

**REPORT No. 79/11**  
CASE 10.916  
PUBLICATION  
JAMES ZAPATA VALENCIA AND JOSE HERIBERTO RAMÍREZ LLANOS  
COLOMBIA<sup>1</sup>  
July 21, 2011

**I. SUMMARY**

1. On July 16, 1991, the Colombian Commission of Jurists (hereinafter "the petitioners"), lodged a petition against the Republic of Colombia (hereinafter "the State," "the Colombian State," or "Colombia") with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") for the "forced disappearance" of James Zapata Valencia and José Heriberto Ramírez Llanos<sup>2</sup> (hereinafter "the victims" or "the executed victims").

2. The petitioners alleged that James Zapata and José Heriberto Ramírez, former members of the April 19 Movement (hereinafter "M-19"), were detained and disappeared on March 22, 1988 by individuals who were identified as members of the F-2 intelligence group of the Colombian National Police. They indicated that the victims were found dead, with signs of torture, and that the proceeding initiated to prosecute those responsible for these murders was not effective. The State for its part alleged that domestic remedies were not exhausted and, as regards considerations on the merits, it argued that the participation of state agents in the alleged violations had not been proven.

3. On September 27, 1999, the Inter-American Commission approved Admissibility Report No. 100/99 in which it considered that the allegations of the petitioners, if proven, could establish a violation of the rights guaranteed in Articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). In Report No. 100/99, the Commission concluded that it had competence to examine the case and that the case fulfilled the requirements stipulated in Article 47 of the Convention. The Commission further decided to join its decision on the requirements stipulated in article 46 until its decision on the alleged violations of articles 8 and 25, with regard to the merits of the case.

4. In its observations on the merits, the petitioners alleged that the Colombian State did not provide the victims with the security and protection needed to reintegrate into civilian life under conditions of equality and respect, once they availed themselves of the amnesty offered by the State. They reported that both the record on the removal of the bodies and the autopsy report demonstrated that the State did not take due care in gathering evidence and that the initial criminal investigations were conducted at the initiative of family members of the executed victims. In addition, they further contended that despite the fact that there was evidence of the participation of state agents, the authorities did not act diligently and the crimes are still unpunished.

5. The State alleged that the detention and death of the victims were perpetrated by third parties. It added that it was evident that the families of the victims had access to judicial

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<sup>1</sup>In accordance with Article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the debate or the decision in this case.

<sup>2</sup> From the documents included in the case file, it was learned that José Heriberto Ramírez was 16 years old at the time of the events in question, and based on the principle of *iura novit curiae*, the IACHR will examine his situation in relation to the rights of the child, under Article 19 of the American Convention.

procedures, and that the lapse of time without a final decision in the criminal proceedings could not be considered as a violation of Articles 8 and 25 of the Convention. Moreover, the State rejected the allegation by petitioners that the acts had been perpetrated because of a link to and the subsequent demobilization of M-19.

6. In the present report, the IACHR concludes that it is competent to examine the case in conformity with article 46.2 of the Convention, based on the considerations regarding the violations of articles 8 and 25, which are established in the legal analysis. The IACHR also concludes that the State violated the right to life, the right to humane treatment, and the right to personal liberty, established in Articles 4, 5, and 7 of the American Convention, considered in accordance with the general obligation of respect and guarantee contained in Article 1.1 of the Convention, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos. It further concludes that the State violated the rights of the child, established in Article 19 of the Convention, in the case of José Heriberto Ramírez Llanos, who was 16 years old at the time of the events in question. Finally, the IACHR concludes that the State is responsible for violation of the right to humane treatment and the right to a fair trial and judicial protection, established in Articles 5, 8, and 25 of the Convention, considered together with Article 1.1 of that instrument, to the detriment of the members of the victims' families.

## **II. PROCESSING BEFORE THE COMMISSION SUBSEQUENT TO THE ADMISSIBILITY REPORT**

7. On September 7, 1999, the Commission approved Admissibility Report No. 100/99. The report was forwarded to the parties in a communication dated October 12, 1999. In that communication, the IACHR made itself available to the parties with a view to reaching a friendly settlement of this matter, in accordance with Article 48.1.f of the Convention, and it granted the parties one month to convey their decision in this regard.

8. The State requested an extension in its communication of November 10, 1999, which the IACHR granted until December 17, 1999. The petitioners submitted a proposal for a friendly settlement in their communication of December 15, 1999, which was forwarded to the State on December 20 of that year. On December 21, 1999, the Commission received observations from the State, and they were forwarded on December 22, 1999. On January 27, 2000, the State sent a communication to the IACHR.

9. The petitioners requested an extension on February 1, 2000, and it was granted that same day. The IACHR also received a communication from the State dated January 27, 2000. On April 14, 2000, the petitioners submitted observations on the brief submitted by the State on December 21, 1999, and they were transmitted to the State in a communication of May 4, 2010.

10. On February 5 and 7, 2002, the IACHR convened the State and the petitioners to a hearing during the Commission's 114th regular session, to take place on March 6, 2002, with a view to receiving the testimony of Mrs. Mariscela Valencia, the mother of James Zapata Valencia. On July 18, 2002, the IACHR sent a copy of the transcript of the testimony to the State and the petitioners, and requested the petitioners to submit their final observations on the merits within two months' time.

11. The Commission received additional observations on the merits from the petitioners on March 26, 2009, and they were forwarded to the State on April 16, 2009, in accordance with Article 38.1 of the IACHR's Rules of Procedure. The Colombian State requested two extensions (June 17 and July 22, 2009), which were granted by the IACHR, to submit observations.

12. On September 2, 2009, the State sent a communication to the IACHR. The State also submitted additional comments on the merits on August 1, 2009, and annexes to those comments on September 11 of that year. The Commission transmitted both communications to the petitioners on September 24, 2009, giving it one month to submit observations.

13. On September 26, 2009, the Commission requested the State to send a copy of the main documents of the criminal proceedings into the death of James Zapata and José Heriberto Ramírez and the main records of the disciplinary procedure conducted by the *Procuraduría* [Office of the Attorney] Delegated to the Judicial and Administrative Police. The State requested an extension on October 26, 2009, which was granted by the IACHR on October 29 of that year.

14. The petitioners requested a hearing during the 137<sup>th</sup> ordinary period of sessions of the IACHR, which was denied in a communication dated October 23, 2009.

15. In a communication of November 30, 2009, the State informed the Commission that it could not forward the copies of the criminal case records requested by the IACHR, due to the reservation on the summary proceedings of the investigation stage [*reserva sumaria*]. The Commission forwarded this communication to the petitioners on December 7, 2009. Moreover, on December 3, 2009, the Commission received a copy of the disciplinary proceeding, which was forwarded to the petitioners for their information on January 6, 2010. On June 3, 2010, the State submitted a brief that was transmitted to the petitioners for their information on June 9, 2010.

16. On September 21 and 30, 2010, the representatives submitted information on the family members of the executed victims. This information was forwarded to the State for its information on September 29 and on October 12, 2010.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioners**

##### **1. Factual arguments**

17. The petitioners indicated that James Zapata Valencia, 35 years of age, and Heriberto Ramírez Llanos, 16 years of age, availed themselves of the amnesty offered on the basis of Law 35 of 1982 (that decreed an amnesty and issued rules for restoration and preservation of peace), since they had been members of the M-19 guerrilla group. They alleged that after being pardoned in 1985, both worked as political activists for a popular civic committee in Manizales and took care of one of their headquarters at night. They indicated that despite the fact that they had left M-19, the victims and their families were constantly being harassed by state agents.

18. In these circumstances, they reported that in 1985, James Zapata was detained on two occasions. The first arrest was by members of the F-2<sup>3</sup> of the National Police. Mrs. Mariscela Valencia, mother of James Zapata, immediately learned of this, and went to the F-2 Police offices, in the Department of Administrative Security (DAS) and to the Ayacucho Army Battalion. They reported that all the authorities had denied that they had taken James Zapata, and that Mrs. Valencia went to a local broadcaster to report the situation of her son. They indicated that as a

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<sup>3</sup> The petitioners indicate in their observations on the merits submitted March 25, 2009, that the F-2 department of the National Police was created in 1953 with intelligence functions for technical criminal investigations. Its structure was modified on various occasions as the Department of Information, Judicial Police, and Criminal Statistics (DIPEC) in the decade of the 1970s, and as the Department of Judicial Police and Investigation (DIJIN) in 1983.

result of this complaint, the Captain, Director of the Manizales F-2, informed her that her son had been transferred to the Ayacucho Army Battalion and he was going to be released. The petitioners added that hours later, James Zapata was released, although F-2 agents continued to pursue him and he had to hide for a few days.

19. The second arrest was three months later, by members of the National Police's F-2 and the Army, and on that occasion, he was again released because of his mother's efforts. The petitioners indicated that as a result of the two arrests, the family of James Zapata decided that he should move to another city. They reported that during the procedures to move him, Ms. Valencia, one of the brothers of James Zapata, and another person were arrested by the National Army, together with a Police collaborator. They also reported that in 1985, two brothers of James Valencia, Rosse Alixon Alzate Valencia and Never Otoniel Alzate Valencia, were detained as well.<sup>4</sup> The petitioners added that on August 26, 1986, James Zapata declared to the *Procuraduría Seccional* of Honda (Tolima) that members of the Police F-2 had confiscated his identification papers.

20. With regard to José Heriberto Ramírez, the petitioners reported that around September 1987, six months before his death, members of the National Army arrested José Heriberto Ramírez, removing him from his home and taking him to a military battalion where he was kept for a day and a night. They indicated that he was finally released, when they could not find any grounds for his detention.

21. The petitioners reported that in 1988, James Zapata and José Heriberto Ramírez were working as political activists and guards at the Popular Civic Committee headed by Fernando Gómez Chica (a candidate for mayor) and Domingo Roncancio Jiménez (manager) (hereinafter "the Committee"). They indicated that their involvement with the Committee had generated telephone calls alerting them to the presence of members of M-19 in it, and the presence of members of the F-2 police group who had offered their protection to its leaders.

22. They indicated that on March 22, 1988, James Zapata and José Heriberto Ramírez were working at the Committee's headquarters. However, at approximately 12:30 p.m., both of them were having lunch at "la Vasconia" restaurant, in the Galería district of the city of Manizales (Caldas), in the vicinity of the Committee, when they were illegally detained by two men in civilian clothes, who identified themselves as F-2 police agents. They added that there were two more F-2 agents outside the establishment, and that this was the last time that the executed victims were seen alive.

23. The petitioners established that on March 23, 1988, campesinos found two bodies with no papers, tied to plants and with signs of torture, at the "Taparcal" Ranch, located in the Municipality of Palestina (Caldas). The Secretary of the Second Joint Civil-Military Municipal Court [*Juzgado Segundo Promiscuo Municipal*], the Police Inspector, and police agents removed the bodies, which showed wounds caused by firearms that had caused their death, as well as other injuries and lacerations. The petitioners alleged that no efforts were made to inspect or record the evidence at the scene of the crime, and that the bodies were registered as unidentified and were buried the same day, on March 23, 1988.

24. They reported that on March 25, 1988, the local newspaper, "La Patria," published photographs of the bodies that had been found with torture marks in the Municipality of Palestina

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<sup>4</sup> The representatives clarified the name of the sister of James Zapata in their communication of September 30, 2010.

on March 23, 1988. The mother of James Zapata and several of his brothers, as well as Herminia Londoño Llanos, the sister of Heriberto Ramírez Llanos, had identified the victims. However, when they went to the authorities, they were informed that they had already been buried, and so the identification consisted of relating some of their physical features to the clothing on the two bodies.

25. The petitioners maintained that days after the extrajudicial execution of the victims, the family members of James Zapata were still being threatened and harassed by state agents. They also indicated that between March and April 1992, the bodies of the victims were moved from the municipal cemetery of Palestina (Caldas) to the city of Manizales (Caldas), without the participation of the families. They reported that on that occasion as well, the technical procedures for full identification of the bodies were not performed.

**a. Judicial proceedings**

26. The petitioners reported that on March 26, 1988, the Municipal Court of Palestina (Caldas) requested the appointment of a judge to initiate the preliminary summary proceeding for the homicide of the two unidentified persons.

27. On April 4 and 5, 1988, the Municipal Civil-Military Court of Palestina received statements from Herminia Londoño Llanos and Mariscela Valencia regarding the last information they had of their disappeared family members. During the procedure, they were shown the objects found on the unidentified bodies, and were able to identify them as belonging to James Zapata and José Heriberto Ramírez.

28. On April 8, 1988, Mariscela Valencia and Luis Alberto Cardona Mejía, President of the Human Rights Committee of Caldas, filed a complaint regarding the forced disappearance and subsequent homicide of James Zapata and José Heriberto Ramírez with the Municipal *Personería* [Office under the *Procuraduría*] of Chinchiná (Caldas). The following day, the Sixth Court for Preliminary Criminal Proceedings [*Juzgado Sexto de Instrucción Criminal*] of Chinchiná Municipality took on the investigation.

29. The petitioners indicated that the investigation was transferred to the Tenth Court for Preliminary Criminal Proceedings of Manizales, and that in June 1988, the following persons testified: 1) Fredy Zapata Valencia, brother of James Zapata, who gave information from a witness to the illegal arrest of the victims who would be able to recognize one of the agents who had participated in the events; 2) Domingo Roncancio Jiménez, who gave a statement regarding the political activity that James Zapata was involved in and his status as a former member of M-19 who had been pardoned; and 3) Juan Jairo Muñoz Cuervo, who indicated that the last time he saw the victims was on March 22, 1988, in La Galería district of Manizales, in the company of four persons whom he described. This witness added that James Zapata had commented to him that a member of F-2 in Manizales “had it out for him.”

30. On June 8, 1988, Herminia Londoño, Mariscela Valencia, and Alberto Cardona had confirmed their complaint with the *Personería Municipal* of Chinchiná (Caldas). On June 23, 1988, the proceeding was sent to the Preliminary Investigative Unit of Medellín (Antioquia), and on June 28, 1988, an eye-witness to the events testified at the Tenth Court for Preliminary Criminal Proceedings of Medellín.

31. The petitioners reported that on March 1, 1991, the investigation had been referred to the Sectional Branch of Public Order [*Dirección Seccional de Orden Público*] of Medellín (Antioquia), and on February 19, 1992, the Court of Public Order of Medellín ordered that some

evidence be gathered. They maintained that on March 5, 6, 7, and 9 of 1992, the Court received the testimony of Herminia Londoño Llanos, Mariscela Valencia, and two witnesses whose identity was secret. Those two witnesses identified five state agents who belonged to the Manizales F-2 Police in March 1988 from a series of photographs. They also reported that despite the fact that Mrs. Mariscela Valencia had given a detailed description of an F-2 agent who was harassing her son, she was never asked to make any identification.

32. The petitioners indicated that on March 14, 1992, the Court of Public Order of Medellín decided to open a criminal investigation, and consequently ordered the apprehension of the five agents identified by the witnesses, as the persons presumed to be responsible for the homicide; three of them were detained. On March 30 and 31 and April 1, 1992, the three agents being held were questioned; they denied their participation in the events, and stated that they did not know the victims or the restaurant where they were arrested, or the military and political activities of the M-19 armed group. On April 3, 1992, the Court abstained from issuing an order to detain the three agents, and ordered their release. Subsequently, the Court ordered that some evidence be gathered to determine whether the agents captured and released were members of the intelligence group of the Subversive Front Police.

33. The petitioners indicated that on January 22, 1993, the Office of the Regional Public Prosecutor [*Fiscalía Regional*] of Medellín instructed the DAS to obtain new evidence, and on October 7, 1993, it decided to close the investigation and transfer the case to the *Procuraduría General de la Nación* [Office of the National Attorney General] for the corresponding opinion. On September 5, 1994, the Regional Public Prosecutor (Fiscalía Regional) de Medellín decided to take the proceeding back to the prior investigative stage, disassociating the persons who had already been questioned based on the information received from the victims' family members and eye-witnesses. In January 1997, the proceeding was referred to the Human Rights Unit of the Office of National Prosecutor General, to continue the preliminary stage.

**b. Disciplinary process**

34. The petitioners indicated that on two occasions, January 24, 1991 and November 28, 1991, the *Procuraduría General de la Nación* pointed out the absence of investigation into the events in question. On September 4, 1992, the *Procuraduría General de la Nación* opened a disciplinary inquiry into the members of the National Police belonging to SIJIN (Colombian Judicial Police) in Caldas Department, who had been associated with the crimes during the criminal investigation. That same day, a list of charges was drawn up, for the following: a) illegal capture or seizure of James Zapata and José Heriberto Ramírez; b) failure to place the persons deprived of their freedom under the orders of a competent authority or to take them to a prison or another similar official institution; c) failure to protect the captured persons; and, d) failure to inform superiors or another authority, and to report the capture or seizure.

35. The petitioners alleged that during the disciplinary investigation, presentations of the acquittal from charges of the persons implicated in the disciplinary procedure were made, but no evidence-taking was ordered to further the investigation. Thus, on August 9, 1993, the *Procuraduría* ordered the investigation closed, in view of the statute of limitations applicable to disciplinary action pursuant to Article 12 of Law 25 of 1974.

**c. Contentious-administrative procedure**

36. The petitioners indicated that on October 11, 1993, Mrs. Mariscela Valencia lodged a complaint alleging the responsibility of the State for the disappearance and subsequent extrajudicial execution of her son, and claiming recognition of and payment of compensation for

the resulting moral and material damages. On December 9, 1993, the Administrative Tribunal of Caldas rejected the complaint, on the grounds that the legal action was null and void since two years had elapsed without any administrative action being filed. Petitioners reported that they challenged the decision, and on April 14, 1994, the Council of State, Contentious-Administrative Chamber, Third Section, issued a writ upholding the statute of limitations in the legal action.

## 2. Legal arguments

37. The petitioners alleged that the State is responsible for violation of the right to life (Article 4 of the Convention), the right to humane treatment (Article 5 of the Convention), the right to personal liberty (Article 7 of the Convention), and the right to a fair trial and to judicial protection (Articles 8.1 and 25 of the Convention), considered in relation to its obligation to respect the rights and freedoms recognized in the Convention (Article 1.1 of the Convention), to the detriment of James Zapata and José Heriberto Ramírez. With regard to the families of James Zapata and José Heriberto Ramírez, the petitioners alleged that the State is responsible for violation of the right to humane treatment and the rights to a fair trial and judicial protection (Articles 5, 8, and 25 of the Convention), considered together with Article 1.1 of that instrument.

