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## **REPORT No. 40/15**

### **CASE 11.482**

#### REPORT ON MERITS

NOEL EMIRO OMEARA CARRASCAL, MANUEL GUILLERMO  
OMEARA MIRAVAL, HECTOR ALVAREZ SANCHEZ *ET AL.*

COLOMBIA

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## **I. SUMMARY**

1. On May 4, 1995 the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR") received a petition submitted by the Colombian Commission of Jurists (CCJ)<sup>1</sup> (hereinafter "the petitioners") alleging the international responsibility of the Republic of Colombia (hereinafter "the State", "the Colombian State", or "Colombia") for the extrajudicial execution of Noel Emiro Omeara Carrascal, the subsequent forced disappearance and extrajudicial execution of his son, Manuel Guillermo Omeara Miraval and the attempted murder and subsequent death of Héctor Álvarez Sánchez, father-in-law of Manuel Guillermo Omeara, that took place in the municipality of Aguachica, Department of Cesar, between January 28, and October 21, 1994.

2. The petitioners argued that the violations of these three persons' rights came about as a result of acts perpetrated by paramilitary groups that the State not only failed to prevent but also, on the contrary, occurred with the collaboration of State agents. The petitioners indicated that because of the lack of due diligence in investigating the facts, impunity and risk have lead some of the victims' families to move away. For its part, the State argued that it is not responsible for the alleged violations since the involvement of its agents in the events has not been proved, that there are judicial proceedings pending and that the victims' families failed to initiate contentious administrative litigation to claim their right to reparations.

3. After examining the findings of fact and law presented by the parties, the Commission concluded that the State is responsible for the violation of the rights to life and physical integrity set out in Articles 4.1 and 5.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in relation to the obligations under Article 1.1 thereof, to the detriment of Noel Emiro Omeara Carrascal and of Héctor Álvarez Sánchez. It also concluded that the State is responsible for the violation of the rights to legal personality, to life, right to humane treatment and personal liberty established in Articles 3, 4.1, 5.1, 5.2 and 7.1 of the American Convention in relation to the obligations under Article 1.1 thereof, to the detriment of Manuel Guillermo Omeara Miraval. The Commission also found a violation of the rights to physical integrity, judicial guarantees, special protection, protection of the family and the protection of children set out in Articles 5.1, 8.1, 25.1, 17.1 and 19 of the American Convention to the detriment of the families identified in this report. Finally, the Commission also considered the State of Colombia responsible for the violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I b) of the American Convention on Forced Disappearance of Persons to the prejudice of the relatives of Mr. Guillermo Omeara Miraval in the terms described in this report.

## **II. PROCEEDINGS BEFORE THE COMMISSION SUBSEQUENT TO ADMISSIBILITY REPORT No. 8/02**

4. The Commission declared the case admissible by adopting Report No. 8/02 of February 27, 2002. The procedure from the submission of the petition until the admissibility report is detailed in the above report. After notification of the Report, on March 14, 2002, the Commission made itself available to the parties in order to reach a friendly settlement, and requested a response within one month. On January 21, 2003, the Commission requested that the petitioners submit their arguments on the merits. On January 24,

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<sup>1</sup> The Center for Justice and International Law (CEJIL) became a co-petitioner on March 27, 2000.

2003, the Commission convened a hearing on February 26, 2003, during the 117th Session. The petitioners presented their arguments on the merits on November 10, 2010, and on May 17, 2014. For its part, the State submitted its observations on August 18, 2011, and August 11, 2014. Finally, on 27 May 2015 the petitioners submitted additional information on the identity of the alleged victims' next-of-kin, which was duly sent to the State.

### **III. POSITION OF THE PARTIES ON THE MERITS**

#### **A. The Petitioners' Position**

5. The petitioners stated that the municipality of Aguachica is located in a heavily militarized region with a large presence of paramilitary groups and the guerrilla group known as the National Liberation Army (ELN). They indicated that in the 1990s - and for several years - a paramilitary group led by members of the "Prada" family operated in the region. They indicated that the Armed Forces and other State security agencies maintained a significant presence with two military bases, the second district of National Police and the Kidnapping and Extortion Prevention Unit (hereinafter "UNASE") located in the main square, a short walk from the Municipal Town Hall.

6. They indicated that in mid-1991, the Community Action Movement (hereinafter "MAC") was organized in Aguachica. They said, however, that since its inception it was seen as part of the political apparatus of the ELN, coming from the "M-19" Movement. They noted that on October 7, 1993, several members of the MAC complained to the Procurator General's Office in Bogota that they were on a UNASE list together with lists used by other authorities, as well as for other acts of persecution against them. They mentioned that on February 25, 1994, Mr. José Erminson<sup>2</sup> Sepúlveda Saravia, a member of that party who was a private secretary in the Aguachica Town Hall, made an oral complaint that he appeared on the list as "the next victim of violence."

7. They argued that on January 28, 1994, Noel Emiro Omeara Carrascal, a cattle rancher, and Erminson Sepúlveda Saravia were attacked by UNASE agents while they were having lunch at a restaurant. They indicated that the Secretary died immediately and that Noel Emiro Omeara Carrascal was hit by a bullet. They added that despite undergoing several operations, Mr. Omeara Carrascal did not show any signs of improvement and died six months later. They indicated that Mr. Noel Emiro Omeara Carrascal told his family that the perpetrators were UNASE agents and that he recognized one of them known as "Rambo".

8. They stated that Noel Emiro Omeara's son, Manuel Guillermo Omeara Miraval, who was an administrator of the San Miguel farmstead (owned by his father-in-law, Héctor Álvarez Sánchez), decided to investigate the circumstances of the attack on his father, without State protection. They said that on August 27, 1994, seven months after the attack on his father, Manuel Guillermo Omeara Miraval was stopped by a group of heavily armed men and that on the following September 23, his remains were found bearing signs of torture.

9. They argued that UNASE members appeared during Guillermo Manuel Omeara's wake, on the night of September 23, 1994. Although members of the police were present at the wake, they were not identified.

10. They added that Héctor Álvarez Sánchez -Manuel Guillermo Omeara's father-in-law- testified before the Prosecutor's Office regarding the men who had kidnapped his son-in-law and that, for that reason, on October 21, 1994, he was the victim of a gun attack. They indicated that Mr. Álvarez Sánchez was left a paraplegic and unable to speak, and that he died on May 11, 2000, due to the injuries caused by the attack.

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<sup>2</sup> The Commission notes that the name of this individual has been referred to indiscriminately by the parties as Herminson and Erminson. In this regard, the Commission will refer to the individual as José Erminson.

11. The petitioners considered that the State is responsible for the violation of the rights to life and physical integrity established in Articles 4 and 5 of the Convention due to the loss of life of the three victims, which they described as extrajudicial executions. They also alleged a violation of the rights to recognition of juridical personality and personal liberty established in Articles 3 and 7 of the Convention, for the disappearance and torture of Mr. Guillermo Omeara. They also alleged that the State's responsibility derives from the failure to prevent the attack on Noel Emiro Omeara Carrascal and Héctor Álvarez and thus the State had violated the right to personal security, protected by Article 7 of the Convention. The petitioners substantiated their arguments based on the fact that the State had failed to provide Noel Emiro Omeara and Héctor Álvarez with the treatment required after the attacks.

12. They alleged that the State failed to provide protection for Carmen Teresa Omeara Miraval, Jaime Antonio Omerara Miraval, Fabiola Álvarez Solano, Héctor Álvarez Sánchez and for the children Elba Catherine, Manuel Guillermo and Claudia Marcela. They stressed that this lack of protection occurred despite the fact that they fulfilled the dual status of victims and witnesses under the terms of Law 104 of 1993. They pointed out that following the threats against Carmen Teresa Omeara Miraval and the attack against Héctor Álvarez Sánchez, Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano and the three children were obliged to go into forced displacement from Aguachica to Bucaramanga, causing a lack of protection of the family. They stated that as a result, the State has violated its obligation to ensure **the right to humane treatment and freedom of movement and residence, enshrined in Articles 5, 17 and 22 of the American Convention.**

13. The petitioners argued that despite the passage of time, the State has left these crimes in total impunity in violation of the **rights to judicial guarantees and judicial protection established in Articles 8.1 and 25 of the American Convention;** as well as their right to finding the truth about what happened to their loved ones, established in **Article 13 of the American Convention.**

14. Finally, they pointed out that at the time of the alleged forced disappearance and subsequent extrajudicial execution of Manuel Guillermo Omeara Miraval, their son Manuel Guillermo Álvarez and daughters Elba Catherine and Claudia Marcela Omeara were children, and therefore the absence of State protective measures constituted a violation of the duty of special protection established in Article 19 of the American Convention.

## **B. The State's Position**

15. The State of Colombia pointed out, with regard to the context outlined by the petitioners that the term "paramilitary" presupposes the creation and acceptance by a State of a military apparatus parallel to its security forces whose structure "has been declared legal." It noted that in the case of Colombia, armed groups had been outlawed in the national legal system since President Virgilio Barco's administration, and that measures to control and eradicate them were adopted in Decree 0180 of January 27, 1988. It argued that due to such measures it is no longer responsible for any actions taken by illegal armed groups, identified as paramilitaries, particularly when the State has implemented major policies to ensure their demobilization and disbanding.

16. It argued that the petitioners had failed to prove a causal link between the allegations and the presumed context of collaboration between State agents with illegal armed groups and that "this lack of certainty regarding the link between State agents and the facts referred to cannot lead the Commission to conclude that such connection existed." In addition, it also indicated that none of the proceedings initiated at the request of the alleged victims have proved the involvement of State agents.

17. It argued that it has not violated the **rights to life, physical integrity and personal liberty enshrined in Articles 4, 5 and 7 of the American Convention** because none of the cases has shown the involvement of State agents in the attacks.

18. In particular, regarding Mr. Noel Carrascal Omeara, the State indicated that it had not been shown how and when he could have identified his alleged attackers in order to infer the involvement of

individuals linked to the State. It added that the circumstances surrounding his death in the medical center, several months after the attack, do not lend themselves to be described as an extrajudicial execution; furthermore it argued that it had not been proved that the death was a direct result of the attack.

19. With regard to what happened to Mr. Guillermo Omeara, the State also indicated that participation of State agents in the facts had not been proved. In this regard, it stressed that it is not responsible for his disappearance, death and alleged torture. Regarding the latter it indicated that in any case the autopsy showed no evidence of such findings.

20. As regards what happened to Mr. Héctor Álvarez Sánchez, the State indicated that participation of State agents in the facts had not been established, and pointed out that in any case there is no proof his death was a result of the attack perpetrated on October 21, 1994.

21. Regarding the alleged violations of the rights to judicial guarantees and judicial protection established in **Articles 8 and 25 of the American Convention**, the State set out the steps taken in each of the proceedings undertaken in connection with what happened to the alleged victims. In this regard, it indicated that i) regarding Mr. Noel Emiro Omeara, proceedings are ongoing under file number 8872 where the First Deputy Prosecutor before the High Court of Bucaramanga decided to consider the facts as a crime against humanity; ii) regarding Mr. Guillermo Omeara Miraval, a number of proceedings followed in the ordinary, disciplinary and military jurisdictions, none of which established the participation of State agents, and in the proceedings followed under number 5118, the disappearance and execution was attributed to members of an illegal armed group, some of whom have already died; and iii) regarding Mr. Héctor Álvarez Sánchez, although the Prosecutor's Office identified a number of individuals allegedly involved in the incident, one of them was a well known hetman of Aguachica, who was assassinated on January 14, 1996.

22. The State argued that, to date, the investigations are still ongoing and that it has acted with due diligence, in view of the fact that the obligation to investigate is one of means and not of results. It added that even if State agents acted illegally, the alleged victims' relatives waived their right to reparations at the domestic level by not filing their claim before the contentious administrative jurisdiction, as required by law. It argued that the mere passage of time without a final decision in the criminal jurisdiction couldn't be considered a violation of the Convention. It also indicated that in the criminal proceedings relating to Héctor Álvarez Sánchez, even though his relatives could have become a *partie civile* in the trial, they have not done so.

23. The State argues that it has not violated the rights to judicial guarantees, freedom of expression, protection of the family, and the rights of the child set out in Articles 3, 13, 17 and 19 of the American Convention because such Articles do not form the basis of the "litigation" of the case defined by the facts and alleged violations determined by the Commission in its Admissibility Report. In its view, by not considering such alleged violations in its Report, the Commission had made "their inadmissibility implicit" and therefore if such allegations were taken into consideration in the merits phase, the State's right to a defense would be violated.

24. Finally, the State indicated that the next-of-kin of Messrs. Carrascal, Omeara Miraval and Álvarez were not identified in the admissibility stage and thus the Commission cannot rule on the facts relating to these individuals for which it is considered that the State is responsible, since they cannot be considered to be new alleged victims at the merits stage. It also argued that the family members had not filed a timely suit for direct compensation domestically to obtain reparations and therefore the State considers that it is not possible for them to be acknowledged as victims before the Commission.

## IV. ANALYSIS ON THE MERITS

### A. Findings of Fact

25. The Commission notes that the petitioners attribute responsibility to the State both for the attack and subsequent death of Mr. Noel Emiro Omeara Carrascal; as well as for the disappearance and execution of Manuel Guillermo Omeara Miraval –Mr. Noel Emiro Omeara’s son- and for the attack perpetrated on Mr. Héctor Álvarez Sánchez -Manuel Guillermo Omeara’s son-in-law- by acts of armed paramilitary groups which, they said, acted in coordination with State agents. Additionally, according to the petitioners, the State failed to prevent the occurrence of these deaths.

26. With regard to these facts, the State considered in the first place that it was not responsible, as the participation of State agents has in no way been proved. In addition, the State noted in relation Mr. Noel Emiro Omeara Carrascal, that his death has not been shown to be a result of the attack he suffered.

27. Taking due consideration of these aspects, the Commission deems it appropriate to determine whether or not the existence of actions or omissions of State agents in their obligations under the Convention can be proved. To do this, as it has in other cases, the Commission considers it appropriate to examine the background in which the case occurred. For this purpose, the Commission will refer in its analysis to the relevant situation in the municipality of Aguachica at the time of the events and the alleged connection between illegal armed groups and State agents. Thereafter, the Commission will refer to the facts surrounding the attack against Mr. Noel Emiro Carrascal Omeara and his subsequent death; the disappearance and execution of Mr. Guillermo Omeara Miraval and the events surrounding the alleged attack and subsequent death of Mr. Héctor Álvarez. Finally, the Commission will refer to the internal proceedings connected with these events and to the information available on their consequences for the respective families.

28. Prior to such an examination and in response to the State's allegations on the non-inclusion of family members, the Commission recalls that in admissibility report No. 8/02, it determined that it was competent to examine the complaint lodged regarding the violation of the rights of Noel Emiro Omeara Carrascal, Guillermo Omeara Miraval and Héctor Álvarez Sánchez.<sup>3</sup> The petitioners alleged at the merits stage that apart from them, members of the Miraval Omeara family have also been victims in the case due to what happened to Mr. Noel Emiro Omeara and Guillermo Omeara,<sup>4</sup> as well as members of the Álvarez Solano family as a consequence of what happened to Mr. Hugo Álvarez.<sup>5</sup>

29. In this regard, the Commission notes first of all that the Inter-American Court has indicated that the procedural moment to determine the victims of the case is in the report on the merits.<sup>6</sup> Indeed, in practice, the Commission generally incorporates information relating to the family members affected by the violations of the Convention, in the merits phase, provided that such information has been brought to the State’s attention. Consequently, there is no question of widening the case already admitted but of identifying all the consequences of the major violations found in the merits phase in the light of the purpose set out in the admissibility stage. Secondly, the Commission notes that both in their arguments on admissibility<sup>7</sup> and in their arguments on the merits, the petitioners have referred to the situation of the alleged victims’ families.

<sup>3</sup> IACHR, Report No.8/02, Petition 11.482, Admissibility, Noel Emiro Omeara Carrascal, Guillermo Omeara Miraval and Héctor Álvarez Sánchez v. Colombia, February 27, 2002.

<sup>4</sup> The petitioners referred to the following children of Mr. Noel Emiro Omeara Carrascal who were in turn the brothers and sisters of Mr. Guillermo Omeara Miraval: Carmen Omeara Mirava, Jaime Omeara Miraval, Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Zoila Rosa Omeara Miraval, and María Omeara Miraval.

<sup>5</sup> The petitioners referred to Mrs. Elba María Solano de Álvarez, Mr. Hugo Álvarez’s wife, as well as to their children Judith Álvarez Solano; Fabiola Álvarez Solano; Miguel Manuel Álvarez Solano; Héctor Manuel Álvarez Solano; Clemencia Patricia Álvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez de García. Additionally, they mentioned Elba Catherine, Manuel Guillermo and Claudia Marcela Omeara Álvarez as being the children of Mr. Guillermo Omeara Miraval and Mrs. Fabiola Álvarez Solano

<sup>6</sup> In accordance with Article 35.1 of the Court’s Rules and its case law, the alleged victims must be identified in the Report on the Merits in accordance with Article 50 of the Convention. 1/A Court H.R., *Case of Expelled Dominicans and Haitians v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 282, para. 53

<sup>7</sup> See petitioners’ brief of March 2, 1999. “The Petition states that Guillermo Omeara Miraval’s next-of-kin were forced to abandon the Municipality of Aguachica due to various threats and acts of harassment”. IACHR, Report No.8/02, Petition 11.482,

[continues ...]

30. In view of the above, the Commission considers that there is no obstacle in proceeding to rule on the proven facts and on the relevant legal framework regarding the petitioners' duly identified next-of-kin in the merits stage and whose arguments were brought to the State's attention.

31. At this stage, the Commission refrains to enter into State's arguments regarding the failure to file an action in the contentious administrative jurisdiction, since this is an argument on admissibility previously put forward at the appropriate procedural stage and that it is not appropriate to reopen it in the merits stage.

## **1. On the Phenomenon of Paramilitarism in Colombia**

32. Violations of human rights in the context of the internal armed conflict in Colombia and, in particular, the actions of paramilitary groups, has been monitored by the organs of the Inter-American system.

33. As the Commission established in its *Third Report on the Situation of Human Rights in Colombia*, the State has played an important role in the development of so-called paramilitary or self-defense groups, whom it permitted to act with legal protection and legitimacy in the Seventies and Eighties,<sup>8</sup> and is generally responsible for their existence and strengthening.<sup>9</sup>

34. These groups, sponsored or accepted by sectors of the Armed Forces, were largely created to combat dissident armed groups.<sup>10</sup> As a result of their counterinsurgency aims, the paramilitaries established ties with the Colombian Army, which were strengthened for over two decades.<sup>11</sup> Finally, on May 25, 1989, the Supreme Court declared Article 33 paragraph 3 of Legislative Decree 3398 of 1968 unconstitutional, a provision giving legal foundation for the creation of self-defense groups<sup>12</sup> and withdrew the legal backing to their relationship with the national defense, after which the State adopted a series of legislative measures to criminalize the activities of these groups and their supporters.<sup>13</sup> Despite this, the State did little to dismantle the structure it had created and fostered, particularly when those groups carried out counterinsurgency activities and, in fact, the links persisted at different levels; in some cases, asking or allowing paramilitaries to carry out certain unlawful acts with the understanding that they would not be investigated, prosecuted or

[... continuation]

Admissibility, Noel Emiro Omeara Carrascal, Guillermo Omeara Miraval and Héctor Álvarez Sánchez v. Colombia, February 27, 2002, para. 14.

<sup>8</sup> Indeed, Decree 3398 of 1965 (National Defense Law) and Law No.48 of 1968 authorized the creation of civil patrols, which would receive weapons for private use from the State security forces through Ministry of Defense authorization. Article 25 of Decree 3398 of 1965 established that "All Colombians, male and female, not otherwise covered by the call to compulsory military service, can be used by the Government in activities and labor which will contribute to the reestablishment of normality." IACHR Report .No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 61.

<sup>9</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. IV, para. 236. Available at: <http://www.IACHR.org/countryrep/Colom99sp/indice.htm>. IACHR, Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 61.

<sup>10</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. I, paras. 7-19. Available at: <http://www.IACHR.org/countryrep/Colom99sp/indice.htm>. IACHR Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62.

<sup>11</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Preliminary Objections. Judgment of March 7, 2005. Series C No. 122, paras. 96.1 – 96.5.

<sup>12</sup> Articles 25 and 33 of Legislative Decree 3398 (National Defense Law) and Law 48 of 1968 provided a legal basis for the creation of "self-defense groups". Cf. I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 84 g).

<sup>13</sup> Decrees 1194 of June 8, 1989 and 2266 of 1991. IACHR. Report No. 75/06 Jesús María Valle Jaramillo, October 16, 2006, para. 62.

punished.<sup>14</sup> The tolerance of these groups by certain sectors of the Army has been denounced by agencies of the State itself.<sup>15</sup>

35. The Commission notes that initially it was the State itself that encouraged the creation of self-defense groups for specific purposes but they expanded and began to act outside the law, together with the collaboration or acquiescence of State agents. The Court has observed that such "paramilitary groups are responsible for numerous murders [...] and for the majority of human rights violations in general" committed in Colombia.<sup>16</sup>

36. This situation has led the Commission to establish that, for the purpose of determining the international responsibility of the State under the American Convention, where paramilitaries and members of the Army carry out joint operations with the knowledge of senior officers, or when the paramilitaries operate thanks to the collaboration or acquiescence of the Security Forces, members of paramilitary groups should be considered to be acting as State agents.<sup>17</sup>

37. For its part, the Inter-American Court has verified, in different periods and geographical contexts, the existence of links between members of Colombia's Armed Forces and paramilitary groups. A combined analysis of the cases decided by the Commission and later by the Inter-American Court points to the existence of a link between paramilitary groups and members of the security forces regarding human rights violations such as extrajudicial executions, forced disappearances, torture and cruel, inhuman or degrading treatment, forced displacement, among others. This link is manifested through either direct actions of support, collaboration and coordination, or through the omissions of members of the security forces that have favored the actions of paramilitary groups. Among such cases are the Case of the 19 Merchants<sup>18</sup>, the Mapiripán Massacre,<sup>19</sup> the Ituango and El Aro Massacres,<sup>20</sup> Cepeda Vargas,<sup>21</sup> among others.

38. Specifically in the *Case of the Rochela Massacre*, the Court recapitulated the instances for attribution of international responsibility to the State for acts perpetrated by paramilitaries. First, it reiterated the international responsibility of Colombia i) for having issued a legal framework through which the creation of self-defense groups led to paramilitarism; and ii) the failure to adopt all necessary measures to effectively end the risk created by the State itself due to such regulations.<sup>22</sup> Secondly, it said it had found Colombia responsible for breach of its duty of protection by failing to take effective preventative and

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<sup>14</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999. Cap. I, paras. 17-19, <http://www.IACHR.org/countryrep/Colom99sp/indice.htm>. See also Report of the Office in Colombia of the United Nations High Commissioner for Human Rights, April 2000, para. 30. See also IACHR. Report No. 75/06, Jesús María Valle Jaramillo, October 16, 2006, para. 62.

<sup>15</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Cap. IV, paras. 37-239. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo*, October 16, 2006, para. 62, at <http://www.IACHR.org/countryrep/Colom99sp/indice.htm>.

<sup>16</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 96.18 and I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148, para. 125.

