

REPORT No. 120/10¹
CASE 12.605
MERITS
JOE LUIS CASTILLO GONZÁLEZ ET AL.
VENEZUELA
October 22, 2010

I. SUMMARY

1. On March 20, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Episcopal Vicariate of Human Rights of Caracas and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”), which claimed that the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) bore international responsibility for the killing in 2003 of the human rights defender Joe Luis Castillo González and the gunshot wounds sustained by his wife, Yelitze Moreno de Castillo, and their son, the child Luis César Castillo Moreno in the municipality of Machiques de Perijá, State of Zulia.

2. The petitioners argue that the State is responsible for violation of the rights to life, to humane treatment, to a fair trial, to freedom of expression, to freedom of association, of the child, and to judicial protection recognized in Articles 4, 5, 8, 13, 16, 19, and 25 of the American Convention on Human Rights (hereinafter the “American Convention”), in conjunction with Article 1(1) of the same treaty, to the detriment of Joe Luis Castillo González, Yelitze Moreno de Castillo, the child Luis César Castillo Moreno, and their next of kin, based on the conduct of agents of the state and the failure to provide an effective response insofar as investigation of the attacks is concerned. For its part, the State rejected the claims of the petitioners regarding the purported violations of rights protected by the American Convention and argued that the obligation of the State to investigate and punish alleged human rights violations is not an obligation of result but of means.

3. Having analyzed the factual and legal arguments put forward by the parties, the Commission concluded that the State is responsible for violation of Articles 4(1), 5(1), 8(1), 16(1), 19 and 25(1) of the American Convention on Human Rights, as well as for the failure to discharge the general obligation to respect and ensure rights recognized in Article 1(1) of said treaty, to the detriment of Joe Luis Castillo González and his family. The Commission also found insufficient evidence to establish a violation of the right protected in Article 13 of the American Convention.

II. PROCESSING BY THE COMMISSION AFTER REPORT ON ADMISSIBILITY 22/07

A. Processing of Case 12.605

4. After receiving the initial complaint, the Commission decided to open petition 259-06 and start its processing. On March 9, 2007, after the admissibility procedure, the Commission declared the case admissible in *Report 22/07*² in which it declared admissible the alleged violations of the rights to life, to humane treatment, to a fair trial, to freedom of expression, to freedom of association, of the child, and to judicial protection recognized in Articles 4, 5, 8, 13, 16, 19, and 25 of the American Convention, in conjunction with Article 1(1) of the same treaty. On March 26, 2007, the Commission forwarded the report on admissibility to the parties and granted the petitioners two months to present their submissions on merits. In the same communication, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter and it requested them to state their interest in that regard as soon as possible.

¹ Pursuant to Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Luz Patricia Mejía Guerrero, a Venezuelan national, did not participate in the discussion or decision in the present case.

² IACHR, Report on Admissibility 22/07, Joe Castillo et al., March 9, 2007. Annual Report of the IACHR 2007

5. On May 25, 2007, the petitioners requested an extension, which the IACHR granted. On July 13, 2007, the Commission received the petitioners' observations on merits, which were conveyed on August 14, 2007, to the State with a time limit of two months in which to respond. On September 4, 2007, the Commission received a communication from the State requesting a copy of the report on admissibility, which was again sent to the State on October 1, 2007. The Commission reiterated its request for observations to the State on December 26, 2007. On January 22, 2008, the Commission received the brief containing the State's observations on merits, which was relayed to the petitioners for its observations.

6. On February 27, 2008, the Commission received the observations of the petitioners, which were transmitted to the State for its observations. On June 3, 2008, the petitioners submitted additional information, which was forwarded to the State for their information. On September 18, 2008, the Commission requested the petitioners for additional information on the matter under review, which was submitted on October 10, 2008, and relayed to the State for its observations. On June 22, 2010, the Commission took receipt of additional information from the petitioners, which was conveyed to the State for its information. On September 2, 2010, the Commission received additional information from the State, which was forwarded to the petitioners for their information. On September 14, 2010, the Commission received additional information from the petitioners, which was relayed to the State for its information.

B. Processing of precautionary measure MC-619/03

7. On August 28, 2003, the petitioners entered an application for precautionary measures to protect the lives and physical integrity of the survivors of the events of August 27, 2003: Yelitze Moreno de Castillo and the child Luis César Castillo Moreno.

8. On August 29, 2003, the Commission requested the State, in accordance with Article 25(1) of its Rules of Procedure, to adopt precautionary measures to protect the lives and physical integrity of Yelitze Moreno de Castillo and Luis César Castillo Moreno.³ At that time, the Commission requested that the State:

1. Provide the protection necessary to protect the lives and physical integrity of Yelitze Moreno de Castillo and her son Cesar Luis Castillo Moreno, in accordance with Articles 4 and 5 of the American Convention on Human Rights

The Commission also requested the appropriate investigative measures. As of the adoption of the instant report on merits, the precautionary measures remain in force.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners allege that in recent years Venezuela has been through a process of conflict and political polarization as well as a progressive deterioration of certain aspects of the rule of law and democratic institutions, which have seriously impaired effective protection and guarantee of human rights. They claim that the institutional decline has been reflected, *inter alia*, in the undermining of the independence and impartiality of the judiciary and a worsening situation of impunity with respect to human rights violations.

10. The petitioners affirm that in Venezuela there is a context of risk for the work of human rights defenders, in particular in the Machiques area of the State of Zulia. According to the petitioners, those risks stem from three factors: the state of conflict that exists in the Colombian-Venezuelan border region, particularly the border with the State of Zulia, where there have been confrontations between armed groups operating outside the law (guerrillas and paramilitaries) from Colombia, as well as the high number of

³ IACHR. Annual Report 2003, Chapter III, 1. Precautionary measures granted by the Inter-American Commission, par. 67.

Colombians displaced by violence; the social movements with land claims in the area, due principally to the effects of the Land and Agrarian Development Law in Venezuela and the murders of peasants by paid killers; and the especially unprotected situation of human rights defenders as a result of the breakdown of institutions, as well as the growing political polarization that undermines the work and status of human rights defenders in Venezuela. They say that, as a result, human rights defenders have been the target of attacks, harassment, professional opprobrium, and murder.

11. The petitioners note that in the above circumstances, Joe Luis Castillo González and Yelitze Moreno de Castillo carried out their work in defense of human rights from 1999 until 2003, providing assistance to refugees and asylum-seekers on the border between Venezuela and Colombia. They say that in the course of these activities Joe Luis Castillo González implemented projects with the Apostolic Vicariate of Machiques and the Regional Office of the United Nations High Commissioner for Refugees (UNHCR). They also say that Joe Luis Castillo González worked until July 15, 2003, as coordinator of the Office of Social Action and Human Rights of the Apostolic Vicariate of Machiques, where he engaged in provision of legal and material assistance to asylum-seekers, in addition to monitoring their human rights situation; human rights training and awareness raising activities with indigenous communities in the Sierra de Perijá area; and legal assistance for peasants involved in land recovery processes. They also indicate that in the course of his activities, in 2001, Joe Luis Castillo González requested the IACHR to grant precautionary measures on behalf of 52 asylum-seekers,⁴ some of whom were subsequently murdered by suspected Colombian paramilitaries.⁵

12. The petitioners allege that at approximately eight o'clock at night on August 27, 2003, as Joe Luis Castillo González, his wife, Yelitze Moreno de Castillo, and their 18-month-old son, Luis César Castillo Moreno, were driving in a car to their residence in the urbanization of Tinaquillo de Machiques, Zulia State, two persons riding on a motorcycle drew level with them and, after slowing down to confirm the identity of the vehicle's occupants, discharged 13 shots at them.

13. Joe Luis Castillo González died as a result of nine bullet wounds. Yelitze Moreno de Castillo presented gunshot wounds with entrance and exit to the left forearm, the left side of her thorax, and the left shoulder. The child, Luis Cesar Castillo Moreno, presented gunshot wounds with entrance and exit to his left forearm, both shoulders, and the left side of his thorax. Both survived after receiving medical attention in the city of Maracaibo.

14. The petitioners say that after being made aware of the incident, the CICPC (Criminal Investigation Police) pursued certain inquiries to clarify the facts and identify the perpetrators and their partners in crime. The petitioners say that on August 28, 2003, the CICPC sent the body of Joe Luis Castillo González to the Office of the Chief Medical Examiner of Maracaibo for a medical examination and legal autopsy. That office concluded that Joe Luis Castillo González died from "acute anemia as a result of injuries to vascular and visceral organs (lungs and liver) caused by gunshots."

15. At the same time, the petitioners mentioned that on September 1, 2003, a call was made to the office of the Apostolic Vicariate of Machiques in which threats were made against its coordinator, Limay Basabe, and against Monsignor Ramiro Díaz Sánchez. They say that the Machiques CICPC Office was notified of these facts on September 2, 2003. They say that although the Office of the 20th Public Prosecutor based in Machiques, State of Zulia, whose duty it was to pursue the investigation, carried out a number of steps to

⁴ MC-176/01, Manuel de Jesús Pinilla Camacho *et al.* Precautionary Measures granted on March 12, 2001. See <http://www.cidh.oas.org/medidas/2001.eng.htm>.

⁵ According to information supplied by those who requested the precautionary measure, two beneficiaries of the measure, Manuel de Jesús Pinilla Camacho and his son's Nelson Pinilla, were murdered on November 4, 2001. They say that according to information from the authorities, both were members of the Camilo Cienfuegos Front of the National Liberation Army (ELN for the Spanish) and had been involved in the extortion of cattle ranchers. Other information collected suggested that both were members of the 33rd Front of the Revolutionary Armed Forces of Colombia (FARC for the Spanish). Record in Case MC-176/01, Manuel de Jesús Pinilla Camacho *et al.* Precautionary Measures granted on March 12, 2001.

collect evidence, it failed to conduct a witness examination procedure with Yelitze Castillo de Moreno and ballistics comparisons tests.

16. They say that on November 28, 2006, the Office of the 20th Public Prosecutor presented its decision to conclude by which it ordered the archive of the investigation opened by the Machiques CICPC Office against as-yet unknown persons because the proceedings had produced insufficient evidence to bring charges under Article 315 of the Organic Code of Criminal Procedure (COPP); in other words, in the three years and 10 months that the investigation lasted none of those responsible was identified. The petitioners argue that since the start of the investigation the criminal authorities have been in possession of information regarding the alleged responsibility of a Venezuelan paramilitary group in the killing of Joe Luis Castillo González.

17. They say also that the authorities were aware that as a result of his work Joe Luis Castillo González would have known persons with links to armed actors in the Colombian conflict. In this context, on September 5, 2003, the officials in charge of the investigation interviewed a co-worker of Joe Luis Castillo González, who stated that a person by the name of Luis Ernesto Castro Vélez, who worked as a volunteer on the Cáritas Machiques staff was known to be an activist in an armed group and was subsequently murdered. The petitioners claim that the officials in charge of the investigation had said that they had received information regarding the alleged responsibility of Colombian paramilitaries in the killing of Joe Luis Castillo González, but that the investigation had not produced results.

18. The petitioners claim that Yelitze Moreno de Castillo was not informed of the decision which ordered the investigation archived. Accordingly, in a letter of June 7, 2007, she requested the Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas for information on the status of the investigation and was verbally informed of its archive. The petitioners say that in view of the foregoing, Yelitze Moreno de Castillo presented a written communication to the Office of the Prosecutor General in which she requested a copy of the order to close the investigation. In reply, by an official letter dated June 20, 2007, the Office of the 20th Public Prosecutor with Full Criminal Jurisdiction in the Judicial District of the State of Zulia sent her a copy of the notification of the archive of November 28, 2006.

19. The petitioners argue that the State has a series of special obligations where human rights defenders are concerned, which are to recognize and ensure their work; allow them to exercise it freely; prevent violations of their rights; provide them with protection in view of their particular exposure to risk, and investigate acts that violate their human rights.

20. The petitioners allege that the State violated Article 4(1) of the American Convention, in conjunction with Article 1(1) of the same Treaty, by its failure to fulfill its duty to respect and ensure rights, specifically its duty to prevent and investigate the violation of the right to life of Joe Luis Castillo González.

21. In first place, as regards the duty of prevention, the petitioners argue that, as a human rights defender, Joe Luis Castillo González provided assistance to asylum-seekers who entered Venezuela through the border area of the State of Zulia and also to peasants with land claims. They also argue that Joe Luis Castillo González carried out this work in the State of Zulia in a context where Colombian paramilitary groups were active and had murdered several asylum-seekers on whose behalf Joe Luis Castillo González had sought precautionary measures from the Inter-American Commission. They also mention the activities of hired killers suspected of murdering several peasant's and agrarian movement leaders, which was a matter of public knowledge. In this regard, they argue that the State knew, or should have known, of the real danger to the life of Joe Luis Castillo González in light of the above-described situation, and yet it failed to take reasonable steps within its power to protect him and prevent the attack on his life.

22. Second, as regards the duty to investigate, the petitioners argue that the State has not carried out a meaningful and effective investigation to identify those responsible for the acts. They say that in the days following the attack, the investigators were aware of the existence of a paramilitary group in Machiques that is said to have operated in partnership with agents of the Venezuelan State, allegedly with the acquiescence of local authorities, and that the killing of Joe Luis Castillo González had been attributed to them.