38. They maintained that the State did not offer the executed victims the security and protection they needed to reintegrate into civilian life under conditions of equality and respect, after having availed themselves of the amnesty. The petitioners contended that the State had not contended the arbitrary detentions of James Zapata and José Heriberto Ramírez on several occasions prior to their disappearance, no court orders were ever issued or a judge made available to them. Moreover, during these arbitrary detentions, their identification papers were confiscated for no apparent reason. They added that none of these detentions was ever investigated by the authorities, despite the fact that they were made aware of it and that, as a result, the victims continued to be persecuted, harassed and threatened, forcing them to hide to avoid further abuse, and this conduct extended to their family members as well.

39. The petitioners contended that the way in which the detention, disappearance, and execution of the victims was done followed the pattern of conduct of the State security agencies, that had been denounced by various members of the media<sup>5</sup> and by the IACHR itself<sup>6</sup> at the time. They alleged that although the link to members of the National Police that had been established by witnesses did not lead to further investigations and result in a court judgment, it could be reasonably concluded that the series of circumstances before and after the events would indicate that State agents had participated directly in the alleged violations in the case.

40. The petitioners added that the atmosphere of hostility and vulnerability surrounding the victims and their families had facilitated and encouraged the violations that occurred in this case, which have gone unpunished. In the instant case, judicial actions initiated by the family members of the victims, and even by James Zapata during the months prior to his execution, had been ineffective to obtain the protection and guarantees required under the general obligation stipulated in Article 1.1 of the Convention.

41. They indicated that the time span between the procedures practiced in criminal proceedings objectively demonstrates the lack of a serious and properly conducted investigation, based on considerable, inexplicable delays in the pace of proceedings and in the way in which

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<sup>5</sup> In their observations on the merits of March 25, 2009, the petitioners referred to the fact that the media at the time was reporting that a large number of SIJIN agents were linked to disciplinary and criminal investigations: "In most cases, the police in uniforms apprehended people in a presumably illegal manner, and hours afterwards the detained persons appeared dead," in "Charges against 19 SIJIN Agents," *"El Tiempo"* of September 9 1992, 9-A, "The Judicial Investigations and Intelligence Service of the Barranquilla Police, Tunja, Villavicencio, and Bogotá, is responsible for the illegal capture, disappearance, and subsequent assassination of at least 12 persons involved in investigative activities with that institution," in "SIJIN Accused of Disappearances," *"El Espectador,"* September 9, 1992, 13-A.

<sup>6</sup> In their observations on the merits dated March 25, 2009, the petitioners referred to Report OAS/Ser.LV/II.53 of June 30, 1981, Chapter E: The emergency regime in the current legal system. The State of Siege, paragraph 2, OEA/Ser.LV/II.84, Doc.39 rev., of October 14, 1993, Chapter on Conclusions and Recommendations.

evidence was gathered, in a manner far removed from the due diligence rules required to determine the authors of crimes. They added that the authorities made no effort whatsoever to locate the families of the victims, but instead deposited them in a pit the municipal cemetery of La Palestina as unidentified bodies. On this point, they indicated that if it had not been for the insistence of the families of the executed victims, the procedure followed by the authorities would have guaranteed the definitive secrecy of the deaths of James Zapata and José Heriberto Ramírez.

42. Moreover, the petitioners pointed out that the criminal investigations initiated in 1988 were conducted at the instigation of the victims' families. Although they maintained that with the transfer of the investigation to the Preliminary Investigative Unit of Medellín (Antioquia) on June 23, 1988, the judicial authorities suspended their work and missed an opportunity to gather evidence that would have led to clarification of the deaths, such as summoning eye-witnesses to identify the presumed perpetrators and identification of the suspects.

43. The petitioners reported that in March 1992, four years after the forced disappearance and subsequent extrajudicial execution, the criminal proceeding was still in the investigation stage. Moreover, as a result of the decision of the Medellín Tribunal of Public Order, which ordered the release of the persons tied to the crime, on October 5, 1994, the process was back at square one, the preliminary investigation stage, in which the family members of the victims could not become civil parties. Moreover, despite the fact that, beginning in 1997, the deaths of James Zapata and José Heriberto Ramírez would be investigated by the Human Rights Unit of the Public Prosecutor's Office in an attempt to give it impetus, over 20 years had lapsed without an investigation into the facts or the identification of the responsible individuals.

44. With regard to the disciplinary procedure, the petitioners indicated that although Mrs. Mariscela Valencia and Luis Alberto Cardona Mejía lodged and confirmed a complaint pertaining to the crimes with the Personería Municipal of Chinchiná (Caldas), the Personería Municipal<sup>7</sup> did not forward the complaint to the *Procuraduría General de la Nación* to initiate the disciplinary investigation. It would have been four years since the murders occurred that gave rise to the disciplinary investigation, and the statute of limitations ran out one year after its beginning. This despite the fact that it could have been officially initiated by the *Procuraduría* in 1991 when the Presidential Adviser for Human Rights, and later the Ministry of Foreign Affairs, requested information from the *Procuraduría General de la Nación* regarding disciplinary procedures initiated as a result of crimes reported. With regard to the contentious-administrative proceeding, the petitioners alleged that the legal action for direct reparations had been dismissed due to procedural rules, without considering the substantive arguments pertaining to the State's responsibility in the illegal detention, forced disappearance, and extrajudicial execution of the victims executed.

45. The petitioners alleged that both the wounds described in the autopsy reports and the photographs shown to the family members for purposes of identification of the victims, and the circumstances in which the events occurred all demonstrate the violation of the victims' right to humane treatment. They added that the intimidation and aggression that were perpetrated against the victims had extended to their families, who had experienced anguish, uncertainty, and suffering to see them exposed to the arbitrary treatment of the authorities who were there to guarantee their life, honor, and property.

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<sup>7</sup> The petitioners stated in their observations on the merits submitted on March 25, 2009 that Law 81 of 1886 establishes that every district and municipality shall have a Municipal "*Personero*," responsible for defending the interests of the Nation, promoting the implementation of laws, judicial decisions, and administrative provisions, and overseeing the public conduct of government employees. Moreover, the Personería Municipal is part of the Public Ministry. They report that at present, this is established in Article 118 of the National Constitution.

46. They maintained that in this case, the State not only was incapable of guaranteeing the life of James Zapata and José Heriberto Ramírez, but that it was also responsible for violating the right to life of the victims, through its agents, not only through their actions in committing the crimes, but also for having fostered impunity, a breach of its general duty to protect and guarantee established in Article 1.1 of the American Convention.

47. Finally, the petitioners argued that the domestic legal mechanisms that the victims' family members had availed themselves of were incapable to providing the protection needed to prevent or put an end to the violations of which they were victims. They contended that at the time the events occurred, there was no adequate judicial mechanism for obtaining the immediate search for a person who had reputedly disappeared, not to mention the fact that James Zapata and José Heriberto Ramírez were denied access to the judicial mechanisms to guarantee their liberty and life.

## **B. Position of the State**

48. The State alleged that the presumed direct victims who are the subjects of the debate into the merits of the case are solely James Zapata and José Heriberto Ramírez. Hence, with regard to the alleged persecution suffered by James Zapata and José Heriberto Ramírez and their families prior to 1986, it maintained that the detentions were carried out as part of a series of judicial and police activities, within the right of any sovereign state to pursue and combat different illegal armed actors. It was only after August 26, 1986, that dialogue and procedures were officially initiated to demobilize James Zapata and José Heriberto Ramírez, following their release from the Military Criminal Court in Honda, Tolima.

49. As regards presumed irregularities in the autopsies alleged by the petitioners, the State indicated that according to the legal medical report, at the time the events occurred the authorities were not very well organized to handle unidentified corpses, but there were elements of identification, such as clothing, dental charts, and specific traits. The authorities did not perform the functions required under current law, but they did lead to identification of the bodies by the families. Moreover, it points out that James Zapata Valencia was recognized by his dental chart.

### **1. Judicial proceedings**

50. With regard to the investigations pursued by the domestic courts, the State recounted the different steps taken during the criminal process, a report that was consistent with the petitioners' report up to September 5, 1994. However, as regards the Regional Prosecutor's Office of Medellín decision of September 5, 1994, which terminated the criminal investigation in favor of the defendants, the State indicated that the Prosecutor's Office had established that despite the fact that two of the persons recognized belonged to the SIJIN in Caldas Department at the time of the events, the evidence used as grounds to connect them to it was tainted by various legal and practical defects. Thus, the persons who had made the identification did so four years after the events occurred, from a photograph album that included only SIJIN personnel. The State added that in that decision, the Prosecutor's Office indicated that whereas one of the persons who made the identification recognized three of the presumed authors, the other one identified two different persons, and so there was no common denominator that could be used as possible evidence of responsibility. It further stated that this decision was upheld by the National Tribunal of Public Order.

51. The State indicated that on February 2, 1996, the Regional Office of Public Prosecutor of Medellín ordered the re-opening of the previous investigation and examination of

copies, to identify the individuals responsible for the facts under investigation, and it commissioned the Investigative Unit of DAS in Manizales to carry out these functions in two months. The State indicated that at the end of this assignment, the DAS indicated that it had not been possible to obtain testimony of importance to the investigation. It pointed out that on January 10, 1997, the National Directorate of Public Prosecutors had ordered reassignment of the investigation to the National Human Rights Unit, and that the *Procuraduría General de la Nación* had set up Special Agency No. 4831 for the purpose of clarifying this case.

52. With regard to the earlier illegal detentions to which James Zapata was subjected prior to his death, the State maintained that the National Human Rights Unit had initiated various evidence-taking procedures. They included contacts with the Caldas Police Department, SIJIN in Manizales, the Intelligence Divisions of Ayacucho Battalion of that city and of DAS, at its headquarters in Manizales, in the company of the Delegated Official from the *Procuraduría General de la Nación*, as well as visits to the Offices of Military Criminal Courts 61 and 22 responsible for preliminary proceedings. These attempts to gather evidence showed the existence of two warrants to search the home of Mariscela Valencia.

53. The State reported that on July 3, 1997, it arranged for new evidence to be gathered at the offices of SIJIN in Manizales, where they found service records and photographs of some of the members of that entity at the time the events occurred. It further reported that there was also a judicial inspection of the historical archives of the National Police, with the support of the Technical Investigative Corps (CTI). Moreover, it indicated that on September 1, 1998, the Public Ministry had requested suspension of the investigation, but that such action had been rejected by the Office, on the grounds that there was still some proof to perform. It maintained that on March 25, 1999, both the person acting as Chief of Intelligence of Ayacucho Battalion and Judge 22 of the Military Criminal Court for Preliminary Proceedings had given statements regarding the searches carried out at the home of Mariscela Valencia.

54. The State reported that the National Institute of Legal Medicine and Forensic Sciences<sup>8</sup> had been able to establish, through the statement given by Mariscela Valencia, that the bodies of James Zapata and José Heriberto Ramírez had been buried initially on March 25, 1988 in the Municipal Cemetery of Palestina (Caldas), where they remained by decision of their families until they were reduced to skeletons. They reported that the remains were delivered to the families on March 21, 1992, and that the transfer of the bodies was authorized by the *Palacio Episcopal*.

55. It alleged that on September 26, 2000 and on February 11, 2002, the taking of evidence was ordered. The State pointed out that on June 7, 2006, the investigation was reassigned to Prosecutor 17 of the National Human Rights and International Humanitarian Law Unit, which had taken over the case and ordered the further taking of evidence. It reported that on October 9, 2007, the Investigative Commission had been instructed to take the evidence ordered. It further indicated that on August 11, 2008, the CTI's Investigative Unit had been commissioned to locate witnesses and to perform the Judicial Inspection of Case File No. 020-9808-1998, in which the *Procuraduría General de la Nación* took action against members of the National Police. The State reported that as of June 30, 2009, there were no plaintiffs intervening in the criminal proceeding.

## 2. Disciplinary proceeding

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<sup>8</sup>The State refers to its submission of additional observations on the merits of August 18, 2009, Letter No. D.334 of September 9, 1999.

56. The State reported that the Disciplinary *Procuraduría* responsible for the Defense of Human Rights in the *Procuraduría General de la Nación* had initiated a disciplinary investigation into the events, against certain members of the National Police, registered as number 008-50818-2002, but on August 9, 1993, the disciplinary action was closed due to the statute of limitations. It indicated that subsequently, the *Procuraduría* for the Judicial and Administrative Police had ordered the opening of a new investigation to establish whether there had been negligence on the part of any officials during the initial proceeding. This investigation was closed on April 26, 1994, as no disciplinary responsibility could be found, since the officials who were in charge of the original proceeding had only one year to complete the stages of the disciplinary investigation.

### 3. Process in the contentious-administrative jurisdiction

57. The State indicated that on April 14, 1994, the Third Section of the Contentious-Administrative Chamber of the Council of State upheld the expiry of the legal action brought by the family members of James Zapata Valencia.

### 4. Admissibility arguments related to Articles 8 and 25 of the Convention

58. The State alleged that since Admissibility Report N° 100 of 1999 established that the admissibility and merits of presumed violations of the rights recognized in Articles 8 and 25 of the Convention would be examined in the merits stage, the Commission should consider during this stage that the petitioners' arguments dispute the assessment made by the criminal authorities of the individual conduct and responsibilities of certain persons linked to the criminal proceedings, thereby intending that the IACHR act as a fourth instance. Thus, the State claimed that the petitioners are using the inter-American system as a fourth instance, to review the proceedings of domestic judicial authorities based on their disagreement with the conclusions of those authorities.

59. The State argued that if the petitioners expected a different decision on the part of the Medellín Court of Public Order for preliminary proceedings, their disagreement would not be sufficient grounds for having recourse to the organs of protection of the Inter-American System, since the judicial authorities acted independently in exercising their functions and their rulings were governed by the principles of sound critical and reasonable thinking. For the State, it is important that the Commission determines, at least with respect to the decision to end the investigation in favor of the state agents implicated in the events, that the petitioners' claim would be tantamount to asking the organs of the Inter-American System to act as a high court, thereby making improper use of the fourth instance formula.

60. The State added that in order for the organs of the Inter-American System to determine the responsibility of states parties for violations of rights recognized in the Convention, two elements are required: the occurrence of an internationally illegal act or event based on disregard for one of the rights or guarantees of the American Convention; and, the possibility that said act could be attributed to the action of a state agent. The State claimed that it would demonstrate that in the present case, there was no internationally illegal act involved, since the acts that led to the detention and subsequent death of the presumed victims were perpetrated by non State actors.

61. The State alleged that there was no pattern of homicides of “protected persons”<sup>9</sup> in Colombia between 1980 and 1992, and it referred to the report by the Working Group on Involuntary Forced Disappearances after its visit to Colombia in 1988, in which it indicated that it was “extremely difficult to globally attribute responsibility for disappearances.”<sup>10</sup> It added that the information in the press submitted by the petitioners to prove the alleged pattern would not be valid either in accordance with the jurisprudence of the Inter-American Court.<sup>11</sup> Consequently, in this case it would not be possible to attribute international responsibility to the State on the grounds of a presumed pattern of this type of conduct during the time the events occurred.

62. The State alleged that there was no international responsibility related to the presumed detention and later forced disappearance of James Zapata and José Heriberto Ramírez, based on the lack of evidence or indications supporting the conclusion that state agents participated in the events, as well as the nonexistence of the conduct of forced disappearance. It rejected the claim that the detention, mistreatment, and murder of James Zapata and José Heriberto Ramírez were done for political reasons by virtue of their previous membership of M-19, since after they demobilized their political work was closely tied to the Popular Civic Movement headed by Fernández Gómez Chica, a conservative or rightist leader, contrary to the tenets on which M-19 built its political position and its armed struggle. The State added that Juan Jairo Muñoz Cuervo, Marino Jaramillo Echeverri, and Domingo Roncancio Jiménez, who knew James Zapata and José Heriberto Ramírez, stated in June 1988 that the alleged victims were never harassed or reprimanded either publicly or privately, nor did they have judicial problems due to their past, and so it believed that the most likely scenario in which the events took place entailed the conduct of private parties, possibly for reasons of personal revenge.

63. The State alleged that based on a comprehensive reading of the jurisprudence of the Inter-American Court, it is possible to conclude that in order for a state party to the Convention to incur responsibility for the acts of third parties, the following elements must be proven to be present: 1) an institutional relationship, that directly guide the third parties to commit the violations; 2) a relationship of dependence or subordination between the state institution and the private parties in question; 3) delegation of public functions to the private parties by the State; 4) conduct by action or omission contrary to the general obligations established in the Convention, as well as prior knowledge on the part of the State of the situation of risk of the alleged victims; 5) situations of special risk created by the State; and 6) an analysis of the specific circumstances of each concrete case.

64. The State contended that in this case, none of the elements indicated were proven to be present. It claimed that there is no evidence that the detentions of Mr. Zapata Valencia and Mr. Ramírez Llanos before or after they were pardoned were in conflict with the principles of the law in force at that time, that in the course of said detentions their personal safety was not in any

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<sup>9</sup> According to International Humanitarian Law, protected persons include: the wounded, the sick, and shipwrecked persons, prisoners of war, civilians and other persons who did not participate or were no longer participating in hostilities, such as health and religious workers, persons who assisted in rescue operations, personnel of civilian protection organizations, and mediators.

<sup>10</sup> The State, in its additional observations on the merits submitted August 18, 2009, refers to paragraph 124 of the Report of the United Nations Working Group on Forced Disappearances.

<sup>11</sup> In its submission on additional observations on the merits of August 18, 2009, the State refers to different judgments of the Inter-American Court, including: *Heliodoro-Portugal v. Panama Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para.79; *The “Panel Blanca” v. Guatemala Case (Paniagua Morales et al)*. Judgment of March 8, 1998. Series C No. 37, para. 75; *Yvon Neptune v. Haiti Case*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 30; and, *Salvador-Chiriboga v. Ecuador Case*. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179, para. 29.

way affected, or that the detention lasted beyond what was reasonable and authorized under domestic laws. On this point, the State indicated that the longest detention documented in the petition indicated that it lasted no more than 36 hours, according to the testimony given by Mrs. Mariscela Valencia at the hearing of the Commission during its 114th regular session.

