



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Jesús María Valle Jaramillo *et al.*
(Case 12.415)
against the Republic of Colombia

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**APPLICATION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF COLOMBIA**

**CASE 12.415
JESÚS MARÍA VALLE JARAMILLO ET AL.**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the Commission") hereby submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") this application in Case No. 12.415, *Jesús María Valle Jaramillo et al.*, against the Republic of Colombia (hereinafter "the State," "the Colombian State," or "Colombia") for its responsibility in the extrajudicial killing of Jesús María Valle Jaramillo, a human rights defender; the detention and inhuman and degrading treatment of Mr. Valle Jaramillo, his sister Nelly Valle Jaramillo, and Mr. Carlos Fernando Jaramillo Correa (hereinafter "the victims") that preceded the killing;¹ the failure to investigate and punish the perpetrators of those deeds; the failure to provide the victims and their next-of-kin with due redress; and the forced displacement that Mr. Jaramillo Correa suffered following the incident.

2. The Commission requests that the Court rule that the Colombian State failed to abide by its international obligations by violating Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with the general obligation of respecting and ensuring human rights set out in Article 1(1) thereof.

3. This case has been processed in accordance with the terms of the American Convention and is submitted to the Court in compliance with Article 33 of its Rules of Procedure. Attached hereto, in the appendixes, is a copy of report No. 75/06, drawn up according to Article 50 of the Convention.²

4. The Commission believes it is justified in referring this case because of the need to ensure justice and to secure redress for the victims and their next-of-kin. Additionally, the Commission believes that this case offers an opportunity for developing inter-American jurisprudence regarding the protection of individuals, nongovernmental organizations, and other groups that work to protect human rights and fundamental freedoms, and regarding respect for the tasks they carry out, taking into consideration the fact that they represent a positive and additional contribution to the efforts made by the State in its capacity as the guarantor of human rights.

II. PURPOSE OF THE APPLICATION

5. The purpose of this application is to respectfully request that the Court conclude and declare that:

¹ As explained below, the next-of-kin of Mr. Jesús María Valle Jaramillo are also victims in this case, through the violation of Articles 8 and 25 of the Convention, in connection with Article 1(1) thereof. However, they will be referred to as the "victim's next-of-kin" or "Mr. Valle Jaramillo's family."

² IACHR, Report No. 75/06 (merits), Case 12.415, *Jesús María Valle Jaramillo*, Colombia, October 16, 2006; Appendix 1.

- (a) the Colombian State is responsible for violating, with respect to Mr. Jesús María Valle Jaramillo, the rights to life, to humane treatment, and to personal liberty set out in Articles 4, 5, and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;
- (b) the Colombian State is responsible for violating, with respect to Messrs. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, the rights to humane treatment and to personal liberty set out in Articles 5 and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;
- (c) the Colombian State is responsible for violating, with respect to Mr. Carlos Fernando Jaramillo Correa and his family, the right to freedom of movement and residence set out in Article 22 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof; and,
- (d) the Colombian State is responsible for violating, with respect to Messrs. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa and to the next-of-kin of Mr. Jesús María Valle Jaramillo, the rights to a fair trial and to judicial protection set out in Articles 8(1) and 25 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof.

6. In consideration of the above, the Inter-American Commission asks the Court to order that the State to:

- (a) carry out an impartial and exhaustive investigation in order to prosecute and punish all those individuals who planned and perpetrated the extrajudicial killing of the human rights defender Jesús María Valle Jaramillo;
- (b) indemnify Jesús María Valle's family for the material and nonmaterial harm they suffered as a result of the violation of his right to life, personal liberty, and human treatment, and as a result of the denial of justice the next-of-kin themselves faced;
- (c) perform actions toward reclaiming the historical memory of Jesús María Valle in his capacity as a human rights defender;
- (d) indemnify Mrs. Nelly Valle for the violation of her rights to personal liberty and humane treatment, and for the denial of justice she suffered;
- (e) indemnify Mr. Carlos Fernando Jaramillo for the violation of his rights to personal liberty and to human treatment, and for the consequences of his displacement and exile, as well as for the denial of justice he suffered;
- (f) take the steps necessary to prevent the occurrence of similar incidents in the future, pursuant to the duty of upholding and guaranteeing basic rights set out in the American Convention; and,
- (g) pay the legal costs and expenses incurred in pursuing this case at the national level, as well as those arising from its processing before the inter-American system.

III. REPRESENTATION

7. In accordance with the provisions of Articles 22 and 33 of the Court's Rules of Procedure, the Commission has appointed Commissioner Víctor Abramovich and Executive Secretary Santiago A. Canton to serve as its delegates in this case. The attorneys Ariel E. Dulitzky, Elizabeth Abi-Mershed, Juan Pablo Albán A., Verónica Gómez, Andrea Repetto, and Karin Mansel, specialists with the Executive Secretariat of the Commission, have been appointed to serve as legal advisors.

IV. JURISDICTION OF THE COURT

8. Under Article 62(3) of the American Convention, the Inter-American Court has jurisdiction to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized that jurisdiction.

9. The Court has jurisdiction to hear this case. The Colombian State ratified the American Convention on July 31, 1973, and it accepted the contentious jurisdiction of the Honorable Court on June 21, 1985.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION³

10. On August 2, 2001, the Inter-American Commission received the petition lodged by the Interdisciplinary Group for Human Rights.

11. On September 25, 2001, the IACHR began processing petition No. 519/2001 in accordance with the Rules of Procedure in force as of May 1, 2001, and it forwarded the relevant parts of the complaint to the State, giving it a period of two months in which to submit its comments.

12. On November 23, 2001, the State requested an extension of the deadline for responding, which was granted by the IACHR on November 27, 2001. On December 17, 2001, the State submitted its reply, which was duly conveyed to the petitioners on December 18, 2001, along with a period of 30 days in which to present their comments.

13. On March 5, 2002, during its 114th period of sessions, the IACHR held a hearing on this case.

14. On May 20, 2002, the petitioners submitted their position, in writing, on the admissibility of the case. They also requested that the Colombian Commission of Jurists be registered as a joint petitioner.

15. On June 5, 2002, the IACHR conveyed the petitioners' reply to the State and asked it to submit its comments within the following 30 days. On July 3, 2002, the Colombian State requested a one-month extension, which was duly granted.

16. On July 15, 2002, the IACHR forwarded the petitioners the documents submitted by the State at the hearing held during its 114th session.

³ The procedural steps described in this section are set out in the case file kept by the Commission; Appendix 3.

17. On August 15, 2002, the Colombian State submitted its comments on the petitioners' filing of May 20, 2002. Those comments were forwarded to the petitioners, who acknowledged receipt of the communication and said they had no desire to make any claims further to those already filed.

18. At its 117 regular session, on February 20, 2003, the Commission declared the petition admissible,⁴ and, in compliance with Article 37(2) of its Rules of Procedure, registered it as Case No. 12.415.

19. Notification of the Report on Admissibility was sent to the parties in communications dated March 11, 2003. On that occasion, the Commission asked the petitioners to submit their claims on the merits of the case within a period of two months, in accordance with Article 38(1) of its Rules of Procedure. That deadline passed without the petitioners presenting their claims.

20. In the same communication of March 11, 2003, the Commission made itself available to both parties in order to reach a friendly settlement of this matter in accordance with Article 48(1)(f) of the American Convention, to which end it asked them to respond to the offer as soon as they could. The Commission received no statements from either party regarding that possibility.

21. On September 12, 2003, in response to a request lodged by the petitioners, the Commission called the parties to a hearing that was held on October 15, 2003, during its 118th regular session, at its headquarters in the city of Washington, D.C.

22. On January 30, 2004, the Commission summoned the parties to a hearing that was intended to hear a statement from a witness presented by the petitioners. The hearing was held on March 1, 2004, during the IACHR's 119th regular session.

23. On October 13, 2004, the Commission again asked the petitioners to submit their written claims on the merits of the case in accordance with the terms set out in its communication of March 11, 2003.

24. On October 18, 2005, the petitioners submitted their written claims regarding the merits. On October 24, 2005, the Commission sent the relevant parts of that submission to the State for it to submit its comments within the following two months.

25. The State submitted its claims regarding the merits in a note dated December 28, 2005. A copy of the State's claims was sent to the petitioners for their comments.

26. On March 21, 2006, the petitioners submitted their comments, which were conveyed to the State on March 22, 2006. The State sent its final comments on May 16, 2006.

27. At its 126th session, held on October 16, 2006, the Commission adopted Report on Merits 75/06, drawn up in compliance with Article 50 of the Convention. In that report, it concluded that:

The Republic of Colombia is responsible for violating the right to life, to humane treatment, to personal liberty, and to judicial protection, enshrined in Articles 4(1), 5, 7, 8(1), and 25 of the

⁴ IACHR, Report No. 5/03 (admissibility), Petition 519/2001, *Jesús María Valle Jaramillo*, Colombia, February 20, 2003; Appendix 2.

American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), with respect to the victim Jesús María Valle Jaramillo and his next-of-kin, together with the general obligation of respecting and ensuring protected rights set out in Article 1(1) thereof. The Commission also finds that Colombia is responsible for violating Articles 5 and 7 of the American Convention with respect to Nelly Valle. With respect to Mr. Carlos Fernando Jaramillo, the Commission concludes that the State is responsible for violating Articles 5, 7, and 22 of the Convention.

28. In that Report on the Merits, the Commission served the following recommendations on the Colombian State:

1. Conduct an impartial and exhaustive investigation in order to prosecute and punish all those individuals who planned and perpetrated the murder of the human rights defender Jesús María Valle Jaramillo.
2. Indemnify Jesús María Valle's family for the material and nonmaterial harm they suffered as a result of the violation of the American Convention described in this report.
3. Perform actions toward reclaiming the historical memory of Jesús María Valle in his capacity as a human rights defender, in light of the conclusions regarding the State's responsibility set out in the body of this report.
4. Redress Mrs. Nelly Valle for the violation of her right to liberty and to freedom from cruel, inhuman, and degrading treatment.
5. Redress Mr. Carlos Fernando Jaramillo for the violation of his right to liberty and to freedom from cruel, inhuman, and degrading treatment, and for the consequences of his displacement and exile.
6. Take the steps necessary to prevent the occurrence of similar incidents in the future, pursuant to the duty of upholding and guaranteeing basic rights set out in the American Convention.

29. The Report on the Merits was conveyed to the State on November 13, 2006, together with a deadline of two months in which to report back on the steps taken toward implementing the recommendations contained therein, in compliance with Article 43(2) of the Commission's Rules of Procedure.

30. On November 14, 2006, pursuant to the terms of Article 43(3) of its Rules of Procedure, the Commission informed the petitioners that a Report on the Merits had been adopted and had been conveyed to the State; it also asked them to state their position, within the following month, regarding the possible referral of the case to the Inter-American Court.

31. On December 14, 2006, the petitioners told the Commission of their wish, and that of the surviving victims and their next-of-kin, for this case to be referred to the Court.

32. In a submission dated January 12, 2007, the Colombian State sent the Commission its report on the measures it had taken and planned to take in order to comply with the recommendations issued by the Commission in this case.

33. After considering the State's report on its implementation of the recommendations contained in the Report on the Merits and the lack of substantial progress with their effective implementation, on February 13, 2007, the Commission resolved to submit this case to the Inter-American Court.

VI. CONSIDERATIONS OF FACT

A. Background

1. Jesús María Valle, human rights defender

34. Jesús María Valle Jaramillo was a lawyer from the department of Antioquia, a university professor, and a civic leader devoted to the defense of human rights; at the time of the incident, he was serving as the president of the Héctor Abad Gómez Human Rights Committee.⁵ Between 1996 and the time of his death he actively denounced crimes perpetrated by paramilitary forces in collaboration with members of the Colombian army and with their acquiescence.

2. Context surrounding the execution of the human rights defender Jesús María Valle Jaramillo

35. In the mid-1990s, the paramilitary groups that would later establish the United Self-Defense Forces of Colombia (AUC) carried out acts of harassment against the civilian population in the municipality of Ituango, located in the northeast of the department of Antioquia.⁶ Jesús María Valle, in his capacity as a municipal councilor for Ituango, alerted various government and departmental authorities about the need to adopt measures to protect the civilian population of that municipality.

36. The Regional Prosecutor's Office in Medellín managed to determine that there was evidence that Dr. Valle Jaramillo was on the list of "targets" following statements he made publicly denouncing joint actions involving the Army, the Fourth Brigade, and the Girardot Battalion with paramilitary groups in Ituango and other neighboring municipalities.⁷ The animosity of the members of the army toward Jesús María Valle Jaramillo arose from the human rights defender's allegations regarding ties between members of the security forces and paramilitary groups and instances in which the two had collaborated.

