



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of Wilmer Zambrano Vélez, José Miguel Caicedo, and
Segundo Olmedo Caicedo
(Case 11.579)
against the Republic of Ecuador

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF ECUADOR**

**CASE 11.579
WILMER ZAMBRANO VÉLEZ, JOSÉ MIGUEL CAICEDO, AND
SEGUNDO OLMEDO CAICEDO**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR ") submits to the Inter-American Court of Human Rights (hereinafter "the Tribunal", "the Inter-American Court" or "the Court ") the application in case 11,579, Wilmer Zambrano Vélez, José Miguel Caicedo, and Segundo Olmedo Caicedo ("the victims"), against the Republic of Ecuador (hereinafter "the State" or "the Ecuadorian State") for its international responsibility arising from the extrajudicial execution of the victims committed March 6, 1993, in Guayaquil, and the subsequent lack of an investigation into the facts.

2. In 1993, the Armed Forces and National Police of Ecuador carried out coordinated actions under the name of "combined and joint operations to protect society." One of these took place on March 6, 1993, in the "Batallón" neighborhood of the city of Guayaquil, located between the streets known as calle 40 and calle "K" in the city's periphery. A total of 1,200 members of the Armed Forces and National Police participated in this operation, including members of the Ecuadorian Navy, Air Force, and Army. During the operation, the members of the government forces – who were hooded – used explosives to knock down doors, and also had army trucks and landing boats. In addition, a helicopter that was flying overhead strafed several homes.

3. Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo were executed during the operation, which was carried out in the context of a suspension of guarantees that did not comport with the applicable standards. More than 13 years after the facts, the State has not undertaken a serious investigation, nor has it identified the direct perpetrators of the victims' executions or those who planned the operation, which is why the direct perpetrators and planners of these deaths have benefited from impunity.

4. The Inter-American Commission asks the Court to find that the Ecuadorian State is responsible for having violated its obligations set forth in Articles 27 (suspension of guarantees), 4 (right to life), 8 (judicial guarantees), and 25 (judicial protection), in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") for the failure to seriously and effectively investigate, prosecute, and punish the persons responsible, and for the failure to make effective reparation to the injured party.

5. The instant case has been processed in keeping with the provisions of the American Convention, and is submitted to the Court in keeping with Article 33 of the Court's Rules of Procedure. In addition, attached to this application, as an appendix, is a copy of Report No. 8/06, prepared pursuant to Article 50 of the Convention.¹ This report was adopted by the Commission on February 28, 2006, and transmitted to the State on April 24, 2006, which was given two months to adopt the recommendations contained therein. That period lapsed without the State submitting any information.

¹ IACHR, Article 50 Report No. 8/06, Case 11,579, Wilmer Zambrano Vélez, José Miguel Caicedo, and Segundo Olmedo Caicedo, February 28, 2006. Appendix 1.

6. The referral of the case to the Court is based on the need to carry out a diligent investigation for the purpose of obtaining truth, justice, and reparations for the harm caused by the violations perpetrated against the victims. In addition, the Commission considers that the case reflects the problematic issue of human rights violations related to the inadequate use of states of emergency and the problems of abuse of authority this leads to, as well as the problems securing justice in Ecuador, a situation that the Inter-American Commission has highlighted from the late 1990s to date.²

II. PURPOSE OF THE APPLICATION

7. The purpose of this application is to ask the Court to find and declare that by the acts carried out against Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo and the subsequent denial of justice with respect to these same acts, the Ecuadorian State has violated the rights to life, judicial guarantees, and judicial protection, in addition to the provisions on suspension of guarantees, all in relation to the obligation to respect and ensure the rights established in the American Convention and the duty to bring its domestic legislation into line with the requirements of the Convention.

8. As a result, the Inter-American Commission asks the Court to order the State:
- a. to carry out a complete, impartial, effective, and prompt investigation into the facts for the purpose of determining the identities of and punishing all those persons responsible for the violations in the instant case;
 - b. to hold a public ceremony acknowledging the international responsibility of the State with respect to the facts of this case and as a form of redress to the victims and their next-of-kin;
 - c. to adopt all measures necessary, in the domestic legal system, to bring the legislation on states of emergency into line with the American Convention and the case-law of the IACHR and the Inter-American Court, and other applicable international standards;
 - d. to adopt all measures necessary for the adequate reparation or mitigation of the harm suffered by the victims' next-of-kin, including both the non-material and material aspects;
 - e. to pay the costs and legal expenses incurred by the victims' next-of-kin and their representatives in the processing of the case, both domestically and before the inter-American system; and
 - f. to adopt all legal, administrative, and other measures necessary to ensure that similar facts not recur in the future, pursuant to the duty to prevent and the duty to guarantee the fundamental rights recognized in the American Convention.

² Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc.10 rev.1, April 24, 1997; Annual Report of the Inter-American Commission on Human Rights 1998, Chapter V, OEA/Ser.L/V/II.102, Doc.6 rev., April 16, 1999; Annual Report of the Inter-American Commission on Human Rights 1999, OEA/Ser.L/V/II.106, Doc. 3, April 13, 2000, Chapter IV, Ecuador; and Annual Report of the Inter-American Commission on Human Rights 2005, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, in: www.cidh.oas.org.

III. REPRESENTATION

9. In keeping with Articles 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissioner Evelio Fernández Arévalos and Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Attorneys Ariel E. Dulitzky, Mario López Garelli, Víctor H. Madrigal Borloz, and Lilly Ching Soto, specialists of the Executive Secretariat of the IACHR, have been designated to act as legal advisers.

IV. JURISDICTION OF THE COURT

10. The Inter-American Court has jurisdiction to hear the instant case. The State ratified the American Convention on December 28, 1977. Pursuant to Article 62(3) of the Convention, the Inter-American Court has jurisdiction to hear any case regarding the interpretation and application of the provisions of the Convention submitted to it, so long as the state party has recognized, or recognizes, the Court's jurisdiction. Ecuador accepted the Court's contentious jurisdiction, pursuant to Article 62 of the Convention, on July 24, 1984. That recognition was accompanied by the following declaration, in keeping with Article 62(2) of the Convention:

As provided in Article 62, paragraph 1, of the Convention in reference, the Government of Ecuador declares that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This recognition of jurisdiction is for an indeterminate period and on condition of reciprocity. The Ecuadorian State reserves the right to withdraw its recognition of this competence and this jurisdiction whenever it may deem it advisable to do so.

11. The application submitted to the Court refers to the extrajudicial execution of three persons in the context of a suspension of guarantees that did not comport with the standards established in the inter-American system, following by total impunity, all of which occurred after the American Convention was ratified by the State.

V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

12. The petition was submitted on November 8, 1994, by the Comisión Ecuménica de Derechos Humanos (CEDHU). After its initial study of the submission, the Commission forwarded the pertinent parts of the petition to the State on February 13, 1995, and established a period of 90 days for the State to provide any information as it saw fit. In particular, the State was asked to provide information on any criminal action that may have been initiated regarding the facts alleged, and any other information that might enable the Inter-American Commission to make a determination as to whether domestic remedies had been exhausted.

13. On July 10, 1995, the IACHR reiterated the request for the information to the State, giving it a new 30-day period. On August 3, 1995, a note was received from the Permanent Mission of Ecuador to the Organization of American States in which it reported that the Ministry of Foreign Affairs of Ecuador had timely requested the respective information from the competent authorities, but that as of that date it did not have the necessary information.

14. After reviewing the case file, on February 13, 1996, the Commission initiated the processing of the matter as an individual case. To that end, it informed both parties of the decision and set a term of 45 days for the State to submit up-to-date information on the criminal proceeding under way in the courts of Ecuador.

15. On June 27, 1996, the response was received from the State³; it was transmitted to the petitioners on July 10, 1996, with a request for any observations. On May 13, 1999, the Inter-American Commission reiterated the request for information to the petitioners, and set the term of 60 days for them to provide up-to-date information on the case. In particular, the IACHR asked that they report on whether there was a judicial investigation to determine the cause of the victims' deaths. The petitioners submitted their observations to the State's response on July 23, 1999.⁴

16. By note received August 30, 1999, the Permanent Mission of Ecuador before the OAS reported that the Ecuadorian authorities were awaiting new information requested of the Office of the Chief of the Joint Command (Jefatura del Comando Conjunto) of the Armed Forces.⁵ On October 6, 1999, another communication was received from the Permanent Mission of Ecuador reporting that it had requested information from the national institutions regarding several cases, including those of Wilmer Zambrano Vélez and others, and indicated that as soon as it received that information, it would be forwarded to the IACHR.⁶

17. By communication received August 3, 2000⁷, the petitioners submitted their observations to the Government of Ecuador's response. This information was transmitted to the State on August 30, 2000; it was given 30 days to forward all the relevant information.

18. On July 18, 2001, the IACHR reiterated its request to the State for said information, and reported that if that information was not received within 30 days, the Commission would consider applying the presumption of veracity established in Article 39 of its Rules of Procedure.⁸

19. On October 4, 2001, the Inter-American Commission received the State's observations.⁹ The petitioners' observations in response were received on April 24, 2002¹⁰, and in turn passed on to the State on May 9, 2002.

20. On April 11, 2003, the Commission informed the petitioners of its decision to apply Article 37(3) of its Rules of Procedures to the instant case, and to defer addressing admissibility until the debate and decision on the merits.¹¹ For that purpose, it asked them to submit their

³ Note No. 095-96 MPE-OEA, June 25, 1996. See Annex 56.

⁴ Official note No. 344- CEDHU/99, July 1, 1999. See Annex 57.

⁵ Note No. 4-2-25/99, August 26, 1999. See Annex 58.

⁶ Note No. 4-1-299/99, October 4, 1999. See Annex 59.

⁷ Official note No. 0376-CEDHU/00, July 18, 2000. See Annex 63.

⁸ That provisions establishes as follows:

Article 39. Presumption

The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

⁹ Note No. 4-2-233/01, with the Official note from the Office of the Attorney General No. 19806 of September 17, 2001. In the record before the IACHR.

¹⁰ Official Note N.-0253-CEDHU/02, March 19, 2002. See Annex 79.

¹¹ Article 37(3) of the Rules of Procedure provides as follows:

In exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The case shall be opened by means of a written communication to both parties.

additional observations on the merits within two months. The petitioners' additional observations were received at the IACHR on August 11, 2003.¹² On February 12, 2004, the Commission asked the State to submit any observations it might have within two months.

21. By communication sent on February 12, 2004, the Commission informed the State that, pursuant to Article 37(3) of its Rules of Procedure, it had decided to open a case and to defer addressing admissibility until the debate on the merits. On that occasion, the IACHR also informed the State that, pursuant to Article 38(1) of its Rules of Procedure, it had asked the petitioner to submit its additional observations on the merits, the pertinent parts of which were also transmitted to the State. In addition, the Commission asked the State to submit any observations as it saw fit within two months.

22. On June 25, 2004, the State submitted its observations and reiterated the objections set forth earlier.¹³ This additional information was forwarded to the petitioners on November 3, 2004, with the request that they submit their observations within one month.

23. On February 18, 2005, the Commission received the petitioners' observations, which were subsequently transmitted to the State in a communication of September 23, 2005. The State sent its observations to the Commission by note received November 3, 2005.¹⁴ The Commission then forwarded it to the petitioner on December 15, 2005.

