended the committal proceedings deadline by the requested 30 days.⁶⁶

Amnesty laws

80. On June 14, 1995, Congress enacted Law No. 26479, granting amnesty to military and police personnel and civilians involved in human rights violations committed between May 1980 and the law's enactment on that same day.⁶⁷

81. Under the terms of Article 1 of Law No. 26479, the benefit covered all military, police, and civilian officials reported, investigated, accused, charged, prosecuted, or convicted of common or military crimes by either the military or regular courts. Article 4 of the Law ordered the immediate release of all persons detained, arrested, in prison, or serving custodial sentences. Article 6 ordered the archiving of all judicial proceedings, whether pre- or post-sentencing, and prohibited the opening of fresh investigations into the facts addressed by those proceedings.

82. On June 28, 1995, Congress enacted Law No. 26492, interpreting Article 1 of Law No. 26479 as meaning that the general amnesty was to be obligatorily enforced by judicial agencies and covered all incidents arising from or occurring as a consequence of the fight against terrorism, from May 1980 to June 14, 1995, regardless of whether the military, police, or civil personnel

⁶² Annex 25: Document of November 25, 1994, signed by María Teresa Jara García, Criminal Judge, and Alejandro Huaman García, Secretary, 27th Criminal Court of Lima. Annex to the State's submission of July 1, 1996.

⁶³ Annex 26: Document 233 94/3er. JMP-2da. ZJE, addressed to the Provincial Criminal Judge of the 27th Criminal Court of Lima, November 24, 1994. Annex to the State's submission of July 1, 1996.

⁶⁴ Annex 26 and Annex 34: Document 233 94/3er. JMP-2da. ZJE, addressed to the Provincial Criminal Judge of the 27th Criminal Court of Lima, November 24, 1994. Annex to the State's submission of July 1, 1996.

⁶⁵ Annex 27: Letter to the Criminal Judge of April 25, 1995, Exp. No. 431-94, signed by Dr. Fabiola Peña Tavera, Provincial Prosecutor, 27th Provincial Criminal Prosecutor's Office of Lima. Annex to the State's submission of July 1, 1996.

⁶⁶ Annex 36: Document of May 2, 1995, signed by María Teresa Jara García, Criminal Judge, and Edward Díaz Tantaleán, Secretary, 27th Criminal Court of Lima. Annex to the State's submission of July 1, 1996.

⁶⁷ Law No. 26.479, granting a general amnesty to military and police personnel and civilians in various cases, published in *El Peruano* on June 15, 1995.

involved had or had not been reported, investigated, prosecuted, or convicted, and sending all judicial proceedings at the pre- or post-sentencing stage to the archive.⁶⁸

⁶⁸ Law No. 26.492, enacted on June 30, 1995, and published in *El Peruano* on July 2, 1995.

Enforcement of Amnesty Law No. 26479 in the case at hand

83. On June 16, 1995, the civil complainant wrote to the 27th Provincial Criminal Prosecutor of Lima requesting that the Amnesty Law not be applied in the case at hand because it was patently unconstitutional.⁶⁹

84. On June 20, 1995, the Supreme Military Justice Council resolved to extend the benefit of amnesty to Sergeant Second-Class Antonio Evangelista Pinedo (Article 1 of Law No. 26479), finding that his actions on August 9, 1994, took place during the fight against terrorism.⁷⁰ The resolution indicates that, consequently, orders were given for the lifting of any measure restricting the freedom of the accused, the archiving of the proceedings, the cancellation of the police, court, and criminal records recorded in connection therewith, and the communication of the resolution to the corresponding judicial body for its execution.⁷¹

85. Later, on June 23, 1995, Antonio Evangelista Pinedo asked the 27th Specialized Criminal Judge of Lima to enforce the benefits of Law No. 26479, on the grounds that the incident of August 9, 1994, took place during a countersubversive operation and during his hours of service as a member of the Peruvian Army, involving actions arising from or occurring as a consequence of the fight against terrorism, and during the extended state of emergency in Lima department and the province of Callao.⁷²

86. On June 30, 1995, the 27th Criminal Court of Lima again extended the committal proceedings for 30 days, pursuant to the prosecutor's request of April 25, 1995.⁷³

87. On August 3, 1995, Sergeant Second-Class Antonio Evangelista Pinedo filed an "motion of *res judicata*" with the 27th Criminal Court of Lima, on the grounds that two sets of proceedings had been brought against him simultaneously for the same incident – one before the military justice system and one before the regular courts – and that in a resolution of June 20, 1995, the Supreme Military Justice Council had awarded him the benefit offered by Law 26479 (the Amnesty Law) following his application for it, and that consequently the matter was *res judicata* and he could not be tried twice for the same offense.⁷⁴

88. On August 17, 1995, the Provost-Marshal of the Army replied to the letter sent by the 27th Criminal Court of Lima on May 2, 1995, seeking the appearance of the members of the Army patrol for them to give statements; he responded that the order had been given for the soldiers in question to appear before that body.⁷⁵

⁶⁹ Annex 41: Document sent to the 27th Provincial Criminal Prosecutor of Lima on June 16, 1995, signed by Ivana M. Montoya Lizárraga and Santiago Pérez Vera. Annex to the State's communication of December 14, 2004.

⁷⁰ Annex 40: Document dated June 20, 1995, signed by the Secretary of the Supreme Military Justice Council, Col. Roger N. Araujo Calderón. Annex to the State's submission of February 27, 2002.

⁷¹ Annex 40: Document dated June 20, 1995, signed by the Secretary of the Supreme Military Justice Council, Col. Roger N. Araujo Calderón. Annex to the State's submission of February 27, 2002.

⁷² Annex 39: Document of June 23, 1995, received at the 27th Criminal Court on June 26, 1995, addressed to the Specialized Criminal Judge of Lima. Annex to the State's submission of February 27, 2002.

⁷³ Annex 37: Document of June 30, 1995, signed by María Teresa Jara García, Criminal Judge, and Edward Diaz, Secretary, 27th Criminal Court of Lima. Annex to the State's submission of December 14, 2004.

⁷⁴ Annex 42: Motion of *res judicata* filed by the defendant Antonio Evangelista Pinedo in the crime against life, body and health – simple homicide and others – with the 27th Criminal Court of Lima on August 3, 1995. Annex to the State's communication of December 14, 2004.

⁷⁵ Annex 38: Document No. 879 CP-PREBOSTE 2/29.02.03 of June 22, 1995, signed by Brig. Gen. Juan Pita Montoya, Provost-Marshal of the Army. Annex to the State's submission of December 14, 2004.

89. On August 22, 1995, the 27th Provincial Criminal Prosecutor's Office of Lima submitted its report to the 27th Criminal Court, recommending that the motion of *res judicata* filed by the defendant be upheld, pursuant to the Supreme Military Justice Council's resolution of June 20, 1995, "in spite of the existence of sufficient evidence of the commission of the criminal acts [for which Antonio Evangelista Pinedo was being investigated] and of the criminal responsibility of the accused."⁷⁶

90. On September 1, 1995, the 27th Criminal Court of Lima received a communication from the Third Military Judge, reporting that Law 26479, the Amnesty Law, had been applied in the proceedings against Sergeant Second-Class Evangelista Pineda, forwarding a copy of the resolution of June 20, 1995, and asking to be informed whether a warrant for the arrest of the accused was still in force.⁷⁷ On September 7, 1995, the 27th Provincial Criminal Prosecutor of Lima again indicated his opinion to the Judge of the 27th Criminal Court of Lima that "the motion of *res judicata* filed by Antonio Mauricio Evangelista Pinedo should be upheld."⁷⁸

91. On September 11, 1995, the 27th Criminal Court of Lima upheld the motion of *res judicata* filed by the defendant and ordered the proceedings sent to the archive. The resolution also ordered the defendant's immediate release and the cancellation of the criminal and judicial records created during the proceedings.⁷⁹

92. On September 12, 1995, the Criminal Judge of the 27th Criminal Court of Lima asked the Judge of the Third Permanent Court of the Second Army Judicial District to order the immediate release of the defendant, Sergeant Second-Class Evangelista Pinedo.⁸⁰

93. On December 12, 1995 – that is, more than a year after the military courts filed the request for recusal and when the proceedings had already been archived – the 27th Criminal Court of Lima dismissed the request for recusal on the grounds that the case file contained no documents to justify such an application and given that the offense under investigation had been classified as simple homicide, "there being no extenuating factors regarding the actions of the accused who, instead of assisting the victims, fled the scene regardless of the seriousness of the incident."⁸¹ Consequently, the resolution states that an order should be given for the accused to be brought before that court for his prosecution,⁸² but that did not happen.

⁷⁶ Annex 43: Document sent to the Criminal Judge on August 18, 1995, signed by Dr. Fabiola J. Peña Tavera, Provincial Criminal Prosecutor of Lima. Annex to the State's submission of December 14, 2004.

⁷⁷ Annex 44: Document No. 1409-95/3J of August 29, 1995, signed by Lt. Col. Segundo Ramos Ruiz, Judge, 3rd Permanent Military Court. Annex to the State's submission of December 14, 2004.