37. On June 11, 1996, paramilitaries acting with the acquiescence of members of the security forces murdered a number of civilians in the town of La Granja in Ituango municipality. The State's responsibility for its agents' acquiescence and collaboration with paramilitary groups in those killings has been established by the Inter-American Court of Human Rights.⁸ According to the testimony of Mr. Carlos Fernando Jaramillo, Jesús María Valle was forced to leave the municipality because of the threats made against him for the accusations he made before and after this crime.⁹

38. On July 10, 1997, Jesús María Valle made allegations in the media regarding the joint action of troops belonging to the Fourth Brigade and paramilitary groups. In response, members of the Army filed a defamation suit against him.¹⁰ The testimony of Mr. Carlos Fernando Jaramillo

⁵ Jesús María Valle was born on February 28, 1942; he would have turned 55 the day after his murder.

⁶ The information in his reports coincided with the observations made in reports issued by official entities. Evaluative Report 139, File 1144, of the Antioquia Departmental Attorney's Office of October 22, 1996; Annex 6.

⁷ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution of May 21, 1999, assessing the committal proceedings of case No. 26017; Annex 1.

⁸ See: I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148.

⁹ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

¹⁰ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution assessing the committal proceedings against the accused in case No. 26017; Annex 1, p. 10. During a hearing on the La Granja massacre, the prosecutor in charge of the investigation explained to the Commission that "Dr. Jesús María Valle denounced the La Granja

Correa states that in this context, the Governor of Antioquia at the time publicly stated that “Dr. Valle appears to be an enemy of the armed forces.”¹¹

39. Between October 22 and November 12, 1997, paramilitaries acting with the acquiescence and support of members of the security forces carried out a series of killings at the town of El Aro in Ituango municipality. The State’s responsibility for its agents’ acquiescence and collaboration with paramilitary groups in those killings has been established by the Inter-American Court of Human Rights.¹² In November 1997, Jesús María Valle lodged a complaint with the office of the Disciplinary Delegate Attorney for the Defense of Human Rights; as a result of his filing, a Declaration of Disciplinary Responsibility was issued against public employees for the incident at El Aro.¹³ In addition, he lodged accusations with the office of the Attorney General of the Nation regarding the negligent conduct of the commanding officer of the Fourth Brigade, of the Governor of Antioquia, and of the department’s Secretary for Government.¹⁴

40. According to the testimony of Carlos Fernando Jaramillo Correa, in November 1997 Jesús María Valle also remarked that he had received an envoy from Carlos Castaño, leader of the paramilitaries at that time, telling him he had to either leave the country or remain silent “so they wouldn’t have to kill him.”¹⁵

41. On February 26, 1998, one day before his death, Dr. Valle gave a free statement in the defamation and slander proceedings filed against him by members of the Army. In his declaration he ratified his allegations about the collusion between the police and paramilitary forces in more than 150 killings carried out in Ituango. He had made the same allegations one month earlier, at a meeting with the Army Fourth Brigade.¹⁶

42. Meanwhile, the risks facing human rights defenders in Colombia, and particularly Jesús María Valle, were a cause for concern to the IACHR and to the international community. In its 1996 Annual Report, the IACHR spoke about attacks on human rights workers, non-mainstream

...continuation

incident; he denounced the massacre at El Aro and the joint actions of Pescadero, Badillo, and Oro Bajo. As a result, the paramilitaries reacted against Jesús María Valle; they even prepared a list of affronts to the National Army, which the Angulo brothers drew up in Ituango; they gathered signatures from all the population and took them to the Army so the military would file suit against him for slander and defamation. Valle thus became an insurmountable hurdle for the actions of the paramilitaries because his voice was loud, public, credible, and accusatory. Finally, on account of that, they decided to kill Jesús María Valle and that was the ultimate motive for this murder.” Testimony given by Carlos Álvaro Bonilla Cifuentes, Regional Prosecutor for Medellín from March to August 1998, transcription of the hearing held before the IACHR on March 2, 2000, during its 106th regular session, in connection with Case 12.050, *Massacre of La Granja*; Annex 14.

¹¹ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

¹² See: I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148.

¹³ Office of the Disciplinary Delegate Attorney for the Defense of Human Rights, case file 008-50035/2000. The proceedings led to the disciplinary responsibility of state agents being established in a ruling dated September 30, 2002; Annex 7.

¹⁴ In a deed dated August 10, 2001, included in proceedings 001-42364/2000, the office of the Attorney General of the Nation ordered the proceedings indefinitely shelved on account of the absence of evidence indicating the disciplinary responsibility of the accused. See: I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 331.

¹⁵ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

¹⁶ Original petition lodged by the GIDH on August 2, 2001; Appendix 3. Resolution assessing the committal proceedings of the accused in case No. 26.017, Office of the Prosecutor General, Office of the Prosecutor Assigned to the Regional Judges of Medellín; Annex 1, page 11.

political parties, locally elected authorities, and trade unionists, and it urged the State to adopt effective measures to protect them.¹⁷ During its on-site visit to Colombia on December 1 to 8, 1997, the Commission was able to meet with Jesús María Valle and to receive information about the situation of human rights defenders in the field. In its report, it noted the increase in the number of threats against, attacks on, and killings of human rights defenders¹⁸ and it recommended that the State take measures to guarantee the security of those individuals.¹⁹

43. In turn, Colombia's Constitutional Court, in a relief judgment of October 20, 1998, declared that there was, in the country, "an unconstitutional state of affairs in the lack of due protection afforded human rights defenders." According to that Court, "the activities of human rights defenders in Colombia are surrounded by countless dangers," which made those defenders "a vulnerable sector of society," and so the State was under an obligation to "emphasize their protection."²⁰

44. This background information indicates that Mr. Jesús María Valle was in a situation of particular vulnerability because of his accusations regarding the – proven – joints actions of paramilitary groups and state agents against the civilian population in Ituango municipality²¹ and because he was singled out as a target by agents of the State. It also shows that in light of the increasing attacks on human rights defenders in Colombia and the impunity they enjoyed, the announced reprisals aimed at silencing him were imminent.

B. The detention of the victims and the extrajudicial killing of Jesús María Valle

45. On February 27, 1998, at around 2 p.m., two armed men entered Jesús María Valle Jaramillo's office located in Medellín city center. The lawyer was, at that time, in a meeting with Mr. Carlos Fernando Jaramillo Correa, and also present at his office was Mrs. Nelly Valle, Jesús María Valle's sister, who served as his secretary.

¹⁷ IACHR, *Annual Report of the IACHR 1996*, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Chapter V, paragraph 57. Similar statements have been made by the Commission on Human Rights and Human Rights Committee of the United Nations in connection with the situation of vulnerability faced by human rights defenders in Colombia. See: UN, Commission on Human Rights, Joint Report of the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolutions 1994/37 and 1994/82, E/CN.4/1995/111, January 16, 1995, paragraphs 41-44; UN, Commission on Human Rights, Report on the Special Rapporteur on the independence of the judiciary and lawyers, Mr. Param Cumaraswamy, E/CN.4/1998/39/Add.2, March 30, 1998, paragraphs 100 and 117; UN, Human Rights Committee, Final Comments of the Human Rights Committee: Colombia, 05/05/97, CCPR/C/79/Add.76. (Concluding Observations/Comments), paragraph 33; UN, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, paragraphs 113 and 159; and UN, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights, E/CN.4/1999/8, March 16, 1999, paragraph 204.

¹⁸ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VII, Recommendation 3.

¹⁹ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter VII, paragraph 5.

²⁰ According to the jurisprudence of the Colombian Constitutional Court, an "unconstitutional state of affairs arises, *inter alia*, when there is a massive and widespread undermining of various constitutional rights that affects a significant number of persons, together with a prolonged failure of the authorities to comply with their obligation of guaranteeing rights"; see: Constitutional Court of Colombia, Judgment SU-559 of 1997, M.P. Eduardo Cifuentes Muñoz. Regarding the concept of an "unconstitutional state of affairs," the following may also be consulted: Juan Manuel Charry Urueña, "Debates constitucionales: Estado de cosas inconstitucional," in: *Ámbito Jurídico*, No. 172, March 7-29, 2005.

²¹ See: I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148.

46. Upon entering the men explained that their presence was part of a guerrilla operation and that someone important was going to visit the building. The testimony given to the IACHR by Mr. Jaramillo Correa indicates that:

The man said that a very important figure was about to arrive [...] and he made us stand facing the wall, because this person did not want to be seen by anyone. Immediately a woman entered the office and proceeded to tie our hands behind our backs with adhesive tape; she told us to lay face-down on the floor and I was about to do so when the woman pushed me; I fell to the ground and one of the men took the laces out of my shoes and used them to tie my feet.²²

47. Once the two men and the woman had finished tying and immobilizing their hostages, they proceeded to execute Jesús María Valle. Mr. Jaramillo Correa's testimony states:

I heard when they told the doctor that the person who was coming didn't want to be seen by anyone and asked him to get on the floor; shortly after, a few minutes later, I felt two dull impacts [...].²³

48. Jesús María Valle was killed by two gunshot wounds to the head from a 38-caliber pistol fitted with a silencer; he died instantly.

49. Although when they arrived his assailants had identified themselves as guerrilla members, immediately after the extrajudicial killing they denied any such affiliation. In his testimony before the IACHR, Carlos Fernando Jaramillo said that the perpetrators looked at Jesús María Valle's body and said:

This man was very important to the armed forces; he'd been giving us a lot of trouble.²⁴

50. These words are also quoted in the justification of the decision adopted by the office of the Prosecutor Assigned to the Regional Judges of Medellín in assessing the committal proceedings against those accused in the preliminary phase of the investigation,²⁵ and they help confirm that Jesús María Valle was seen as an obstacle both by the paramilitaries, led by Carlos Castaño and Salvatore Mancuso, and by members of the security forces, both of which groups were involved in attacks on the civilian population in Ituango municipality. In addition, the office of the regional prosecutor in Medellín believed there was evidence that the crime was planned with the participation of Gen. Alfonso Manosalva Florez, commanding officer of the Army's Fourth Brigade, who had already died at the time of the attack.²⁶

51. After the extrajudicial killing, Mrs. Valle and Mr. Jaramillo Correa were dragged from the office area into the lounge. There, threatened with firearms, they begged for their lives. The

²² Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²³ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²⁴ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²⁵ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution of May 21, 1999, assessing the committal proceedings of case No. 26017; Annex 1, p. 3. Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²⁶ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution of May 21, 1999, assessing the committal proceedings of case No. 26017; Annex 1, pp. 24, 31, and 32.

court proceedings and Mr. Jaramillo Correa's testimony agree that one of the men said, while pointing at his face, "we'll let you live but you haven't seen me," following which the killers left the office.²⁷

52. For two years after the incident, Nelly Valle suffered from the consequences of the physical and psychological mistreatment that had accompanied the trauma of witnessing her brother's murder and from the fear that she and her family would be targeted for reprisals. Similarly, Mr. Carlos Fernando Jaramillo, who gave testimony in the domestic investigation and before the IACHR, was forced into exile on account of the threats he received. Thus, in his testimony he states:

My family and all of us had to move from Ituango, where our properties were [...] we had to abandon them [...] the entire family group has suffered emotionally, and its economic situation has also worsened greatly. In addition, for me, all this time [...] particularly after Dr. Valle's murder, has been an excruciating ordeal; I am practically a ghost struggling to be alive, to be a human being. And so [...] in July 1998 I had to leave for Brazil [...] alone, without my wife, without my children, and [...] move to another country that has accepted me. Back home I had property and fended for myself; all my life I was an independent man. I am not ashamed where I am now, but it is painful: I am a laborer.²⁸

53. To summarize, on February 27, 1998, Carlos Fernando Jaramillo, Nelly Valle, and Jesús María Valle were taken hostage by armed men, and Jesús María Valle was killed while in a state of total defenselessness. The available evidence indicates that the motive for the murder was to silence the allegations made by the human rights defender Jesús María Valle regarding crimes committed in Ituango municipality by paramilitaries in collusion with members of the security forces – actions already subject to a declaration of the State's international responsibility issued by the Inter-American Court of Human Rights.²⁹

C. Subsequent legal proceedings

54. The investigation into the extrajudicial killing of Dr. Jesús María Valle Jaramillo was led by the office of the Prosecutor Assigned to the Regional Judges of Medellín. The activity of the prosecutor's office led to ten persons being named in the investigation in a resolution of accusation dated May 21, 1999,³⁰ which was confirmed by the office of the Prosecutor Assigned to the Bogotá Superior Court on September 9, 1999.

²⁷ The attackers' words are taken verbatim from the resolution assessing the committal proceedings against the accused, Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution of May 21, 1999, assessing the committal proceedings of case No. 26017; Annex 1, p. 3. See also: Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²⁸ Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

²⁹ See: I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148.

³⁰ The following persons were accused: Angulo Osorio, Elkin Darío Granada Echeverri, Carlos Alberto Bedoya Marulanda, Omar Tobón Echeverri, Gilma Patricia Gaviria Palacio, Jorge Eliécer Rodríguez Guzmán, Alvaro Goez Mesa, Carlos Castaño Gil, and Francisco Antonio Angulo Osorio. In the accusation resolution, the prosecutor charged the following persons with the following offenses: (1) for the crimes of aggravated homicide and conformation of illegally armed groups, Messrs. Carlos Castaño Gil, Francisco Antonio Angulo Osorio, and Jaime Angulo Osorio; (2) as accomplices in the crime of aggravated homicide, and for belonging to illegal armed groups, Messrs. Elkin Darío Granada López, Alexander Vallejo Echeverri, Carlos Alberto Bedoya Marulanda, Gilma Patricia Gaviria Palacio, Jorge Eliécer Rodríguez Guzmán, and Alvaro Goez Mesa; and (3) for the crime of aggravated homicide, Mr. Omar Tobón Echeverri. Regional Directorate of Prosecutors' Offices, office of the Prosecutor Assigned to the Regional Judges of Medellín, Proceedings No. 26017, resolution of May 21, 1999; Annex 1.