<sup>17</sup> IACHR. Report No.37/00 *Monsignor Oscar Arnulfo Romero and Galdámez*, para. 64. IACHR. Report No. 75/06 *Jesús María Valle Jaramillo*, October 16, 2006, para. 63.

<sup>18</sup> I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109.

<sup>19</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134.

<sup>20</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006 Series C No. 148.

<sup>21</sup> I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No.213.

<sup>22</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 78.

protective measures for the civilian population in a situation of risk that was reasonably foreseeable by members of the Armed Forces or State security services with regard to paramilitary groups.<sup>23</sup> Thirdly, it said that it had determined the responsibility of Colombia on several occasions for violations committed by paramilitary groups with the support, acquiescence, participation and collaboration of members of the Security Forces.<sup>24</sup>

39. Recently in the *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis)*, the Court stated that "it is a well-know public fact that various decisions of Colombia's high courts have referred to the connections existing between paramilitary groups and members of the Armed Forces<sup>25</sup>, as have several reports of the Ombudsman's Office".<sup>26</sup> Elsewhere in the Court's jurisprudence it has taken into account reports and decisions of the Attorney General's Office in which there was proven collaboration between members of the Army and paramilitary groups in the department of Antioquia.<sup>27</sup> Also, the reports published by the National Historical Memory Center (...) also report different scenarios in which there were links between the Colombian security forces and paramilitary groups.<sup>28</sup>

40. In the same Judgment, the Court indicated that:

<sup>23</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 78.

<sup>24</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 78.

<sup>25</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing, *cf.* Colombian Supreme Court of Justice, Criminal Cassation Chamber: Review Judgment No. 30516, March 11, 2009 (evidence file, folios 9851 and 9856); Cassation Judgment No. 24448, September 12, 2007, cited in Regional Director of Prosecution Offices, Memorandum No. 0035 of April 28, 2009, pp. 106 to 118 (evidence file, folio 10024). See also Colombian Constitutional Court, decision 005 of January 26, 2009, and Council of State, Third Section, Action for direct reparation, Judgment No. 68001-23-15-000-1996-01698-01, Counselor Rapporteur: Olga Melida Valle de De La Oz of February 27, 2013, p 13.

<sup>26</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Quoting, *Cf.* Ombudsman's Fourth Report to the Congress of Colombia, Bogotá, 1997, pp. 59 and 60, cited by the Commission on Human Rights of the United Nations in the Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with resolution 1999/47 of the Commission, E / CN # 4/2000/83 /Add.1 of 11 January 2000 for. 25 (evidence file, page 1571). It stresses that the President of the Court requested, through its Secretariat, the Ombudsman of Colombia to forward the Fourth Report of the Ombudsman to the Congress of Colombia as useful evidence but it was referred. On the other hand, the State did not object to the reference made regarding the aforementioned Report by the UN report, so the Court considers that the reference to the text of it is in accordance with its wording. See also Ombudsman, Twelfth Report of the Ombudsman to the Congress of Colombia January-December 2004, pages 66, 67, 172, 173; Ombudsman. Ombudsman Report on Forced by Violence in Colombia, April 2002, points 4 and 9 displacement; and Ombudsman. Report to Monitor Compliance with the orders of the T-1025 Case 2007, pp 16, 17, 21 and 35.

<sup>27</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing, *cf.* Public Prosecution Service, Human Rights Office, Ruling issued by the Human Rights Office on September 30, 2002. Ruling cited in the *Case of the Ituango Massacres v. Colombia*. para. 125.100: "on September 30, 2002, the disciplinary office delegated to the defense of human rights decided to sanction Lieutenant Everardo Bolaños Galindo and Sergeant first class Germán Antonio Alzate Cardona, alias "Rambo," removing them from their positions as public officials because it found them responsible for having intentionally collaborated with and facilitated the paramilitary incursion in El Aro and the removal of livestock. On November 1, 2002, following an appeal filed by these two individuals, this ruling was confirmed in second instance by the Disciplinary Chamber of the Public Prosecution Service."

<sup>28</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing *Cf.* National Historical Memory Center, "*Basta ya! Colombia: Memorias de guerra y dignidad. Informe General Grupo de Memoria Histórica*," Imprenta Nacional, Colombia, 2013, pp. 20, 42, 48, 343 and 347; and "*Justicia y Paz ;verdad judicial o verdad histórica?*" Colombia, 2012, pp. 251, 377, 469, 498, 513, 514 and 515; "*La Rochela: Memorias de un crimen contra la justicia*," Ed. Semana, Colombia, 2010, pp. 20, 95, 96, 104, 105 and 116; "*Silenciar en Democracia. Las masacres de Remedios y Segovia, 1982-1997*," Ed. Semana, Colombia, 2010, pp. 21, 22, 28, 29, 61, and 73 to 76; "*La masacre de Bahía Portete: Mujeres Wayuu en la mira*," Ed. Semana, Colombia, 2010, pp. 23 and 33; "*San Carlos: Memorias del éxodo en la guerra*," Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 87 and 15; "*Mujeres y guerra. Víctimas y resistentes en el Caribe colombiano*," Ed. Aguilar, Altea, Taurus, Alfaguara, S. A., Colombia, 2011, pp. 31, 32 and 240.

In accordance with what has been indicated by several State institutions, different United Nations bodies and agencies (the Commission on Human Rights, the Office of the High Commissioner for Human Rights, the Human Rights Committee of the International Covenant on Civil and Political Rights<sup>29</sup>, and the ILO<sup>30</sup>) have referred to this context of connections between the Armed Forces and the paramilitaries. Lastly some expert opinions presented in these proceedings,<sup>31</sup> and in other proceedings before the Court<sup>32</sup> (incorporated into the documentary evidence of this case) reveal these connections.

## **2. The Situation in the Municipality of Aguachica; the actions of illegal armed groups and the links between some of them and State agents**

41. The municipality of Aguachica is located in the south of the Department of Cesar and at the time of the events was a militarized region with a large presence of illegal armed groups.<sup>33</sup> According to a report issued in 1995 by investigator with the Unit for Crimes against Life and Personal Integrity "the best way to ensure survival [in this area] [was] being part of any of the groups perpetrating the violence (subversives and paramilitaries), where most of those affected [by violence were] not part of them."<sup>34</sup> According to the statement of a Deputy of the National Police "most acts of violence that were then happening in this region were a result of subversion and private justice groups sponsored and financed by the PRADA family, headed by ROBERTO PRADA and his brothers JUANCHO and MARTINIANO".<sup>35</sup>

<sup>29</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing Cf. United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on internally displaced persons submitted in accordance with Commission resolution 1999/47, E/CN.4/2000/83/Add.1, para. 25 (evidence file, folio 1571). United Nations High Commissioner for Human Rights, Reports on the Situation of Human Rights in Colombia: E/CN.4/2001/15, 20 March 2001, para. 131 (evidence file, folio 2601); E/CN.4/2005/10, 28 February 2005, para. 149, Annex No. II, paras. 5, 6, 7 and 8 (evidence file, folios 2337 and 2348); E/CN.4/2004 /13, 17 February 2004, paras. 23, 24, 65 and 73 (evidence file, folios 2382, 2383, 2392, and 2393); E/CN.4/2003/13, 24 February 2003, paras. 9, 34, 44, 74, 75 and 77 (evidence file, folios 2445, 2450, 2452, 24659 and 2460); E/CN.4/2002/17, 28 February 2002, para. 62 (evidence file, folio 2520); E/CN.4/2000/11, 9 March 2000, paras. 25, 110 and 111 (evidence file, folios 2640, 2657 and 2658); E/CN.4/1998/16, 9 March 1998, paras. 29, 90, 91 and 175 (evidence file, folios 744, 751 and 762). See also, United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of 5 May 1997, para. 17; 4 August 2010, para. 8, and 26 May 2004, para. 12

<sup>30</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing Cf. ILO, Committee of Experts on the Application of Conventions and Recommendations (CEACR), individual observation, 2009, pp. 78 and 79.

<sup>31</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing Cf. Expert opinion provided by Javier Ciurlizza, expert witness proposed by the Commission, before the Inter- American Court of Human Rights during the public hearing on February 12, 2013: "[...] The existence of connections between paramilitary groups and some local economic or political agents is public knowledge [...]." Anthropological appraisal provided by Jesús A. Flores López, proposed by the representatives, before the Inter-American Court of Human Rights on February 12, 2013

<sup>32</sup> I/A Court H.R., *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. Citing Cf. Sworn statement by Federico Andreu Guzmán. *Case of the Mapiripán Massacre and the La Rochela Massacre v. Colombia*. In different parts of his statement, Mr. Andreu referred to the existence of connections between paramilitary groups and soldiers.

<sup>33</sup> Investigative Report into the Puerto Patiño (Cesar) Massacre, of February 13, 1995. Directorate of Judicial Police and Investigation. Unit for Crimes against Life and Physical Integrity. Annex to the petitioners' brief of April 23, 1997 and of March 3, 1999. Interrogation of Army Major Jorge Alberto Lázaro Vergel, dated March 17, 1995, in the case of the Puerto Patiño village massacre, case file 008-152218 of the Delegate Human Rights Procurator's Office, folder of Annexes No 1, pp. 57 to 79. Annex 24 to the petitioners' brief of November 10, 2010.

<sup>34</sup> Investigative Report into the Puerto Patiño (Cesar) Massacre, of February 13, 1995. Directorate of Judicial Police and Investigation. Unit for Crimes against Life and Physical Integrity. Annex to the petitioners' brief of April 23, 1997 and of March 3, 1999.

<sup>35</sup> Complaint filed by member of the Police Jorge Fredy Monroy Ávila on February 23, 1995, case file No. 397 of the Human Rights Unit of the National Prosecutor's Office, Bucaramanga, folder No. 2, pp. 223 - 227. Annex 27 to the petitioners' brief of November 10, 2010.

42. In mid-1991 the "Community Action Movement" (MAC) was formed in Aguachica, and it managed to have three councilors elected to the mayor's office.<sup>36</sup> The MAC was perceived by some, including the authorities, as a group whose leaders allegedly came from the ex-guerrilla group M-19. By that time complaints about the existence of self-defense groups started.<sup>37</sup>

43. Army Major John Carlos Vigoya Arango was the Commander in charge of the Santander Battalion prior to 1994.<sup>38</sup> After the then Mayoress of the municipality of Aguachica resigned because of "repeated and serious threats against her life", Major John Carlos Arango Arango was elected Mayor of Aguachica in May 1994.<sup>39</sup> Then Major Jorge Alberto Lázaro Vergel was placed in charge of the military post of Aguachica.<sup>40</sup> Following a series of murders and attacks against members of the MAC (see infra para .. xx) a public statement was released in 1994 by members of the MAC where they said that "those who had survived were resigning from the Political Community Action Movement" and said that some party members had moved "to other parts of the country to protect [their] lives".<sup>41</sup>

44. The Commission notes that the information provided by the petitioners contains statements and reports of authorities as well as individuals linking Army personnel, especially Major Jorge Alberto Lázaro Vergel, as well as other authorities, to the activities of the illegal armed group identified as paramilitaries in the area as follows:

- The C.T. Fabian Rios referring to the acts of illegal armed groups in the area said that the commander of the Aguachica base, Major Jorge Alberto Lázaro Vergel told him once that "nobody operates without my orders, they notify me when they go to do some work and I tell them yes or no, they are under my command, also there will not be any longer any dead left; people will be taken and disappeared because the dead cause a lot of trouble".<sup>42</sup> Major Lazaro Vergel stated "he was the

<sup>36</sup> Project Colombia Nunca Más. Report Zone V. *El sur del Cesar: entre la acumulación de la tierra and el monocultivo de la palma*. At: <http://movimientodevictimas.org/~nuncamas/images/stories/zona5/SURDELCEGAR.pdf>

<sup>37</sup> In this respect, Army Major Jorge Alberto Lázaro Vergel, stated in 1995 that "[...]as is well-known to all the authorities, before the Mayor of Aguachica and his private secretary took charge of their positions they were commanders of the M-19 group. Once they took office they were the ones who started to talk of paramilitary groups in Aguachica, just as the ELN. Therefore I gather that they are the ones interested in having the authorities combat the paramilitaries that the ranchers claim to have. I believe they call the rancher's escorts "self-defense", which are one, two, three men armed with legal handguns, and who accompany the ranchers to the properties so that they are not kidnapped. Some of these ranchers whenever they visited their properties used to approach the base to ask for protection [...] In conclusion, we can say that the guerrillas are trying by all means that the Government combat the paramilitaries so they have a clear path –as they have always had— to continue kidnapping and blackmailing ranchers; in the municipality of Aguachica the Camilo Torres Restrepo group is strong, with urban militias, gangs of thieves and robbers [...] these are ELN commanders, squadron commanders include [...] LIBARDO GALVIS former Counselor of the Aguachica Municipality[...] Interrogation of Major Jorge Alberto Lázaro Vergel, before the Military Court on Criminal Instruction No.100, March 23, 1995, case file 008-152218 de Human Rights National Procurator's Office, folder No 1, pp. 234 to 260. Annex 7 to the petitioners' brief of November 10, 2010. See also Diario El Tiempo. *En Aguachica manda el miedo*, June 5, 1994. At: <http://www.eltiempo.com/archivo/documento/MAM-144390>

<sup>38</sup> Report No. ULA Technical Investigation Corps 525 of September 18, 1998 of the Local Unit of Aguachica, Technical Investigative Corps of the General Prosecutor's Office, case file No. 397 of the National Unit of Human Rights of the General Prosecutor's Office of Bucaramanga, pp. 176- 178. Annex 22 to the petitioners' brief of November 10, 2010.

<sup>39</sup> Decree No. 1109 of 1994, published in the Official Gazette of May 31, 1994. Annex No. 21 of the petitioner's brief of November 10, 2010.

<sup>40</sup> Interrogation of Army Major Jorge Alberto Lázaro Vergel, dated March 17, 1995, in the case of the Puerto Patiño village massacre, case file 008-152218 of the National Procurator's Office Human Rights Division, folder of Annexes No 1, pp. 57 to 79. Annex 24 to the petitioners' brief of November 10, 2010.

<sup>41</sup> MAC Public Communiqué, case file No. 015 of the National Unit of Human Rights of the General Prosecutor's Office of Bucaramanga, folder No. 9, p. 301. Annex No. 11 to the petitioners' brief of November 10, 2010.

<sup>42</sup> Sworn statement of L.C. Fabian Rios to the Central Judicial Police Unit, Homicide Crimes and Personal Injury Section, February 6, 1995, investigation on the Puerto Patiño Massacre. Annex to the petitioners' brief of March 3, 1999 and Annex 23 to the petitioners' brief of November 10, 2010. He also stated that "in relation to Major Lazaro I had many reports that he worked with the paramilitaries, practically he belonged to them." Sworn statement of L.C. Fabian Rios to the Regional Directorate of Public Prosecutions, May 7, 1998. Annex 25 of the petitioners' brief of November 10, 2010. Regarding Major Lazaro he also indicated "I do not know directly about his involvement, what I've always said is that he personally told me that he was the Coordinator of these self defense groups in Aguachica, and they did nothing without an order from him"; he added that "given his Lázaro Vergel's declaration that he was the coordinator of the paramilitaries in Aguachica and that these people did nothing without his orders, by simple logic it is clear that he was the one ordering the killings." Sworn statement of Police Captain Fabian Rios Cortes of August 20, 1999, case file No. 015 of the National Prosecutor's Office – National Human Rights Unit Bucaramanga, folder No. 8, pp. 53 - 58. Annex 26 to the petitioners' brief of November

[continues ...]

coordinator of the group"<sup>43</sup> and reckoned that these "paramilitaries were not born on the day that Major Lazaro Vergel arrived to command the Battalion, logically the outgoing commander decided to appreciate the jurisdiction (sic)."<sup>44</sup> According to C.T. Fabian Rios, Major Lazaro Vergel declared at the time of the events "that anything that smelled of subversion was to be removed."<sup>45</sup>

- According to the statement of Mr. Jorge Fredy Monroy Avila, a National Police member, who investigated a massacre that took place in the Municipality of Aguachica on January 15, 1995, he came to the conclusion that the group led by members of the Prada family had "the strong support of Army Major LAZAROVERGEL (sic) JORGE ALBERTO, commander of the Aguachica Military Base" and said that "as a result of all these interviews and judicial evidence ... the conclusion is that Major LÁZARO VERGEL was involved in the Puerto Patiño massacre."<sup>46</sup> According to a report by the Directorate of Judicial Police and Investigation in connection with the massacre, "various top-level sources of information point to National Army Major JORGE ALBERTO LAZARO VERGEL, Commander of the Aguachica base, being directly responsible as an organizer and perpetrator of the actions carried out by this group."<sup>47</sup>
- According to Roberto Prada Delgado, Roberto Prada's son, who commanded the illegal armed group, his father "coordinated with members of the Police, and the DAS" and said they were "from the Police or the Army". He also noted that "it was no secret that the public officials failed to act so that the self defense forces could operate in that area."<sup>48</sup>
- According to the statement of Javier Antonio Quintero, who had been a member of the self-defense forces since December 1994, "they worked directly with the Army Major called LÁZARO VERGEL who was the Deputy Commander of the Santander Battalion, with that gentleman we were free to roam everywhere."<sup>49</sup>

45. In addition, as part of its monitoring work, the Commission received information on the links between the Army and paramilitary groups in the city of Aguachica at the time of the facts of this case. This situation was reflected in its *Third Report on the Situation of Human Rights in Colombia* in the following terms:

[i]n February of 1995, the police commander in Aguachica stated that the paramilitary group presumably responsible for the massacre was directly sponsored by the State's public security forces, in particular by the commander of the local military base, Major Jorge

[... continuation]

10, 2010. In connection with the alleged relationship between Major Lazaro Vergel and paramilitary groups, the Commission notes that the Puerto Patiño massacre, Aguachica, FCSP's press release said that "according to the testimony of self-confessed paramilitaries that participated in the events, they were carried out by a mixed group made up of members of the criminal gang known as "los cara tapadas" and troops from Infantry Battalion No. 15 "General Francisco de Paula Santander", including the then commander of the Aguachica military base, LAZARO VERGEL who in addition to promoting the advancement of paramilitaries in the area, participated directly in the massacre and forced disappearance" of the fishermen. See Rural Press Agency. Lieutenant Colonel Jorge Alberto Lázaro Vergel captured and accused of being the author of the massacre of Puerto Patiño, Aguachica. At <http://prensarural.org/spip/spip.php?article5382>. Cf. sworn statement of Police Captain Fabián Ríos Cortés of August 20, 1999, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 8, pp. 53 - 58. Annex 26 of the petitioners' brief of November 10, 2010.

<sup>43</sup> Sworn statement of Police Captain Fabián Ríos Cortés of August 20, 1999, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 8, pp. 53 - 58. Annex 26 to the petitioners' brief of November 10, 2010.

<sup>44</sup> Sworn statement of Police Captain Fabián Ríos Cortés of August 20, 1999, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 8, pp. 53 - 58. Annex 26 to the petitioners' brief of November 10, 2010.

<sup>45</sup> Sworn statement made by Fabián Ríos Cortes before the 44th Special Prosecutor of August 2, 2012. Annex to the petitioners' brief received on May 17, 2014.

<sup>46</sup> Complaint filed by Police member Jorge Fredy Monroy Ávila on February 23, 1995. Case file No. 397 of the National Human Rights Unit - National Prosecutor's Office, folder No. 2, pp. 223 - 227. Annex 27 to the petitioners' brief of November 10, 2010.

<sup>47</sup> Investigative report into the Puerto Patiño (Cesar) massacre of February 13, 1995. Directorate of Judicial Police and Investigation. Unit for Crimes against Life and Physical Integrity. Annex to the petitioners' brief of April 23, 1997 and of March 3, 1999. Cf. Sworn statement of Police Captain Fabián Ríos Cortés of May 7, 1998, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 159 - 163. Annex No. 31 to the petitioners' brief of November 10, 2010. Cf. Sworn statement of Rubén Darío Torres of July 21, 2010, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 212 - 215. Annex No. 36 to the petitioners' brief of November 10, 2010.

<sup>48</sup> Sworn statement made by Roberto Prada Delgado before the 44 Specialized Prosecutor on April 8, 2011. Annex to the petitioners' brief received on May 17, 2014.

<sup>49</sup> Sworn statement made by Javier Antonio Quintero Coronel before the 76 Specialized Prosecutor of the National Unit of Human Rights and International Humanitarian Law, of April 30, 2013. Annex to the petitioners' brief received on May 17, 2014.

Alberto Lazaro Vergel. According to the police commander, Major Lazaro had told him, in the presence of a DAS officer, that he had a list of suspects who were to be located and killed by paramilitary forces.<sup>50</sup>

46. Furthermore, the Commission notes that some statements and reports refer to a State body called UNASE (National Anti-Kidnapping Unit), comprising members of the National Army, National Police and the DAS<sup>51</sup>, which was located in San Roque's main park, near the Town Hall of the Municipality of Aguachica<sup>52</sup>.

47. With regard to this unit, the petitioners submitted a number of statements indicating that it was known for its participation in acts of violence and extortion. Thus, Edel Mary Castilla Acosta, who worked at the Town Hall, indicated, with regard to the violence against members of the MAC group, that "for a time it was doing all the killings"<sup>53</sup>; C.T. Fabián Ríos Cortés said that "from the information we hear that they have links equally to the paramilitaries"<sup>54</sup>; Mrs. Fabiola Pastrana said that a person who belonged to the UNASE asked her for a million pesos to tell [her] who killed [her] husband [...]"<sup>55</sup>; and Mr. Ruben Darío Torres, who worked in the communications office of the treasury department, said "they knew there were social cleansing groups" and added that "there were comments made [of UNASE] that they were charged with cleaning up"<sup>56</sup>. He further noted that "at that time we heard about death squads, but these were merely rumors, because no one had either the resources or the technology with which to conduct a good investigation."<sup>57</sup>

48. Additionally, the Commission notes that the case file contains information on a number of attacks and killings against members of the MAC: Carlos Emiro Ramos Galvis, Principal Treasurer (E) Municipal, killed on October 28, 1992;<sup>58</sup> Gonzalo Cárdenas Alfonso, Chief of Personnel of the Mayor of Aguachica, who was attacked on November 29, 1993;<sup>59</sup> Víctor Guadía Castañeda, who died on September 21,

<sup>50</sup> IACHR. *Third Report on the Situation of Human Rights in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, Ch. IV, para. 173. Cf. Sworn Statement of Police Captain Fabián Ríos Cortés on May 7, 1998, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 159 - 163. Annex No. 31 to the petitioners' brief of November 10, 2010.

<sup>51</sup> Report No. 279 of August 12, 2002 General Operations Department - Special Operations Subsection - DAS Judicial Police Coordination - case file No. 397 of the National Human Rights Unit Bucaramanga, folder No. 1, pp. 301 - 303. Annex 2 to the petitioners' brief of November 10, 2010.

<sup>52</sup> Map of the main park of San Roque in the Municipality of Aguachica in 1994, drawn up by Jaime Antonio Omeara Miraval. Annex 37 to the petitioners' brief of November 10, 2010. Sworn statement of Carmen Teresa Omeara Miraval of February 18, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 142 - 145. Annex No. 39 to the petitioners' brief of November 10, 2010. Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>53</sup> Sworn statement of Edel Mary Castilla Acosta of February 21, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 150 - 154. Annex 35 to the petitioners' brief of November 10, 2010.