They argue that the investigators had had information about the names of the members of the paramilitary group and the vehicle in which they moved about in Machiques. They say that the investigators even followed the vehicle and interviewed a member of the paramilitary group as well as a member of the National Guard who collaborated with said group. However, the petitioners say that, despite that information, they excluded from their lines of investigation the individualization of State agents who could have been implicated in the attack.

23. The petitioners also claim that the State violated Article 4(1) of the American Convention to the detriment of Yelitze Moreno de Castillo and Luis César Castillo Moreno, given that in the attack of August 27, 2003, their lives had been seriously endangered and the fact that they were not killed was a matter of chance.⁶

24. The petitioners charge that the State violated Articles 5(1) and 5(2) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Yelitze Moreno de Castillo and Luis César Castillo Moreno. According to the petitioners, the responsibility of the State is based on three factors: first, the lack of an effective investigation of the acts that caused injuries to the physical and psychological integrity of Yelitze Moreno de Castillo and Luis César Castillo Moreno; second, the suffering endured by Yelitze Moreno de Castillo and the next of kin of Joe Luis Castillo González as a result of the impunity that continues to surround the facts; and, third the changes in the conditions of existence and life plans of Yelitze Moreno de Castillo and Luis César Castillo Moreno.

25. In this regard, the petitioners argue that the failure to investigate the events and the impunity in which the facts remain create a propitious climate for a repetition of acts of this nature to the detriment of Yelitze Moreno de Castillo and the child Luis César Castillo Moreno. In addition, the incident coupled with the anxiety and suffering caused by the absence of an effective response from the authorities and the failure to investigate and punish those responsible has harmed their psychological and emotional integrity. According to the petitioners, in 2004, Yelitze Moreno de Castillo had to be referred for psychiatric treatment after presenting panic symptoms and generalized anxiety, accompanied by physical disorders, as a result of the fears associated with collecting information and hypotheses as to the facts. They say that Yelitze Moreno de Castillo still evinces symptoms associated with post-traumatic stress, such as flashbacks of the violence of the incident, fear of a repetition, nightmares, difficulty sleeping and relaxing, and other symptoms that have impeded her healthy development. They allege that this situation has also affected her son and immediate relatives.

26. The petitioners say that the child Luis César Castillo Moreno, who was one and a half years old at the time of the incident, reacts with panic to the sound of detonations and with anxiety to loud vehicle noises, especially those of motorcycles, and displays regressive conduct characterized by clinging to his mother and care-givers as well as inability to sleep alone, among other behaviors.

27. According to the petitioners, the State violated Article 13 of the American Convention, in connection with Articles 4(1) and 1(1) thereof, to the detriment of Joe Luis Castillo González. The petitioners claim that the murder of Joe Luis Castillo González was prompted by his work as a human rights defender and, therefore, his killing constituted a means of deprivation of his right to freedom of thought and expression, as well as that of Venezuelan society as a whole. They also hold that the killing of Joe Luis Castillo González impaired the work of the Vicariate of Machiques in reporting human rights violations, and to that extent constituted, in turn, a form of indirect coercion of the right to freedom of expression of the human rights defenders that worked at the Vicariate.

28. The petitioners also assert that the State violated Article 16 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Joe Luis Castillo González. According to the petitioners, given that the murder of Joe Luis Castillo González was motivated by his work in defense of human rights, it constituted a violation of the right to freedom of association. They also argue that his killing

⁶ The petitioners refer to I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C, No. 163, pars. 124 and 128. Petitioners' brief on merits received at the IACHR on July 13, 2007.

had an intimidatory effect on the other human rights defenders who worked at the Apostolic Vicariate of Machiques, so much so that in the wake of the events, the staff were collectively given leave and the Vicariate's Social Action Office was closed, which put an end to its work in the area of assistance to refugees and human rights violations.

29. Finally, the petitioners argue that the State is responsible for violation of Articles 8(1) and 25(1) of the American Convention, in connection with Article 1(1) thereof, by neglecting its duty to act with due diligence in the investigation and failing to carry out said investigation in a reasonable time. They also assert that the State failed to ensure an effective remedy under domestic law for the alleged victims and their next of kin.

30. As to the reasonable time rule, the petitioners argue that the criminal investigation into the facts was archived during the preparatory phase, which lasted three years and 10 months, and that the investigation had failed to lead to the identification, apprehension, and punishment of either the intellectual or the material authors of the crime.

31. As regards the procedural activity of the interested party, the petitioners say that Yelitze Moreno de Castillo has continually pursued, both personally and through her representatives, measures to assist in the elucidation of the facts and identification of the culprits. They say that Yelitze Moreno de Castillo took part in various evidentiary procedures, has furnished relevant information to the investigation, requested the performance of forensic tests aimed at identifying those responsible, and called for celerity in the investigation. As for the conduct of the judicial authorities, the petitioners argue that there was excessive delay in ordering the performance of forensic tests and collection of other evidence necessary to identify the perpetrators, which, they say, shows a lack of diligence in moving the proceedings forward.

32. Finally, with respect to the complexity of the matter the petitioners claim that although the case is complex to some degree, the Office of the Attorney General had basic evidence in its possession since the start of the investigations, including an artist's sketch of the alleged author of the gunshots made with a description supplied by Yelitze Moreno de Castillo, the projectiles found at the scene of the crime, and the fact that the Office of the Attorney General became aware on September 10, 2003, of the existence of a paramilitary group operating in Machiques that was thought to have carried out the killings of several persons -including Joe Luis Castillo González- and that it knew the names and/or aliases of the group's members.

33. They also allege that in September 2003, the Office of the Attorney General learned of the existence of a list of names of persons considered by alleged Colombian paramilitaries as "targets for elimination." They say that the Office of the Attorney General had access to witnesses, such as the alleged paramilitary Emer Humberto Terán Méndez, who had expressly mentioned that the killing of Joe Luis Castillo González was committed by presumed Colombian paramilitaries with the support of Venezuelan local authorities. The petitioners claim, however, that despite being in possession of the requisite evidence, the Office of the Attorney General took no steps to determine the veracity of the account of Mr. Emer Humberto Terán Méndez, nor pursued a line of investigation to identify the physical perpetrators and architects of the murder of Joe Luis Castillo González.

34. As to due diligence in the investigations, the petitioners argue that the State violated its duty by its failure to take steps to confirm the truth of the testimony given by Emer Humberto Terán Méndez and the member of the National Guard Edgar Alfonso González, who said with regard to Emer Humberto Terán Méndez that "these guys are *paracos* [paramilitaries] hired by various cattle ranchers in the area; the mayor Toto Márquez knows about it, and in fact and his drivers ferry these guys to and from different places; they have come to cleanse Machiques of all the lowlives; they are scary guys because they don't respect anybody." The petitioners argue that these testimonies could have given rise to a line of investigation that would have made it possible confirm the identity of those, agents of the State included, who took part in the killing of Joe Luis Castillo González; however, no steps were taken to identify and charge those responsible.

B. The State

35. The State rejects the claims of the petitioners that in recent years there has been an increase in acts of aggression against human rights defenders and holds that the State has respected and ensured the human rights of all Venezuelans, including Venezuelan and foreign NGOs that work in the country.

36. The State says that it is aware of the activities of Colombian paramilitaries and hired killers in the area, for which reason over the past nine years the State has strengthened security measures through increased police and military vigilance in the border zones adjoining the Colombian state. It also mentions that a strategic command (CEO) composed of five theaters of operations (TOs), and around 100 border protection bases have been set up. It says that the TOs are military zones with personnel trained to carry out special operations and that they act in coordination with state intelligence agencies, the Office of the Attorney General, and the police. The State mentions that TO2 covers the border municipalities in the States of Zulia and Táchira with 20 border protection bases and 14 bases situated between communities. It says that in spite of the fact that two new military theaters of operations were set up in Apure and Zulia, and that crime has been successfully reduced, it is impossible to prevent incidents such as the murder of Joe Luis Castillo González, which it regrets and repudiates.

37. As regards the criminal investigation opened into the killing of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and Luis César Castillo Moreno, the State argues that its obligation to investigate and punish alleged human rights violations is a guarantee of the means but not of the outcome. In that regard, it notes that what is appropriate is for the State to adopt serious and diligent measures designed to elucidate the facts. It also argues that States cannot be expected to produce results when faced with complex or unclear circumstances that warrant a longer investigation time than others.⁷

38. The State argues that the internal conflict in the Republic of Colombia directly affects the inhabitants of Venezuela. It says that the petitioners' characterization of the situation of violence in the Colombian-Venezuelan border region does not accurately reflect the violent conflict being waged in Colombia nor aptly represent the gravity of the threat that it poses for Venezuela. In that connection, the State says that the Colombian conflict spilled over into Venezuela 50 years ago and that there has been an increase in the activities of paramilitary groups, common criminals, and drug traffickers from Colombia since President Hugo Chavez Frías took office in 1999. It also says that a number of Venezuelan landowners began to hire Colombian paramilitaries as paid killers to murder campesino leaders who sought to put into effect the Land and Agrarian Development Law. The State argues that incursions for political purposes of Colombian paramilitaries have even been recorded in the capital of the country.

39. As to the petitioners' argument that the duty to ensure the right to life of Joe Luis Castillo González entailed a positive obligation to take a series of steps to prevent attacks on his life, the State holds that neither the alleged victim, nor the petitioners submitted any request or application for protection, or reported any possible acts of harassment of Joe Luis Castillo González prior to his murder. Therefore, the State cannot be considered to have acted with negligence when it was unaware of any real and immediate danger, as recognized by the case law of the Inter-American Court, to the right to life of Joe Luis Castillo González.

40. As for the submissions of the petitioners regarding an alleged violation of the right to freedom of association, the State argues that the acts that violate said right are the prevention of the creation, constitution, or voluntary membership of different organizations, or the implementation of rules and measures against the members of any legally constituted organization, which, it says, has not been demonstrated in this particular instance. In addition, the State notes that the Inter-American Court has ruled that "the impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16(1) of the Convention when such violation arises from the victim's legitimate exercise of the right to freedom of association," and that in the instant case there was no violation of the right

⁷ Note AGEV/000080 from the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, January 21, 2008, p. 5.

to life attributable to the State and, therefore, a violation of the rights to freedom of association cannot be established.

41. Finally, the State dismisses as unfounded the arguments of the petitioners on the alleged violations of the rights to life, humane treatment, a fair trial, freedom of thought and expression, freedom of association, and judicial protection, protected in Articles 4(1), 5(1), 5(2), 8(1), 13(1), 16, and 25(1) of the American Convention, in connection with Article 1(1) thereof.

IV. ANALYSIS ON THE MERITS

A. Established Facts

1. Context

1.1 The situation in the border zone of the State of Zulia

42. The State of Zulia is in the far northeast of Venezuela where it borders the Colombian departments of La Guajira, Cesar and Norte de Santander. In its concluding observations on Venezuela in 2001, the UN Human Rights Committee said that it was greatly concerned

at the treatment of persons seeking asylum or refuge in Venezuela, especially those entering the country from Colombia, chiefly because of the lack of national legislation establishing selection criteria for asylum seekers even though there are bilateral arrangements between Colombia and Venezuela on such matters. The Committee is also concerned about the possible breach of the principle of *non refoulement*.⁸

43. According to the organization *Programa Venezolano de Educación – Acción en Derechos Humanos* (PROVEA), since July 1999 different waves of Colombians have been displaced as a result of the conflict in Colombia.⁹ It also notes that in four years the number of persons that moved from Colombia to bordering countries, such as Ecuador, Panama, and Venezuela, doubled from 11,700 in 1999 to 21,800 in 2002.¹⁰ It mentions that in Venezuela this situation is particularly serious on the border with the Colombian departments of Norte de Santander, Arauca, and La Guajira.¹¹

44. PROVEA says that in March and April 2003 several groups of people moved toward the Río Oro zone (Perijá Mountains) in the State of Zulia, fleeing attacks and/or fighting between guerrillas and paramilitaries: the first group numbered 200, and the second and third groups, 600 and 1,000, respectively.¹² The Office of the Ombudsman of Colombia stated that in 2003, 3,669 Colombians sought refuge in Venezuela.¹³

⁸ Human Rights Committee, Concluding Observations of the Human Rights Committee: Venezuela, 26 April 2001, CCPR/CO/71/VEN, Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.VEN.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.VEN.En?Opendocument).

⁹ Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report 2000. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/00_derecho_al_asilo_y_al_refugio.pdf

¹⁰ CODHES. Monitoring 2002. Border Area. Colombia, 02, pp. 1-2 in Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/03_derecho_al_asilo_y_al_refugio.pdf

¹¹ CODHES. Monitoring 2002. Border Area. Colombia, 02, pp. 1-2 in Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/03_derecho_al_asilo_y_al_refugio.pdf

¹² *El Universal*, editions of April 3, 2009, and April 5, 2009, in Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/03_derecho_al_asilo_y_al_refugio.pdf

¹³ Office of the Ombudsman of Colombia, Report to the Congress of the Republic 2003, Petitioners' brief on merits received at the IACHR on July 13, 2007.