55. The prosecutor's accusation resolution of May 21, 1999, filed charges against all the accused for the crimes of paramilitary activities and aggravated homicide, and it also ordered a procedural separation of the investigations, ordering a continuation of the investigation of two individuals for the unqualified abduction of Nelly Valle Jaramillo.³¹

56. Although the ten named persons were called on to give statements, three of them (Carlos Castaño Gil and the two civilians finally convicted as the direct perpetrators of the crime) never appeared before the authorities and their arrest warrants were never served, with which the investigation and the trial were carried out without the accused being present. In this regard, it should be noted that, as the IACHR has said in the past,³² arrest warrants issued for well-known leaders of the AUC accused of committing serious crimes were never served in spite of those individuals' daily contacts with the press and, on occasions, with government officials.

57. The failure to execute the arrest warrants was compounded by the context of harassment that surrounded the investigation, as a result of which the case was abandoned by the two prosecutors whose efforts had led to the charges filed against the first ten civilians. Thus, the prosecutors who carried out the first stage of the investigation and named the accused received death threats³³ and two of them were forced into exile.³⁴

³¹ As a result of the procedural separation of case No. 26017, proceedings Nos. 2000 – 0665 and 343431 were opened. In case No. 2000 – 0665, Mr. Nicolás Ángel García Graciano (with an arrest warrant out against him) was named in the proceedings as an absent person; his sentence has been pending since November 20, 2001. In case No. 343431, a new preliminary investigation was conducted in order to identify other possible perpetrators of Dr. Jesús María Valle Jaramillo's killing. During that investigation, a resolution of December 19, 2001, ordered that a series of tests and other investigatory procedures be conducted to identify other perpetrators; as a part of this, the Administrative Security Department (DAS) was commissioned. That investigation was subsequently halted under the terms of Article 326 of the C.P.P, whereby "the Prosecutor General or his appointee shall suspend the preliminary investigation if, after one hundred and eighty (180) days, the identity of the suspect has not been established." It should be noted that the article in question was declared inadmissible by the Constitutional Court in Judgment C-760-01 of July 18, 2001, prepared by Justices Dr. Marco Gerardo Monroy Cabra and Dr. Manuel José Cepeda Espinosa.

³² IACHR, Report 75/01, Case 12.266, *El Aro, Ituango*, Annual Report of the IACHR 2001, paragraph 26.

³³ With respect to the death threats made against the prosecutors leading the investigation, Mr. Bonilla stated that: "following the assassination of Valle, the national government, the Prosecutor General of the Nation, set up a commission – the DAS from Bogotá, the DIJIN from Bogotá, and the CTI from Medellín and Bogotá – to support me in the investigation, as the DIJIN. This was because the police wanted us to conclude it was a guerrilla operation, to make that assumption, but as the investigation advanced we had to abandon that hypothesis. So the DIJIN withdrew, the Bogotá DAS also withdrew, and then we were told that the DAS, which was my judicial police, had given Carlos Castaño's lawyers my full name, my identity, along with confidential details about the case. Because of that, they decided to make the committal proceedings confidential, [...] and then, six months later, a lawyer for the Self-Defense Forces said that my murder was going to take place two days after the confidentiality restrictions were lifted. [...] Finally, to conclude this tale of death, I was taken off the Jesús María Valle case in March 1999 [...] when [...] that same lawyer for Carlos Castaño said that [...] an urban military faction of the Self-Defense Forces had a list of seventeen prosecutors from around the country to be killed, two of whom were from Medellín – me, and the other prosecutor [...]." Testimony given by Carlos Álvaro Bonilla Cifuentes, Regional Prosecutor for Medellín from March to August 1998, transcription of the hearing held before the IACHR on March 2, 2000, during its 106th regular session, in connection with Case 12.050, *La Granja Massacre*; Annex 14.

³⁴ Former prosecutor Bonilla Cifuentes told the IACHR that "the group of prosecutors involved in those investigations, the ones who put all those paramilitary leaders behind bars – we are now all in exile [...]. In my particular case, I sought the protection of the National Police; they sent a security expert who analyzed my case and said that an attack to kill me was imminent, and they suggested bodyguards [...], none of that happened [...]. Faced with that absence of state protection, [...] I went to the United Nations High Commissioner in Colombia, [...] I explained my situation and that of the coordinator [...] Shocked, the very next day he spoke to the Assistant Prosecutor General on our behalf. [...] with enormous sorrow I resigned my duties, which I believed I discharged with ethic and moral excellence, because of threats against my life." Testimony given by Carlos Álvaro Bonilla Cifuentes, Regional Prosecutor for Medellín from March to August 1998, transcription of the hearing held before the IACHR on March 2, 2000, during its 106th regular session, in connection with Case 12.050, *La Granja Massacre*; Annex 14.

58. On March 15, 2001, the Third Criminal Court of the Medellín Specialized Circuit handed down a judgment convicting the three civilians who had been tried *in absentia*. Specifically, *in absentia* convictions were handed down against Álvaro Goez Mesa and Jorge Eliécer Rodríguez Guzmán as joint material perpetrators of the homicide of Jesús María Valle Jaramillo, sentencing them to 40 years in prison (and acquitting them of the charges of paramilitary activities), and Carlos Castaño Gil for the crime of establishing illegal or paramilitary armed groups, sentencing him to 20 years in prison (and acquitting him of the charges of aggravated homicide).³⁵ The court acquitted the seven civilians who had been arrested and ordered their immediate release.

59. On April 6, 2001, the prosecutor lodged an appeal against the acquittal of some of the defendants³⁶ but on July 25, 2001, the Criminal Chamber of the Medellín Superior Court upheld the first-instance ruling. Furthermore, applying the principle of favorability, the court reduced the prison term imposed on Carlos Castaño Gil by the first-instance ruling from 20 to nine years, and with respect to Messrs. Álvaro Goez Mesa and Jorge Eliécer Rodríguez, it reduced their sentences from 40 to 25 years.

60. On January 21, 2005, the Prosecutor General of the Nation assigned one of the investigations created by the separation of proceedings to the National Human Rights Unit; as of the date of this report, however, no information is available about the progress of that investigation or about charges leveled at state agents as a result of the inquiry.

61. The State reported on January 26, 2007, that on September 28, 2006, it arrested Román Ovidio Tapias Rengifo, a former AUC member named in the investigation along with Eucario Macías Mazo and Pedro Emiro Verona Lobo, also former AUC members; to date, however, the prosecution has not issued any statement regarding the likely responsibility of those persons for the offenses.³⁷

62. To summarize, almost nine years after the extrajudicial killing of the human rights defender Jesús María Valle Jaramillo and the abduction of Nelly Valle and Carlos Fernando Jaramillo, three civilians have been convicted *in absentia*, and there are no judicial investigations aimed at establishing the responsibility of any state agents.

VII. CONSIDERATIONS OF LAW

A. Preliminary considerations

1. Liability

63. The Commission believes that the actions of the individuals involved in the incidents described above affecting the enjoyment of such basic rights as life and humane treatment can be attributed to the Colombian State and, consequently, give rise to its responsibility under international law. In this regard, the Inter-American Court has stated that the sole requirement is to demonstrate that State authorities supported or tolerated infringement of rights recognized in the Convention.³⁸

³⁵ Judgment of March 15, 2001; case No. 26017 – 4841 – 0565; Annex 2.

³⁶ Office of the Prosecutor Assigned to the Criminal Judges of the Medellín Specialized Circuit, April 6, 2001; REF: 26017/4841/99000565 / Murder of Dr. Jesús María Valle / Grounds for appeal filing; Annex 3.

³⁷ Specialized Prosecution Office 5, Deed No. 205, December 4, 2006; Annex 4.

³⁸ I/A Court H.R., *The “Panel Blanca” Case (Paniagua Morales et al.)*, Judgment of March 8, 1998, Series C No. 37, paragraph 91.

64. First of all, it should be noted that, as the IACHR said in its Third Report on the Situation of Human Rights in Colombia, the State has played an important role in the development of so-called paramilitary or self-defense groups and allowed them to act with legal protection and legitimacy in the 1970s and 1980s³⁹ and, in general terms, is responsible for their existence and growing strength.⁴⁰

65. These groups, sponsored or sanctioned by sectors of the military, were to a large extent created to combat armed dissident groups.⁴¹ Since their motivation was to combat the insurgency, the paramilitaries established ties with the Colombian Army and, over the space of more than two decades, these ties grew stronger. Finally, on May 25, 1989, the Supreme Court of Justice declared the decree to be unconstitutional, thus eliminating the legal basis for their relationship with national defense; after this the State adopted a series of legislative measures criminalizing these groups' activities and those of their supporters.⁴² In spite of this, the State did little to dismantle the structure it had created and encouraged, particularly when the groups conducted counterinsurgency activities; in fact, the ties remained in place at several levels, with the paramilitaries being asked or allowed to carry out certain illegal acts on the understanding that they would not be investigated, prosecuted, or punished.⁴³ The fact that these groups were tolerated by certain branches of the army has been denounced by agencies of the State itself.⁴⁴

66. This situation has led both the Commission and the Court to rule, in establishing a state's international responsibility under the American Convention, that in cases in which paramilitaries and members of the armed forces conduct joint operations with the knowledge of superior officers, or when paramilitaries act with the acquiescence or collaboration of the security forces, those members of paramilitary groups are to be considered state agents.⁴⁵

67. During the processing of this case by the Commission, the State argued that in light of the decisions reached by the regular and disciplinary courts, attributing the crime against Jesús María Valle to civilians with paramilitary ties and finding no grounds to investigate the participation of state agents, it could not be assigned any responsibility in the alleged violations. It also stated

³⁹ Decree 3398 of 1965 (the National Defense Law) and Law 48 of 1968 authorized the creation of civilian patrols that, with the authorization of the Ministry of Defense, received weapons of types restricted to the State's security forces. Article 25 of Decree 3398 of 1965 stipulated that: "All Colombian men and women not called upon to perform mandatory military service may be used by the government in activities and efforts intended to restore normal conditions."

⁴⁰ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter IV, paragraph 236.

⁴¹ See: IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 17-19.

⁴² Decrees 1194 of June 8, 1989, and 2266 of 1991.

⁴³ See: IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter I, paragraphs 17-19. See also: *Report of the United Nations High Commission for Human Rights on the Office in Colombia*, April 2000, paragraph 30, which states that: "The Office has received testimony concerning the direct involvement of members of the armed forces [...] in some cases the residents of the communities affected recognized members of the armed forces forming part of the paramilitary contingents that carried out the massacres. Also, the law enforcement agencies adopted an attitude of ignoring which undoubtedly enabled the paramilitaries to carry out their mission of extermination."

⁴⁴ IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter IV, paragraphs 237-239.

⁴⁵ See: Report 37/00, *Annual Report of the IACHR 1999*, Vol. I, paragraph 64. See also: I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134; I/A Court H.R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140; I/A Court H.R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148.

that it was inadmissible to assume that its obligations as guarantor extended to situations such as the one described in this case.

68. The Commission believes it is clear that, as the Inter-American Court has ruled, a State cannot be held responsible for a violation of human rights committed by private persons under its jurisdiction. Thus, the *erga omnes* nature of states' treaty-based guarantee obligations does not imply their unlimited responsibility for all acts or deeds of individuals, because their obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission, or deed of an individual has the legal consequence of violating certain human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the observance of these guarantee obligations must be considered.⁴⁶

69. In addition, during the processing of this case by the Commission, the State maintained that it had adopted measures to counteract the activities of self-defense and paramilitary groups and that its authorities were aware of the risk of paramilitary group activities affecting the civilian population and, in particular, a human rights defender who had denounced their criminal actions carried out in conjunction with state agents.

70. However, those measures did not translate into the specific and effective dismantling of the risk that the State itself had helped create by encouraging the establishment of such groups. The State objectively created a situation of risk for its inhabitants and it did not take all the necessary or adequate steps to prevent them from continuing to commit crimes such as those of the instant case. As the Inter-American Court has ruled, the declaration of the illegality of these groups should have translated into the adoption of sufficient and effective measures to avoid the consequences of the danger that had been created, and, while it subsists, this dangerous situation accentuates the State's special obligations of prevention and protection in the zones where the paramilitary groups were present, as well as the obligation to investigate diligently, the acts or omissions of State agents and individuals who attack the civilian population.⁴⁷

71. The lack of effectiveness in dismantling the paramilitary structures can be seen, *inter alia*, from an examination of the numerous human rights violations committed by paramilitary groups at the time of the facts and over the following years, acting on their own or in connivance or collaboration with state agents, *vis-à-vis* the high rates of impunity surrounding this type of incident. Both the Inter-American Commission and the United Nations High Commissioner for Human Rights⁴⁸ have made repeated statements about the high level of impunity enjoyed by human rights violations

⁴⁶ I/A Court H.R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 123.