<sup>54</sup> Sworn statement of C.T. Fabián Ríos before the Central Unit of the Judicial Police, Homicide Crime and Personal Injury Section, of February 6, 1995.

<sup>55</sup> Sworn statement of Fabiola Pastrana, widow of Galvis on March 30, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 122 and 123. Annex No. 13 to the petitioners' brief of November 10, 2010.

<sup>56</sup> Sworn statement of Rubén Darío Torres of July 21, 2010, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 212 - 215. Annex No. 36 to the petitioners' brief of November 10, 2010.

<sup>57</sup> Sworn statement made by Fabián Ríos Cortes before the 44th Special Prosecutor on August 2, 2012. Annex to the petitioners' brief received on May 17, 2014.

<sup>58</sup> Sworn statement of Fabiola Pastrana widow of Galvis of March 30, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 122 and 123. Annex No. 13 to the petitioners' brief of November 10, 2010. Sworn statement of Jesús Emilio Blanco Páez of October 7, 1993, before the Office of Special Investigations of the National Procurator's Office, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 85 and 86. Annex No. 17 to the petitioners' brief of November 10, 2010. Sworn statement of Manuel Claro Santiago of February 22, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 155 - 163. Annex No. 19 to the petitioners' brief of November 10, 2010.

<sup>59</sup> Report No. 431 of September 7, 2009, of the Criminal Investigator of the National Human Rights Unit Bucaramanga, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office, folder No. 3, pp. 279 - 286. Annex No. 12 to the petitioners' brief of November 10, 2010. [continues ...]

1993. On October 7, 1993 Jesús Emilio Blanco Páez, a town hall employee and a MAC leader, filed a complaint before the National Procurator's Office indicating that he had been publicly accused of being guerrilla member and had received death threats.<sup>60</sup>

49. Regarding the perpetrators of the above facts against MAC members, the Commission notes that in the case file on the death of Carlos Emiro Galvis, his wife said that: "[...] Gloria –married to Rambo who belonged UNASE— told him he had a list [...]" and that, as noted above, "Pelo de Puya, surnamed Romero, who belonged to the UNASE, asked for one million pesos to tell [her] who had killed [her] husband [...]"<sup>61</sup>. Meanwhile, regarding the death of Mr. Víctor Guadía, his mother said that "the rumors were that it had been the police and UNASE who sent them to kill those of the Community Action".<sup>62</sup> Likewise, Mrs. Luz Neira Carrascal, Blanco's widow, stated that "people commented was that it was the UNASE organized by the National Government, who had people from the Army, Police, the DAS, saying they were several united entities..."<sup>63</sup>

50. Regarding the allegations of coordination between the security forces and paramilitary groups, and with regard to the UNASE, the Commission notes that the case file shows that Major Lázaro Vergel said, "This is totally false" and said that in Aguachica, "in the urban areas no paramilitary group has been operating"<sup>64</sup>. Also, according to his statement, during "the whole time we were with Major BIGOYA as mayor with me in my post, no one spoke of paramilitary groups in Aguachica"<sup>65</sup>. For its part, the State reported on the result of proceedings aimed at investigating whether the Major Lázaro Vergel was involved in acts of violence related to the activities of paramilitary groups with one of the alleged victims in the case (see *infra* para. XXX ). The Commission notes that although such investigations in the ordinary, military and disciplinary jurisdictions has not yet found any official responsible, this situation in itself does not necessarily controvert all the evidence described in this section.

[... continuation]

brief of November 10, 2010. Sworn statement of Elibardo Galvis Barrera of March 20, 2003, before the Special Prosecutor of the National Human Rights Unit - National Prosecutor's Office, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 9, pp. 295 - 301. Annex No. 10 to the petitioners' brief of November 10, 2010. Public Communiqué of the MAC, case file No. 015 of the National Unit of Human Rights of the General Prosecutor's Office of Bucaramanga, folder No. 9, p. 301. Annex No. 11 to the petitioners' brief of November 10, 2010. See also sworn statement of María Castañeda Ortega dated March 26, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 90 - 92. Sworn statement of Gonzalo Cárdenas Alfonso of October 7, 1993 before the Office of Special Investigations of the National Procurator's Office, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 81 and 82. Annex No. 15 to the petitioners' brief of November 10, 2010. Sworn statement of Gonzalo Cárdenas Alfonso of March 19, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 93 - 96. Annex No. 16 to the petitioners' brief of November 10, 2010. Sworn statement of Jesús Emilio Blanco Páez of October 7, 1993 before the Office of Special Investigations of the National Procurator's Office, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 85 and 86. Annex No. 17 to the petitioners' brief of November 10, 2010. Sworn statement of Luz Neira Carrascal widow of Blanco, of March 19, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 97 - 101. Annex No. 18 to the petitioners' brief of November 10, 2010.

<sup>60</sup> Jesús Emilio Blanco Páez was murdered on September 23, 1997. Report No. 431 of September 7, 2009 of the Criminal Investigator of the National Human Rights Unit Bucaramanga, case file No. 397 National Human Rights Unit - National Prosecutor's Office, folder No. 3, pp. 279 - 286. Annex No. 12 to the petitioners' brief of November 10, 2010.

<sup>61</sup> Sworn statement of Fabiola Pastrana, widow of Galvis, on March 30, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 122 and 123. Annex No. 13 to the petitioners' brief of November 10, 2010.

<sup>62</sup> Sworn statement of María Castañeda Ortega dated March 26, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 90 - 92. Annex No. 14 to the petitioners' brief of November 10, 2010.

<sup>63</sup> Sworn statement of Luz Neira Carrascal, widow of Blanco, of March 19, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 97 - 101. Annex No. 18 to the petitioners' brief of November 10, 2010.

<sup>64</sup> Interrogation of Army Major Jorge Alberto Lázaro Vergel, dated March 17, 1995, in the case of the Puerto Patiño village massacre, case file 008-152218 of the Human Rights Delegation of the National Procurator's Office, folder of Annexes No 1, pp. 57 to 79. Annex 24 to the petitioners' brief of November 10, 2010.

<sup>65</sup> Interrogation of Army Major Jorge Alberto Lázaro Vergel, dated March 17, 1995, in the case of the Puerto Patiño village massacre, case file 008-152218 of the Human Rights Delegation of the National Procurator's Office, folder of Annexes No 1, pp. 57 to 79. Annex 24 to the petitioners' brief of November 10, 2010.

51. In this regard, in view of the information provided by the parties, the Commission considers that at the time of the events there was a context of collaboration between members of the security forces and the activities of paramilitary groups in the area.

### **3. *Facts relating to Noel Emiro Omeara Carrascal***

52. The Commission notes that there is no dispute that on January 28, 1994, Mr. Noel Emiro Omeara Carrascal suffered gunshot wounds when four individuals entered the “San Roque” restaurant located near the building of the municipal town hall.<sup>66</sup> Nor is it disputed that the individuals who entered the restaurant intended to execute Mr. José Emerson Sepúlveda Saravia, who was a member of the political group MAC and the injuries caused to Mr. Noel Emiro Omeara were the result of that operation.

53. The dispute between the parties centers on whether the events surrounding the attack that injured Mr. Omeara were the result of actions or omissions of State agents or not; and whether his death which occurred several months after the attack had a causal link to these injuries. In order to resolve these factual disputes, the Commission will determine the circumstances surrounding the operation, which injured Mr. Noel Emiro Omeara Carrascal. Subsequently, the Commission will determine whether, based on the available evidence, the subsequent death of Mr. Omeara Carrascal is related to the injuries he sustained on January 28, 1994.

#### **a. *The Background relating to José Emerson Sepúlveda Saravia***

54. Mr. José Emerson Sepúlveda Saravia was Private Secretary to the Town Hall and a member of the MAC. On October 7, 1993, he and other MAC leaders filed a complaint before the Procurator General’s Office regarding a series of attacks against them arguing that “there have been several comments that members of the political group were on a list of civic leaders who were to be executed.”<sup>67</sup> The complaint indicates that MAC members were designated as “belonging to a guerrilla organization, more specifically, the ELN”.<sup>68</sup> The signatories, including Mr. José Emerson Sepúlveda, demanded “an immediate investigation and further action to prevent and ensure [their] physical and moral integrity” and requested “an immediate

<sup>66</sup> Cf. Sworn statement of Manuel Claro Santiago of February 22, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 3, pp. 155 - 163. Annex No. 19 to the petitioners’ brief of November 10, 2010. Cf. Sworn statement of Ana Graciela Quintero Ortega of August 20, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 3, pp. 268 - 274. Annex No. 33 to the petitioners’ brief of November 10, 2010 and sworn statement of Rubén Darío Torres of July 21, 2010, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 4, pp. 212 - 215. Annex No. 36 to the petitioners’ brief of November 10, 2010. Sworn statement of Ana Graciela Quintero Ortega of January 28, 1994, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 1, pp. 26 and 27. Annex No. 61 to the petitioners’ brief of November 10, 2010.

<sup>67</sup> Regarding the list see also sworn statement of Fabiola Pastrana widow of Galvis on March 30, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 2, pp. 122 and 123. Annex No. 13 to the petitioners’ brief of November 10, 2010. The deposition indicates: “more than three of four years after Carlos’ death Gloria –married to Rambo who belonged UNASE— approached me and told me told me that he had a list [...] she asked me the name of my husband and when I told her Carlos Gálvez she answered that Rambo had a list of the people they would murder and he was on it”. See sworn statement of Elibardo Galvis Barrera of October 7, 1993 before the Office of Special Investigations of the Procurator’s Office, case file No. 397 of the Human Rights Unit of the Prosecutor’s Office, Bucaramanga, folder No. 2, pp. 77 - 79. Annex No. 9 to the petitioners’ brief of November 10, 2010. This statement indicates that he is a Member of the Municipal Council of Aguachica and that he knew “of comments indicating that members of the political group were in a listed drawn by the UNASE and other authorities operating in the municipality of Aguachica.” See also sworn statement of Gonzalo Cárdenas Alfonso of October 7, 1993 before the Office of Special Investigations of the Procurator’s Office, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 2, pp. 81 and 82. Annex No. 15 to the petitioners’ brief of November 10, 2010.

<sup>68</sup> Complaint filed before the Procurator’s Office on October 5, 1993, by members of MAC, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 1, pp. 241 - 245. Annex 8 to the petitioners’ brief of November 10, 2010. Sworn statement of Emerson Sepúlveda Saravia of 7 October, 1993 before the Office of Special Investigations of the National Procurator’s Office, case file No. 397 National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 2, pp. 82 - 84. Annex No. 29 to the petitioners’ brief of November 10, 2010. Sworn statement of Elibardo Galvis Barrera of October 7, 1993 before the Office of Special Investigations of the Procurator’s Office, case file No. 397 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 2, pp. 77 - 79. Annex No. 9 to the petitioners’ brief of November 10, 2010.

investigation and other action to prevent and ensure [their] lives, the lives of [their] families and other members of the [MAC]."<sup>69</sup>

55. On January 25, 1994, Erminson Sepúlveda Saravia filed a verbal complaint with the Municipal Ombudsman, stating that the person who answered the telephone at the Town Hall had received an anonymous call indicating that the next victim would be the Mayor's Private Secretary. After stating that several officials had been subjected to acts of violence, he also said in his complaint: "I appear to be the next victim of the violence in this city [...]"<sup>70</sup>. According to Mrs. Alba Luz Sepúlveda Saravia, her brother Erminson Sepúlveda, had "three young friends of my brother charged with looking after him, but unarmed because the Army never allowed them to arm themselves."<sup>71</sup>

#### **b. Facts surrounding the Injuries to Mr. Noel Emiro Omeara Carrascal**

56. On January 28, 1994, three days after the abovementioned complaint, an order was given for the police to search all employees and visitors to the Town Hall, who had to leave their weapons at the entrance.<sup>72</sup> As Edel Castilla Acosta –who worked in the town hall— pointed out "[...] this order was only carried out that day and from comments from former employees I knew it had never been done before".<sup>73</sup>

57. According to Danilson Lanzziano Lemus, who also worked at the Town Hall, José Erminson Sepúlveda told him that "there were strange, suspicious people outside," but said that they were going out to "have lunch there opposite" indicating it was "impossible that they would be so brazen [...]". Mr. Lanzziano Lemus said that on the way to the restaurant José Emirson Sepúlveda met "Mr. Noel, who asked him for a favor [...]" to which Mr. Emirson Sepúlveda told him "come and join me for lunch and a talk."<sup>74</sup>

58. Once Noel Emiro Omeara Carrascal and Erminson Sepúlveda were in the restaurant, four plain clothes armed men entered, shot them and then left the area.<sup>75</sup> Erminson Sepúlveda Saravia died the same day,<sup>76</sup> while Noel Emiro Omeara Carrascal, who was hit by a bullet, was taken to hospital in Aguachica

<sup>69</sup> Complaint filed before the Procurator's Office on October 5, 1993 by MAC members, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 241 - 245. Annex 8 to the petitioners' brief of November 10, 2010.

<sup>70</sup> Complaint of Erminson Sepúlveda Saravia before the Municipal Ombudsman of Aguachica January 25 1994, case file No. 397 National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 100 - 103. Annex No. 31 to the petitioners' brief of November 10, 2010.

<sup>71</sup> Sworn statement of Alba Luz Sepúlveda Sarabia of April 14, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 133 - 137. Annex No. 30 to the petitioners' brief of November 10, 2010.

<sup>72</sup> Sworn statement of Edel Mary Castilla Acosta of February 21, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 150 - 154. Annex 35 to the petitioners' brief of November 10, 2010.

<sup>73</sup> Sworn statement of Edel Mary Castilla Acosta of February 21, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 150 - 154. Annex 35 to the petitioners' brief of November 10, 2010.

<sup>74</sup> Sworn statement of Danilson Lanzziano Lemus of August 19, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 247 - 250. Annex, No. 34 to the petitioners' brief of November 10, 2010. Cf. sworn statement of Damaris Lanziano Lemus of March 31, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 118 and 119. Annex No. 32 to the petitioners' brief of November 10, 2010.

<sup>75</sup> Cf. sworn statement of Manuel Claro Santiago of February 22, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 155 - 163. Annex No. 19 to the petitioners' brief of November 10, 2010. Cf. sworn statement of Ana Graciela Quintero Ortega of August 20, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 268 - 274. Annex No. 33 to the petitioners' brief of November 10, 2010 and sworn statement of Rubén Darío Torres of July 21, 2010, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 212 - 215. Annex No. 36 to the petitioners' brief of November 10, 2010. Sworn statement of Ana Graciela Quintero Ortega of January 28, 1994, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 26 and 27. Annex No. 61 to the petitioners' brief of November 10, 2010.

<sup>76</sup> In its report the Directorate of Judicial Police and Investigation acknowledges Erminson Sepúlveda Saravia's murder in the context of the political violence in the area. Investigative report on the Puerto Patiño massacre (Cesar) on February 13, 1995. Directorate of Judicial Police and Investigation. Unit for Crimes against Life and Physical Integrity. Annex to the petitioners' brief of April 23, 1997 and of March 3, 1999.

and that same day was rushed to another hospital.<sup>77</sup> With regard to these events, Jaime Antonio Omeara Miraval stated that "[...] the UNASE group, [...] arrived at the park and picked up ERMINSON and my dad, and took them to the hospital, from where at about two or three in the afternoon they were rushed to Bucaramanga."<sup>78</sup>

59. With regard to the perpetrators of these acts, there are several witness statements in the case file linking both paramilitary groups and State agents, especially members of the "UNASE". They are as follows:

- Carmen Teresa Miraval Omeara said her father told her that those who injured him were "persons belonging to the law." She said she learned that "they belonged to the UNASE because my dad gave me a description of the one he remembered the best" and after a visit to "the San Roque park, which was where this groups' headquarters were" she identified an individual with the characteristics her father had told her, who was known as "Rambo."<sup>79</sup> Carmen Teresa Omeara also said she had made "inquiries" and the other person who allegedly participated in the murder of her father was "PELO de PUYA."<sup>80</sup>
- Landis Sepúlveda Saravia said that "it was known in town that some UNASE boys had killed them."<sup>81</sup>
- Mrs. Alba Luz Sepúlveda, Mr. Emerson Sepúlveda's sister, said that "the people who killed [her] brother in the restaurant [...] were members of UNASE, moved around (sic) on motorcycles, in one red car and a (blue) one and walked through the streets." She added that the person "who shot [her] brother was thin, ugly, with a thin face, a big nose, short, clear eyes, and was a member of UNASE".<sup>82</sup>
- Damaris Lanziano Lemus, Mr. Emerson Sepúlveda's widow, said, with regard to those responsible for the death of her husband, that "based on feedback from the people ... the UNASE had a lot to do with it because just in the days before HERMIRSON's death lots of Army and Police were visible all the time, but on the day he was killed there was no-one."<sup>83</sup>
- Jaime Antonio Omeara said that "in the town there was an individual they called RAMBO, from the UNASE group, a very scary character [...] who had the reputation of being a hit man. They say he was

<sup>77</sup> Sworn statement of Araminta Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 174 and 175. Annex No. 38 to the petitioners' brief of November 10, 2010.

<sup>78</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>79</sup> Sworn statement of Carmen Teresa Omeara Miraval of February 18, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 142 - 145. Annex No. 39 to the petitioners' brief of November 10, 2010. "[...] I started to work in the organization at the beginning of 1993. I started to work with GUSTAVO VELÁSICO alias RAMBO who started at the same time and the boss or leader of the group was ROBERTO PRADA GAMARRA. Sworn statement of Fredy Ramiro Pedraza of July 13, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 95 to 98. Annex No. 4 to the petitioners' brief of November 10, 2010. See also sworn statement of Fabiola Pastrana widow of Galvis on March 30, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 122 and 123. Annex No. 13 to the petitioners' brief of November 10, 2010. Cf. sworn statement of Damaris Lanziano Lemus of March 13, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 118 and 119. Annex No. 32 to the petitioners' brief of November 10, 2010.

<sup>80</sup> Sworn statement made by Carmen Teresa Omeara Miraval, before the 44th Special Prosecutor on June 28, 2011, Annex to the petitioners' brief received on May 17, 2014.

<sup>81</sup> Sworn statement of Landis Sepúlveda Sarabia of April 17, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 138 - 140. Annex No. 43 to the petitioners' brief of November 10, 2010. Cf. sworn statement of Damaris Lanziano Lemus of March 13, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 118 and 119. Annex No. 32 to the petitioners' brief of November 10, 2010.

<sup>82</sup> Sworn statement of Alba Luz Sepúlveda Sarabia of April 17, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 133 - 137. Annex No. 30 to the petitioners' brief of November 10, 2010.

<sup>83</sup> Sworn statement of Damaris Lanziano Lemus of March 13, 2003, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 2, pp. 118 and 119. Annex No. 32 to the petitioners' brief of November 10, 2010.

in the van in which the gunmen who killed HERMIRSON SAPULVEDA and shot my dad arrived. It is also said that the UNASE group had another individual called AVE, but he was not an UNASE official”<sup>84</sup>.

- When asked about these facts, Mr. Juan Francisco Prada Márquez –a paramilitary who benefited from the Justice and Peace Law— said "I learned that the person ordering this was Roberto Prada Gamarra [...] " and that "the one who came back to commit the murder was 'el ave' (Gabriel Madriaga (sic))."<sup>85</sup>

60. The Commission notes that with regard to some of the persons mentioned in the above statements, a report by a prosecutor of the National Unit of Human Rights and International Humanitarian Law was able to demonstrate that there was a person with the alias "Rambo", which matched César Vidal Rodríguez Martínez and another under the alias "Pelo de Puya", matching Gentil Romero César. According to the report both individuals were "active officials of SIJIN Aguachica, Cesar."<sup>86</sup> Similarly, according to a record of the Human Resources Branch of the National Police, Mr. Gentil Romero Rodríguez died "on active service" on October 1, 1994, being ultimately assigned to the unit: "DECES". In the same vein, there was a record that Mr. César Vidal Rodríguez Martínez died "on active service" the same October 1, 1994, being assigned to Unit "DECES"<sup>87</sup>. Mr. CT Fabian Rios said that "when Rodríguez arrived he was escorting the district commander and GENTIL ROMERO belonged to the sub-SIJIN".<sup>88</sup>

61. As additional elements relating to the lack of action by State agents to prevent what happened, the Commission notes that according to some evidence, these events took place near the premises of the security forces, specifically the UNASE base.<sup>89</sup> In particular, Carmen Teresa Omeara stated that the UNASE facilities were "a few steps away, not far, that is, the UNASE was diagonally opposite the restaurant"<sup>90</sup> and Jaime Antonio Omeara Miraval also stated that it was "strange that having both the DAS as well as the UNASE group in the park, next to the town hall, they, despite being authorities, did nothing [...]".<sup>91</sup>

62. As an additional element linking UNASE members with the events, the Commission notes that according to Mrs. Teresa Omeara, Agustina Ana Rocha Beleño, an eyewitness, was threatened a few days after the attack with a gun by one of the UNASE members who "told her not to talk"<sup>92</sup>. Ana Graciela Ortega

<sup>84</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>85</sup> Justice and Peace Process, Referral of Copies of Voluntary Statements, dated 19/06/2012. Juan Francisco Prada Márquez's version. Annex to the petitioners' brief received on May 17, 2014.

<sup>86</sup> Report No. 431 of September 7, 2009 of the Criminal Investigator of the National Human Rights Unit Bucaramanga, case file No. 397 National Human Rights Unit - National Prosecutor's Office, folder No. 3, pp. 279 - 286. Annex No. 12 to the petitioners' brief of November 10, 2010.

<sup>87</sup> National Police, Human Resources Subsection, Service Records 6030540 and 79400248 of January 2, 1996. Annex to the petitioners' brief received on May 17, 2014.

<sup>88</sup> Sworn statement made by Fabián Ríos Cortes before the 44th Special Prosecutor on August 2, 2012. Annex to the petitioners' brief received on May 17, 2014.

<sup>89</sup> Map of the main park of San Roque in the Municipality of Aguachica for 1994, drawn up by Jaime Antonio Omeara Miraval Jaime Antonio Omeara Miraval. Annex 37 to the petitioners' brief of November 10, 2010. Sworn statement of Carmen Teresa Omeara Miraval of February 18, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 142 - 145. Annex No. 39 to the petitioners' brief of November 10, 2010. Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>90</sup> Sworn statement made by Carmen Teresa Omeara Miraval, before the 44th Criminal Prosecutor of June 28, 2011. Annex to the petitioners' brief received on May 17, 2014.

<sup>91</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>92</sup> Sworn statement of Carmen Teresa Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, unpaginated document. Annex No. 40 to the petitioners' brief of November 10, 2010.