45. According to press reports in April 2003, in addition to mass displacements, also reported in the border zone with Venezuela were armed conflicts between Colombian guerrillas and paramilitaries, as well as between those illegal armed groups and the Venezuelan army.¹⁴ The State has said that it is aware of the activities of Colombian paramilitaries and hired killers in the area, for which reason it has strengthened security measures through increased police and military vigilance in the border zones adjoining the Colombian State.¹⁵ Specifically, over the last nine years two new Theaters of Military Operations were established in Apure and Zulia.¹⁶

1.2 Land claim movements and the agrarian reform process in Venezuela

46. The Land and Agrarian Development Law came into force in Venezuela on November 13, 2001. Its aim is "a fair distribution of wealth and a democratic and participatory system of strategic planning of land ownership and development in all agrarian activity."¹⁷ To implement the above law the government issued Decree 2.292 which provided that

[...] Those autonomous institutes, State-owned enterprises, and any other persons and in which the aforementioned entities have a share of more than 50% of the capital stock, and State foundations, shall transfer to the National Land Institute title of those lands in their possession that are not necessary for the accomplishment of their purposes and which have agricultural potential.

To that end, the government authorized the National Land Institute (INTI) to expedite the procedures

[...] for placing said lands, as well as those under its ownership, in the possession of the organized campesino communities spread throughout the national territory.

The National Land Institute shall proceed to publish Agrarian Maps which shall certify those campesino groups that express their will to organize for productive purposes and to proceed, forthwith, to cultivate and develop said lands.¹⁸

47. According to PROVEA, in November 2002 the INTI, in the framework of the land distribution process, took control of purportedly publicly owned lands that were in private hands. The organization indicated that in "the State of Zulia 20 properties were appropriated after INTI officials conducted technical and land records studies and determined that the persons who claimed to own them did not have title over them."¹⁹ In that context, a number of violent land occupations occurred that heightened tensions between owners' associations and peasants.²⁰

¹⁴ *El Mundo*, editions of March 12, 2003, and March 18, 2003, in Petitioners' brief on merits received at the IACHR on July 13, 2007.

¹⁵ Note AGEV/000080 from the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, January 21, 2008, p. 5.

¹⁶ Note AGEV/000080 from the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, January 21, 2008, p. 13.

¹⁷ Explanatory Statement of the Land and Agrarian Development Law. Petitioners' brief on merits received at the IACHR on July 13, 2007.

¹⁸ Article 1 of Decree 2.292 on Transfer of Title to the INTI of Lands of the State, State Entities, and State-owned Enterprises that are not necessary for the operations thereof. Available at http://www.inti.gob.ve/index.php?option=com_content&task=view&id=25&Itemid=35.

¹⁹ Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org/ve/proveaweb/wp-content/uploads/03_derecho_a_la_tierra.pdf.

²⁰ Alleged by the petitioners in their brief on merits received at the IACHR on July 13, 2007. Not contested by the State. In its Annual Report October 2002 - September 2003 PROVEA said, "While it is true that the number of forcible occupations has not been significant and does not fundamentally affect the right to property of those who possess large or medium-sized tracts of land, the few that have occurred have increased the tensions that have existed for years because of the inequitable distribution of land. Furthermore, the associations that represent the cattle ranchers and landowners accused the national government of encouraging land occupations and using the Armed Forces to back the invaders. [...] For his part, in the state of Zulia, Luis Elías Martínez, Vice President of the Machiques Cattle Ranchers Association, said 'We are not

48. The State says that at the time of the events in the instant case, "some Venezuelan landowners began to hire Colombian paramilitaries as hired killers to murder campesino leaders who sought to put into effect the Land and Agrarian Development Law."²¹ For its part, PROVEA said

killings of campesino leaders occurred in various States in the country. The use of hired killers was the most common way of acting against the leaders. According an investigation carried out by the National Agrarian Coordinator, 20 campesino and indigenous leaders were murdered from January to September 2003. [...] Raúl Yépez Chirinos, Deputy Director of the Criminal Investigation Police (CICPC), reported that 56 campesinos were murdered in the States of Zulia, Apure, Barinas, Guarico, Portuguesa, and Táchira, although he did not state how long they had been keeping a record. In addition to several leaders and campesino organizations, he said that landowners were involved in those acts, in particular in the Zulia region where it was corroborated that they hired paid killers to murder several people.²²

49. Furthermore, in its Annual Report for 2006 the Commission noted that it has been "following with concern the situation of impunity in cases of contracted or paid killings [*sicariato*] perpetrated against campesinos or persons involved in land claims."²³

1.3 The situation of human rights defenders in Venezuela

50. In its 2003 Report on the Situation of Human Rights in Venezuela, the Commission said that it had been "receiving a considerable volume of complaints about different kinds of attacks and intimidatory acts against individuals working among the inhabitants of Venezuela to protect basic rights and promote their observance."²⁴ The Commission also said,

Incidents in which human rights workers or human rights organizations are harassed occasionally escalate into attacks on defenders themselves; however, there has also been a series of cases in which human rights defenders have been targeted by vague forms of intimidation, by means of veiled threats perceivable in seemingly insignificant incidents that upset day-to-day routines and, seen as unusual or strange by the persons involved, convince them that they are being watched. One form of such intimidation is to have unidentified individuals make threats against places where human rights defenders work or to loiter in the vicinity.²⁵

51. In that report, the IACHR noted that the violence and harassment aimed at human rights defenders worsened with the institutional crisis that affected Venezuela in 2002.²⁶ Subsequently, in its 2005

going to let them take the land from us like the Barinas producers [...]. They will have to kill us first, one by one, because we are going to unite and are prepared to defend, with arms if need be, what our grandfathers built in the greatest hardship and adversity more than 100 years ago." Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org/ve/proveaweb/wp-content/uploads/03_derecho_al_asilo_y_al_refugio.pdf.

²¹ Note AGEV/000080 from the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, January 21, 2008, pp. 12 and 13.

²² Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2002 - September 2003. Available at http://www.derechos.org/ve/proveaweb/wp-content/uploads/03_derecho_a_la_tierra.pdf.

²³ IACHR. Annual Report 2006, Chapter IV, Venezuela, par. 178. Available at <http://www.cidh.oas.org/annualrep/2006eng/Chap.4f.htm>.

²⁴ IACHR. Report on the Situation of Human Rights in Venezuela. Chapter II. B. The Situation of Human Rights Defenders. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003, par. 232. Available at <http://www.cidh.oas.org/countryrep/Venezuela2003eng/chapter2.htm#B>.

²⁵ IACHR. Report on the Situation of Human Rights in Venezuela. Chapter II. B. The Situation of Human Rights Defenders. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003, par. 233. Available at <http://www.cidh.oas.org/countryrep/Venezuela2003eng/chapter2.htm#B>.

²⁶ IACHR. Report on the Situation of Human Rights in Venezuela. Chapter II. B. The Situation of Human Rights Defenders. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003, par. 234. Available at <http://www.cidh.oas.org/countryrep/Venezuela2003eng/chapter2.htm#B>.

Annual Report,²⁷ 2006,²⁸ 2007,²⁹ and 2008,³⁰ the Commission expressed its ongoing concern with respect to acts of harassment, institution of judicial proceedings, threats, attacks against lives and physical well-being, smear campaigns, and public discrediting by government officials of the work of human rights defenders in Venezuela.

52. Finally, in its report entitled *Democracy and Human Rights in Venezuela* the Commission mentioned,

Venezuelan human rights organizations have noted with concern that murders and executions of human rights defenders have been recorded for the first time in Venezuela's democratic history. The Vicariate of Human Rights of Caracas has documented six cases of violations of the right to life of human rights defenders in Venezuela between 1997 and 2007.³¹

The IACHR mentioned that one of the six murders was the landmark case of Joe Luis Castillo González.³²

2. The work of Joe Luis Castillo González as a human rights defender

53. Joe Luis Castillo González was a lawyer who had been living since 1999 in the city of Machiques, State of Zulia, with his wife, Yelitze Moreno de Castillo, a teacher.³³ Upon moving to the city of Machiques Joe Luis Castillo González and his wife began work on human rights protection and education projects at the Social Action Office of the Apostolic Vicariate of Machiques.³⁴ In his work as a human rights

²⁷ In its annual report for 2005 the IACHR mentioned, "In 2005 harassment and intimidation of human rights defenders continued. The Commission was informed that judicial proceedings were instituted against human rights defenders, whose purpose is allegedly to silence their reports. In addition, high-level officials continued to question the legitimacy of their work. The IACHR expresses its grave concern over the impact these statements could have on the security of human rights defenders." IACHR. Annual Report 2005. Chapter IV. Venezuela OEA/Ser.L/V/II.124 Doc. 7. February 27, 2006, pars. 337 *et seq.* Available at <http://www.cidh.oas.org/annualrep/2005eng/chap.4e.htm>.

²⁸ In its annual report for 2006 the IACHR regretted "that it received information in 2006 denouncing the existence of acts of harassment and intimidation through discourse belittling human rights defenders and groups or individuals who are critical of the policies or objectives of the government" and it called on the state to prevent a repeat of these situation. IACHR Annual Report 2006. Chapter IV. Venezuela OEA/Ser.L/V/II.127 Doc. 4 rev. 1. March 3, 2007, pars. 211, 216 and 219. Available at <http://www.cidh.oas.org/annualrep/2006eng/Chap.4f.htm>.

²⁹ In its annual report for 2007, the IACHR said that it "continued to receive information regarding the situation of human rights defenders in Venezuela. The following are some of the more alarming developments, [...]: i) the increasing number of threats and attempts on the life and physical well-being of human rights defenders; and ii) other obstacles human defenders face, such as public discrediting by officials of the State, accusations to the effect that they are receiving funds from abroad, and the difficulty they have when attempting to get access to information. IACHR. Annual Report 2007. Chapter IV. Venezuela. OEA/Ser.L/V/II.130 Doc. 22 rev. 1. December 29, 2007, pars. 232 *et seq.* Available at <http://www.cidh.oas.org/annualrep/2007eng/Chap.4f.htm>.

³⁰ In its annual report for 2008, the IACHR said that it "continued to receive troubling information about the situation of human rights defenders in Venezuela. In this section, the Commission will discuss situations that warrant special attention, in the following order: a) life and physical well-being; b) public statements that discredit the work of human rights defenders; c) the institution of legal action, and d) administrative and financial controls. IACHR. Annual Report 2008. Chapter IV. Venezuela. OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, pars. 346 *et seq.* Available at <http://www.cidh.oas.org/annualrep/2008eng/Chap4.f.eng.htm>.

³¹ Vicariate of Human Rights of Caracas. Report on the Situation of Human Rights Defenders in Venezuela 2007, p. 38, in IACHR, *Democracy and Human Rights in Venezuela*. Chapter V.B. Obstacles to the work of defending human rights. OEA/Ser.L/V/II. Doc. 54. December 30, 2009, par. 623. Available at <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPVENG.htm#CHAPTER%20V>.

³² IACHR. *Democracy and Human Rights in Venezuela*. Chapter V.B. Obstacles to the work of defending human rights. OEA/Ser.L/V/II. Doc. 54. December 30, 2009, pars. 624 and 625. Available at <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPVENG.htm#CHAPTER%20V>.

³³ Psychological and Social Assistance Unit, COFAVIC, interview with Yelitze Lisbeth Moreno Cova, June 7, 2007. Annex 2 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

³⁴ Psychological and Social Assistance Unit, COFAVIC, interview with Yelitze Lisbeth Moreno Cova, June 7, 2007. Annex 2 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

defender Joe Luis Castillo González served as General Coordinator of the Social Action Office of the Apostolic Vicariate of Machiques and, in that capacity, provided humanitarian and legal assistance to Colombian citizens who entered Venezuela as refugees. He also worked in defense of campesinos and indigenous communities in the State of Zulia.³⁵ For her part, Yelitze Moreno de Castillo worked in the human rights education and training program of the Apostolic Vicariate of Machiques.³⁶

54. Specifically, as Coordinator of the Social Action and Human Rights Office of the Apostolic Vicariate of Machiques, Joe Luis Castillo González, carried out fieldwork in the area of the frontier between the State of Zulia and Colombia, in particular in the Oro River zone where a group of displaced Colombian citizens who had moved into Venezuela had settled.³⁷ Joe Luis Castillo González also provided legal counsel to peasants who were in dispute with landowners over the ownership of land, some of whom were selectively murdered in circumstances yet to be clarified.³⁸

55. Prior to the attempt on his life Joe Luis Castillo González had told co-workers at the Vicariate that he was very much afraid and that he was going to request the Office of the United Nations High Commissioner for Refugees (UNHCR) to arrange better security for him because of the risks he ran in his work.³⁹

56. On July 15, 2003, Joe Luis Castillo González and his wife, Yelitze Moreno de Castillo, resigned from the Social Action Office of the Apostolic Vicariate of Machiques owing to the situation in the zone and in order to seek financial stability and opportunities for their family.⁴⁰ At the time of the facts, Joe Luis Castillo González was in the process of handing over his position.⁴¹

³⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106 and communication from the Community Education Center (CECODAP) to the Office of the Prosecutor General of the Republic, September 3, 2003, pp. 121-122. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

³⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106. Annex to the petitioners' brief received at the IACHR on June 3, 2008, and Psychological and Social Assistance Unit, COFAVIC, interview with Yelitze Lisbeth Moreno Cova, June 7, 2007. Annex 2 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

³⁷ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Luz Marina Márquez Frontado, September 5, 2003, pp. 47 and 48. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

³⁸ Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2001 - September 2002. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/006_derecho_a_la_tierra.pdf. Luis Mora Durán, a campesino leader and member of the *Patria para Todos* [Homeland for All] party was murdered on January 10, 2001; Wilmer Avendaño, a leader of the majority of the South of Lake Maracaibo land committees was slain at his home on February 2, 2001; Licinio Lago, a member of the *Movimiento Quinta República (MVR)* [Fifth Republic Movement] was assassinated on October 30, 2001; Pedro José Doria, a doctor and agrarian leader was murdered on August 25, 2002. Some weeks later Dr. Doria's neighbor, Carlos Parra, was murdered, as was an agrarian leader named Armando García. Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2001 - September 2002. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/006_derecho_a_la_tierra.pdf in briefs from the petitioners received at the IACHR on July 13, 2007 and June 22, 2010. Not contested by the State.