⁴⁷ I/A Court H.R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 126.

⁴⁸ See: *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2005/10, February 28, 2005, paragraph 92; *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2004/13, February 17, 2004, paragraphs 26, 27, 28, and 77; *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia in 2002*, E/CN.4/2003/13, February 24, 2003, paragraph 77; *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2002/17, February 28, 2002, paragraphs 211, 212, and 365; *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia in 2000*, E/CN.4/2001/15, March 20, 2001, paragraphs 57, 142, 206, and 254; and *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, E/CN.4/2000/11, March 9, 2000, paragraphs 27, 47, 146, and 173.

because of the failure of criminal proceedings and disciplinary investigations involving members of the security forces and paramilitaries to identify responsibilities and impose the applicable sanctions.

72. The Commission believes that over and above assessing the evidence regarding exactly who murdered Jesús María Valle, the Court should apply the above-cited criteria from its jurisprudence in cases involving paramilitary activity, whereby responsibility for the actions of the members of the paramilitary group in this specific case falls to the State in that it did not diligently adopt the measures necessary to protect the civilian population in light of the circumstances described.⁴⁹ Consequently, the Commission asks the Court to rule that the Colombian State is liable both for the violations of the American Convention committed through the actions and omissions of its own agents and for those committed by the private citizens involved in the death of Jesús María Valle Jaramillo and the acts that preceded that crime.

2. Due protection of human rights defenders

73. Both the Commission and the Inter-American Court have determined that serious human rights violations committed against individuals noted for their work in defending the human rights of others have the direct effect of intimidating other efforts to assert rights or report violations.⁵⁰ Attacks on certain leaders can produce the immediate paralysis or almost total slowdown of such processes, because human rights defenders may be forced to abandon the areas where they work, move house, change their working habits, or, in some cases, flee the country. In addition to those direct effects, the Commission has learned of collateral effects on other defenders who, while not affected to the same extent, experience fear upon seeing their colleagues' situations and the ease with which similar arbitrary actions could be taken against them.

74. This same intimidating impact is felt by the victims of human rights violations who, on account of their fears, refuse to file complaints, to meet with threatened defenders, or to visit the offices of organizations that been threatened or attacked. The assailants seek to create widespread fear to avoid social censure and public denunciations, not only from the instigators of such processes, but from any person in a position to do so. With this, the vulnerizing effects of such actions are perversely extended throughout society, affecting human rights defenders most severely and victimizing anew those individuals who have already suffered violations, thwarting them in their efforts to secure truth and justice. In addition, in some states these violations are systematic and interconnected; this creates a general context of danger for the task of defending human rights, which increases with the state's failure to provide protection or investigate violations.

75. Threats are intimidatory notifications of the possible commission of an act intended to produce serious pain – for example, torture, the denial of freedom, abduction, rape, or death. They are intended to scare human rights defenders and their families and to coerce them into abandoning certain inquiries or claims. The Commission notes that human rights defenders are targeted by threats when they make public accusations, when they investigate violations committed

⁴⁹ As the Court has stated: "It is true that there is no evidence before the Court to show that the State was directly involved in the perpetration the massacre or that there was a connection between the members of the Army and the paramilitary groups or a delegation of public functions from the Army to such groups. However, the responsibility for the acts of the members of the paramilitary group in this case in particular can be attributed to the State, to the extent that the latter did not adopt diligently the necessary measures to protect the civilian population in function of the circumstances that have been described. For the reasons set out in the previous paragraphs, the Court concludes that the State did not comply with its obligation to ensure the human rights embodied in Articles 4, 5 and 7 of the Convention, because it did not comply with its prevention and protection obligations to the detriment of those who disappeared and were deprived of life in this case." I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 140.

⁵⁰ See: I/A Court H. R., *Case of Huilca Tecse vs. Peru*, Judgment of March 3, 2005, Series C No. 121, paragraph 67 *et seq.*

by state agents, when they defend the rights of a specific type of vulnerable individual or groups of persons, when they participate in the defense of individuals accused of participating in armed conflicts, or when they question the actions of state agents. People who defend trade unionists and indigenous communities and those who participate in land ownership disputes have also been a constant target of threats.

76. The work of human rights defenders is also curtailed by discourse that discredits their efforts and that creates or exacerbates an unfavorable climate for the defense of basic rights.

77. The Commission has noted that in some of the region's nations, including Colombia, human rights defenders have seen their defense efforts undermined by statements that are dismissive of their endeavors. In many public declarations, state agents have called the work of human rights defenders illegal, or rights advocates have been publicly called criminals simply for defending, at trial, individuals accused of committing specific crimes.

78. Relations between states and human rights defenders must unfold within a peaceful framework of respect and deference, at all times favoring dialogue, the recognition of pluralism, and the broadest possible cultivation of tolerance.

79. As stated by the office of the United Nations High Commissioner for Human Rights in Colombia, "the maintenance of that framework is particularly necessary in countries with high levels of polarization, such as Colombia, where widespread violence and the degradation of the internal armed conflict have been, for many years now, making victims out of human rights defenders."⁵¹

80. In turn, the Secretary-General of the United Nations has said that: "Human rights defenders are at the core of the human rights movement the world over. They work at democratic transformation in order to increase the participation of people in the decision-making that shapes their lives. Human rights defenders contribute to the improvement of social, political and economical conditions, the reduction of social and political tensions, the building-up of a peaceful environment, domestically and internationally, and the nurturing of national and international awareness of human rights. They form the base that regional and international human rights organizations and mechanisms, including those within the United Nations, build upon in the promotion and protection of human rights."⁵²

81. In turn, the Court has ruled that: "States must provide effective and adequate guarantees for human rights advocates to freely conduct their activities, and they should pay special attention to actions that limit or obstruct their work."⁵³

82. Similarly, the importance of the work performed by human rights defenders has been noted on several occasions within the political framework of the OAS, in resolutions recognizing the

⁵¹ Office in Colombia of the High Commissioner for Human Rights, press release of September 17, 2003, "The importance of Protecting and Defending Human Rights Defenders," available at <http://www.hchr.org.co/publico/comunicados/2003/comunicados2003.php3?cod=27&cat=16> as of June 10, 2005.

⁵² A/55/292, August 11, 2000. *Report of the United Nations Secretary-General to the General Assembly*, fifty-fifth session.

⁵³ I/A Court H. R., *Lysias Fleury Case*, Provisional Measures, Order of the Court of December 2, 2003, 10th "considering" clause.

influence of their efforts on eradicating human rights violations, upholding those rights, and safeguarding democracy.⁵⁴

B. Violation of the right to personal liberty

83. The American Convention guarantees all individuals the right to personal liberty. Article 7 of that instrument provides as follows:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

84. The Inter-American Court has ruled that that protection of liberty can safeguard “both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection.”⁵⁵

85. The Inter-American Court has also ruled that sections (2) and (3) of Article 7 place limits on state power that expressly prohibit both illegal and arbitrary arrests.⁵⁶

86. Jesús María Valle, together with his sister Nelly Valle and Mr. Carlos Fernando Jaramillo, was held by force in his office by armed men whose aim was to execute the human rights defender.

⁵⁴ In this regard, see: Resolution AG/RES. 1044 of June 8, 1990; Resolution AG/RES. 1671 (XXIX-O-99); Resolution AG/RES. 1818 of June 5, 2001; AG/RES. 1842, adopted in the year 2002; and AG/RES. 1920 (XXXIII-O/03), of June 10, 2003.

⁵⁵ The Inter-American Court has ruled that according to “the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect).” I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 77; I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paragraph 72; and I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 141.

⁵⁶ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 78; I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 139; I/A Court H. R., *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, paragraph 85.

87. The detention of Jesús María Valle, Nelly Valle, and Carlos Fernando Jaramillo constitutes a violation of Article 7(2) of the Convention, which requires that no person be denied freedom except under the conditions established by domestic law.

88. The Commission asks the Court to declare that the circumstances in which Jesús María Valle, Nelly Valle, and Carlos Fernando Jaramillo were denied their freedom violate the right to personal liberty and to freedom from arbitrary arrest enshrined in Article 7(2) of the American Convention, in conjunction with Article 1(1) thereof.

C. Violation of the right to humane treatment

89. The Colombian State is responsible for violating the right to personal integrity of Jesús María Valle, Nelly Valle, and Carlos Fernando Jaramillo Correa, and of their right of freedom from cruel, inhuman, and degrading treatment, in accordance with Article 5, sections (1) and (2), of the American Convention, whereby:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

90. On February 27, 1998, Jesús María Valle Jaramillo, Nelly Valle and Carlos Fernando Jaramillo Correa were detained and overpowered, and their feet and hands were tied. The victims were threatened with death while their captors brandished their weapons and fitted a silencer.⁵⁷

91. It is therefore important to recall that an illegal and arbitrary detention in and of itself places the victim in a situation of vulnerability, creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated.⁵⁸

92. The Inter-American Court has ruled that, irrespective of its consummation, in some cases the threat of an action prohibited under Article 5 of the American Convention may constitute the violation of the right to humane treatment enshrined therein.⁵⁹ In the case at hand, the

⁵⁷ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution assessing the committal proceedings against the accused in case No. 26017; Annex 1, p. 6. See also: Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

⁵⁸ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 96, quoting I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 150; I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paragraph 90; I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 166. In this regard, see also: ECHR, *Case of Ireland v. the United Kingdom*, Judgment of January 18, 1978, Series A No. 25, paragraph 167.

⁵⁹ I/A Court H. R., *Case of the "Juvenile Reeducation Institute,"* Judgment of September 2, 2004, Series C No. 112, paragraph 167. See also: interpretation of the European Court of Human Rights of Article 3 of the European Convention on Human Rights, in ECHR, *Campbell and Cosans*, Judgment of February 25, 1982, Series A, No. 48, paragraph 26, quoted by the I/A Court H. R. in *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 165. Because of this, reference must be made to the Inter-American Convention to Prevent and Punish Torture, even though at the time of the facts it was not yet in force in Colombia, and to the definition of torture set out in Article 2 thereof, whereby it can be considered "any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose." Inter-American Convention to Prevent and Punish Torture, adopted in Cartagena de Indias, Colombia, on December 9, 1985, at the 15th regular session of the OAS General Assembly, ratified by the Republic of Colombia on January 19, 1999.

circumstances that preceded the extrajudicial killing of Jesús María Valle did in fact constitute a real and immediate threat that his life would be taken arbitrarily and violently which, in and of itself, constitutes inhumane treatment under Article 5(2) of the American Convention with respect to the victim and thus gives rise to the State's international responsibility. The same applies to Mr. Carlos Fernando Jaramillo Correa and Mrs. Nelly Valle, who not only witnessed the murder of a friend and relative, respectively, but who were also overpowered, dragged from one place to another, and threatened with death – in Mr. Jaramillo Correa's case, with a gun in his face – prior to being abandoned in the office.⁶⁰

93. In this regard, the Inter-American Court has ruled that "it is inherent in human nature that any persons subjected to violence and ill-treatment [...] (unlawful detention, cruel, inhuman and degrading treatment, and death) experience corporal pain and deep suffering and anguish."⁶¹

94. Additionally, in Nelly Valle's case, as the Inter-American Court has stated, there were violations of the right to life capable of generating, among the victim's next-of-kin, "suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate,"⁶² under the terms of Article 5(2).

95. To reach this conclusion in previous cases, the Court has given consideration to the closeness of the family ties, the particular circumstances of the relationship with the victim, the extent to which the relative witnessed the facts, the relative's level of involvement in the search for justice, and the State's reply to the formalities pursued.⁶³

96. Furthermore, the Court has in the past stated that it is reasonable to conclude that the suffering of a victim extends to the closest members of his or her family, particularly those who had strong ties of affection with the victim.⁶⁴

97. Consequently, the Commission asks the Court to declare that the Colombian State is responsible for violating the right to humane treatment enshrined in Article 5(1) and (2) of the American Convention with respect to Jesús María Valle Jaramillo, Nelly Valle, and Carlos Fernando Jaramillo Correa, in conjunction with guarantee obligation set out in Article 1(1) thereof.

D. Violation of the right to life

98. Article 4(1) of the American Convention on Human Rights stipulates that:

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

⁶⁰ Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution assessing the committal proceedings against the accused in case No. 26017; Annex 1, p. 6. See also: Testimony given by Carlos Fernando Jaramillo Correa, CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*; Annex 13.

⁶¹ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 248.

⁶² I/A Court H. R., *Blake Case*, Judgment of January 24, 1998, Series C No. 36, paragraph 114.

⁶³ I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraphs 162 and 163.

⁶⁴ I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 160; I/A Court H. R., *Case of the "Juvenile Reeducation Institute"*, Judgment of September 2, 2004, Series C No. 112, paragraph 191; I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 249; I/A Court H. R., *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, paragraph 162; I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, paragraph 98.