⁷⁸ Annex 45: Document sent to the Criminal Judge by the 27th Provincial Prosecutor of Lima, September 7, 1995, motion of *res judicata*. Annex to the State's submission of February 27, 2002.

⁷⁹ Annex 46: Resolution of September 11, 1995, by the 27th Criminal Court of Lima, case file N-431-94. Annex to the State's submission of February 27, 2002.

⁸⁰ Annex 47: Document 431-91.EDT of September 12, 1995, addressed to the Judge of the Third Permanent Court of the Second Army Judicial District, signed by María Teresa Jara García, Criminal Judge. Annex to the State's submission of February 27, 2002.

⁸¹ Annex 35: Document of December 12, 1995, signed by María Teresa Jara García, Criminal Judge, and Alejandro Huaman García, Secretary, of the 27th Criminal Court of Lima. Annex to the State's submission of February 27, 2002.

⁸² Annex 35: Document of December 12, 1995, signed by María Teresa Jara García, Criminal Judge, and Alejandro Huaman García, Secretary, of the 27th Criminal Court of Lima. Annex to the State's submission of February 27, 2002.

Reopened proceedings before the civilian jurisdiction

94. The IACHR analyzed the amnesty laws and their consequences in 1996, and it found that Law No. 26479 constituted interference in the functions of the judiciary and that Law No. 26492 “not only fails to provide an effective remedy, but goes much further, denying any possibility of appeal or of bringing an objection based on human rights violations.”⁸³ Consequently, the IACHR recommended “that the Peruvian State repeal Amnesty Law No. 26479, and the Law on Judicial Interpretation (No. 26492), because they were incompatible with the American Convention, and investigate, try, and punish the state agents accused of human rights violations, especially violations that amount to international crimes.”⁸⁴

95. On March 14, 2001, the Inter-American Court of Human Rights issued judgment in the *Barrios Altos Case*, ruling that amnesty laws Nos. 26479 and 26492 were incompatible with the American Convention on Human Rights and, consequently, were void of legal effect.⁸⁵ Subsequently, the Inter-American Court issued a judgment interpreting its judgment on the merits in which it ruled that given the nature of the violation that amnesty laws Nos. 26479 and 26492 represented, its decision in the judgment on the merits in the *Barrios Altos Case* would be applicable generally.⁸⁶

96. On April 19, 2001, the civil complainants filed an application with the 27th Criminal Court of Lima for the proceedings to be removed from the archive and reopened.⁸⁷ On September 10, 2001, the 27th Provincial Criminal Prosecutor’s Office of Lima sent the 27th Criminal Court of Lima its report on the petitioners’ request, proposing that it be ruled inadmissible, on the grounds that they had attached a simple copy of the Inter-American Court’s judgment in the *Barrios Altos Case* without following the procedure established in Article 151 of the Consolidated Text of the Organic Law of the Judiciary for the execution of supranational judgments under the treaties to which Peru is a party.⁸⁸

97. On April 8, 2002, the 27th Criminal Court of Lima requested that the Third Permanent Court of the Second Military Judicial District be contacted for it to report on the current state of the proceedings against Antonio Evangelista Pinedo.⁸⁹

98. On October 25, 2002, the 27th Provincial Criminal Prosecutor found in favor of removing the file from the archive and continuing the proceedings, after receiving the Inter-American Court’s judgments of March 14 and September 3, 2001, in compliance with Article 151 of the Consolidated Text of the Organic Law of the Judiciary.⁹⁰

⁸³ IACHR, Annual Report 1996, Chapter V, Part 4, Section IV.C.

⁸⁴ IACHR, Annual Report 1996, Chapter V, Part 4, Section VIII.6.

⁸⁵ I/A Court H. R., *Case of Barrios Altos v. Peru*, Judgment of March 14, 2001, Series C No. 75, operative paragraph 4.

⁸⁶ I/A Court H. R., *Case of Barrios Altos v. Peru*, Interpretation of the Judgment on the Merits (Art. 67 of the American Convention on Human Rights), Judgment of September 3, 2001, Series C No. 83, operative paragraph 3.

⁸⁷ Annex 48: Document of April 17, 2001, addressed to the Judge of the 27th Criminal Court of Lima, signed by Santiago Pérez Vera, Víctor Tarazona Hinostroza, and Gloria Cano Legua. Annex to the State’s submission of December 14, 2004.

⁸⁸ Annex 49: Document of August 29, 2001, signed by Dr. Fabiola J. Peña Tavera, 27th Provincial Criminal Prosecutor’s Office of Lima. Annex to the State’s submission of December 14, 2004.

⁸⁹ Annex 50: Document of April 8, 2002, signed by the 27th Criminal Court of Lima, Superior Court of Justice of Lima. Annex to the State’s submission of December 14, 2004.

⁹⁰ Annex 51: Document of October 23, 2002, signed by Dr. Claudia García Flores, Provincial Criminal Prosecutor of Lima. Annex to the State’s submission of December 14, 2004.

99. On November 27, 2002, the 27th Criminal Judge recused himself from further hearing the proceedings before resolving the request for the case to be removed from the archive, pursuant to an administrative resolution issued on October 28, 1997 – in other words, almost 5 years previously – which ruled that the court lacked jurisdiction over the substance of the case.⁹¹

100. On January 21, 2003, the 16th Provincial Criminal Court of Lima ordered the case removed from the archive and the criminal trial reopened, and it extended the duration of the committal proceedings by 30 days for a series of formalities to be carried out or communicated and for instructions to be given to the Judicial Police for the suspect's location and arrest.⁹²

101. On May 19, 2003, the 16th Provincial Criminal Prosecutor of Lima asked the judge for an extension of 30 days for the committal proceedings, given that the investigation was still at an early stage.⁹³ This report sets out the formalities pursued to date, including the criminal background of the accused (no annotations) and his judicial background (with the annotation of having been convicted on July 24, 1997, to a four-year custodial sentence for the crime of grievous bodily harm⁹⁴).⁹⁵ This report primarily based the request for the extension of the deadline for committal proceedings on the need to issue instructions to the competent authority for the suspect's location and arrest, and to take witness statements from the members of the Army patrol.⁹⁶

102. On June 9, 2003, the 16th Provincial Criminal Court of Lima informed the prosecutor that the deadline for the committal proceedings had been extended by 30 days.⁹⁷ On July 15, 2003, a witness statement was taken from Army Technician Third-Class Antonio Enrique Vivas Chapilliquen, the commander of the military patrol that included Sergeant Second-Class Evangelista Pinedo on August 9, 1994; in that statement he said that at no time did he order his troops to inspect or stop vehicles, and "certainly not to fire their weapons."⁹⁸ Army Technician Antonio Enrique Vivas also said that in his capacity as patrol commander he was punished for the incident under investigation with eight days of simple arrest for failing to control the soldiers under his command.⁹⁹ On July 21, 2003, a statement was taken from Víctor Tarazona Hinostrosa, the

⁹¹ Annex 52: Resolution of November 27, 2002, case file 43-94, signed by Víctor J. Valladolid Zeta, Criminal Judge, and Juan Carlos Osorio Huapaya, Secretary. Annex to the State's communication of December 14, 2004.

⁹² Annex 53: Document of January 21, 2003, case file No. 550-02, Sec: Cevallos. Annex to the State's communication of December 14, 2004.

⁹³ Annex 57: Report No. 1171, case file 550-2002, Sec. Cevallos, 16 J.P.L., dated May 12, 2003, signed by César Alegre Landaveri, Provincial Criminal Prosecutor of Lima. Annex to the State's communication of December 14, 2004.

⁹⁴ Annex 56: Ministry of Justice, National Penitentiary Institute, Lima Penitentiary Records Office, No. 002660, Evangelista Pinedo Mauricio Antonio, March 19, 2003. Annex to the State's communication of December 14, 2004.

⁹⁵ Annex 57: Report No. 1171, case file 550-2002, Sec. Cevallos, 16 J.P.L., dated May 12, 2003, signed by César Alegre Landaveri, Provincial Criminal Prosecutor of Lima. Annex to the State's communication of December 14, 2004.

⁹⁶ Annex 57: Report No. 1171, case file 550-2002, Sec. Cevallos, 16 J.P.L., dated May 12, 2003, signed by César Alegre Landaveri, Provincial Criminal Prosecutor of Lima. Annex to the State's communication of December 14, 2004.

⁹⁷ Annex 58: Document of June 9, 2003, signed by William Ardiles Campos, Provincial Judge of the Thirtieth Criminal Court of Lima, Superior Court of Justice of Lima. Annex to the State's communication of December 14, 2004.

⁹⁸ Annex 59: Witness statement of Peruvian Army Technician Third-Class Antonio Enrique Vivas Chapilleuren, aged 41, July 15, 2003. Annex to the State's communication of December 14, 2004.