24. On February 28, 2006, in the course of its 124th session, the Inter-American Commission adopted Report No. 8/06, on admissibility and the merits. In that report, the IACHR concluded that:

1. It is competent to hear this case and that the petition is admissible, in keeping with Articles 46 and 47 of the American Convention.
2. The Republic of Ecuador violated its obligations set forth in Article 27 of the American Convention.
3. The Republic of Ecuador violated its obligations resulting from Articles 4 (right to life), in connection with Article 1(1) of the American Convention by the deaths of the persons identified in this report, in the operation of March 3, 1992.
4. The Republic of Ecuador is responsible for violating Articles 8 and 25 of the American Convention (judicial guarantees and judicial protection) in conjunction with Articles 1(1) and 2 of the Convention for the failure carry out a serious and effective investigation, prosecution, and punishment of the persons responsible, and for the failure to make effective reparation to the victims of these violations and their next-of-kin.
5. In relation to the right to humane treatment and the right to personal liberty, the Commission considers that in the course of this proceeding, violations of these rights have not been shown, accordingly the State has not breached Articles 5 or 7 of the Convention.

¹² Official note N.-0520-CEDHU/03 of June 19, 2003. See Annex 81.

¹³ Note No. 4-2-131/04, with the Official note from the Office of the Attorney General No. 009334 of June 9, 2004. In general terms, the observations of Official note No. 19806 are reiterated. In the record before the IACHR.

¹⁴ Note No. 4-2-205/05, to which is attached the Official note from the Office of the Attorney General No. 020296 of October 20, 2005. In the record before the IACHR.

25. In addition, in that report the Commission made the following recommendations:
1. Bring the legislation regarding the use of the state of emergency into line with international standards.
 2. Undertake a thorough, impartial, and effective investigation for the purpose of identifying and prosecuting the authorities and officials responsible for the violations established in the conclusions of this report.
 3. Pay adequate, prompt and effective compensation to the victims' next-of-kin for the moral and material injury resulting from the facts alleged and verified by the Commission.
 4. Amend the Criminal Code of the National Police so as to clarify guidelines on application of the special jurisdiction and the regular jurisdiction, in keeping with what is established in this report.
 5. Adequately regulate the use of firearms by government forces (*la fuerza pública*)

26. The Inter-American Commission transmitted Report 8/06 to the State on April 24, 2006, and set a period of two months for the State to report on the measures it was taking to carry out those recommendations. On that same date, the pertinent parts of the report were forwarded to the injured party, and it was asked, based on Article 43(3) of its Rules of Procedure, to present its position on the possibility of submitting the case to the Inter-American Court.

27. By document of May 17, 2006, the petitioners sent a communication in which they ask that the IACHR submit the instant case to the Inter-American Court due to its importance and considering that a favorable resolution would redound to the benefit of Ecuadorian society as a whole.

28. The term of two months that was set when the report on the merits was transmitted elapsed without the State submitting any reply. On July 18, 2006, the Commission decided to submit the instant case to the jurisdiction of the Inter-American Court, in keeping with Articles 51(1) of the American Convention and Article 44 of the Commission's Rules of Procedure.

VI. THE FACTS

29. The Inter-American Court has recognized that for an international court, the standards for weighing evidence are less formal than in the domestic systems, and that as regards the examination of circumstantial evidence, indicia and presumptions may be used, so long as one can draw conclusions from them that are consistent with the facts.¹⁵ In the instant case, that principle of flexibility must be studied, along with the determination as to which party bears the burden of proof. In this respect, inter-American case-law has noted that – in contrast to domestic criminal law – in proceedings in which a possible violation of human rights is being investigated, the

¹⁵ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4. Paragraphs 128-130. In addition, as the Court has noted, the criteria for weighing the evidence before an international human rights body are broader, for the determination of the international responsibility of a State for the violation of the rights of a person allows the court greater flexibility in weighing the evidence produced before it on the relevant facts, in keeping with the rules of logic and based on experience. I/A Court H.R., *Loayza Tamayo Case*. Judgment of September 17, 1997. Series C No. 33, para. 42.

State's defense cannot rely on it being impossible for the complainant to present evidence which, in many cases, cannot be obtained without the cooperation of the State.¹⁶

30. From the outset of the operation in the "Batallón" neighborhood, the information related to executions and the elements of proof were in the control of the State¹⁷, which is why it is not possible to require the petitioners to submit that information.¹⁸ Having said this, the factual bases presented below come from the information provided by the parties and the evidentiary material produced during the processing of the matter before the IACHR.

A. Context

31. In 1992, Ecuador's main cities were struck by serious criminal acts that led to a climate of citizen insecurity and internal commotion. In the face of this situation, on September 3, 1992, the President of the Republic of Ecuador, Sixto Durán Ballén, issued Decree 86, which stated:

Whereas

Throughout the national territory, and especially in the cities of Quito and Guayaquil, acts of vandalism, attacks on the physical integrity of persons, and considerable losses to public and private property continue, resulting in a grave state of internal commotion;

It is essential to maintain and defend the legal and democratic system of the Republic, and to safeguard the order and security of the inhabitants of ECUADOR, adopting adequate measures; and

In the exercise of legal powers,

ARTICLE ONE.- The intervention of the Armed Forces, throughout the national territory, is hereby ordered as a means of safeguarding persons and public and private property.

ARTICLE TWO.- This Decree shall enter into force from this date, without prejudice to its publication in the Official Registry (Registro Oficial) and its implementation is entrusted to the Minister of National Defense.

32. With respect to the participation of members of the Armed Forces in fighting crime domestically, the training received in the military is aimed at operations in the context of an armed conflict, thus their actions are governed, in principle, by the rules of engagement. In the specific

¹⁶ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 135.

¹⁷ Similarly, it should be noted that on July 18, 2001, the State was notified of the possible application and effects of Article 39(f) of the Commission's Rules of Procedure (*see supra*).

¹⁸ In this regard, the Inter-American Court has indicated in the *Velásquez Rodríguez* case (Judgment of July 29, 1988. Series C No. 4. para. 136):

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.

The Court has also said that

in proceedings on violations of human rights, the defense of the State can not lean on the plaintiff impossibility to gather evidence that, in many cases, can not be obtained without the cooperation of the State.

I/A Court H.R. *Durand and Ugarte Case*, Judgment of August 16, 2000, para. 65; I/A Court H.R., *Case of Neira Alegria et al.*, para. 65; I/A Court H.R., *Gangaram Panday Case*, para. 49; I/A Court H.R., *Godínez Cruz Case*, para. 141; and I/A Court H.R., *Velásquez Rodríguez Case*, para. 136.

case of Ecuador, the Armed Forces have as their essential function supporting national defense in every respect, as provided by the Constitution at Article 183:

The *fuera pública* shall be constituted by the Armed Forces and the National Police. Their mission, organization, preparation, use, and control shall be regulated by law.

The Armed Forces shall have as their fundamental mission the preservation of national sovereignty, the defense of the integrity and independence of the State, and the guarantee of its legal order.

In addition to the pertinent Armed Forces, reserve forces shall be organized, in light of national security needs.

33. The Organic Law on the Armed Forces establishes:

Article 2. The Armed Forces, as part of the Fuerza Pública, shall have the following constitutional missions:

- (a) To conserve national sovereignty;
- (b) To defend the integrity and independence of the State;
- (c) To guarantee the legal order of the State;
- (d) To collaborate in the country's social and economic development, using its human and material resources, particularly in strategic activities and areas; and,
- (e) To cooperate and intervene in all other aspects concerning national security, in keeping with the law.

Article 5. In case of conflict or internal war, the President of the Republic, through the Chief of Joint Command of the Armed Forces shall delegate the conduct of military operations to the Commanders of the defense zones, who shall have command and jurisdiction, therein, in keeping with the respective plans.¹⁹

34. In its 1997 special report on Ecuador (hereinafter "1997 Report"), the Inter-American Commission took into consideration the facts that occurred from the beginning of the administration of President Durán Ballén, in mid-1992, until September 1996. The Commission referred to the issue of suspension of constitutional guarantees in Ecuador and found:

The President of the Republic is invested, pursuant to Article 103.ñ of the Constitution, with the authority to declare a state of national emergency and to exercise certain enumerated powers, including the competence to suspend certain constitutional guarantees. The suspension of the right to life or physical integrity is expressly prohibited, as is the expulsion of nationals or the confinement of citizens far from their place of residence. The National Congress, if in session, has the authority to revoke such a declaration, and the Constitutional Court has the competence to review the validity of such a declaration.

The period under review has been characterized by repeated resort to such exceptional measures.... In September of 1992, President Durán Ballén issued Decree Law 86, mobilizing the police and armed forces in view of expected demonstrations to protest upcoming fiscal austerity plans. Again in December of 1993, the Government decreed a state of emergency [...].²⁰

¹⁹ Organic Law of the Armed Forces. Law No. 109. RA/ 1990, of September 28, 1990.

²⁰ Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc.10 rev.1, April 24, 1997, Chapter II, Section 4, at: www.cidh.oas.org.

35. As the Commission established in its 1997 Report, the state of emergency or suspension of guarantees was declared in Ecuador at least seven times from mid-1992 to mid-1996. Given this situation, the Inter-American Commission found:

The Government has, in every instance [on which it decreed a suspension of guarantees], failed to comply with the Article 27(3) requirement of immediate notification through the Office of the Secretary General that the right of suspension is to be exercised.²¹

36. The imposition of a state of emergency is, according to Ecuadorian domestic legislation, and general international law, a mechanism constitutionally authorized to address a situation of external attack or a serious breakdown in public order that cannot be controlled by regular measures. As the Court of Constitutional Guarantees of Ecuador has indicated, the use of exceptional measures implies that the procedures normally applicable are not sufficient to resolve the presumed threat to the country. In this respect:

The Commission has regularly reviewed and analyzed states of emergency, and has reiterated on numerous occasions that any suspension of guarantees must comply with the criteria of necessity and proportionality articulated in Article 27 of the Convention. In this regard, several of the decrees emitted by the Executive during the Administration of President Durán Ballén raise *prima facie* concerns.

[...]

The Commission has previously expressed the view that measures which enable the military to perform police functions raise profound concerns. First, the military mission is clearly distinct from that of the police. The mobilization of the armed forces to combat common crime means deploying troops trained for combat in situations which require specialized training in law enforcement. Law enforcement personnel are trained to interact with civilians, combat troops are trained to fight a designated enemy. Moreover, the use of the armed forces, which serve under the authority of the Executive, to carry out criminal investigation activities which should be under the ultimate authority of the judiciary raises a serious institutional concern with respect to the separation of powers.²²

37. In addition, the Commission referred to the relationship between the National Police and the Armed Forces, and indicated its concern regarding the methods used to fight crime:

In some cases, this involves cooperation between the military and the police, in other cases, the military is authorized to carry out certain actions when the police are unavailable. These activities have involved patrols by members of the military, as well as searches, investigations, arrests, detentions, and a series of raids. Human rights groups expressed profound concern for the effects on the rights of civilians caught up within these operations.²³

38. In its 1997 Report, the Commission emphasized that

in accordance with the conditions established in Article 27 of the American Convention, any declaration of a state of emergency must meet certain criteria. Certain individual guarantees may never be suspended, the remaining rights may be limited only in accordance with the

²¹ Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc.10 rev.1, April 24, 1997, Chapter II, Section 4, at: www.cidh.oas.org.

²² Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc.10 rev.1, April 24, 1997, Chapter II, Section 4, at: www.cidh.oas.org.

²³ Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96 Doc.10 rev.1, April 24, 1997, Chapter II, Section 3, at: www.cidh.oas.org.

criteria set forth in the Convention. Bearing in mind that the declaration of a state of emergency is a measure of an absolutely exceptional nature, the Commission wishes to emphasize to the authorities that the powers normally attributed to the State should be utilized to resolve the great majority of situations.

In addition, any State seeking to avail itself of the exceptional measures available under Article 27 of the Convention must immediately inform the other States Parties, through the Secretary General, as to which guarantees it has suspended, the reasons therefor, and the date set for the termination of such suspension. It is recommended that the State take steps to provide the information required and to ensure full compliance with this requirement in the future.