99. The right to life is of particular importance because it is the *sine qua non* for all the other rights. The right to life is of fundamental importance within the American Convention's system of guarantees, with Article 27(2) stipulating that it is one of those rights that cannot be suspended at times of war, public danger, or other emergencies threatening the independence or security of the states party thereto. The Inter-American Court has ruled that:

The right to life plays a fundamental role in the American Convention as it is the essential corollary for the exercise of the other rights.⁶⁵ When the right to life is not respected, all other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.⁶⁶ Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation),⁶⁷ under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction. This active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must safeguard security, whether they are the police forces or the armed forces.⁶⁸ Therefore, States must adopt all necessary measures, not only to prevent and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.⁶⁹

100. The Court has also recognized that the State's international responsibility can arise from human rights violations committed by third parties or private citizens but attributed to the State, as part of its official obligation to ensure respect for rights among such individuals. In this regard, the Inter-American Court has stated that:

That international responsibility may also arise from the actions of private citizens that, *prima facie*, are not attributable to the State. [The *erga omnes* obligations of upholding and ensuring the observance of the protection standards incumbent on states parties to the Convention] have effects that go beyond the relationship between its agents and the persons under its jurisdiction, in that they also arise in the State's positive obligation of adopting all the measures necessary to ensure the effective protection of human rights in relations between individuals. The allocation of responsibility to the State for the actions of private citizens may take place in cases in which the State fails to observe, through the actions or omissions of its

⁶⁵ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153.

⁶⁶ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153, quoting United Nations Human Rights Committee, General Comment 6/1982, paragraph 3, in: *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.No.Doc.HRI/GEN/1/Rev 1 en 6 (1994); United Nations Human Rights Committee, General Comment 14/1984, paragraph 1, in: *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.No.Doc.HRI/GEN/1/Rev 1 en 18 (1994); I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003, Series C No. 101, paragraph 152; I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 110; and I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 144.

⁶⁷ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153, quoting I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003, Series C No. 101, paragraph 153; I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, paragraph 111; and I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 110.

⁶⁸ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153, quoting U.No.Doc.CCPR/C/SR.443, paragraph 55.

⁶⁹ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, *supra*, paragraph 153, quoting *Case of Myrna Mack Chang*, *supra*, paragraph 153; *Case of Juan Humberto Sánchez*, *supra*, paragraph 110; *Bámaca Velásquez Case*, *supra*, paragraph 172; United Nations Human Rights Committee, General Comment No. 6 (16th session, 1982), paragraph 3, *supra*; and United Nations Human Rights Committee, *María Fanny Suárez de Guerrero v. Colombia*, Communication No. R.11/45 (February 5, 1979), U.N.Doc. Supp. No. 40 (A/37/40) en 137 (1982), p. 137.

agents when in the position of guarantors, those *erga omnes* obligations set out in Articles 1.1 and 2 of the Convention.⁷⁰

Further to that parameter for the allocation of responsibility, the Court has recently ruled that:

A State cannot be held responsible for any violation of human rights committed by private persons under its jurisdiction. Thus, the *erga omnes* nature of the treaty-based guarantee obligations of States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating certain human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the observance of these guarantee obligations must be considered.⁷¹

101. The situation described in the factual background section of this application arose within the framework of a general pattern of violence against human rights defenders in Colombia that was thoroughly documented by local and international nongovernmental organizations and regarding which alerts were issued by international agencies. As noted previously, the authorities were aware of this risk and took steps to address it. However, those measures were insufficient to eradicate the situation of violence and to prevent the continuation of killings and other violent acts committed against defenders. Neither were those measures effective in eradicating the impunity that underlies those cases. In this regard, the Commission has said that:

Given the fact that [this violation] is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to [...] violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.⁷²

102. The authorities themselves declared that the serious situation of inadequate protection faced by human rights defenders in Colombia heightened the State's duty of providing protection (Constitutional Court, Judgment T590/98). In the case at hand, it was reasonable to assume that the risk faced by Jesús María Valle Jaramillo warranted the adoption, by the State, of measures in accordance with that elevated duty of protection. Primarily, the historical situation of violence against defenders in the country worsened, particularly in the department of Antioquia, during the months prior to the murder of Mr. Valle Jaramillo.⁷³

103. The organization led by Mr. Valle Jaramillo had been particularly affected by the actions of armed agents: three directors of the organization had been killed previously and those

⁷⁰ I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 111.

⁷¹ I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraphs 123 and 124.

⁷² IACHR, Report No. 54/01 (Merits), Case 12.051, *Maria Da Penha Maia Fernandes*, Brazil, April 16, 2001, paragraph 56.

⁷³ For example, on June 24, 1997, a bomb destroyed the offices and records of the Medellín branch of the Association of Relatives of the Disappeared (ASFADDES). See: I/A Court H.R., *Matter of Álvarez et al.*, Order of the Court of November 11, 1997, Series E, 1997.

crimes remained unpunished. The lawyer Jesús María Valle Jaramillo became the fourth director of that organization to be killed as a result of its activities.⁷⁴ According to reports from national and international organizations, since its creation in 1978, more than 30 members of the Permanent Committee for the Defense of Human Rights have been killed in various parts of the country.⁷⁵ In spite of this history of violence against the organization, the authorities implemented no protective measures for its members or installations, which facilitated the actions of those who, in broad daylight, entered the office of its director, the lawyer Jesús María Valle, and killed him.

104. The recent public accusations Valle had made regarding the actions of paramilitary groups in collusion with state agents made him a target for reprisals from those who saw him as an obstacle to the continuation of their criminal activities.

105. The Commission believes that the risks facing Jesús María Valle were public and evident, and on account of that the State was obliged to adopt special measures of prevention and protection. However, those measures were not put in place in a reasonable fashion. Although the State drew up policies intended to mitigate the risks faced by human rights defenders, in this specific case none of those policies was implemented on a reasonable or timely basis. In consideration of that, the Commission asks the Court to declare that the State did fail in its obligation of adopting measures to prevent the attack on Mr. Jesús María Valle Jaramillo's, thus violating Article 4 of the American Convention, in conjunction with Article 1(1) thereof.

E. Violation of the right to freedom of movement and residence

106. Sections 1 and 4 of Article 22 of the American Convention provide that:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

107. The Court has ruled that the right to freedom of movement and residence is an indispensable condition for the free development of the person⁷⁶ and that it entails, *inter alia*, the right of those legally within the borders of a state to travel freely within that state and to choose their place of residence.⁷⁷

108. Similarly, in an evolutionary interpretation of Article 22 of the Convention, based on the applicable interpretative rules and in compliance with Article 29(b) thereof, which prohibits the

⁷⁴ Prior to the murder of Jesús María Valle, the human rights defenders Héctor Abad Gómez, Leonardo Betancourt, and Luis Fernando Vélez had been killed.

⁷⁵ European Parliament, resolution regarding the murder in Colombia of Jesús María Valle Jaramillo presented under Article 47(1) of the Rules of Procedure, March 12, 1998.

⁷⁶ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 206; I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 168; I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, paragraph 110; and I/A Court H. R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111, paragraph 115.

⁷⁷ I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 168; I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, paragraph 110; and I/A Court H. R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111, paragraph 115. In this same regard, see also: United Nations Human Rights Committee, General Comment No. 27 of November 2, 1999, paragraphs 1, 4, 5, and 19.

restrictive interpretation of rights, the Court has ruled that Article 22(1) of the Convention protects the right of freedom from forced displacement within the territory of its states parties.⁷⁸

109. Because of the complexity of the internal displacement phenomenon and the broad range of human rights that it affects or endangers, and in consideration of the circumstances of particular vulnerability and defenselessness generally faced by displaced persons, their situation may be considered a *de facto* case of inadequate protection. Under the terms of the American Convention, that situation requires states to provide them with special treatment and adopt positive measures to counteract the effects of their weakness, vulnerability, and defenselessness, including with respect to the actions and deeds of other private citizens.⁷⁹

110. The Constitutional Court of Colombia has spoken about the vulnerability facing displaced persons in the following terms:

Given the characteristics of internal displacement, persons [...] who are forced to “suddenly abandon their places of residence and normal economic activities, and to migrate to another location within the nation’s borders” to flee the violence generated by the internal armed conflict and by the systematic flouting of human rights and international humanitarian law, are exposed to a much higher level of vulnerability, which implies a serious, massive, and systematic violation of their basic rights and, for that same reason, warrants that particular attention be paid by the authorities. Persons displaced by violence are in a situation of weakness, as a result of which they deserve special treatment from the State.⁸⁰

111. The United Nations Human Rights Committee analyzed the case of a Colombian civil rights defender who was forced into exile in the United Kingdom after receiving numerous death threats and surviving an attack on his life.⁸¹ At the time that the Committee adopted its decision, ten years had passed since that attack, and the result of the criminal investigation in Colombia was still unknown. As regards the victim’s claims that his right of freedom of movement and residence had been violated, the Committee stated that:

Considering the Committee’s view that the right to security of person (art. 9, para. 1) was violated and that there were no effective domestic remedies allowing the author to return from involuntary exile in safety, the Committee concludes that the State party has not ensured to the author his right to remain in, return to and reside in his own country. Paragraphs 1 and 4 of article 12 of the Covenant were therefore violated.⁸²

112. Among the pernicious effects of forced internal displacement are the loss of land and home, marginalization, serious psychological repercussions, unemployment, poverty and falling living standards, increased disease and mortality, the loss of access to commonly-held property, food insecurity, and social disconnection.⁸³

⁷⁸ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 207; I/A Court H. R., *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 188.

⁷⁹ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 210; I/A Court H. R., *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 179.

⁸⁰ Judgment T025 of January 22, 2004, issued by the Third Review Chamber of the Constitutional Court (annexes to the submission responding to the filing, Vol. III, Annex 30, pp. 4363 to 4747hh).

⁸¹ UN Human Rights Committee, Communication No. 859/1999: Colombia, April 15, 2002.

⁸² UN Human Rights Committee, Communication No. 859/1999: Colombia, April 15, 2002, paragraph 7.4.

⁸³ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 213; I/A Court H. R., *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 175.

113. In the case at hand, as a result of the death threats received after the events of February 27, 1998, because of his involvement as a witness in the investigations and legal proceedings, and because the State had placed him in a situation of vulnerability and inadequate protection, Mr. Carlos Fernando Jaramillo Correa and his family were forced to relocate within Colombia and, later, into exile in another country. Consequently, the Commission asks the Court to declare that his right to freedom of movement and residence, as enshrined in Article 22 of the Convention in conjunction with Article 1(1) thereof, was violated.

F. Violation of the right to a fair trial and to judicial protection

114. The State has failed to meet its obligation of conducting an exhaustive, effective, and timely investigation of the facts of this case and of prosecuting and punishing all those responsible for the extrajudicial killing of the human rights defender Jesús María Valle Jaramillo and his detention and subjection, along with his sister Nelly Valle and Mr. Carlos Jaramillo, to cruel, inhuman, and degrading treatment, as required by Articles 8 and 25 of the American Convention.

115. Article 8 of the Convention provides as follows:

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.

116. In turn, Article 25 of the Convention provides that:

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.

117. Article 1(1) of the American Convention, in turn, reads:

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.

118. These articles establish the State's obligation of providing access to justice with guarantees of legality, independence, and impartiality, within a reasonable period, together with the general obligation of providing effective judicial recourse following the violation of basic rights, including the principle that procedural instruments and mechanisms are to be effective.

119. As the Inter-American Court of Human Rights has stated:

Article 25, read in conjunction with Article 1(1), requires the State to guarantee all persons access to the administration of justice and, in particular, to prompt and simple recourse for having the persons responsible for human rights violations judged, and to obtain reparations for the harm suffered. As the Court has said, "Article 25 is one of the basic pillars, not only of

the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention."⁸⁴

120. Thus, the content of Article 25 is closely related to that of Article 8(1), which sets out the right of all persons to be heard, with all due guarantees and within a reasonable time, by an independent and impartial tribunal or judge, and ensures the next-of-kin of victims that the deaths of their loved ones shall be investigated effectively by the authorities, that the guilty shall be prosecuted, that the relevant punishments shall be imposed, and that redress shall be made for the harm suffered.⁸⁵ The Inter-American Court of Human Rights has also said that:

Under the American Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1.1).⁸⁶

121. Inter-American jurisprudence has established that once a publicly prosecutable crime has been committed, the State is obliged to pursue and promote the criminal proceedings to their final consequences⁸⁷ and that, in such cases, this is the best way to clear up incidents, prosecute the guilty, and impose the applicable punishments, in addition to enabling other forms of redress.

122. In the case at hand, on May 21, 1999, the prosecutor assigned to Medellín named and ordered the arrest of all the suspects against whom charges were filed for aggravated homicide and creation of illegally armed groups, and ordered the continuation of the investigation into the crime of simple kidnapping committed against Carlos Fernando Jaramillo and Nelly Valle Jaramillo, who were with Jesús María Valle Jaramillo at the time of the incident.

123. The prosecutors investigating the case were forced to abandon it, and some were forced to seek refuge abroad on account of the death threats made against them during the investigation.