⁹⁹ Annex 59: Witness statement of Peruvian Army Technician Third-Class Antonio Enrique Vivas Chapilleuren, aged 41, July 15, 2003. Annex to the State's communication of December 14, 2004.

father of Zulema Tarazona Arrieta; he said, *inter alia*, that his daughter helped support the family and that the Army had only paid for her cemetery niche.¹⁰⁰

103. On September 12, 2003, the 16th Provincial Criminal Court of Lima received a report from the prosecutor indicating the formalities pursued to date.¹⁰¹ On September 19, 2003, the judge in the case returned the documents to the prosecutor for him to rule on the request (although it fails to indicate what that ruling was on).¹⁰²

104. On September 26, 2003, the Prosecutor's Office asked the 16th Judge to rule on the State's civil responsibility as a third party in the proceedings, as had been requested by the civil complainant on July 18, 2003, on the grounds that the offenses with which the defendant was charged occurred on August 9, 1994, during an operation of the Peruvian Army in which he was officially participating in his capacity as a sergeant second-class.¹⁰³ On December 22, 2003, the judge in the proceedings ruled the State (Ministry of Defense) to be a civilly responsible third party.¹⁰⁴

105. On December 24, 2003, although the court had ordered the taking of witness statements from the members of the patrol, that formality had not been completed because of their failure to appear.¹⁰⁵

106. In a submission dated May 7, 2004, the Third Superior Criminal Prosecutor of Lima asked the judge for a 50-day extension, on the grounds that the investigation was incomplete and the elements necessary for arriving at a clear decision on the commission of the offenses and degree of the accused's responsibility had not been gathered.¹⁰⁶ The proposed formalities to be carried out included the following: (1) take a statement from the accused, notifying him of the penalties applicable to noncompliance if ruled a fugitive; and (2) take witness statements from the members of the patrol and other individuals.¹⁰⁷ The Judge granted the extension in a ruling dated May 21, 2004.¹⁰⁸

107. On November 2, 2004, the 16th Provincial Criminal Judge issued a resolution indicating that there were still important formalities to be carried out in the proceedings and ordering, *inter alia*: (1) that orders be given for the immediate location and arrest of the suspect,

¹⁰⁰ Annex 60: Statement of Víctor Tarazona Hinostroza, aged 66, July 21, 2003, signed by Pedro Abraham Valdivia, Assistant Provincial Prosecutor. Annex to the State's communication of December 14, 2004.

¹⁰¹ Annex 61: Report No. 1587, case file No. 550-02, September 9, 2002. Annex to the State's communication of December 14, 2004.

¹⁰² Annex 62: Resolution of September 19, 2003, by the Criminal Judge in case file 550-2003. Annex to the State's communication of December 14, 2004.

¹⁰³ Annex 63: Report of the 16th Provincial Criminal Prosecutor, addressed to the Judge, dated September 25, 2003.

¹⁰⁴ Annex 64: Resolution of December 22, 2003, signed by Marco Cevallos Reyes. Annex to the State's communication of December 14, 2004.

¹⁰⁵ Annex 67: Comments, December 24, 2003, signed by the Criminal Judge. Annex to the State's communication of December 14, 2004.

¹⁰⁶ Annex 65: Case file No. 429-2004, Report No. 596-2004, May 7, 2004. Annex to the State's communication of December 14, 2004.

¹⁰⁷ Annex 65: Case file No. 429-2004, Report No. 596-2004, May 7, 2004. Annex to the State's communication of December 14, 2004.

¹⁰⁸ Annex 66: Ruling dated May 21, 2004, case file 429-2004(2C). Annex 65: Case file No. 429-2004, Report No. 596-2004 dated May 7, 2004. Annex to the State's communication of December 14, 2004.

Evangelista Pinedo; (2) that witness statements be taken from the patrol members; and (3) that the Army Personnel Directorate be contacted urgently for it to report on the employment situation of the accused and, if still serving, "to make him physically available to the court given the existence of an arrest warrant."¹⁰⁹

108. On August 2, 2005, the 16th Provincial Criminal Court of Lima ordered a special 30-day extension of the deadline for the committal proceedings, in order for the formalities indicated in the judicial resolution of November 2, 2004, to be carried out.¹¹⁰ In connection with the statements to be taken from the patrol members, an order was given for notice to be served on the National Registry of Identity and Marital Status (RENIEC), since according to the report submitted by the Army Personnel Directorate, those troops were no longer serving.¹¹¹

109. On September 21, 2005, the 16th Criminal Judge of Lima recused himself from further hearing the proceedings, pursuant to administrative resolution 170-2004-CE-PJ whereby the jurisdiction of the Specialized Courts for Terrorism Offenses was expanded to allow them to hear cases involving common crimes that constituted human rights violations – which, in the opinion of the 16th Criminal Judge, was the case with the proceedings at hand. Consequently, the 16th Criminal Judge of Lima referred the case file to the clerk's office for criminal proceedings of the Lima Superior Court of Justice, for it to pass it on to the competent Specialized Court for Terrorism Offenses.¹¹²

110. On December 19, 2005, The Judge of the 4th Supraprovincial Criminal Court asked the President of the Superior Chamber for an exceptional extension to pursue various formalities, including taking statements from the defendant and from 11 members of the patrol.¹¹³ According to the report, as of December 19, 2005, the legal status of the defendant Antonio Mauricio Evangelista Pinedo was that of a fugitive from justice.¹¹⁴

111. On May 30, 2006, the Senior Prosecutor of the National Superior Criminal Prosecution Office asked the President of the National Criminal Chamber for an exceptional extension of 20 days in the committal proceedings deadline, in order for a statement to be taken from the defendant or, failing that, for his legal situation to be determined, and for witness statements to be taken from 11 members of the patrol.¹¹⁵

112. On May 31, 2006, the National Criminal Chamber denied the requested extension to the committal deadline, on the grounds that in the case at hand, "the limit for committal proceedings set by law has been exceeded and, in addition, the deadline has been extended on

¹⁰⁹ Annex 68: Document of November 2, 2004, case file 167-04, SEC. Alcalá, signed by Mercedes D. Gómez, Judge. Annex to the petitioners' communication of August 3, 2005.

¹¹⁰ Annex 69: Deed of official notification, case file 550-02, addressed to Dr. Ivonne Arroyo Azursa, with the seal of the 16th Criminal Court of Lima. Annex to the petitioners' communication of August 3, 2005.

¹¹¹ Annex 69: Deed of official notification, case file 550-02, addressed to Dr. Ivonne Arroyo Azursa, with the seal of the 16th Criminal Court of Lima. Annex to the petitioners' communication of August 3, 2005.

¹¹² Annex 70: Resolution of September 21, 2005, signed by Judge Mercedes D. Gómez, case file 550-02, Sec. Alcalá. Annex to the State's communication of October 12, 2006.

¹¹³ Annex 71: Final expansion report addressed to the President (of the Superior Chamber), December 19, 2005, case file No. 069-05, Sec. Medina. Annex to the State's communication of October 12, 2006.

¹¹⁴ Annex 71: Final expansion report addressed to the President (of the Superior Chamber), December 19, 2005, case file No. 069-05, Sec. Medina. Annex to the State's communication of October 12, 2006.

¹¹⁵ Annex 73: Report No. 09-2006-4^o FSPN-MP/FN, case file No. 13-06, May 19, 2006. Annex to the State's submission of October 12, 2006.

repeated occasions, [...] and the failure to pursue the formalities requested by the representative of the Public Prosecution Service, at the committal stage, poses no obstacle for the adoption of the corresponding ruling.”¹¹⁶ Consequently, the Criminal Chamber ordered the case file returned to the Fourth National Superior Criminal Prosecutor for the representative of Public Prosecution Service to issue the legally required ruling.¹¹⁷

113. On July 14, 2006, more than three years after the proceedings were reopened and almost 12 years after the incident took place, the Fourth National Superior Criminal Prosecutor filed charges against Antonio Mauricio Evangelista Pinedo for the crimes against life, body, and health (simple homicide) with respect to Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and for grievous bodily harm against Luis Alberto Bejarano, and requested the imposition of a ten-year custodial sentence and the joint payment, with the civilly responsible third party, of 30,000 new sols as redress civil for each of the victims.¹¹⁸ As of October 3, 2006, the accused Antonio Mauricio Evangelista Pinedo was a fugitive from justice, and no date had been set for the start of oral proceedings since he had not appeared before the National Criminal Chamber.¹¹⁹

114. Later, between the years 2007 and 2008, the petitioners asked the President of the National Criminal Chamber on three occasions to update the warrant for the arrest of the accused Antonio Mauricio Evangelista Pinedo and, in addition, to contact: (1) the Warrants Office of the National Police for his immediate location, arrest, and referral to the judicial authorities; (2) the Immigration Directorate of the Interior Ministry and the National Office of Electoral Processes, for them to report, respectively, if the accused had entered or left the country recently and if he had voted in the most recent elections; and (3) the Judicial Police, for it to report on the steps taken to detain the accused Antonio Mauricio Evangelista Pinedo.¹²⁰

115. On July 12, 2007, the Immigration Directorate of the Interior Ministry informed the National Criminal Chamber that no migratory movements were on record for the accused.¹²¹ On July 16, 2007, the National Office of Electoral Processes informed the National Criminal Chamber that Antonio Evangelista Pinedo had voted in the first round of the 2006 general election and in that year’s regional and municipal elections.¹²²

¹¹⁶ Annex 74: Document of the National Criminal Chamber of May 31, 2006, signed by July Camargo Mondragón, Secretary of the Clerk’s Office, National Criminal Chamber. Annex to the State’s submission of October 12, 2006.