65. With regard to the duty to guarantee rights, the State contended that this obligation does not commit states absolutely to respect action between private parties, hence the assignment of international responsibility to a State for nonobservance of this duty requires the necessary verification of the combined existence of the following elements: 1) prior knowledge of the risk to an individual or a group of persons; 2) the fact that this risk is real and immediate; and 3) the fact that the State has a reasonable possibility of preventing or averting such a risk. The State maintains that neither in the observations nor in the submission on the merits by the petitioners, nor in previous briefs submitted did the petitioners present proof that the State was aware of the situation of real and immediate danger to the persons who were the victims, nor did the families of James Zapata and José Heriberto Ramirez inform the authorities of acts that would represent threats or situations that would lead them to infer a risk to their lives, personal safety, or individual freedom.

66. The State alleged that the events that befell James Zapata and José Heriberto Ramirez cannot be described as a forced disappearance, since they were not preceded by a denial to give information on their whereabouts or where they were hidden, and the bodies were taken away on March 23, 1988, namely the day after these persons were detained, hence there was no predetermined intention on the part of judicial officials to hide the bodies. Based on the foregoing, the State rejects the possible responsibility that was alleged by the petitioners or may be decided by the Commission that the State has responsibility in the light of the Inter-American Convention on the Forced Disappearance of Persons.

67. With regard to the presumed violation of the rights to due process (Article 8 of the Convention) and judicial protection (Article 25 of the Convention), the State maintained that there were procedures initiated with a view to complying with the duties to investigate, prosecute, and, if appropriate, punish the responsible parties, as well as to provide reparations for the acts in question. In support of this, the State discussed the following points: a) the comprehensive or integral nature of the remedies of the domestic legal system; b) the State's obligation to investigate has to do with the means and not the results, according to the jurisprudence of the Inter-American Court; c) the families of the victims relinquished their right to reparations under domestic law in the event of possible illegal action by State agents when they failed to avail themselves of the contentious-administrative jurisdiction according to the terms established by law.

68. As regards the integral nature of the remedies under domestic law, the State referred to the importance of recognizing the contribution of each of the remedies offered in seeking the truth, justice, and reparations in favor of victims. With respect to the State's obligation to investigate, it alleged that access to judicial mechanisms by the families of the victims was more than evident, and this is corroborated by the fact that the petitioners stated in their additional observations on the merits that "the initial criminal investigations in 1988 were opened at the instigation of the families of James Zapata and José Heriberto Ramirez, with the statements given by them and various witnesses." The State indicated that, despite the foregoing, the Public Prosecutor in charge of the investigation reported that the families of the alleged victims still had not made themselves plaintiffs in the criminal proceeding.

69. With regard to the lack of diligence in the investigations, the State argued that both the Commission and the Court have found in their jurisprudence that the obligation to administer

justice involves means and not results. The State alleged that the mere passage of time without reaching a definitive decision in criminal proceedings cannot be considered in any circumstances as a violation of Articles 8 and 25 of the Convention. The State pointed out that during the criminal proceedings in the domestic courts, Mrs. Mariscela Valencia, the mother of James Zapata, testified on numerous occasions, and this enabled the authorities to orient the investigation towards the hypothesis she herself put forward. The persons possibly linked to the crimes were identified by photographs based on statements made by Mrs. Valencia. The State mentioned that, notwithstanding this, the results were different from those desired by the mother of the victim, but that does not entail responsibility on the part of the State in the conduct of the investigation.

70. As regards the right of the families of the victims to receive reparations under domestic law in view of the possible illegal acts by State agents, the State alleged that the families of the victims gave up that right because they did not avail themselves of the contentious-administrative courts according to the terms established by law. On this point, the State maintained that although the remedy offered under the contentious-administrative jurisdiction does not consist of full reparations in the manner analyzed by the Inter-American Court, it may supplement other remedies, and thus, considered altogether, provide for full reparations for the victim.<sup>12</sup> The State further indicated that in the case of the Rochela Massacre, two of the surviving victims withdrew their complaints filed with the inter-American system, because they had engaged in settlement procedures with the State,<sup>13</sup> and this was accepted by the Inter-American Court.

71. The State alleged that the obligation to use remedies under domestic law or to reject them implies that petitioners should avail themselves of the parameters established for their access under domestic law, as has been acknowledged by the Commission.<sup>14</sup> Based on the foregoing, the State concluded that by voluntarily availing themselves of legal action for direct reparations, the alleged victims relinquished the possibility of obtaining reparations by the other means, but that this does not represent a violation of the rights recognized in Articles 8 and 25 of the American Convention.

#### IV. PRELIMINARY MATTER

72. In order for a complaint of an alleged violation of the provisions of the American Convention to be admissible, it must meet the requirements established in Article 46.1 of that international instrument. Article 46.1.a of the Convention states that to determine the admissibility of a petition or communication lodged with the IACHR, pursuant to Articles 44 or 45 of the Convention, the remedies under domestic law must have been pursued and exhausted according to the generally recognized principles of international law.<sup>15</sup>

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<sup>12</sup> The State is referring to the additional observations on the merits dated August 18, 2009, to the Inter-American Court, *Boyce et al. v. Barbados Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para.125.

<sup>13</sup> The State is referring to the additional observations on the merits dated August 18, 2009, to the Inter-American Court. *Rochela Massacre v. Colombia Case*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 241.

<sup>14</sup> The State is referring to its additional observations on the merits dated August 18, 2009, to the IACHR. Report No. 59/08, Case 11277, Eduardo Carlos Hernández and Amalia Wahibe Mariátegui Surcar (Peru), July 24, 2008; IACHR Report No. 48/04 on Inadmissibility, Petition 12210, Félix Román Esparragoza González and Nerio Molina Peñaloza (Venezuela), October 13, 2004, para. 56.

<sup>15</sup> I/A Court H. R., *Moiwana Community v. Suriname Case*. Judgment of June 15, 2005. Series C No. 124, para. 48; *Tibi v. Ecuador Case*. Judgment of September 7, 2004. Series C No. 114, para. 48; and, *Herrera Ulloa v. Costa Rica Case*. Judgment of July 2, 2004. Series C No. 107, para. 80.

73. The IACHR notes that in order to provide an appropriate recourse to remedy alleged human rights violations, it is the responsibility of the State, in its capacity as the instigator of punitive action, to initiate proceedings to identify, prosecute, and punish those responsible for committing such crimes, while diligently advancing all of the procedural stages until their conclusion.<sup>16</sup> As we will analyze *infra*, the IACHR is of the view that the State did not provide adequate and effective remedies in a reasonable time to address the violations alleged by the petitioner; hence, it considers that the provisions of article 46.2 of the Convention are applicable to the present case.

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<sup>16</sup> IACHR, Report No. 27/99, Case 11697, Ramón Mauricio García-Prieto Giralt of March 9, 1999, para. 40.

## V. ANALYSIS ON THE MERITS

### A. Weighing of the evidence

74. As indicated in the part of this report referring to the procedures in this case, on September 26, 2009, the IACHR requested the Colombian State to provide it with a simple copy of the main procedural documents of the criminal proceeding initiated upon the death of James Zapata and José Heriberto Ramírez, and with a copy of the disciplinary procedure conducted by the *Procuraduría* in charge of the Judicial Police and Administrative Police. In its communication of November 30, 2009, the State informed the Commission that it was unlawful for it to submit the copies of the criminal records requested by the IACHR, based on the reservation applicable to summary proceedings pursuant to Article 331 of the Code of Criminal Procedure (Law 600 of 2000). However, on December 3, 2009, the Commission received a full copy of the disciplinary proceedings.

75. The IACHR notes that the case *sub examine* presents peculiar characteristics by virtue of its very nature and of the alleged violations, that make it difficult to establish a detailed account of the events related to the violations of the Convention. In this regard, the Commission, in application of Article 43.1 of its Rules of Procedure (hereinafter “the IACHR Rules of Procedure”), must examine the arguments and the evidence presented by the parties, and take into account information that is a matter of public knowledge, as well as the jurisprudence of the inter-American system.<sup>17</sup>

#### 1. Proven facts

76. James Zapata, 35 years of age,<sup>18</sup> and José Heriberto Ramírez, 16 years of age,<sup>19</sup> at the time of the events, were members of the April 19 Movement (M-19)<sup>20</sup> until they availed

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<sup>17</sup> Article 43.1 of the IACHR Rules of Procedure: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

<sup>18</sup> Statement of Mrs. Mariscela Valencia de Zapata to the Municipal Court of Dual Jurisdiction of Palestina – Caldas on April 5, 1988. A copy of the disciplinary case record,, registered as No. AD-015-133079 (121754), attached to the communication of the State dated December 3, 2009.

<sup>19</sup> Statement of Mrs. Herminia Londoño Llanos, sister of José Heriberto Ramírez Llanos, to the Municipal Court of Dual Jurisdiction of Palestina (Caldas) on April 4, 1988. In her statement, Mrs. Londoño said that José Heriberto Ramírez Llanos indicated that her brother would be 17 years old on June 19, 1988, and she brought his birth certificate. Attached to the brief of the petitioners of April 23, 1999, and a copy of the disciplinary case record No. AD-015-133079 (121754), attached to the communication of the State of December 3, 2009; Brief of the District Department of Preliminary Criminal Proceedings, Antioquia, Technical Corps of the Judicial Police, Human Rights, addressed to Dr. Tosa Elena Cárdenas Roa, head of the National Human Rights Unit, August 22, 1991. A copy of the disciplinary case file registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>20</sup> Statement of Mrs. Mariscela Valencia de Zapata given in the office of the Municipal *Personería* of Chinchiná on June 8, 1988. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009; statement of Mrs. Herminia Londoño Llanos to the Municipal *Personería* of Chinchiná on June 8, 1988. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

themselves of the amnesty<sup>21</sup> stipulated in Law 35 of 1982,<sup>22</sup> which provided for general amnesty for authors, accomplices, or accessories of acts constituting political crimes committed prior to the entry into force of this law.<sup>23</sup>

77. The April 19th Movement, known as M-19, began as an urban movement mounted against the traditional parties and the oligarchy. It was a populist movement that sought to win over the urban masses by ridiculing democratic elections as a means of effecting change in the country. The movement was small by comparison to the FARC<sup>24</sup>.

78. In M-19, James Zapata was known as Lieutenant Jhon<sup>25</sup> and José Heriberto Ramírez Llanos as Andrés Arcilla.<sup>26</sup> The immediate family of James Zapata consisted of: Mariscela Valencia (mother) and José Fernando, Freddy, and Estrella Zapata Valencia, as well as Never Ottoniel, Luz Dalida, Rosse Alixon, and Juliana Patricia Alzate Valencia (siblings) and the immediate family of José Heriberto Ramírez consisted of: José Heriberto Ramírez Bernal (father), Blanca Oliva Llanos (mother); Javier de Jesús and José Jair Llanos; María Yolanda and Herminia Londoño Llanos, and José Orlando and Jhon Meider Ramírez Llanos (siblings)<sup>27</sup>.

79. There was a disagreement between the petitioners and the State regarding the time of the demobilization of James Zapata and José Heriberto Ramírez. The mother of James Zapata maintained that the demobilization occurred in 1985,<sup>28</sup> whereas the State contended that James

<sup>21</sup> Addition to the statement of Mrs. Mariscela Valencia de Zapata to the Sixth Court of Preliminary Criminal Proceedings on June 8, 1988. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009; statement of Mrs. Herminia Londoño Llanos to the Municipal *Personería* of Chinchiná on June 8, 1988. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>22</sup> Law 35 of 1982 "by which amnesty was decreed and provisions established for the restoration and preservation of peace."

<sup>23</sup> Official Gazette, Year CXVIII.N. 36133 BIS. 20 November, 1982, p 529. Article 1. There is a disagreement between the petitioners and the State regarding the time when James Zapata and José Heriberto Ramírez demobilized. Whereas the mother of James Zapata maintains that the demobilization occurred in 1985, the State contends that James Zapata demobilized on August 26, 1986, when he was released by the Military Criminal Court of Honda, Tolima on August 26, 1986, the date on which the Secretary of the Honda (Tolima) Division of the *Procuraduría* Seccional de Honda (Tolima), at the verbal request of James Zapata, recoded that the alleged victim "is a person who was a member of M-19 and is reintegrated in civilian life" and "indicates that the identification document is the document confiscated by the F-2 of Manizales, where he wants to go to reclaim it." See: Statement of witness Mariscela Valencia de Zapata to the Inter-American Commission on Human Rights, rendered on Wednesday, March 6, 2002. Transcription of the hearing. Transmitted to the State in IACHR communication of July 18, 2002, and document signed by the Secretary of the Honda, Tolima Divisional *Procuraduría*, at the verbal request of the interested party in the facilities of the Local Patriotas Battalion, Office of the Military Criminal Court, Jorge Hernández Castaño, August 26, 1986; Líbano – Tolima, document signed by Municipal *Personero* Jorge Hernando Rangel Echeverry on January 9, 1987. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>24</sup> OEA/Ser.L/V/II.84, Doc. 39 rev.14 October 1993, IACHR. Second Report on the Situation of Human Rights in Colombia, Chapter II: The Violence Phenomenon, C. Major Factors and Sources of Political Violence; document called *Concepción y Estructura de la OPM (Organización Político Militar del M-19)*, product of the Sixth Conference of the M-19, March 1978. A quote by Enrique Neira in the journal "Guión", Bogota, March 1980, pp.153-162.

<sup>25</sup> Court of Public Order for Preliminary Proceedings of Medellín, April 3, 1992, Number 6252. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>26</sup> Additional investigation of Néstor Martínez by the ante el Court of Public Order for Preliminary Proceedings of Medellín of March 31, 1992. A copy of the disciplinary record, No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>27</sup> Communications of the representatives of the victims on September 21 and 30, 2010.

<sup>28</sup> Statement of witness Mariscela Valencia de Zapata to the Inter-American Commission on Human Rights, rendered on Wednesday, March 6, 2002. Transcription of the hearing. Transmitted to the State in IACHR communication of July 18, 2002.

Zapata was demobilized on August 26, 1986, when he was released from the Military Criminal Court of Honda, Tolima on August 26, 1986,<sup>29</sup> the date on which the Secretariat of the Procuraduría's Honda Branch, at the verbal request of James Zapata, recorded that the alleged victim "is a person who declares that he was a member of M-19 and has reintegrated into civilian life" and "states that that his identification document was confiscated in the Manizales F-2, where he could like to go to reclaim it."<sup>30</sup>

80. In 1988, James Zapata Valencia and José Heriberto Ramírez Llanos were working as political supporters and guards at the Popular Civic Committee of Fernando Gómez Chica (candidate for mayor), Domingo Roncancio Jiménez (director), and Mario Echeverri Jiménez, located next to the *Palacio Municipal* of Manizales. The victims were working for that Committee in 1987 as political supporters for the March 1987 elections,<sup>31</sup> and in 1988, they also were responsible for looking after the Committee headquarters at night.<sup>32</sup>

81. On March 22, 1988, James Zapata Valencia and José Heriberto Ramírez were working at the Committee headquarters. The morning of that day, the victims took some stands and flags to the office of the Director, Domingo Roncancio Jiménez, and when James asked him if he would give him the money to buy a coffee, he gave him 500 pesos. James Zapata told Mr. Roncancio that they were going to use that money to have lunch.<sup>33</sup> At approximately 12:30 p.m., James Zapata and José Heriberto Ramírez were having lunch in "la Vasconia" Restaurant near the Committee when they were "detained" by two men in civilian clothes, who identified themselves as agents of the F-2 Police.<sup>34</sup>

82. That same day, Juan Jairo Muñoz, who was working with James Zapata Valencia and José Heriberto Ramírez on the popular civic movement for the election of mayors, was going

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<sup>29</sup> Document signed by the Secretary of the Honda, Tolima Divisional *Procuraduría*, at the verbal request of the interested party in the facilities of the Local Patriotas Battalion, Office of the Military Criminal Court, Jorge Hernández Castaño, August 26, 1986; Líbano – Tolima, document signed by Municipal *Personero* Jorge Hernando Rangel Echeverry on January 9, 1987. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>30</sup> Document signed by the Secretary of the Honda, Tolima Divisional *Procuraduría*, at the verbal request of the interested party in the facilities of the Local Patriotas Battalion, Office of the Military Criminal Court, Jorge Hernández Castaño, August 26, 1986; Líbano – Tolima, document signed by Municipal *Personero* Jorge Hernando Rangel Echeverry on January 9, 1987. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>31</sup> Statement of Dr. Marino Jaramillo Echeverri to the Court for Preliminary Criminal Proceedings on June 29, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009; Supplement to statement of Mariscela Valencia de Zapata to the Sixth Court for Preliminary Criminal Proceedings on June 8, 1988. Attachment to the submission of the petitioners on April 23, 1999 and a copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>32</sup> Statement of Dr. Marino Jaramillo Echeverri to the Court for Preliminary Criminal Proceedings on June 29, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754); Statement of Domingo Roncancio Jiménez to the Tenth Court of Preliminary Criminal Proceedings of Manizales on June 17, 1988. Attachments to the State's submission on December 3, 2009.