39. In its 1998 Annual Report (hereinafter "1998 Report"), the Inter-American Commission referred to the follow-up on the special Report on the Situation of Human Rights in Ecuador and stated:

The Commission is aware of the difficult economic situation facing Ecuador, the social unrest this has created, and the seriousness of the crime rates in certain areas of the country.... In this regard, the State is obliged to take the steps necessary to guarantee the security of the citizenry through mechanisms that observe the standards of respect for human rights applicable in a democratic society. The Commission is of the opinion that fight with the crime and to reduce the social unrest caused by the economic situation by the suspension of the guarantees declaring the state of emergency does not comply with the American Convention's guidelines as to when such declarations are admissible. The State has — and is required to have — other mechanisms for channeling social unrest and fighting crime that do not involve suspending the population's fundamental guarantees.²⁴

40. In addition, the Commission urged the Ecuadorian State to ensure that those crimes in which civilians were involved, especially in light of allegations of violations of fundamental rights by members of the armed forces or police under the state of emergency, be effectively investigated "by the civil[ian] courts and not by military justice in accordance with the rules of due legal process set forth in Articles 8 and 25 of the American Convention and, when applicable, to ensure that the perpetrators are punished and that the victims receive restitution for the human rights violations suffered."²⁵

41. In its 1999 Annual Report (hereinafter "1999 Report"), the Inter-American Commission referred to the issue of suspension of guarantees in Ecuador, noting that "Ecuador has a long history of declaring states of emergency in order to mitigate social and economic problems, as well as crime"²⁶ and that "[b]ased on Article 27 of the Convention and the rules indicated by the Inter-American Court, *there is a basic prerequisite of respect for the system of representative democracy* and certain requirements for a State to have grounds for declaring a state of emergency."²⁷

42. Once again, in its 2005 Annual Report (hereinafter "2005 Report"), the IACHR reiterated what it stated in earlier reports and press releases on public order in Ecuador, and the use

²⁴ Annual Report of the Inter-American Commission on Human rights 1998, OEA/Ser.L/V/II.102, Doc. 6 rev. 1, April 16, 1999, Chapter V, Ecuador, para. 44.

²⁵ Annual Report of the Inter-American Commission on Human Rights 1998, OEA/Ser.L/V/II.102, Doc. 6 rev. 1, April 16, 1999, Chapter V, Ecuador, para. 49.

²⁶ Annual Report of the Inter-American Commission on Human Rights 1999, OEA/Ser.L/V/II.106, Doc. 3, April 13, 2000, Chapter IV, Ecuador, para. 65.

²⁷ Annual Report of the Inter-American Commission on Human Rights 1999, OEA/Ser.L/V/II.106, Doc. 3, April 13, 2000, Chapter IV, Ecuador, para. 67.

of states of emergency and suspension of guarantees. It also made reference to the importance of the principles of separation of powers and checks and balances, as well as the need to strengthen the idea of judicial independence, administration of justice, and protection for the individual rights of Ecuadorians.²⁸

B. Operation in the “Batallón” neighborhood

43. On Saturday, March 6, 1993, the Armed Forces and National Police carried out a joint operation in a peripheral area of the city of Guayaquil called “Barrio Batallón,” located between “40th” street and “K” street. This operation included the participation of 1,200 agents of the Ecuadorian Navy, Air Force, and Army with the support of trucks, boats, and one helicopter. The military entered the homes of local residents wearing balaclavas.

44. The representatives of the Armed Forces told the press that they acted under the National Security law and based on military intelligence information.²⁹ In the official communiqué issued by the Armed Forces regarding the operation in an outlying area of Guayaquil, the causes that justified this action by the official forces were stated, as well as its objectives, and the results obtained. The following quote is the entirety of that communiqué:

Operation carried out Saturday, March 6, 1993, at 6:00 a.m.

Background:

In response to appeals from the citizenry, media, and public opinion in general for the Armed Forces to act in the face of the uncontrollable increase in criminal activity, the joint command of the Armed Forces, watchful for the internal security of the nation, ordered that an operation be carried out in the city of Guayaquil based on the information obtained by military intelligence, which was carried out on Saturday, March 6, at 6:00 am, with the participation of personnel from the three branches of the Armed Forces quartered in the province.

The objectives of the operation were to arrest subversives, criminals, drug traffickers, weapons, and related materials. The result is as follows: Three criminals were killed when they put up resistance. 39 persons were detained who, based on their preliminary statements, have participated in several assaults, murders, rapes, and drug trafficking and consumption. Firearms of various calibers, military uniforms, hand grenades, explosives, money, marijuana, cocaine paste and base, which will be shown to you subsequently.

The detainees taken for investigation were those who, at the time of the operation, had drugs, weapons, military attire, etc. The criminals who died shot at point-blank range at the personnel involved: with a Colt 45 pistol (Wilmer Zambrano), Olmedo Caicedo with a 38 caliber revolver with dum-dum projectiles that hit the chest of one member of the military, who was saved because he was protected by a bulletproof vest; Miguel Caicedo, who tried to take the weapon of one of his guards; he died in the attempt.

The detainees continue to be investigated to determine their degree of participation in the illicit activities of recent months.

The citizenry should be aware that a military operation entails the use of force, thus opposing it can bring lamentable consequences; therefore, all citizens are called on to collaborate in the future.

Given the way it was planned and executed, it is considered that it was a clean operation, because other than the criminals who put up resistance, no one was wounded. If there were

²⁸ Annual Report of the Inter-American Commission on Human Rights 2005, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, Chapter IV, Ecuador.

²⁹ Diario “El Hoy”, FFAA explican violento operativo antidelictivo, March 9, 1993. See Annex 28.

disorderly situations in the houses, it was due to the compelling need to find the drugs and weapons, which as you saw verified positive.

This is the official version of the operation carried out on Saturday, March 6, of this year.

The citizenry should rest assured that the Armed Forces will act in the same manner in the future, the sole purpose being to fight those elements who seek to alter the citizen peace.

45. Despite the State's version of the operation, eyewitnesses and journalists indicated that the operation was violent and entailed the disproportionate use of force.

46. Among the findings of the operation, the military commanders displayed cash alleged to be the proceeds of robberies, weapons, grenades, and other items seized when they went into the dwellings of the alleged criminals. The evidentiary material indicates that nine sawed-off shotguns, two machetes, seven switchblades, one set of handcuffs, and one electricity meter, 18 packages of military dynamite from Peru, and eight military grenades, among other items, were found in other dwellings in the neighborhood.³⁰

47. The events of March 6, 1993, left a total of three persons executed by firearms, and 39 persons detained. The persons executed in the operation were identified as Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo. In the official communiqués, the Ecuadorian authorities stated:

The criminals who died shot at point-blank range at the personnel involved: with a Colt 45 pistol Wilmer Zambrano, Olmedo Caicedo with a 38 caliber revolver with dum-dum projectiles that hit the chest of one member of the military, who was saved because he was protected by a bulletproof vest; Miguel Caicedo, who tried to take the weapon of one of his guards; he died in the attempt.³¹

48. The eyewitnesses, local residents, state that Segundo Olmedo Caicedo, José Miguel Caicedo, and Wilmer Zambrano Vélez were all executed when resting in their own bedrooms, by members of the military, who were protected by balaclavas and painted faces to ensure they wouldn't be recognized.³² Relatives of Mr. Wilmer Zambrano Vélez indicated that the members of the military shot their weapons or used "something like a grenade" to open the doors of the victims' homes.³³ For her part, in her testimony one woman resident of the area³⁴ (unidentified) said that the members of the military violently entered the home of Mr. Miguel Caicedo Vélez and his cousin Wilmer Zambrano Vélez, and shot both of them because they didn't give them information about the terrorists they were looking for.

49. Following is a consolidated version of the information on the circumstances in which each of the three victims in this case died.

³⁰ Information partially reproduced from the daily newspaper "El Universo", Sin noticia sobre desaparecidos: 39 detenidos en operativo, March 8, 1993. See Annex 23.

³¹ Daily newspaper "El Universo", Sin noticia sobre desaparecidos: 39 detenidos en operativo, March 9, 1993. See Annex 23.

³² Daily newspaper "El Telégrafo". Caos y Dolor tras operativo militar: se desconoce el paradero de más de 35 detenidos, March 8, 1993. See Annex 14.

³³ Statement by Wilmer Zambrano's mother-in-law, daily newspaper "El Hoy", Helicópteros y lanchas en operativo: Medio millar de uniformados intervino en impresionante operativo, March 7, 1993. See Annex 7.

³⁴ Testimony of residents of the Batallón sector of the periphery (40th and K), Events of March 6, 1993, visit on Monday, March 8, 1993. See Annex 10.

C. Execution of Mr. Segundo Olmedo Caicedo

50. On March 6, 1993, the land force of the operation that was under way in the “Batallón” neighborhood went to the house where Mr. Segundo Olmedo Caicedo was to be found. The members of the military set off dynamite to open the door, and once inside the house where Mr. Caicedo was, with his wife and children, extrajudicially executed him.³⁵

51. The local press noted that Segundo Olmedo Caicedo had five gunshot wounds in different parts of his body.³⁶ The press indicated that there were three revolvers, one switchblade, one shotgun, and bullets at the home of Segundo Olmedo Caicedo. In the processing of the case before the IACHR, the Ecuadorian State has not provided any other information with respect to the facts surrounding the death of Segundo Olmedo Caicedo.

D. Execution of Mr. José Miguel Caicedo

52. On March 6, 1993, Mr. José Miguel Caicedo was recovering from an injury. That day, members of the operation entered the house where he was and extrajudicially executed him in the yard of that house.³⁷

53. Local press reported that José Miguel Caicedo had three gunshot wounds to the neck and chest.³⁸ As for the weapons seized in the operation, press reports indicated that one twin-cartridge carbine, one revolver, three cartridge pistols, one switchblade, and one Uzi machine gun with a silencer and bullets were found at Miguel Caicedo’s house.³⁹

³⁵ In her testimony, one resident said:

Then the land force went to the house of the Caicedo family, placed a stick of dynamite at the main door, and abruptly opened it. Inside they detained Segundo Olmedo Caicedo, first they wounded him, and then they took him to his room, where they shot him several times, before the astonishment of his wife and two children, one a minor.

In addition, Rosa Caicedo, the sister of one of the persons killed in the operation, stated:

Olmedo Caicedo, they killed him in bed, first they shot at his wife, she’s being held, he went to grab – to protect – his wife, they grabbed him, they beat him, they gagged him, and practically in front of his two children they killed him in the same bed.

See: Testimony of residents of the Batallón sector of the periphery (40th and K), Events of March 6, 1993, visit on Monday, March 8, 1993. See Annex 10.

³⁶ Daily newspaper “La Hora”, Barbarie en operativo militar, March 8, 1993. See Annex 13.

³⁷ The facts that surrounded the death of José Miguel Caicedo were described as follows by one local resident:

They lifted up Mr. Caicedo and his 7-year-old daughter said that they took him from the bed, took him back to the patio, and killed him. Here too they say that Wilmer Zambrano responded with a firearm, it’s a lie, it was the members of the military who were shooting.

For her part Rosa Caicedo, the sister of two of the persons killed in the operation, said:

Miguel Caicedo was shot in a bar in Chone and his wife was caring for him, he was on crutches since June. They say that he wanted to take their weapon. He couldn’t even stand up – and that this was why they killed him. First they zapped him and outside they killed him.

Testimony of residents of the Batallón sector of the periphery (40th and K), Events of March 6, 1993, visit on Monday, March 8, 1993. See Annex 10.

³⁸ Daily newspaper “La Hora”, Barbarie en operativo militar, March 8, 1993. See Annex 13.

³⁹ Information partially reproduced from the daily newspaper “El Universo”, Sin noticia sobre desaparecidos: 39 detenidos en operativo, March 8, 1993. See Annex 23.