¹¹⁷ Annex 74: Document of the National Criminal Chamber of May 31, 2006, signed by July Camargo Mondragón, Secretary of the Clerk’s Office, National Criminal Chamber. Annex to the State’s submission of October 12, 2006.

¹¹⁸ Annex 3: Ruling No. 12-2006-4°FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Prosecution Service, case file No. 13-06, July 14, 2006. Annex to the State’s communication of October 12, 2006.

¹¹⁹ Annex 75: National Criminal Chamber, Resolution No. 483, case file No. 13-06, signed by July Camargo Mondragón, Secretary of the Clerk’s Office. Annex to the petitioners’ submission of July 27, 2011.

¹²⁰ See Annex 76: Undated document from the International Federation for Human Rights addressed to the President of the National Criminal Chamber in case file 13-2006; Annex to the petitioners’ submission of July 27, 2011. Annex 77: Document from the International Federation for Human Rights addressed to the President of the National Criminal Chamber in case file 13-2006, received on November 19, 2007; Annex to the petitioners’ submission of July 27, 2011. Annex 78: Document from the International Federation for Human Rights addressed to the President of the National Criminal Chamber in case file 13-2006, received on March 3, 2008. Annex to the petitioners’ submission of July 27, 2011.

¹²¹ Annex 78: Document from the International Federation for Human Rights addressed to the President of the National Criminal Chamber in case file 13-2006, received on March 3, 2008. Annex to the petitioners’ submission of July 27, 2011.

¹²² Annex 78: Document from the International Federation for Human Rights addressed to the President of the National Criminal Chamber in case file 13-2006, received on March 3, 2008. Annex to the petitioners’ submission of July 27, 2011.

116. On June 27, 2008, the National Criminal Chamber set July 21, 2008, for the start of oral proceedings, since the clerk's office had informed it that the accused was in detention at the Lurigancho Penitentiary.¹²³

Conviction of Sergeant Second-Class Evangelista Pinedo

117. The defendant admitted to the facts set out in the charges of July 14, 2006, pled guilty to the crime with which he was accused, and accepted responsibility for the civil redress in order to obtain more lenient sentencing. Consequently, on July 23, 2008, the National Criminal Chamber handed down a conviction against Antonio Mauricio Evangelista Pinedo for the crimes against life, body and health (simple homicide) with respect to Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and for the crime of grievous bodily harm with respect to Luis Alberto Bejarano Laura, and imposed on him a six-year custodial sentence, reduced by the length of his detention from September 13, 1994, to August 29, 1995, on the orders of the Third Permanent Military Court, and from June 19, 2008.¹²⁴

118. The Court found that the accused's actions "were more a disproportionate use of force by a member of the Army, with respect to which the institution failed to exert effective control, as acknowledged by the patrol commander; however, while the legal definitions of the offenses indicated in the charged were met, it cannot be considered an extrajudicial killing and therefore does not constitute a crime against humanity."¹²⁵

119. The judgment also set civil redress at 30,000 new sols, to be paid jointly by the accused and the State (Peruvian Army) to each of the victims Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and at 10,000 new sols, payable to Luis Alberto Bejarano. The judgment states that in setting the civil redress amount, it was constrained by the amount requested by the Public Prosecution Service, and that although the civil complainants requested an increase to that amount, the request was ruled untimely in that it was only filed three days before the hearing began. In addition, the Court ruled to disallow "compensation for the lost earnings the victims would have received if they were alive as of the date of the judgment, because under such a scenario said earnings would be infinite. What can be compensated is the pain and suffering inflicted on their families and heirs, understood as emotional injury, and since there is no way of repairing that than with the payment of a sum of money, it must be compensated for in that way."¹²⁶

120. On July 24, 2008, the petitioners filed a remedy for annulment "as regards the ruling on civil redress,"¹²⁷ for which they set out the grounds in a submission dated August 6, 2008: namely, the failure to take into account that the civil responsibility that arises from the commission of a crime must address such aspects as restitution, redress of the harm caused, and

¹²³ Annex 79: National Criminal Chamber, case file No. 13-06, document dated June 27, 2008. Annex to the petitioners' submission of July 27, 2011.

¹²⁴ Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

¹²⁵ Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

¹²⁶ Annex 1: Judgment of July 23, 2008, National Criminal Chamber, case file No. 13-06, Case: Antonio Evangelista Pinedo. Annex to the petitioners' submission of July 27, 2011.

¹²⁷ Annex 80: Document from APRODEH and FIDH, addressed to the President of the National Criminal Chamber, July 2008. Annex to the petitioners' submission of July 27, 2011.

compensation for material and moral damages.¹²⁸ On November 4, 2008, the First Temporary Criminal Chamber of the Supreme Court rejected the remedy for annulment filed by the petitioners on the grounds that although they questioned the civil redress amount requested in the charges by the representative of the Public Prosecution Service, they did so after the deadline set by Article 227 of the Code of Criminal Procedure.¹²⁹ On December 24, 2008, the judgment of July 23, 2008, became final.¹³⁰

121. On March 4, 2009, notice of the judgment was served on the Peruvian Army¹³¹ and the convict, Antonio Mauricio Evangelista Pinedo, was asked to pay the civil redress.¹³² On April 27, 2009, the petitioners asked the Judge of the Fourth Supraprovincial Criminal Court to order the Peruvian Army to pay the civil redress amount, in that it had been jointly ordered to do so.¹³³ The petitioners reiterated this request in the month of June 2009¹³⁴ and on August 4, 2009.¹³⁵ On August 5, 2009, the Fourth Supraprovincial Criminal Court issued a resolution ordering the Army to pay the civil redress award,¹³⁶ but on November 19, the payment had still not been made. Consequently, on that date the petitioners again requested that the responsible third party be ordered to make the payment.¹³⁷ On December 15, 2009, the Fourth Supraprovincial Criminal Court informed Víctor Tarazona Hinostriza, Zulema Tarazona Arrieta's father, that the General Finance Office of the Ministry of Defense of the Peruvian Army had deposited S 15,000 in his name.¹³⁸ As of January 6, 2010, the convict and the State (Peruvian Army) had not fully paid the civil redress amount.¹³⁹ Finally, the remaining 50% of the redress amount was deposited and handed over to the legal heirs of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, and to Luis Alberto Bejarano Laura, prior to July 2011.¹⁴⁰

¹²⁸ Annex 2: Grounds of the remedy for annulment presented by the civil complainants on August 6, 2008, against the judgment of July 23, 2008, with respect to its provisions regarding redress. Annex to the petitioners' submission of July 27, 2011.

¹²⁹ Annex 81: Document of the First Temporary Criminal Chamber R.N. No. 4370-2008, dated November 4, 2008. Annex to the petitioners' submission of July 27, 2011.

¹³⁰ Annex 82: Judgment of the National Criminal Chamber of December 24, 2008, case file No. 13-06, signed by Julia Esther Esquivel Apaza, Clerk, National Criminal Chamber. Annex to the petitioners' submission of July 27, 2011.

¹³¹ Annex 83: Document No. 2005-00069-0-4TO.JPSP of March 4, 2009, National Criminal Chamber, Fourth Supraprovincial Criminal Court. Annex to the petitioners' submission of July 27, 2011.

¹³² Annex 84: Document of APRODEH and FIDH addressed to the Judge of the Fourth Supraprovincial Criminal Court, received on April 27, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³³ Annex 84: Document of APRODEH and FIDH addressed to the Judge of the Fourth Supraprovincial Criminal Court, received on April 27, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³⁴ Annex 85: Document of APRODEH and FIDH addressed to the Judge of the Fourth Supraprovincial Criminal Court, in the sentence execution record. Annex to the petitioners' submission of July 27, 2011.

¹³⁵ Annex 86: Document of APRODEH and FIDH addressed to the Judge of the Fourth Supraprovincial Criminal Court, received on August 4, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³⁶ Annex 87: Judicial notice of the Fourth Supraprovincial Criminal Court dated August 5, 2009, received by APRODEH on August 21, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³⁷ Annex 88: Document of APRODEH and FIDH addressed to the Judge of the Fourth Criminal Court of Lima, received on November 19, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³⁸ Annex 89: Judicial notification of the Fourth Supraprovincial Criminal Court to Víctor Tarazona Hinostriza, dated December 15, 2009. Annex to the petitioners' submission of July 27, 2011.

¹³⁹ Annex 90: Judicial notification of the Fourth Supraprovincial Criminal Court, dated January 6, 2010. Annex to the petitioners' submission of July 27, 2011.

¹⁴⁰ Reported by the petitioners in their submission of July 27, 2011.