<sup>33</sup> Statement of Domingo Roncancio Jiménez, a councilor and businessman, and to the Tenth Court of Preliminary Criminal Proceedings of Manizales on June 17, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>34</sup> Statement of Juan Jairo Muñoz Cuervo to the Tenth Court of Preliminary Criminal Proceedings on June 23, 1988, where he referred to the comments by Juan Martín Valencia, employee and manager of La Vasconia restaurant. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009, and supplement to the statement of Mariscela Valencia de Zapata to the Sixth Court of Preliminary Criminal Proceedings on June 8, 1988. Attachment to the submission of the petitioners on April 23, 1999 and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

down 19<sup>th</sup> street when he saw James Zapata Valencia and José Heriberto Ramírez being taken away, in custody. He subsequently went into La Vasconia Restaurant and there, Juan Martín Valencia told him that persons who identified themselves as members of F-2 had just apprehended the disappeared victims, and that he had recognized two of them.<sup>35</sup>

83. On March 23 1988, two bodies were found at the "Taparcal" Ranch, located in the Municipality of Palestina, Caldas. At 6:30 pm on that same day, "La Inquisición" Departmental Police Inspector of Palestina (Caldas), received information from the manager of the Taparcal Ranch.<sup>36</sup> On the same date, the Police Inspection Department went to the place where the events took place and removed the two male bodies between 8:00 and 8:30 pm. The bodies were not identified. In both Legal Statements of the removal of the bodies, there was a description of the clothing found, but there was no indication whether evidence had been found. One of the Legal Statements established that the death was caused by a firearm and described the wounds of the corpses. Related to one of the bodies, the Legal Statement determines that "it presents two wounds in the forehead that appear to be bullet wounds, and another in the left parietal lobe", and, as regards the other body, "apparent bullet wounds in the posterior part of the left parietal lobe, with no exit wound."<sup>37</sup>

84. On March 23, 1988, "La Inquisición" Police Inspection Department asked the forensic physician to perform an autopsy on the male bodies to determine: the number of wounds; the weapons that caused them; the apparent age; and the primary cause of death.<sup>38</sup>

85. Autopsy number 1 established the following: a man with blond or light-brown hair, "around 25 years of age," 1.65 cm. in height and weighing approximately 65 kg, who had tattoos on the outer part of his right arm in the form of parachutes with wings, and on the front of the right leg, in the form of "A" and "G."<sup>39</sup> The same autopsy established that the body had three bullet wounds with entry holes (at the level of the angle of the right side of the mandible, the right forehead, and in the area above the left eye), and three exit wounds (at the angle of the left side of the mandible, in the left parietal region, and in the right occipital region). In addition, the autopsy indicated that the body presented marks where the wrists were tied, a comminuted fracture of the left side of the mandible with the floor of the mouth compromised, and destruction of teeth (caused by bullet No. 1), laceration of around 4 cm in diameter with no bleeding with a violet laceration at the level of the right shoulder (caused by bullet No. 4), a laceration on the right knee of around 4 cm in diameter with no bleeding, and a laceration on the left knee of about 2 cm in diameter, with no bleeding. The autopsy concluded that death was "the natural and direct

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<sup>35</sup> Receipt of testimony from secret witness, in accordance with the parameter of Decree 2790 of 1990, on March 7, 1992. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>36</sup> Report of the Police Inspection Department signed by Germán Granada Mora, Inspector, and by Leonel Moncada García, ad hoc Secretary. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009

<sup>37</sup> Record of removal of the bodies, March 23, 1988, "La Inquisición" Police Inspection Department Palestina (Caldas). Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009

<sup>38</sup> Official letter Number 012 of "La Inquisición" Police Inspection Department Palestina (Caldas), March 23, 1988, signed by Germán Granada Mora, Inspector.

<sup>39</sup> Official letter Number 050 of March 25, 1988, of the Palestina-Calda Legal Medical Office, addressed to Inspector Germán Granada Mora. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009

consequence of the wounds caused by bullets 2 and 3 together and separately, [that] had a mortal effect and entered from the front to the back.”<sup>40</sup>

86. Autopsy number 2 reported the following: a man with blond or light brown hair around 20 years old, 1.6 cm in height, and weighing approximately 60 kg, who presented a laceration at the level of the third distal of the right thigh, anterior face, without bleeding, of more or less 2 cm in diameter, with the bullet entry orifice “at the level of the left temporal-occipital region,” and that a coffee-colored mole of approximately 2 cm in diameter with irregular edges was noted in the right pectoral region. The autopsy concluded that death was “the natural and direct consequence of the wounds caused by the bullet at the level of the encephalic mass.”<sup>41</sup> After the two autopsies, “La Inquisición” Police Inspector requested the transfer of the bodies to Santa Ana Hospital, to take the fingerprints of the corpses and establish their identity,<sup>42</sup> which was done on March 24, 1988.<sup>43</sup>

87. On March 25, 1988, “La Patria,” the local newspaper of Caldas, showed photographs of the two bodies found at the Taparcal Ranch, with signs of torture.<sup>44</sup> The mother of James Zapata and some of his brothers, as well as Herminia Londoño Llanos, the sister of José Heriberto Ramírez Llanos, recognized the victims. However, when they went to the ranch and to the authorities, they were informed that the bodies had already been buried, and so identification consisted in relating some physical features with the clothing in which the two bodies were dressed.<sup>45</sup>

88. On March 26, 1988, the First Municipal Judge of Palestina (Caldas) requested the Chief of Criminal Proceedings of Manizales (Jefe de Instrucción Criminal de Manizales) to appoint a judge for the investigative preliminary proceeding, so that he could open the investigation of the murder of unidentified persons by unidentified persons, that occurred on March 23, 1988.<sup>46</sup> On April 4, 1988, Mrs. Herminia Londoño Llanos gave a statement in the Municipal Court of Palestina, Caldas. In her statement, she indicated that the previous Monday, March 25, 1988, she saw a photograph in “La Patria” newspaper that appeared to be that of her brother, José Heriberto Ramírez Llanos, and so that is why she went to Palestina to speak with the paper’s photographer, who showed her the same photograph that he had published on March 25, 1988, but in color, in which she identified her brother. During the proceeding, Mrs. Herminia Londoño recognized the

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<sup>40</sup> Official letter Number 050 of March 25, 1988, of the Palestina-Calda Legal Medical Office, addressed to Inspector Germán Granada Mora. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>41</sup> Official letter Number 050 of March 25, 1988, of the Palestina-Calda Legal Medical Office, addressed to Inspector Germán Granada Mora. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009

<sup>42</sup> Official letter Number 012 of “La Inquisición” Police Inspection Department Palestina (Caldas), addressed to the Municipal Civil Registrar.

<sup>43</sup> Official letter 098 from the National Civil National Registry Office, dated March 24, 1988.

<sup>44</sup> Submission of the petitioners dated July 2, 1991, not disputed by the State; Statement of Herminia Londoño Llanos, sister of José Heriberto Ramírez Llanos, to the Municipal Court of Palestina (Caldas) of April 4, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>45</sup> Submission of the petitioners dated July 2, 1991, not disputed by the State; Statement of Herminia Londoño Llanos, sister of José Heriberto Ramírez Llanos, to the Municipal Court of Palestina (Caldas) of April 4, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>46</sup> Report signed by Luz Edith Ramírez Atehortua, First Municipal Judge of Palestina, on March 26, 1988.

clothing she was shown, her brother's shoes, and his handwriting on a piece of paper with a telephone number and a name.<sup>47</sup>

89. On April 5, 1988, Mrs. Mariscela Valencia, the mother of James Zapata Valencia, gave a statement at the First Municipal Court of Palestina, Caldas. In her declaration, Mrs. Valencia indicated that on March 21, 1988, James Zapata was with her and his family at the home of one of his daughters in Manizales until 7:00 p.m., when they took him to the political headquarters of Fernando Gómez Chica and Domingo Roncancio Jiménez, since that is where he slept. She reported that since she did not receive news from her son James for two days, she asked another son named Freddy to find out where James was. When she was asked if she knew the other person who appeared with her murdered son, Mrs. Valencia responded that José Heriberto Ramírez and her son had been friends for some time, that both of them were involved in politics and that they had agreed to meet at the political headquarters that night. During the proceeding, Mrs. Valencia identified different objects and clothing shown to her as belonging to James Zapata.<sup>48</sup>

90. The Municipal Court of Palestina transferred the proceedings to the Sixth Court for Preliminary Criminal Proceedings [*Juzgado Sexto de Instrucción Criminal*] of Chinchiná, which took over the case on April 9, 1988.<sup>49</sup> On April 11, 1988, the Sixth Court for Preliminary Criminal Proceedings of Chinchiná, Caldas, requested the assistance of the commanding officer of the Police Station in Palestina, Caldas, in clarifying the violent deaths of James Zapata Valencia and José Heriberto Ramírez Llanos.<sup>50</sup>

91. On April 12, 1988, Ariel Marín Osorio, the feeder at Taparcal Ranch who found the bodies on March 23, 1988, gave a statement to the 6th Court for Preliminary Criminal Proceedings. In his statement, Mr. Marín Osorio indicated that he had seen a dead person hanging from a guava tree with his hands tied, and so he went to notify the manager of the ranch. He indicated that he had not seen anything else and that he had not approached the body.<sup>51</sup>

92. On June 8, 1988, Mrs. Mariscela Valencia de Zapata appeared in Court, to expand the statement she had provided earlier during the same proceeding. In her statement, she indicated that the executed victims, former members of M-19, had been pardoned approximately two years ago, and that they were working for the political movement of Fernando Gómez Chica, Domingo Roncancio Jiménez, and Dr. Marino Jaramillo Echeverí. She also declared that the two of them took care of office number two, which was located on 20th street between 17 and 18 in Manizales, where they sometimes spent the night. Mrs. Valencia further reported that on March 22, 1988, at around 12:30 pm, her son, James, was having lunch with José Heriberto Ramírez

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<sup>47</sup> Deposition of Herminia Londoño Llanos, sister of José Heriberto Ramírez Llanos, to the Municipal Court of Palestina (Caldas) of April 4, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>48</sup> Deposition of Mariscela Valencia de Zapata to the Municipal Court of Palestina, Caldas, on April 5, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009

<sup>49</sup> Case remitted on June 15, 1988 to the Regional *Procuraduría* of Manizales for judicial decision, signed by the Secretary of the Municipal Personería of Chinchiná, Hernando Duran Loiza. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>50</sup> Criminal Note Number 373 of April 11, 1988, signed by Judge Carmelita de la Cruz Palacio Betancurt.

<sup>51</sup> Statement of Ariel Marín Osorio to the Sixth Court for Preliminary Criminal Proceedings on April 12, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

Llanos at La Vasconia restaurant, located next to the offices where they both worked, when some persons came in and took them out of the restaurant. She indicated that one of the owners of the restaurant left to ask the persons who was going to pay for the meal, to which they answered: "they are not paying." She added that the restaurant owner saw them, but that he did not want to say anything out of fear.<sup>52</sup>

93. On June 8, 1988, Mr. Luis Alberto Cardona Mejía, President of the Human Rights Committee of Caldas, confirmed the complaint submitted in writing to the Personería Municipal of Chinchiná, official letter N° 035 of the Human Rights Committee of Caldas, that same day, in which the Personería Municipal de Chinchiná was asked to look into the events and the process pertaining to the death of James Zapata and José Heriberto Ramírez.<sup>53</sup> On that same day in June, Mrs. Mariscela Valencia de Zapata and Mrs. Herminia Londoño Llanos, gave a statement to the Personería Municipal of Chinchiná.<sup>54</sup>

94. In her statement, Mrs. Valencia indicated that James Zapata and José Heriberto Ramírez disappeared on March 22, 1988, and were found on March 23 at the Taparcal Ranch, Palestina jurisdiction, tied up, tortured, and with several bullet wounds. She reported that they were buried in Palestina without the knowledge of their families, since it was not until March 26, 1988, that they learned of their death. She claimed that the murderers intended that the bodies of James Zapata and José Heriberto Ramírez not be found, since they took all of the papers they were carrying, including the M-19 amnesty documents, which is why they were buried as unidentified persons. She declared that one of the two owners of La Vasconia restaurant recognized who the possible authors of the crime were, but that said person wanted to be given protection and security.<sup>55</sup>

95. Mrs. Herminia Londoño Llanos declared that her brother availed himself of amnesty, although she did not know when that had occurred, and that he devoted himself to political work with Fernando Gómez Chica up to the time he disappeared on March 22, 1988. She stated that she had only seen the photo of the body of José Heriberto in "La Patria" newspaper, since by the time she learned of his death, he had already been buried in Palestina.<sup>56</sup>

96. On June 15, 1988, the Municipal *Personería* of Chinchiná sent the depositions of Mrs. Valencia and Mrs. Londoño to the Regional *Procuraduría* in Manizales, together with the case records of the double homicide, in which the Personero Municipal described the steps taken to

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<sup>52</sup> Additional deposition of Mariscela Valencia de Zapata to the Sixth Court of Preliminary Criminal Proceedings on June 8, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009

<sup>53</sup> Municipal *Personería* of Chinchiná (Caldas), June 8, 1988, confirmation of the complaint lodged by Luis Alberto Cardona Mejía.

<sup>54</sup> Statement of Mariscela Valencia de Zapata at the office of the Municipal *Personería* of Chinchiná on June 8, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009, and Statement of Herminia Londoño Llanos to the Municipal *Personería* of Chinchiná on June 8, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>55</sup> Statement of Mariscela Valencia de Zapata at the office of the Municipal *Personería* of Chinchiná on June 8, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>56</sup> Statement of Herminia Londoño Llanos to the Municipal *Personería* of Chinchiná on June 8, 1988. Attachment to the submission of the petitioners on April 23, 1999, and copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

date and indicated that proceedings were in the preliminary, investigative stage, that there was no one charged, and that there had been no judicial decisions of any kind handed down.<sup>57</sup>

97. On June 15, 1988, Fredy Zapata Valencia, a brother of James Zapata, gave a statement to the Tenth Court for Preliminary Criminal Proceedings in Manizales. In his statement, Fredy Zapata Valencia declared that 15 or 20 days ago, he was talking with Domingo Roncancio Jiménez when Juan Jairo Muñoz Cuervo approached them to tell them that one of his neighbors, a partner in La Vasconia restaurant, had invited him for drink, and while they were chatting, he had asked him if he knew or remembered a couple of guys who worked at the headquarters of Fernando Gómez Chica. In response, the partner of La Vasconia restaurant said yes, because they would frequently have lunch at the restaurant, and that just a few days ago, while they were eating lunch, some F-2 agents arrived and asked them to accompany them so that they could ask them a few questions. He stated that when Juan Jairo Muñoz told him that those two guys had been found dead, he was alarmed and asked him not to say anything about what he had said. Fredy Zapata Valencia mentioned that he went to La Vasconia restaurant to speak with the partner, who was very frightened and did not want to answer questions. The partner had told him that four guys had taken the two from the restaurant, and that he could identify them.<sup>58</sup>

98. On June 17, 1988, Domingo Roncancio Jiménez, a member of the Municipality (Concejal) and businessman, gave a statement to the Tenth Court for Preliminary Criminal Proceedings. He said in his statement that he had known James Zapata Valencia for some 20 years, because since he was young he had been active in the political campaign he was directing, and that one of his sisters had been his secretary, and that his mother had also been a supporter of his political movement. He said that the boy called Andrés was possibly in the M-19, since he and James were inseparable. He declared that the morning of the day they disappeared, James Zapata Valencia and José Heriberto Ramírez Llanos brought some stands and flags to his office, and asked him to give them money for a coffee, and so he gave them 500 pesos. He said that James told him that they would use that money to have lunch. When asked if both James and Andrés or Heriberto had problems or enemies of some kind, Mr. Roncancio answered that he did not know of any, and that they did not have any problems in their movement, but that they could have had some from having been with the guerrillas.<sup>59</sup>

99. On June 23, 1988, Juan Jairo Muñoz Cuervo gave a statement to the Tenth Court for Preliminary Criminal Proceedings of Manizales. In his statement, Juan Jairo Muñoz Cuervo declared that about fifteen days ago, when he was in the Galerías district, he saw two friends involved in political work called Andrés and John James Zapata, who were with four persons, and so he did not approach them. He stated that on Thursday of the next week, he went into La Vasconia restaurant, and spoke with Juan Martín Valencia, who was working in the restaurant and commented to him that the two guys were eating in the restaurant when four persons who identified themselves as members of F-2 in Manizales came into the restaurant, and took them out

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<sup>57</sup> Case remitted on June 15, 1988 to the Regional *Procuraduría* of Manizales for judicial decision, signed by the Secretary of the Municipal Personería of Chinchiná, Hernando Duran Loiza. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>58</sup> Statement of Fredy Zapata Valencia to the Tenth Court of Preliminary Criminal Proceedings of Manizales on June 15, 1988. Copy of the disciplinary record registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>59</sup> Statement by Domingo Roncancio Jiménez, a councilor and businessman, to the Tenth Court for Preliminary Criminal Proceedings of Manizales on June 17, 1988. Copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

at gunpoint. He said that the manager of the restaurant must have also seen them, and that Mr. Zapata had told him that a member of Manizales F-2 had been harassing him.<sup>60</sup>

100. On June 28, 1988, Juan Martín Valencia Toro gave a statement to the Tenth Court for Preliminary Criminal Proceedings of Manizales. In his statement, he indicated that two persons entered the restaurant and seized James Zapata and José Heriberto Ramírez, while another guy remained in the doorway. When asked if these persons identified themselves as F-2, he said that he did not know, and that he was not able to identify them.<sup>61</sup>

101. On June 29, 1988, Mr. Marino Jaramillo Echeverry, an attorney, gave a statement to the Tenth Court for Preliminary Criminal Proceedings. In his statement, he indicated that he had met James Zapata Valencia and José Heriberto Ramírez Llanos the year before for political reasons, since they both were assisting as supporters and organizers at the political headquarters located in front of the Palacio Municipal. He said that James Zapata also guarded the place at night, and that he had been granted amnesty from M-19, as had his companion. He reported that he did not know of any misconduct during that time.<sup>62</sup>

102. On July 5, 1988, Mrs. Mercedes García Arango, a partner in La Vasconia restaurant, gave a statement to the Tenth Court for Preliminary Criminal Proceeding. She stated that she did not know anything about the events, since she stayed in the kitchen, but she said that Juan Martín Valencia had told her one day that two guys had left without paying, and that afterwards, she had heard that they were found dead at El Taparca Ranch.<sup>63</sup>

103. On April 4, 1990, Mrs. Mariscela Valencia participated in the Forum of Personeros of Caldas in which she related how she had learned of the death of her son and of José Heriberto Ramírez Llanos, and indicated that they were two former M-19 members who had been pardoned, and that the only enemies they had were agents of F-2 and the Army.<sup>64</sup> On September 12, 1990, Mrs. Valencia sent a letter to the Presidential Advisor for the Defense of Human Rights, in which she requested his assistance in determining the truth regarding the deaths of her son and of José Heriberto Ramírez, which were being investigated by the Preliminary Investigative Unit of Chinchiná, Caldas. In that letter, Mrs. Valencia said it was impossible for her to hire an attorney because she did not have enough economic resources.<sup>65</sup>

104. In an official letter dated December 21, 1990, the Director General of Multilateral Political Affairs requested information from the *Procurador* in charge of the Judicial Police

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<sup>60</sup> Statement of Juan Jairo Muñoz Cuervo to the Tenth Court for Preliminary Criminal Proceedings on June 23, 1988. Copy of the disciplinary case record, roistered as No.. AD-015-133079 (121754), is attached to the State's communication of December 3, 2009.