³⁹ Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State. Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Luz Marina Márquez Frontado, September 5, 2003, pp. 47 and 48. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁰ Psychological and Social Assistance Unit, COFAVIC, interview with Yelitze Lisbeth Moreno Cova, June 7, 2007. Annex 2 of the petitioners' brief on merits received at the IACHR on July 13, 2007. See also Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Luz Marina Márquez Frontado, September 5, 2003, pp. 47 and 48, and record of interview with Besabe Pérez Linmay del Carmen, September 5, 2003, p. 49. Not contested by the State.

⁴¹ Petitioners' briefs on merits received at the IACHR on July 13, 2007. Not contested by the State.

3. The attack on Joe Luis Castillo González, Yelitze Moreno de Castillo, and Luis César Castillo Moreno

57. On August 27, 2003, at approximately 7:30 p.m., Joe Luis Castillo González, his wife, Yelitze Moreno de Castillo, and the child, Luis César Castillo Moreno, who was one and a half years old at the time,⁴² were in their car on their way home in Urbanization Tinaquillo II, Municipality of Machiques de Perijá, State of Zulia. Joe Luis Castillo González was driving. Two unidentified men riding on a motorcycle drew level with the car on the driver's side and stopped to examine the occupants of the vehicle.⁴³ A few meters further on, the motorcycle stopped again and the men began to shoot several times at the vehicle's occupants, whereupon Joe Luis Castillo González lost control of the car and it collided with the sidewalk.⁴⁴

58. Joe Luis Castillo González was taken to Hospital *Rural Dos* of Machiques, where he was admitted without vital signs.⁴⁵ At 9:25 p.m. that same day, August 27, 2003, a team from the Criminal Investigation Police (CICPC) conducted an inspection of the corpse at the morgue of Machiques General Hospital.⁴⁶ On August 28, 2003, the chief medical examiner performed a medical examination and legal autopsy on the corpse of Joe Luis Castillo González and concluded that the cause of death was “[a]cute anemia as a result of injuries to vascular and visceral organs (lungs and liver) caused by gunshots.”⁴⁷

59. Yelitze Moreno de Castillo and the child Luis César Castillo Moreno had sustained gunshot wounds and were taken to the Clinical Hospital of the city of Maracaibo in order to be operated on surgically.⁴⁸ Yelitze Moreno de Castillo presented with entrance and exit gunshot wounds to the left forearm, the left side of her thorax, and to the left shoulder⁴⁹ and remained hospitalized in the Clinical Hospital for around one week.⁵⁰

4. Consequences and after-effects of the killing of Joe Luis Castillo González on his workplace and family

⁴² Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁴³ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106 and case summary, p. 24. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, August 27, 2003, pp. 7 and 8. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, certificate of inspection of corpse, August 27, 2003, p. 5. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁷ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Medical Examiner's Report 9700/1685040, September 16, 2003, pp. 68 and 69. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁸ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, case summary, p. 24 and police report, August 27, 2003, pp. 7 and 8. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁴⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, August 27, 2003, pp. 7 and 8. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁵⁰ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

60. As regards the effects of his killing on his former workplace, on September 2, 2003, the manager of the Apostolic Vicariate of Machiques, Luz Marina Márquez Frontado, told an inspector of the Machiques CICPC Office that on September 1, 2003 a man called the office and made threats against the Vicariate's director, Linmay del Carmen Basabe Pérez and against Monsignor Ramiro Díaz Sánchez, Vicar of Machiques.⁵¹ Furthermore, in a communication dated September 3, 2003, the organization CECODAP notified the Office of the Prosecutor General of the Republic of the threats made against the Vicariate on September 1, 2003.⁵²

61. Following the killing of Joe Luis Castillo González and the threats of September 1, 2003, the Apostolic Vicariate of Machiques announced collective leave and the closure of the Social Action Office. Two months after the closure, the Vicariate redirected the work of the Social Action Office toward activities to strengthen community work and excluded assistance to refugees and human rights violations. In this regard, Monsignor Ramiro Díaz Sánchez said,

[...] the way things are we decided to resume activities on October 1. The rest of the staff who worked at the Vicariate with Joe are dismayed and afraid [...] if this climate continues we must stop or introduce limits, so the work is going to be restricted because it's difficult to do things when you work under pressure, stress, and without freedom.⁵³

62. On September 30, 2003, the Director General for Legal Services of the Office of the Ombudsman requested the Human Rights Department of the Office of the Attorney General to adopt protective measures to safeguard the life and integrity of Linmay del Carmen Basabe Pérez.⁵⁴ However, in her statement given on April 14, 2004, to the 20th Prosecutor's Office, Linmay del Carmen Basabe Pérez did not request protection measures for her person.⁵⁵

63. As regards the family, following the murder of Joe Luis Castillo González, his wife, Yelitze Moreno de Castillo, and his son, Luis César Castillo de Moreno, moved their residence to the home of the sister of Yelitze Moreno de Castillo in Santa Lucía del Tuy, State of Miranda, where they stayed for the duration of the former's recovery. Subsequently, mother and son moved in to the maternal home of Joe Luis Castillo González.⁵⁶

64. Following their relocation, Yelitze Moreno de Castillo found work as a fourth-grade elementary school teacher near their home, which provided her with a living to support herself and her son. She currently works as an administrative employee in the studies control section.⁵⁷ In February 2008, Yelitze Moreno de Castillo began psychological treatment at the Psychological and Social Assistance Unit of the organization *Comité de Familiares de las Víctimas de los sucesos ocurridos entre el 27 de febrero y los primeros*

⁵¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, September 2, 2003, p. 44. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁵² Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, communication from the Community Education Center (CECODAP) to the Office of the Prosecutor General of the Republic, September 3, 2003, 2003, pp. 121-122. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁵³ Petitioners' brief on merits received at the IACHR on July 13, 2007.

⁵⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter DGSJ/2172-03 from the Director General for Legal Services of the Office of the Ombudsman, September 20, 2003, p. 132. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁵⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, interview with Linmay del Carmen Basabe Pérez, April 14, 2004, p. 145. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁵⁶ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁵⁷ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

días de marzo de 1989 (COFAVIC), in the course of which she was diagnosed with depression that varied from moderate to light and symptoms associated with posttraumatic stress.⁵⁸ Yelitze Moreno de Castillo still admits to feelings of sadness and loneliness associated with the loss of her husband and with the ensuing changes in her physical health, adaptation to a new job, limitation of social activities, and feelings of vulnerability and insecurity because of the failure to identify those responsible for her husband's murder.⁵⁹

65. Furthermore, the child Luis César Castillo Moreno displayed behavioral changes, such as difficulty sleeping, irritability, clinging, fear, and reactions to stimuli connected with the event, such as loud noises from detonations, motorcycles, etc. Those symptoms have lessened over time; however, with the acquisition of language and increased capacity for expression through drawing and imagination, he has begun to ask questions about the incident and his father.⁶⁰

5. The investigation of the murder of Joe Luis Castillo González and the injuries caused to Yelitze Moreno de Castillo and Luis César Castillo Moreno

66. On August 27, 2003, the Chief of Machiques CICPC Office informed the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia that, under Article 284 of the Organic Code of Criminal Procedure (COPP),⁶¹ that he had opened a criminal proceeding *ex officio* for a crime against persons to the detriment of Joe Luis Castillo González, Yelitze Moreno de Castillo, and Luis César Castillo Moreno.⁶²

67. On August 27, 2003, CICPC officers began initial investigation procedures, such as, two inspections of the scene of the crimes where eight 9 mm cartridges were found,⁶³ an inspection of the corpse of Joe Luis Castillo González,⁶⁴ the removal of the corpse,⁶⁵ and an interview of Bárbara Paternina Montoya, who said that she heard five shots fired.⁶⁶ On August 28, 2003, CICPC officers interviewed Rafael José Velazco Acosta⁶⁷ and Juan Carlos Morales.⁶⁸ Furthermore, Machiques CICPC Office requested the Zulia Office to

⁵⁸ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁵⁹ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁶⁰ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁶¹ Article 284 of the COPP: "Police investigation. If notice is received by the police authorities they shall inform the Office of the Attorney General within 12 hours and shall only carry out such procedures as are necessary and urgent. Necessary and urgent procedures are those designed to identify and locate the principals and other parties to the offense as well as to secure the objects connected with its perpetration.

⁶² Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter 9700-218 from Machiques CICPC Office, August 27, 2003, p. 1. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶³ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, inspection 0243, pp. 3, 7, and 8. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, inspection 0244, p. 4. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of removal of corpse, p. 5. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Bárbara Paternina Montoya, August 27, 2003, pp. 10 and 11. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶⁷ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Rafael José Velazco Acosta, August 28, 2003, p. 12 and record of interview with Juan Carlos Morales, p. 19. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

instruct expert officials attached to the Criminalistics Unit to carry out a hematology test and scan on the vehicle in which Joe Luis Castillo González and his family were traveling.⁶⁹ This was carried out the same day, as were planimetry and ballistics trajectory calculations at the scene of the attack.⁷⁰ The CICPC also requested the chief of that office's Auto Unit to carry out an expert inspection and appraisal and of Joe Luis Castillo González' vehicle.⁷¹

68. On August 28, 2003, the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia ordered an investigation opened for the crimes of intentional aggravated homicide⁷² of Joe Luis Castillo González and thwarted intentional aggravated homicide⁷³ of Yelitze Castillo de Moreno and Luis César Castillo Moreno.⁷⁴

69. The Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia was in charge of the investigation and responsible for conducting the inquiries that it deemed pertinent to clarify the facts and responsibilities. Furthermore, on August 29, 2003, the Common Crimes Department of the Office of the Prosecutor General of the Republic ordered the Office of the 20th State Prosecutor, either jointly with or separately from the Office of the 11th State Prosecutor with full nationwide jurisdiction to take part in the inquiry into the murder of Joe Luis Castillo González.⁷⁵ That order was vacated on October 7, 2003, after the

⁶⁸ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Juan Carlos Morales, August 28, 2003, pp. 10 and 11. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁶⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, memorandum of August 28, 2003, p. 13. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷⁰ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, memorandum of August 28, 2003, p. 14. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, memorandum of August 28, 2003, p. 15. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷² Article 407 of the Criminal Code of the Bolivarian Republic of Venezuela: "Anyone who intentionally kills another person shall be punished with 12 to 18 years of imprisonment." Article 408(1) of the Criminal Code of the Bolivarian Republic of Venezuela: "The following penalties shall be applied in the below-listed cases: 1. 15 to 25 years of imprisonment for anyone who, with malice aforethought or for trifling or ignoble reasons, or in the course of perpetrating any of the offenses provided in Articles 453, 454, 455, 457, 460, and 462 of this Code, commits homicide by means of poison, fire, drowning or any other of the offenses provided in Title VII of this book."

⁷³ Article 407 of the Criminal Code of the Bolivarian Republic of Venezuela: "Anyone who intentionally kills another person shall be punished with 12 to 18 years of imprisonment." Article 408(1) of the Criminal Code of the Bolivarian Republic of Venezuela: "The following penalties shall be applied in the below-listed cases: 1. 15 to 25 years of imprisonment for anyone who, with malice aforethought or for trifling or ignoble reasons, or in the course of perpetrating any of the offenses provided in Articles 453, 454, 455, 457, 460, and 462 of this Code, commits homicide by means of poison, fire, drowning or any other of the offenses provided in Title VII of this book." Article 80 of the Criminal Code of the Bolivarian Republic of Venezuela: "In addition to a consummated offense and omission, also punishable are the attempted commission and thwarted commission of a crime. Attempted commission exists when with the purpose of committing a crime someone has initiated its execution by the appropriate methods but, for reasons beyond their control, has not done everything necessary to consummate it." Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, order to open the investigation, August 28, 2003, p. 22. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, order to open the investigation, August 28, 2003, p. 22. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter DDC-R-38816, August 29, 2003, p. 57. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

Office of the Prosecutor General assigned follow-up of the case to the Human Rights Protection Department.⁷⁶ Furthermore, on September 8, 2003, the Office of the Prosecutor General instructed the Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas⁷⁷ to assist in these investigations.⁷⁸

70. On August 29, 2003, an interview was held with Yerson José Rodríguez López, who witnessed the incident.⁷⁹ On August 29, 2003, a forensic examination was performed on Yelitze Moreno de Castillo and the child Luis César Castillo Moreno.⁸⁰

71. On September 2, 2003, interviews were held with José Héctor Chavarriaga and Isabel Muñoz de Torres Meira, who did not witness the events but heard the gunshots, as well as with Xavier Ricardo Moran Ferrer who went to the aid of the alleged victims.⁸¹ Also, on September 2, 2003, an interview was held with Luz Marina Márquez Frontado, who stated that on September 1, 2003, a man called the office and made threats against the Vicariate's director, Linmay del Carmen Basabe Pérez and against Monsignor Ramiro Díaz Sánchez, Vicar of Machiques.⁸² On September 5, 2003, interviews were held with the employees of the Apostolic Vicariate of Machiques Luz Marina Márquez Frontado and Linmay del Carmen Basabe Pérez, as well as with a collaborator of the Vicariate, Fanny Machado Beltrán; they described the work done by Joe Luis Castillo González.⁸³

72. In her interview Luz Marina Márquez Frontado was asked the following about the security situation of Joe Luis Castillo González:

⁷⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter DDC-R-47140, October 7, 2003, p. 138. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷⁷ The IACHR did not have access to a copy of the record of the case processed by Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, despite having requested said record from both parties (from the State on December 26, 2007, and from the petitioners on September 18, 2008). The IACHR knows for a fact that the petitioners requested copies of the records of the investigation in the domestic jurisdiction on August 24, 2005 and September 25, 2008, and that, to date, these have not been released.