C. Legal Analysis

1. Right to life (Article 4) and right to humane treatment (Article 5), in conjunction with the obligation to respect rights (Article 1.1), under the American Convention on Human Rights

122. Article 4.1 of the American Convention provides that:

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

123. Article 5.1 of the American Convention stipulates that:

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

124. Regarding the right to life, the Commission notes that:

Article 4 of the Convention guarantees the right of every human being to not be deprived of his life arbitrarily, which includes the need that the State adopt substantive measures to prevent the violation of this right, as would be the case of all measures necessary to prevent arbitrary killings by its own security forces, as well as to prevent and punish the deprivation of life as a consequence of criminal acts carried out by individual third parties.¹⁴¹

125. In line with the precedents set by the Inter-American Court, the Commission notes that although agents of state security forces may legitimately use lethal force in discharging their duties, that use must be exceptional and must be planned and proportionately constrained by the authorities; thus, “force or coercive means can only be used once all other methods of control have been exhausted and have failed.”¹⁴² Similarly, Article 3 of the United Nations Code of Conduct for Law Enforcement Officials provides that: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”;¹⁴³ and Principle No. 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials¹⁴⁴ states that: “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

126. Consequently, the law must determine when state security agents may use lethal force; this must be restrictively construed, so that they are used only when absolutely necessary in relation to the force or threat being countered.¹⁴⁵ Clearly:

¹⁴¹ I/A Court H. R., *Case of Servellón García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 98; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 64; I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Preliminary Objection, Judgment of November 30, 2005, Series C No. 139, para.125; and I/A Court H. R., *Case of the Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2006, Series C No. 148, para. 131.

¹⁴² 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, para. 83; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 68.

¹⁴³ UN Doc. A/34/46 (1979), A.G. Res. 34/169.

¹⁴⁴ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

¹⁴⁵ 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, para. 84; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 68. Similarly, see also: ECHR, *Huohvanainen v. Finland*, March 13, 2007, No. 57389/00, paras. 93-94; ECHR, *Erdogan and*

State agents must distinguish between persons who, by their actions, constitute an imminent threat of death or serious injury and persons who do not present such a threat, and use force only against the former.¹⁴⁶

127. The Commission notes that the use of excessive or disproportionate force by law enforcement officials that results in the loss of life may amount to an arbitrary deprivation of life.¹⁴⁷ For that reason, upon learning that firearms have been used by members of its security forces with lethal consequences, the State has the obligation to initiate, ex officio and without delay, a serious, independent, impartial and effective investigation.¹⁴⁸ This arises from the obligation, incumbent on States, to “see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”¹⁴⁹ In addition, in cases in which extrajudicial killings are alleged:

It is essential that the States effectively investigate the deprivation of the right to life, and in its case, punish all those responsible, especially when state agents are involved, since on the contrary, it would be creating, within an environment of impunity, the conditions necessary for the repetition of this type of facts, which is contrary to the duty to respect and guarantee the right to life. Besides, if the acts that violate human rights are not investigated seriously, they would, in some way, result aided by public power, which compromises the State’s international responsibility.¹⁵⁰

Others v. Turkey, April 25, 2006, No. 19807/92, para. 67; ECHR, *Kakoulli v. Turkey*, November 22, 2005, No. 38595/97, paras. 107-108; ECHR, *McCann and Others v. the United Kingdom*, Judgment of September 27, 1995, Series A No. 324, paras. 148-150, 194; and Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly, Resolution 34/169, December 17, 1979, Article 3; Under Principle 11 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from August 27 to September 7, 1990, rules and regulations on the use of firearms by law enforcement officials should include clear guidelines that: (a) specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; (d) regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; (e) provide for warnings to be given, if appropriate, when firearms are to be discharged; (f) provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

¹⁴⁶ 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, para. 85. Similarly: IACHR, Report on Terrorism and Human Rights, 2002.

¹⁴⁷ 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, para. 85.

¹⁴⁸ 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, para. 88; I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 112. See also: *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 256; and I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 155, para. 77. Similarly, see also: ECHR, *Erdogan and Others v. Turkey*, supra note 66, paras. 122-123; and ECHR, *Nachova and Others v. Bulgaria* [GC], Nos. 43577/98 and 43579/98, paras. 111-112, July 6, 2005.

¹⁴⁹ 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, para. 81; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 66. See also: I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 238; and I/A Court H. R., *Case of Servellón García et al.*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 102.

¹⁵⁰ I/A Court H. R., *Case of Servellón García et al.*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 123; I/A Court H. R., *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 91; I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of 31 January 2006, Series C No. 140, para. 145; I/A Court H. R., *Case of the*

128. The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions contains investigation guidelines that must be followed when examining a possible extrajudicial killing.¹⁵¹

129. In the case at hand, the petitioners claim that as a consequence of the unnecessary, deliberate, and disproportionate actions of a member of the Army, two people were killed and another was seriously injured, and that the State is therefore responsible for violating the alleged victims' right to life and to humane treatment, in that it had the positive obligation of protecting its citizens' lives through the actions of its police and armed forces. They contend that although the State's international responsibility in this case has been fully established, the judicial authorities have failed to make full amends for the harm inflicted on the victims by rejecting the inclusion in the civil redress of future losses from what the deceased victims should have earned and, with respect to Luis Alberto Bejarano, by only taking into consideration the injury that endangered his life and his inability to work.

130. The State, in turn, has acknowledged the facts established by the Commission, and it claims it has an institutional and regulatory framework that allows the investigation and prosecution of those suspected of human rights violations, which includes the investigation undertaken by the Public Prosecution Service in the case at hand. In addition, regarding the matter of comprehensive redress for the victims and their next-of-kin, the State indicates that in 2006 it adopted the regulatory framework of the Comprehensive Reparations Plan for the victims of the violence that took place between May 1980 and November 2000, in compliance with the conclusions and recommendations of the Truth and Reconciliation Commission's report, through the enactment of Law No. 28592, "Law Creating the Comprehensive Reparations Plan."

131. The Inter-American Court has held, from its earliest judgments, that:

According to Article 1.1, any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.

This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.¹⁵²

132. The Commission notes that, as has been established, on August 9, 1994, two members of the Army, their faces covered by balaclavas and unbeknown to the bus driver, ran onto the Lima-Chosica highway to intercept a public transport vehicle. The members of the patrol had not been ordered to stop motor vehicles, but to identify passersby in the vicinity and to ask them to show their papers. It has also been established that when the bus failed to stop, one of the soldiers accidentally fired on it with the FAL rifle he was carrying, causing the deaths of Ms. Zulema Tarazona Arrieta and Ms. Norma Teresa Pérez Chávez and seriously wounding Mr. Luis Bejarano

"Mapiripán Massacre" v. Colombia, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, paras. 137 and 232.

¹⁵¹ United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E/ST/CSDHA/12 (1991).

¹⁵² I/A Court H. R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, paras. 169 and 170.

Laura. The Commission notes that the two soldiers subsequently fled the scene without rendering assistance and that they did not inform their immediate superior of the incident, even though both were aware that they had that obligation.

133. The Commission notes that according to the first steps taken in investigating the incident, upon hearing the gunshot and being informed that his troops had opened fire on a public transport vehicle, the patrol commander went to the Ate Vitarte police station, where he allowed a National Police specialist to partially disassemble the FAL rifles of the 15 patrol members to identify which of them had been discharged and that the weapon in question was thus identified. However, the Commission notes that the Army did not hand over the discharged rifle, or the other 14 belonging to the patrol members, to the civilian authorities for them to carry out further investigations, and neither does the record indicate that the prosecutor in charge of the case asked the Army to surrender those weapons. The Commission also notes that the prosecutor did not order additional expert testing after being informed of the incident by the National Police in Ate Vitarte on August 10, 1994, such as paraffin nitrate tests on all the patrol members, the reconstruction of the scene of the crime, or forensic mapping.

134. The Commission notes that although on August 17, 1994, Sergeant Second-Class Antonio Evangelista Pinedo acknowledged in his statement to the prosecutor that he had discharged his weapon in the direction of the bus, which was corroborated by Cpl. Arica – Sgt. Evangelista Pinedo's patrol partner – in his statement, the prosecutor did not file a criminal complaint against Sergeant Second-Class Evangelista Pinedo until November 2, 1994, almost three months after the incident, and the Criminal Court did not open committal proceedings until November 25, 1994, almost four months later.

135. In addition, the Commission has seen that although at the commencement of committal proceedings on November 25, 1994, the judge ordered a statement to be taken from the accused and for him to be detained, the Army did not hand him over to the civilian authorities, even though he was under arrest at military facilities from September 13, 1994, to August 29, 1995, when he was released under the terms of the Amnesty Law.

136. The Commission recognizes the efforts made by the State of Peru to investigate and punish the facts of the case at hand, in that finally, on July 23, 2008, almost 14 years after the incident and almost 7 years after reopening the case, the National Criminal Chamber handed down a conviction for homicide and set a compensation payment of 30,000 new soles, jointly paid in later years by the convict and the State (Army) to each of the families of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, together with a payment of 10,000 new soles to Luis Alberto Bejarano.