<sup>61</sup> Statement of Juan Martín Valencia Toro to the Tenth Court for Preliminary Criminal Proceedings on June 28, 1988. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), is attached to the State's communication of December 3, 2009.

<sup>62</sup> Deposition of Marino Jaramillo Echeverry to the Tenth Court for Preliminary Criminal Proceedings on June 29, 1988. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), is attached to the State's communication of December 3, 2009.

<sup>63</sup> Deposition of Mercedes García Arango to the Tenth Court for Preliminary Criminal Proceedings on July 5, 1988. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), is attached to the State's communication of December 3, 2009.

<sup>64</sup> Forum of Personeros of Caldas, Committee II- Chichiná Impunity, received on April 4, 1990; attachment to the submission of the petitioners on April 23, 1999.

<sup>65</sup> Communication sent to the Presidential Advisor for the Defense of Human Right on September 12, 1990, signed by Mariscela Valencia. Attachment to the petitioners' submission on July 2, 1991.

(Procurador Delegado de la Policía Judicial) of the *Procuraduría General de la Nación* regarding the existence of an investigation opened by that Procuraduría, into the murder of James Zapata Valencia y José Heriberto Ramírez Llanos, presumably by members of the F-2 of that city. This request was repeated on August 28, 1991.<sup>66</sup> In March 1991, the investigation into the homicides of James Zapata Valencia and José Heriberto Ramírez Llanos was transferred by the Preliminary Investigation Unit of Chinchiná, Caldas, to the Public Order Division of Medellín, Antioquia.<sup>67</sup>

105. On May 14, 1991, Juan Jairo Muñoz Cuervo, who was working with James Zapata and José Heriberto Ramírez for the same popular civic movement for the mayoral election, gave a sworn statement, in which he stated that on March 22, 1988, at 12:30 pm, he saw how members of F-2 had taken James Zapata and José Heriberto Ramírez prisoners when he was on 19th street. He indicated that subsequently, he went into La Vasconia restaurant, where Juan Martín Valencia told him that persons who identified themselves as members of F-2 had just arrested the two and that he could identify two of them. Mr. Muñoz Cuervo requested in his statement that his name remain anonymous for his own security.<sup>68</sup>

106. On February 19, 1992, the Court of Public Order of Medellín took on the case and ordered the Technical Corps of the Judicial Police for Public Order to: 1) request the National Police for the service record of Agent Luís Fernando Velázquez Peláez; 2) take the necessary steps to establish in 1988 which F-2 agent, whose physical traits were described in the statement made by Mariscela Valencia de Zapata on May 26, 1989, was known as "Pantera," and once the agent's identity was obtained, request his service record and a photograph; 3) listen again to the testimony of Mariscela Valencia de Zapata, Juan Martín Valencia Toro, Abad Ramírez García, Juan Jairo Muñoz Cuervo, Herminia Londoño Llana, in order to: a) establish the physical characteristics of the persons who took James Zapata Valencia and José Heriberto Ramírez Llanos out of La Vasconia restaurant; b) provide new information on the alleged authors of these events; c) establish whether the F-2 agents who identified themselves as such and took the two murdered victims out of La Vasconia restaurant were later seen in the town and in the area, for what period of time, and their current whereabouts; d) any other information they might contribute to help identify or name the authors or participants in said event.<sup>69</sup>

107. On March 5, 1992, Mrs. Mariscela Valencia de Zapata testified at the Divisional Office of Public Order, Investigative Unit of the Technical Corps of the Judicial Police of Medellín. In her statement, she indicated that she had managed to identify one F-2 agent, whose name was William Arroyave, who had followed her son together with two other F-2 agents known as "la Pantera" and "el Pelirrojo". She stated that William Arroyave had offered Domingo Roncancio Jiménez protection from James Zapata and Heriberto Ramírez Llanos about 15 days prior to their murder, but Domingo Roncancio told them that he knew them and did not need protection, and that he was aware that they had been members of M-19. She also said that since the death of

<sup>66</sup> Official communication P.M./D.H. 19212 of August 28, 1991, signed by Luis Guillermo Grillo Olarte, Director General of Multilateral Political Affairs. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), is attached to the State's communication of December 3, 2009.

<sup>67</sup> Record by the person in charge of the preliminary investigation of Chinchiná, Caldas, at the verbal request of Mariscela Valencia on April 10, 1991. Attachment to the petitioners' submission on July 2, 1991.

<sup>68</sup> Sworn statement of Juan Jairo Muñoz Cuervo, Manizales on May 14, 1991, to María Consuelo del Río M, Coordinadora de Promoción Jurídica, Carrera 10, Nro 24-76, Oficina 1101. Attachment to the petitioners' submission on July 2, 1991.

<sup>69</sup> Court of Public Order for preliminary proceedings, Medellín, February 19, 1992, copy of the disciplinary case record, registered as No.. AD-015-133079 (121754) attached to the State's communication of December 3, 2009. In that communication, reference is made to the statements rendered by Mariscela Valencia de Zapata, on May 26, 1989, and by Abad Ramírez García, which the IACHR did not have at the time of drafting this report (see *supra* para. 15).

James Zapata, she had not received threats, but that her sons José Fernando and Fredy Zapata Valencia had been subject to several kidnapping attempts on different occasions, and that, in the case of her son Fredy, some men who identified themselves as F-2 agents tried to take him out of a pool hall.<sup>70</sup>

108. In this regard, according to the declaration made in 2002 by Mrs. Mariscela Valencia to the Inter-American Commission on Human Rights, in 1988 several members of F-2 came to the headquarters of the Civic Committee to speak with Domingo Roncancio Jiménez and to offer him protection, since they said that there were members of M-19, referring to James Zapata Valencia and José Heriberto Ramírez Llanos, there. In her statement, Mrs. Valencia indicated that Domingo Roncancio had told her prior to this visit that there had been things written on his car and on the car of Fernando Gómez Chica, and that he had received phone calls telling him to be careful, since M-19 had penetrated his movement. Mrs. Valencia indicated that Domingo Roncancio did not accept the protection. However, Fernando Gómez Chica had accepted the protection, since from that time on, members of F-2 were at the headquarters of the Civic Committee. She indicated that Juan Jairo Muñoz Cuervo could identify the persons who were with the executed victims on March 22, 1988, as the body-guards of Fernando Gómez Chica who belonged to F-2.<sup>71</sup>

109. On March 6, 1992, the sister of José Heriberto Ramírez Llanos, Herminia Londoño Llanos, gave a statement to the Sectional Branch of Public Order, Investigative Unit of the Technical Corps of the Judicial Police of Medellín. Mrs. Londoño Llanos described how six months before his brother was murdered, personnel of the battalion had taken him out of the house where he was living with his grandmother and had kept him in the battalion for a day and part of a night, before they released him.<sup>72</sup>

110. On March 7, 1992, testimony was received from a person whose identity was protected, in accordance with Article 22 of Decree No. 2790 of November 20, 1990,<sup>73</sup> and who was identified by his right index finger. This person declared that he was in La Vasconia restaurant between 12 and 2 pm, when two guys came in and ordered lunch. He reported that shortly

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<sup>70</sup> Statement of Mariscela Valencia de Zapata to the Sectional Branch of Public Order, Investigative Unit of the Technical Corps of the Judicial Police of Medellín on March 5, 1992. Copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009; Statement of witness Mariscela Valencia de Zapata to the Inter-American Court of Human Rights, rendered on Wednesday, March 6, 2002. Transcription of the hearing. transmitted to the State in IACHR communication of July 18, 2002.

<sup>71</sup> Statement of witness Mariscela Valencia de Zapata to the Inter-American Court of Human Rights, rendered on Wednesday, March 6, 2002. Transcription of the hearing transmitted to the State in IACHR communication of July 18, 2002.

<sup>72</sup> Statement of Herminia Londoño Llanos to the Divisional Department of Public Order, Investigative Unit of the Technical Corps of the Judicial Police of Medellín on March 5, 1992. Copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>73</sup> ARTICLE 22. Whenever circumstances so advise for the safety of witnesses, they may affix their fingerprint to a declaration instead of their signature; in these cases, however, the participation of an agent of the Public Ministry is required, to certify that said print corresponds to the declarant. For this purpose, a record shall be drawn up, containing a complete description of the identity of the declarant and his fingerprint, and said record shall be kept in a sealed envelope and forwarded to the Divisional Department of Public Order using appropriate security measures.

The same procedure may be followed with expert testimony and with any other evidence given where it would be appropriate to protect the identity of the persons who participated in it. In these cases, reference to these persons shall be omitted from the text of the record of the testimony by witnesses or experts.

Without prejudice to the functions granted by law to the Chief of the Administrative Department of Security, the National Assistant Director of Public Order may take special steps to protect witnesses when they so request, which may even consist in the substitution of the civil registry and identity documents of persons, and in the provision of the economic resources needed for the persons to change their domicile and occupation, both within and out of the country.

thereafter, four persons arrived and went up to the guys. One said: "we are F-2, and you need to follow us."<sup>74</sup> He indicated that one of the guys asked him why if they had papers, but he answered: "come on" and seized them. He said that while two of the persons were entering the restaurant, the other two were at the entrance of each of the two doors of the restaurant. Moreover, he was able to identify three persons from photographs, which were distributed in three sheets showing seven photos of each one of them. The person declaring identified dismissed Sergeant Néstor Martínez, who at the time was working for F-2 in Manizales, Luis Arnulfo Giraldo, who at the time of the events was working at SIJIN in Manizales, and Oscar Gutiérrez Giraldo, who at the time the statement was given was a driver of the Manizales Police.<sup>75</sup>

111. On March 9, 1992, further testimony was received from a person whose identity was withheld, in accordance with Decree 2790 of 1990, who identified himself with the fingerprint of his right index finger. The witness indicated that he was in the district of La Galería two days prior to finding the corpses of James Zapata and Heriberto Ramírez, when he saw those two persons in the company of three or four persons dressed in ponchos, hats, and sacks. He indicated that he approached La Vasconia restaurant, to greet a friend who worked there, who told him that the persons who were with James Zapata and José Heriberto Llanos had identified themselves as members of F-2. During the procedure of photographic identification, he recognized Jorge Enrique García, who was working at the time for F-2 in Manizales, and Héctor Fabio Ospina Salcedo, who was a member of F-2 at the time of the events.<sup>76</sup>

112. On March 14, 1992, the criminal investigation was opened by the Court of Public Order for Preliminary Proceedings of Medellín, since the persons allegedly responsible for the disappearance and subsequent murder of James Zapata Valencia and José Heriberto Ramírez Llanos had been identified. Having proven the existence of the events, the court ordered that the persons allegedly responsible for them be summoned to appear in that court on March 19, 1992.<sup>77</sup> However, none of the four police agents or the former sergeant who had been given notice appeared at the proceedings of which they had been notified.<sup>78</sup>

113. On March 30, 1992, the Court of Public Order of Medellín took the testimony of Néstor Martínez and Oscar Gutiérrez Giraldo, both of whom denied knowing anything about what they were questioned on, and stated that in March 1988, neither of them was working for F-2, but

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<sup>74</sup> Receipt of testimony from witness whose identity was withheld in accordance with the parameters of Decree 2790 de 1990, March 7, 1992. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>75</sup> Receipt of testimony from witness whose identity was withheld in accordance with the parameters of Decree 2790 de 1990, March 7, 1992. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>76</sup> Receipt of testimony from witness whose identity was withheld in accordance with the parameters of Decree 2790 de 1990, March 7, 1992. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>77</sup> Proceeding 6252, Court of Public Order for Preliminary Proceedings, Medellín, Saturday, March 14, 1992. Attachment to the State's communication of December 3, 2009; Record of special visit to proceeding No. 6252 in the Public Order jurisdiction, hearing the case of the violent deaths of James Zapata Valencia and José Heriberto Ramírez Llano. Department of the *Procuraduría*, 20 March 1992. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>78</sup> Department of the *Procuraduría*, Medellín, March 20, 1992, Evaluation Report No. 15 addressed to Dr. Iván Velázquez Gómez, Departmental *Procurador*, and signed by Laura Nelly Tobón Duque, Legal Advisor. Copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

that the first worked for SIJIN, and the second drove a truck for the police.<sup>79</sup> On March 31, 1992, further testimony was taken from Mr. Néstor Martínez.<sup>80</sup> On April 1, 1992, a preliminary statement was taken from Jorge Enrique García, who acknowledged that he belonged to F-2 in Manizales at the time of the events.<sup>81</sup> In their testimony, these persons denied knowing James Zapata Valencia and José Heriberto Ramírez Llanos or La Vasconia restaurant, and they denied any police intelligence operations in the city of Manizales.

114. On April 3, 1992, the Court of Public Order for Preliminary Proceedings determined the legal situation of the persons investigated as allegedly implicated in the homicide of José Heriberto Ramírez Llanos and James Zapata Valencia, but refrained from issuing detention orders against them, although they were required to appear in court whenever necessary, on the grounds of: inconsistencies in the testimony of witnesses with regard to the description of the persons prior to identification by the photographs; the failure of both witnesses to identify the persons under investigation; the lack of documentary proof that the accused were members of the Intelligence Group; and, that they would have “committed such macabre crimes” on the orders of a superior.<sup>82</sup>

115. However, in that decision, the Court instructed the Technical Corps of the Manizales Judicial Police to gather the following evidence in 30 days: 1) to request SIJIN of Manizales to establish whether the persons investigated were members of the Subversive Front Intelligence Group and the Command of Caldas Department, provide the Security Corps they were assigned to, and submit an authenticated copy of the service record of each of them; 2) to question the personnel working at the SIJIN Intelligence Group in Manizales and summon them to give testimony on the events under investigation; to determine whether internal investigations into the disappearance of the two former M-19 guerrillas, James Zapata Valencia and José Heriberto Ramírez Llanos, were conducted, since it would appear that they were directed by F-2 agents in those branches; to determine if agents knew of their death, and if they recalled the existence of leftist groups operating in Caldas Department and specifically in Manizales; to verify the authorities who investigated the case of the two murdered former guerrillas, and determine how many times both they and their families were placed at the disposal of F-2; 3) to interrogate the seven police agents identified by the Court in its decision and ask them whether other F-2 agents had access to the intelligence group, and the names of other agents who were working there at that time; 4) to conduct a judicial inspection of the police records, to determine the specific functions performed by the agents under investigation on March 22 and 23, 1988, and whether they were absent from their work and for what reason; 5) to take the testimony of various persons identified regarding the conduct and behavior of the persons under investigation.<sup>83</sup>

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<sup>79</sup> Statement of Néstor Martínez to the Court of Public Order, Medellín on 30 March 1992. Statement of Oscar Gutiérrez Giraldo on March 30, 1992. Attached to the petitioners’ submission of March 25, 2009, and copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>80</sup> Expanded investigation of Néstor Martínez by the Court of Public Order for Preliminary Proceedings, Medellín, March 31, 1992. Attachment to the petitioners’ submission of March 25, 2009, and copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>81</sup> Investigative statement of Jorge Enrique García to the Court of Public Order of Medellín on April 1, 1992. Copy of the disciplinary case record, registered as No. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>82</sup> Court of Public Order of Medellín, 3 April, 1992, Proceeding 6252. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

<sup>83</sup> Court of Public Order of Medellín, Case 6252. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State’s communication of December 3, 2009.

116. On April 30, 1992, the Court of Public Order for Preliminary Proceedings of Medellín accepted to take the evidence requested by the attorney of two of the persons charged and ordered the Technical Corps of the Judicial Police to do the following within 30 days: 1) conduct a judicial inspection of the books of the Personnel Office to determine whether in March 1988, the three persons under investigation belonged to the Manizales F-2 Group or whether they were providing their services to another Police Division; 2) determine in the Caldas SIJIN Record Book the missions and working orders performed in that agency, and whether the subversive front had a specific mission; 3) notify the Caldas Regional *Procuraduría* to report whether it had made progress against the three persons under investigation or if the investigation into the death of the former M-19 guerrillas, James Zapata Valencia and José Heriberto Ramírez Llanos, had advanced.<sup>84</sup>

117. On June 8, 1992, the *Procuraduría* responsible for the Judicial Police and Administrative Police ordered the Departmental *Procurador* of Antioquia to send a copy of the procedures carried out by the Technical Corps of the Manizales Judicial Police, in accordance with the order issued by the Court of Public Order for Preliminary Proceedings on April 3, 1992,<sup>85</sup> which was done on June 25, 1992.<sup>86</sup>

118. On September 9, 1992, the *Procuraduría* for the Judicial Police and the Administrative Police opened a disciplinary investigation to clarify the conduct of members of the National Police who belonged to SIJIN, Caldas Police Department: Sergeant Néstor Martínez, Agents Luis Arnulfo Giraldo Marin, Oscar Gutiérrez Giraldo, Jorge Enrique García, and Héctor Favio Ospina Salcedo<sup>87</sup>.

119. On August 9, 1993, the *Procuraduría* responsible for the Judicial Police and the Administrative Police ordered the proceedings closed, since disciplinary action was prohibited under the statute of limitations, because more than five years had elapsed since the last act representing a disciplinary offense occurred, pursuant to Article 12 of Law 25 of 1994.<sup>88</sup>

120. On April 14, 1994, the Contentious-Administrative Chamber of the Council of State heard the appeal against the December 9 decision of the Administrative Tribunal of Caldas, that found the complaint filed by Mrs. Mariscela Valencia to be inadmissible due to the fact that the statute of limitation barred the action.<sup>89</sup> The Contentious-Administrative Chamber upheld the 1993 decision, indicating that a petition should have been filed within a period of two years, from

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<sup>84</sup> Court of Public Order of Medellín, 3 April, 1992, Proceeding 6252. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>85</sup> *Procuraduría* responsible for the Judicial and Administrative Police, Santa Fé de Bogotá D.C., June 8, 1992, signed by Jaime Camacho Florez, *Procurador* for the Judicial and Administrative Police. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>86</sup> Departmental *Procuraduría*, Medellín, June 25, 1992, Evaluation Report No. 049, signed by Laura Nelly Tobon Duque, Legal Advisor. Copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009.