⁷⁸ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106. The record of the interview indicates that the order was given to the Office of the 83rd Public Prosecutor by official letter DPDF-7-F-4446-03-6687-03-40479 of September 8, 2003. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁷⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Yerson José Rodríguez López, August 29, 2003, pp. 34 and 35. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁰ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, August 29, 2003, p. 38. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with José Héctor Chavarriaga, Isabel Muñoz de Torres Meira, and Xavier Ricardo Moran Ferrer, September 2, 2003, pp. 42, 43, and 44. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸² Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, September 2, 2003, p. 44. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸³ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interviews with Luz Marina Márquez Frontado, Linmay del Carmen Basabe Pérez, and Fanny Machado Beltrán, September 5, 2003, pp. 47-51. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

Please state if the aforementioned Joe Castillo ever received any threats from any individual, civil servant, or organization as a result of the work that he did? ANSWER: Not that I am aware; however, we were twice visited by the DISIP to check that we worked. Yeli[tze] also talked to them.⁸⁴

In addition, Linmay del Carmen Basabe Pérez was asked the following in an interview:

Please state if you were ever aware that, as a result of his work, the lawyer Joe Luis Castillo made enemies who might have intended to do him harm. ANSWER: I have no knowledge of that and what is more, the work that we do there is humanitarian and does no harm to anyone.⁸⁵

73. On September 10, 2003, Assistant Police Chief Rafael Viloria attached to Machiques CICPC recorded the following in a police report:

[...] I received a telephone call from a citizen who identified himself as Juan Palacios [...] he feared reprisals and told me the following: that, in relation to the recent murders in this area, including that of the lawyer Joe Castillo [...] a number of individuals belonging to a group of paramilitaries from the border city of Cúcuta had taken part in same, and of these he mentioned the following [...] Giovanni [...], Paton [...] Charris or el Sobrino [...] Emer, alias Parabólica [...] said individuals travel in a burgundy Cherokee coupé pickup, license plate ACV-84G [...] this person also informed me that said individuals move around among the population of Machiques.⁸⁶

74. Yelitze Moreno de Castillo was interviewed on September 10, 2003,⁸⁷ and based on the information she supplied, the CICPC made an artist's sketch of one suspect.⁸⁸ In that interview, Yelitze Moreno de Castillo was asked if

[...] in the days before the above-described incident she or her husband had received any type of threat or felt that they were being followed? RESPONSE: No, the only call we received was three years ago to a cellular phone that my husband had, whose number I do not recall, where we were told not to be *pajúos* [slang: informers] and to stop defending human rights. My husband took the call and told me that it was a man's voice. He did not ask who he was speaking to but just said the above. [...] Please state if in his work your husband Joe Castillo ever had an important case that might have put his life or the lives of his family at risk. RESPONSE: No. [...] Please state if to your knowledge in the years that you and your husband worked at the OASVAM offices there was ever any theft of materials or instruments belonging to that institution? RESPONSE: Not as far as I know.⁸⁹

⁸⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Luz Marina Márquez Frontado, September 5, 2003, pp. 47 and 48. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Linmay del Carmen Basabe Pérez, September 5, 2003, p. 49. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, September 10, 2003, p. 83. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁷ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁸ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, artist's sketch, September 10, 2003, p. 100. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁸⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 103 and 105. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

75. On September 11, 2003, the CICPC carried out a number of inquiries to verify the information received on September 10, 2003, by Assistant Chief Rafael Viloría. The investigators managed to obtain more details about the ownership of the vehicle reportedly used by the persons allegedly involved in the murder of Joe Luis Castillo González. Accordingly they mounted a surveillance operation on the vehicle and saw three individuals get into it;⁹⁰ however, the individuals were not identified. On September 16, 2003, a forensic examination was made of the aforesaid vehicle and it was found that the security and chassis serial numbers were false.⁹¹ However, the record in the possession of the Commission does not suggest that any additional procedures were carried out.

76. In the course of the investigations the CICPC took statements from an alleged member of a paramilitary group called Emer Humberto Terán (or Román) and the national guardsman Edgar Alfonso González. Emer Humberto Terán (or Román) told the Investigations Chief of Machiques CICPC,

[...] all I can say is that the guerrillas are never going to be legalized. That man was on our target list [...] in all, there are around 20 persons on the list who are elimination targets because they were opposed to honest people in the cattle ranching business in the area [...] the mayor of this city [Machiques] is knows about their presence as do several leaders of Gadema [Machiques Cattle Ranchers] [...] their main contacts are with an intelligence unit in the National Guard in this area.⁹²

Edgar Alfonso González also referred to Emer Humberto Terán (or Román) and said

[...] these guys are *paracos* [a slang term for paramilitaries] hired by various cattle ranchers in the area; the mayor [...] knows about it, and in fact and his drivers ferry those guys to and from different places; they have come to cleanse Machiques of all the lowlifes; they are scary guys because they don't respect anybody.⁹³

77. On September 17, 2003, Yelitze Moreno de Castillo examined photographs of the possible physical perpetrators of the act.⁹⁴

78. On September 21, 2003, a report was published in the press about the incident which suggested that, because of his presumed ties to members of Colombian guerrilla groups, Joe Luis Castillo González had been murdered by Colombian paramilitary units which, with financing from members of the local community and a kind of list, were cleansing the zone by assassinating everyone linked to the guerrillas. Specifically, the information in the press suggested that Joe Luis Castillo González had provided lodging in his home for two Colombian citizens known as “el Cabilla” and “el Enfermero,” who were linked to Colombian guerrillas and that when the former discovered their connection to the Revolutionary Armed Forces of Colombia (FARC) he tried to distance himself from said persons. They say that the two supposed guerrillas were subsequently murdered.⁹⁵

⁹⁰ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police reports, September 11, 2003, pp. 84-88. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State. “We spotted the aforementioned vehicle and, therefore, decided to set up surveillance in order to see who got into it. After two hours we saw three adult males climb into the vehicle and set off to an unknown destination.”

⁹¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, imprint of vehicle, September 16, 2003, pp. 91-93. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

⁹² CICPC Investigation Report, September 15, 2003. Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁹³ CICPC Investigation Report, September 15, 2003. Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁹⁴ Office of the 83rd Public Prosecutor, Record of September 17, 2003, Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁹⁵ *El Universal* newspaper, September 21, 2003. Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, page not numbered Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

79. On October 7, 2003, Romilio Segundo Troconis was interviewed about his business connections with Joe Luis Castillo González.⁹⁶ According to the Office of the 20th Public Prosecutor, on November 20, 2003, the regional newspapers published information that the individuals who had allegedly executed Joe Luis Castillo González had been killed in a clash with security forces in Machiques de Perijá.⁹⁷

80. On January 21, 2004, Yelitze Moreno de Castillo examined photographs of the possible physical perpetrators of the act.⁹⁸ On June 22, 2004, the Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas requested the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia to conduct a ballistics comparison test of the eight spent bullet cartridges and lead fragments recovered from the scene of the crime with the firearms captured from the citizens who died in the confrontation of November 20, 2003, and who might be linked to the case; collect photographs while alive of those allegedly involved in the killing of Joe Luis Castillo González so that Yelitze Moreno de Castillo might examine them; and collect the list captured from the citizens killed in the clash with the police in November 2003.⁹⁹

81. On August 20, 2004, Machiques CICPC sent the Office of the 20th Public Prosecutor a photograph of Orlando Antonio Peña Luzardo,¹⁰⁰ who was arrested for a separate incident from the murder of Joe Luis Castillo González and injuries to Yelitze Moreno de Castillo and their son Luis César Castillo Moreno, and from whom firearms were seized. On November 2, 2004, the Office of the 83rd Public Prosecutor for Metropolitan Caracas requested the Office of the 20th Public Prosecutor for the State of Zulia to forward “photographic prints of [...] Orlando Suárez [...] so that they might be duly examined by the victim, citizen Yelitze Moreno de Castillo [...].”¹⁰¹

82. The IACHR notes that on April 21, 2005, the organization *Red de Apoyo por la Justicia y la Paz* [Justice and Peace Support Network], which represented Yelitze Moreno de Castillo at the domestic level, requested a ballistics comparison test of the projectiles removed from the body of Joe Luis Castillo Moreno with the weapons captured from Orlando Antonio Peña Luzardo.¹⁰²

83. On August 10, 2005, the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia forwarded to the Office of the 83rd Public Prosecutor for Metropolitan Caracas a color photograph of Orlando Antonio Peña Luzardo, who is under investigation in case G-694.743, as well as the list captured from the citizens killed on November 20, 2003, who are under investigation in case 24-F20-1179-

⁹⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, record of interview with Romilio Segundo Troconis, October 7, 2003, pp. 140 and 141. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

⁹⁷ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter ZUL-F20-3038-2004, November 15, 2004, p. 153. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

⁹⁸ Office of the 83rd Public Prosecutor, Record of September 17, 2003, Petitioners’ brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

⁹⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter DF-83-903-2004 from the 83rd Public Prosecutor, June 22, 2004, p. 148. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰⁰ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter 1452, August 20, 2004, pp. 150 and 151. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter DF-83-1978-2004, November 2, 2004, p. 152. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰² Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter Red67/2005, April 21, 2005, p. 175. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

03.¹⁰³ That same day the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia requested the Police Chief for the Zulia Region of the CICPC, State of Zulia, to appoint ballistics experts to conduct a forensic examination, examination of marks left by erased serial numbers in metal, and ballistics comparisons of the firearms captured from the citizens killed in the confrontation of November 20, 2003, with the bullets that struck Joe Luis Castillo González and were recovered by the CICPC.¹⁰⁴ Furthermore, the Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia requested the Police Chief for the Zulia Region of the CICPC, State of Zulia, to appoint ballistics experts to conduct a forensic examination and ballistics comparisons of the firearms captured from Orlando Enrique Peña Luzardo with the bullets that struck Joe Luis Castillo González and were recovered by the CICPC.¹⁰⁵

84. There is nothing in the record in the possession of the Commission to suggest that a photographic examination of Orlando Antonio Peña Luzardo by Yelitze Moreno de Castillo was conducted; that photographs while alive of the citizens who were killed in the confrontation of November 20, 2003, were collected so that Yelitze Moreno de Castillo might carry out an examination, or that the ballistics comparison tests were performed.

85. On November 28, 2006, the Office of the 20th Public Prosecutor, invoking Article 315 of the Organic Code of Criminal Procedure (COPP),¹⁰⁶ presented its decision to conclude and ordered the archive of the proceedings in the investigation opened by the Machique CICPC Office against as-yet unknown persons “on the grounds that they were insufficient to bring charges, without prejudice to their reopening should new facts come to light [...]”¹⁰⁷

86. According to the petitioners, Yelitze Moreno de Castillo was not informed of the decision which ordered the investigation closed. Accordingly, in a letter of June 7, 2007, she requested the Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas for information on the status of the investigation and was verbally informed of its closure.¹⁰⁸ In view of said information, Yelitze Moreno de Castillo presented a written communication to the Office of the Prosecutor General in which she requested a copy of the order to archive the investigation. In reply, by an official letter dated June 20, 2007,¹⁰⁹ the Office of the 20th Public Prosecutor with Full Criminal Jurisdiction in the Judicial District of the State of Zulia sent Yelitze Moreno de Castillo a copy of the notification of archive of November 28, 2006, accompanied by an official letter in which the Office of the 20th Public Prosecutor said that for the purposes of effective notification of the victim, the representative of the prosecutor's office agreed to deliver the notification to the attorney Isbely Chacón of the Apostolic Vicariate of Machiques on November 28, 2006.¹¹⁰ For its part, the

¹⁰³ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter ZUL-F20-1774-05, August 10, 2005, p. 204. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter ZUL-F20-1776-05, August 10, 2005, p. 206. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter ZUL-F20-1780-05, August 10, 2005, p. 208. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁰⁶ Article 315 of the COPP: “Case Closure by the State Prosecutor. Where the outcome of an investigation is insufficient to bring charges, the Office of the Attorney General shall order the proceedings closed, without prejudice to their reopening should new facts come to light. The victim in the proceeding shall be notified of this measure. All provisional measures issued against the accused in whose favor the decision to close is made shall cease. The victim may at any juncture request the reopening of the investigation, indicating the relevant investigative procedures.”