137. Based on the established facts, the parties' contentions, and the foregoing analysis, the Commission therefore concludes that since a member of the army caused the deaths of Ms. Zulema Tarazona Arrieta and Ms. Norma Teresa Pérez Chávez and wounded Luis Alberto Bejarano Laura on August 9, 1994, during a military operation in which they were not authorized to stop vehicles or use their service weapons, since there was no rationale whatsoever for those actions, and since no thorough investigation was conducted during the first stage of the criminal proceedings, the State of Peru did violate Article 4.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Zulema Tarazona Arrieta and Norma Pérez Chávez, and that it did violate Article 5.1 of the American Convention on Human Rights, in conjunction with Article 1.1 thereof, with respect to Luis Alberto Bejarano Laura. Irrespective of the foregoing, the Commission believes that since the competent courts did convict the perpetrator of those actions and enforce the payment of compensation to the families of the deceased victims and to Alberto Bejarano Laura, as provided for in the judgment of July 23, 2008, the violation was remedied in part.

2. Violation of the right to a fair trial and the right to judicial protection (Articles 8.1 and 25 of the American Convention), in conjunction with the obligation to respect human rights and to adopt domestic legal effects (Articles 1.1 and 2 thereof)

138. Article 8.1 of the American Convention provides that:

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

139. Article 25.1 of the Convention, in turn, reads:

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.

140. The Commission notes that one basic principle in the law of international state responsibility, enshrined in international human rights law, is that a State is internationally responsible for acts and omissions by any of its agencies or agents in violation of internationally established rights, pursuant to Article 1.1 of the American Convention.¹⁵³ In this regard, Articles 8 and 25 of the Convention define the scope of that principle, with reference to the actions and omissions of the domestic judicial organs.¹⁵⁴

141. The Inter-American Court has ruled that:

Under the American Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1.1).¹⁵⁵

142. The Commission notes that although the obligation of conducting an investigation is an obligation of means and not of results, that obligation

[...] must be assumed by the State as its own juridical duty and not as a simple formality condemned beforehand to be fruitless, or as a simple action of individual interests, which depends on the procedural initiative of the victims or their next of kin or of the private contribution of evidentiary elements.¹⁵⁶

¹⁵³ I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149, para. 172; *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 140; I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Merits, Reparations, and Costs, Judgment of January 31, 2006, Series C No. 140, paras. 111 and 112; and I/A Court H. R., *Case of the "Mapiripán Massacre" v. Colombia*, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, para. 108.

¹⁵⁴ I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149, para. 173; *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 141; I/A Court H. R., *Case of López Álvarez v. Honduras*, Merits, Reparations, and Costs, Judgment of February 1, 2006, Series C No. 141, para. 28; and *Case of Herrera Ulloa*, Judgment of July 2, 2004, Series C No. 107, para. 109.

¹⁵⁵ I/A Court H. R., *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006, Series C No. 148, para. 287.

¹⁵⁶ I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 255; I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Merits, Reparations,

143. In the case at hand, the petitioners claim that the State violated the rights enshrined in Articles 8 and 25 of the Convention through its unwillingness to investigate and punish the alleged facts, in that 14 years went by from the start of the criminal proceedings before the regular courts to the finalization of the conviction on July 23, 2008, during which time the case was archived for eight years (from 1995 to 2003) in application of Amnesty Law No. 26492. Regarding the alleged violation of Article 8.1 of the Convention, the petitioners claim that the process was brought before a venue – the military courts – that was not competent to hear the case because it involved a common crime and not a service-related or military offense. They note that it was the military courts that applied the Amnesty Law and that the regular courts upheld that decision, prior to the resolution of the conflict of jurisdiction brought up by the military justice system to resolve which jurisdiction had competence over the proceedings – a conflict that was finally settled on behalf of the regular courts when the proceedings had already been sent to the archive.

144. The State, in turn, initially claimed that the facts of the case occurred during a countersubversive operation, for which reason the command of the First Special Forces Division filed a complaint with the Permanent Court-Martial of the Second Army Judicial District against Sergeant Second-Class Antonio Evangelista Pinedo for the crime of negligent homicide; later, on July 20, 1995, the accused benefited from the Amnesty Law pursuant to the Constitution and special provisions. The State indicated that following the Inter-American Court's adoption of its interpretation judgment in the *Barrios Altos Case* on September 3, 2001, the case was reopened on January 21, 2003. The State claimed that it worked for the Public Prosecution Service's investigation of the matter in order to punish the guilty, and that for that purpose it has an institutional and regulatory framework that allows suspects to be investigated and prosecuted. The State reminds the Commission that its function is not to serve as a "virtual fourth instance" but that its oversight is instead of a "subsidiary, reinforcing, and complementary" nature.

145. Regarding the ability of the system's agencies to analyze domestic proceedings, the Commission notes that according to precedent established by the Inter-American Court:

In order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, [the Commission and the Court] may have to examine the respective domestic proceedings. In light of the above, the domestic proceedings must be considered as a whole and the role of the international court is to establish whether the proceedings as a whole were in accordance with international provisions.¹⁵⁷

146. The Inter-American Court has said that "the execution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by these situations, such as [...] the rights to personal liberty, humane treatment and life."¹⁵⁸

and Costs, Judgment of September 26, 2006, Series C No. 155, para. 75; I/A Court H. R., *Case of the Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2006, Series C No. 148, para. 131; and *Case of the Massacre of Pueblo Bello*, para. 120.

¹⁵⁷ 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, para. 142; I/A Court H. R., *Case of Lori Berenson Mejía v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2004, Series C No. 119, para. 133; I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 25, 2003, Series C No. 101, para. 200; and I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 120.

¹⁵⁸ I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 145.

147. The Commission has ruled that Articles 8.1. and 25 of the Convention establish the State's obligation of providing access to justice with guarantees of legality, independence, and impartiality, within a reasonable period, together with the general obligation of providing effective judicial recourse following the violation of basic rights, including the principle that procedural instruments and mechanisms are to be effective.¹⁵⁹

148. Similarly, the Inter-American Court has ruled that victims of human rights violations and their next-of-kin have the right to expect – and the State, the obligation to ensure – that what befell the alleged victims will be investigated effectively by the State authorities, that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.¹⁶⁰ According to the above, the State's authorities, once apprised of a human rights violation – in particular of the right to life, humane treatment, or personal liberty¹⁶¹ – have the duty of initiating, without delay and on an ex officio basis, a serious, impartial, and effective investigation,¹⁶² which must be completed within a reasonable time.¹⁶³

149. Regarding the reasonableness of the time taken, the Court has ruled that the right of access to justice is not exhausted with the filing of domestic proceedings; instead, inquiries must be pursued through all legal means available and must be oriented toward the determination of the truth.¹⁶⁴ It has further ruled that the State has the duty of ensuring that all steps necessary to learn the truth about what happened and for those responsible to be punished are carried out,¹⁶⁵ involving all institutions of the State in that undertaking.¹⁶⁶ In addition, the Court and the Commission have established, regarding the principle of reasonable time enshrined in Article 8.1 of the American Convention, that three elements must be taken into consideration in determining whether or not the time taken to discharge proceedings is reasonable: (a) the complexity of the matter, (b) the judicial

¹⁵⁹ IACHR, Application from the Inter-American Commission on Human Rights, *Case of Jesús María Valle Jaramillo v. Colombia*, February 13, 2007, para. 118.

¹⁶⁰ I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 103; I/A Court H. R., *Case of Bulacio v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, para. 114; and I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 382.

¹⁶¹ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 100.

¹⁶² I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004, Series C No. 110, para. 146; I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 130.

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

¹⁶⁴ I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101.

¹⁶⁵ I/A Court H. R., *Case of Bulacio v. Argentina*, Judgment of September 18, 2003, Series C No. 100, para. 114; I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 146; I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 382.

¹⁶⁶ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 130; I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 120; and I/A Court H. R., *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C, No. 121, para. 66.

activity of the interested party, and (c) the behavior of the judicial authorities.¹⁶⁷ However, the pertinence of applying these three criteria to determine the reasonableness of the time of the proceedings depends on the circumstances of each case.¹⁶⁸

150. The Commission reiterates that whenever state agents cause a person's death, the State has the obligation to conduct an investigation in order to give a satisfactory and convincing explanation of the events and thereby to rebut allegations over its liability, through appropriate evidence.¹⁶⁹

151. In the following paragraphs, the Commission will analyze the due diligence exercised by the State in the proceedings brought before the domestic courts in connection with the deaths of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez and the injuries inflicted on Luis Alberto Bejarano Laura, in order to determine whether they were pursued in accordance with the right to a fair trial and within a reasonable time, and whether an effective remedy was offered to ensure the rights of access to justice and of redress to the families of the deceased and Mr. Bejarano Laura.