Quintero stated that she was also intimidated by some men who went to the "San Roque" restaurant to ask if she knew them.<sup>93</sup>

63. The Commission notes that with respect to statements and reports considered in this section, the State indicated that "the available evidence discovered by the National Prosecutor General's Office points to paramilitary groups as responsible" from which it concluded that this was "an act fully perpetrated by non-State agents".<sup>94</sup>

**c. Mr.Noel Emiro Omeara Carbajal's Death**

64. Mr. Noel Emiro Omeara Carrascal died on July 26, 1994, six months after being shot.<sup>95</sup> Although he underwent several operations, he did not show signs of improvement and was left with a physical disability that prevented him from walking. In this regard, his daughter Araminta Omeara Miraval testified before the judicial authorities:

they stated that he would be left an invalid, and that for him it was terrible, there [at the hospital] he remained for a month, we brought him here and then he became ill and was brought back to Bucaramanga, when we brought him back again he became ill because he could not accept being an invalid, he did not want to return to the farm, once we took him to the farm and we went back quickly, and then he died in July 1994. Lately he did not even visit the doctor, because for such an active person like him, being an invalid was terrible. We do not know what he died of, but the doctor of Bucaramanga, the psychologist, told us that he did not last more than six months because it was very bad for him; while at the clinic he was delirious, speaking as if on the farm giving orders; it is not known how he died, but everyone says that it was due to the immense grief; he changed since the accident, he was very happy but after that accident he changed, that was very hard for all who knew him.<sup>96</sup>

65. For his part, Jaime Antonio Omeara Miraval stated that "[...] my father was wounded and after that became disabled and could no longer walk and the family began to suffer a lot and the household expenses increased to care for him [...]"<sup>97</sup>

66. With regard to the injuries sustained on January 28, 1994 and Mr. Noel Emiro Omeara's death, the State reported that

According to the Amplification of Opinion No. 017-2004, from the Institute of Legal Medicine and Forensic Sciences, we can infer a causal link between the injury suffered by Noel Emiro Omeara, and his death, since patients with spinal cord trauma present with multiple late complications.<sup>98</sup>

67. The Commission has no additional elements of technical evidence. However, given that the State provided such information and that it was not disputed by the petitioners, the Commission considers it

<sup>93</sup> Ana Graciela Quintero Ortega, restaurant administrator. Cf. sworn statement of Ana Graciela Quintero Ortega of August 20, 2008, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 3, pp. 268 - 274. Annex No. 33 to the petitioners' brief of November 10, 2010.

<sup>94</sup> State's brief of July 13, 2012, received on July 16, 2012.

<sup>95</sup> Amplification of Opinion No. 017-2004, Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>96</sup> Sworn statement of Araminta Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 174 and 175. Annex No. 38 to the petitioners' brief of November 10, 2010.

<sup>97</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>98</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

reasonable to state that there is a connection between Mr. Noel Emiro Omeara's death and the after-effects of the injuries sustained on January 28, 1994.

#### **4. Events Relating to Manuel Guillermo Omeara Miraval**

68. Manuel Guillermo Omeara, Noel Emiro Omeara's son, was manager of the San Miguel farm of his father-in-law, Héctor Álvarez Sánchez, and started inquiries on his own account to discover the truth about what happened to Mr. Noel Emiro Omeara.<sup>99</sup>

69. On August 27, 1994, Manuel Guillermo Omeara Miraval was travelling to Aguachica from the San Miguel farm and along the way was deprived of his liberty by various armed men, who forced him into a blue van. As his wife Fabiola Álvarez Solano stated:<sup>100</sup>

Manuel Guillermo Omeara Miraval was at the SAN MIGUEL farm [...] when around two in the afternoon, a neighboring lady of the farm and a child said they saw a motorbike belonging to the kidnapped man, driven by another man... and the same lady told us that a blue van followed [...], the van came to the farm at eleven in the morning with armed individuals and left around three in the afternoon and was parked on the road leading to the farm with a man, apparently armed, looking after it."<sup>101</sup>

70. On August 28, 1994, Fabiola Álvarez Solano filed a complaint for kidnapping with the UNASE located in the municipality of Aguachica,<sup>102</sup> which was received by DAS official.<sup>103</sup>

71. A few days after Manuel Guillermo Omeara's disappearance, Carmen Teresa Omeara contacted a soldier who was a cousin of Mr. Guillermo Omeara<sup>104</sup> who had arrived at the town hall; however,

<sup>99</sup> In this regard, Carmen Teresa Omeara indicated that "MANUEL GUILLERMO did not stay like that; he did start to find out who these people were; on the same day of my father's attack he tried to find out who had shot my father and later I learned that he found a friend –whose name I never learned— that provided him with information on the attack; what is more, I asked my brother whether he had found out anything and he would say 'my friend is finding out' but he never said who his friend was nor what he had discovered; he said it was a ticking bomb". Deposition of Carmen Teresa Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit of the Prosecutor's Office of Bucaramanga, folder No. 11, unpaginated document. Annex No. 40 to the petitioners' brief of November 10, 2010. Héctor Álvarez Sánchez, declared that Manuel Guillermo Omeara told him that he had found out that the perpetrators of the attack against his father were UNASE members or paramilitaries. Deposition of Héctor Álvarez Sánchez of September 6, 1994, case file No. 015 of the Human Rights Unit of Bucaramanga, folder No. 1, pp. 11 – 13. Annex No. 44 to the petitioners' brief of November 10, 2010. Jaime Antonio Omeara indicated that "his brother GUILLERMO, who was closer to my father, said that things would not stay just like that and started to investigate [...]". Deposition of Jaime Antonio Omeara Miraval of August 25, 1998, case file No. 397 National Human Rights Unit of the Prosecutor's Office Bucaramanga, folder No. 1, pp. 172 and 173 Annex No. 41 to the petitioners' brief of November 10, 2010.

<sup>100</sup> Request No. 526 RP.015 F.66 of the National Human Rights Unit of October 20, 2009 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 79 – 81. Annex No. 56 to the petitioners' brief of November 10, 2010. Sworn statement of Fredy Ramiro Pedraza of July 13, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 95 to 98. Annex No. 4 to the petitioners' brief of November 10, 2010.

<sup>101</sup> Complaint of Fabiola Álvarez Solano before the UNASE for Manuel Guillermo Omeara Miraval's kidnapping on August 28, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Unit Bucaramanga, folder No. 1, p. 86. Annex No. 45 to the petitioners' brief of November 10, 2010. See in a similar sense sworn statement of Héctor Álvarez Sánchez of September 6, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 11 – 13. Annex No. 44 to the petitioners' brief of November 10, 2010.

<sup>102</sup> Report of October 13, 1994 of the Military Forces – National Army – UNASE Group Aguachica BR5, case file No.015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>103</sup> Request No. 463 BR-5-COUNASE of January 6, 1996, of the Military Forces – National Army – UNASE Fifth Brigade, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 409 and 410. Annex No. 46 to the petitioners' brief of November 10, 2010.

that person did not provide any relevant information.<sup>105</sup> Also, according to Mr. Jaime Antonio Omeara the person identified with the alias "Rambo" visited their home "[...] and he asked if the Omeara family was in" reporting "that he was from the UNASE group and was investigating the disappearance of MANUEL GUILLERMO."<sup>106</sup> According to Mr. Jaime Antonio Omeara, his sister-in-law FABIOLA arrived at that moment and told "Rambo" "why do you want to know something if you are complicit in the disappearance of GUILLERMO? [...]" He said he was the authority and I told him that whether he was the authority or not, I did not want to see him there, he left the house, started up his bike and left [...]."<sup>107</sup>

72. On September 22, 1994, a telephone call was received at the DAS of Aguachica detailing the location of Guillermo Manuel Omeara Miraval's body.<sup>108</sup>

73. On September 23, 1994, the Nineteenth Delegated Prosecutor, a coroner and DAS officials, travelled to a location around the "La Granja" farm and found Manuel Guillermo Omeara's body.<sup>109</sup> The body was discovered "in a 'supine' position, with the hands tied with thin black nylon towards the rear behind the back. A black scarf with the initials 'ACG' was found beside the body, with the flag of Colombia and two crossed rifles."<sup>110</sup> The details of the exhumation recorded that the body had been buried for more than eight days. Present at the exhumation were José Miguel Miraval (his uncle), Fabiola Álvarez Lozano and María Omeara Carrascal (his aunt), who identified the body of Manuel Guillermo Omeara.<sup>111</sup>

[... continuation]

<sup>104</sup> Deputy Sergeant Javier Álvarez Omeara. See Report No. 0775-UNPJ-GDH of December 26, 1995 of the National Prosecutor's Office - Technical Investigation Corps National Department - National Judicial Police Unit, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 383 - 387. Annex No. 48 to the petitioners' brief of November 10, 2010.

<sup>105</sup> In this regard, Mrs. Teresa Omeara said she had contacted him because "it was important to talk to him because I thought suddenly, he, being in the military, could help to find to my brother GUILLERMO because we felt that none of the authorities cared about looking for my brother." In this regard, while looking for him at the Town Hall "I told him about GUILLERMO and he was like he did not know, I do not know if he knew or not, and he told me not to worry, that he was going to collaborate to see what he could do. The next day he came to my house, he came several times to my house and I found it strange that he questioned me so much about GUILLERMO, if I knew something, if I knew who had taken him and also asked about my dad, if we knew who were the perpetrators who attacked my father, I even made the mistake of telling him quite confidently, that my dad was with the UNASE and he was surprised [...] he asked me why I was asserting such things and I said it was not just me, they were the people who saw him and I told him that they were people who were still alive [...] he stayed a few days, but suddenly went away and we didn't learn any more about him. He had told me he had been moved to Aguachica to accompany the Mayor of Aguachica, but the strange thing is that if he had been moved to Aguachica, why did he remain so little time here in Aguachica. In the days after he left Aguachica, was when GUILLERMO's body appeared." Sworn statement of Carmen Teresa Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, . Annex No. 40 to the petitioners' brief of November 10, 2010.

<sup>106</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11. Annex No. 42 to the petitioners' brief of November 10, 2010.

<sup>107</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, . Annex No. 42 to the petitioners' brief of November 10, 2010.

<sup>108</sup> Cf. Report of October 13, 1994 of the Military Forces - National Army - UNASE Group Aguachica BR5, case file No.015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>109</sup> See also *Luego de 27 días de desaparecido encuentran sin vida a "memo"*. in: Vanguardia Liberal. Bucaramanga, September 24, 1994. Cf. Report of October 13, 1994 of the Military Forces - National Army - UNASE Group Aguachica BR5, case file No.015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>110</sup> Record of exhumation of the body dated September 23, 1994, case file No. 015 National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 41 and 42. Annex No. 50 to the petitioners' brief of November 10, 2010. See also Report No. 066 of September 23, 1994, supplemental to Report 065 of the DAS - Santander Administration-Operational Section Aguachica, case file 008-152218 Delegate Human Rights Procurator's Office, folder of Annexes No 1, pp. 1 and 2. Annex No. 51 to the petitioners' brief of November 10, 2010. "also these scarves were garments we used at that time [...]". Sworn statement of Fredy Ramiro Pedraza of July 13, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 95 to 98. Annex No. 4 to the petitioners' brief of November 10, 2010.

<sup>111</sup> Record of exhumation of the body dated September 23, 1994, case file No. 015 National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 41 and 42. Annex No. 50 to the petitioners' brief of November 10, 2010. See also Report No. 066 of September 23, 1994, supplemental to Report 065 of the DAS - Santander Administration-Operational Section Aguachica, case file 008-152218 Delegate Human Rights Procurator's Office, folder of Annexes No 1, pp. 1 and 2. Annex No. 51 to the petitioners' brief of November 10, 2010. "Also these scarves were garments we used at that time". Regarding the AUC, sworn statement  
[continues ...]

74. The body was taken to the Central Cemetery of Aguachica. Manuel Guillermo Omeara was buried the same day. In this regard, Jaime Antonio Omeara Miraval stated that in the cemetery where there was further identification of the body, there were "the Army, police, DAS and even the UNASE group, and also present was the aforementioned RAMBO"<sup>112</sup> and regarding the corpse of his brother, it was found that:

the body was in quite an advanced state of decomposition and bore signs of torture, I mean with signs of torture because his nails were missing [...] he appeared to have lost some teeth [...] they had also tortured his testicles and poured acid on him, we knew that because the man in charge of the removal of the body told us. He put his head up to the right and his jaw opened and we saw that several teeth were missing, also the man told us that he did not have nails[...].<sup>113</sup>

75. The Commission notes that the above findings on the injuries to Mr. Guillermo Omeara's body were not reflected in the autopsy report.<sup>114</sup> On October 22, 1994 an attorney filed a complaint before the National Prosecutor General's Office, the Ombudsman and the DAS alleging that on September 23, 1994, Manuel Guillermo Omeara was found "dead with horrific signs of torture. His face was burned by acid, his toenails had been torn out and there was mutilation of his genitals."<sup>115</sup>

76. The Commission notes that in the case file there are some statements linking members of the "Prada" family group - paramilitaries operating in the area - with the events. In this regard, the Commission observes that according to Mr. Héctor Álvarez "he got DANIEL's version, the driver of a truck" who had known of the events. According to Mr. Héctor Álvarez, "Daniel" told him that "he had seen a blue Toyota van with a black cover". He said that that person took him to "where a man PEDRO [...] who was also well aware of the vehicle and he also said that the vehicle was a blue Toyota truck, black covering". Mr. Héctor Álvarez told the authorities that

The Toyota van is the one carrying those they say they are paramilitaries, commanded by Mr. ROBERTO PRADA GAMARRA and one of his brothers called JUANCHO PRADA [...] His

[... continuation]

of Fredy Ramiro Pedraza of July 13, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 95 to 98. Annex No. 4 to the petitioners' brief of November 10, 2010.

<sup>112</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11. Annex No. 42 to the petitioners' brief of November 10, 2010.

<sup>113</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, . Annex No. 42 to the petitioners' brief of November 10, 2010.

<sup>114</sup> The protocol stated that

[...]Presents with a gunshot wound. The upper limbs were found towards the back of the body, bound at the wrist level

[...]Long dirty nails

[...]Neck: no injuries

Thorax: no injuries

Abdomen: no injuries

External genitalia: male

Extremities: indentations at wrist level

Cranium: comminuted fracture of the parietal and left occipital lobes. Comminuted fracture of the right anterior cranial cavity.

Spinal Column: no injuries

[...] Spinal fluid: no injuries

CONCLUSION:

Cause of death: cerebral laceration

Cause of death: gun shot trauma

Manner of death: violent [...]National Institute of Legal Medicine and Forensic Sciences. Local Unit of Aguachica, Autopsy Protocol. Investigation No. 1012394 of September 23, 1994. Annex to Prosecutor's Office brief of March 6, 2003.

<sup>115</sup> Tatiana Rincón Covelli's communications with the National Prosecutor's Office, DAS and Ombudsman of October 22, 1994.

father was injured and his spine broken on January 28 1994, in an establishment, at a restaurant in Aguachica [...] I heard the comments...he was investigating to see who he was"<sup>116</sup>

77. For his part, Mr. Jaime Omeara said that approximately two months after his brother's murder, he was threatened on his cell phone "if you don't keep quiet, the same will happen to you as what happened to your brother ". He said that because of this threat he left for Bucaramanga and filed a complaint before the Ombudsman, where they offered to relocate him, but he said that was not what he wanted.<sup>117</sup>

78. The Commission notes that in relation to this event, according to a version rendered by Mr. Juan Francisco Prada Márquez –a beneficiary of the Justice and Peace Law– "Roberto Prada Gamarra did all these things, because he told me he had sent 'el ave' to Héctor Álvarez's son-in-law because he was a suspected guerrilla and that was Manuel Guillermo Omeara". However, he said that "Roberto Prada Gamarra did not tell me how they had killed him."<sup>118</sup>

## 5. *Events Relating to Héctor Álvarez Sánchez*

79. Héctor Álvarez Sánchez was Manuel Guillermo Omeara Miraval's father-in-law. On the night of October 21, 1994, as Héctor Sánchez Álvarez entered his house with his five-year-old granddaughter, Claudia Marcela Álvarez Omeara, he was shot several times by men in plain clothes, from a motorcycle.<sup>119</sup> Héctor Álvarez Sánchez was taken to hospital in Aguachica and then to a clinic in Bucaramanga. On June 29, 1995, he was taken by his family to the Military Hospital in Bogota for his rehabilitation, from where he was discharged in September 1995.<sup>120</sup>

80. Elba María Solano de Álvarez referred to the situation in which Mr. Héctor Álvarez was left: "he was rendered quadriplegic, [...] he was a very active person before the attack [...] after he was taken home, our relationship came to a complete standstill, because he was a person who could not even lift a glass of water to his mouth [...] all his movements were frozen[...]"<sup>121</sup>. Regarding the treatment he received, she indicated that in the Military hospital "three months were on our own account because our insurance didn't cover us beyond that."<sup>122</sup>

81. Mr. Héctor Álvarez Sánchez died on May 11, 2000.<sup>123</sup> As to whether his death was related to the attack, the State reported that "it has not been possible to establish that the injuries sustained in the

<sup>116</sup> Sworn statement of Héctor Álvarez Sánchez of September 6, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 11 - 13. Annex No. 44 to the petitioners' brief of November 10, 2010.

<sup>117</sup> Sworn statement of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, . Annex No. 42 to the petitioners' brief of November 10, 2010.

<sup>118</sup> Justice and Peace Process, Referral of Copies of Voluntary Statements, dated 19/06/2012. Juan Francisco Prada Márquez's version. Annex to the petitioners' brief received on May 17, 2014.

<sup>119</sup> See *En Aguachica vuelve el "sicariato"*. In: Vanguardia Liberal. Bucaramanga, October 23, 1994.

<sup>120</sup> Report UA SACE No. 008 of February 10, 2003 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 9, pp. 73 - 75. Annex No. 53 to the petitioners' brief of November 10, 2010.

<sup>121</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners' brief received on May 17, 2014.

<sup>122</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners' brief received on May 17, 2014.

<sup>123</sup> Report UA SACE No. 008 of February 10, 2003 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 9, pp. 73 - 75. Annex No. 53.

attack [...] were the direct cause of his death [...], as recorded in the medical record and in the latest statement of his attending physician.”<sup>124</sup>

82. Regarding the motives and identity of the perpetrators of the attack, the Commission notes that Mr. Héctor Manuel Álvarez Solano, Héctor Álvarez’s son, declared that he had “knowledge from Mr. Juan PRADA in a personal conversation we had that my dad HECTOR ALVAREZ knew that MANUEL GUILLERMO was, according to them, a guerrilla member.”<sup>125</sup>

83. Mrs. Elba María Solano de Álvarez stated that “they said the attack was carried out by a Mr. AVE and a Mr. JAIRO PAVA, hit men retained by the paramilitaries.”<sup>126</sup> On this point, Patricia Alvarez, also states that paramilitaries extorted ranchers, but his father refused to collaborate with any group<sup>127</sup> Specifically regarding the attack to Mr. Hector Alvarez, Elba Mrs. Solano said that “the attack was permed by AVE and JAIRO PAVA, which were gunmen of the paramilitary army”<sup>128</sup>. She also said that the attempted murder of Mr. Álvarez was the result of his statement regarding the disappearance of Mr. Guillermo Omeara, where he stated that the truck belonged to Mr. Prada “[...] and because of that statement they attacked him to shut him up.”<sup>129</sup> Regarding whether Mr. Héctor Álvarez made some “phrase or comment” to the prosecutor when he made his statement and realized “the danger that he could run by giving such testimony,” Mrs. Elba María Solano said “only the phrase he said when he signed, he had sealed his death warrant, but he did it in their presence, they ought to have given us protection, but didn’t, they did not provide us with anything until after the event.”<sup>130</sup>

84. According to an account made by Mr. Juan Francisco Prada Márquez –a paramilitary who benefited under the Justice and Peace Law— “that was also ‘el ave’ under Roberto Prada Gamarra’s orders. That was the rumor in San Alberto, because this gentleman was a very good person and did not mess with anyone.”<sup>131</sup>

85. With respect to these elements concerning those responsible for the attack, the State indicated that “there is evidence to establish that one of the perpetrators of the attack was Gabriel Madariaga Carballo, alias the Mad ‘Ave’, who was killed on January 14, 1996 [...]. The other person who is stated to have participated [...] is Jairo Pava Montilla [...]”<sup>132</sup>

## **6. The Displacement of the Álvarez Solano Family**

86. In the early hours of October 22, 1994, Héctor Álvarez’s daughter, Fabiola Álvarez Solano, her three children Catherine Elba, Manuel Guillermo and Claudia Marcela Omeara Álvarez and Carmen Teresa Omeara Miraval, moved from the municipality of Aguachica to the city of Bucaramanga. Carmen Teresa Omeara Miraval said of this event:

<sup>124</sup> State’s brief of August 8, 2014, received on August 11, 2014.

<sup>125</sup> Sworn statement made by Héctor Manuel Álvarez Solano before the 66th Special Prosecutor of the National Human Rights Unit and IHL of October 31, 2012. Annex to the petitioners’ brief received on May 17, 2014.

<sup>126</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners’ brief received on May 17, 2014.

<sup>127</sup> Amplification of sworn statement of Celeme3nsia Patricia Álvarez Solano of February 15, 2013. Annex to the petitioners’ brief received on May 17, 2014.

<sup>128</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners’ brief received on May 17, 2014.

<sup>129</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners’ brief received on May 17, 2014.

<sup>130</sup> Amplification of sworn statement of Elba María Solano de Álvarez of April 3, 2013. Annex to the petitioners’ brief received on May 17, 2014.

<sup>131</sup> Justice and Peace Process, Referral of Copies of Voluntary Statements, dated 19/06/2012. Juan Francisco Prada Márquez’s version. Annex to the petitioners’ brief received on May 17, 2014.

<sup>132</sup> State’s brief of August 8, 2014, received on August 11, 2014.

when they attacked Mr. Héctor Álvarez [...] we had to leave the house at dawn because I don't know who told my mom, but someone came and told them that GUILLERMO's three children and myself, we had to leave Aguachica right away and we had to come to Bucaramanga, I don't know who it was, but my mom packed a suitcase for me and I had to leave that night for Bucaramanga with my brother's children, I never knew where the threat came from, but I had to run from there and I stayed here [in Bucaramanga] for a period of 6 months or so.<sup>133</sup>

87. In 1995, the Ombudsman of Colombia said in its report to Congress that Manuel Guillermo Omeara Miraval was "delivered at night and in the fog [and that he] received complaints from family members [...] due to threats and attacks on their lives. These people had actively participated in the search for the missing person. The military Mayor of Aguachica was asked to provide them with the necessary protection."<sup>134</sup> On August 9, 1995, the Regional Prosecutor in charge of the criminal investigation opened into the kidnapping of Manuel Guillermo Omeara Miraval ordered that "appropriate measures be taken as soon as possible in order to provide effective protection of the physical integrity of members of the OMEARA and ÁLVAREZ families living in Aguachica (Cesar)"<sup>135</sup>. The Commission has no information on whether these measures were adopted.

## **7. *Judicial Proceedings to Clarify the Events***

88. The Commission does not have the entire record of the investigations. Thus, the findings of fact are based on the account of the proceedings that were reported by the parties, and other evidence produced and not contested.

### **a. *Criminal Investigation No. 397 relating to Noel Emiro Omeara Carrascal***

89. On January 31, 1994, the 25th Prosecutor of the Local Unit in Aguachica ordered the opening of the investigation into Erminson Sepúlveda's murder.<sup>136</sup> In October 1998, the investigation was reassigned to the National Human Rights Unit of the Prosecutor's Office in Bogotá, which assumed the investigation on November 13, 1998.<sup>137</sup>

90. On August 31, 1998, the Regional Director of Public Prosecutions in Barranquilla ordered a registration in the system.