¹⁰⁷ Notice, November 28, 2006. Annex 3 of Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁰⁸ Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁰⁹ Official letter ZUL-20-1579-2007, June 20, 2007. Annex 3 of Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹¹⁰ Notice, November 28, 2006, and Official letter ZUL-20-1579-2007 of June 20, 2007. Annex 3 of Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

State informed the Commission that Yelitze Moreno de Castillo had been notified of the prosecutor's decision to archive the case on June 26, 2006.¹¹¹

B. LEGAL ANALYSIS

1. Rights to life, humane treatment, and of the child (Articles 4(1), 5(1) and 19 of the American Convention)

87. Article 4(1) of the American Convention provides:

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.

88. For its part Article 5(1) of the American Convention provides, "Every person has the right to have his physical, mental, and moral integrity respected."

89. Article 19 of the Convention stipulates:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

90. The Commission has taken it as proven that Joe Luis Castillo González was murdered on August 26, 2003, after being attacked with firearms while in his automobile in the company of his wife, Yelitze Moreno de Castillo, and their one-and-a-half-year-old son, Luis César Castillo Moreno, who were also shot and wounded. The parties do not dispute the abridgment of the rights to life and humane treatment as a result of the attack. Nor is there any dispute over the involvement of private citizens in the attack. The dispute centers on whether or not the events are imputable to the Venezuelan State.

91. In that regard, the petitioners argue that Venezuela breached its duty to prevent violations, bearing in mind the danger to which, they say, Joe Luis Castillo González was exposed as a human rights defender in the area where he was working. For its part, the Venezuelan State holds that it has adopted measures to increase security in the zone but that events such as this are unavoidable. The State notes that Joe Luis Castillo González had not requested protection measures nor reported any threats against him.

92. Based on the arguments of the parties, as well as on information in the record, the Commission finds that analyzing the alleged responsibility of the State is most complex, given that there are different versions as to the background, motives, and even actors involved in the attack. Thus, for instance, there is evidence that could connect the events with Joe Luis Castillo González's work as a human rights defender in regard both to land claims and to provision of assistance to refugees. Furthermore, the State has acknowledged the violence and danger in the area as result of its proximity to the Colombian border and the activities of paramilitary groups. With regard to this point, in the domestic proceeding reference was made to the existence of a list of targets of paramilitary groups which included the name of Joe Luis Castillo González because of the view that he had helped to shelter guerrillas. It has also been mentioned that paramilitary groups have a number of links to landowners in the area and to State authorities, who were aware of their criminal activities and even collaborated with them.

93. The Commission finds that the linking of certain of these elements to the facts in the instant case could lead to different hypotheses about the responsibility of the State in the death of Joe Luis Castillo González and the injuries to his wife and son. Therefore, based on the evidence contained in the record, the available information as to context, and the investigations carried out at the domestic level, the Commission

¹¹¹ Official letter DFGR-VFGR-DGAP-DPDF-16-PRO-130-7447-07 for the Prosecutor General of the Republic. Attached to Note AGEV/000080 from the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, January 21, 2008.

will analyze the facts in the light of: i) the duty to prevent violations; ii) indicia of direct involvement of agents of the State; and, iii) the investigations at the domestic level.

1.1 The duty to prevent violations

94. The Inter-American Court has found with respect to the right enshrined in Article 4 of the American Convention that

[...] the right to life plays a key role in the American Convention as it is the essential corollary for realization of the other rights.¹¹² When the right to life is not respected, all the other rights lack meaning. The States have the obligation to ensure the creation of such conditions as may be required to avoid violations to this inalienable right and, specifically, the duty of avoiding attempts against it by the agents of the State.¹¹³ Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.¹¹⁴

95. With respect to fulfillment of the duty to ensure rights, the case law of the organs of the Inter-American system indicates that said duty includes aspects, such as prevention, protection, and investigation. When these requirements are not met, States may engage their international responsibility for violation of the right to life.

96. Specifically, the Commission has indicated that failure to afford protection may occur when a State leaves a person unprotected and, therefore, facilitates violation of their human rights in open disregard of the duty of prevention.¹¹⁵

97. The Court has often reiterated the criteria to be taken into account in evaluating compliance with the duty of prevention and protection as a means to ensure a right. In the words of the Court:

it is evident that a State cannot be held responsible for any human rights violation committed between private individuals within its jurisdiction. Indeed, a State's obligation of guarantee under the Convention does not imply its unlimited responsibility for any act or deed of private individuals, because its obligation to adopt measures of prevention and protection for private individuals in their relations with each other is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger. In other words, even though the juridical consequence of an act or omission of a private individual is the violation of certain human rights of another private individual, this cannot be attributed automatically to the State, because the specific circumstances of the case and the discharge

¹¹² I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 237; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 120; I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, par. 65.

¹¹³ I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Judgment of July 4, 2007. Series C No. 166, par. 79; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, par. 64; I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, par. 125; I/A Court H.R., *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, par. 83; See also *United Nations Human Rights Committee*, General Comment 6/1982, para. 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 6 (1994); *United Nations Human Rights Committee*, General Comment 14/1984, para. 1 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 18 (1994).

¹¹⁴ I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 75; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 130; I/A Court H.R., *Case of the Indigenous Community Sawhoyamaya v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, par. 152.

¹¹⁵ IACHR. Report 24/98. Joao Canuto de Oliveira. Brazil. April 7, 1998, par. 53.

of such obligation to guarantee must be taken into account.¹¹⁶

98. Similarly, the Commission has disaggregated those criteria as follows: i) the existence of a certain risk; ii) the State's awareness of that risk; iii) the particular situation of the persons affected; and, iv) reasonable possibilities of prevention.¹¹⁷

99. In the instant case, the Commission finds nothing in the record to suggest that Joe Luis Castillo González was the target of threats or intimidation prior to his death. Nor was there any public denunciation or report to the State authorities of a situation of danger or of a need for prevention measures. In these circumstances the Commission finds that in the instant case it cannot be said that a danger existed of which the State was, or should have been, aware with respect to Joe Luis Castillo González and his family.

100. Although it is true that the State recognized a broader situation of violence in the border zone of the State of Zulia, where paramilitary groups and hired killers operate, this broad context alone is not sufficient to attribute to the State responsibility for violation of the duty of prevention. Nor is it possible to impute responsibility to the State for breach of that duty based solely on the climate of harassment of the activities of human rights defenders in Venezuela without factoring in other circumstances. Furthermore, while there is evidence that Joe Luis Castillo González was under observation because of his work and was a target for certain groups in the area, that evidence came to light after the investigation was opened. There is no evidence whatsoever to suggest that the appropriate State authorities had any knowledge of this particular situation before the attack such that they would have been in a position to take reasonable steps to prevent it.

101. Based on the above, the Commission finds that it lacks sufficient evidence to attribute to the State responsibility for violation of the duty of prevention where the killing of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and the boy Luis Cesar Castillo Moreno are concerned.

1.2 Evidence of direct or indirect involvement of State agents and the duty to investigate

102. In the *Case of the Massacre of Pueblo Bello*,¹¹⁸ the Court determined that the general obligation of the State to ensure the human rights recognized in the Convention for every person under its jurisdiction, as recognized in Article 1(1) thereof, taken in conjunction with the right to life under Article 4 of said treaty, gives rise to the obligation to carry out an effective official investigation of in the event of extrajudicial, illegal, arbitrary, or summary executions. The Court also held that in such cases, when the deed is brought to their attention, the State authorities have the obligation to initiate, *ex officio* and without delay, a genuine, impartial and effective investigation,¹¹⁹ regardless of whether it was committed by agents of the State or private citizens.

¹¹⁶ I/A Court H.R., *Case of González et al. ("Cotton Field")* Judgment of November 16, 2009, par. 280; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140. par. 123. See also ECHR, *Case of Kiliç v. Turkey*, Judgment of 28 March 2000, paras. 62 and 63, and ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, paras. 115 and 116.

¹¹⁷ IACHR, Application of the IACHR, *Case of Luisiana Ríos et al.*, April 20, 2007, paras. 226-228. Available at <http://www.cidh.oas.org/demandas/12.441%20Luisiana%20Rios%20y%20otros%20Venezuela%2020%20abril%202007%20ENG.pdf>.

¹¹⁸ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 142.

¹¹⁹ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 143; and I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 145.

103. Thus, the Court has also held that “the conduct of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are otherwise affected or annulled by those situations, such as the right to life, personal liberty and personal integrity.”¹²⁰

104. The Commission finds that in the instant case the duty to investigate should have been observed with particular diligence and assiduity given the existence of evidence of connivance or collaboration on the part of State agents in the murder of Joe Luis Castillo González.

105. The Commission notes that in the course of the investigation into the killing of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and Luis César Castillo Moreno, the CICPC took statements from the alleged paramilitary group member Emer Humberto Terán (or Román) and the member of the National Guard Edgar Alfonso González. They both said that Joe Luis Castillo González was on a target list of paramilitary groups and that the municipal authorities were aware of the activities of said groups, which acted with their connivance.

106. Specifically, Emer Humberto Terán (or Román) told the Investigations Chief of Machiques CICPC,

[...] all I can say is that the guerrillas are never going to be legalized. That man was on our target list [...] in all, there are around 20 persons on the list who are elimination targets because they were opposed to honest people in the cattle ranching business in the area [...] the mayor of this city [Machiques] is knows about their presence as do several leaders of Gadema [Machiques Cattle Ranchers] [...] their main contacts are with an intelligence unit in the National Guard in this area.¹²¹

Edgar Alfonso González also referred to Emer Humberto Terán (or Román) and said

[...] these guys are *paracos* [a slang term for paramilitaries] hired by various cattle ranchers in the area; the mayor [...] knows about it, and in fact and his drivers ferry those guys to and from different places; they have come to cleanse Machiques of all the lowlifes; they are scary guys because they don't respect anybody.¹²²

107. The Commission also notes that a report was published in the press about the incident which suggested that, because of his presumed ties to members of Colombian guerrilla groups, Joe Luis Castillo González had been murdered by Colombian paramilitary units which, with financing from members of the local community and a kind of list, were cleansing the zone by assassinating everyone linked to the guerrillas.¹²³

108. In short, there were indicia of links between the local mayor's office and paramilitary groups, which, in turn, were reputedly in possession of a list on which Joe Luis Castillo González appeared as a target for elimination. Mention was also made of an alleged link between those groups and National Guard intelligence units. There were even said to be cooperation ties, for instance, through the use of official vehicles.

109. The Commission reiterates that faced with evidence of this nature, which would appear directly to engage the State's international responsibility by acquiescence, collaboration, or participation, the

¹²⁰ I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 145.

¹²¹ CICPC Investigation Report, September 15, 2003. Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹²² CICPC Investigation Report, September 15, 2003. Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹²³ *El Universal* newspaper, September 21, 2003. Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, page not numbered Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

authorities in charge of the investigation should have made every effort to clarify any possible responsibility or involvement on the part of State authorities in a violation of the right to life. Thus, it was up to the State to carry out a thorough, meaningful, and diligent investigation to prove or disprove the evidence of involvement of State agents. As will be described in the section concerned with the rights to a fair trial and judicial protection, the State ordered the closure of the case without pursuing logical lines of enquiry that arose from the evidence to hand, without performing procedures that might lead to the identification of those responsible, and, most particularly, without seriously examining the possible involvement of State authorities.

110. The Commission also observes that it was incumbent on the State authorities to take into account the work that Joe Luis Castillo González did as a human rights defender. Specifically, Joe Luis Castillo González carried out work that involved the provision of assistance and advisory services to refugees and asylum-seekers in the border zone. In the course of work, in 2001, Joe Luis Castillo González requested the IACHR to grant precautionary measures on behalf of 52 asylum-seekers.¹²⁴ As noted, in the framework both of the precautionary measures and of the instant petition, two persons were subsequently murdered by alleged Colombian paramilitaries.¹²⁵ Joe Luis Castillo González also provided legal counsel to peasants who were in dispute with land owners over the ownership of land, several of whom were subsequently murdered in an apparently selective manner and in circumstances yet to be clarified.¹²⁶

111. Therefore, the Commission finds that despite the existence of different indicia that suggested the participation, acquiescence, or collaboration of State agents in the killing of Joe Luis Castillo González, the State set aside the investigation without effectively investigating them. In that connection, the European Court of Human Rights has held,

[...] The obligation of the State to protect the right to life requires, by implication, that some kind of effective official investigation be carried out when an individual has been killed as a result of the use of force. Such investigations must be carried out [...] regardless of whether the perpetrators are agents of the State or third parties. However, where the involvement of State agents or bodies is alleged specific rules may apply with regard to the effectiveness of the investigation.

221. The basic purpose of such an investigation is to ensure effective implementation of domestic laws that protect the right to life and, where State agents are involved, to ensure their accountability for deaths under their responsibility (free translation by the Secretariat).¹²⁷

¹²⁴ MC-176/01, Manuel de Jesús Pinilla Camacho *et al.* Precautionary Measures granted on March 12, 2001. See <http://www.cidh.oas.org/medidas/2001.eng.htm>.