Complexity of the matter

152. The Commission notes, from the established facts, that the very first police formalities conducted on the day of the incident indicated that the crimes were presumably committed by members of the Peruvian Army. The Commission also notes that all the witnesses interviewed by both the police and the prosecution service in August 1994 stated that a soldier had discharged his weapon and that, as a result, Zulema Tarazona and Norma Pérez had been killed and Luis Bejarano had been injured. In addition, on the very day of the incident, the police were able to identify the member of the patrol who fired the shot. Thus, the established facts indicate that around 9:15 p.m. on August 9, 1994, a National Police specialist proceeded to partially disassemble the weapons of the 15 soldiers who made up the military patrol commanded by Sgt. Maj. Antonio Vivas Chapillequen, noting that the FAL rifle belonging to one of the soldiers appeared to have been recently discharged. That same soldier acknowledged in his initial statement to the prosecutor's office, given 13 days after the facts, that he had fired "although it was never his intention to fire on the vehicle," and that he had failed to inform his immediate superior "out of fear that something would happen" to him. This version of events was corroborated on August 17, 1994, by Corporal Arica, who was with the soldier in question at the time of the incident.

153. In addition, the Commission notes that almost 14 years after the incident, the soldier who discharged his FAL rifle against the bus admitted his guilt in the facts, as set down in the judgment of July 28, 2008.

154. Consequently, the Commission believes that the matter at hand was not complex.

¹⁶⁷ IACHR, Report on the Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27 2002, para. 76. See also: I/A Court H. R., *López Álvarez Case*, para. 132; *Case of García Asto and Ramírez Rojas*, para. 166; and *Acosta Calderón Case*, para. 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, para. 35.

¹⁶⁸ I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 171.

¹⁶⁹ 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, para. 108; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 80; I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 273; and I/A Court H. R., *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 120. Similarly, see also: I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 111.

Procedural activity of the petitioners

155. The Commission notes that the petitioners filed a complaint with the Public Prosecution Service on August 15, 1994 – in other words, 11 days after the incident which, by its very nature, should have been investigated on an *ex officio* basis. It also notes that on October 19 and 25, 1994, the parents of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez applied to appear as civil complainants in the proceedings before the regular courts, that their requests were accepted by the 27th Criminal Court of Lima on January 11, 1995, almost three months later, and that they each gave a statement.

156. The Commission notes that two days after Congress passed Law No. 26479 on June 14, 1995, which granted amnesty to military, police, or civil personnel involved in human rights violations committed between May 1980 and the date of the law's enactment, the petitioners applied to the 27th Provincial Criminal Prosecutor of Lima requesting that the Amnesty Law not be applied in the case at hand, on the grounds that it was patently unconstitutional; however, that was not taken into consideration in the Prosecutor's report on the admissibility of the motion of *res judicata* based on the military courts' resolution of June 20, 1995, whereby an amnesty was extended to the accused in this case, or in the resolution upholding the motion of *res judicata* before the regular courts. In addition, the Commission notes that under military law, the petitioners were unable to appear in the proceedings before the military courts.

157. It has also been established before the Commission that it was the petitioners who requested the reopening of the case on April 19, 2001 – that is, almost seven years after the incident – on the basis of the Inter-American Court's judgment in the case of *Barrios Altos v. Peru* of March 14, 2001. That request was declined by the Prosecutor's Office on September 10, 2001, for failing to comply with the legally established procedure for legalizing supranational judgments; subsequently, after the required legal formalities had been met, the case was ordered to be removed from the archive on January 21, 2003: in other words, almost two years after the request.

158. In addition, the Commission notes that once the Prosecutor's Office filed charges against Sergeant Second-Class Evangelista Pinedo on July 14, 2006, and since he had been a fugitive from justice since the reopening of the case in 2003, the petitioners asked the President of the National Criminal Chamber, on three occasions during 2007 and 2008, to update the arrest warrant and to pursue various formalities to locate him, given the lack of activity on the part of the authorities.

159. In addition, the Commission notes that according to the established facts, once the conviction became final on December 24, 2008, the petitioners had to ask the Judge of the Fourth Supraprovincial Criminal Court on four occasions – April 27, during June, August 4, and November 19, 2009 – to order the Peruvian Army to pay the compensation amount in its capacity as responsible third party in order for the redress to be made effective.

160. Consequently, the Commission believes that the petitioners acted in a way compatible with civil complainants as established in Peruvian law at the time and, rather than hindering the process, they worked in pursuit of its conclusion.

Actions of the authorities

161. The Commission has seen, from the facts established in the case at hand that criminal proceedings were brought before the military and regular courts. This was in spite of the military authorities' initial determination that it was not a service-related offense or military crime, in that they identified it as negligent homicide, in that the alleged victims were civilians and not

combatants, and in that the patrol was not authorized to stop vehicles or to open fire, but merely to ask passersby for their papers.

162. The Commission notes that in cases such as the one at hand, in which two people were killed and another injured as a result of the actions of a state agent, it is of particular importance “that the competent authorities adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation.”¹⁷⁰ On this point, the constant jurisprudence of the Inter-American Court holds that “the obligation to investigate a death means that the effort to determine the truth with all diligence must be evident as of the very first procedures”¹⁷¹ and must take into account the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.¹⁷²

163. The Commission notes that according to the established facts, before the criminal proceedings began before the regular courts, a case was brought in connection with the same incident before the military courts on August 31, 1994, and that those proceedings concluded on June 20, 1995, with the resolution of the Supreme Military Justice Council that awarded the accused soldier the benefits of Law No. 26479 (the Amnesty Law), finding that his actions on August 9, 1994, took place as a part of the fight against terrorism. Those proceedings lasted a total of almost ten months.

164. The Inter-American Court has already ruled on the unsuitability of military criminal courts as venues for examining, prosecuting, and punishing cases of human rights violations, and it has ruled that under the democratic rule of law, that jurisdiction must have a restricted and exceptional scope and be designed to protect special juridical interests associated with the functions assigned by law to the military forces. Hence, it should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system,¹⁷³ which was not the case in the incident at hand, which involved the deaths of two civilians and the wounding of a third by a shot fired without any justification whatsoever.

165. As the Inter-American Commission has said, “when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised,” as a result of which it is “impossible to conduct the investigation, obtain the information, and provide the remedy that is allegedly available,” and what occurs is *de facto*

¹⁷⁰ 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, para. 122.

¹⁷¹ I/A Court H. R., *Case of González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 300; *Case of Servellón García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 120; *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 383; and *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 121. Also: United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E/ST/CSDHA/.12 (1991).

¹⁷² I/A Court H. R., *Case of Servellón García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 120; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 5, 2006, Series C No. 150, para. 140; I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149, para. 179; I/A Court H. R., *Case of the Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2006, Series C No. 148, para. 298; and United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E/ST/CSDHA/.12 (1991).

¹⁷³ I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 189; I/A Court H. R., *Case of Palamara Iribarne v. Chile*, Judgment of November 25, 2005, Series C No. 137, para. 124; I/A Court H. R., *Case of the “Mapiripán Massacre” v. Colombia*, Judgment of September 15, 2005, Series C No. 134, para. 202; and I/A Court H. R., *Case of Lori Berenson Mejía v. Peru*, Judgment of November 25, 2004, Series C No. 119, para. 142.

impunity, which “has a corrosive effect on the rule of law and violates the principles of the American Convention.”¹⁷⁴

166. The Commission notes that although the investigation of the facts began before the regular justice system on August 9, 1994, and the committal proceedings began on November 25, 1994, during 1994 and 1995 the Prosecutor assigned to the case never asked the Army to surrender the FAL rifles belonging to the 15 members of the military patrol and, most particularly, the one assigned to Sergeant Second-Class Evangelista Pinedo at the time of the incident, in order to safeguard the evidence; neither did he request other relevant tests to cast light on the incident, such as conducting paraffin tests on all the members of the patrol, reconstructing the scene of the crime, or carrying out forensic mapping.

167. The Commission also notes that during the first stage of the investigation, although statements were taken from the witnesses of the incident and from 2nd Sgt. Evangelista Pinedo and Cpl. Arica, once the proceedings began before the regular courts on November 25, 1994, the military authorities failed to refer, to the prosecutor’s office, both the defendant – who was subject to an arrest warrant and was in detention at a military facility – and the other members of the military patrol for them to give statements, even though the prosecutor’s office made that request on several occasions. In fact, the Army did not notify the prosecutor’s office of the names of the military patrol’s members until August 17, 1995: that is, after the Amnesty Law had been enacted and after the accused had filed the motion of *res judicata*.

168. The Commission notes that the criminal proceedings before the regular courts began on November 2, 1994, when the 27th Provincial Prosecutor filed charges against Sergeant Second-Class Evangelista Pinedo, and concluded on September 11, 1995, when the 27th Provincial Criminal Court of Lima upheld the motion of *res judicata* lodged by the accused, pursuant to the Supreme Military Justice Council’s resolution of June 20, 1995. It also notes that this occurred even though as of that date, the request for recusal filed by the military justice system on November 24, 1994, had not yet been resolved, and that the request was finally rejected at the first instance on December 12, 1995 – in other words, more than a year later, and when the proceedings had been archived more than three months earlier and, as a result of which, the decision had no impact whatsoever on the proceedings. The Commission would like to point out that in the case at hand, the opening of the criminal trial before the military courts was intended merely to hinder the investigation and punishment of the incident, as further indicated by the application of the Amnesty Law.

