In the case of Zambrano Vélez et al.

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56, and 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I. SUBMISSION OF THE CASE AND OBJECT OF THE DISPUTE

1. On July 24, 2006, pursuant to Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application before the Court against the State of Ecuador (hereinafter "the State" or "Ecuador"). The application originated from petition No. 11.579, which was submitted by the Comisión Ecuménica de Derechos Humanos (hereinafter "CEDHU") to the Registry of the Commission on November 8, 1994. On February 28, 2006, the Commission adopted report No. 8/06 on the admissibility and merits of the case, pursuant to Article 50 of the Convention, in which it made certain recommendations to the State [FN1]. On July 18, 2006, the Commission decided to submit the instant case to the contentious jurisdiction of the Court [FN2], in view of the failure of the State to submit any reply.

[FN1] In the report on the merits, the Commission concluded that Ecuador "violated its obligations set forth in Article 27 of the American Convention […and those] resulting from Article 4 (right to life) in conjunction with Article 1(1) [of that treaty], for the death of the persons identified in the present report during the March 6, 1992, operation[sic]"; and that the State "is responsible for violating Articles 8 and 25 (judicial guarantees and judicial protection)

in conjunction with Articles 1(1) and 2 of the [American] Convention for the failure to seriously and effectively investigate, prosecute and punish the responsible parties and for the failure to provide effective reparation to the victims of these violations and to their next-of-kin". Moreover, "with regard to the right to humane treatment and the right to personal liberty, […the Commission concluded that] violations of these rights have not been established in the course of this proceeding [and] accordingly, the State did not controvert the rights set forth in Articles 5 and 7 of the Convention." Finally, the Commission made certain recommendations to the State.
[FN2] The Commission appointed Evelio Fernández Arévalos, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates; and Víctor Madrigal Borloz, Ariel E. Dulitzky, Mario López Garelli and Lilly Ching as legal advisers.
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2. The application concerns the alleged extrajudicial execution of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo Cobeña, allegedly committed on March 6, 1993, in Guayaquil, Ecuador, and the alleged subsequent lack of investigation of the facts. The Commission points outs that "Wilmer Zambrano Vélez, Segundo Olmedo Caicedo and José Miguel Caicedo were [allegedly] executed during [an operation of the Armed Forces and the National Police of Ecuador] carried out within the framework of a suspension of guarantees which did not comply with the established standards". Furthermore, the Commission alleges that "more than 13 years after the facts [happened], the State has not undertaken any serious investigation, nor has it identified the perpetrators and masterminds of the [alleged] victims' executions, which is why [… they] remain unpunished".

3. The Commission requested the Court to conclude and declare that the State is responsible for the violation of "its obligations set forth in Articles 27 (Suspension of Guarantees), 4 (Right to Life), 8 (Judicial Guarantees) and 25 (Judicial Protection), in conjunction with Articles 1(1) [(Obligation to Respect Rights)] and 2 [(Obligation to Adopt Domestic Measures) thereof]". The Commission therefore requested that the Court order the State to adopt certain reparation measures.

4. On October 16, 2006, the representatives of the alleged victims' family members, CEDHU (hereinafter "the representatives"), submitted their brief on pleadings, motions and evidence (hereinafter "brief on pleadings and motions") pursuant to Article 23 of the Rules of Procedure. On the grounds of the facts mentioned by the Commission in its application, the representatives requested that the Court conclude and declare the international responsibility of the State for the violation of the same provisions as alleged by the Commission, to the detriment of the said alleged victims and their family members. Therefore, they requested that the Court order the State to adopt certain reparation measures.

5. On December 15, 2006, the State [FN3] submitted its brief containing the answer to the application and comments on the brief on pleadings and motions (hereinafter the "answer to the application"), in which it alleged that it is not responsible for the alleged violations and that the State cannot be held internationally responsible for acts committed "by state agents in self-defence". The State alleged that these persons' deaths occurred in a confrontation with members of the government force during the said operation, which was carried out as a legal and necessary measure within the framework of a state of emergency duly declared and in a period of high

delinquency and conformation of terrorist groups. Furthermore, the State pointed out that there has been a police and military investigation in this regard, although it stated that no criminal proceeding has been undertaken, and therefore the State shall not be held responsible for the alleged violation of the judicial guarantees and judicial protection. However, at the beginning of the public hearing held in the instant case, as well as in its final arguments, the State partially acknowledged its responsibility in the terms hereinafter put forward (infra paras. 8 to 31).