<sup>87</sup> *Procuraduría* for the Judicial and Administrative Police, Santa Fé de Bogotá D.C., September 4, 1992. Copy of disciplinary case record No. AD-015-133079 (121754). Attachment to the petitioners' submission of March 25, 2009 and attached to the State's communication of December 3, 2009.

<sup>88</sup> *Procuraduría* responsible for the Judicial and Administrative Police, Santa Fé de Bogotá D.C., August 9, 1993, signed by Guillermo Villa Alzate, *Procurador Delegado*. Attachment to the petitioners' submission of March 25, 2009, and copy of the disciplinary case record, registered as No.. AD-015-133079 (121754), attached to the State's communication of December 3, 2009. Also see the attachment to the petitioners' submission of April 23, 1999.

<sup>89</sup> Council of State, Contentious-Administrative Chamber, Third Section, Case File Number 9382, April 14, 1994, reporting Councilor Dr. Julio César Uribe Acosta. Attachment to the State's submission on August 15, 1997.

the time that the petitioners “were certain of the death of the persons initially detained and disappeared at the hands of F-2 agents.”<sup>90</sup>

121. On June 7, 2006, the investigation was reassigned to Prosecutor 17 of the National Human Rights and International Humanitarian Law Unit, which took over the case and ordered the taking of further evidence. On September 22, 2008, the Manizales Technical Investigative Corps of the Office of the Public Prosecutor specializing in Human Rights and International Humanitarian Law personally notified Mrs. Mariscela Valencia that she should appear in the Office of the Public Prosecutor specializing in Human Rights and International Humanitarian Law in Bogota to give further testimony in the investigation proceedings.<sup>91</sup>

122. To date, the investigation is still in the preliminary stage of investigation of responsible people,<sup>92</sup> despite the efforts by family members of the executed victims for over twenty years to discover the truth about what occurred and to seek justice for the crimes committed.

## **B. Legal considerations**

### **1. Right to personal liberty (Article 7 of the American Convention), considered in relation to the duty to guarantee rights (Article 1.1 of the American Convention)**

123. Article 7 of the American Convention establishes the following:

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.

124. The Commission notes that in its 1993 Report on the Human Rights Situation in Colombia, it indicated that:

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<sup>90</sup> Council of State, Contentious-Administrative Chamber, Third Section, Case File Number 9382, April 14, 1994, reporting Councilor Dr. Julio César Uribe Acosta. Attachment to the State’s submission on August 15, 1997.

<sup>91</sup> Personal Notification, Office of the National Prosecutor General, Comisorio: 1052 – Office of Prosecutor specializing in Human Rights and International Humanitarian Law, Document No. 167 of September 22, 2008. Attachment to the petitioners’ submission of March 25, 2009.

<sup>92</sup> Reported by the State in its submission of November 30, 2009.

[t]he right to personal liberty was amply discussed in the Commission's 1981 report, in consideration of the large number of complaints of violations of this right. At present, political or presumably political arbitrary detentions have been selective, instead of on a mass scale, and on many occasions they take place as a step prior to the disappearance of a person. Arbitrary detention, according to the information provided to the IACHR, is a violation that affects all of Colombian society.<sup>93</sup>

125. Thus, in its 1993 Report, the Commission pointed out that during its on site visit, it had an opportunity to learn through the direct testimony of nongovernmental human rights organizations and representatives of other university, professional, and religious institutions of the selective nature of detention orders carried out by the Police and the Army, the majority of which are directed to detaining persons linked either directly or indirectly with subversives, labor unionists allegedly unionized to act as instruments to disrupt social peace, in coordination with subversive movements, and friends, families, and relatives of these persons, or human rights activists or leaders, who were discriminated against for their action in defense of such rights, as collaborators of the subversion.<sup>94</sup>

126. Both the Inter-American Court and the European Court of Human Rights have attached special importance to prompt judicial control of detentions, to prevent arbitrary detentions. A person who has been deprived of his liberty without any type of judicial control should be released or immediately placed at the disposal of a judge, since the main duty established in Article 7 of the Convention is protection of personal liberty against the interference of the State. The Court has emphasized that failure to recognize the detention of an individual is a complete denial of the guarantees that should be granted and an even more serious violation of the article in question.<sup>95</sup>

127. In the same context the Inter-American and the European Court on Human Rights, as well as the UN Working Group on Arbitrary Detention, have found that by protecting personal liberty, both protection of the physical freedom of individuals as well as personal safety and security are being safeguarded, in a situation in which the absence of guarantees could result in subversion of the rule of law and in deprivation of the minimum forms of legal protection to detainees.<sup>96</sup> Moreover, prohibition of arbitrary detention is essential to citizen security, to the extent that it prevents legal mechanisms that were created to defend the security of all inhabitants from being used for the purpose of violating human rights protected by the Convention.

128. For the purpose of determining whether detention is compatible with the provisions of paragraphs 2 and 3 of Article 7 of the American Convention, there are three steps to follow: 1) in the first place, the legality of the detention must be determined, in the material and formal sense of the term, for which purpose it must be found to be consistent with the domestic legislation of the state in question; 2) in the second place, said domestic laws must be examined in light of the guarantees established in the American Convention, to determine if they are arbitrary; and 3) finally, if the detention meets the requirements established in domestic laws that are compatible with the

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<sup>93</sup> IACHR, OEA/Ser.L/V/II.84, Doc. 39 rev.14 October 1993, IACHR, Second Report on the Human Rights Situation in Colombia, Chapter V: Right to Personal Liberty, B. Complaints related to this right, para. 1.

<sup>94</sup> IACHR, OEA/Ser.L/V/II.84, Doc. 39 rev.14 October 1993, IACHR, Second Report on the Human Rights Situation in Colombia, Chapter V: Right to Personal Liberty, B. Complaints related to this right, para. 3.

<sup>95</sup> I/A Court H.R., *Bámaca Velásquez v. Guatemala Case*. Judgment of November 25, 2000. Series C No. 70, para. 141.

<sup>96</sup> *Ibidem*, 139.

American Convention, it must be determined whether application of that provision to the specific case was arbitrary.<sup>97</sup>

129. In the present case, there is testimony by various persons who either were present or had knowledge of the background and the way in which the victims were detained and taken from the public establishment they were in. This testimony reveals a substantial level of consistency and uniformity with regard to the principal points or events, namely, that James Zapata Valencia and José Heriberto Ramírez Llanos had been subjected to prior detentions, that both of them were in La Vasconia restaurant on March 22, 1988, that a group of four persons who identified themselves as members of F-2 arrived at the public establishment and removed them from it, that the executed victims were seen alive for the last time in the custody of these persons, that the bodies of the executed victims appeared at a ranch the following day, and that the family of at least one of the victims had been subjected to harassment on the part of state agents before and after the executions.

130. The capture of the executed victims constituted an act of abuse of power, since it was not done for the purposes of bringing them to a judge or another official authorized by law to exercise judicial functions, so that said official or judge could decide promptly as to the legality of their arrest or detention and order their release if the arrest or detention had been illegal, according to the terms of Article 7.6 of the Convention. On the contrary, it was carried out by persons identifying themselves as members of the F-2 police group, without an explanation of any sort as to the reasons for the detention and with the obvious result of their execution, using intimidation and violence, and openly in the presence of witnesses.

131. The Commission concludes that based on the situation at the time, the specific circumstances of the case, and the lack of an investigation by the State, the State of Colombia violated Article 7 of the American Convention, considered in conjunction with Article 1.1 of said instrument, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos.

**2. Right to Life (Article 4 of the American Convention), considered in relation to the obligation to respect rights (Article 1.1 of the Convention)**

132. Article 4.1 of the American Convention establishes the right to life. Said Article states that:

5. 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.

133. The right to life is of special importance, because it is the essential presupposition for exercise of all the other rights. The right to life is of fundamental importance within the system of guarantees of the American Convention, and it is recognized in Article 27.2 of that instrument as one of the rights that cannot be suspended in time of war, public danger or other emergency that threatens the independence or security of a State Party to the Convention.

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<sup>97</sup> According to the repeated doctrine of the Commission, arbitrary detention is based on three assumptions: 1) the detention takes place outside the reasons validly stipulated by law (extra-legal detention); 2) it is executed without observing the rules stipulated by law; and 3) it involves improper use of the powers of detention, i.e., it is done for purposes other than those stipulated and required by law (detention for inappropriate purposes). IACHR, Report 1/96, Case 10559 (Peru), published in the 1995 Annual Report of the IACHR, page 161.

134. Violation of the human rights protected by the Convention can entail the international responsibility of a state party, either because the violation is perpetrated by its own agents or, even if initially it is not directly attributed to the State because it was committed by a private party, even if it is not possible to determine the author of said violation, due to a lack of diligence on the part of the State in taking action to reasonably prevent the violation, or to deal with it in accordance with the provisions of the Convention.

135. It is therefore critical to determine if the illegal act was committed with the participation, support, or acquiescence of state agents, or resulted from failure by the State to fulfill its obligation to reasonably prevent human rights violations, to conduct a serious investigation to identify and punish the responsible parties, and to provide adequate reparations to the victims or their family members for the damages caused.

136. According to the Court's findings in its jurisprudence, states have the obligation to guarantee the conditions required to prevent violations of this inalienable right and, more specifically, the duty to prevent its agents from perpetrating such violations. Compliance with Article 4, taken in conjunction with Article 1.1 of the American Convention, not only presumes that no one is deprived of his life arbitrarily (negative obligation), but also requires states to adopt appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to guarantee the full and free exercise of the rights of all persons under their jurisdiction. This active protection of the right to life by the state not only involves its legislators, but also all state institutions and those in charge of providing security, whether they be the police or the armed forces.<sup>98</sup>

137. In the present case, there is evidence of the participation of state agents in the kidnapping and subsequent execution of the victims Zapata and Ramirez. The IACHR notes in this regard that this evidence was not corroborated by means of an effective investigation. Observing this matter as a whole and in context, it determines that the documentary and testimonial evidence offered confirms the involvement of state agents in the violation of the right to life, through acts of collaboration or omission. In this context, the Commission notes that various elements are present and need to be considered to establish whether the Colombian State violated the Convention or not, based on the circumstances surrounding the execution of the victims.

138. As stated in the report, in the first place, there is testimony by various persons that reveals a substantial degree of consistency and uniformity regarding the principal points of the events, namely, that James Zapata Valencia and José Heriberto Ramírez Llanos had been subjected to prior detentions, that both of them were in La Vasconia restaurant on March 22, 1988, that a group of four persons who identified themselves as members of F-2 arrived at the public establishment and removed them from it, that the executed victims were seen alive for the last time in the custody of these persons, that the bodies of the executed victims appeared at a ranch the following day, and that the family of at least one of the victims had been subjected to harassment on the part of state agents before and after the executions.

139. Along the same lines, the allegations regarding the detentions, the lack of evidence to support their legality or justify them, the versions of the parties, the documents related to the scene of the crime, which lacked sufficient detail on the removal of the bodies and evidence found at the scene, the burial of the bodies without identifying them or gathering more evidence, and the

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<sup>98</sup> I/A Court H.R., *Case of Myrna Mack Chang*, paras.152 and 153; *Case of Bulacio*, para. 111; *Case of Juan Humberto Sánchez*, para. 110; and, *Case of the "Street Children" (Villagrán Morales et al.)*, para. 144, cited in the *Case of 19 Comerciantes vs. Colombia*, Judgment of July 5, 2004, para. 153.

failure to conduct a comprehensive investigation into the events all allow one to infer the participation of persons acting as state agents in the present case.

140. In the second place, the Commission notes that the execution of James Zapata and José Heriberto Ramírez presents characteristics that fit with the conduct reported by different media sources, by the United Nations, and by the Commission itself at the time, namely, that government security organizations, protected by broad powers granted under the state of siege, committed acts that on occasions involved forced disappearance, executions, torture, and arbitrary detentions.<sup>99</sup>

141. With respect to the situation in Colombia at the time of the events, the United Nations Working Group on Forced or Involuntary Disappearances indicated in its report on a visit to Colombia in 1988 that forced disappearances were characterized in Colombia by their short duration, and that in

many cases of legal detention or kidnapping, the body of the victim would appear a few hours or days later, invariably tortured, sometimes mutilated. Technically, these cases were considered as “clarified” in the language of the Working Group, even before they were actually the subject of a complaint or legal action, but it is unquestionable that these could be cases of summary or arbitrary execution and torture.<sup>100</sup>

142. The Working Group further indicated that:

In general, after weighing the available evidence, the Working Group is of the view that in most of the cases reported, indirect evidence permits one to suspect—and available information demonstrates—the participation of units of the armed forces or the police in the forced or involuntary disappearances.<sup>101</sup>

143. In the third place, and in view of the consistent indications that there was a detention and extrajudicial execution by state agents, the Colombian authorities did not conduct a diligent and effective domestic investigation to establish responsibilities in this case. The proceedings initiated after the execution of the victims are still only in their preliminary phase, even though over 20 years have elapsed since the events occurred. Neither was a domestic administrative proceeding initiated, nor was evidence of any kind collected, such as the evidence located at the scene of the crime, nor was Fernando Gómez Chica interrogated on the F-2 personnel who allegedly provided his security, which would have been part of a diligent investigation.

144. The Commission notes that, as established in the section on proven facts, the persons who were identified as suspects did not collaborate in the investigation of the facts surrounding the execution of the victims, and instead only denied the violations they were charged with and any connection with the events of the case. Moreover, the State did not offer evidence to discredit the testimony of eye-witnesses and others who testified to the participation of F-2 police agents in the executions.

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<sup>99</sup> See IACHR: OEA/Ser.L/V/II.84, Doc. 39 rev.14 October 1993, IACHR, Second Report on the Human Rights Situation in Colombia.

<sup>100</sup> Doc. E/CN.4/1989/18/Add.1, 6 February, 1989, para. 127.

<sup>101</sup> Doc. E/CN.4/1989/18/Add.1, 6 February, 1989, para. 127.

145. In this context, the Commission recalls that in accordance with the jurisprudence of the Inter-American Court, gaps or defects in the investigation that prevent effective action to determine the cause of death or to identify the responsible parties or the masterminds behind the crime imply noncompliance with the obligation to guarantee the right to life.<sup>102</sup> Thus, the Commission notes that the Inter-American Court has repeatedly ruled that in cases of extrajudicial executions, forced disappearances, torture, and other serious human rights violations, the conduct of an *ex officio* investigation that is prompt, serious, impartial, and effective is a fundamental element that is a requisite for the guarantee and protection of certain rights affected in these situations, such as personal liberty, humane treatment, and life.<sup>103</sup>

In these cases, the state authorities must conduct the investigation as a legal duty, over and above the procedural activities of the interested parties, using all available legal means, for the purpose of determining the truth. Moreover, depending on the right at risk or that has allegedly been violated, as in the case of the right to life, the investigation must procure the pursuit, capture, trial, and possible punishment of all the authors of the acts, and especially when state agents may be or are involved.<sup>104</sup>

146. In the present case, the corpses of the victims were identified by their families only through the clothes they were wearing at the time of the events, which they were shown on April 4 and 5, 1988, since the bodies were buried as unidentified on March 25, 1988. After identification of the bodies, the authorities did not take any steps to exhume them or to gather evidence in the place where they were found. In this regard, the Commission notes that according to the 1989 Principles related to Effective Prevention and Investigation of Extralegal, Arbitrary, or Summary Executions, and specifically Principles 2 and 13:

The body of the deceased person may not be buried, incinerated, etc. until a physician, and if possible an expert in forensic medicine, has performed an adequate autopsy. Persons who perform the autopsy shall have access to all of the data of the investigation, the place where the body was discovered, and the place where the death is assumed to have occurred. If after having buried the body, it is necessary to conduct an investigation, the body will be promptly exhumed in an appropriate manner for a subsequent autopsy....<sup>105</sup>

The body of the deceased person must be made available to the persons who will perform the autopsy during a sufficient period of time, so that they can carry out a detailed investigation. In the autopsy, an attempt must be made to determine, at least, the identity of the dead person and the cause and form of death. Inasmuch as possible, the time and place of death must also be specified. The autopsy report should include detailed color photographs of the body, with a view to documenting and corroborating the conclusions of the investigation. The autopsy report should describe each and every one of the lesions present on the dead person and include any indications of torture.<sup>106</sup>

<sup>102</sup> I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C. N. 134, para. 219; *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006, Series C. No. 140, para. 144; *Case of Baldeón García*. Judgment of April 6, 2006, Series C. No. 147, para. 97; and *Case of Montero Aranguren et al.* Judgment of July 5, 2006, para. 83.

<sup>103</sup> I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of 26 May 2010. Series C No. 213, para. 117; *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 145.

<sup>104</sup> I/A Court H.R., *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of 26 May 2010. Series C No. 213, para. 117; *Massacre of Pueblo Bello v. Colombia Case*. Judgment of January 31, 2006. Series C No. 140, para. 143.

<sup>105</sup> Recommended by the Economic and Social Council in its decision 1989/65, of May 24, 1989, Principle 12.

<sup>106</sup> Recommended by the Economic and Social Council in its decision 1989/65, of May 24, 1989, Principle 13.

147. Consequently, based on the foregoing analysis, the Commission concludes that the State violated Article 4 of the American Convention, in conjunction with Article 1 of that instrument, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos.

**3. Right to Humane Treatment (Article 5 of the American Convention, considered in relation to the Obligation to Respect Rights (Article 1.1 of the Convention))**

148. Article 5.1 of the American Convention establishes that:

Every person has the right to have his physical, mental, and moral integrity respected," and paragraph 2 of that Article states that "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.

149. The responsibility of the State of Colombia for the illegal detention and subsequent extrajudicial execution of James Zapata Valencia and José Heriberto Ramírez Llanos has already been proven. On this point, it is important to recall that the condition of illegal and arbitrary detention in and of itself places the victim in a situation of vulnerability leading to the risk that other rights, such as the right to human treatment and to be treated with dignity, will also be violated.<sup>107</sup>

150. With regard to the time that the victims may have been illegally detained, even when the case record does not contain elements of proof that make it possible to define precisely the duration of the detention before proceeding with their execution, the Commission considers that, in accordance with criteria established by the Court,<sup>108</sup> it is enough that the detention lasted briefly for a violation of their mental and moral integrity to have been committed.