¹²⁵ According to information supplied by those who requested the precautionary measure, two beneficiaries of the measure, Manuel de Jesús Pinilla Camacho and his son's Nelson Pinilla, were murdered on November 4, 2001. They say that according to information from the authorities, both were members of the Camilo Cienfuegos Front of the National Liberation Army (ELN for the Spanish) and had been involved in the extortion of cattle ranchers. Other information collected suggested that both were members of the 33rd Front of the Revolutionary Armed Forces of Colombia (FARC for the Spanish). Record in Case MC-176/01, Manuel de Jesús Pinilla Camacho *et al.* Precautionary Measures granted on March 12, 2001.

¹²⁶ Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). Annual Report October 2001 - September 2002. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/006_derecho_a_la_tierra.pdf. Luis Mora Durán, a campesino leader and member of the *Patria para Todos* [Homeland for All] party was murdered on January 10, 2001; Wilmer Avendaño, a leader of the majority of the South of Lake Maracaibo land committees was slain at his home on February 2, 2001; Licinio Lago, a member of the *Movimiento Quinta República (MVR)* [Fifth Republic Movement] was assassinated on October 30, 2001; Pedro José Doria, a doctor and agrarian leader was murdered on August 25, 2002. Some weeks later Dr. Doria's neighbor, Carlos Parra, was murdered, as was an agrarian leader named Armando García. Annual Report October 2001 - September 2002. Available at http://www.derechos.org.ve/proveaweb/wp-content/uploads/006_derecho_a_la_tierra.pdf in briefs from the petitioners received at the IACHR on July 13, 2007 and June 22, 2010. Not contested by the State.

¹²⁷ ECHR. *Case of Khaindrava and Dzamashvili v. Georgia*, Judgment of 8 September 2010, para. 58. See also: *McCann and Others v. the United Kingdom*, Judgment of 27 September 1995, Series A no. 324, para. 49 § 161, *Kaya v. Turkey*, Judgment of 19 February 1998, Reports 1998-I, para. 329, § 105), *Tahsin Acar v. Turkey*, Judgment of 8 April 2004, paras. 220 and 221, and *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII).

112. In view of these omissions, the Commission considers that the State did not meet the obligation to disprove the indicia of acquiescence or collaboration on the part of State agents. Owing to the shortcomings in the investigation, the Commission lacks evidence that might counter the aforesaid indicia and, therefore, finds that the State is responsible for violation of the right to life recognized in Article 4(1) of the Convention to the detriment of Joe Luis Castillo González; of the right to humane treatment enshrined in Article 5(1) of the Convention to the detriment of Yelitze Moreno de Castillo and Luis César Castillo Moreno; and of the rights of the child under Article 19 of the Convention to the detriment of the latter, all in relation to the obligations set forth in Article 1(1) of said instrument.

2. Right to a fair trial and judicial protection (Articles 8(1) and 25(1) of the American Convention)

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

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

114. For its part, Article 25 (1) of the Convention provides,

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.

115. The Commission has indicated that these articles 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.¹²⁸

116. The Inter-American Court, for its part, has found,

Under the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be implemented according to the rules of due process of law (Article 8(1)), all within the general obligation of States to ensure to all persons subject to their jurisdiction free and full exercise of the rights established in the Convention (Article 1(1)).¹²⁹

117. The Court has also ruled,

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next-of-kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.¹³⁰

118. By the same token, the Court has ruled that the next of kin of the alleged victims have the right to expect, and the States 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

¹²⁸ IACHR. Application of the Inter-American Commission on Human Rights. *Case of Jesús María Valle Jaramillo v. Colombia*, February 13, 2007, par. 118.

¹²⁹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 287.

¹³⁰ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, par. 102; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, par. 227; and I/A Court H.R., *Case of the Serrano-Cruz Sisters v. Guatemala. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, par. 63.

responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.¹³¹ Based on the foregoing, once State authorities have knowledge of a violation of human rights, in particular of the rights to life, humane treatment, and personal liberty,¹³² they should initiate a serious, impartial and effective investigation, ex officio and without delay,¹³³ which should be carried out within a reasonable time.¹³⁴

119. As to the substance of the duty to investigate with due diligence, the Inter-American Court has held that the investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.¹³⁵ In that same vein, the Court has found that the State has the duty to ensure that everything necessary is done to learn the truth about what happened and for those responsible to be punished,¹³⁶ and involving every State institution.¹³⁷ The Court has also said that the authorities should adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation.¹³⁸

120. In that connection, the duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective,¹³⁹ or as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹⁴⁰

¹³¹ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, par. 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, par. 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, par. 382.

¹³² I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 100.

¹³³ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, pars. 146; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 130.

¹³⁴ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 382.

¹³⁵ I/A Court H.R., *Case of García-Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 168, par. 101.

¹³⁶ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 382.

¹³⁷ I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 130; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 120; and I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, par. 66.

¹³⁸ I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 122.

¹³⁹ I/A Court H.R., *Velásquez Rodríguez Case. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 131; and I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 120.

¹⁴⁰ I/A Court H.R., *Velásquez Rodríguez Case. Honduras*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 120.

121. Likewise, it has indicated that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin, to have everything necessary done to uncover the truth of the events and to punish those responsible.¹⁴¹

122. Bearing in mind the above precedents, the Commission will examine if in the instant case the Venezuelan State carried out a meaningful and diligent investigation, within a reasonable time, of the facts described in this report, as a means to guarantee the substantive rights to life and humane treatment and to ensure access to an effective judicial remedy for human rights violations.¹⁴² To that end, the Commission will assess the criminal process instituted at the domestic level.

123. In this assessment, the Commission will take into account the guidelines which, according to the United Nations Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions ("Minnesota Protocol"), should govern such inquiries. The above instrument sets out a number of basic procedures: identification of the victim; recovery and preservation of evidentiary material related to the death to aid in any potential prosecution of those responsible; identification of possible witnesses and collection of statements from them concerning the death; determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; distinction between natural death, accidental death, suicide and homicide; identification and apprehension of the person(s) involved in the death; and bringing of the suspected perpetrator(s) before a competent court established by law.¹⁴³

124. The Commission's analysis of the evidence adduced on the criminal inquiry launched on August 27, 2003, into the killing of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and Luis César Castillo Moreno, indicates that more than seven years after the events the circumstances in which they occurred have not yet been clarified and, therefore, the appropriate penalties have not been imposed. The Commission finds that this time is, in itself, unreasonable and that there is nothing in the available evidence to justify the delay. Specifically, the investigation is not overly complex since it concerns a single victim. Furthermore, in the course thereof different evidence came to light that would seem to have made it possible to identify the possible culprits; however, the omissions in the performance of various tests show that the authorities in charge did not act with the necessary diligence that the instant case requires.

125. The Commission notes that Yelitze Moreno de Castillo was interviewed on September 10, 2003,¹⁴⁴ and based on the information she supplied, the CICPC made an artist's sketch of one suspect.¹⁴⁵ Furthermore, on September 17, 2003, and January 21, 2004, she took part in the examination of photographs of possible physical perpetrators of the acts.¹⁴⁶ The Commission also notes that, according to submissions of

¹⁴¹ I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*. Judgment of November 24, 2009. par. 105; *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, par. 114; *Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 115.

¹⁴² I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Judgment of November 16, 2009, par. 287; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 142.

¹⁴³ See U.N. Doc E/ST/CSDHA/12 (1991). The Commission has previously relied on United Nations documents to evaluate the basic procedures to be carried out in such cases. See IACHR. Report 10/95. Case. 10.580. Ecuador. September 12, 1995, par. 53.

¹⁴⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁴⁵ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, artist's sketch, September 10, 2003, p. 100. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁴⁶ Office of the 83rd Public Prosecutor, Record of September 17, 2003, Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

the petitioners not disputed by the State, Yelitze Moreno de Castillo approached the Office of the Attorney General on several occasions to request the performance of tests to identify the alleged culprits¹⁴⁷ and to request greater speed in the investigation.¹⁴⁸ However, a reading of the record in the possession of the Commission reveals the below-described omissions.

126. To begin with the Commission notes that Yelitze Moreno de Castillo did not examine the photograph of Orlando Antonio Peña Luzardo. On August 10, 2005, the Office of the 20th Prosecutor sent the Office of the 83rd Prosecutor, at the request of the latter, the photograph of Orlando Antonio Peña Luzardo;¹⁴⁹ however, said examination was not carried out.

127. In second place the Commission notes that photographs while alive were not collected of the citizens killed in the confrontation of November 20, 2003.

128. Third, no ballistics comparison tests were performed between the firearms captured from Orlando Antonio Peña Luzardo and from the citizens killed in the confrontation of November 20, 2003, and the bullets that struck Joe Luis Castillo González which were recovered by the CICPC.¹⁵⁰

129. In fourth place the Commission finds that the CICPC did not investigate to a sufficient extent the allegations received by telephone on September 10, 2003, by Assistant Police Chief Rafael Vilorio attached to Machiques CICPC, in which it was claimed that paramilitaries from Cúcuta, Colombia were involved in the attack on Joe Luis Castillo González and his family.¹⁵¹ It should be noted that the complainant indicated the vehicle in which the alleged perpetrators traveled.¹⁵² The record shows that the investigators managed to obtain more details about the ownership of the vehicle reportedly used by the persons allegedly involved in the murder of Joe Luis Castillo González. Accordingly they mounted a surveillance operation on the vehicle and saw three individuals get into it.¹⁵³ Nevertheless, the individuals were not identified. On September 16, 2003, a forensic examination was made of the aforesaid vehicle and it was found that the security and chassis serial numbers were false.¹⁵⁴ However, the record in the possession of the Commission does not suggest that any additional procedures were carried out.

130. Finally, according to submissions of the petitioners not disputed by the State, the Office of the Attorney General had access to witnesses, including the alleged paramilitary group member Emer

¹⁴⁷ Office of the 83rd Public Prosecutor, Record of January 21, 2004, Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁴⁸ Office of the 83rd Public Prosecutor, Record of August 10, 2004, Petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁴⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letter ZUL- 20- 1774-2005, August 10, 2005, p. 204. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁵⁰ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Official letters ZUL-F20-1776-05 and ZUL-F20-1780-05, August 10, 2005, pp. 206 and 208. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁵¹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, September 10, 2003, p. 83. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁵² Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police report, September 10, 2003, p. 83. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁵³ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, police reports, September 11, 2003, pp. 84-88. Annexes to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State. "We spotted the aforementioned vehicle and, therefore, decided to set up surveillance in order to see who got into it. After two hours we saw three adult males climb into the vehicle and set off to an unknown destination."

¹⁵⁴ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, imprint of vehicle, September 16, 2003, pp. 91-93. Annex to the petitioners' brief received at the IACHR on June 3, 2008. Not contested by the State.

Humberto Terán and national guardsman Edgar Alfonso González, who both said in their statements that Joe Luis Castillo González was on a list of targets to be eliminated by the paramilitaries who were hired by several cattle ranchers in the area and that the mayor of Machiques had knowledge of this.¹⁵⁵

131. In this regard, the Commission finds that, despite the existence of different leads that could have resulted in the identification of those allegedly responsible for the killing of Joe Luis Castillo González, the judicial record in the possession of the Commission shows that the last act in the investigation was carried out on September 19, 2005, after which it remained inactive until it was closed on November 28, 2006. Based on the above, the Commission concludes that the State, without justification, suspended the investigation without having conducted procedures necessary to elucidate the facts.

132. The Inter-American Court has found, “[t]he right to effective judicial protection [...] requires that the judges direct the proceeding in such a way as to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights.”¹⁵⁶ The Commission finds that the omission of certain essential procedures, as well as the failure to investigate the suspected involvement of Colombian paramilitaries in the murder of Joe Luis Castillo González unduly impeded the investigation and led to the closure of the case on November 28, 2006, because the evidence produced by the inquiry was insufficient to bring charges.¹⁵⁷

133. In this regard, the Commission has held that “the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.”¹⁵⁸ In the instant case the Commission sees that the investigation lasted more than three years but failed to identify anyone as the physical perpetrator or architect of the crime, after which it was closed. In that connection, the Inter-American Court has indicated that “the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin, to have everything necessary done to uncover the truth of the events and to punish those responsible.”¹⁵⁹

134. Consequently, the Commission considers that the State has not taken the necessary steps to meet its obligation to investigate, prosecute, and punish those responsible, and to provide reparation to the victims and their next of kin. As a result, the attack that culminated in the death of Joe Luis Castillo González and injured his wife, Yelitze Moreno de Castillo, and their son, Luis César Castillo Moreno remains in impunity.

135. The Inter-American Court has defined impunity as “the absence of any investigation, pursuit, capture, prosecution and conviction of those responsible for violations of rights protected by the American Convention.”¹⁶⁰ Furthermore the Court has observed that “the State has the obligation to combat impunity by all available legal means, because it encourages the chronic repetition of the human rights violations and the

¹⁵⁵ CICPC Investigation Report, September 15, 2003. Petitioners’ brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁵⁶ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, par. 210; and I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, par. 115.

¹⁵⁷ Notice, November 28, 2006. Annex 3 of Petitioners’ brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁵⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 109.

¹⁵⁹ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, par.112.