E. Execution of Mr. Wilmer Zambrano Vélez

54. On March 6, 1993, Mr. Zambrano Vélez was with his family when troops from the Operation being carried out in "Batallón" neighborhood entered his house and executed him.⁴⁰

55. The information in the press indicates that the following were found at the house of Wilmer Zambrano Vélez: one repeater, one machete, two pistols, two revolvers, one sawed-off shotgun, one switchblade, and some pouches that were said to be classified for shipping drugs.⁴¹

56. The autopsy report indicates the following:

Upon the general inspection of his teguments, we observe:

Wounds caused by gunshots, located in the following bodily regions:

Three gunshot wounds on the right side of the abdomen, with exit injuries in the supraumbilical region, in the left dorsal paravertebral region, and in the right supraclavicular region;

Two gunshot wounds to the left of the hypogastrium (infraumbilical region), with exit injuries in the right inguinal region;

Two transfixive gunshot wounds, in the dorsal and tendar region of the right hand;

Gunshot wound in the upper third and external part of the right thigh, with exit in the middle and anterior of that thigh;

Gunshot wound in the right knee with exist of it in the posterior popliteal region;

Gunshot wound in the left knee, exiting in the lower and rear third of the respective thigh;

Two gunshot wounds in the back outer region of the left knee.

F. Investigations after the executions

57. The information available does not indicate that the investigation into the death of the three victims in this case was pending in the military courts, or that at that moment they were before the regular courts.

58. Informational Brief No. 2000-013-IGPN-DAI, prepared by the Internal Affairs Department of the Office of the Inspector General of the National Police on March 7, 2001, indicates that the corpses of Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo were at the San Eduardo Naval Base. The report states that the victims had multiple gunshot wounds in different parts of the body, adding that in interviews with members of said Naval Base, they said that in the early morning hours that same day, they had carried out a joint operation involving the three branches of the Armed Forces, from 41st avenue to 45th avenue, and from K street to H street, in the city of Guayaquil, where a confrontation had taken place with criminals in which the three persons had died.

⁴⁰ With respect to the circumstances of the death of Wilmer Zambrano, the local press indicated that the members of the military bound him, in front of his children, and according to witnesses they took him to the patio and proceeded to "shoot him at point-blank range." See: daily newspaper "La Hora", Barbarie en operativo militar, March 8, 1993. See Annex 13. In addition, Rosa Caicedo, sister of two of the persons killed in the operation, stated: "Wilmer Zambrano, a merchant, he worked with shrimp, he also bought clothes. His wife saw how they killed him, and they were going to shoot her as well, but she grabbed her baby, and told them 'don't kill me'." See: Testimony of residents of the Batallón sector of the periphery (40th and K), Events of March 6, 1993, visit on Monday, March 8, 1993. See Annex 10.

⁴¹ Information partially reproduced from the daily newspaper "El Universo", Sin noticia sobre desaparecidos: 39 detenidos en operativo, March 8, 1993. See Annex 23.

59. The press information that appears in the file before the IACHR indicates that members of the Ecuadorian Congress had called for an investigation into the events that occurred during the armed operation of March 6, 1993. Nonetheless, there is no information on any investigation.

60. This was despite the fact that the Criminal Code of the National Police of Ecuador provides:

Article 1

For the purposes of this Code, those imputable acts sanctioned by this Code and by the Disciplinary Regulation of the National Civilian Police, are infractions, and they are divided into offenses and disciplinary breaches, depending on the nature of the facts and the sanctions particular to each of these.

Article 2

An offense is any imputable act or omission committed by an individual member of the National Civilian Police, active duty, or in a transitory situation, punished by imprisonment or reclusion in this Code.

Article 3

A disciplinary breach is any imputable act or omission, committed by an individual belonging to the National Civilian Police, on active duty, or in a transitory situation, which is not classified an offense, and which is repressed with a sanction provided for in this Code or in the institution's Disciplinary Regulation.

Article 4

The jurisdiction for members of the National Civilian Police is applicable only with respect to violations committed in the performance of the function that specifically corresponds to them as members of this Institution, and for certain infractions determined in this Code and in the Disciplinary Regulation.

Regular judges shall have jurisdiction to judge all other infractions committed by the members of National Civilian Police, in any of their branches, applying the Regular Criminal Code and the Code of Criminal Procedure.

For this and all other legal effects, it is declared that the National Civilian Police constitutes a single institutional and legal unit.

[...]

Article 21

A member of the National Civilian Police who acts in necessary defense of his or her own person does not commit any infraction whatsoever, so long as the following circumstances are present: present unlawful assault; rational necessity of the means employed to repel that assault; and lack of sufficient provocation on the part of the person who defends himself or herself.

The circumstances listed in the previous paragraph shall be understood to be present if the act has taken place defending the life or property from the perpetrators or a robbery or looting carried out with violence; or pursuing an arsonist, or one who commits robbery or burglary in a fire, when caught in flagrante delicto; or repelling an attack on a barracks or office of the National Civilian Police; or rejecting the climbing or breaking of fences, walls, or entrances to offices or places occupied by the Civilian Police. In addition, one who acts in the immediate defense of a person who, for reasons of his or her position he or she should provide protection or help to, or also in defense of another member of the Institution, so long as the circumstances described in the first paragraph of this article are present – and, in the event that the assailant had been provoked, that the one who defends has not taken part in it – does not commit any infraction whatsoever.

Excess in defense shall always be an excusing cause, unless it is shown that such excess was determined by factual circumstances which led to a well-founded fear of a greater danger, in which case it shall release one of responsibility.

[...]

Article 25

One who, having been entrusted with the custody of prisoners, at the time of their escape, makes use of one's weapons to contain or prevent the escape; nor one who uses them against the prisoner or detainee who does not obtain the orders to halt, does not commit an infraction, so long as he or she did not have any other practicable and less harmful means to stop it.

61. The perpetrators of the extrajudicial executions are covered by complete impunity more than 13 years later. The State has not provided any solid information that would lead to the conclusion that the facts have been seriously investigated; accordingly the persons responsible for carrying out and planning the deaths of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo have not been identified.

VII. LEGAL ARGUMENTS

A. Suspension of guarantees (Article 27 of the American Convention)

62. Article 27 of the Convention establishes, with respect to the suspension of guarantees, as follows:

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

63. The Inter-American Commission established previously, in its 1997 Report, that on issuing and enforcing Decree No. 86, the State failure to abide by the requirement stipulated in Article 27(3), that one must immediately report the use of the power to suspend guarantees.⁴² In this respect, the Inter-American Court has noted that, naturally, when in a state of emergency a government has suspended some rights and freedoms, of those subject to suspension, the judicial

⁴² On that same occasion, the Commission indicated that it "has reiterated on numerous occasions that any suspension of guarantees must comply with the criteria of necessity and proportionality articulated in Article 27 of the Convention. In this regard, several of the decrees emitted by the Executive during the Administration of President Durán Ballén raise *prima facie* concerns." See Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997, Chapter II, 4. Suspension of Guarantees.

guarantees essential to ensure the effectiveness of those rights and freedoms must be preserved.⁴³ As for the interpretation of Article 27, the Court established:

The starting point for any legally sound analysis of Article 27 and the function it performs is the fact that it is a provision for exceptional situations only. It applies solely "in time of war, public danger, or other emergency that threatens the independence or security of a State Party." And even then, it permits the suspension of certain rights and freedoms only "to the extent and for the period of time strictly required by the exigencies of the situation." Such measures must also not violate the State Party's other international legal obligations, nor may they involve "discrimination on the ground of race, color, sex, language, religion or social origin."⁴⁴

64. The conditions for suspending guarantees are specifically stipulated, and they are strict. First, the circumstances invoked to justify the exceptional measures must be grave and constitute an imminent threat to the life of the nation. Second, the measures taken due to a declaration of a state of emergency are valid "to the extent and for the period of time strictly required by the exigencies of the situation," and only when they do not represent any discrimination and are not incompatible with other international obligations. Third, the individual guarantees provided for in Article 27(2) cannot be suspended in any way or in any circumstance. Fourth, the other guarantees may only be suspended in keeping with the very strict criteria listed in the second point above. Fifth, a state party that wishes to avail itself of this prerogative must immediately notify the other states parties through the Secretary General of the Organization of American States. That notification must describe the guarantees that have been suspended; the reasons for the suspension; and the date on which the suspension will end.⁴⁵

65. In Advisory Opinion OC-8/87 on habeas corpus in states of emergency, the Inter-American Court underscored that within the principles that inform the inter-American system, the suspension of guarantees cannot be separated from the "effective exercise of representative democracy" to which Article 3 of the OAS Charter makes reference. The Court has also indicated that such a suspension is not legitimate when used to attack the observance of certain essential individual rights, including the right to life.⁴⁶

66. In the instant case, both the petitioners and the State have recognized that the country was facing particular circumstances at the time of the facts. Nonetheless, the restrictions used to curb a situation that is effectively threatening the juridical security and independence of the State cannot be applied in violation of the fundamental rights of its inhabitants. Nor can these restrictive measures be used indiscriminately, and their use cannot replace the work of its internal structures designed to maintain order. The IACHR made the following findings in its 1998 report:

Articles 145 and 147 of the National Security Law stipulate that during states of emergency, actions constituting the crimes set forth therein as well as crimes punishable by imprisonment must be judged under the Military Criminal Code. In the Commission's opinion, a rule of this nature, giving military courts full jurisdiction to try civilians for the crimes referred to, is incompatible with and in contravention of Article 27(2) of the American Convention, which

⁴³ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 39.

⁴⁴ I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 19.

⁴⁵ Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc.10 rev.1, April 24, 1997, Chapter II, Section 4, at: www.cidh.oas.org.

⁴⁶ I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 20.

states that there are some rights and freedoms that cannot be suspended under any circumstance, including "the judicial guarantees essential for the protection of such rights."

Under the terms of Article 27(2), the judicial guarantees essential for the protection of those rights are "those [legal procedures] that ordinarily will effectively guarantee the full exercise of the rights and freedoms protected by that provision and whose denial or restriction would endanger their full enjoyment." This implies the intervention of an independent and impartial court of law for ruling on the legality of the trials conducted during the state of emergency and controlling the provisions enacted, to ensure that "they are proportionate to the needs [of the situation] and do not exceed the strict limits imposed by the Convention or derived from it," thus preserving the rule of law. In this regard, the Inter-American Court of Human Rights has ruled that the essential judicial guarantees are among others those listed in Articles 7(6), 8, and 25 of the American Convention; in connection with this, the Commission refers to its jurisprudence maintaining that the proper jurisdiction for dealing with acts committed by civilians belongs to the civil courts and not to military tribunals and that the latter are only competent to deal with crimes committed by members of the military while on active duty.

In this particular case, the terms of the National Security Law are especially incompatible with and in breach of the American Convention, in that they imply a suspension of rights that cannot be suspended in any circumstances, such as the judicial guarantees enshrined in Articles 8 and 25 of the American Convention. This is because giving the military criminal courts immediate jurisdiction over a wide range of situations involving civilians undermines the right to a trial before an independent, impartial court: this is because the armed forces play a dual role — first, they are active agents during the state of emergency and, second, the military courts administer justice with regard to actions affecting civilians that are not an inherent part of military functions.⁴⁷

67. Article 27 of the American Convention provides that a certain category of rights is not subject to suspension in any circumstance. The rights recognized as not subject to restriction that have been invoked in this complaint are the right to life (Article 4), the right to humane treatment (Article 5), and the guarantees essential for the protection of those rights.⁴⁸ In its Advisory Opinion OC-8/87, the Inter-American Court has recognized that Article 25(1) of the American Convention, among others, cannot be suspended under Article 27(2), because it enshrines judicial guarantees essential for protecting the rights and freedoms that are also not subject to suspension, pursuant to the same provision.⁴⁹

68. In the instant case, the State issued decree-law 86, by which it suspended certain guarantees without justifying the criterion of necessity, in keeping with the standards established in the inter-American system, and without giving notice of that suspension. Additionally, in carrying out the powers granted to the Armed Forces and the National Police, state agents extrajudicially executed three persons. These circumstances make the case especially serious, and give rise to state responsibility for the violation of Article 27 of the American Convention.