151. Moreover, the Commission considers as a proven fact, in accordance with the autopsies performed, that in addition to presenting the impacts from a firearm, at least one of the bodies of the victims had signs of having had his wrists tied, as well as fractures and lacerations. The IACHR also notes that the photographs shown to the family members for identification of the victims, in the light of the circumstances in which the events occurred, show lesions that would imply violation of the right to humane treatment of the executed victims. Together with the foregoing, the IACHR takes into account that the State did not submit arguments on this right beyond denying the responsibility of state agents in general.

152. In both international instruments and jurisprudence, torture is defined as the intervention of a deliberate intent to obtain certain purposes, such as to obtain information from a person, or to intimidate or punish someone.<sup>109</sup> Specifically, Article 2 of the Inter-American

<sup>107</sup> I/A Court H. R., *Baldeón García v. Peru Case*. Judgment of April 6, 2006. Series C No. 147, para. 119; I/A Court H. R., *López Álvarez v. Honduras Case*. Judgment of February 1, 2006. Series C No. 141, para. 104; I/A Court H. R., *Juan Humberto Sánchez v. Honduras Case*. Judgment of June 7, 2003. Series C No. 99, para. 96. See also, ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25. para. 167.

<sup>108</sup> I/A Court H.R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, para. 108; and, I/A Court H.R., *Juan Humberto Sánchez v. Honduras Case*. Judgment of June 7, 2003. Series C No. 99, para. 98.; I/A Court H.R., *Cantoral Benavides v. Peru Case*. Judgment of August 18, 2000. Series C No. 69, paras. 83, 84 and 89.

<sup>109</sup> In the Case of *Cantoral Benavides*, the Court invoked the interpretation of the European Court regarding the elements of the concept of torture of Article 1° of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, among which it expressly included "Intervention of a deliberate intent to obtain certain ends, such as to obtain information from a person, or to intimidate or punish him." I/A Court H.R., *Case of Cantoral Benavides*. Judgment of 18 August, 2000, para. 97.

Convention to Prevent and Punish Torture, signed by Colombia on December 9, 1985, establishes that:

For the purposes of this Convention, torture shall be understood to be 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.

153. In the present case, there is consistent evidence to establish that the victims had been detained and released on previous occasions, that they were identified with the M-19, a movement to which they had belonged, and that at least one of them had said that he was being harassed and pursued by the police. When this is considered in the light of the information that appears specifically in at least one of the autopsies done, and in the photographs taken of the corpses, it is reasonable to infer that the executed victims experienced anguish, fear, and suffering, and consequently that would denote the existence of cruel, inhuman, or degrading treatment at the time of their kidnapping and up to the time of their execution.

154. According to the criteria established by international jurisprudence, the State is presumed to be responsible for the mistreatment exhibited by a person who has been in the custody of state agents.<sup>110</sup> However, during the processing of this case by the Commission, the State of Colombia never provided information on the origin, causes, or parties responsible for the visible signs of physical mistreatment that the bodies presented when they were subject to examination by the competent authorities.

155. Consequently, based on the existing testimony, the condition in which the bodies were found, the lesions they presented, the autopsies performed, and the photographs taken, as well as other related evidence in this report, the Commission determines that the State is responsible for the violation of the right to humane treatment established in Article 5 of the Convention, considered in accordance with Article 1.1 of that instrument, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos.

156. Moreover, the petitioners alleged that the lesions described in the autopsy reports and the ones that could be seen in the photographs shown to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, the fact that they learned of the death of their loved ones when they had already been buried, the persecution they had suffered, and the lack of an investigation caused the anguish, uncertainty, and suffering of the families, to find themselves exposed to the arbitrary will of authorities who were established to protect them. The State presented no arguments on this point.

157. The loss of a family member causes emotional pain and suffering to all of the members of the immediate family circle.<sup>111</sup> The extrajudicial execution of any person is *per se* a serious violation of that person's fundamental rights. The Inter-American Court has noted that "it is a characteristic of human nature" that a person who is subjected to serious acts of violence and

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<sup>110</sup> I/A Court H.R., *The "Street Children" v. Guatemala Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 170.

<sup>111</sup> Blake Case, Judgment of January 24, 1998 (Merits), Ser. C No. 36, paras. 112-16; more specifically see: Blake vs. Honduras, Judgment of January 22, 1999 (Reparations), Independent Opinion of Judge A. A. Cançado Trindade, paras. 43-45 (in which the international jurisprudence on the rights of immediate family members that have experienced suffering as a result of the violations of rights of a loved one, including siblings).

abuse “experiences moral suffering”.<sup>112</sup> Consequently, “no proof is required to arrive at this conclusion.”<sup>113</sup>

158. From the facts that have been described throughout this report, it is evident that the executed victims, as well as the members of their immediate families, experienced moral suffering, and feelings of insecurity, frustration, and impotence<sup>114</sup> as a result of their illegal detention and extrajudicial execution. In this regard, the Commission would point out that in accordance with the jurisprudence of the Inter-American Court, “the families of the victims of human rights violations may also in turn be victims.”<sup>115</sup>

159. In this context, the State is also responsible for failing to conduct a serious investigation into the illegal detention and execution of the victims, James Zapata Valencia and José Heriberto Ramírez Llanos. In this respect, the Court has established that the absence of effective remedies constitutes a source of additional suffering and anguish for the families of the victims,<sup>116</sup> who in the present case, have sought but not found justice over a period of more than 22 years following the execution of their loved ones, as will be further discussed in the analysis of the violation of Articles 8 and 25 of the American Convention (*infra*).

160. In summary, the Commission considers that as a result of the previous circumstances, the families experienced suffering, anguish, insecurity, frustration, and impotence vis-à-vis the state authorities,<sup>117</sup> the reason why they may be regarded as victims of the violation of their right to humane treatment.<sup>118</sup> Consequently, the Commission concludes that the State violated Article 5 of the American Convention, considered in relation to Article 1.1 of that instrument, to the detriment of the families of James Zapata Valencia and José Humberto Ramírez.

#### **4. Rights of the child (Article 19 of the American Convention), considered in relation to the duty to guarantee rights (Article 1.1 of the American Convention)**

161. Article 19 of the American Convention provides that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” In this regard, the Commission points out that the illegal detention and

<sup>112</sup> See I/A Court H.R., *Aloeboetoe Case v. Suriname*. Judgment of September 10, 1993, Series C No. 15, para. 52.

<sup>113</sup> *Ibidem*.

<sup>114</sup> I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 160.

<sup>115</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objections, Merits, Reparations and Costs; Judgment of June 7, 2003. Series C No. 99, para. 101; *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000, para. 160; *Case of Cantoral Benavides v. Peru*. Judgment of Augusto 18, 2000, para. 105; *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 43, para. 175; and, *Case of Castillo Páez v. Peru*. Reparations, (art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998, Series C No. 43, para. 59.

<sup>116</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 261. See also I/A Court H.R., *Case of the Massacre of the “Massacre of Mapiripán” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 145; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 145; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 94.

<sup>117</sup> I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 160; *Case of Cantoral Benavides v. Peru*. Judgment of December 3, 2001. Series C No. 88, para. 105; *Case of Durand and Ugarte v. Peru*. Reparations. Judgment of December 3, 2001. Series C No. 89, para. 128

<sup>118</sup> I/A Court H. R., *Case of Bámaca Velásquez Case v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 162; Eur. Court HR, Kurt v. Turkey, paras. 130-134.

execution of José Heriberto Ramírez took place when he was 16 years old, based on the statement given by Herminia Londoño Llanos, the sister of the victim, to the Municipal Court of Palestina, Caldas, on April 4, 1988. The State had this information since 1988, and so it had an opportunity to dispute it during the procedures before the Commission. Thus, based on the fact not disputed by the State that José Heriberto Ramírez was a child at the time of the events, the Commission will analyze *iura novit curia* Article 19 of the Convention.

162. The Convention on the Rights of the Child is part of a comprehensive international *corpus juris* for protection of children, that serves to “fix the content and the scope of the general provision contained in Article 19 of the American Convention.”<sup>119</sup>

163. The Court has stated that “children possess the rights that correspond to all human beings—minors and adults—and they also have special rights based on their condition, which entail specific duties on the part of the family, society, and the State.”<sup>120</sup> In the case of children, the principle of the best interest of the child prevails, based on their own characteristics, on the need to foster their development, with full exploitation of opportunities, as well as on the dignity inherent in the human being.<sup>121</sup>

164. On this point, the Commission is of the view that in the light of the rights of the child and based on the information it had, the State should have adopted adequate measures to search for the child, Ramirez Llanos, once his kidnapping was reported. Thus, the IACHR considers that the investigation into what happened to the victim should have taken into account the characteristics of children and the special duties of the State in their regard. None of these considerations was present, either with regard to the search mechanisms that could have been activated or with respect to the investigation into his kidnapping and execution.

165. For the foregoing reasons, the Commission considers that the State is responsible for violation of Article 19 of the American Convention, considered in relation to Article 1.1 of that instrument, to the detriment of José Heriberto Ramírez.

## **5. The right to a fair trial and to judicial protection (Articles 8.1 and 25.1) of the American Convention on Human Rights, in relation to the families of James Zapata Valencia and José Heriberto Ramírez Llanos.**

<sup>119</sup> I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al)*. Judgment of November 19, 1999. Series C No. 63, para. 194.

<sup>120</sup> I/A Court H.R., *Legal Status and Human Rights of the Child. Advisory Opinion OC-17/02* of August 28, 2002. Series A No. 17, para.54.

<sup>121</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 244. See also I/A Court H.R., *Case of the Massacre of the “Massacre of Mapiripán”*. Judgment of September 15, 2005. Series C No. 134, para. 134; *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 134; and Inter-American Court, *Case of the Yakye Axs Indigenous Community. Judgment of June 17, 2005*. Series C No. 125, para. 172. Furthermore, article 38.4 of the UN Convention on the Rights of the Child (ratified by Colombia on January 28, 1991) establishes: “In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”. Article 6.3 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (ratified by Colombia on May 25, 2005) also establishes that: “States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration”. See also: UN Security Council Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) y 1612 (2005) and, UN General Assembly resolutions A/RES/51/77, A/RES/53/128, A/RES/54/149, A/RES/54/263, A/RES/55/79, A/RES/56/138, A/RES/57/190, A/RES/58/157, A/RES/59/261, A/RES/60/231, A/Res/61/146, A/Res/62/141, A/RES/63/241 y A/RES/64/146.

166. Article 8.1 of the American Convention establishes that:

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

167. For its part, Article 25.1 of the Convention establishes 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.

168. The Commission recalls that it is a basic principle of the law pertaining to the international responsibility of the State, recognized in international human rights law that every state is internationally responsible for the acts or omissions of any of its authorities or organs, in violation of the rights internationally recognized, in accordance with Article 1.1 of the American Convention.<sup>122</sup> In this context, Articles 8 and 25 of the Convention specify the scope of the foregoing principle, with reference to acts and omissions by domestic judicial organs.<sup>123</sup>

Then it is clear that, in principle, the state is responsible for any violation of the rights recognized in the Convention as a result of an act of the government or persons availing themselves of the powers they have by virtue of their official capacity. However, this does not cover all of the situations in which the state is required to prevent, investigate, and sanction human rights violations, or the cases in which its responsibility may be engaged by impairment of those rights. In fact, an illicit act in violation of human rights that is not initially directly attributable to a state, for instance, because it was perpetrated by a private party or because the author of the violation was not identified, may entail the international responsibility of the state, not for the act *per se*, but due to the lack of due diligence in preventing the violation or in dealing with it in accordance with the terms set forth in the Convention.<sup>124</sup>

169. The Commission notes that although the obligation to investigate is an obligation of means and not result, said obligation:

[...] should be assumed by the state as a legal duty and not as a simple formality doomed in advance to be futile, or merely as a matter of managing private interests, that will depend on

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<sup>122</sup> I/A Court H.R., *Case of Ximenes Lopes v. Brazil*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, para. 172, *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C. No. 147, para. 140; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C. No. 140, paras. 111 and 112; and *Case of the Mapiripán Massacre v. Colombia*. Judgment of September 15, 2005. Series C. No. 134, para. 108.

<sup>123</sup> I/A Court H.R., *Case of Ximenes Lopes Vs. Brazil*. Merits, Reparations, and Costs. Judgment of July 4, 2006. Series C No. 149, para. 173, *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 141; *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C. No. 141, para. 28; and *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No 107, para. 109.

<sup>124</sup> I/A Court H.R., *Case of Caballero Delgado and Santana v. Colombia*. Reparations and Costs. Judgment of January 29, 1997. Series C No. 31, para. 56; *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 172; *Case of Godínez Cruz v. Honduras*. Judgment of January 20, 1989. Series C No. 5. Series C No. 5, paras. 181-182.

the procedural initiative of the victims or their families, or the private contribution of elements of proof.<sup>125</sup>

170. In the present case, the petitioners rejected the Colombian State's argument according to which there was no proof of the participation of state agents in the deaths of James Zapata Valencia and José Heriberto Ramírez Llanos, since no decision that declared such to be the case was handed down in the domestic courts. They consider it inadmissible that the State can claim the results of the impunity in this case in its favor, after over 22 years have gone by since the events occurred. The petitioners allege that the judicial investigation was not taken on by the authorities as their legal duty, nor as action aimed at producing the results for which it was established. They indicate that the process was systematically transferred from one office to the next, thereby preventing the families of James Zapata Valencia and José Heriberto Ramírez Llanos from an opportunity to follow regularly the judicial proceedings.

171. The State alleges that there were procedural activities in the domestic courts to comply with the duties of investigation, judgment, and, if appropriate, punishment of the responsible parties, as well as reparations in relation to this case. The State alleges that the obligation to investigate involves means and not results, hence the mere passage of time without reaching a definitive decision cannot be considered as a violation of Articles 8 and 25 of the Convention. The State contends that it was evident that the victims' families had access to judicial mechanisms, but they relinquished their right to reparations for the possible illegal acts of state agents because they did not have recourse to the contentious-administrative jurisdiction in accordance with the terms established by law. Finally, as regards the disciplinary proceeding, it maintains that the officials had only one year to complete the steps of the disciplinary investigation before the statute of limitations proscribed the action on August 9, 1993.

172. The Commission recalls that:

International Human Rights Law purports to provide individuals with the means to protect their internationally recognized human rights vis-à-vis the State. In the international jurisdiction, the parties and the matters in dispute are by definition different than in the domestic jurisdiction.<sup>126</sup>

173. With regard to the possibility that organs of the system examine domestic proceedings, the Inter-American Court has found as follows:

[T]he clarification of presumed violations by a State of its international obligations through its judicial organs may result in a situation in which [the Commission and the Court] must examine the domestic proceedings in question. In this event, the domestic proceedings should be considered as a whole, and the function of the international tribunal is to

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<sup>125</sup> I/A Court H.R., *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 255; *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 75; *Case of the Massacres of Ituango v. Colombia*. Judgment of July 6, 2006. Series C No. 148 para. 131; and *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 120.

<sup>126</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, para. 73; *Case of "Cinco Pensionistas" v. Peru*. Judgment of February 28, 2003. Series C No. 98, para. 163; *Case of the Mayagma (Sumo) Awas Tingi Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79, para. 154; *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 168; *Case of the Constitutional Tribunal v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 109; *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No 70, para. 210; and, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 220.

determine whether the proceedings considered altogether were in conformity with international law.<sup>127</sup>

174. The Commission will now examine the due diligence on the part of the State in the proceedings related to the deaths of James Zapata Valencia and José Heriberto Ramírez Llanos that were opened in the domestic courts, in order to determine whether they were conducted in accordance with due legal process, in a reasonable period of time, and whether they provided an effective remedy to ensure the rights of access to justice, the truth of what happened, and reparations for the families of the victims.

175. The IACHR recalls that in cases such as this one, it is especially important “that the competent authorities adopt reasonable measures to obtain the elements of proof needed to conduct the investigation.”<sup>128</sup> In this regard, the jurisprudence of the Inter-American Court establishes that “the efficient determination of the truth in the context of the obligation to investigate a death that may be the result of an extrajudicial execution must prevail from the first steps taken with all due diligence” and should take into account the Manual on Prevention and Effective Investigation of Extrajudicial Executions.<sup>129</sup> In this regard:

[t]he state authorities who conduct an investigation must, *inter alia*, a) identify the victim; b) recover and preserve the elements of proof related to the death; c) identify possible witnesses and obtain their statements regarding the death under investigation; d) determine the cause, manner, place, and time of death, as well as any procedure or practice that may have caused it; and e) distinguish between natural death, accidental death, suicide, and homicide. In addition, the crime scene must be investigated exhaustively, autopsies must be performed, and the human remains analyzed rigorously, by competent professionals using the most appropriate procedures.<sup>130</sup>

176. The Commission notes that in the case in point, the records on removal of the bodies discovered at Taparcal Ranch on March 23, 1988, do not indicate whether spent cartridges, bullets, or other evidence was found and collected at the place of the events. Neither do the autopsy reports of March 25, 1988, indicate whether or not any bullets were recovered in the bodies of the alleged victims. The Commission considers that this is a clear indication not just of the failure to secure the evidence related to the acts, but also of the failure to perform the steps essential for an investigation into the deaths.

177. Moreover, Article 8.1 of the Convention establishes that one of the elements of due process is that a competent judge decides the cases submitted to the tribunal within a reasonable time. In this context, a prolonged delay may represent in and of itself a violation of the right to a

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<sup>127</sup> I/A Court H. R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 142, *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2004. Series C No. 119, para. 133; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, para. 200; *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 7, 2003. Series C No. 99, para. 120.

<sup>128</sup> I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, para. 122.

<sup>129</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations, and Costs. Judgment of September 21, 2006. Series C No. 152, para. 120; *Case of Montero Aranguren et al. v. Venezuela*, para. 140; *Case of Ximenes Lopes v. Brazil*, para. 179; *Case of the Massacres of Ituango*, para. 298; and, United Nations Manual on Prevention and Effective Investigation of Extrajudicial, Arbitrary, and Summary Executions,, E/ST/CSDHA/12 (1991).