¹⁶⁰ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 299; I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 237; and I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 203; and *Case of the Serrano Cruz Sisters v. Guatemala*. Judgment of March 1, 2005. Series C No. 120, par. 170.

total defenselessness of the victims and their next of kin,”¹⁶¹ and that even though investigations have been conducted impunity subsists whenever the whole truth of the facts has not been determined nor full responsibility apportioned.¹⁶² Finally, the Commission has stated that “impunity helps hamper the work of human rights defenders and has an impact on society whereby intimidation prevents it from denouncing any violations it might suffer.”¹⁶³

136. In view of the foregoing, the Commission concludes that the State violated the rights of the next-of-kin of Joe Luis Castillo González, namely, his wife, Yelitze Moreno de Castillo; his young son, Luis César Moreno de Castillo; his mother, Yolanda González; his father, Jaime Castillo; his brother, Jaime Castillo González; and his sister, Julijay Castillo González, to a fair trial and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in connection with the duty to observe rights set forth in Article 1(1) thereof.

3. Right to humane treatment (Article 5(1) of the American Convention)

137. Article 5(1) of the American Convention provides, “[e]very person has the right to have his physical, mental, and moral integrity respected. The Inter-American Court has held that the next of kin of the victims of human rights violations may, in turn, be victims themselves.¹⁶⁴ Specifically, the Court has held that the mental and moral integrity of the next of kin of victims may be impaired as a result of the particular circumstances endured by their loved and subsequent acts or omissions of the domestic authorities in relation to the facts.¹⁶⁵

138. In the instant case, the Commission's finds that the facts that occurred activated the duty of the State to investigate the violation of the right to life of Joe Luis Castillo González and the right to humane treatment of Yelitze Moreno de Castillo and Luis César Castillo Moreno, as described above in section IV.B.1 (Right to life, right to humane treatment, and rights of the child). The Inter-American Court of Human Rights has ruled, “[t]he obligation to investigate human rights violations is among the positive measures that the State must adopt to guarantee the rights established in the Convention. Additionally, the State must, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”¹⁶⁶

139. Specifically, the Commission has concluded hereinabove (Section IV.B.2, Right to a fair trial and judicial protection) that in the instant case a complete and effective investigation of the facts was not

¹⁶¹ I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 299; I/A Court H.R., *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, par. 168; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 266; I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 237.

¹⁶² I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 320.

¹⁶³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 108.

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

¹⁶⁵ I/A Court H.R. *Case of Cantoral-Huamani and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 112; I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

¹⁶⁶ I/A Court H.R. *Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, par. 98. Cf. I/A Court H.R., *Velásquez Rodríguez Case. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 166; I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, par. 142; and I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Judgment of November 20, 2007, Series C No. 168, par. 99.

carried out. In this regard, the Court has ruled that the next of kin of the victims have the right to reparations for the damage they have suffered and States have the obligation to provide them.¹⁶⁷

140. Therefore, the Commission finds that the loss of a loved one in the circumstances described in the instant case and the lack of a complete and effective investigation have impaired the mental and moral integrity of the wife of Joe Luis Castillo González, Yelitze Moreno de Castillo; his son, Luis César Castillo Moreno, and their next of kin, in addition to the distress and anguish caused by not knowing the truth of what happened.

141. By way of illustration, it is worth noting that in February 2004, Yelitze Moreno de Castillo began psychological treatment at the Psychological and Social Assistance Unit of the organization COFAVIC, in the course of which she was diagnosed with depression that varied from moderate to light and symptoms associated with posttraumatic stress.¹⁶⁸ Yelitze Moreno de Castillo still admits to feelings of sadness and loneliness associated with the loss of her husband and with the ensuing changes in her physical health, adaptation to a new job, limitation of social activities, and feelings of vulnerability and insecurity because of the failure to identify those responsible for her husband's murder.¹⁶⁹

142. Furthermore, the child Luis César Castillo Moreno displayed behavioral changes, such as difficulty sleeping, irritability, clinging, fear, and reactions to stimuli connected with the event, such as loud noises from detonations, motorcycles, etc. Those symptoms have lessened over time; however, with the acquisition of language and increased capacity for expression through drawing and imagination, he has begun to ask questions about the incident and his father.¹⁷⁰

143. In light of the foregoing, the Commission finds that the murder of Joe Luis Castillo González caused profound distress and a radical change in the lives of his closest family members. In view of the foregoing, the Commission concludes that the State violated the right of Yelitze Moreno de Castillo, the child Luis César Castillo Moreno, Yolanda González, Jaime Castillo, Jaime Castillo González, and Julijay Castillo González, to have their mental and moral integrity respected as recognized in Article 5(1) of the American Convention, in connection with the duty to observe rights set forth in Article 1(1) thereof.

4. Right to freedom of association (Article 16(1) of the American Convention)

144. Article 16 of the American Convention provides, "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

145. The Commission notes that this right has two dimensions: one, individual and the other, social. With respect to the individual dimension, the Inter-American Court has found that "those who are protected by the Convention [...] have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right."¹⁷¹ As to the collective dimension, the Court has concluded that in exercising the right recognized in Article 16, individuals "enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or

¹⁶⁷ I/A Court H.R. *Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, par. 103. I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*. Judgment of November 20, 2007, Series C No. 168, par. 103; and I/A Court H.R., *Case of Heliodoro-Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, par. 146.

¹⁶⁸ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁶⁹ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁷⁰ Psychological and Social Assistance Unit, COFAVIC, Psychological Report, June 18, 2007. Annex 1 of the petitioners' brief on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁷¹ I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121, par. 69.

interference that could alter or change their purpose.”¹⁷² The Inter-American Court has also ruled that the positive obligations to prevent and investigate violations of this right must be adopted “even in the sphere of relations between individuals, if necessary.”¹⁷³

146. The Court has also consistently held that “freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.”¹⁷⁴ In this regard, the Court has stated that “the impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16(1) of the Convention when such violation arises from the victim’s legitimate exercise of the right to freedom of association.”¹⁷⁵

147. According to submissions offered by the petitioners not contested the State, Joe Luis Castillo González served as General Coordinator of the Social Action Office of the Apostolic Vicariate of Machiques and, in that capacity, worked in the area of humanitarian and legal assistance for Colombian citizens who entered Venezuela as refugees. He also worked in defense of the rights of members of campesino and indigenous communities in the State of Zulia.¹⁷⁶

148. The Inter-American Court has determined that in the exercise of the right to freedom of association, “the freedom to associate and to pursue certain collective goals are indivisible.”¹⁷⁷ In this connection, with regard to human rights defenders, the Commission has held, “Any act that tends to impede [...] in any way [...] the purposes for which they have formally associated, is a direct attack on the defense of human rights.”¹⁷⁸

149. Joe Luis Castillo González belonged to an organization whose purpose is the protection of human rights and in which he engaged until a few months before his death in humanitarian and legal assistance activities for refugees and peasant communities.¹⁷⁹ The Commission notes that at the time of the facts Joe Luis Castillo González was in the process of handing over his position.¹⁸⁰

¹⁷² I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121, par. 69.

¹⁷³ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 144. Cf. I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121, par. 76; and I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C, No. 167, par. 141.

¹⁷⁴ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 150. I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121, par. 75, and I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C, No. 167, par. 146.

¹⁷⁵ I/A Court H.R., *Case of Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 150. Cf. I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C, No. 167, par. 147.

¹⁷⁶ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106 and communication from the Community Education Center (CECODAP) to the Office of the Prosecutor General of the Republic, September 3, 2003, pp. 121-122. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁷⁷ I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121, par. 70.

¹⁷⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 76. Cf. IACHR, Report 31/96, Case 10.526, Guatemala, October 16, 1996, par. 119. In that same connection, see Report on Merits 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz, Mexico, April 13, 1999.

¹⁷⁹ Office of the 20th Public Prosecutor for the Judicial District of the State of Zulia, Case 24-F20-817-2003, Office of the 83rd Public Prosecutor for the Judicial District of Metropolitan Caracas, interview with Yelitze Lisbeth Moreno Cova, September 10, 2003, pp. 101-106 and communication from the Community Education Center (CECODAP) to the Office of

150. The Commission has stated that activities in defense of human rights are intrinsic to the legitimate exercise of the rights protected by Article 16 of the American Convention and, therefore, the State had a duty to respect and ensure the human rights protection activities of the members of the Vicariate, including Joe Luis Castillo González.

151. The Commission recalls that the obligations of the State arising from the killing of a human rights defender and its repercussions on the right to freedom of association are accentuated and must be examined in the light of the special framework of protection that Article 16 of the American Convention affords. In this regard, the court has held that “States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; [...] to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”¹⁸¹

152. The Commission considers that the organized work of human rights defenders is an essential component in building a solid and lasting democracy, fully achieving the rule of law, and securing the fundamental guarantees of every human being. In the instant case the Commission notes that the State failed either to conduct a meaningful and effective investigation of the facts connected with his murder in order to identify those responsible, or provide comprehensive reparation to his next of kin, with the attendant detrimental effect on those who work in defense of human rights in the area of Machiques, State of Zulia and, in particular, in the Apostolic Vicariate.

153. In this connection, the Commission considers that the killing of Joe Luis Castillo González has had a direct intimidating effect on the processes of claiming rights and denouncing violations.¹⁸² Thus, following the murder of Joe Luis Castillo González, the Vicariate closed for two months, after which it redirected the efforts of the Social Action Office toward activities to strengthen community work.

154. In view of the foregoing, the Commission concludes that the State violated the right of Joe Luis Castillo González to freedom of association recognized in Article 16(1) of the American Convention, in connection with the duty to observe rights set forth in Article 1(1) thereof.

5. Right to freedom of thought and expression (Article 13 of the American Convention)

155. The American Convention guarantees for all the right to freedom of thought and expression. Article 13 of said instrument provides, “[e]veryone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

156. Based on the contents of the right ensured in Article 13 of the American Convention, expression and dissemination of thoughts and ideas are indivisible and any restriction on the possibility of imparting them represents a curb on the right to express oneself freely. This right is essential in developing and strengthening democracy as well as for the full exercise of human rights. Full recognition of freedom of expression is a fundamental guarantee for ensuring the rule of law and democratic institutions.

the Prosecutor General of the Republic, September 3, 2003, pp. 121-122. Annex to the petitioners’ brief received at the IACHR on June 3, 2008. Not contested by the State.

¹⁸⁰ Petitioners’ briefs on merits received at the IACHR on July 13, 2007. Not contested by the State.

¹⁸¹ I/A Court H.R., *Case Kawas-Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, par. 145. Cf. I/A Court H.R., *Case of Nogueira de Carvalho et al. v. Brazil*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, par. 77, and I/A Court H.R. *Case of Valle-Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, par. 91.

¹⁸² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 141; and I/A Court H.R., *Case of Huilca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005, Series C No. 121.

157. The Commission has determined that freedom of expression is [one] of the rights essential to the work of human rights defenders.¹⁸³ Nonetheless, not every murder, act of intimidation, or attack on human rights defenders or on any person or group that seeks to influence society that constitutes a violation of the right to freedom of thought and expression. From that perspective, in order to substantiate a violation of the above right it must be shown that it may reasonably be deduced that the aim of the murder, intimidation, or attack was to silence the expression in public or private of the thoughts and ideas of the victim of that violence.

158. In the instant case, no factual or legal elements have been offered that demonstrate, or from which it might reasonably be deduced, that the aim of the murder was to silence Joe Luis Castillo González. Therefore, the Commission is unable to find that there has been a violation of the right to freedom of thought and expression to the detriment of Joe Luis Castillo González, Yelitze Moreno de Castillo, and the child Luis César Castillo Moreno.

V. CONCLUSIONS

159. Based on the foregoing factual and legal considerations, the Commission concludes that the Bolivarian Republic of Venezuela is responsible for:

- violation of the right to life recognized in Article 4(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Joe Luis Castillo González.
- violation of the rights to a fair trial and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Yelitze Moreno de Castillo, Luis César Castillo Moreno, Yolanda González, Jaime Castillo, Jaime Castillo González, and Julijay Castillo González.
- violation of right to humane treatment recognized in Article 5(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Yelitze Moreno de Castillo, Yolanda González, Jaime Castillo, Jaime Castillo González, and Julijay Castillo González.
- violation of right to humane treatment and rights of the child recognized in Articles 5(1) and 19 of the American Convention, in connection with Article 1(1) thereof, to the detriment of the child Luis César Castillo Moreno.
- violation of the right to freedom of association recognized in Article 16(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Joe Luis Castillo González.

VI. RECOMMENDATIONS

160. Based on the arguments as to fact and law given above,

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

1. Conduct a complete, impartial, and effective investigation, within a reasonable time, of the human rights violations recognized in the instant report, in order to identify and punish the intellectual and material authors of the murder of Joe Luis Castillo González and the injuries to Yelitze Moreno de Castillo and Luis César Castillo Moreno.

2. Institute the appropriate administrative, disciplinary, or criminal proceedings to address the acts or omissions of the State officials who contributed to the denial of justice and impunity in which are the facts of the case.

¹⁸³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, par. 79.

3. Strengthen institutional capacities to combat the pattern of impunity in cases of extrajudicial execution, through effective criminal investigations in which there is consistent judicial follow-up, thereby ensuring the appropriate sanction and reparation.

4. Provide adequate reparation for the human rights violations recognized in the instant report, which should include both material and moral damages.

VIII. NOTIFICATION

161. The Commission decides to transmit the instant report to the Venezuelan State and to grant it two months to implement the recommendations it contains. That period will be counted from the date of transmission of the instant report to the State, which shall not be at liberty to make it public. The Commission also decides to notify the petitioners of the adoption of a report under Article 50 of the American Convention.