⁴⁷ Annual Report of the Inter-American Commission on Human Rights 1998, OEA/Ser.L/V/II.102, Doc. 6 rev. 1, April 16, 1999, Chapter V, Ecuador, paras. 46 to 48.

⁴⁸ The Inter-American Court said that guarantees should be not only essential but also judicial, and that the "expression 'judicial' can only refer to those judicial remedies that are truly capable of protecting these rights. Implicit in this conception is the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency." I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 30.

⁴⁹ I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8.

B. Right to life (Article 4 of the American Convention)

69. Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo were executed in the early morning hours of March 6, 1993, during a military operation, carried out pursuant to a decree-law that allowed the Armed Forces to act to safeguard the security of persons and of public and private property.

70. The Inter-American Commission considers that Ecuador breached its international responsibility with respect to the acts and omissions related to the deaths of the three persons mentioned. This conclusion arises from the overall analysis of the events that unfolded prior to and during the military incursion. The state agents did not act within the reasonable framework of their functions, and consequently did not comply with the duty to make reasonable use of force.

71. Recognition of the right to life as a prerequisite for the enjoyment of all other rights makes it especially important within the system of guarantees of the American Convention.⁵⁰ In this regard, Article 4 of the American Convention provides:

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

72. The obligation of the Ecuadorian State to respect this right has been incorporated into Article 23(1) of its Constitution, which establishes that the State recognizes and guarantees, for all persons, the inviolability of life, and prohibits the death penalty. In keeping with that, and pursuant to Article 27 of the American Convention, the IACHR has established that the right to life, above all, is a non-derogable right; accordingly "states may not, even in time of war, public danger, or other emergency that threatens its independence or security, take measures suspending the protection of the right to life."⁵¹ Therefore, the "arbitrary deprivation of life and summary executions"⁵² are not admissible under the precepts of the American Convention, not even in the case of lawful states of emergency.⁵³

73. Protection of the right not to be deprived of life arbitrarily implies the obligation of the States to "guarantee the creation of the conditions required in order that violations of this basic right do not occur" and "the duty to prevent its agents from violating it."⁵⁴

74. The IACHR asks the Court to consider the action of the State from a dual perspective: that of the events that occurred beforehand, i.e. the planning that preceded the operation and the use of the military forces; and the acts committed as it was being carried out, with emphasis on the unlawful use of force.

⁵⁰ See I/A Court H.R., *Case of Villagrán Morales et al.* (The "Street Children" case), Judgment of November 19, 1999, Series C No. 63, para. 144.

⁵¹ See IACHR, Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, p. 174; and Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev., October 22, 2002, para. 86, p. 79.

⁵² IACHR, Case of Juan Carlos Abella et al., Report No. 55/97, Argentina, November 18, 1997, para. 161. See also Case 10,559, Report No. 1/96, Chumbivilcas (Peru), Annual Report of the IACHR 1995, p. 147; Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev., October 22, 2002, para. 86, p. 79.

⁵³ See Third Report on the Human Rights Situation in Colombia, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999, p. 78, Chapter IV, para. 24. See also Annual Report of the IACHR 1980-81, p. 112; Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev., October 22, 2002, para. 86, p. 79.

⁵⁴ See I/A Court H.R., *Case of Villagrán Morales et al.* (The "Street Children" Case), Judgment of November 19, 1999, para. 144.

i. The planning and the use of the military forces

75. The State has publicly acknowledged that the military operation was planned ahead of time. This would lead one to assume that the commanders had adequate and sufficient time to train the members of the military who were to participate in it and inform them of the preventive measures and precautions that they should have taken during the armed incursion with respect to civilians and their property. Nonetheless, the facts have shown that this was not the case.

76. Due to the nature and essential function of the Armed Forces, special efforts and care and attention were called for in the planning stage to prevent harm to private persons; their participation in the operation should included an extra effort. In the instant case, the petitioners' allegations and the press reports indicate that in addition to the extrajudicial executions of the three victims in this case, damage was inflicted on the property and integrity of private persons. With respect to these facts, there is no documentation indicating that judicial proceedings were held on these matters, nor that any reparation was made for the harm done.

77. Given the planning that preceded the military operation, the number of persons involved, and its objectives and characteristics, the Commission establishes that the executions of Messrs. Wilmer Zambrano Vélez, Olmedo Caicedo, and José Miguel Caicedo cannot be considered accidental deaths.

ii. The use of force as an element for controlling public order

78. The Inter-American Court has recognized that the State not only has the right but also the duty to guarantee its own security, and that it is beyond doubt that every society suffers from infractions of its legal order. Nonetheless, the Court clarified that "regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action."⁵⁵

79. Along the same lines, the IACHR has said: "The legitimate use of force implies, among other factors, that it be both necessary and proportionate to the situation, or in other words, that it be exercised with moderation and in proportion to the legitimate objective pursued, and in an effort to reduce to a minimum any personal injury and loss of human lives."⁵⁶

80. In the United Nations system, a Code of Conduct for Law Enforcement Officials has been adopted. Given its relevance to the instant case, reference is made to some of the guidelines for its application:

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

- (a) [...] the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or

⁵⁵ *Velásquez Rodríguez Case*, para. 154 and *Godínez Cruz Case*, para. 162, *Neira Alegría Case*, para. 75.

⁵⁶ IACHR, Brazil, Merits, Case 11,556, Corumbiara Massacre, 2003, para. 174.

assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

- (b) [...] In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms.... In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.⁵⁷

81. The precautions and necessary measures that should be employed in the use of force are also spelled out in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

[...]

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

[...]

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.⁵⁸

⁵⁷ Code of Conduct for Law Enforcement Officials (December 17, 1979), [A/RES/34/169](#); and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990.

⁵⁸ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, UN Doc. A/CONF.144/28, Rev.1 p. 112 (1990).

82. The aforementioned criteria standards and case-law of the inter-American system establish the elements of proportionality and necessity as indicative for determining whether lawful use has been made of the Armed Forces or National Police. On evaluating these aspects, one must be mindful of the following:

- The March 1993 armed incursion involved the participation of 1,200 members of the military, supported by one helicopter, army tanks, and boats;
- The operation was designed with weeks of lead time, and from the statement "the agent did not die [in the confrontation] because he was wearing a bulletproof vest," one understands that the forces who participated in this action were duly protected;
- Each of the three victims was killed in his home, which shows that the possible resistance to the agents of the government forces was individual. In addition, the statement by the State on the fact that the three were bearing arms and that there was a confrontation was not proved, since the State presented no evidence of this;
- The autopsy of Wilmer Zambrano Vélez reveals that he suffered the impact of 12 bullets, and the information from the media and the eyewitnesses leads one to conclude that the Caicedo brothers died in similar circumstances.

83. The State has not produced any evidence that suggests that any of Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, or José Miguel Caicedo was bearing arms at the time of his death, and that therefore the state agents acted in self-defense. In this regard, the State alleged that one of its agents took a bullet, without it entailing major consequences as he was wearing a bulletproof vest. Nonetheless, that statement was not supported by any evidence either.

84. In this case, the information clearly shows that the use of force was not restricted or controlled, but, to the contrary, there was an evident excess. This results from the mere finding of the number of members of the military who participated in the operation, compared to the number of weapons seized, and by the fact that no information was provided on acts of resistance in the course of the operation. It is not possible to show the urgency required or justify the volume of force used by the state authorities in light of the above-noted legal standards.

85. The Inter-American Court has already addressed the indiscriminate use of force, especially by members of the military as an instrument for controlling public order:

The characteristics of the facts in the instant case reveal that the armed forces and security agencies of the State were not prepared to face public order disturbances by applying means and methods that respect human rights. It is necessary to avoid by all means any repetition of the circumstances described. The State must adopt all necessary provisions to this end, and specifically those for education and training of all members of its armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency. The pretext of maintenance of public security cannot be invoked to violate the right to life. The State must, also, adjust operational plans regarding public disturbances to the requirements of respect and protection of those rights, adopting to this end, among other measures, those geared toward control of actions by all members of the security forces in the very field of action to avoid excess. Finally, the State must ensure that, if it is necessary to resort to physical means to face situations of disturbance of public order, the members of its armed forces and its security bodies will use only those means that are indispensable to

control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment.⁵⁹

86. In addition, when the use of force causes injury or death, the State is under an international obligation to determine, through independent and impartial judicial organs, whether the force used was excessive. If so, the persons responsible for carrying out and planning such use of force should be punished and the victims or their next-of-kin compensated.⁶⁰ In this regard, the Inter-American Court has noted that “safeguarding the right to life implicitly requires the existence of an effective form of official investigation when people die as the result of use of force by agents of the State.”⁶¹

87. This obligation has also been recognized by the European Court of Human Rights, in its analysis of Article 2 of the European Convention on Human Rights (equivalent to Articles 4 and 1(1) of the American Convention):

the obligation to protect life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention “to secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.⁶²

88. In the instant case, one must observe, taking into account the parties’ presentations and the evidence produced, that the State has not complied with its duty to effectively investigate these facts. This aspect was also recognized by the State itself when it indicated that the effective remedy for the petitioners’ claims would be a criminal proceeding, which had not even begun in 2001, eight years after the underlying events.

89. During the March 6, 1993 operation, the Ecuadorian State failed in its duty to prevent the deaths of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo. In addition, the State made disproportionate use of force, and thereby arbitrarily deprived the three victims of their lives, and breached its obligation to ensure the human right to life, for not having duly investigated those deaths for more than 13 years. Therefore, the Ecuadorian State is responsible for violating Article 4(1) of the American Convention to the detriment of Messrs. Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo.

C. Right to judicial guarantees (Article 8(1) of the American Convention)

90. The Inter-American Court has determined that every person affected by a violation of human rights has the right to obtain, from the component organs of the State, clarification of the facts constituting the violation or violations, and a determination of responsibilities through an investigation in the framework of Articles 8 and 25 of the American Convention.⁶³

⁵⁹ I/A Court H.R., *Caracazo Case*. Reparations (Article 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 127.

⁶⁰ IACHR, Brazil, Merits, Case 11,556, Corumbiara Massacre, 2003, para. 175.

⁶¹ I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 112, and I/A Court H.R., *Myrna Mack Chang Case*. Judgment of November 25, 2003. Series C No. 101, para. 157.

⁶² European Court of Human Rights, *Timurtas v. Turkey*. Judgment of June 13, 2000, para. 87. See also, *mutatis mutandis*, *McCann and Others v. United Kingdom*, Judgment of September 27, 1995, para. 161; and *Kaya v. Turkey*, Judgment of February 19, 1998, para. 105.

⁶³ I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, para. 48.

91. Article 8 of the American Convention provides: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature." The concept of due process of law enshrined in Article 8 of the Convention should be considered applicable to all the judicial guarantees referred to in the American Convention, even under a regime of suspension as regulated by Article 27 of the treaty.⁶⁴ In this respect, the Inter-American Court concluded in its Advisory Opinion OC-9/87 that the principles of due process of law cannot be suspended in states of emergency, since they constitute necessary conditions for the procedural instruments regulated by the American Convention to be able to be considered judicial guarantees.⁶⁵

92. The provisions of the Criminal Code of the Police of Ecuador do not establish that its mere invocation automatically releases agents of liability in the case of acts committed in the performance of their functions. Rather, the provisions transcribed suggest the conduct of a proceeding in a special jurisdiction to clear up situations such as this one.