The name of the victim NOEL EMIRO OMEARA CARRASCAL, since only the name of JOSÉ ERMINSON SEPÚLVEDA SARAIVA appears and investigation is followed by the death of both individuals[...].<sup>138</sup>

<sup>133</sup> Sworn statement of Carmen Teresa Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, . Annex No. 40 to the petitioners' brief of November 10, 2010.

<sup>134</sup> Ombudsman, *Ombudsman's Second Annual Report to the Colombian Congress - 1995*, Bogotá, 1995, Series of Documents No. 8, pp. 76 and 77. Available at: <http://www.metabase.net/docs/iidh/05019.html>

<sup>135</sup> Order to open proceedings of August 9, 1995, of the Regional Prosecutor, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 122 - 124 Annex No. 52 to the petitioners' brief of November 10, 2010.

<sup>136</sup> On April 4, 1994, the investigation was undertaken by the 20<sup>th</sup> Prosecutor Branch of Aguachica. On May 25, 1994, the proceedings were sent to the Permanent Unit of Valledupar, which decided to send them back to Aguachica, in particular to Prosecutor No.25. On November 3, 1994, the investigation was sent by the Prosecutor No.25 to the Regional Prosecutor of the city of Valledupar, who took over the investigation on November 26, 1994. On March 10, 1997 the proceedings were received at the Regional Directorate of Prosecutions in Barranquilla, which took over the investigation on September 17, 1997. On November 26, 1997, an order to take evidence was issued. Information presented by the State in its brief of July 13, 2012 not contested by the Petitioners.

<sup>137</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners

<sup>138</sup> Request of Internal Order of August 31, 1998, of the Regional Director of Prosecutions of Barranquilla, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 134 and 135. Annex No. 59 to the petitioners' brief of November 10, 2010

91. On January 29, 1999, the Aguachica local unit of the Technical Investigation Corps was commissioned to take evidence. On November 14, 2001, the Human Rights Group of the DAS was charged with locating eyewitnesses and determining whether at the date the events took place, UNASE existed in Aguachica, among other measures.<sup>139</sup> On April 8, 2002, new testimony was ordered, including the determination of whether Noel Emiro Omeara's death was caused by the injuries he received on January 28, 1994. Subsequently, an inspection of the National Headquarters of UNASE was ordered.<sup>140</sup>

92. On May 8, 2002, an inspection of investigation No.15 underway at the National Unit of Human Rights in Bogota was ordered, into Manuel Guillermo Omeara Miraval's death against Roberto Prada Gamarra and Major Jorge Alberto Lázaro Vergel. On August 12, 2002, Report No. 234 of the DIJIN was issued, which contained information on the members of the UNASE and on the paramilitary group called "Los Macetos".<sup>141</sup>

93. On April 23, 2003, January 9 and March 8, 2004, an order to take evidence was issued. In March 2004, the Institute of Legal Medicine and Forensic Sciences issued opinion No. 017-2004<sup>142</sup> where the State infers "a causal link between the injury suffered by Noel Emiro Omeara and his death, since patients with spinal cord trauma have multiple late complications."<sup>143</sup> On May 5, September 10, 2004, October 5, 2005 and February 22, 2006, an order to take evidence was issued. On May 4, 2006, the investigation was assigned to the 44th Specialized Prosecutor of the National Human Rights Unit.<sup>144</sup>

94. On November 9, 2007 the abovementioned Prosecutor started its investigation and issued an order to take evidence. On February 19, 2008, a judicial inspection was carried out at the Municipal Ombudsman's Office in Aguachica. On March 19, 2009 and July 26, 2010, an order to take evidence was issued and a field mission of the Technical Investigation Corps was undertaken.<sup>145</sup> On April 13, 2010, a judicial inspection of the National Army Personnel Files was carried out. The former head of SIJIN Judicial Unit of Cesar South based in Aguachica, Pedro Alirio Ibáñez Castro, testified regarding the failure to include Noel Emiro Omeara Miraval at the beginning of the investigation, noting that he did not know why the victim had not been included.<sup>146</sup>

95. During 2010, a number of steps were taken in the investigation.<sup>147</sup> On April 21, 2014, the First Delegate Prosecutor to the High Court of Bucaramanga described the crime as "a crime against humanity".<sup>148</sup>

<sup>139</sup> On December 19, 2001 the sworn statements of four individuals were received. On December 27, 2001 the DAS presented its Report. Information presented by the State in its brief of July 13, 2012, not contested by the petitioners.

<sup>140</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>141</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>142</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>143</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>144</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>145</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>146</sup> In this regard he said: "we arrived at the scene; there were very few people in the place, among them a person who worked in the kitchen; I think they took a version of the events from her. QUESTION. Report the reasons why in this Report the competent authorities were not informed of the injuries suffered by Mr. Noel Omeara CARRASCAL[...] REPLY. As it was an order given to all agents to take all necessary procedural steps to clarify these events, I do not know why Mr. BERNAL had no knowledge of the other injured person. Sworn statement of Pedro Alirio Ibáñez Castro of April 13, 2010, case file No. 397 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 4, pp. 103 - 107. Annex No. 60 to the petitioners' brief of November 10, 2010.

<sup>147</sup> On May 5, and August 6, 2010, an order to take evidence was issued. Subsequently, the Technical Investigation Corps - National Human Rights Unit took charge. On August 12, 2010, a working mission was undertaken and the Technical Investigation Corps' report was issued. On September 2, 2010, an order to take evidence was issued. The request for evidence put forward by *partie civile* was accepted. On September 13, 2010, the 66th Special Prosecutor of the National Human Rights Unit of Bucaramanga undertook a new judicial inspection of Proceeding No.15 (Manuel Guillermo Omeara). On September 14, 2010, the 22nd Special Prosecutor of the National Human Rights Unit of Bogota undertook a judicial inspection of Proceeding No. 1663 (Héctor Álvarez Sánchez). On November 2, 2010,

[continues ...]

96. The information available indicates that this investigation has failed to identify the possible perpetrators or masterminds of the crime.

**b. Criminal Investigation No. 15 relating to Manuel Guillermo Omeara**

*i) The Regular Criminal Courts*

97. On August 28, 1994, Fabiola Álvarez Solano filed a complaint with the UNASE on the kidnapping of her husband.<sup>149</sup> On September 6, 1994, a pre-trial investigation was initiated before the Regional Prosecutor of Barranquilla.<sup>150</sup>

98. On September 6 and 7, 1994, Héctor Álvarez Sánchez<sup>151</sup> and Fabiola Álvarez Solano<sup>152</sup> rendered their respective sworn statements. On September 8, 1994, a search was carried out at the farms of St. Martin to locate the victim.<sup>153</sup> On September 20, "the proceedings were referred to the regional prosecutor of Aguachica, on the grounds that it was a simple kidnapping and not a terrorist kidnapping."<sup>154</sup>

99. On September 22, 1994, the DAS reported an anonymous call about the location of the victim's body.<sup>155</sup> On September 23, 1994, the body of Manuel Guillermo Omeara was exhumed.<sup>156</sup> On October 13, 1994, UNASE reported that:

the possible kidnapers were alleged illegal rebel groups, among which is Front 24 of the FARC, commanded by Humberto Muñoz alias 'Tomás' [...] the family concerned declared that at no time had

[... continuation]

some requests for evidence filed by the *partie civile* were granted and others denied. On February 3, 2011, a working mission of the Technical Investigation Corps was undertaken. On February 17, 2011, the Technical Investigation Corps' report was issued. On February 21, 2011, a working mission of the Technical Investigation Corps was commissioned to carry out a judicial inspection and to gather testimonies. On March 28, 2011, a working mission of the Technical Investigation Corps was commissioned to locate and cite various individuals for sworn statements. On April 19, 2011, an order to take evidence was issued. On April 20, May 10, and June 7, the Technical Investigation Corps' reports were issued. On July 28, 2011, a judicial inspection of the investigation headed by the Prosecutor's Office in Aguachica was carried out. On August 22, 2011, an expert's report of the INMLCF of Bucaramanga and a forensic psychiatry evaluation of Carmen Teresa Omeara Miraval were issued. On September 23, 2011, an order to take evidence was issued. On October 10, 2011, the Technical Investigation Corps' report was issued and on February 2, 2012, a judicial police commission was sent to Aguachica, to gather testimony from an eyewitness. Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>148</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>149</sup> Complaint of Fabiola Álvarez Solano before the UNASE for the kidnapping of Manuel Guillermo Omeara Miraval on August 28, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 86. Annex No. 45 to the petitioners' brief of November 10, 2010. Report of October 13, 1994 of the Military Forces- National Army UNASE Group Aguachica BR5, case file No.015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>150</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>151</sup> Sworn statement of Héctor Álvarez Sánchez of September 6, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 11 – 13. Annex No. 44 to the petitioners' brief of November 10, 2010.

<sup>152</sup> Sworn statement of Fabiola Álvarez Solano of September 7, 1994, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 17 – 19. Annex No. 47 to the petitioners' brief of November 10, 2010.

<sup>153</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>154</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>155</sup> Report No. 065 of September 22, 1994 of the DAS-Santander Administration-Operational Section Aguachica, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 34. Annex No. 49 to the petitioners' brief of November 10, 2010.

<sup>156</sup> Record of exhumation of the body of September 23, 1994, case file No. 015 National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 41 and 42. Annex No. 50 to the petitioners' brief of November 10, 2010. Report No. 066 of September 23, 1994, additional to Report 065 of the DAS - Santander Administration-Operational Section Aguachica, case file 008-152218 of the National Procurator's Office- Human Rights section, folder of Annexes No 1, pp. 1 and 2. Annex No. 51 to the petitioners' brief of November 10, 2010.

they maintained any telephone or written communication with the kidnappers, making it impossible to monitor the corresponding calls.<sup>157</sup>

100. On October 21, 1994, the DAS reported that based on the enquiries made, it was established that those apparently responsible for the events were members of a "private justice" group operating in the region [...].<sup>158</sup> On October 19, 1994, after establishing that the events were linked to a kidnapping, Prosecutor 28 of the Anti-Extortion and Kidnapping Unit of Valledupar ordered the referral of the proceedings to the Regional Prosecutor of that city. For its part, on March 28, 1995, the Prosecutor's Office of Valledupar decided to refer the investigation to the Regional Prosecutor of Barranquilla, once more.<sup>159</sup>

101. On August 9, 1995, an investigation was opened against Roberto Prada Gamarra, a member of a paramilitary group,<sup>160</sup> for the crime of kidnapping.<sup>161</sup> In the order opening proceedings, among other measures, there was a request for "an oral deposition by Commander Sánchez, a commander of the St. Martin PONAL on the exhumation of Manuel Guillermo Omeara's body and particularly of St. Martin in order to furnish further details about the members of the group commanded by ROBERTO PRADA".<sup>162</sup> Also, the exhumation of the body was ordered for the purpose of determining the existence of the following injuries, apparently inflicted before his death: a) "on the face in order to certify whether he was burned with acid"; b) "to determine whether the toenails had been pulled out"; c) whether "his genitals had been mutilated".<sup>163</sup>

102. On August 29, 1995, an arrest warrant was issued against Roberto Prada Gamarra<sup>164</sup>. The report of the judicial investigator in charge of the case established that:

Valuable verifications were undertaken in San Martín - Cesar, and a map will be annexed showing the layout of the block where the PRADA GAMARRA family lives, in particular ROBERTO, JUANCHO and CIRO. The Prada Gamarra family controls all matters relating to armed and self-defense groups in the sector, and it is obvious that Juancho Prada Gamarra's property is located right behind the counter-guerrilla platoon assigned to Intelligence Battalion 27 located at Street Thirteen (13). It was established that Mr. JUANCHO PRADA GAMARRA carries a 9 mm Smith pistol with two hanging belt clips, as well as the same walkie-talkie as those used by the Intelligence Battalion located behind his house. In relation to the Group's most important leaders, they are ROBERTO [...] JUANCHO and CIRO [...] every man has a salary [...], and also receives bonuses when performing special jobs such as kidnappings, blackmailings and killings[...].<sup>165</sup>

<sup>157</sup> Report of October 13, 1994 of the Military Forces- National Army UNASE Aguachica BR5, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>158</sup> Response of the DAS of October 21, 1994 to Gilma Tatiana Rincón Covelli. Annex to the Petition of April 28, 1995. Cf. Report of October 13, 1994 of the Military Forces- National Army UNASE Group Aguachica BR5, case file No.015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, p. 99. Annex No. 57 to the petitioners' brief of November 10, 2010.

<sup>159</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>160</sup> Order to open proceedings of August 9, 1995, of the Regional Prosecutor, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 122 - 124. Annex No. 52 to the petitioners' brief of November 10, 2010.

<sup>161</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>162</sup> Order to open proceedings of August 9, 1995, of the Regional Prosecutor, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 122 - 124. Annex No. 52 to the petitioners' brief of November 10, 2010.

<sup>163</sup> Order to open proceedings of August 9, 1995, of the Regional Prosecutor, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 122 - 124. Annex No. 52 to the petitioners' brief of November 10, 2010.

<sup>164</sup> On September 12, 1995, two individuals gave sworn statements. On September 14, 1995, and January 13, 1996, the Technical Investigation Corps reported on the investigative activities undertaken. On February 21, 1996, a judicial inspection was carried out on proceedings relating to events taking place during the same period. On June 11, 1996, an arrest warrant was issued for an individual. On July 14, 1996, and September 15, 1997, the Technical Investigation Corps reported on its investigative activities. Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>165</sup> Report No. 0775-UNPJ-GDH of December 26, 1995 of the National Prosecutor's Office -Technical Investigation Corps National Department- National Judicial Police Unit, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 1, pp. 383 - 387. Annex No. 48 to the petitioners' brief of November 10, 2010.

103. On May 20, 1998, an order to include Major Jorge Alberto Lázaro Vergel to the "kidnapping and murder" investigation was issued. On June 4, 1998, the National Army captured Major Jorge Alberto Lázaro Vergel and he provided a deposition on June 5, 1998.<sup>166</sup> On July 10, 1998, it was decided to issue an order for his "preventative detention on account of the investigation for aggravated homicide"; however, on the February 15, 1999, he was released "due to expiration of the time limit".<sup>167</sup>

104. On June 16, 1998, Roberto Prada Gamarra rendered his deposition. On July 18, 1998, Juan Francisco Prada Márquez was included in the investigation for murder and conspiracy to commit a crime. On July 19, 1998, an order was issued for the preventive detention of Roberto Prada Gamarra on account of the investigation on aggravated murder and conspiracy to commit a crime. On September 4, 1998, Juan Francisco Prada Márquez was formally considered to be *in absentia* in the proceedings. On March 4, 1999, an order was issued for the preventive detention of Juan Francisco Prada Márquez for aggravated murder and conspiracy to commit a crime.<sup>168</sup> On April 3, 2000, a report from La Picota prison informed of the death in detention of "Roberto Prada Gamarra."<sup>169</sup>

105. On August 14, 2000, the results of the investigation merited "issuing charges against Juan Francisco Prada Márquez" for conspiracy to commit a crime and "the closing of the investigation against Juan Francisco Prada Márquez for murder and against Jorge Alberto Lázaro Vergel on all charges."<sup>170</sup> On October 17, 2000, on account of his death, the investigation against Roberto Prada Gamarra was closed. On March 6, 2002, the First Specialized Criminal Court in Valledupar acquitted Juan Francisco Prada Márquez of conspiracy to commit a crime. On May 8, 2002, an order for the continuation of the preliminary investigation was issued.<sup>171</sup>

106. In May 2007, paramilitary leader Juan Francisco Prada Márquez alias "Juancho Prada" was demobilized with the paramilitary group he commanded in the southern region of the Department of Cesar, and he and the members of his group applied for the benefits of Law 975 of 2005.<sup>172</sup> In May 2009, the Prosecutor submitted a report on the events.<sup>173</sup>

107. On August 17, 2010, Jaime Antonio Omeara Miraval declared before the Prosecutor that "the three deaths [...] are linked". He stated in particular that "the first one is my dad's because unfortunately he fell in the attack against the Town Hall secretary and months later he died, then my brother started to investigate the men who shot my dad and then they killed my brother GUILLERMO for that reason and then, about a month after GUILLERMO's body appeared, I don't remember exactly when, they attacked Mr. HÉCTOR ÁLVAREZ who was my brother GUILLERMO's father-in-law; in this attack he was left a quadriplegic and died 4 or 5 years after, I think."<sup>174</sup>

108. On June 25, 2012, the National Justice and Peace Unit sent the National Human Rights Unit an attested copy of the voluntary testimony rendered by Juan Francisco Prada Márquez on June 24, 2010 which referred to the murder of Manuel Guillermo Omeara, in order to be included in case file of the

<sup>166</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>167</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>168</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>169</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>170</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>171</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>172</sup> Available at: <http://www.verdadabierta.com/nunca-mas/678-perfil-de-juan-francisco-prada-marquez->

<sup>173</sup> Request No. 526 RP.015 F.66 of the National Human Rights Unit of October 20, 2009 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, pp. 79 – 81. Annex No. 56 to the petitioners' brief of November 10, 2010.

<sup>174</sup> Deposition of Jaime Antonio Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 11, unpaginated document. Annex No. 42 to the petitioners' brief of November 10, 2010.

investigation.<sup>175</sup> According to the petitioners, the exhumation of Guillermo Manuel Omeara's body was not carried out.<sup>176</sup>

109. The State reported that "currently the proceedings are progressing with orders for the taking of evidence, the most recent being on June 20, 2014."<sup>177</sup>

*ii) Investigations in the military courts*

The State reported that the investigation undertaken by the 109th Military Criminal Judge was initiated on October 24, 1994 "in order to establish whether military personnel were linked to the events relating to Guillermo Omeara".<sup>178</sup> With regard to this investigation, the State indicated that on December 26, 1996, the 109th Military Criminal Judge declined to open a criminal investigation; however, this decision was overturned on April 30, 1997, and a photo identification of UNASE personnel was ordered. The State indicated in its latest report that "the relevant requests were made [...] and the missing photographs were ordered to be sent to the Metropolitan Police of Bucaramanga. There have been attempts to locate the missing personnel through Army, Police and DAS photographs."<sup>179</sup>

110. The available information indicates that this investigation is still pending.

*c) Investigation in the disciplinary jurisdiction*

111. The State indicated that on September 28, 1994 the Delegate Procurator for Human Rights opened a disciplinary investigation. The State reported that the "disciplinary record" was archived because in the course of the proceedings the evidence pointed to Mr. Roberto Prada Gamarra as a potential perpetrator, while "the report submitted by members of the Police only provided a supposition" regarding the alleged involvement of Major Jorge Alberto Lázaro Vogel.<sup>180</sup>

**c. Criminal Investigation No. 1663 on Héctor Álvarez Sánchez**

112. On August 22, 1995, the preliminary investigation into the attempted murder of Héctor Álvarez Sánchez<sup>181</sup> was opened before the 19th Prosecutor of Aguachica - Cesar, and the oral deposition of two individuals, requested. The DAS of Aguachica - Cesar were commissioned to establish, among other things, the motivation and individual responsibility for the crimes. On December 18, 1995, the DAS of Aguachica - Cesar issued Report No. 359 "with negative results". On October 2, 1996, an interlocutory decision ordering the suspension of the investigation was issued.<sup>182</sup>

113. In February 2003, Elba María Solano Álvarez, Héctor Álvarez Sánchez's wife, told the authorities that she did not know "anything about who was leading the investigation because none of the family members had been called to testify about it."<sup>183</sup>

<sup>175</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>176</sup> Information presented by the petitioners in their brief of November 10, 2010 not contested by the State.

<sup>177</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>178</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>179</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>180</sup> State's brief of August 8, 2014, received on August 11, 2014.

<sup>181</sup> Letter of the National Human Rights Unit - National Prosecutor's Office of September 10, 2010. Annex No. 62 to the petitioners' brief of November 10, 2010.

<sup>182</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>183</sup> Report UA SACE No. 008 of February 10, 2003 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, case file No. 015 of the National Human Rights Unit - National Prosecutor's Office Bucaramanga, folder No. 9, pp. 73 - 75. Annex No. 53 to the petitioners' brief of November 10, 2010.

114. On April 30, 2003, the 22nd Specialized Prosecutor of the National Human Rights Unit took cognizance of the pre-trial investigation. On April 30, 2003, an order for the location of an individual was issued. The Technical Investigations Corps and the Prosecutor of Barranquilla were commissioned to locate the investigation of the procedural steps taken with regard to the disappearance or kidnapping of Guillermo Omeara. On May 30, 2003, the Technical Investigations Corps of Aguachica issued a report.<sup>184</sup>

115. On January 27, 2004, an order to take evidence was issued as well as a request for copies of documents and sworn statements from Investigation No.15. On February 27, 2004, SACE - NATIONAL HUMAN RIGHTS UNIT - DAS Bucaramanga issued a report with statements of two individuals as annexes. On May 31, 2005, an order to take evidence was issued. On July 6 and August 9, 2005, the Technical Investigations Corps of the National Human Rights Unit issued a report.<sup>185</sup>

116. On July 13, 2006, information was requested from the SIJIN on the location and whereabouts of five persons in order to gather their sworn statements and other procedural steps. On August 10, and September 20, 2006, the FGN-CTI-NATIONAL HUMAN RIGHTS UNIT issued a report. On January 10, 2007, a judicial inspection of Proceeding No. 15 (Manuel Guillermo Omeara Miraval) was ordered. On March 22, 2007, the Sub Unit of Human Rights and Humanitarian Law was commissioned to gather additional testimony from Manuel Sánchez Álvarez. On June 19, 2007, the Technical Investigations Corps was commissioned to aid in the investigation.<sup>186</sup>

117. On January 30, 2008, the Technical Investigations Corps of the National Human Rights Unit was required to designate investigators to analyze the case in detail. On October 31, 2008, the Technical Investigations Corps of the National Human Rights Unit was commissioned to appoint an investigator to establish what information the demobilized individuals of the Self-Defense Group of Santander and South of Cesar possessed on the events involving the victim Héctor Álvarez Sánchez.<sup>187</sup> Between 2009 and 2010 supplementary reports and testing practices were requested. Finally, the State reported that on November 20, 2013 a "summons a free version of a person" was performed and in 2014 a 'voluntary declaration' was received<sup>188</sup>. The State explained that the investigation was oriented to determine de group of Roberto Prada as the responsible for the attack"<sup>189</sup> The State indicated that " there are elements of proof establishing that one of the alleged perpetrators was alias Loco Ave" , who was killed on January 14, 1996 and the other person that participated was " Jairo Pava Monilla " who was a good friend of *Loco Ave*. regards the latter person , the State indicated that free version recognized that integrated the paramilitary group of Roberto Prada in 1996, but was not involved in the events<sup>190</sup>

<sup>184</sup> On June 2, 2003, an Resolution to take evidence was issued. On June 16, 2003, the Technical Investigation Corps of Aguachica issued a Report. On July 8, 2003, a Resolution to take evidence was issued. The July 17, 2003, the Technical Investigation Corps of Aguachica issued a Report. On October 15, 2003, the taking of evidence was ordered, and the Technical Investigation Corps of Aguachica was commissioned to gather depositions. Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>185</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>186</sup> Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>187</sup> On March 17, and April 23, 2009, the DN Technical Investigation Corps-GDH-IHL Report was issued. On May 8, 2009, the Technical Investigation Corps was commissioned. Report DN Technical Investigation Corps-GDH-IHL of September 8 and 21, and October 4, and 24, 2009. On September 30, 2010, an order to gather evidence was issued. On March 22, 2007, a copy of the medical records of an individual was requested from the Military Hospital. On November 16, 2010, Héctor Álvarez Sánchez's medical records were referred. On December 3, 2010, an order to gather evidence was issued; and on June 12, 2011, "the request was answered." Information presented by the State in its brief of July 13, 2012 not contested by the petitioners.