124. When the investigation was formally opened, the prosecution service called for ten individuals to be interrogated, of whom only seven were actually questioned because they were already in custody; the other three, Carlos Castaño Gil and two of the physical perpetrators of the crime, never appeared before the authorities nor were the warrants for their arrest ever served.

125. On March 15, 2001, the Third Criminal Court of the Medellín Specialized Circuit dismissed the evidence and ordered the acquittal of almost all the accused, handing down convictions against only three of them. Two of the accused were convicted *in absentia*, as the joint material perpetrators of Jesús María Valle Jaramillo's homicide, to a prison term of 40 years, while the third, Carlos Castaño Gil, was sentenced *in absentia*, for the crime of established illegal or paramilitary armed groups, to 20 years in prison. The Third Court acquitted the other accused and Carlos Castaño Gil of the charges of planning an aggravated homicide and of the allegations of

⁸⁴ I/A Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Series C No. 79, paragraph 52; and I/A Court H. R., *Ivcher Bronstein Case*, Judgment of February 6, 2001, Series C No. 74, paragraph 135.

⁸⁵ I/A Court H. R., *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, paragraph 130.

⁸⁶ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 287.

⁸⁷ I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006. Series C No. 147; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140. See also: Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, Annual Report of the IACHR 1997.

belonging to illegal or paramilitary armed groups. On April 6, 2001, the assigned prosecutor appealed the decision⁸⁸ to acquit seven of the accused, who were also immediately released by the Criminal Chamber of the Superior Court of Medellín. On July 25, 2001, the Criminal Chamber of the Superior Court of Medellín upheld the first-instance decision and, applying the principle of favorability, the court reduced the prison term imposed on Carlos Castaño Gil by the first-instance court from 20 to nine years, and with respect to Messrs. Álvaro Goetz Mesa and Jorge Eliécer Rodríguez, it reduced their sentences from 40 to 25 years. To date, however, none of the arrest warrants have been served, and none of the guilty have been punished. The paramilitary group members were tried and convicted *in absentia*.

126. The State's claim that it is meeting its treaty-based obligation of conducting a serious investigation of the murder within a reasonable time must be addressed. In this regard, it should be noted that the conviction of three civilians for the killing, including AUC leader Carlos Castaño Gil, represents a significant element in analyzing the operation of the internal mechanisms in the present case. Beyond its formal significance, however, the Commission must measure the extent to which those convictions translate into an effective remedy. Thus, the IACHR notes that the individuals convicted *in absentia* have not been arrested, that the State has furnished no specific information on the efforts made in that direction, and the context – which is common knowledge – indicates that there is little likelihood of making those convictions a concrete reality and thus providing an effective remedy.⁸⁹ In that regard, the Inter-American Court has ruled that if a state has pursued investigations and although some of them have ended with convictions, impunity still exists as long as the entire truth of the matter has not been established and as long as some of the responsibilities therein have not been identified.⁹⁰

127. In the case at hand, the Commission notes that the investigations and formalities carried out have lasted for more than eight years without all the guilty being prosecuted, particularly the state agents, and without the civilians convicted *in absentia* serving their sentences. The Commission has, on repeated occasions, stated that:

The obligation of investigating and punishing all actions that constitute violations of Convention-protected rights requires that punishment be meted out not only to the physical perpetrators of human rights violations, but also the individuals who mastermind such offenses.⁹¹

128. The obligation of investigating and punishing human rights violations must be assumed by the State with all seriousness. In this regard, the Court has said that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true

⁸⁸ Office of the Prosecutor General, Office of the Prosecutor Assigned to the Criminal Judges of the Medellín Specialized Circuit, April 6, 2001; REF: 26017/4841/99000565 / Murder of Dr. Jesús María Valle / Grounds for appeal filing; Annex 3.

⁸⁹ See also: Report No. 55/97, paragraph 392; Report 57/00, *La Granja, Ituango*, IACHR Annual Report 2000, paragraph 40.

⁹⁰ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 320.

⁹¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, paragraph 109.

regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.⁹²

129. The IACHR has also said that a state's obligation of investigating and punishing applies not only to those individuals involved in violating the rights of persons who dedicate their lives to the defense of human rights; on the contrary, the obligation of investigating and punishing also extends to all persons involved in planning violations of the human rights of human rights defenders.⁹³

130. Further to this, in January 2005, seven years after Mr. Jesús María Valle Jaramillo's death, according to information furnished by the Colombian State in a written submission dated December 29, 2005, the Prosecutor General of the Nation assigned one of the cases created by the 1999 separation of proceedings to the National Human Rights Unit; as of the date of this report, however, no information was available regarding the formalities pursued by that investigation or about any real progress made. The jurisprudence of the Inter-American Court is unequivocal regarding the State's duty of investigating extrajudicial killings and about its duty to commence, on an *ex officio* basis and without delay, a serious, impartial, and effective investigation, and not as a mere formality preordained to be ineffective.⁹⁴

131. The delay in completing investigations and in executing arrest warrants already issued help perpetuate the acts of violence and intimidation suffered by witnesses and prosecutors involved in clearing up these incidents. It can be said that the failure to clarify these cases not only violates the right to justice and redress of the victims and their next-of-kin, but that it also helps justify the commission of acts intended to dissuade people from seeking justice.

132. Nothing in the case file suggests that the delay seen to day can be justified by the complexity of the violations reported. Moreover, it is reasonable to conclude that the delay undermines the chances of casting light on the very grave violations reported in this case. As a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation.

133. The State is subject to the duty of preventing and combating impunity which, according to the definition adopted by the Inter-American Court, is "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."⁹⁵ The Inter-American Court has also ruled that it is an obligation of

⁹² I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 177. Similarly, the Constitutional Court of Colombia has stated that: "International law has said that for the effective protection of human rights, it is insufficient for the victims and injured parties to be solely given indemnification for the damages suffered; this is because truth and justice are necessary if a society is to avoid repeating those situations that lead to grave human rights violations, and in addition, because recognizing the inherent dignity and equal and inalienable rights of all human beings requires that the judicial remedies designed by states be geared toward comprehensive redress for victims and injured parties, including economic indemnification and access to justice to establish the truth about what happened and to seek, through institutional channels, the just punishment of the guilty"; Judgment C-228/02 of April 3, 2002.

⁹³ *Ibid.*

⁹⁴ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 296; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 143; I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 223; and I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, paragraph 146.

⁹⁵ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 299; I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 237;

the State to combat impunity through all available legal means, since impunity fosters the chronic repetition of human rights violations and creates the total defenselessness of victims and their next-of-kin.⁹⁶ The Inter-American Court has ruled that delays in investigations, in prosecuting and convicting all the guilty, and in executing arrest warrants help perpetuate the acts of violence and intimidation suffered by witnesses and prosecutors involved in clearing up such incidents.⁹⁷

134. In addition, as the Commission has held on several occasions, “impunity helps hamper the work of human rights defenders and has an impact on society whereby intimidation prevents it from denouncing any violations it might suffer.”⁹⁸

135. Consequently, in the case at hand, the State has not taken the steps necessary to meet its obligation of investigating, judging, and punishing the guilty and of making redress to the victims and their next-of-kin. The extrajudicial killing of Jesús María Valle remains unpunished and, as the Court has said, that fosters the chronic repetition of human rights violations, leaving victims and their relatives in total defenselessness.⁹⁹ Based on the foregoing considerations, the Commission asks the Court to declare that the State did violate the right to a fair trial and to due judicial protection set out in Articles 8(1) and 25 of the American Convention with respect to the victims in this case and to their next-of-kin, at the same time as it failed to abide by its duties under Article 1(1) of that same instrument.

G. Noncompliance with the general obligation of respecting and ensuring human rights

136. Article 1(1) of the Convention provides as follows:

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.

137. In this regard, the Inter-American Court has ruled that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of

...continuation

and I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, paragraph 203; and I/A Court H. R., *Case of the Serrano Cruz Sisters*, Judgment of March 1, 2005, Series C No. 120, paragraph 170.

⁹⁶ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 299; I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 168; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 266; I/A Court H. R., *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 237.

⁹⁷ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 322.

⁹⁸ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, paragraph 108.

⁹⁹ I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 299; I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 168; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 266; I/A Court H. R., *Case of the “Mapiripán Massacre,”* Judgment of September 15, 2005, Series C No. 134, paragraph 237; I/A Court H. R., *The “Panel Blanca” Case (Paniagua Morales et al.)*, Judgment of March 8, 1998, Series C No. 37, paragraph 173.

international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.

This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.¹⁰⁰

138. The Commission believes that the responsibility of the State in the violations committed is substantial. The State is responsible both for failing to adopt measures to prevent serious human rights violations from occurring when it had the information and means necessary to do so, and for the actions of acquiescence and direct collaboration on the part of the state agents with the civilians who carried out the execution.

139. In both cases, more than eight years after the facts, the State has not yet effectively met its duty of prosecuting and punishing all the persons responsible for the extrajudicial killing of Jesús María Valle and of making redress to the next-of-kin.

140. International and regional human rights law holds that any violation of the right to life requires the state involved to undertake a judicial investigation by a criminal court instructed "to prosecute criminally, try and punish those held responsible for such violations."¹⁰¹ More specifically, the Court has ruled that "in cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life."¹⁰²

141. In its judgment in the *Case of the Massacre of Pueblo Bello*, the Inter-American Court ruled that:

The execution of an effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected or annulled by these situations, such as, in the instant case, the rights to personal liberty, humane treatment and life.¹⁰³

¹⁰⁰ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 72; I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 181; I/A Court H. R., *Case of Herrera Ulloa*, Judgment of July 2, 2004, Series C No. 107, paragraph 144; I/A Court H. R., *Case of the Five Pensioners*, Judgment of February 28, 2003, Series C No. 98, paragraph 163; I/A Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Series C No. 79, paragraph 154; I/A Court H. R., *Baena Ricardo et al. Case*, Judgment of February 2, 2001, Series C No. 72, paragraph 178; and I/A Court H. R., *Caballero Delgado and Santana Case*, Judgment of December 8, 1995, Series C No. 22, paragraph 56.

¹⁰¹ Human Rights Committee of the United Nations, *Bautista v. Colombia*, Decision of October 27, 1995, paragraph 8.6. See: IACHR, Reports 28/92 (Argentina), *Herrera et al.*, and 29/92 (Uruguay), *De los Santos Mendoza et al.*, in *Annual Report of the IACHR 1992-1993*, March 12, 1993, pp. 35, 154.

¹⁰² I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 130; I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003, Series C No. 101, paragraph 156.

¹⁰³ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 145.

[...] In order to determine the violation of Articles 4, 5 and 7 of the Convention, [...] suffice it to say that the Court finds that the investigations [...] conducted [...] in proceedings conducted by the ordinary and the military criminal justice system, and by the disciplinary and administrative justice systems were seriously flawed, and this has undermined the effectiveness of the protection established in the national and international norms applicable in this type of case, and resulted in [...] impunity.¹⁰⁴

[...] Because it failed in its prevention, protection and investigation obligations, the State is responsible for the violation of the rights to life, humane treatment and personal liberty embodied in Articles 4(1), 5(1), 5(2), 7(1) and 7(2) of the Convention, in relation to Article 1(1) thereof, owing to failure to comply with its obligation to ensure these rights.¹⁰⁵

142. The IACHR believes that in the instant case, the Colombian State failed in its obligation of ensuring the right to life and to humane treatment, together with the right to judicial protection of the victims, pursuant to Article 1(1) of the American Convention, and expressly asks the Court to make a declaration in that sense.

VIII. REPARATIONS AND COSTS

143. In consideration of the claims made in this application and of the consistent jurisprudence of the Inter-American Court holding that “any violation of an international obligation that has produced damage entails the obligation to make adequate reparation,”¹⁰⁶ the IACHR presents the Court with its claims regarding the reparations that the Colombian State must grant as a consequence of its responsibility for the human rights violations committed with respect to the victims and their next-of-kin.

144. In line with the Court’s Rules of Procedure, which grant individuals autonomous representation, the Commission will at this time simply outline the general guidelines related to reparations and costs that it believes the Court should apply in the case at hand. The Commission understands that it falls to the victims and their representatives to back up their claims, in compliance with Article 63 of the American Convention and Article 23 and others of the Court’s Rules of Procedure.

A. Obligation of making reparations

145. One essential function of justice is to remedy the harm inflicted on the victim. This function must be expressed through rectification or restitution, and not only through compensation, which does not reset the moral balance nor return what was taken.

146. Article 63(1) of the American Convention provides as follows:

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

¹⁰⁴ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 148.

¹⁰⁵ I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 153.

¹⁰⁶ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 199; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 413; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 141.

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.

147. Similarly, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets out broad guarantees for those who suffer economic losses, physical or mental injury, and “substantial impairment of their fundamental rights,” through acts or omissions, including abuses of power. The victims or their next-of-kin have the right to seek redress and to be informed of that right.¹⁰⁷

148. As the Court has consistently maintained in its jurisprudence, “Article 63(1) of the American Convention contains a rule of customary law that constitutes one of the fundamental principles of contemporary international law on State responsibility. According to it, when an illegal act attributable to the State takes place, the latter immediately incurs a responsibility for the violation of the international provision involved, with the attendant duty of providing reparations and of making the consequences of said violation cease.”¹⁰⁸

149. Reparations are crucial in ensuring that justice is done in a given case, and they are the mechanism whereby the Court’s decisions move beyond the realm of mere moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear. Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred.