93. With respect to special jurisdictions, the Commission has noted "repeatedly and consistently that the military or special jurisdiction does not offer the guarantees of independence and impartiality necessary for judging cases that involve sanctioning members of the Armed Forces, thereby guaranteeing impunity."⁶⁶ In addition, the IACHR has indicated that "the problem of impunity is aggravated by the fact that most of the cases that involve human rights violations by the members of the State security forces are tried by the military criminal courts."⁶⁷ The problem of impunity in the military criminal justice system is associated not only with the acquittal of the accused, but also "the investigation of human rights violations by the military courts itself entails problems where it comes to having access to an effective and impartial judicial remedy."⁶⁸ In other words, if the possibility of an objective and independent investigation is thwarted, it may make a conviction impossible, or it may keep judicial proceedings from reaching a final decision stage.⁶⁹ Accordingly, the military jurisdictions cannot be considered to constitute a genuine judicial system, as they are not part of the Judicial branch, but are, rather, under the Executive.⁷⁰

94. The National Police of Ecuador does not enjoy the independence or autonomy needed to carry out impartial investigations of alleged human rights violations committed during the armed incursion of March 6, 1993.

95. Nonetheless, in this case, not even was a special jurisdiction applied; rather, this case isn't even about the application of a special jurisdiction, as there has been no proceeding whatsoever, not even in the disciplinary realm, to determine the circumstances in which the deaths came about. For that reason, the persons responsible were never identified nor were the respective sanctions imposed. The State itself has recognized that until 2001 there was no criminal proceeding whatsoever. In a 2004 communication the State asserted that "the corresponding

⁶⁴ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 29.

⁶⁵ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 30.

⁶⁶ IACHR, *Third Report on the Human Rights Situation in Colombia*, paras. 17 ff.

⁶⁷ IACHR, *Second Report on the Situation of Human Rights in Peru*, June 2000, Ch. II, para. 209.

⁶⁸ IACHR, *Second Report on the Situation of Human Rights in Peru*, para. 210.

⁶⁹ IACHR, *Third Report on the Human Rights Situation in Colombia*, paras. 17 ff.

⁷⁰ IACHR, *Second Report on the Situation of Human Rights in Peru*, para. 211.

investigations were carried out," yet to date the State has not provided any documentation to corroborate that assertion.

96. Article 8 of the American Convention establishes that the victims of human rights violations, or their next-of-kin, should have broad possibilities for being heard and acting in the respective proceedings, to clear up the facts and to punish the persons responsible, and to seek appropriate reparations.⁷¹ In the instant case, the judicial apparatus of the State has not been set in motion, which clearly shows that the injured party has not had those guarantees. In addition, under the standards applied by the Inter-American Court, the lapse of more than 13 years since a proceeding has been initiated is far lengthier than the limits and standards for what constitutes a reasonable time.⁷²

97. In view of all the foregoing, the Inter-American Court is asked to find that the Ecuadorian State has breached Article 8(1) of the American Convention.

D. Right to judicial protection (Article 25 of the American Convention)

98. The right to a fair trial is one of the fundamental pillars of the rule of law.⁷³ The Inter-American Court has explained that this right imposes a duty on the state to investigate human rights violations, prosecute the persons responsible, and prevent impunity. Impunity has been defined by the Inter-American Court as "the overall failure to investigate, pursue, arrest, prosecute and convict those who violate the rights protected by the American Convention."

99. Article 25 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.

2. The States Parties undertake:

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

100. In October 2001, on suggesting that domestic remedies had not been exhausted, the State acknowledged that "the proceeding has not been forward to a criminal judge from the jurisdiction in which the alleged offense was committed." The State argued that no criminal

⁷¹ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 227.

⁷² In the *Genie Lacayo* case, on analyzing what constitutes a reasonable time, the Court stated that even if one excludes the police investigation and the time used by the Office of the Attorney General of the Republic of Nicaragua to make the accusation before the judge of first instance, i.e. counting from July 23, 1991, the date the judge decreed the proceeding open, to the present date when no firm judgment had been handed down, more than five years have elapsed in this process, a time that the Court considers beyond the limits of reasonableness provided for by Article 8(1) of the Convention, para. 77.

⁷³ I/A Court H.R., *Castillo Páez Case*, Judgment of November 3, 1997, Series C No. 34, para. 82; *Cesti Hurtado*, para. 121; *Castillo Petruzi*, para. 184.

proceeding had not been opened to investigate the facts, nor has a complaint or private accusation been filed by the injured family members, and it called into question that the petitioners had gone directly to the Inter-American Commission for it to declare the responsibility of the State.⁷⁴ On that same occasion, the State argued that the criminal proceeding, together with the cassation remedy, "would be effective recourse to solve the petitioner's legal situation within the Ecuadorian judicial system."⁷⁵

101. According to the case-law of the inter-American system, in order for a remedy to be effective, in addition to be formally stipulated in the domestic legal system, it must be suitable for establishing whether there has been a violation of human rights, and should provide as necessary to remedy it. The State has indicated that in the domestic jurisdiction the petitioners had the possibility of having a criminal proceeding, or a cassation remedy, to "resolve the legal situation of the petitioner with the Ecuadorian legal system."

102. In the instant case it has been alleged that state agents have violated the right to life; accordingly, the State cannot shift the burden of investigating and prosecuting the persons responsible to the next-of-kin or their representatives. In addition, it is evident that the cassation remedy cannot be effective if the proceeding has not even begun.

103. The characteristics of the instant case are such that access to justice for the victims' next-of-kin is particularly limited, as the State controls the means for clearing up the facts.⁷⁶

104. Accordingly, the next-of-kin of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo did not have an effective remedy to guarantee them the exercise of their rights. For that reason, the persons responsible have not even been identified, much less punished, nor has reparation been made to the next-of-kin. This situation thus has given rise to a framework for total impunity attributable to the Ecuadorian State.

105. In view of the foregoing, the IACHR asks the Inter-American Court to find that the State violated Article 25 of the American Convention.

E. The obligation to respect to the rights and to adopt provisions of domestic law (Articles 1(1) and 2 of the American Convention)

106. The obligation to respect the rights is set forth in Article 1(1) of the American Convention:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

107. As regards this obligation, the Inter-American Court has recognized:

⁷⁴ Communication from the State of October 2, 2001, p. 2. In the record before the IACHR.

⁷⁵ Communication from the State of October 2, 2001, p. 3. In the record before the IACHR.

⁷⁶ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 136. In addition, the Court has said that "in proceedings on violations of human rights, the defense of the State can not lean on the plaintiff impossibility to gather evidence that, in many cases, can not be obtained without the cooperation of the State." I/A Court H.R., *Durand and Ugarte*, Judgment of August 16, 2000, para. 65; I/A Court H.R., *Case of Neira Alegría et al.*, para. 65; I/A Court H.R., *Gangaram Panday Case*, para. 49; and I/A Court H.R., *Godínez Cruz Case*, para. 141.

[...] the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. These are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.⁷⁷

108. The states parties to the American Convention have the duty to organize their governmental apparatus so as to ensure legally the free and full exercise of human rights. To the same end, the states must prevent, investigate, and punish any violation of the rights recognized by the American Convention and also seek to reestablish, if possible, the right violated, and, as appropriate assure reparation of the harm caused by the violation of human rights.⁷⁸

109. In the instant case, due to the time the State had to plan the military operation, its magnitude, and the level of force used, the State did not abide by its duty to prevent. This is observed in the violations of the right to life, physical integrity, personal liberty, and private property that took place during that operation.

110. In addition, the lack of any judicial investigation to clear up the responsibility for the extrajudicial executions of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo leads one to conclude that the Ecuadorian State also breached its duty to investigate and punish the persons responsible for those deaths. Accordingly, the Ecuadorian State did not comply with its obligation to respect rights, stipulated in Article 1(1) of the American Convention.

111. In addition, the State has invoked the application of a special jurisdiction which in its opinion makes it possible to release the state agents who participated in the operation of any liability since they acted in the performance of their functions. It should be reiterated in this respect that the State did not offer evidence indicating that a proceeding was held to clarify the facts alleged. The State's assertion contradicts its responsibility imposed by Article 2 of the American Convention:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

112. The Inter-American Court has indicated that the general duty of the state established at Article 2 of the American Convention includes adopting measures to suppress rules and practices of any sort that entail a violation of the guarantees provided for in the treaty, as well as issuing provisions and developing practices conducive to the effective observance of such guarantees.⁷⁹ In this regard, on limiting the procedural guarantees to a special jurisdiction, the rights of the victims and their next-of-kin are violated, as access to information essential to clarifying the facts is restricted.

113. The Ecuadorian State has not taken adequate measures under domestic law that would make it possible to uphold the rights of the next-of-kin of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo, and José Miguel Caicedo. Accordingly, the IACHR asks the Inter-American Court

⁷⁷ I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, May 9, 1986. Series A No. 6, para. 21.

⁷⁸ I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 166.

⁷⁹ I/A Court H.R. *Five Pensioners Case*, para. 165; I/A Court H.R. *Baena Ricardo et. al. Case. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 180.

to find that the State has breached the general obligations set forth at Articles 1(1) and 2 of the American Convention.

VIII. REPARATIONS AND COSTS

114. In view of the facts alleged in this application and the consistent case-law of the Inter-American Court that establishes that "it is a principle of international law that all violations [of] an international obligation that have caused harm generate an obligation to adequately redress said harm...",⁸⁰ the IACHR presents to the Inter-American Court its position on reparations and costs that should be borne by the Ecuadorian State as a result of its responsibility for violations committed to the detriment of the victims.

115. The Inter-American Commission will limit itself to spelling out, in the following paragraphs, the general criteria on reparations and costs that should be applied by the Court in the instant case, with attention to the rules of the Court that grant the individual autonomous representation. The Commission understands that it is up to the injured party to specify its claims, in keeping with Article 63 of the American Convention and Articles 23 and others of the Inter-American Court's Rules of Procedure. In the event that the victims' next-of-kin do not make use of that right, the IACHR asks the Court to grant it a procedural opportunity to quantify those claims.

A. Obligation to make reparation and measures of reparation

116. Article 63(1) of the American Convention establishes:

If the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

117. This provision gives expression to a customary norm "that is one of the fundamental principles of the contemporary international law on the responsibility of the States."⁸¹ The reparation of the injury caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation prior to the violation. If it is not possible, it shall be up to the Court to order measures that ensure respect for the rights violated, and that make reparation for the consequences of the violations, paying compensation for the damages caused.⁸² Reparations have an additional but no less fundamental purpose of preventing and halting future violations.

⁸⁰ I/A Court H.R. *Brothers Gómez Paquiyaui Case*, Judgment of July 8, 2004. Series C No. 110, para. 187; *Myrna Mack Chang Case*, Judgment of November 25, 2003. Series C No. 101, para. 141; *Bulacio Case*, Judgment of September 18, 2003. Series C No. 100, para. 72; *Juan Humberto Sánchez Case*, Judgment of June 7, 2003. Series C No. 99, para. 147.

⁸¹ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 86; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 52; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 139.

⁸² I/A Court H.R., *Brothers Gómez Paquiyaui Case*. Judgment of July 8, 2004. Series C No. 110, para. 189; "19 *Tradesmen Case*". Judgment of July 5, 2004. Series C No. 109, para. 221; *Molina Theissen Case*. Reparations (Art. 63(1) of the American Convention on Human Rights), Judgment of July 3, 2004, Series C N° 108, para. 42.

B. Measures of reparation

118. The Court has indicated the measures of reparation are aimed at making the effects of the violations committed disappear.⁸³ Such measures include the different ways in which a state can assume its responsibility, which under international law entails measures of restitution, compensation, rehabilitation, satisfaction, and non-repetition.⁸⁴

1. Measures of compensation

119. The Court has established the essential criteria that should guide fair compensation aimed at making adequate and effective economic compensation for the damages suffered as a result of the violations of human rights.⁸⁵

i. Material injury

120. The Court, in its case-law on reparations, has been consistent in establishing that material damages include actual damages and lost profit, as well as the nonmaterial or moral injury to the victims and the members of their immediate families.⁸⁶

121. Actual damages have been understood to mean the direct and immediate economic consequence of the facts. This concept considers the economic impact stemming immediately and directly from the facts in relation to the expenses of the injured party in seeking justice⁸⁷, related in this case to the death of loved ones.