<sup>188</sup> Brief of the State of August 8, 2014, received on August 11, 2014.

<sup>189</sup> Brief of the State of August 8, 2014, received on August 11, 2014. The State indicated that "in the investigation two hypotheses were handled", the first related to the murder of Mr. Alvarez as a result of his statement in the investigation for what happened to Manuel Guillermo Omeara, and the second related to a person named Joaquín Caselles, "who frequented the paramilitaries" and was the one who raised alias *Loco Ave*, who owed him an amount of money to Mr. Hector Alvarez. The State indicated that "the investigation is directed to the first hypothesis." The Commission notes that both hypotheses involve the participation of members of paramilitary groups.

<sup>190</sup> Brief of the State of August 8, 2014, received on August 11, 2014.

## B. Determinations as to Law

### 1. *Prior Considerations*

#### a. **The petitioners' Legal Arguments**

118. In the merits stage, the petitioners submitted that the State bore responsibility for violation of the rights to juridical personality, freedom of thought and expression, rights of the family, and rights of the child, recognized in articles 3, 13.1, 17, and 19 of the American Convention, as well as Article 7 of said instrument with respect to personal security. The State, for its part, held that the Commission should not analyze those submissions because they were not included in the analysis of colorability of the petition's claims in the report on admissibility.

119. In that connection, the Commission recalls that its analysis of the colorability of claims of possible violations of rights made in its reports on admissibility is based on a prima facie standard of appreciation, the purpose of which is to verify compliance with the requirement contained in Article 47(b) of the American Convention that the petition is not "manifestly groundless" or "obviously out of order" as paragraph (c) of that article provides. In that regard, the determination as to rights identified as violated in the report on admissibility does not preclude the possibility in the merits stage of the Commission pronouncing on the legal arguments advanced by the petitioners, should the alleged facts suggest that they are consistent with the petitioners' claim and the State has had the possibility to defend itself in that regard.<sup>191</sup>

120. The Commission notes that the legal submissions presented in the merits stage to which the State objects relate to the subject matter of the admitted case and are based on facts described by the petitioners in the admissibility stage and reiterated in the merits stage. Therefore, the State has had ample opportunity to mount a defense. In that regard, in the relevant sections below the Commission analyzes the submissions of the petitioners on the rights mentioned in this section. At any event, the Commission recalls that under the *iura novit curia* principle it may pronounce on any provision contained in the Convention even if not invoked by the parties. Consequently, the state's argument is not valid.

#### b. **Responsibility of the State**

121. The Commission notes that the controversy between the parties is over whether the State bears international responsibility for: (i) the attack on and subsequent death of Noel Emiro Omeara Carrascal; (ii) the disappearance and execution of Manuel Guillermo Omeara Miraval, Noel Emiro Omeara's son; (iii) the attack on Héctor Álvarez Sánchez, Manuel Guillermo Omeara's father-in-law; and (iv) the ensuing harm reportedly suffered by the families of the above individuals as a result of those events.

122. Whereas the petitioners argue that the events occurred as a result of the actions of paramilitary groups who allegedly operated in coordination with and with the acquiescence of state agents, the State considered that it was not responsible, as the involvement of its agents has in no way been proved. In addition, the State considered that it has not been demonstrated that the death of Noel Emiro Omeara Carrascal was the result of the attack he suffered.

123. The Commission considers it as well to recall that international responsibility of the State may be based on the acts or omissions of any branch of government or organ thereof that violate the American Convention, and it arises immediately with the attributed international wrongful act. In such circumstances, to establish a violation of the rights enshrined in the Convention one need not determine, as in domestic criminal law, the guilt of its agents or their intent, nor need one individually identify the agents to

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<sup>191</sup> I/A Court H.R., *Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246*, par. 52 et seq.

which the violations are attributed. It is sufficient to demonstrate “that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet.”<sup>192</sup>

124. The Commission recaps that in its findings of fact it has taken as established that a context existed at the time of the alleged facts in which it was verified that an illegal armed group operated in coordination with and with the acquiescence of members of the State security forces. The Commission notes that the joint activities between authorities and the group led by members of the “Prada” family have their own implications where the international responsibility of the State is concerned, apart from demonstrating that at the time of the alleged facts the State did not take effective steps to neutralize the risk posed by the activities of those groups, which it originally created. The Commission also draws attention to the extremely serious nature of the allegations concerning ÚNASE as a death squad (*grupo de limpieza*) whose purpose was to exterminate persons identified as subversives. Moreover, with respect to the myriad circumstantial evidence of this situation, the Commission finds that the State has furnished no information or proof to counter said circumstantial evidence.

125. In that regard, the Commission will now analyze the facts in respect of each of the alleged victims in the light of the State's obligations and the rules on burden of proof, in order to determine if they produce elements consistent with said context that accredit the responsibility of the State for the acts or omissions of its agents with respect to the obligations established in the American Convention. With that in mind, the Commission will perform its legal analysis in the following order: first, the attack on and death of Noel Emiro Omeara; second, what happened to Guillermo Omeara Miraval; third, the attack on Héctor Álvarez. Lastly, the Commission will examine the petitioners' allegations regarding the alleged harm to the family members.

## **2. Rights to Life, Humane Treatment, and Personal Liberty (Articles 4, 5, and 7 of the American Convention in Connection with Article 1 (1) thereof)**

126. The rights to life<sup>193</sup> and humane treatment<sup>194</sup> are of critical importance in the Convention. Under Article 27(2) of said treaty, those rights are part of a nucleus of non-derogable rights that cannot be suspended in the event of war, public danger or other threats. The Court has held that the obligation to prevent violations of the rights to life and humane treatment “encompasses all those measures of a legal, political, administrative and cultural nature that ensure protection of human rights, and that any possible violation of these rights is considered and treated as an unlawful act, which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences.”<sup>195</sup>

127. With respect to the right to life, the Inter-American Court has repeatedly held that said right is a fundamental human right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.<sup>196</sup> The Court has also said that the foregoing means that States have both the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur, as well

<sup>192</sup> I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par. 133; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C, No. 140, par. 112.

<sup>193</sup> Article 4(1) of the American Convention provides: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>194</sup> Articles 5(1) and 5(2) of the American Convention state: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>195</sup> I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*. Judgment of July 29, 1988, Series C No. 4, par. 175.

<sup>196</sup> 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. 78; I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. par. 144.

as the duty to prevent the infringement of the said right by its officials or private individuals.<sup>197</sup> According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).<sup>198</sup>

128. The Court has also reiterated in its case law that “compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.<sup>199</sup> Thus, according to the Court:

states must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.<sup>200</sup>

129. With respect to the rights to humane treatment enshrined in Article 5 of the Convention, the Court has indicated that “[the] infringement of the right to physical and psychological integrity of the human person is a type of violation which has a varying connotation and which encompasses torture and other types of mistreatment or cruel, inhuman, or degrading treatment whose physical and psychological consequences may have different degrees of intensity according to the extrinsic and intrinsic factors which should be proved in each specific situation.”<sup>201</sup>

130. The jurisprudence of the organs of the inter-American system considers that in addition to the duty to ensure that their agents do not violate the rights to life and humane treatment, the obligation of States to guarantee those rights includes the creation of the necessary conditions to ensure that violations of those rights do not occur.<sup>202</sup> Particularly with respect to the right to protect, both the Court and the Commission have found that “[f]or a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take

<sup>197</sup>I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. par. 144.

<sup>198</sup>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. 79; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. par. 83.

<sup>199</sup>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. 80; I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. par. 144.

<sup>200</sup>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. 81; 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. 66.

<sup>201</sup>I/A Court H.R., *Ximenes López vs. Brazil*, Judgment of July 4, 2006. Series C No. 149, par. 127; *Case of Loayza Tamayo*. Merits. Judgment of September 17, 1997. Series C No. 33, par. 57.

<sup>202</sup>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, para. 83; See also, 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 at 6 (1994); 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 at 18 (1994).

measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.<sup>203</sup>

131. Finally, concerning the right to personal liberty, that right is protected by Article 7 of the Convention, which provides that “[e]very person has the right to personal liberty and security” and establishes a series of guarantees that protect the right not to be unlawfully or arbitrarily deprived of liberty.<sup>204</sup> In particular, the Court has held that the security to which that provision refers should be understood as protection against all unlawful or arbitrary interference with physical liberty.<sup>205</sup>

**a. Regarding What Happened to Noel Emiro Omeara Carrascal**

132. In determining if the State is responsible for the violation of Mr. Omeara Carrascal’s right to humane treatment, the Commission’s analysis examines: (i) if the State fulfilled its duty to prevent the attack in which Mr. Noel Emiro Omeara was wounded; (ii) if State agents or paramilitaries acting in coordination with those agents took part in the attack; (iii) if as a result of the attack and its consequences there was a violation of the right to life.

**i) As to Whether or Not the State Had a Duty to Prevent What Happened to Noel Emiro Omeara Carrascal**

133. The Commission recalls that the parties do not dispute the events in which Mr. Omeara Carrascal was seriously wounded as a result of an attempt to execute Erminson Sepúlveda, whom the petitioners have not presented as a victim in the case.

134. The Commission notes that, according to the petitioners’ argument, the State knew that Erminson Sepúlveda could be the victim of an attack but took no steps to protect him and so avert the violence in which Mr. Omeara was wounded. In light of this submission and taking into account the link between the alleged lack of protection and the materialization of the attack on Erminson Sepúlveda, with the ensuing violent outcome for Noel Emiro Omeara, the Commission considers it relevant to analyze if the elements are met by which the State could be responsible for not having taken steps to prevent such an incident; that is, if: (i) the State was aware of a situation risk; (ii) that risk was real and immediate; (iii) the State took reasonable steps to prevent the materialization of that risk.<sup>206</sup>

135. As regards awareness of the risk, the Commission notes that it is proven that State agents knew of it from the collective complaint filed with the Procurator General’s Office by members of the MAC, in which they described a number of serious acts of violence against them. In addition, the situation of imminent individual risk was known from the complaint filed with the Municipal Ombudsmen on January 25, 199, that is, three days before the attack on Erminson Sepúlveda was carried out, in which he said, “I appear to be the next victim of the violence in this city.”

<sup>203</sup>European Court of Human Rights, *Kiliç v. Turkey*, Judgment of 28 March 2000, Application No. 22492/93, §§ 62-63; *Osman v. The United Kingdom*, Judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, §§ 115-16; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, par. 124.

<sup>204</sup>I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010, Series C No. 220*

<sup>205</sup>I/A Court H.R., *Case of Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 21, 2007. Series C No. 170, par.53; I/A Court H.R. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 284; I/A Court H.R. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 75. 124.*

<sup>206</sup>In several of its judgments, the Inter-American Court has relied on the jurisprudence of the European Court with respect to the aforesaid elements of the duty to prevent violations. In that connection, see: I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 124; I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, par. 284; I/A Court H.R. Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 75. 124.*

136. The Commission finds that the complaint made by Erminson Sepúlveda in itself reflected a situation of real and immediate risk, since he advised the authorities that his life was in danger. What is more, however, that complaint was particularly credible and serious as it was framed by specific circumstances in which a series of acts of violence was being reported against individuals who, along with Erminson Sepúlveda, were also members of the MAC and were on a list of persons marked for execution, a number of whom had already suffered acts of violence, some with fatal consequences (cf. *supra* par. 48).

137. The Commission notes that, despite this situation of risk, the State provided no information about any measures to provide Erminson Sepúlveda with effective protection in the wake of those concrete complaints that suggested that the risk to him had increased. On the contrary, the record discloses elements that could suggest collaboration on the part of agents of the State in enabling the attack to be perpetrated. Thus, there is information, which the State has not contested that indicates that: (i) on the day of the operation in which Erminson Sepúlveda's was killed and Noel Emiro Omeara was wounded, the National Police conducted a search that "was only carried out that day" and relieved of their weapons all officials who entered the office of the mayor of Aguachica; (ii) Erminson Sepúlveda bodyguards were not authorized to carry weapons; (iii) at the time of the incident there was no police presence in the vicinity of the restaurant, despite being one block from the police station.

138. The Commission considers that in spite of the existence of a duty to prevent violations of Erminson Sepúlveda rights bearing in mind the specific complaints made by him, the State's omission in that regard resulted in the materialization of an attack on him in unprotected circumstances by an armed group during which the rights of Noel Emiro Omeara were infringed. Based on the foregoing, the Commission concludes that the harm to Noel Emiro Omeara's physical integrity is attributable to the State on account of its failure to discharge its obligation to prevent that attack. In the above-described context of collaboration between State agents and the paramilitary group led by members of the Prada family in the area, the Commission considers that an omission of this nature, apart from demonstrating a breach of the duty to prevent violations of rights, could be interpreted as circumstantial evidence of collaboration on the part of State agents, an aspect that the Commission analyzes in the section below.

#### **ii) The Involvement of State Agents in the Events of January 28, 1994**

139. To recap, the Commission notes that, according to the established facts, there is information to suggest that the attack on Noel Emiro Omeara was the result of coordinated activity between agents of the state and members of a paramilitary group aimed at executing Emerson Saravia.

140. In that regard, the Commission observes that Juan Francisco Prada recognized that the deed was committed by the "Prada" group, which, as the Commission has noted from various statements and police reports, had a collaboration arrangement with agents of the State around the time of the events. In addition, the Commission notes that there are statements that directly indicate that there were State agents among the individuals who carried out the attack. Thus: (i) Noel Emiro Omeara said that the attack was carried out by "persons belonging to the law"; (ii) Carmen Teresa Omeara Miraval said that she recognized an individual with the alias "RAMBO" who was a member of ÚNASE and matched the description given by her father; (iii) Landis Sepúlveda Saravia, Alba Luz Sepúlveda, Damaris Lanziano, and Jaime Antonio Omeara stated that they learned from the comments of several persons that members of ÚNASE had carried out the attack. The Commission finds that these statements are consistent with official records provided by the petitioners, according to which, two of the individuals mentioned in the statements of Carmen Teresa Omeara as having participated in the deed and who went by the aliases "Pelo de Puya" and "Rambo" were identified as serving members of SIJIN in Aguachica, César.

141. The Commission notes that, though the State indicated that "the available evidence discovered by the National Prosecutor General's Office points to paramilitary groups as responsible" and not

state agents,<sup>207</sup> the aforementioned information that agents of the state took part in the attack along with paramilitaries is consistent with descriptions of the context in Aguachica at the time of the events, which the State has offered no evidence to counter. The State has merely indicated that at the domestic level the deed was declared a crime "against humanity," without providing a copy of the record of the inquiry by which to determine which persons are currently under investigation. This information is not suitable for controverting the multiple instances of circumstantial evidence pointing to a context of collaboration that is consistent with the information available on this case.

142. Based on its analysis, the Commission finds that at the time of the attack on Erminson Sepúlveda the State had taken no effective steps to protect his life against the specific and imminent risk that he reported days earlier to state agents. On the contrary, as far as the Commission can determine, there is information to suggest that those agents engaged in omissions that, given the context in which they occurred, could be construed as being intended to make it easier for the attack to be carried out. The Commission also finds that it has been proven in this case that there was a context of collaboration between agents of the State and the paramilitary group responsible for the attack, in addition to the fact that some of the individuals named as the perpetrators of the deed were identified as agents of the State. Based on the foregoing, the Commission concludes that, for the purposes of its international responsibility, there are sufficient elements to conclude that the obligation to respect and ensure rights was breached in this case and, therefore, the attack with firearms in which Mr. Omeara Carrascal was seriously wounded is attributable to the State.

**iii) As to Whether As a Result of the Attack and Its Consequences There Was a Violation of the Right to Life**

143. As regards the right to life, the Commission recalls that the Inter-American Court has recognized the violation of this right in respect of individuals who were not killed as a consequence of violating acts but happened, by chance, to survive.<sup>208</sup> That jurisprudence is consistent with that of the European Court of Human Rights in the case of *Acar and Others v. Turkey*, in which armed municipal guards stopped two vehicles, made their 15 occupants get out, ordered them to form a line on the road, and shot them. Six of them died and nine were injured. The European Court found that they were victims of behavior that, due to its nature, represented a serious risk to their lives despite the fact that they survived the attack.<sup>209</sup> In addition, in the case of *Makaratzis v. Greece*, the Court established that:

the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the State agents' actions in inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention. In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that, irrespective of whether or not the police actually intended to kill him, the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 is thus applicable in the instant case.<sup>210</sup>

144. Bearing in mind the aforementioned standards, the Commission considers that the way in which the operation on January 28, 1995 [Tr: sic], was carried out, that is, a deliberate attack with firearms in which Noel Emiro Omeara Carrascal had no possibility of escape and survived by chance, leads it to conclude that the State is responsible for violation of his right to life. The Commission stresses that this conclusion is irrespective of whether or not a causal link can be proved between his injuries and his death months afterward. Having said that, the Commission notes that, in any event, the evidence collected at the domestic level suggests that such a causality did exist.

<sup>207</sup> State's brief of July 13, 2012, received on July 16, 2012.

<sup>208</sup>Cf. I/A Court H.R., *Case of the Rochela Massacre* Judgment of May 11, 2007. Series C No. 163, par. 127.

<sup>209</sup>Cf. Eur.C.H.R., *Acar and Others v. Turkey*, Judgment of 24 May 2005, App. Nos. 36088/97 and 38417/97, para. 77.

<sup>210</sup> Cf. Eur.C.H.R., *Makaratzis v. Greece* [GC], Judgment of 20 December 2004, App. No. 50385/99, paras. 51 and 55.

145. Indeed, the Commission observes that as a result of the attack Mr. Omeara acquired a deficiency that left him in a disabled and, subsequently, caused his death six months later. The Commission notes that according to medical records his death was the result of multiple late complications that patients with spinal cord trauma suffer.<sup>211</sup>

**iv. Conclusion**

146. In light of the above considerations, the Commission concludes that the State is responsible both for the attack that occurred on January 28, 1994, which Noel Emiro Omeara survived, and for his subsequent death. All of the foregoing is in violation of the duty to respect and ensure rights under Articles 5 (right to humane treatment) and 4 (right to life) of the American Convention, taken in conjunction with Article 1(1) of said treaty.

147. With regard to the petitioners' submissions concerning a violation of the right to personal security enshrined in Article 7 of the Convention, the Commission considers that those submissions have been analyzed in this section and, therefore, there is no need to make separate determinations in relation to that provision in this case.

**b. Events Relating to Manuel Guillermo Omeara Miraval**

**i. Disappearance and Subsequent Execution**

148. The petitioners have indicated that the disappearance and subsequent death of Manuel Guillermo Omeara Miraval was the consequence of acts or omissions by agents of the State. The State, for its part, holds that the involvement of its agents has not been proved. In this section, the Commission analyzes if there is sufficient evidence to arrive at the conviction that what happened was a forced disappearance attributable to the State, taking into account the particular features of the attribution of this crime to the State.

149. In that regard, the Commission recalls that the Court has defined forced disappearance as the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.<sup>212</sup> The Court has stated a number of times that forced disappearance, whose prohibition has the character of *jus cogens*, constitutes a multiple violation of several rights protected by the American Convention, including the rights to life, juridical personality, humane treatment, and personal liberty.<sup>213</sup>

150. As regards the specific characteristics of the crime of forced disappearance, the court has found that the Inter-American Convention on Forced Disappearance of Persons, like other international instruments,<sup>214</sup> establishes that forced disappearance comprises the following concurrent, basic elements: (a) deprivation of liberty; (b) direct involvement of governmental officials or acquiescence thereof; and (c)

<sup>211</sup> The Commission has no specific information to the effect that during that time he received adequate medical treatment for the physical and psychological harm that he suffered.

<sup>212</sup> I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, par. 126.

<sup>213</sup> I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 139; *Case of Goiburú et al. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; and *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of September 3, 2012 Series C No. 190, par. 91.

<sup>214</sup> The Court makes references to the following instruments: United Nations Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, 15 December 1996. (E/CN. 4/1996/38), para. 55; and Article 2 of the International Convention for the Protection of all Persons from Forced Disappearance.

refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.<sup>215</sup>

151. In this case, as the established facts show, there are sufficient elements to believe that the Mr. Omeara Miraval's **deprivation of liberty** on August 27, 1994, was committed by individuals who belonged to a paramilitary group that was operating in the area. In that respect, the first element of forced disappearance is met.

152. As to the **involvement or acquiescence of state agents** and **concealment** of the deed, the Commission finds that there is circumstantial evidence of the international responsibility of the State for the disappearance and later execution of Guillermo Omeara Miraval.

153. In first place, the fact that there are elements linking the illegal armed group led by Roberto Prada Gamarra to the disappearance and subsequent execution of Guillermo Omeara Miraval in itself constitutes circumstantial evidence of the State's responsibility, given the above-describe context of collaboration by agents of the state with that paramilitary group (cf. *supra* par. 51).

154. Second, as regards the response of the State on being made aware of the disappearance by the complaint filed by his wife on August 28, 1994, the Commission notes that said response was utterly omissive to the extent that it is fair to infer that said omission was deliberate. The Commission recalls that it follows from inter-American jurisprudence that insofar as a missing person's report is concerned, the response of the State is inevitably linked to the protection of the life and well-being of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an immediate and exhaustive response is concerned. According to the Court's case law, "when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty."<sup>216</sup>

155. In this case, the Commission observes that after the State was made aware of the incident on August 28, 1994, by the wife of Manuel Guillermo Omeara, there is no evidence of any inquiries specifically intended to effectively investigate his whereabouts until September 6, 1994, when the Regional Prosecutor of Barranquilla opened the preliminary investigation. The only information available to the Commission is the statement of Jaime Antonio Omeara, who said that the man by the alias "Rambo," who, as noted, was linked to the attack in which Mr. Omeara Carrascal was wounded, visited the family's home and said that an investigation was under way.

156. The Commission has no other information to attest that immediate steps were taken and followed up upon by the states with the aim of finding Manuel Guillermo Omeara Miraval alive, in spite of the fact that the nature of the reported facts should have made it abundantly clear to the state authorities that he was in a situation of extreme danger. In addition, the Commission finds it appropriate to note that, although Mr. Omeara Miraval's body was found on September 22, 1995, there is nothing in the record to show that that came about as a result of the inquiries made to find him. On the country, according to the information available, it was the result of an anonymous call.

157. In the opinion of the Commission, the lack of specific and effective steps to look for Mr. Omeara Miraval after his disappearance was reported constitutes in itself a violation of the duty to ensure his

<sup>215</sup>I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 60.

<sup>216</sup>I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 134; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 221; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See, also, *Matter of Natera Balboa regarding Venezuela*. (Provisional Measures) Order of the Inter-American Court of Human Rights of February 1, 2010, preambular par. 13.

rights. Indeed, the Commission finds that those omissions favored the continued disappearance of Mr. Omeara Miraval and, ultimately, his execution.