150. If full restitution is not possible, as in the case at hand, it falls to the Inter-American Court to order the adoption of a series of measures so that, in addition to guaranteeing observance of the affected rights, the consequences resulting from the violations are repaired and an indemnification is paid as compensation for the harm caused in the case in question.¹⁰⁹ The chief aim of indemnifications in such cases is to repair the actual damage, both material and nonmaterial, suffered by the injured parties.¹¹⁰ The calculation of the harm suffered shall necessarily be proportionate “to the gravity of the violations and the resulting damage.”¹¹¹ Likewise, reparations have the additional – albeit no less essential – goal of preventing and halting future violations.

¹⁰⁷ U.N. A/RES/40/34 of November 29, 1985, paragraphs 1, 4, and 5.

¹⁰⁸ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 414; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 116.

¹⁰⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 201; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

¹¹⁰ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Bulacio*, Judgment of November 30, 2003, Series C No. 100, paragraph 70; I/A Court H. R., *Case of Hilaire, Constantine, Benjamin, et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 204.

¹¹¹ United Nations, Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1996/17, paragraph 7. See also: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 89; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraph 141; *Cantoral Benavides Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of December 3, 2001, Series C No. 88, paragraph 42; and *Cesti Hurtado Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 31, 2001, Series C No. 78, paragraph 36.

151. A respondent state may not invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by international law¹¹² since “where there are unpunished violations or unrepaired damages, law enters into crisis: not only as an instrument for resolving a specific litigation, but as a method for resolving them all – in other words, for ensuring peace with justice.”¹¹³

152. In the case at hand, the Inter-American Commission has shown that the Colombian State incurred in international responsibility by violating Jesús María Valle’s right to life, humane treatment, and personal liberty; by the violation, with respect to Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, of the right to humane treatment and personal liberty; and by the violation, with respect to the surviving victims and the next-of-kin of the deceased victim, of the right to a fair trial and effective remedies, arising from the absolute impunity that has surrounded the incident. More than eight years after the incident took place, the victims and their next-of-kin feel the natural sensation of injustice and despair that arises from vainly making efforts for the State to complete the investigation, prosecute and punish the guilty, and also indemnify them for the human rights violations they suffered.

B. Reparation measures

153. Some writers hold that in cases such as the one at hand, to remedy the victim’s situation and/or that of his next-of-kin, the State must meet the following obligations: “obligation of investigating and disclosing the facts that can be reliably established (truth); obligation of prosecuting and punishing the guilty (justice); obligation of making comprehensive reparations for the moral and material injuries inflicted (redress) and obligation of removing from the security forces all individuals known to have committed, ordered, or tolerated such abuses (creation of security forces worthy of a democratic state). These obligations are neither mutual alternatives nor optional; the responsible state must comply with each of them to the extent that it can and in good faith.”¹¹⁴

154. Similarly, the United Nations Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.¹¹⁵ In the opinion of the United Nations Special Rapporteur on the impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim; an apology, including public acknowledgement

¹¹² I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

¹¹³ Sergio García Ramírez, “Reparations in the inter-American system for the protection of human rights,” paper presented at the seminar “The inter-American system for the protection of human rights on the threshold of the 21st century,” San José, Costa Rica (November 1999).

¹¹⁴ Juan E. Méndez, “The Right to Truth in Serious Human Rights Violations,” article in *The Application of Human Rights Treaties by National Courts*, CELS, 1997, p. 517.

¹¹⁵ *Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Dr. Theodore Van Boven pursuant to Human Rights Sub-Commission decision 1995/117. E/CN.4/ sub.2/1997/17.

of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations; the prevention of further violations, etc.

155. Similarly, the Court has said that reparations tend to eliminate the effects of the violations committed.¹¹⁶ These measures cover the different ways in which a state can meet the international responsibility in which it incurred and, in accordance with international law, can be measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.¹¹⁷

156. The United Nations Commission on Human Rights has also ruled that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹¹⁸

157. In light of the above remarks, the Inter-American Commission seeks for the Court to order comprehensive measures of reparation; these would, in turn, send a message against the impunity that surrounds the vast majority of human rights violations in the member countries of the Organization of American States. This requires the establishment and, when necessary, the strengthening of judicial and administrative mechanisms to allow victims to obtain redress through formalized procedures that are swift, fair, inexpensive, and accessible.

158. In accordance with the evidence presented in this application and in consideration of the guidelines set by the Court in its jurisprudence, the Inter-American Commission submits its conclusions and claims regarding measures to make amends for the material and nonmaterial harm and other forms of redress and satisfaction applicable in the case of Jesús María Valle, Nelly Valle, Carlos Fernando Jaramillo, and their families.

1. Compensation measures

159. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory in nature, and that it is to be

¹¹⁶ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 202; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 416; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 144.

¹¹⁷ See: United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights, 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, paragraph 31; I/A Court H. R., *Suárez Rosero Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, paragraph 41.

¹¹⁸ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, paragraph 7.

granted in volume and fashion sufficient to repair both the material and the nonmaterial harm inflicted.¹¹⁹

1.1. Material damages

160. In its jurisprudence on reparations, the Court has been consistent in maintaining that material damages include consequential damages and future losses, together with nonmaterial and moral damages, for both the victims and, in certain cases, their immediate families.¹²⁰

161. Consequential damages have been defined as the direct and immediate effect of the incident on property. This notion includes the economic impact derived immediately and directly from the incident in conjunction with the expenses occurred by the victims and their families in their attempts to secure justice.¹²¹ As the Court will be able to see from the evidence submitted in this case, the victims and their relatives made significant economic efforts to obtain justice domestically and to overcome the physical, psychological, and moral trauma that the actions of the Colombian State caused them. Indeed, one of the victims was forced to meet other expenses arising from his displacement and subsequent exile caused by the threats and persecution he faced on account of his attempts to assist the investigation.

162. In contrast, future losses are understood as the loss of economic income or benefits not accrued on account of a given circumstance, which can be quantified using certain measurable and objective indicators.¹²²

163. Notwithstanding the claims that the representatives of the victims and their next-of-kin may submit at the appropriate point in proceedings, the IACHR asks the Court to set an equitably determined sum of money as indemnification for the consequential damages and future losses, in exercise of its broad powers in this regard.

1.2. Nonmaterial damages

164. With respect to nonmaterial damages, the Court has stated that:

Non-pecuniary harm may include the suffering and affliction caused to the direct victims and to their next-of-kin and the impairment of values that are very significant for a person, together with changes, of a non-pecuniary nature, in the living conditions of victims or their next-of-kin. As it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for purposes of integral reparation to the victims all that can be done is for them to

¹¹⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Hilaire, Constantine, Benjamin, et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 204; I/A Court H. R., *Garrido and Baigorria Case, Reparations* (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 39, paragraph 41.

¹²⁰ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraphs 213 and 214; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 423; I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114.

¹²¹ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 215; 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, paragraph 147; and I/A Court H. R., *Aloeboetoe et al. Case, Reparations* (Art. 63.1 American Convention on Human Rights), Judgment of September 10, 1993, Series C No. 15, paragraph 50.

¹²² See, for example: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 105 *et seq.*; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraphs 151 and 152.

receive compensation, and this in two ways. First, by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity. Secondly, by carrying out acts or public works whose scope or public repercussion have an effect in terms of the remembrance of the victims, recovery of their dignity, consolation to their relatives or issuing a message of official reproof of the violations of human rights involved and of commitment to avoid their repetition.¹²³

165. In addition, the Court has suggested the existence of an assumption regarding the nonmaterial damage inflicted on the victims of human rights violations by stating that moral or nonmaterial harm imposed on the victims is evident, since it is inherent in human nature for all individuals whose human rights are affronted or undermined to suffer nonmaterial moral harm and that “no proof is required to reach the aforesaid conclusion.”¹²⁴

166. In the case at hand, the surviving victims and the relatives of all the victims have suffered intense psychological suffering, anguish, uncertainty, sorrow, and alterations to their lifestyle on account of the lack of justice for the injuries inflicted on them and for the death of their loved one.

167. In the case at hand, the suffering endured by the surviving victims and the families of all the victims as a result of the human rights violations described in this case, particularly the failure to conduct a diligent investigation of the incident and subsequently to punish the guilty, along with other affronts, justify the Commission’s asking the Court, in light of the nature of the case, to set an equitably determined sum as compensation for nonmaterial damages.

2. Measures of cessation and satisfaction and guarantees of nonrepetition

168. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.¹²⁵ Satisfaction takes place when three events occur, generally one after the other: apologies, or any other gesture showing acknowledgement of responsibility for the act in question; prosecution and punishment of the guilty; and the adoption of measures to prevent the harm from recurring.¹²⁶

169. On November 29, 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,¹²⁷ according to

¹²³ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 216; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 430; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 383; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 254.

¹²⁴ See, *inter alia*: I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 150; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 384; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 217; I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 248.

¹²⁵ Brownlie, *State Responsibility*, Part 1, Clarendon Press, Oxford, 1983, p. 208.

¹²⁶ *Ibid.*

¹²⁷ A/RES/40/34, Access to justice and fair treatment. “4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious,

which victims “are entitled to access to the mechanisms of justice and to prompt redress,” for which purpose “the views and concerns of victims [must] be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”

170. Under European jurisdiction, in contrast, the European Convention on the Compensation of Victims of Violent Crimes was drawn up in 1983. In essence, it addresses the situation of victims who have suffered bodily harm or diminished health, and of the dependents of persons killed as a result of such offenses; however, it also deals with the obligation of protecting victims and of granting them certain rights of participation in criminal proceedings.¹²⁸

171. In the following paragraphs the IACHR will set out its position regarding the cessation and satisfaction measures and guarantees of nonrepetition required in the case at hand, reserving the right to expand, at a later time, its arguments on this point.

172. The Court has stated on repeated occasions that all individuals, and society as a whole, have the right to be informed about incidents involving human rights violations.¹²⁹ Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators and their accomplices are essential steps towards rehabilitation and reconciliation; consequently, it has urged states to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated, and it has encouraged victims to participate in that process.¹³⁰

173. As indicated by the claims made by the State during the processing of this case by the Commission, the facts of the incident involve individuals with ties to paramilitary blocs that have joined the demobilization process and could thus receive the benefits of the Justice and Peace Law.¹³¹ In this connection, the Commission stresses the State’s obligation of removing all practical and legal obstacles that could hinder the exhaustive legal clarification of the human rights violations committed in the case at hand. In an earlier case involving the Colombian State, the Court reiterated

...continuation

fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) providing proper assistance to victims throughout the legal process; (d) taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

¹²⁸ European Convention on the Compensation of Victims of Violent Crimes, November 24, 1983. The Council of Europe has also issued regulations and recommendations regarding the rights of crime victims.

¹²⁹ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 347; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 139; I/A Court H. R., *Case of Ximenes Lopes*, Judgment of July 4, 2006, Series C No. 149, paragraph 245.

¹³⁰ E/CN.4/RES/2001/70.

¹³¹ Law 975 of July 25, 2005. In this regard, see: IACHR, “Statement of the Inter-American Commission on Human Rights on the Application of the Law of Justice and Peace in the Republic of Colombia,” August 1, 2006, available at <http://www.cidh.org/Comunicados/English/2006/28.06eng.htm> as of February 13, 2007.

its constant jurisprudence that no domestic law or legal provision can prevent a state from meeting its obligation of investigating and punishing those guilty of human rights violations.¹³²

174. The Court has also ruled that:

The State must also remove all *de facto* and legal mechanisms and obstacles that maintain impunity in the instant case; it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and victims, and use all means available to it so as to expedite the proceeding.¹³³

175. The Commission's basic opinion is that until an impartial and effective investigation is conducted into the arbitrary detention and subjection to cruel, inhuman, and degrading treatment of all the victims, and into the death of Jesús María Valle Jaramillo, there remains a permanent violation of the right of access to efficient and effective justice.

176. In accordance with the Court's jurisprudence, and in light of the particularly serious nature of the human rights violations described in the instant case, comprehensive redress requires the State to investigate the incident with all due diligence in order to identify, prosecute, and punish the guilty. To this end, it must take all the judicial and administrative steps necessary to complete the investigation, to locate, prosecute, and punish the perpetrators and planners of the incident, and to report on the results thereof. The State is also obliged to investigate and punish those responsible for the impunity, obstructions of justice, and concealments that have characterized this case. The surviving victims, their families, and the next-of-kin of the dead victim must be given full access and authority to appear at all phases and stages of those investigations, in accordance with domestic law and the provisions of the American Convention. The State must also ensure effective compliance with the decisions adopted by the domestic courts under this obligation. The result of this process must be made public, to make Colombian society aware of the truth.¹³⁴

177. Secondly, Colombia must adopt rehabilitation measures for the victims and their next-of-kin. These measures shall necessarily include forms of psychological and medical rehabilitation.