122. Lost profit is understood as the loss of economic income or benefits that one has ceased to obtain on occasion of the victims' deaths, and which can be quantified based on measurable and objective indicators.⁸⁸

ii. Nonmaterial injury

123. On nonmaterial injury, the Court has established as follows:

[...] to understand both the suffering and afflictions caused the direct victims and their loved ones, the detriment of very significant values for persons, as well as alterations, non-

⁸³ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 89; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 141; I/A Court H.R., *Brothers Gómez Paquiyaui Case*. Judgment of July 8, 2004. Series C No. 110, para. 190.

⁸⁴ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and humanitarian law*. E/CN.4/Sub2/1990/10, July 26, 1990. See also I/A Court H.R., *Blake Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of January 22 1999. Series C No. 48, para. 31; *Suárez Rosero Case*, Reparations (Article 63(1) American Convention on Human Rights), Judgment of January 20, 1999. Series C No. 44, para. 41, and I/A Court H.R., *Castillo Páez Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43.

⁸⁵ See I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*, para. 204; *Paniagua Morales et al. Case*. Reparations, para. 80; *Castillo Páez Case*. Reparations, para. 52; and *Garrido and Baigorria Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, para. 41.

⁸⁶ I/A Court H.R., *Tibi Case*. Judgment of September 7, 2004. Series C No. 114, para. 237; I/A Court H.R., *Caracazo Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002, Series C No. 95; and I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94.

⁸⁷ I/A Court H.R., *Loayza Tamayo Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 147; *Aloeboetoe et al. Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 50.

⁸⁸ *Id.*

pecuniary in nature, in the conditions of existence of the victim or his or her family. It not being possible to assign a precise monetary equivalent to nonmaterial injury, for the purposes of comprehensive reparation to the victims, it can only be subject to compensation, which may take two forms. First, through the payment of a sum of money the delivery of goods and services subject to monetary evaluation, which the Court should determine, in a reasonable application of judicial discretion and equity. And, second, by performing acts or works of public scope or repercussion that have effects such as recovering the memory of the victims, recognition of their dignity, consoling their next-of-kin, or transmitting a message of official reprobation of the human rights violations in question, and a commitment to efforts aimed at ensuring they not recur.⁸⁹

124. In the instant case, the nonmaterial injury in the wake of the victims' death is clear, as are the harmful consequences of the denial of justice to their next-of-kin. One may presume that the injured party has experienced intense psychological suffering, anguish, shame, and a change in one's life plans as a result of the death of a loved one and the lack of justice in a reasonable time and without the respective punishment of all those involved in the facts that gave rise to this case.

2. Measures of satisfaction and guarantees of non-repetition

125. Satisfaction has been understood as any measure that the perpetrator of a violation takes under international instruments or customary law the purpose of which is to acknowledge that an unlawful act has been committed.⁹⁰ Satisfaction occurs when three acts take place, generally cumulatively: apologies, or any other gesture that shows recognition of the authorship of the act in question; the judgment and punishment of the individuals responsible; and taking steps to ensure that the injury not be repeated.⁹¹

126. In this regard, the IACHR considers that among the measures of reparation, the Ecuadorian State should take the steps needed to put in place legislation that satisfactorily regulates states of emergency, so as to bring Ecuador's legislation strictly into line with its obligations under international law arising from Articles 2 and 27 of the American Convention.

127. Additionally, the IACHR is of the view that it is necessary to include among the measures of reparation amending the Criminal Code of the National Police, so as to clarify the guidelines on application of special jurisdiction and regular jurisdiction; and adequately regulate the use of firearms by the Armed Forces and National Police.⁹²

128. It is a criterion of the Commission, and is required of one who interprets it, that in this ambit, public apology and publicizing the decision of the Inter-American Court is a means of making reparation to the victims' families.

129. In addition, the Court has held previously that in those cases in which it has concluded that the State's legislation is incompatible with the provisions of the American Convention and was invoked or applied such that harm was caused the victims' next-of-kin, compliance with those requirements requires that the state party adopt the domestic legal measures needed to bring the legislation in question into line with the American Convention.⁹³

⁸⁹ I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 80; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 155; See also, I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 117.

⁹⁰ Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

⁹¹ *Id.*

⁹² See Fourth and fifth recommendations of Report 8/06 of February 28, 2006 (Appendix No. 1).

⁹³ See, for example, *Loayza Tamayo Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, paras. 162-164, 192(5).

C. The beneficiaries of the reparation owed by the State

130. Article 63(1) of the American Convention demands reparation for the consequences of a violation and "that fair compensation be paid to the injured party." Those persons with a right to such compensation are generally those directly injured by the facts of the violation in question.

131. In view of the nature of the instant case, the injured party or the beneficiaries of any reparations the Court may order as a result of the human rights violations perpetrated by the Ecuadorian State are, in this case, the next-of-kin of the three victims. According to the information provided by the injured party, those next-of-kin are:

Wilmer Zambrano Vélez

- Alicia Rodríguez (common-law wife)
- Linda Zambrano Rodríguez (daughter)
- Johana Elizabeth Zambrano Abad (daughter)
- Jennifer Karina Zambrano Abad (daughter)
- Ángel Homero Zambrano Abad (son)

Segundo Olmedo Caicedo

- Silvia Alicia Macías Acosta (common-law wife)
- Vanner Caicedo Macías (son)
- Olmedo Germán Caicedo Macías (son)
- Marjorie Caicedo Rodríguez (daughter)
- Marianela Caicedo Rodríguez (daughter)
- Mariela Caicedo Rodríguez (daughter)
- Richard Caicedo Rodríguez (son)
- Iris Caicedo Chamorro (daughter)
- Mayerlin Chamorro (daughter)

José Miguel Caicedo

- Teresa María Susana Cedeño Paz (common-law wife)
- María Magdalena Caicedo Cedeño (daughter)
- Jessica Soraya Vera Cedeño (daughter)
- Manuel Abelardo Vera Cedeño (son)
- Briner Ramón Vera Cedeño (son)
- Klever Miguel Caicedo Ponce (son)
- Mariela Caicedo Ponce (daughter)
- Kelvin Caicedo Ponce (son)
- Cira Caicedo Ponce (daughter)
- Gina Caicedo Ponce (daughter)

D. Costs and expenses

130. According to the case-law of the Court, costs and expenses should be considered to fall within the concept of reparation enshrined in Article 63(1) of the American Convention, since the activity carried out by the injured party, their successors, or their representatives to accede to

international justice entails economic outlays and commitments that should be compensated.⁹⁴ In addition, the Court has considered that the costs to which Article 56(1)(h) of the Court's Rules of Procedure refers encompass the necessary and reasonable expenses entailed in having access to the supervisory organs of the American Convention, with expenses including the attorney's fees.

131. The Inter-American Commission asks the Court, once the injured party is heard, to order the Ecuadorian State to pay the costs and expenses duly proven by them.

IX. CONCLUSIONS

132. In view of all that is stated in this application, the Commission asks the Inter-American Court to find and declare the international responsibility of the Ecuadorian State for having violated its obligations set forth at Articles 27 (suspension of guarantees), 4 (right to life), 8 (right to a fair trial), and 25 (judicial protection), in conjunction with Articles 1(1) and 2 of the American Convention for failure to investigate, undertake a serious and effective prosecution into, and punish the persons responsible; and for the lack of effective reparation to the injured party.

X. RELIEF SOUGHT

133. Considering the conclusions of this case, the Inter-American Commission takes this opportunity to ask the Court to order the Ecuadorian State:

- a. to undertake a complete, impartial, and prompt investigation into the facts to determine and punish all persons responsible for the violations in the instant case;
- b. to hold a public ceremony in which the international responsibility of the State for the facts in this case is acknowledged, and redress is provided to the victims and their next-of-kin;
- c. to take all steps necessary, in the domestic legal system, to bring its legislation on states of emergency into line with the American Convention, the case-law interpretations of the IACHR, and the Inter-American Court, and other applicable international standards;
- d. to take all steps necessary for adequate reparation or mitigation of the injury caused the victims' next-of-kin, including both nonmaterial and material injury;
- e. to pay the legal costs and expenses incurred by the victims' next-of-kin and their representatives in processing the case domestically and before the inter-American system; and
- f. to adopt all legal, administrative, and other measures necessary to prevent similar events from occurring in the future, pursuant to the duty of prevention and the obligation to ensure the fundamental rights recognized by the American Convention.

⁹⁴ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 115; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 177.

XI. EVIDENTIARY SUPPORT

A. Documentary evidence

134. The Commission attaches the following documentary evidence in support of the arguments of fact and law set forth in this application:

APPENDIX 1: IACHR, Report 8/06 on admissibility and the merits, Case 11,579 Wilmer Zambrano, José Miguel Caicedo, and Segundo Olmedo Caicedo, February 28, 2006.

APPENDIX 2: Case file before the Inter-American Commission.

ANNEX 1: Autopsy Report No. 223 on the corpse of Segundo Olmedo Caicedo. National Police, Department of Forensic Medicine. Guayaquil, March 6, 1993.

ANNEX 2: Autopsy Report No. 224 on the corpse of Miguel José Cobeña Vélez (erroneously identified by that name, it is actually the corpse of José Miguel Caicedo Cobeña). National Police, Department of Forensic Medicine, March 6, 1993.

ANNEX 3: Autopsy Report No. 225 on the corpse of Wilmer Humberto Zambrano Vélez. National Police, Department of Forensic Medicine. Guayaquil, March 6, 1993.

ANNEX 4: Press article: "Balacera conmocionó el suburbio," EL COMERCIO, Ecuador. March 7, 1993.

ANNEX 5: Press article: "Sangrienta operación militar", Diario EL EXPRESO, Ecuador. March 7, 1993.

ANNEX 6: Press article: "Tres muertos en operativo", Diario El Hoy, Ecuador. March 7, 1993.

ANNEX 7: Press article: "Helicópteros y lanchas en operativo: Medio millar de uniformados intervino en impresionante operativo", Diario EL HOY, Ecuador. March 7, 1993.

ANNEX 8: Press article: "Operativo de FF.AA. contra grupos subversivos: 3 delincuentes muertos y varios detenidos en la 42 a y la K", Diario El Telégrafo, Ecuador. March 7, 1993.

ANNEX 9: Press article: "Desbaratan banda de subversivos", Diario EL COMERCIO, Ecuador. March 7, 1993.

ANNEX 10: Testimony of residents of the Batallón sector of the periphery (40th and K), Events of March 6, 1993, visit on Monday, March 8, 1993.

ANNEX 11: Press article: "Indignación y desconcierto por operativo de FF.AA.", Diario EL TELEGRAFO, Ecuador. March 8, 1993.

ANNEX 12: Press article: "30 detenidos en operativo: Muertos estarían vinculados a asaltos de bancos", Diario EL UNIVERSO, Ecuador. March 8, 1993.

ANNEX 13: Press article: "Barbarie en operativo militar", Diario LA HORA, Ecuador. March 8, 1993.