169. The Commission reiterates that according to the Court’s established precedent, the right of access to justice demands the effective determination of the facts under investigation and, if applicable, the imposition of the corresponding criminal sanctions within a reasonable time: in consideration of the need to uphold the rights of injured parties, a prolonged delay may constitute, in and of itself, a violation of the right to a fair trial.¹⁷⁵

170. The Commission notes that the Court has already analyzed the content and scope of Amnesty Laws Nos. 26479 and 26492 in the case of *Barrios Altos v. Peru*, ruling in its judgment on the merits of March 14, 2001, that they “are incompatible with the American Convention [...] and, consequently, lack legal effect.”¹⁷⁶ Specifically, the Court ruled that “enactment of a law that is

¹⁷⁴ IACHR, Report No. 53/01, Case 11.565, Ana, Beatriz, and Celia González Pérez (Mexico), April 4, 2001.

¹⁷⁵ I/A Court H. R., *Case of Anzaldo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 124.

¹⁷⁶ I/A Court H. R., *Case of Barrios Altos v. Peru*, Merits, Judgment of March 14, 2001, Series C No. 75, paras. 41-44 and operative paragraph 4.

manifestly incompatible with the obligations undertaken by a State Party to the Convention is *per se* a violation of the Convention for which the State incurs international responsibility [and] that given the nature of the violation that amnesty laws No. 26479 and No. 26492 constitute, the decision in the judgment on the merits in the *Barrios Altos Case* has generic effects."¹⁷⁷

171. As a result of the above, the Commission finds that for seven years (from December 12, 1995, to January 21, 2003, when the 16th Provincial Criminal Court of Lima ordered the case removed from the archive), the victims' next-of-kin were denied an effective remedy for asserting their rights. During the time that Amnesty Laws Nos. 26492 and 26479 remained in force, the criminal proceedings brought in connection with this case were archived, making it impossible for the state agent involved therein to be prosecuted by reason of that legislation. Consequently, for as long as they remained in force, those laws were a factor in the delay of the investigations and an obstacle to casting light on the facts, a fault for which responsibility lies with the State.

172. The Commission notes that the petitioners requested that the case be removed from the archive on April 19, 2001, when the Amnesty Laws were ruled incompatible with the American Convention, and the proceedings continued until December 24, 2008, when the first-instance judgment of July 23, 2008, became final. The Commission notes that the investigation conducted by the Prosecutor's Office during this stage in the proceedings was marked by an absence of procedural initiative. Thus, the established facts show that the Prosecutor's Office requested extensions of the committal proceedings deadline on at least four occasions and failed to observe the legally established time frames, as can be seen in the National Criminal Chamber's resolution of May 31, 2006, denying the final extension request lodged by the prosecutor. The Commission notes that when the prosecutor filed charges against Sergeant Second-Class Evangelista Pinedo on July 14, 2006, practically no formalities had been carried out other than those performed prior to the archiving of the case in 1995.

173. The established facts also indicate that after the case was removed from the archive on January 21, 2003, the accused could not be located and that the judicial authorities took no steps to locate him; consequently, on October 3, 2006, the accused was a fugitive from justice, even though on July 14, 2006, the Fourth National Superior Criminal Prosecutor had filed charges against him. In this regard, the Commission notes that according to the established facts, two years after the charges were filed the authorities located the accused by accident, while he was in prison for the alleged commission of another crime. The State did not indicate exactly since when Mr. Evangelista Pinedo had been an inmate of that prison.

174. Pursuant to the analysis offered in this chapter, to the parties' contentions, and to the established facts, the Commission believes that the State did violate the rights enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, with respect to the next-of-kin of Zulema Tarazona Arrieta and Norma Pérez Chávez, and with respect to Luis Bejarano Laura, by failing to conduct the investigation within a reasonable time.

3. Right to humane treatment (Article 5 of the American Convention) with respect to the next-of-kin of Zulema Tarazona Arrieta and Norma Pérez Chávez and with respect to Luis Alberto Bejarano Laura

175. The petitioners claim that the State is responsible for violating Article 5 of the American Convention with respect to the victims' next-of-kin, in that they have suffered greatly from the unexpected loss of their loved ones and from the serious injuries suffered by Luis Alberto

¹⁷⁷ I/A Court H. R., *Case of Barrios Altos v. Peru*, Interpretation of the Judgment of the Merits, Judgment of September 3, 2001, Series C No. 83, para. 18 and operative paragraph 2.

Bejarano Laura as a consequence of the actions of state agents in the case at hand. They claim that the suffering of the victims' next-of-kin was heightened as a consequence of the numerous difficulties encountered during the processing of the criminal trial for the killing and serious injuring of their loved ones, the archiving of the case under the Amnesty Law, and the difficulties in reopening the case and in locating and arresting the suspect. The State offered no arguments on this point.

176. The Commission notes that in accordance with precedent established by the Inter-American Court, "the next of kin of the victims of human rights violations may, in turn, become victims."¹⁷⁸ Thus, the Inter-American Court has found violations of the right to mental and moral integrity of the victims' next-of-kin violated based on the additional suffering they have undergone as a consequence of the specific circumstances of the violations committed against their loved ones¹⁷⁹ and based on the subsequent actions or omissions of state authorities regarding those facts.¹⁸⁰

177. In the case at hand, the Commission has concluded that the State did violate the right to life of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez and the right to humane treatment of Luis Alberto Bejarano Laura, and that, in addition, it did violate the right to a fair trial and to an effective remedy of the deceased victims' next-of-kin and of Luis Alberto Bejarano Laura through the absence of an adequate investigation conducted within a reasonable time after the incident. The Commission notes that although one person was convicted in 2008, and the families of Zulema Tarazona Arrieta and Norma Pérez Chávez, together with Luis Alberto Bejarano Laura, received payment for moral redress, that did not take place in its entirety until almost three years after the judgment was handed down and 17 years after the incident itself.

178. Consequently, the Commission finds that these circumstances caused the next-of-kin feelings of suffering, anguish, insecurity, frustration, and powerlessness vis-à-vis the state authorities,¹⁸¹ and it concludes that the State did violate Article 5.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of Zulema Tarazona Arrieta and Norma Pérez Chávez and with respect to Luis Alberto Bejarano Laura.

V. CONCLUSIONS

179. Based on the legal and factual considerations set out above, the Inter-American Commission concludes that the Republic of Peru is responsible for:

¹⁷⁸ I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 101; I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 160; I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Merits, Judgment of August 18, 2000, Series C No. 69, para. 105; I/A Court H. R., *Case of the Street Children (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, para. 175; and I/A Court H. R., *Case of Castillo Páez v. Peru*, Reparations and Costs, Judgment of November 27, 1998, Series C No. 43, (Art. 63.1 of the American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43, para. 59.

¹⁷⁹ I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 335; *Case of Vargas Areco v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 155, para. 96; and *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 96.

¹⁸⁰ I/A Court H. R., *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of May 26, 2010, Series C No. 213, para. 195.

¹⁸¹ I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C No. 70, para. 160; I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Merits, Judgment of August 18, 2000, Series C No. 69, para. 105; and I/A Court H. R., *Case of Durand and Ugarte v. Peru*, Merits, Judgment of August 16, 2000, Series C No. 68, para. 128.

- Violating the right to life enshrined in Article 4.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Zulema Tarazona Arrieta and Norma Pérez Chávez. The Commission believes that since the competent courts convicted the perpetrator and enforced the payment of moral compensation to the families of the deceased victims, the violation was remedied in part.
- Violating the right to humane treatment enshrined in Article 5.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Luis Alberto Bejarano Laura. The Commission believes that since the competent courts convicted the perpetrator of the victim's injuries and enforced the payment of moral compensation to the victim, the violation was remedied in part.
- Violating the right to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, with respect to the next-of-kin of Zulema Tarazona Arrieta and of Norma Pérez Chávez, and with respect to Alberto Bejarano Laura.
- Violating the right to humane treatment enshrined in Article 5.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the next-of-kin of Zulema Tarazona Arrieta and of Norma Pérez Chávez, and with respect to Alberto Bejarano Laura.

VI. RECOMMENDATIONS

180. In consideration of the foregoing conclusions, and bearing in mind that a final criminal conviction has been handed down in the case and that the State has complied with the payment of moral redress imposed in the judgment of July 23, 2008, as a civilly responsible third party in the incident,

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

1. Make appropriate amends for the human rights violations established in this report, with fair compensation for the 14-year delay in the judicial proceedings, to the next-of-kin of Zulema Tarazona Arrieta and Norma Pérez Chávez, and to Luis Alberto Bejarano Laura.
2. Strengthen its ability to conduce timely and duly diligent investigations of incidents in which members of the armed forces use lethal force.
3. Take the necessary steps to prevent similar events from occurring in the future, in accordance with the duty of prevention and the obligation of guaranteeing the fundamental rights recognized in the American Convention; in particular, through the implementation of human rights programs in its armed forces training schools.