158. In addition to disclosing an infringement of the duty to ensure rights, the aforementioned omissions are particularly significant insofar as the State's involvement in the disappearance and later execution is concerned, bearing in mind that said inaction belonged to UNASE, the unit with which Fabiola Álvarez said she filed her complaint and which was alleged to be a death squad that acted in coordination with the very illegal armed group to which the attack on Guillermo Omeara's was attributed.

159. Third, the Commission finds that the testimony of Juan Francisco Prada, a member of the paramilitary group, indicates that one of those involved in the disappearance and execution of Guillermo Omeara was the man known by the alias "el ave" (cf. *supra* par. 78). According to Juan Francisco Parra that same person took part in the attack on Héctor Álvarez, who revealed that the truck in which Mr. Omeara Miraval disappeared belonged to Mr. Prada (cf. *supra* par. 84).

160. The Commission finds that the same person's involvement in both incidents strengthens the petitioners' contention that the acts of violence were interconnected. Specifically they argued that the attack on Héctor Álvarez was designed to silence the bid to obtain justice for the disappearance and execution of Guillermo Omeara, and that what happened to Guillermo Omeara was aimed at delaying his investigations to identify the perpetrators of the attack on Noel Emiro Omeara, in which evidence has been presented of the involvement of state agents (cf. *supra* par. 60).

161. Faced with this accumulation of circumstantial evidence, the Commission notes that the State said that the involvement of agents of the State has not been proved based on the findings of the investigations. In that regard, the Commission finds that the investigation of Major Lázaro Vergel in relation to this fact was precluded in the regular courts and set aside in disciplinary proceedings. However, the State has not provided an explanation or evidence supporting the decisions on the basis of which it was opted not to include Major Lázaro Vergel in the criminal investigation. Likewise, the State has not furnished an explanation of the reason not to investigate the possible activities of other state agents, such as "Rambo," who was said in a statement to be a member of the UNASE, was allegedly involved in the events connected with the attack on Noel Emiro Omeara, and reputedly later visited the family after Guillermo Omeara's disappearance was reported.

162. With respect to the investigation in the military jurisdiction, although the State has provided information about inquiries aimed at determining whether or not army, police, and DAS personnel, as well as members of the UNASE, were involved, the Commission finds that said jurisdiction does not satisfy the guarantees of independence and impartiality that would allow it to be considered a valid means of clarification of the facts under the Convention (cf. *infra* pars. 198-201).

163. In conclusion, the Commission finds that the State's mere mention of the sense of the decisions that were adopted in the ordinary courts and disciplinary proceedings and its denial of any involvement of its agents in the events are not sufficient to disprove the findings made with regard to the involvement of the illegal armed group led by members of the Prada family in the events, for which there is consistent information to suggest that it acted in coordination with, or with the acquiescence of, state agents. That circumstantial evidence of responsibility is further strengthened, moreover, when one considers the inaction of the UNASE rather than launch an immediate search upon learning of the disappearance, that said unit was referred to by several individuals as a death squad that acted in connivance with the paramilitary group, and that it has not been effectively investigated by the State. The Commission also finds the foregoing to be consistent with the petitioners' submissions that the purpose of the disappearance was to silence Guillermo Omeara on account of his efforts to investigate the attack on Noel Emiro Omeara, in which, as is noted above, State agents were involved whom, it may be reasonably concluded, would have had an interest in their responsibility not coming to light. In spite of the circumstantial evidence that all three incidents were interconnected, the State has failed to investigate that connection properly.

164. In that regard, all of the foregoing elements taken together lead the Commission to conclude that the disappearance and execution of Manuel Guillermo Omeara Miraval are attributable to the State and, therefore, that the State violated the rights to legal personality, life, right to humane treatment and personal liberty established in Articles 3, 4, 5, and 7 of the American Convention in relation to the obligations under Article 1(1) of same. As the Court has held, faced with multiple, consistent circumstantial evidence and the lack of a proper investigation by the State (cf. *infra*, pars. 197 et seq.) to conclude otherwise would allow the State to shelter behind its negligence and the ineffectiveness of the criminal investigation in order to evade international responsibility.<sup>217</sup>

## ii. Alleged Torture

165. The Inter-American Court has repeatedly held that international human rights law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*.<sup>218</sup> Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.<sup>219</sup>

166. In this case, the Commission notes that the parties disagree over whether or not Manuel Guillermo Omeara was tortured before he died. While the family members said that they saw that the corpse's hands were tied and it bore signs of torture, including missing fingernails and teeth, torture marks on the testicles, and acid burns on the body (cf. *supra*, par. 74), the State said that no such injuries were recorded in the autopsy report prepared by the National Institute of Legal Medicine and that, on the contrary, the victim had "long, dirty nails," and that there were no injuries on the thorax and abdomen; it only mentioned the existence of "indentations" on the wrists (see footnote 114).

167. With respect to these facts, the Commission notes that in addition to the statements of the family members, the alleged existence of these wounds was reported by a lawyer to the Prosecutor General's Office, the Ombudsman's Office, and the DAS (cf. *supra*, par. 75). The Commission finds that in light of the family's discrepancy, on August 9, 1995, the exhumation was ordered of the body of Manuel Guillermo Omeara in the investigation at the domestic level. However, the Commission has no evidence that said procedure was carried out or, if it was, of its findings.

168. The Commission considers that although it is proved that the victim's hands were tied, the absence of a definitive pronouncement in the domestic investigation on the other injuries constitutes an obstacle—attributable to the State—to determining if those injuries actually existed. Nevertheless, the Commission considers that given the plurality of offenses that forced disappearance entails, that act constituted a violation of the victim's right to humane treatment in which the sequence of what happened to Guillermo Omeara, in terms of being arbitrarily detained, forced into a truck, having his hands tied, and subsequently enduring the fear that he was going to be executed, as indeed he was, are sufficient for it to be reasonably concluded that he suffered most terribly<sup>220</sup> at the uncertainty of what would happen to him and

<sup>217</sup> I/A Court H.R., *Case of Gonzalez Medina and Family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, par.132; I/A Court H.R., *Case of Kawas Fernández v. Honduras*, Judgment of April 3, 2009 Series C No. 196, par. 97.

<sup>218</sup> I/A Court H.R., *Case of Bueno-Alves*. Judgment of May 11, 2007. Series C No. 164. par. 76; I/A Court H.R., *Miguel Castro Castro Prison Case*. Judgment of November 25, 2006. Series C No. 160. par. 271; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. par. 117.

<sup>219</sup> I/A Court H.R., *Case of Bueno-Alves*. Judgment of May 11, 2007. Series C No. 164. par. 76; I/A Court H.R., *Miguel Castro Castro Prison Case*. Judgment of November 25, 2006. Series C No. 160. par. 271; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. par. 117.

<sup>220</sup> The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, pars. 162-163; I/A Court H.R., *Case of the 19 Merchants v. Colombia*, Judgment of July 5, 2004. Series C No. 109, par. 150; IACHR, Report No. 63/0, Prada González and Bolaño Castro v. Colombia, Case 11.710, par. 34; Report 33/04, Jailton Neri da Fonseca v. Brazil.

the knowledge that his death was imminent.<sup>221</sup> The Commission considers that the above amounted to torture, in violation of his right to humane treatment protected by Article 5 of the Convention.

### **c. Events Relating to Héctor Álvarez Sánchez**

169. The Commission has taken has established that on October 21, 1994, according to several witnesses, members of the paramilitary group led by Roberto Prada Gamarra shot at Héctor Álvarez Sánchez several times from a motorcycle and that the attack left him in a paraplegic state and unable to speak. Héctor Álvarez Sánchez subsequently died on May 11, 2000.

170. In this section the Commission analyzes if the State bears responsibility for these events as a consequence of its acts or omissions.

171. With respect to the attack, the Commission observes, first, that, as this report consistently notes, the fact that the attack was carried out by the group headed by Roberto Prada means that it was perpetrated by a group that had a collaboration arrangement with state agents (cf. *supra*, par. 51).

172. Second, as has been attested, Héctor Álvarez made inquiries into the disappearance of his son-in-law, Manuel Guillermo Omeara Miraval, and stated to the Prosecutor's Office that he had managed to ascertain that the truck in which he was taken was one used by Mr. Prada. The Commission notes that these steps taken by Héctor Álvarez are consistent with the petitioners' argument that there was an interest in delaying or suppressing his contributions to the proceeding in connection with the disappearance and killing of Guillermo Omeara. The Commission also finds that the above assertion is further strengthened, bearing in mind that the man with the alias "El Loco Ave," who allegedly belonged to the Prada group and was said to be one of the perpetrators of the attack (cf. *supra*, par. 85), is the same person for which there is circumstantial evidence of involvement in the disappearance and execution of Guillermo Omeara. These elements strengthened the interconnection among the various facts in the case, which makes it reasonable to infer that the attack was intended to silence Mr. Álvarez and conceal the responsibility of the perpetrators for the events relating to the attack on Guillermo Omeara and what happened to Noel Emiro Omeara Carrascal.

173. Faced with all of the above, the Commission notes that the State said that the involvement of its agents in the events has not been proved. In that regard, although the State has reported that there is an open investigation underway in the regular courts, the Commission finds that it has not provided any evidence as to how that investigation has effectively elucidated the facts, nor explained why the possible responsibility of state agents is not being investigated.

174. In light of the foregoing, the Commission considers that the State has not managed to disprove the multiple circumstantial evidence of its responsibility and, therefore, concludes that it bears international responsibility for the attack on Héctor Álvarez Sánchez, the injuries that he sustained, and the physical and mental disabilities that he suffered as a result of the attack until the day he died.

175. Third, the Commission finds that although the state was aware of the danger to Mr. Álvarez, it failed to offer him due protection, despite the fact that two other members of the family to which he belonged had fallen victim to serious acts of violence in the space of less than nine months.

176. In that regard, the Commission recalls that when he appeared before the authorities to give his statement, the State was aware of what had happened to those two family members: Noel Emiro Omeara and Manuel Guillermo Omeara. Moreover, according to the statement of Elba María Solano, which the State has not refuted, upon signing his statement to the prosecutor's office, Héctor Álvarez expressly announced the danger he faced by saying that "he had sealed his death warrant."

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<sup>221</sup>The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, pars. 162-163 and 168; Case of the 19 Merchants v. Colombia, Judgment of July 5, 2004. Series C No. 109, par. 150; IACHR, Report No. 63/01, Prada González and Bolaño Castro v. Colombia, par. 34; IACHR, Report 33/04, Jailton Neri da Fonseca v. Brazil.

177. The Commission considers that with an incriminating statement of that nature and the express announcement that his life was in danger, the agents of the State knew that Mr. Álvarez was at risk, especially since he had played a particularly important role in the investigation as the only person who had testified about the alleged perpetrators of the disappearance and execution of Guillermo Omeara. That situation of risk was made still clearer if one considers that in his statements he said that Manuel Guillermo Omeara had been “disappeared” for making inquiries about what happened.

178. In the Commission's opinion, based on the above, the State had a duty to analyze the danger to Héctor Álvarez and adopt suitable and effective protection measures. In that connection, the Commission recalls that the Court has determined that upon investigating events of the kind that befell Manuel Guillermo Omeara, the State has a duty *ex officio* immediately to investigate and adopt sufficient comprehensive protection measures regarding any act of coercion, intimidation and threats towards persons who contribute to the clarification of the facts in an investigation, whether they be witnesses or justice operators.<sup>222</sup>

179. The Commission considers that, upon being made aware of Héctor Álvarez's specific situation, according to the Inter-American Court's case law, it became the State's duty “to offer the person at risk timely information on the measures available.” The Court has held that “[t]he assessment of whether a person requires protection measures and what those measures should be is the State's obligation, and this must not be limited to requiring the victim to apply to ‘the competent authorities,’ without knowing which authority can best address the situation.”<sup>223</sup>

180. The Commission finds that, in spite of that obligation to analyze the situation of risk and adopt adequate protection measures,<sup>224</sup> the State has not demonstrated that any such analysis was done of Mr. Álvarez's specific situation or that any protection measures were ordered. On the contrary, the Commission observes that, according to the statement of Elba María Solano, Mr. Álvarez said in the presence of representatives of the prosecutor's office “that he had sealed his death warrant.” She said, “[T]hey ought to have given us protection, but didn't.”

181. The Commission finds that the above omission translates into a violation of the duty to provide protection and, therefore, that Mr. Alvarez' defenseless state favored the attack on him.

182. Based on the above, the Commission concludes that the State is responsible for violation of the right to humane treatment established in Article 5 of the American Convention, taken in conjunction with the obligations contained in article 1(1) of the same instrument, to the detriment of Héctor Alvarez.

183. Finally, the Commission finds that the fact that Mr. Omeara should have survived the attack was simply a matter of luck, given that it was carried out by means of shots discharged from a firearm aimed specifically at his person while he was completely defenseless as a result of the lack of protection measures afforded by the State. The Commission considers that the State's omission to protect the life of Mr. Álvarez

<sup>222</sup>I/A Court H.R., Case of Kawas Fernández v. Honduras, Judgment of April 3, 2009 Series C No. 196, par. 97. In that same regard, the Inter-American Court has held that the State must “grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the victims, and use all possible measures to advance the proceeding.” I/A Court H.R., Case of La Cantuta. Judgment on Merits, Reparations and Costs Judgment of November 29, 2006, Series C No. 162, par. 226; I/A Court H.R., Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, par. 134. See also, I/A Court H.R., Case of Almonacid-Arellano et al. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006, Series C No. 154, par. 156.

<sup>223</sup>**I/A Court H.R., Case of Luna López v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, par. 127.**

<sup>224</sup>The Commission notes that the domestic standards recognize that obligation in Law 104 of 1993, which created the Program for the Protection of Witnesses, Victims, Persons Involved in the Proceeding, and Staff of the Attorney General, which was in force at the time of the events under review here and provided that victims and witnesses shall be granted comprehensive protection and social assistance, as shall their family members up to the fourth degree of consanguinity, the first degree of affinity, the first civil degree, and the spouse or permanent partner, whenever they are at risk of an attack or their lives are in danger by reason or in the context of their involvement in a criminal proceeding, for which mechanisms are recognized for enabling them to live in peace and effective justice, as well as other provisions (Law 104 of December 30, 1993, Art. 63). **Repealed by Article 131 of Law 418 of 1997.** Available in Spanish at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=8743>

and the circumstantial evidence of connivance with the illegal armed group that perpetrated it are sufficient to establish the State's responsibility for violation of the rights to life protected by Article 4 of the American Convention, taken in conjunction with the obligations contained in article 1(1) the same instrument.

184. Having established the State's responsibility, the Commission finds that it is unnecessary to ascertain whether or not it is medically proven that the subsequent death of Héctor Álvarez Sánchez was the consequence of the aforesaid attack. Furthermore, in relation to the petitioners' submissions regarding a separate violation of Article 7 of the Convention owing to an alleged violation of the right to personal security, the Commission finds no additional elements to conclude that Hector Alvarez's right in that regard was infringed.

### **3. Rights to a Fair Trial<sup>225</sup> and Judicial Protection<sup>226</sup> and the Duty to Adopt Provisions under Domestic Law<sup>227</sup> (Articles 8 and 25 of the American Convention)**

185. The Court has held that "as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law."<sup>228</sup> By the same token, the Court has ruled that victims and their next of kin have the right to expect, and the States the obligation to ensure, that what happened to the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.<sup>229</sup> Accordingly, State authorities, once they become aware of an act of violation of human rights, especially the rights to life, humane treatment and personal liberty,<sup>230</sup> have a duty to initiate ex officio and without delay, a serious, impartial and effective investigation,<sup>231</sup> which must be conducted within a reasonable period of time.<sup>232</sup>

<sup>225</sup>Article 8(1) of the American Convention states, 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>226</sup>Article 25(1) of the American Convention provides: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>227</sup>The Inter-American Court has stated that Article 2 of the Convention requires the State to suppress any laws and practices that imply a violation of the guarantees established in the Convention and, furthermore, to adopt laws and implement practices leading to the effective observance of those guarantees. I/A Court H.R., *Castillo Petruzzi et al. Case v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, pars. 207; I/A Court H.R., *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 60; and I/A Court H.R., *Case of the Dos Erres Massacre v. Guatemala*. Judgment of November 24, 2009, par. 122.

<sup>228</sup>I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 124; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163. par. 145; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, par. 106.

<sup>229</sup> I/A Court H.R., *Case of García-Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007, Series C No. Series C No. 168. par. 103; I/A Court H.R., *Case of Bulacio. 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*. Judgment of November 25, 2006. Series C No. 160. par. 382.

<sup>230</sup>I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 100.

<sup>231</sup>I/A Court H.R., *Case of García-Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007, Series C No. Series C No. 168. par. 101; I/A Court H. R., *Case of the Gómez Paquiyaui Brothers*. Judgment of July 8, 2004. Series C No. 110. pars. 146; I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz*, Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 130.

<sup>232</sup>I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160. par. 382.

186. 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.<sup>233</sup> 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,<sup>234</sup> and involving every State institution.<sup>235</sup> 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.<sup>236</sup>

187. Although the duty to investigate is one of means, not results, it must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective,<sup>237</sup> or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>238</sup> In that connection, with respect to due diligence in the analysis of the scene of a crime, the Inter-American Court and the Commission have taken into account the guidelines laid down in the United Nations Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions.<sup>239</sup>

188. Bearing the above parameters in mind, the Commission will determine in the instant case the State of Colombia carried out a serious and diligent investigation of the facts described in this report within a reasonable time. With that in mind, the Commission will analyze if each of the investigations was carried out with due diligence and in a reasonable time. Finally, the Commission will offer its conclusions on the international responsibility of the State.

**a. The failure to link and coordinate the investigations**

189. The Commission notes that the investigations into the attack and subsequent death of Noel Emiro Omeara, the disappearance and execution of Guillermo Omeara Miraval, and the attack on Héctor Álvarez have been conducted separately in three different proceedings. The Commission has determined that in all three proceedings there are various statements and allegations made by family members on different occasions that identify the paramilitary group headed by Roberto Prada, as well as agents of the state, as those responsible for the crimes. Furthermore, the names of some of the alleged perpetrators, such as those with the aliases “El Ave” and “Rambo,” coincide in a number of inquiries.

190. The Commission observes that although the State has provided information, though not proof, regarding inspections of the records of the investigations, there continues to be a lack of analysis of the findings made in them and of investigative hypotheses that tie them all together. The Commission finds that the lack of linkage among the three investigations and the findings adopted in the framework of the “justice

<sup>233</sup>I/A Court H.R., *Case of García-Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007, Series C No. 168, par. 101.

<sup>234</sup>I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 382.

<sup>235</sup>I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objection, 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*. Judgment of January 31, 2006. Series C No. 140, par. 120; and I/A Court H.R., *Case of Huilca Tecse*. Judgment March 3, 2005. Series C No. 121, par. 66.

<sup>236</sup>I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 122.

<sup>237</sup>I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Cantoral-Huamani and García-Santa Cruz*. Preliminary Objection, 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.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 120.

<sup>238</sup>I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 120.

<sup>239</sup>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. U.N. Doc E/ST/CSDHA/12 (1991). The Commission has previously relied on United Nations documents to evaluate basic procedures to be carried out in such cases. See November 18, 2008. Report 10/95. Case 10.580, Ecuador. September 12, 1995, par. 53.

and peace” jurisdiction is particularly significant in this case since, as was noted above, there are allegations that the acts of violence were committed in retaliation for inquiries made by the victims into the attacks suffered by their family members, the origin of which was the attack on Noel Emiro Omeara in which there is information that directly implicates state agents.

191. In that regard, the Commission notes that the consequence of not linking the investigations conducted, respectively, into the disappearance and death of Guillermo Omeara Miraval and the attack on Héctor Álvarez with the inquiry into the attack on Noel Emiro Omeara is an obstacle to clarifying the relationship between the State agents and members of a paramilitary group who are alleged to have been involved in the incidents. On this point, the Commission notes that the Court has held that “[i]nvestigating with due diligence requires taking into consideration what happened in other murders and establishing some type of connection with them. This should be carried out *ex officio*, without the victims or their next of kin being responsible for taking the initiative.”<sup>240</sup>

192. In light of the foregoing, the Commission considers that the separate nature of the investigations constitutes a breach of the duty to investigate the facts with due diligence and hinders both their clarification and the identification of those responsible, particularly the State agents involved.

#### **b. The Investigation of What Happened to Noel Emiro Omeara**

193. Investigation No. 397 was opened on January 31, 1994, for the homicide of Erminson Sepúlveda Saravia and was reassigned in October 1998 to the National Human Rights Unit of the Prosecutor’s Office in Bogota. The Commission sees that it was not until four years later, on August 31, 1998, that the Regional Director of Public Prosecutions in Barranquilla ordered the registration of Noel Emiro Omeara Carrascal in the investigation of the death of Erminson Sepúlveda. More than 10 years later, in April 2010, the former head of SIJIN Judicial Unit of Cesar South based in Aguachica, Pedro Alirio Ibáñez Castro, testified regarding the failure to include Noel Emiro Omeara Miraval in the investigation, saying that he did not know “why Mr. BERNAL had no knowledge of the other injured person.”

194. The Commission finds that the extensive delay in investigating the crime committed against Mr. Omeara Carrascal is reflects negligence in investigating the incident and translates into an obstruction and impediment in the search for the truth and punishment of the culprits. This, particularly bearing in mind the importance of the initial inquiries in clarifying the facts.

195. In addition, as regards investigative proceedings, the Commission notes that, in order to demonstrate due diligence, the State said that a series of procedures was ordered for the purpose of collecting evidence and that various reports were received. However, beyond mentioning them, the State furnished no evidence to the Commission by which to determine the content of the procedures ordered or their results. In that connection, the Commission finds that the State has not shown that essential procedures were carried out, such as planimetric diagrams, reconstruction of events, or identification of discharged rounds in order to determine responsibilities; or that logical lines of investigation were exhaustively pursued. In particular, the Commission notes that although the State reported that a number of procedures were carried out as part of an inspection of the UNASE and to obtain information about the illegal group “Los Macetos,” it does not have information on the results of those efforts.

196. The Commission finds that in the State's last brief containing its observations, it mentioned that the proceeding remain at the preliminary inquiry stage without providing details about the persons currently under investigation therein. Accordingly, the Commission finds that more than 21 years after the events the investigation still appears to be at that preliminary stage, in spite of the fact that in the framework of the justice and peace jurisdiction there are statements pointing to the possible perpetrators.

#### **c. The Investigation of What Happened to Guillermo Omeara Miraval**

<sup>240</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, par. 224.*

197. In this case, the State presented information about investigations conducted in the military criminal, disciplinary, and regular criminal jurisdictions.

### **i) The Military Criminal Jurisdiction**

198. The Commission notes that the State reported that in the investigation undertaken by the 109th Military Criminal Judge a series of procedures were carried out with respect to the UNASE and DAS personnel on the date of the events "in order to establish whether military personnel were linked" to them.