- ANNEX 14:** Press article: "Caos y Dolor tras operativo militar: se desconoce el paradero de más de 35 detenidos", Diario EL TELÉGRAFO, Ecuador. March 8, 1993.
- ANNEX 15:** Press article: "Terroristas en el suburbio", Diario EL EXTRA, Ecuador. March 8, 1993.
- ANNEX 16:** Press article: "Desbaratamos banda subversiva", Diario EL EXTRA, Ecuador. March 8, 1993.
- ANNEX 17:** Press article: "Duro Golpe a la subversión", Diario EL COMERCIO: Operativo de las FF.AA. llevó tres meses de preparación, Ecuador. March 8, 1993.
- ANNEX 18:** Press article: "Denuncian abusos durante operativo militar: Guayaquil", Diario EL HOY, Ecuador. March 8, 1993.
- ANNEX 19:** Press article: "Versiones de familiares de fallecidos en suburbio", Diario EL EXTRA, Ecuador. March 8, 1993.
- ANNEX 20:** Press article: "Operativo sangriento y hasta hoy misterioso", Diario EL HOY, Ecuador. March 8, 1993.
- ANNEX 21:** Press article: "FFAA impedirán presencia de subversivos", Diario LA HORA, Ecuador. March 8, 1993.
- ANNEX 22:** Press article: "Acción enérgica: Operativo militar", Diario ÚLTIMAS NOTICIAS, Ecuador. March 8, 1993.
- ANNEX 23:** Press article: "39 detenidos en operativo: Sin noticia sobre desaparecidos", Diario EL UNIVERSO, Ecuador. March 8, 1993.
- ANNEX 24:** Press article: "Operativo se realizó contra delincuentes comunes", diario EL HOY, Ecuador. March 9, 1993.
- ANNEX 25:** Press article: "Diputados rechazan violencia de las FFAA en Guayaquil", Diario EL HOY, Ecuador. March 9, 1993.
- ANNEX 26:** Press article: "Capturamos droga y subversivos: FF.AA.", Diario LA HORA, Ecuador. March 9, 1993.
- ANNEX 27:** Press article: "3 muertos y 39 detenidos en operativo contra subversión", Diario EL MERIDIANO, Ecuador, March 9, 1993; and, "Ministro de Defensa sería llamado al Congreso Nacional", Diario EL MERIDIANO, Ecuador. March 9, 1993.
- ANNEX 28:** Press article: "FFAA explican violento operativo antidelictivo", diario EL HOY, Ecuador. March 9, 1993.
- ANNEX 29:** Press article: "Operativo fue muy violento", Diario EL MERCURIO, Ecuador. March 9, 1993.
- ANNEX 30:** Press article: "Operativo de FF.AA. fue limpio: Afirma general Alfredo Chacón", diario EL TELÉGRAFO, Ecuador. March 9, 1993.

- ANNEX 31:** Official note to the Minister of Defense from Servicio Paz y Justicia en América Latina (SERPAJ), Ecuador. March 9, 1993. Signed by Nelsa Curbelo and Elsie Monge, Presidente of the CEDHU.
- ANNEX 32:** Official note to the President of the National Congress, from SERPAJ, Ecuador. March 9, 1993. Signed by Nelsa Curbelo and Elsie Monge.
- ANNEX 33:** Press article: "Sombría situación de derechos humanos", Diario EL HOY, Ecuador. March 10, 1993.
- ANNEX 34:** Press article: "FFAA no cesarán el combate contra la subversión existente en el país"; Press article: "Hay rebrote de la subversión", Diario EL COMERCIO, Ecuador, March 10, 1993; Press article: "Militares muestran evidencias", Diario EL HOY, Ecuador March 10, 1993.
- ANNEX 35:** Press article: "Diputados piden investigar hechos", Diario EL MERCURIO, Ecuador, March 10, 1993; Press article: "Operativo militar anti-delito", Diario EL MERCURIO, Ecuador, March 10, 1993.
- ANNEX 36:** Press article: "Hay que apoyar lucha contra el terrorismo: León", Diario EL EXPRESO, Ecuador. March 11, 1993.
- ANNEX 37:** Press article: "Lunes levantarán incomunicación a los 39 detenidos en operativo", Diario EL UNIVERSO, Ecuador. March 11, 1993.
- ANNEX 38:** Press article: "7 presos tienen antecedente delictivo: Policía Nacional presenta informe", Diario EL MERCURIO, Ecuador. March 11, 1993.
- ANNEX 39:** Official note 002-WF-R-93 of March 11, 1993, operational report to the Chief of the Joint Command of the Armed Forces, signed by Brigadier Alfredo E. Chacón Savinovich.
- ANNEX 40:** Press article: "Fue entregado informe de operativo militar", Diario EL HOY, Ecuador. March 12, 1993.
- ANNEX 41:** Press article: "Misteriosa trinidad", Diario EL HOY, Ecuador. March 12, 1993.
- ANNEX 42:** Press article: "Varios fichados irán a órdenes de Inteligencia", Diario EL HOY, Ecuador. March 12, 1993.
- ANNEX 43:** Press article: "Subversión, delincuencia, realidad", Diario EL MERCURIO, Ecuador. March 13, 1993.
- ANNEX 44:** Press article: "Detenidos en operación militar llevados al CDP", Diario EL EXPRESO, Ecuador. March 13, 1993.
- ANNEX 45:** Press article: "El operativo militar", Diario EL COMERCIO, Ecuador. March 15, 1993.
- ANNEX 46:** Press article: "39 detenidos en la Penitenciaría: Están a órdenes de Intendente", Diario EL TELÉGRAFO, Ecuador. March 15, 1993.
- ANNEX 47:** Press article: "Trasladaron detenidos al CDP", Diario EL EXPRESO, Ecuador. March 15, 1993.

- ANNEX 48:** Communication signed by Diego Delgado Jara, President of the Committee on Human Rights of the National Congress, "Gobierno de Sixto Durán Ballén ha reinstaurado la pena de muerte," Ecuador. March 19, 1993.
- ANNEX 49:** Press article: "Gobierno de Sixto Durán Ballén ha reinstaurado la pena de muerte: Afirma diputado socialista", Diario EL MERIDIANO, Ecuador. March 22, 1993.
- ANNEX 50:** Press article: "Actos de represión", Diario LA HORA, Ecuador. March 22, 1993.
- ANNEX 51:** Report on the military operation carried out March 6, 1993, signed by Army General José Gallardo Roman, Ecuador. March 22, 1993.
- ANNEX 52:** Press article: "Intelectuales Protestan", Diario EL HOY, Ecuador. March 28, 1993.
- ANNEX 53:** Press release, April 25, 1993, signed by Nelsa Curbelo.
- ANNEX 54:** Press release, "Allegations of Extrajudicial Executions By Security Forces," Amnesty International. Ecuador. April 28, 1993.
- ANNEX 55:** Official note No. 226-CEDHU/96. Sent by the Presidente of CEDHU, Elsie Monge to the Provincial Chief of Police of Guayas and the Chief of the Office of Criminal Investigation of Guayas, April 1, 1996.
- ANNEX 56:** Official note No. 095-96 MPE-OEA of June 25, 1996.
- ANNEX 57:** Official note No. 344 – CEDHU/99 of July 1, 1999.
- ANNEX 58:** Note No. 4-2-25/99, August 26, 1999.
- ANNEX 59:** Note No. 4-1-299/99, October 4, 1999.
- ANNEX 60:** Copy of Judicial Resolution of April 5, 2000.
- ANNEX 61:** Official note No. 14604, October 4, 2000.
- ANNEX 62:** Official note No. 2107, October 20, 2000.
- ANNEX 63:** Official note No. 0376-CEDHU, July 18, 2000.
- ANNEX 64:** Copy of Inspection Order issued by the Office of the Inspector General of the National Police of Ecuador, January 12, 2001.
- ANNEX 65:** Official note No. 119-SPN, January 16, 2001.
- ANNEX 66:** Copy of Memorandum 2001-0229-IGPN, January 22, 2001, signed by Jorge Molina Nuñez, Inspector General of the National Police.
- ANNEX 67:** Copy of Memorandum 2001-0046-IGPN-DAI, January 26, 2001, signed by Ramiro Armando Salazar, Chief of Internal Affairs of the Office of the Inspector General of the National Police.

- ANNEX 68:** Official note No. 054-CRP-CP-2, February 14, 2001, signed by Cesar Escobar Vallejos, Second Lieutenant of the Police, On-duty officer of the C.R.P. for CP-2.
- ANNEX 69:** Official note No. 055-CRP-CP-2, February 14, 2001, signed by Cesar Escobar Vallejos, Second Lieutenant of the Police, On-duty officer of the C.R.P. for CP-2.
- ANNEX 70:** Official note No. 433-P2-CP-2, February 14, 2001, signed by Henry Benítez Osejo, Police Captain, Chief P-2 CP-2.
- ANNEX 71:** Official note No. 191-J2-CP2, February 14, 2001, signed by Iván Vásquez Freire, Lt. Col. Of the Police of E.M., Deputy Commander of the National Police of Guayas.
- ANNEX 72:** Official note No. 1418-CP-2, February 15, 2001, signed by Marco Antonio Cuvero Velez, Police Colonel of EM of the National Police of Guayas.
- ANNEX 73:** Copy of Informational Report No. 2000-013-IGPN-DAI, of March 7, 2001, signed by Diego F. Ganchala G. Investigative Officer, and with the approval of Carlos Rodrigo Arcos Bentacourt, Chief of the Department of Internal Affairs at the Office of the Inspector-General of the National Police.
- ANNEX 74:** Official note No. 2001-0537-IGPN, March 13, 2001, signed by Mr. Jorge Molina Núñez, Inspector General of the National Police.
- ANNEX 75:** Official note No. 527, March 16, 2001, signed by Fausto Egas Benavides, Deputy Clerk of the Police.
- ANNEX 76:** Official note No. 010701-MJ-3, July 3, 2001, signed by Hugo Unda Aguirre, Minister of National Defense.
- ANNEX 77:** Official note No. DINADHU-B-2001-159 of August 22, 2001, signed by Mr. Wilson Mayorga B., National Director of Human Rights for the State. Communication from the State, June 25, 2004.
- ANNEX 78:** Official note from the Office of the Attorney General No.19806, September 17, 2001.
- ANNEX 79:** Official note N.-0253-CEDHU/02, March 19, 2002.
- ANNEX 80:** Official note No. 002-WF-R-93, March 11, 1003.
- ANNEX 81:** Official note N.-0520-CEDHU/03, June 19, 2003.
- ANNEX 82:** Official note No. 009334, June 9, 2004, signed by the National Director of Legal Representation of the Office of the Attorney General.
- ANNEX 83:** Official note from the Office of the Attorney General No.020296 of October 20, 2005.
- ANNEX 84:** Data on the victims' filiation.
- ANNEX 85:** Powers of attorney.

135. Additionally, the Commission asks the Court to order the State to submit the certified and complete copies of any and all investigations undertaken into the facts described in this application.

B. Witness testimony

a. Witnesses

136. The Inter-American Commission offers the following witnesses:

- Vanner Omar Olmedo Macías, Segundo Olmedo Caicedo's son, to refer to the events in the early morning hours of March 6, 1993, when agents of the Ecuadorian security forces violently entered his house and executed his father, by gunshot wounds, in front of the family, as well as other aspects related to the purpose of this application;
- Teresa María Susana Cedeño Paz, common-law wife of José Miguel Caicedo, to refer to the events of the early morning hours of March 6, 1993, when agents of the Ecuadorian security forces violently entered her house and executed, by gunshot wounds, her common-law husband in front of the family, as well as other aspects related to the purpose of this application;
- Alicia Marlene Rodríguez Villegas, common-law wife of Wilmer Zambrano Vélez, to refer to the facts of the early morning hours of March 6, 1993, when agents of the Ecuadorian security forces violently entered her house and executed her common-law husband, by gunshot wounds, in front of the family, as well as other aspects related to the purpose of this application.

XII. ORIGINAL PETITIONERS, THE VICTIMS, AND THEIR NEXT-OF-KIN

137. As provided by Article 33 of the Court's Rules of Procedure, the Inter-American Commission informs the Court that the original petitioner is the Comisión Ecuménica de Derechos Humanos (CEDHU), and the victims' next-of-kin have designated attorney César Duque, a staff attorney with CEDHU, to represent them in this case. His contact information is as follows:

[REDACTED]

Washington, D.C.
July 24, 2006