<sup>130</sup> I/A Court H.R., *Case of Servellón García et al v. Honduras*. Merits, Reparations, and Costs. Judgment of September 21, 2006. Series C No. 152, para. 120.

fair trial.<sup>131</sup> The reasonableness of the time should be evaluated in relation to the total duration of the criminal proceeding.<sup>132</sup>

178. The IACHR considers that to establish whether an investigation has been conducted promptly, it is necessary to consider a series of factors, such as the time elapsed since the crime was committed, whether the investigation has advanced from the preliminary stage, the measures adopted by the authorities, as well as the complexity of the case.<sup>133</sup> Moreover, the Commission recalls that the Inter-American Court has determined that a prolonged delay may in and of itself constitute a violation of the right to a fair trial, hence the State has a duty to explain and demonstrate the reason why it has needed more time than reasonable to hand down a definitive judgment in a particular case,<sup>134</sup> something it did not do in this case.

179. Therefore, pursuant to the terms of Article 8.1 of the Convention, the Commission will take into consideration, in the light of the specific circumstances of this case, the three elements consistently examined in its jurisprudence, namely: a) the complexity of the matter; b) the conduct of the judicial authorities; and c) the procedural activity of the interested party.<sup>135</sup>

180. As for the complexity of the matter, the Commission notes that the matter was not complex. However, the indispensable initial procedures were not carried out, as indicated earlier, nor was any due diligence performed that could have helped to clarify the deaths. In this sense, the Commission observes that despite the fact that the Sixth Court of Preliminary Criminal Proceedings requested the Police Commander of Palestina, Caldas on April 11, 1988, to take the necessary steps to clarify the deaths, not a single step was taken in this direction.

181. The Commission notes, in accordance with the proven facts, that from March 26, 1988 to July 5, 1988, the judicial authorities only took statements of family members of the victims and persons identified by them as witnesses, but they did not take any steps based on the information in the case file, which indicated that James Zapata Valencia and José Heriberto Ramírez Llanos had belonged to M-19, that they were political activists, and that agents of the F-2 Police may have participated in their death.

182. It has also been proven to this Commission that from July 5, 1988 to February 19, 1992, the date on which the Court of Public Order for Preliminary Proceedings of Medellín took over the preliminary proceedings for the case, not a single step was taken to clarify the events, and that the proceeding remained inactive.

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<sup>131</sup> I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 25, 2005. Series C No. 137, para. 166; I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 160.

<sup>132</sup> I/A Court H.R., *Case of López Álvarez v. Honduras*. Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141, para. 129; *Case of Acosta Calderón v. Ecuador*. Merits, Reparations, and Costs. Judgment of 24 June, 2005. Series C No. 129, para. 104; and *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 168.

<sup>133</sup> IACHR, Report No. 130/99, Víctor Manuel Oropeza (Mexico), Petition 11740, paras. 30-32.

<sup>134</sup> I/A Court H.R., *Case of Ricardo Canese V. Paraguay*. Merits, Reparations, and Costs. Judgment of August 31, 2004. Series C No. 111, para. 142.

<sup>135</sup> IACHR, Report No. 77/02 on the Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11506), December 27, 2002, para. 76. See also I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C. No. 141, para. 132; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C. No. 137, para. 166; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C. No. 129, para. 105; UN, Doc. CCPR/C/GC/32 of August 23, 2007. Human Rights Committee, General Observation N° 32, para. 35.

183. Despite the fact that the investigation was reactivated on February 19, 1992, based on procedures ordered by the Court of Public Order of Medellín and testimony of family members, various witnesses, and even several members of the police, the investigation went back to the preliminary stage on April 3, 1993, and it is still at that stage today, despite the fact that 22 years have elapsed since the deaths occurred. The Commission does not have information on any proceedings after June 25, 1992, although it had requested such information in writing.<sup>136</sup>

184. In the second place, as regards the conduct of the authorities, the Commission notes that in the present case, the proceedings of the authorities were deficient and they did not act with due diligence. On this point, the IACHR concluded previously that Colombia did not take the steps required to investigate the deaths (*supra*), and there were periods of inactivity on the part of the authorities (*supra*).

185. Finally, as regards the procedural activity of the interested parties, the Commission notes that in the case of a death, namely a crime against public order, the state has the duty to open an official investigation, without the need for participation by the interested parties. Regardless of that, it appears in the documents that the families of James Zapata Valencia and José Heriberto Ramírez Llanos gave timely statements on many occasions in both 1988 and 1992, despite the transfer of the case to different courts and even jurisdictions, located far away from Manizales, such as the Court of Public Order of Medellín. In addition, Mrs. Valencia participated in the Calda Forum of *Personeros* on April 4, 1990, to denounce the events, and she wrote to the Presidential Councilor for the Defense of Human Rights in September 1990 to request assistance in the investigation, indicating that she did not have the economic resources to hire an attorney.

186. Based on the foregoing considerations, the IACHR is of the view that in the present case, there was a violation of a reasonable time in the criminal proceedings. The Commission points out that although over 20 years had lapsed since the deaths occurred, the criminal proceedings are still open and those responsible of Mr. Zapata and Mr. Ramirez murders have not been tried. The Commission considers that the above mentioned exceeds by far the time that could be considered as reasonable for these purposes.

187. The Commission would like to emphasize that 22 years have gone by since the deaths occurred, without to date any decision handed down by a lower court to determine what happened on March 22, 1988. The Commission further notes that the prospects for an effective investigation into the deaths of James Zapata Valencia and José Heriberto Ramírez Llanos are not very great, in view of the lack of timely procedures indispensable to clarify the facts in 1988 and 1989, i.e., after the events occurred.

188. The Commission considers that in this case there has been a lack of diligence in conducting the investigation that has allowed such acts to continue to this day, and has created a situation of serious impunity. In these circumstances, the Commission recalls that:

The general failure to investigate, pursue, capture, prosecute, and convict the persons responsible for violations of rights protected by the American Convention, when the State has the obligation to combat such a situation with all legal means at its disposal, since impunity fosters the chronic repetition of human rights violations and the complete defenselessness of the victims and their families.<sup>137</sup>

<sup>136</sup> See communication of the Commission dated September 24, 2009.

<sup>137</sup> I/A Court H.R., *Case of the "Panel Blanca" (Paniagua Morales et al), v. Guatemala*. Judgment of March 8, 1998. Series C. No. 37, para. 173; *cf. Case of Maritza Urrutia v. Guatemala*, para. 126; *Case of Myrna Mack Chang v. Guatemala*.

189. Based on the foregoing, the Commission concludes that in the instant case, the competent authorities did not respect the right of the families of James Zapata Valencia and José Heriberto Ramírez Llanos to a fair trial, nor did they provide an effective remedy to guarantee access to justice, determination of the truth of the events, and the investigation, identification, indictment and, as applicable, punishment of the responsible parties, as well as reparations for the consequences of the violations. Consequently, the State is responsible for violation of the right to a fair trial and the right to judicial protection, recognized in Articles 8.1 and 25.1 of the American Convention, considered together with Article 1.1 of that instrument, to the detriment of the families of James Zapata Valencia and José Heriberto Ramírez Llanos.

## VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 113/10

190. On October 21, 2010, during its 140th regular session, the Commission adopted Report No. 113/10 in accordance with Article 50 of the American Convention. In this report, the Commission concluded that the Republic of Colombia had violated, with respect to James Zapata Valencia and José Heriberto Ramírez Llanos, the right to life, the right to humane treatment, and the right to personal liberty, enshrined in Articles 4, 5, and 7 of the American Convention and applicable under Article 1(1) of that international instrument. It further concluded that the State had violated the child's rights of José Heriberto Ramírez Llanos, who was 16 years old at the time of the events. Lastly, the IACHR concluded that the State had violated the rights of the victims' families to humane treatment, fair trial, and judicial protection accorded under Articles 5, 8, and 25 of the Convention and in connection with the general obligation of respect and guarantee established in Article 1(1) of the Convention. Accordingly, the IACHR recommended that the State should (1) conduct a full, impartial, and effective investigation within a reasonable time into the circumstances of the deaths of James Zapata Valencia and the child José Heriberto Ramírez Llanos; (2) adopt the necessary measures to ensure due investigation of cases of executions by State security agents; and (3) provide adequate reparation to the families of James Zapata and José Heriberto Ramírez, taking into consideration the latter's child status at the time of the events.

191. Merits Report 113/10 was transmitted to the State of Colombia on November 23, 2010, together with the relevant recommendations and it was given two months to comply therewith. On the same date, the petitioners were informed that the IACHR had adopted said report and they were given one month to state their position as regards referral of the case to the Inter-American Court of Human Rights, as well as to indicate the position of the victims and

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...continuation

Judgment of November 25, 2003. Series C No. 101, paras. 156 and 210; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 120; *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, paras. 143 y 185; *Case of Las Palmeras. Reparations, para 53.a*; *Case of Caracazo v. Venezuela*. Reparations, paras. 116 and 117; *Case of Trujillo Oroza*. Reparations (art. 63.1, American Convention on Human Rights). Judgment of 27 February 2002. Series C No. 92, para. 101; *Case of Bámaca Velásquez v. Guatemala. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of 22 February 2002. Series C No. 91, para 64; *Case of Las Palmeras v. Colombia*. Judgment of December 6, 2001. Series C No. 90, para. 56; *Case of Cantoral Benavides v. Peru*. Reparations, para 69; *Case of Cesti Hurtado v. Peru. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para. 63; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of 26 May 2001. Series C No. 77, para 100; *Case of "Panel Blanca" (Paniagua Morales et al.) v. Guatemala*. Reparations (art. 63.1 American Convention on Human Rights). Judgment of 25 de mayo de 2001. Series C No. 76, para 201; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para 186; *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C No. 71 para. 123; *Case of Bámaca Velásquez v. Guatemala*, para. 211; *Case of Blake v. Guatemala. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 64; *Case of Castillo Páez v. Peru*. Reparations, *supra* nota 101, para. 107; y *Case of Loayza Tamayo v. Peru. Reparations* (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 170.

provide their data. In the event of an affirmative response, they were requested to present arguments indicating why they believed their case should be submitted to the Court, along with their claims in terms of reparations and costs, all pursuant to Article 44(3) of the Commission's Rules of Procedure. The petitioners sent the requested information on December 21, 2010, receipt of which was confirmed by the IACHR in a communication of January 3, 2011.

192. By note DIDHD/GOI No. 1705/0088 of January 13, 2011, the State requested an extension of at least one month to report on its measures to implement the recommendations contained in Report No. 113/10. In a communication dated January 21, 2011, the Commission granted the State of Colombia an extension until February 18, 2011. The petitioners sent a communication dated February 17, 2011, receipt of which was confirmed by the IACHR on February 24, 2011.

193. In a communication dated February 18, 2011 and received on February 22, 2011, the State of Colombia submitted its report on the steps it had taken to comply with the recommendations made by the IACHR in Report No. 113/10. On February 23, 2011, the IACHR decided not to submit the case to the Court, based on the wishes expressed by the petitioners in a communication dated December 21, 2010, and reiterated on February 17, 2011, that the case not be submitted to the Inter-American Court of Human Rights, despite the fact that they had not been contacted by the State concerning compliance with the recommendations of the IACHR in Report No. 113/10. The petitioners felt that to submit the case to the Court would mean further delay for the relatives of James Zapata Valencia and José Heriberto Ramírez in obtaining an international ruling that would uphold their rights and deliver justice 23 years after the deeds occurred. Furthermore, in accordance with Article 51 of the American Convention, the Commission decided to continue to monitor the recommendations on which compliance is still pending.

194. During its 141<sup>st</sup> session, the Commission considered information submitted by the State regarding its compliance with the recommendations adopted in Report No. 113/10, as follows:

**A. The recommendation to conduct a full, impartial, effective investigation within a reasonable time into the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died.**

197. In a communication received on February 22, 2011, the State informed the Commission that the Office of the Prosecutor General had undertaken on February 3, 2011, to attempt "an action for review once the evidentiary procedures ordered had been carried out to corroborate that the law enforcement agents favored by the decision to close the investigation had had an active part in the events in which James Zapata and José Heriberto Ramírez lost their lives." The State also indicated that in order to give effective impetus to the criminal investigation, the Office of the Prosecutor General had been exploring a new hypothesis regarding the incident and had ordered various procedures to be conducted in this regard.

198. The State also reported that the prosecutor's office in charge of the case was in the process of drawing up a work plan to ensure that the investigation was given the appropriate impetus, and that this was "contingent on the results of procedures still to be carried out, the results of which will permit the investigation to move forward..." Based on the foregoing, the Commission concludes that this recommendation has not been implemented.

**B. The recommendation to adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents.**

199. The State of Colombia, in a communication received on February 22, 2011, presented detailed information about “the numerous measures adopted to prevent executions perpetrated by law enforcement agents, to give impetus to the respective investigations, and, as appropriate, provide reparations to victims of such criminal behavior” since 1998. These measures include: 1) a policy of zero-tolerance of human rights violations by security forces; 2) a legal framework to punish arbitrary deprivations of life and killings of protected persons; 3) an administrative framework to prevent and ensure non-repetition of arbitrary deprivations of life or the homicide of protected persons; 4) judicial machinery to ensure the investigation, prosecution, and, as appropriate, punishment of those suspected of offenses that could constitute arbitrary deprivations of life or killings of protected persons; and, 5) judicial machinery to ensure full reparation for damages.

200. The State indicated that its efforts to protect and ensure human rights, as well as to implement policies and guidelines to prevent crimes of this sort by agents of the State and other individuals are reflected in the following: (1) a sharp decline in the number of complaints of this type of conduct and a strengthening of the policies of the Ministry of Defense and the General Command of the Military Forces with regard to the observance and protection of human rights and international humanitarian law in the framework of tactical, operational, and strategic military operations; (2) issuance of instructions that requests made by competent judicial authorities during their investigations are to be supported, with respect shown for the independence and autonomy of those authorities.

201. The Commission notes with satisfaction the measures adopted by the Colombian State with respect to investigations of extrajudicial executions. However, given that, to date, the executions of James Zapata and José Heriberto Ramírez, which occurred in 1988, have not been prosecuted, the Commission concludes that the State of Colombia has not met this recommendation.

**C. The recommendation to provide adequate reparations to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, taking into account the special status of José Heriberto Ramírez as a child at the time of the events.**

202. In a communication received on February 22, 2011, the State of Colombia reported that, as of that writing, it had initiated the respective administrative and legal procedures to enforce Law 288 of 1996 for the purpose of adequately compensating the relatives of the victims.<sup>138</sup> The State did not provide information on what measures it had taken to ensure that the reparation of the relatives of José Heriberto Ramírez took into account his special status as a child at the time of the deeds. The petitioners indicated in a communication dated February 17, 2011, that the State had not yet contacted them. Therefore, the Commission concludes that, at the date of approval of this report, this recommendation has not been met.

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<sup>138</sup> Law 288 “introduces instruments for providing compensation to victims of human rights violations, as directed by certain international human rights bodies.”

195. In light of the above considerations, on March 31, 2011 the Commission approved Report on the Merits No. 71/11, in accordance with Article 51.1 of the American Convention. In this report, the Commission reiterated the recommendations and conclusions made in Report No. 113/10.

## **VII. CONCLUSIONS**

196. In view of the foregoing issues of fact and law, the Inter-American Commission reiterates its conclusions that the Republic of Colombia violated to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos the rights to life, humane treatment, and personal liberty enshrined in Articles 4, 5, and 7 of the American Convention, in connection with the provisions of Article 1.1 thereof. The Commission further concludes that the State violated the rights of the child José Heriberto Ramírez Llanos, who was 16 years old at the time of the events. Lastly, the IACHR concludes that the State is responsible for violation of the rights to humane treatment, a fair trial, and judicial protection of the relatives of the victims, as recognized in Articles 5, 8, and 25 of the Convention, in conjunction with the general obligation to respect and ensure human rights set forth in Article 1.1 of the Convention.

## **VIII. RECOMMENDATIONS**

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE STATE OF COLOMBIA:**

- a. That it conduct a full, impartial, effective investigation within a reasonable time into the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died.
- b. That it adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents.
- c. That it provide adequate reparations to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, taking into account the child special condition of José Heriberto Ramírez at the time of the events.

**IX. PUBLICATION**

197. Report on the Merits No. 71/11 was notified to both parties on April 11, 2011, in accordance with Article 51.1 and 2 of the American Convention, with a three-month reply deadline for providing additional information on compliance with its recommendations. On April 12, 2011, the Colombian State informed the Commission that it was in the process of implementing all of the mechanisms and measures required to comply with the recommendations and would meet the reporting deadline.

198. On July 15, 2011 the State submitted its report on compliance with the IACHR recommendations articulated in Report No. 71/11. The State reiterated information provided previously, following the release of Report on the Merits No. 113/10, and added that the public prosecutor responsible for the investigation had visited the city of Manizales between April 18 and 20, 2011 to gather additional evidence. It also reported that, based on the results of commissions of inquiry held in February and April 2011, it had been decided to draw up a timetable of measures to be taken in the next 20 working days, including obtention of event-related documents, judicial inspection of military facilities, location of investigations into the two victims' alleged activity, location of persons presumably aware of the events, and other measures appropriate to the investigation. The State indicated that it was working on strengthening hypotheses regarding the motives and possible perpetrators of the acts in the case. The State also reported that approval had been given to negotiate the implementing resolution for Law 288 of 1996 (establishing instruments for compensating victims of human rights violations), and that steps were being taken to obtain the signatures of the competent ministers in order to initiate the reparation process in question.

199. In light of the foregoing considerations and by virtue of Article 51.3 of the American Convention and Article 47 of its Rules of Procedure, the Commission hereby decides to reiterate the recommendations formulated hereinabove.

200. Lastly, the Commission hereby decides to publish this report and to include it in its Annual Report to the General Assembly of the OAS. In accordance with its mandate, the Commission will continue to evaluate the Colombian State's actions to comply with the aforesaid recommendations until they are fully implemented.

Done and signed in the city of Washington, D.C., on the 21<sup>st</sup> day of the month of July, 2011.  
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.