199. In that regard, the Commission recalls that special jurisdictions, such as the military criminal justice system, should have a restricted and exceptional scope and be designed to protect special juridical interests associated with the entity itself. The Inter-American Court has had the opportunity to analyze the structure and composition of special tribunals, such as military courts, in the light of the United Nations Basic Principles on the Independence of the Judiciary and has reached the conclusion that such tribunals lack the necessary independence and impartiality to take cognizance of human rights violations.<sup>241</sup>

200. Taking the above criteria into account, the Inter-American Court has referred to the incompatibility with the American Convention of the use of military criminal tribunals in cases involving human rights violations, noting that the fact that the very same military forces are those "charged with prosecuting their peers for executing civilians" is problematic for the guarantee of independence and impartiality.<sup>242</sup> Accordingly, the Inter-American court has found as a special jurisdiction, military courts "should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system."<sup>243</sup>

201. Consequently, the investigation in the military criminal jurisdiction of the possible involvement of State agents in the events surrounding the disappearance and subsequent death of Manuel Guillermo Omeara Miraval constitutes in itself a violation of the rights to a fair trial and judicial protection of the victim's family.

### **ii) The Disciplinary Proceedings**

202. The State informed the Commission that the the Delegate Procurator for Human Rights opened a disciplinary investigation, which was set aside because it was found that the report submitted by members of the police linking Major Jorge Alberto Lázaro Vogel to the activities of illegal armed groups "only provided a supposition." The State provided no evidence of the decisions that were adopted in that proceeding and, therefore, the Commission has been unable to weigh the grounds for said decisions, particularly the one that led the investigation to be set aside.

203. As to the relevance of the results reported by the State to demonstrate due diligence in the investigation, the Commission recalls that disciplinary proceedings are not an adequate means to prosecute and punish human rights violations or redress their consequences.<sup>244</sup> The Inter-American Court has determined that a disciplinary investigation "tends to protect the administrative function and the correction

<sup>241</sup>A number of relevant factors highlighted by the Court are: (i) that they are made up of active-duty officers who are hierarchically subordinate to higher-ranked officers through the chain of command; (ii) that their designation does not depend on their professional skills and qualifications to exercise judicial functions; and (iii) that they do not have sufficient guarantees that they will not be removed. Cf. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C, No. 135. par. 155 and 156.

<sup>242</sup>I/A Court H.R., *Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, par. 53.

<sup>243</sup>I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 272.

<sup>244</sup>IACHR. Report No. 74/07 (Admissibility). *José Antonio Romero Cruz et al. Colombia*. October 15, 2007, par. 34.

and control of public officials, so that, in cases of grave human rights violations, it can complement but not substitute completely the function of the criminal jurisdiction.”<sup>245</sup>

204. Based on the foregoing, the Commission does not consider that the information provided the by the State regarding this jurisdiction, for which it has likewise offered no probative elements, is sufficient to conclude that the State acted with due diligence to investigate and punish those responsible for what happened to Mr. Omeara Miraval.

### iii) The Criminal Investigation in the Regular Jurisdiction

205. The Commission recalls with respect to the crime of forced disappearance of persons that the Court has held that, given its particular gravity and the nature of the rights harmed, the prohibition of forced disappearance of persons requires a corresponding obligation to investigate and punish those responsible.<sup>246</sup> That obligation is also recognized in Article I (b) of the Inter-American Convention on Forced Disappearance of Persons, which came into force in Colombia on April 12, 2005, and provides that States Parties to that Convention undertake “[t]o punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

206. Furthermore, the Commission recalls in relation to violations of the rights to humane treatment by reason of torture that the obligation to investigate is reinforced by the provisions contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, which has been in force for Colombia since January 19, 1999.

207. In this case, the Commission recalls that it has already pronounced on the State's lack of due diligence in attempting to find Mr. Omeara alive after his disappearance was reported, given that there is nothing in the record to suggest that any steps were taken to look for him. All there is are statements regarding the incident made by family members, including Héctor Álvarez Sánchez, who was subsequently the target of an attack while unprotected. The Commission also notes that although an investigation was initiated on September 6, 1994, for the "kidnapping" of Manuel Guillermo Omeara, the State has not provided the record of the investigation or evidence attesting to the content and results of the procedures that it said it had carried out. The foregoing prevents the Commission from determining if basic procedures were carried out that required securing the scene of the crime, including the preservation of all evidence.

208. Furthermore, as regards the course of the inquiries, the Commission notes with respect to the individuals under investigation that in May 1998, Army Major Jorge Alberto Lázaro Vergel and Juan Francisco Prada Márquez were included in the investigation and that it was later ordered partially closed. Subsequently, Juan Francisco Prada Márquez was ordered to be remanded in pretrial custody and charged with conspiracy to commit a crime. However, he was acquitted of that charge on March 6, 2002. Roberto Prada Gamarra was also taken into pretrial detention but that proceeding was precluded by his death. The Commission notes that although it received information on the sense of the above decisions, the State provided no evidence in connection with their content, which would have enabled it to know the reasons for their adoption, in particularly the ones concerning Major Lázaro Vergel and Juan Francisco Prada Márquez.

209. Without prejudice to the foregoing, the Commission observes that in the framework of the justice and peace jurisdiction, Juan Francisco Prada provided information in connection with the events, in which he said that Roberto Prada Gamarra gave the orders for the disappearance and execution. The Commission has no information from the State concerning inquiries to determine the responsibility of individual members of the illegal armed group who might have had a hand in the incident, or about other agents of the State who may have been involved in the investigation.

<sup>245</sup>I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 204.

<sup>246</sup>I/A Court H.R., *Case of Goiburú et al v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 84; *Case of Anzualdo Castro v. Peru*. Judgment of September 22, 2009, Series C No. 202, par. 59; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, par. 139.

210. The Commission finds that in its last brief, the State reported that "currently the proceedings are progressing with orders for the taking of evidence, the most recent being on June 20, 2014." However, the state and observes that no explanation was offered about those procedures, nor was there any indication if anyone is currently under investigation.

211. Finally, with respect to the complaint filed on October 22, 1994, which alleges that Guillermo Omera was tortured, the Commission observes there is nothing in the record to suggest that that was actually investigated. Although the Commission notes that the exhumation of the corpse was ordered on August 9, which would have helped to settle the dispute over the nature and extent of the alleged injuries, the State offered no evidence to confirm that said procedure was actually carried out or of its impact on the investigation.

#### **d. The Investigation of What Happened to Héctor Álvarez**

212. The Commission notes that the investigation of the attack on Héctor Álvarez was conducted by the 22nd Specialized Prosecutor's Office. Although the State broadly mentioned a series of procedures, including interviews and collection of evidence, it offered no proof or explanation of same, which has prevented confirmation of their content, pertinence, and findings in the investigation.

213. The foregoing aside, the Commission finds that the State reported that there was evidence to suggest that one of the perpetrators of the attack was alias the "Loco Ave," who was murdered on January 14, 1996. As regards the other possible perpetrators, the Commission observes that the State said that in a voluntary deposition, Mr. "Pava Montilla" admitted having been a member of the self-defense group but denied having taken part in the events or having information about the possible perpetrators. The Commission finds that there is nothing in the information provided by the State to suggest that, other than his statement, the attempt was made to gather more evidence about Mr. "Pava Montilla" or to investigate the possible involvement of agents of the state in the events. The foregoing is particularly important, bearing in mind the account presented by the family to the effect that the attack was connected with Mr. Álvarez's inquiries into the violence committed against Guillermo Omeara, who, in turn, was making inquiries into the attack on Noel Emiro Omeara, in which there is information implicating agents of the State.

#### **e. The Length of the Investigations**

214. The Commission recalls that in determining if an investigation has been carried out in a reasonable time, the organs of the inter-American system have considered: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>247</sup>

215. The Commission observes that the three investigations carried out in the regular jurisdiction in this case have dragged on for nearly 21 years in all. In the Commission's opinion the case was not particularly complex since the victims were individuals whose identity was easily determined. Moreover, the violations committed against them were connected, as they belonged to the same family and there were allegations that following what happened to Mr. Omeara Carrascal, the other acts of violence were reprisals for inquiries made by family members. The Commission also notes that the events were immediately brought to the attention of the State, and the authorities had free access to the scene of the crime and were able to question possible witnesses and carry out the relevant technical tests. Be that as it may, the State has not provided concrete information by which to establish a link between the potential complexity of the matter and specific in the investigations.

<sup>247</sup>IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, par. 100. I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

216. As regards the conduct of the authorities, the Commission notes that they committed a series of omissions, as was clear, for example, from the failure to include Noel Emiro Omeara as a victim without any justification, which stalled the investigation of the attack on him for several years; the failure to take immediate steps to find Manuel Guillermo Omeara Miraval, contributing to his defenselessness and facilitating his subsequent execution; and the absence of protection measures for Héctor Álvarez given the gravity of his statements in the investigation of the events that befell Manuel Guillermo Omeara, thereby enabling the attack against him. Furthermore, the Commission notes that although there are connected elements in the two investigations, aside from a number of isolated inspections, the State has not provided any information to demonstrate that the investigations were adequately linked.

217. The Commission has also been unable to assess the progress of the investigation as it has not had access to the record of the domestic proceedings. However, it notes from the information supplied by the State that there were significant bouts of inactivity. Thus, in the investigation connected with Mr. Omera Carrascal, the Commission sees that after 2010 the State reported no further procedures until 2014; in the investigation concerning the disappearance and subsequent execution of Guillermo Omeara there was a significant period of inactivity between 2000 and 2007, and there is no information of any significant procedural steps since 2010; in the investigation of the attack on Héctor Álvarez the Commission has no information about significant procedural measures between 2010 and 2014, when a voluntary deposition was reportedly taken.

218. Finally, as regards the conduct of the family, the Commission finds that they took several steps to contribute to the investigation. Indeed, as has been noted, the violence against Guillermo Omeara Miraval and Héctor Álvarez has apparently been confirmed as the result of their interest in elucidating the facts. There is nothing in the record to suggest any procedural steps by the family that might have impaired the course of the investigations.

#### **f. Conclusion**

219. Following its analysis of each of the proceedings and investigations in connection with the victims in the case, the Commission considers that the failure adequately to link them has impeded clarification of the facts and identification of those responsible. The Commission finds that notwithstanding serious circumstantial evidence of responsibility of State agents and members of paramilitary groups, the State has not managed to demonstrate that it has investigated that evidence in a meaningful, timely, and thorough manner. Furthermore, despite the fact that some of those allegedly responsible have been individually named in statements given by members of paramilitary groups, as a consequence of the State's delays, some of the alleged perpetrators have since died and, though more than 20 years have passed since the events occurred, so far, the truth about the motives and circumstances in which the acts of violence were ordered and, as applicable, coordinated with agents of the state remains unknown.

220. The Commission notes that the lack of due diligence in the investigations has also contributed to the impunity of the culprits, who through the ensuing acts of violence against Manuel Guillermo Omeara and Héctor Álvarez would appear to have made sure of evading their responsibility while also impeding proof of the links that existed between members of the state security forces and illegal armed groups at the time of the events.

221. The aforesaid situation has also prevented the truth of what happened from coming to light. The Inter-American Court has made clear its position on the right of victims or their relatives to know what happened and has found that the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.<sup>248</sup> The right to the truth [...] constitutes an important means of reparation for victims and their next of kin and creates an expectation that the State must fulfill.<sup>249</sup>

<sup>248</sup> I/A Court H.R. *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, par. 48. *Case of Bámaca Velásquez* Judgment of November 25, 2000. Series C No. 70, para. 201. *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, par. 62; [continues ...]

222. Moreover, taking into account its analysis of the length of the investigations, the Commission finds that the State has committed a series of omissions that have resulted in more than two decades of unreasonable delays in the investigation from which no results have been forthcoming in terms of justice and truth, with the attendant difficulties caused by the passage of time in terms of obtaining evidence by which to clarify the facts and identify all those involved.

223. In view of the foregoing, the Commission concludes that the State has not adopted the necessary measures to discharge its obligation to investigate, prosecute, and punish all those responsible for the human rights violations analyzed in this report within a reasonable time, in accordance with Articles 8(1) and 25(1) of the American Convention, taken in conjunction with Article 1(1) thereof, to the detriment of the families of Manuel Guillermo Omeara Miraval, Noel Emiro Omeara Carrascal, and Héctor Álvarez Sánchez.

224. Furthermore, under the *iura novit curia* principle and bearing in mind the same analysis of the lack of due diligence in the investigations, the Commission considers that by reason of the State's failure to investigate the disappearance and torture that Manuel Guillermo Omeara suffered after January 19, 1999, and April 12, 2005, when Colombia deposited its instruments of ratification of the Inter-American Convention to Prevent and Punish Torture and of the Inter-American Convention on Forced Disappearance of Persons, respectively, the State bears international responsibility for violation of Articles 1, 6, and 8, of the former Convention and Article I (b) of the latter treaty to the detriment of the family of Manuel Guillermo Omeara Carrascal.

225. The Commission finds that, as its analysis has included the arguments of the petitioners concerning their submissions as to the lack of truth with respect to the facts, it need not pronounce on the separate violation of Article 13 of the Convention.

#### **4. Right to humane treatment, rights of the family, and freedom of movement and residence (Articles 5, 17, and 22 of the American Convention to the detriment of the family members)**

226. Article 5(1) of the American Convention on Human Rights provides, "Every person has the right to have his physical, mental, and moral integrity respected." The Inter-American Court has indicated that the next-of-kin of victims of certain human rights violations may, in turn, become victims.<sup>250</sup> Specifically, the Court found that the right to mental and moral integrity of the next of kin of victims [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>251</sup>

227. Article 22 of the American Convention protects the right of all persons lawfully within a State to move freely within that State and to choose their place of residence; and the right of such persons to enter, to remain in, or to leave the State's territory without any unlawful interference.<sup>252</sup> In addition, the

[... continuation]

*Case of Almonacid-Arellano et al.* Judgment of September 26, 2006. Series C No. 154, par. 148; and *Case of Myrna Mack Chang*, Judgment of November 25, 2003, pars. 217 and 218; and IACHR, Report No. 62/08 Manuel Cepeda Vargas, par. 140.

<sup>249</sup>I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 78; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, par. 62, and IACHR Report .No. 62/08 Manuel Cepeda Vargas, par. 140.

<sup>250</sup>I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; I/A Court H.R., *Case of Bueno-Alves*. Judgment of May 11, 2007. Series C No. 164, par. 102.

<sup>251</sup>I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; I/A Court H.R., *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, par. 96.

<sup>252</sup>I/A Court H.R., *Case of Valle Jaramillo et al. T. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 138.

Court has indicated that the right to freedom of movement and residence may be affected when a person is the victim of threats or harassment and the State does not provide the guarantees necessary to allow him/her to move freely and reside in the territory in question, even when those threats and harassments are carried out by non-State actors.<sup>253</sup> Regarding displacement caused by acts of violence, the Commission recalls that the Inter-American Court has held that:

In view of the complexity of the phenomenon of internal displacement and of the broad range of human rights affected or endangered by it, and bearing in mind said circumstances of special weakness, vulnerability, and defenselessness in which the displaced population generally finds itself, as subjects of human rights, their situation can be understood as an individual *de facto* situation of lack of protection with regard to the rest of those who are in similar situations.<sup>254</sup>

228. The Commission recalls that Article 17(1) of the American Convention provides, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state” and that in addition to the special measures of protection for children required by Article 19 of the Convention, the Court has held that “[t]he child has the right to live with his or her family, which is responsible for satisfying his or her material, emotional, and psychological needs.”<sup>255</sup>

229. In the instant case, the Commission finds that the acts of violence against Noel Emiro Omeara Carrascal, Guillermo Omeara Miraval, and Héctor Álvarez; the suffering of their families as a result of the crimes in themselves and of the failure, to date, to clarify them; and the constant fear and anxiety of being victims of further retaliation on account of their search for justice for what happened to their family members are attributable to the State, and therefore constitute a violation of Article 5 of the American Convention.

230. In addition, the Commission believes it appropriate to note that following the initial act of violence with which this case is concerned, there was a series of threats and acts of intimidation against witnesses and the victims' families. Thus, a few days after Noel Emiro Omeara was shot, Ana Agustina Rocha Beleño, an eyewitness, was threatened with a gun by one of the UNASE members who “told her not to talk.” Ana Graciela Ortega Quintero was also intimidated by some men who went to the “San Roque” restaurant to ask if she knew them; Carmen Teresa Omeara was threatened by a member of the UNASE, who told her, “you look prettier when you keep quiet,” and that if her father told her anything she should not talk about it.<sup>256</sup> Guillermo Omeara was later “disappeared” and executed, after which, Héctor Álvarez Sánchez was also attacked for his involvement in the investigations.

231. As a result of the above climate, in addition to suffering the loss of their loved ones, the family was forced to take decisions to protect themselves from further acts of violence, given the serious danger, the absence of protection measures, and the lack of progress in the investigations. Thus, on October 22, 1994, Fabiola Álvarez Solano, her three children, and Carmen Teresa Omeara Miraval, were forced to move to the city of Bucaramanga. The move, to escape a situation of violence in which their loved ones had lost their lives, created a state of uncertainty and anxiety as a result of abandoning their habitual place of residence and heading into the unknown.

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<sup>253</sup>I/A Court H.R., *Case of Valle Jaramillo et al. T. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 139.

<sup>254</sup>I/A Court H.R. *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 177. IACHR. Report No. 64/11, Marino López et al. (Operation Genesis), March 31, 2011, par. 288.

<sup>255</sup>I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, par. 71, and *Case of Chitay-Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, par. 156. *Cf.* Marino López et al. (Operation Genesis), March 31, 2011, par. 318.

<sup>256</sup>Sworn statement of Carmen Teresa Omeara Miraval of August 17, 2010, case file No. 015 of the National Human Rights Unit - National Prosecutor’s Office Bucaramanga, folder No. 11, unpaginated document. Annex No. 40 to the petitioners’ brief of November 10, 2010.

232. The Commission notes that the displacement and state of defenselessness came about in spite of express requests from authorities to protect the family. For example, the Ombudsman said that these people had actively participated in the search for Manuel Guillermo Omeara and he asked the military mayor of Aguachica to provide them with the necessary protection. However, there is nothing in the record to suggest that such measures were implemented. In addition, the record shows that on August 9, 1995, the Regional Prosecutor in charge of the criminal investigation opened into the kidnapping of Manuel Guillermo Omeara Miraval ordered that "appropriate measures be taken as soon as possible in order to provide effective protection of the physical integrity of members of the OMEARA and ÁLVAREZ families living in Aguachica (Cesar)". However, there is nothing in the record to suggest that the victim received any kind of protection as a result of that request either.

233. In light of the foregoing, the Commission finds that: (i) The State created the conditions of risk to the victims; (ii) it was aware of that situation of risk which, in turn, led to their forced displacement; (iii) it adopted no measures for their protection, not even for the children of Guillermo Omeara for whom it may be reasonably assumed that the displacement had aggravated consequences by reason of their condition is minors.

234. The Commission also deems it necessary to point out that acts of violence against three members of the same family inevitably have an impact on life plans at both the individual and the family level. Consequently, the Commission considers that in the particular circumstances of this case, there has been a separate violation of the rights of the family enshrined in Article 17 of the Convention.

In conclusion, the Commission finds that the State violated the right to humane treatment and the rights of the family established in Articles 5 and 17 of the American Convention in connection with the obligations under Article 1(1) thereof, to the detriment of the following children of Noel Emiro Omeara Carrascal, who were, in turn, siblings of Manuel Guillermo Omeara Miraval: Carmen Teresa Omeara Miraval; Jaime Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Zoila Rosa Omeara Miraval, and María Omeara Miraval; as well as the spouse of Hector Álvarez, Elva María Solano de Álvarez, and their children Judith Álvarez Solano; Miguel Manuel Álvarez Solano; Héctor Manuel Álvarez Solano; Clemencia Patricia Álvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez de García; and the spouse of Guillermo Omeara, Fabiola Álvarez Solano, and their three children Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

235. Furthermore, the State violated the freedom of movement and residence recognized in Article 22(1) of the American Convention, in connection with the obligations set out in Article 1(1) thereof, to the detriment of Carmen Teresa Omeara Miraval; Fabiola Álvarez Solano, and her three children Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez and Claudia Marcela Omeara Álvarez; and Carmen Teresa Omeara Miraval. Finally, the Commission concludes that the State violated Article 19 of the American Convention to the detriment of the children of Manuel Guillermo Omeara Miraval.

## V. CONCLUSIONS

236. Based on the factual and legal considerations contained in this report, the Commission concludes that the State is responsible for violation of the rights recognized in the following articles of the American Convention:

- a) Articles 4, and 5 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Noel Emiro Omeara Carrascal and Héctor Álvarez Sánchez;
- b) Articles 3, 4, 5, and 7 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Manuel Guillermo Omeara Miraval;
- c) Articles 5 and 17 of the American Convention to the detriment of Carmen Teresa Omeara Miraval; Jaime Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel

Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Zoila Rosa Omeara Miraval, and María Omeara Miraval; Elba María Solano de Álvarez; Judith Álvarez Solano; Miguel Manuel Álvarez Solano; Héctor Manuel Álvarez Solano; Clemencia Patricia Álvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez de García; Fabiola Álvarez Solano; Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

d) Article 22 of the American Convention to the detriment of Carmen Teresa Omeara Miraval, Fabiola Álvarez Solano; Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

e) Article 19 of the American Convention to the detriment of Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

f) Articles 8 and 25 of the American Convention, in connection with Article 1 (1) thereof to the detriment of Carmen Teresa Omeara Miraval; Jaime Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Zoila Rosa Omeara Miraval, and María Omeara Miraval; Elba María Solano de Álvarez; Judith Álvarez Solano; Miguel Manuel Álvarez Solano; Héctor Manuel Álvarez Solano; Clemencia Patricia Álvarez Solano; Juan Carlos Álvarez Solano and Ana Edith Álvarez de García; Fabiola Álvarez Solano; Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

g) Articles 1, 6, and 8 of the Inter-American Convention against Torture and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Carmen Teresa Omeara Miraval; Jaime Omeara Miraval; Luis Enrique Omeara Miraval; Aura Isabel Omeara Miraval; Noel Emiro Omeara Miraval; Araminta Omeara Miraval; Ricaurte Omeara Miraval; Zoila Rosa Omeara Miraval, María Omeara Miraval; Fabiola Álvarez Solano; Elba Catherine Omeara Álvarez, Manuel Guillermo Omeara Álvarez, and Claudia Marcela Omeara Álvarez.

## VI. RECOMMENDATIONS

237. Based on the arguments of fact and law set forth above,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS:

1. Provide comprehensive reparation to the families of Noel Emiro Omeara Carrascal, Manuel Guillermo Omeara Miraval, and Héctor Álvarez Sánchez identified in the report for the material and non-pecuniary injuries resulting from the events, including the relevant measures of compensation, satisfaction and rehabilitation.
2. Conduct a complete, impartial, effective, and prompt investigation of the facts, in order to clarify the events and, where appropriate, punish the masterminds and perpetrators who took part in the events that led to the attack on Noel Emiro Omerara Carrascal and his later death; the disappearance, torture and execution of Manuel Guillermo Omeara Miraval; and the attack on Héctor Álvarez Sánchez.
3. Adopt appropriate administrative, disciplinary or criminal measures to investigate and, where appropriate, punish the acts or omissions of State officials that contributed to the denial of justice and impunity surrounding the facts in the case.
4. Adopt the necessary measures to prevent a repetition of events such as those that occurred in this case, including strengthening protection mechanisms for family members and witnesses in the framework of investigations into human rights violations; and strengthening investigative capabilities with regard to contexts and patterns of joint activity between State agents and illegal armed groups.