178. Thirdly, the gravity and nature of the facts in this case demand that the State take steps intended to dignify the victim's memory. In that connection, the Commission asks the Court to order, *inter alia*:

- The publication, in a national newspaper, of whatever judgment the Court may hand down;
- An act of public recognition of the State's responsibility for the harm inflicted and for the grave violations that occurred;

¹³² I/A Court H. R., *Case of the "Mapiripán Massacre,"* Judgment of September 15, 2005, Series C No. 134, paragraph 204.

¹³³ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 228; I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 134. See also: I/A Court H. R., *Case of Almonacid Arellano*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 26, 2006, Series C No. 154, paragraph 156.

¹³⁴ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 441; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 441; I/A Court H. R., *Case of Almonacid Arellano*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 26, 2006, Series C No. 154, paragraph 157; I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 128.

- Actions toward reclaiming the historical memory of Jesús María Valle and of other human rights defenders from Antioquia who have been killed for denouncing injustices; and,
- In consultation with the next-of-kin of the dead victim, the establishment of a street, school, monument, or memorial to his memory.

179. In addition, the Commission believes that the State is obliged to prevent the recurrence of human rights violations such as those described in the instant case; consequently, it asks the Court to order the Colombian State to adopt, on a priority basis, a policy to protect and promote the work of human rights defenders, along with all the measures necessary to prevent similar incidents from occurring in the future, in accordance with the duty of upholding and ensuring the basic rights enshrined in the American Convention.

C. Beneficiaries

180. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that “fair compensation be paid to the injured party.” The persons entitled to this compensation are generally those who suffered direct harm as a result of the violation in question.

181. In accordance with the nature of the instant case, the beneficiaries of redress to be ordered by the Court are the following: the victims already named in this application and their family members who have suffered material and/or nonmaterial injuries as a result of the human rights violations described.

D. Costs and expenses

182. In accordance with the Court’s consistent jurisprudence, costs and expenses must be included in the reparations described in Article 63(1) of the American Convention. This is because the activities pursued by the injured parties, their heirs, or their representatives in securing access to international justice imply expenditures and financial commitments that must be compensated.¹³⁵ In addition, the Court has also ruled that costs referred to in Article 55(1)(h) of its Rules of Procedure include the necessary and reasonable expenses incurred in securing access to the American Convention’s supervisory bodies, with those expenses including the fees charged by those providing them with legal assistance.

183. In the case at hand, the Inter-American Commission asks the Court, after hearing the representatives of the victims and their next-of-kin, to order the Colombian State to reimburse such costs and expenses as they duly evidence, taking into consideration the special characteristics of this case.

IX. CONCLUSION

184. The extrajudicial killing of Jesús María Valle Jaramillo, a human rights defender; the detention and inhuman and degrading treatment of Mr. Valle Jaramillo, of his sister Nelly Valle Jaramillo, and of Mr. Carlos Fernando Jaramillo Correa that preceded the killing; the failure to investigate and punish the perpetrators of those deeds; the failure to provide the victims and their

¹³⁵ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 243; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 455; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 152.

next-of-kin with due redress; and the forced displacement that Mr. Jaramillo Correa suffered following the incident: all these constitute violations of the rights protected by Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (right to freedom of movement and residence) and 25 (right to judicial protection) of the American Convention on Human Rights, all in conjunction with the general obligation of respecting and ensuring human rights set out in Article 1(1) thereof.

X. DEMANDS

185. Based on the considerations of fact and law set out above, the Inter-American Commission on Human Rights asks the Court to conclude and declare that:

- (a) the Colombian State is responsible for violating, with respect to Mr. Jesús María Valle Jaramillo, the right to life, to humane treatment, and to personal liberty set out in Articles 4, 5, and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;
- (b) the Colombian State is responsible for violating, with respect to Messrs. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, the right to humane treatment and to personal liberty set out in Articles 5 and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;
- (c) the Colombian State is responsible for violating, with respect to Mr. Carlos Fernando Jaramillo Correa and his family, the right to freedom of movement and residence set out in Article 22 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof; and,
- (d) the Colombian State is responsible for violating, with respect to Messrs. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa and to the next-of-kin of Mr. Jesús María Valle Jaramillo, the right to a fair trial and to judicial protection set out in Articles 8(1) and 25 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof.

And, consequently, to order the State to:

- (a) conduct an impartial and exhaustive investigation in order to prosecute and punish all those individuals who planned and perpetrated the extrajudicial killing of the human rights defender Jesús María Valle Jaramillo;
- (b) indemnify Jesús María Valle's family for the material and nonmaterial harm they suffered as a result of the violation of his right to life, personal liberty, and humane treatment, and as a result of the denial of justice the next-of-kin themselves faced;
- (c) perform actions toward reclaiming the historical memory of Jesús María Valle in his capacity as a human rights defender;
- (d) indemnify Mrs. Nelly Valle for the violation of her rights to personal liberty and to humane treatment, and for the denial of justice she suffered;

- (e) indemnify Mr. Carlos Fernando Jaramillo for the violation of his rights to personal liberty and to human treatment, and for the consequences of his displacement and exile, as well as for the denial of justice he suffered;
- (f) take the steps necessary to prevent the occurrence of similar incidents in the future, pursuant to the duty of upholding and guaranteeing basic rights set out in the American Convention; and,
- (g) pay the legal costs and expenses incurred in pursuing this case at the national level, as well as those arising from its processing before the inter-American system.

XI. EVIDENCE

A. Documentary evidence

186. The documentary evidence available at this time is listed below:

- APPENDIX 1.** IACHR, Report No. 75/06 (merits), Case 12.415, *Jesús María Valle Jaramillo*, Colombia, October 16, 2006;
- APPENDIX 2.** IACHR, Report No. 5/03 (admissibility), Petition 519/2001, *Jesús María Valle Jaramillo*, Colombia, February 20, 2003.
- APPENDIX 3.** Case file from the Inter-American Commission on Human Rights.
- ANNEX 1.** Office of the Prosecutor Assigned to the Regional Judges of Medellín, Resolution of May 21, 1999, assessing the committal proceedings of case No. 26017.
- ANNEX 2.** Third Criminal Court of the Medellín Specialized Circuit, ordinary judgment of March 15, 2001, in case No. 26017.
- ANNEX 3.** Office of the Prosecutor Assigned to the Criminal Judges of the Medellín Specialized Circuit, grounds for filing appeal against the ordinary judgment of March 15, 2001, handed down by the Third Criminal Court of the Medellín Specialized Circuit, April 6, 2001.
- ANNEX 4.** Superior Court of Medellín, Criminal Decisions Chamber, Judgment of July 25, 2001, in case No. 048 (002027).
- ANNEX 5.** Specialized Prosecution Office 5, Deed No. 205, December 4, 2006.
- ANNEX 6.** Antioquia Departmental Attorney's Office, Evaluative Report No. 139, October 22, 1996.
- ANNEX 7.** Office of the Disciplinary Delegate Attorney for the Defense of Human Rights, judgment of September 30, 2002, in case No. 008-50035-2000.
- ANNEX 8.** Office of the Prosecutor General, Human Rights Unit, statement given by Dr. Jesús María Valle Jaramillo, June 13, 1997, in connection with the incident at La Granja.
- ANNEX 9.** Communication from the Héctor Abad Gómez Permanent Committee to the Governor of Antioquia, November 20, 1996, signed by Dr. Jesús María Valle Jaramillo.
- ANNEX 10.** Communication from the Héctor Abad Gómez Permanent Committee to the Office of the United Nations High Commissioner for Colombia, July 29, 1997, signed by Dr. Jesús María Valle Jaramillo and others.

- ANNEX 11.** Communication from the Héctor Abad Gómez Permanent Committee to the Departmental Prosecutor, November 4, 1997, signed by Dr. Jesús María Valle Jaramillo.
- ANNEX 12.** Communication from the Héctor Abad Gómez Permanent Committee to the President of the Republic, Dr. Ernesto Samper Pizano, July 7, 1997.
- ANNEX 13.** CD containing the recording of the hearing held before the IACHR at its 119th regular session, March 1, 2004, in connection with Case 12.415, *Jesús María Valle*.
- ANNEX 14.** Transcription of the hearing held before the IACHR at its 106th regular session, March 2, 2000, in connection with Case 12.050, *Massacre of La Granja*.
- ANNEX 15.** CD containing the recording of the hearing held before the Inter-American Court of Human Rights on September 22 and 23, 2005, in connection with Cases 12.050 and 12.266, *Massacre of Ituango*.
- ANNEX 16.** CD containing the recording of the hearing held before the Inter-American Court of Human Rights on March 7, 2005, in connection with Case 12.250, *Massacre of Mapiripán*.
- ANNEX 17.** List of persons that the representatives of the victims and their next-of-kin consider to be possible beneficiaries of any redress ordered.

187. The Commission asks the Court to request that the illustrious State of Colombia submit certified copies of all the documents related to the investigations carried out under domestic jurisdiction in connection with this incident, together with authenticated copies of the applicable legislation and regulatory provisions.

B. Witness evidence

188. The Commission asks the Court, in accordance with the principle of procedural economy and with the terms of Article 44(2) of its Rules of Procedure, to accept, as witness testimony, the following statements:¹³⁶

- Sworn statement given by Carlos Fernando Jaramillo Correa during the hearing held before the IACHR at its 119th regular session, on March 1, 2004, in connection with Case 12.415, *Jesús María Valle*, which hearing was attended by the Colombian State. This statement is contained in Annex 13.
- Sworn statement given by Carlos Fernando Jaramillo Correa during the hearing held before the Inter-American Court of Human Rights on September 22 and 23, 2005, in connection with Cases 12.050 and 12.266, *Massacres of Ituango*, which hearing was attended by the Colombian State. This statement is contained in Annex 15.
- Sworn statement given by Carlos Álvaro Bonilla Cifuentes, Regional Prosecutor for Medellín between March and August 1998, during the hearing held before the IACHR at its 106th regular session, on March 2, 2000, in connection with Case 12.050, *Massacre of La Granja*, which hearing was attended by the Colombian State. This statement is contained in Annex 14.

¹³⁶ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 188.

189. The Commission asks the Court, in accordance with the principle of procedural economy and with the terms of Article 44(2) of its Rules of Procedure, to accept, as expert testimony, the following statement:

- Sworn statement given by Dr. Federico Andreu during the hearing held before the Inter-American Court of Human Rights on March 7, 2005, in connection with Case 12.250, *Massacre of Mapiripán*, which audience was attended by the Colombian State. The relevant part of this statement is contained in Annex 16.¹³⁷

190. Should the Court not accept these statements as witness testimony, the Commission reserves the right to request the appearance before the Court of the aforesaid witnesses and expert.

191. Additionally, the Commission asks the Court to take statements from the following witnesses:

- Nelly Valle Jaramillo, surviving victim and sister of the murdered victim, to give a statement on the events of February 27, 1998; on the obstacles encountered by the victim's family in seeking to ensure justice in the case; on the impact of the human rights violations described in this application on her personal life and on her family; and on other issues of relevance to the purpose and scope of this application.
- Magdalena Valle Jaramillo, sister of Jesús María Valle, to give a statement on the events of February 27, 1998; on the obstacles encountered by the victim's family in seeking to ensure justice in the case; on the impact of the human rights violations described in this application on her personal life and on her family; and on other issues of relevance to the purpose and scope of this application.
- Rafael Rincón, to give a statement on the sociopolitical and human rights context within which the incidents described in this case took place; and on other issues of relevance to the purpose and scope of this application.
- Ligia Bedoya, to give a statement on the circumstances in which Mr. Carlos Fernando Jaramillo was forced into internal displacement and, subsequently, into exile as a result of having assisted the investigation of the human rights violations described in this case; and on other issues of relevance to the purpose and scope of this application.
- Liliana Uribe, to give a statement on the impact of Dr. Jesús María Valle Jaramillo's extrajudicial killing on the human rights movement and the work of Antioquia's human rights defenders; and on other issues of relevance to the purpose and scope of this application.

¹³⁷ With reference to this case, the expert testimony in question addressed the following issues: "historical and current ties between the paramilitaries and the security forces[;] the role of the Colombian justice system in investigating crimes committed by paramilitary groups, [...] the practical, legal, and political obstacles that prevent justice from being served in investigations of human rights violations in general." I/A Court H. R., *Case of the "Mapiripán Massacre,"* Order calling a public hearing, January 28, 2005, p. 9.

XII. INFORMATION ABOUT THE ORIGINAL PETITIONERS AND THE VICTIMS' REPRESENTATIVES

192. In compliance with Article 33 of the Court's Rules of Procedure, the Inter-American Commission submits the following information: The original complaint was lodged by the Interdisciplinary Group for Human Rights.

193. Messrs. Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa, the surviving victims, and the next-of-kin of Dr. Jesús María Valle Jaramillo, the murdered victim, have authorized the nongovernmental organizations Interdisciplinary Group for Human Rights and Colombian Commission of Jurists to represent them before the organs of the inter-American system, and the relevant powers of attorney will be submitted directly to the Court by those representatives. The single address of the designated representatives is the office of the Interdisciplinary Group for Human Rights, [REDACTED].

Washington, D.C.
February 13, 2007.