[FN3] On October 12, 2006, the State had appointed Mr. Juan Leoro Almeida, Ambassador of Ecuador in Costa Rica, as Agent and Mr. Erick Roberts and Mr. Salim Zaidán as Deputy Agents. Subsequently, following a request for clarification made by the Secretary, the State appointed the last two persons as Agent and Deputy Agent, respectively.

II. JURISDICTION

6. The Court has jurisdiction to hear the instant case pursuant to Articles 62(3) and 63(1) of the American Convention, since Ecuador has been a State Party to the Convention since December 28, 1977, and recognized the contentious jurisdiction of the Court on July 24, 1984.

III. PROCEEDINGS BEFORE THE COURT

7. On August 18, 2006, the Registry of the Court (hereinafter "the Registry"), after a preliminary review of the application by the President of the Court (hereinafter "the President") and pursuant to Article 35(1) of the Rules of Procedure, served notice of said application to the State [FN4] and to the representatives. During the proceedings before the Court, the President ordered [FN5] the submission of the sworn declaration (affidavit) of an expert witness proposed by the representatives, regarding which the parties were given the opportunity to present their comments. Furthermore, in view of the specific circumstances of this case, the President summoned the Inter-American Commission, the representatives, and the State to a public hearing to receive their final oral arguments on the merits and possible reparations and costs in the instant case, as well as the testimonies of three family members of the alleged victims. The said public hearing was held on May 15, 2007, during the Court's XXX Special Period of Sessions, in Guatemala City, Guatemala, at the seat of the Constitutional Court of that country [FN6]. In accordance with the President's instructions and pursuant to Article 45(2) of the Rules of Procedure, the Registry also requested the parties to provide certain information and documentation to be considered as evidence to facilitate the adjudication of the case. Said evidence has only been submitted by the representatives. Finally, in June 2007, the Commission, the representatives and the State submitted their briefs containing their final arguments, in which they provided some clarifications regarding the partial acknowledgement of liability made by the State, the alleged violations of the Convention and the possible reparations and costs.

[FN4] When the application was notified to the State, the Court informed it of the terms to submit an answer to the application and to appoint its representatives in the proceedings. At the same time, the State was also informed of the possibility to appoint an ad hoc Judge to

participate in the consideration of the case. On October 12, 2006, the State appointed an ad hoc Judge. However, in the same way it has been decided in other cases, the Court decided to reject the appointment proposed by the State in the present case because the said appointment was done after the expiration of the term granted to the State.
[FN5] Order of the President of the Court of May 15, 2007.
[FN6] The following persons appeared before the Court: a) for the Inter-American Commission: Evelio Fernández, Commissioner, as Delegate; and Mr. Mario López and Ms. Lilly Ching, as legal advisors; b) for the representatives: César Duque, CEDHU's lawyer; and c) for the State: José Xavier Garaicoa Ortiz, General Attorney of the State, as Agent; Alberto Salim Zaidán, as Deputy Agent, and Gabriela Galeas, as legal advisor.

IV. PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY

8. At the beginning of the public hearing held in the instant case (supra para. 7), the Agent of the State partially acknowledged the responsibility of Ecuador in the following terms:

[…] the State of Ecuador expresses its good faith and its intention to respect and guarantee human rights. It reaffirms its special interest to contribute to the development of legal precedents which broaden the protection standard set forth in the American Convention [on] Human Rights. This is the position and the vision [the State] holds and maintains at this moment in time and for these circumstances, with the intention to modify the traditional conception of an oppressive State during regimes of exceptions, which tend according to us to be a favorable setting for eventual disproportionate use of force and abuses of authority. We believe that the maintenance of law and order cannot in any way be opposed to or given preference over the enjoyment of the fundamental rights in the Ecuadorian society and in human communities in general.
In this context […] I present in the name of the State of Ecuador a partial aknowledgement of international liability arising from the violations of Articles 8, 25 and 27 of the American Convention on Human Rights.
I make an exception [with respect to] Article 4 thereof, as we consider […] that the State of Ecuador has not incur in an unlawful protection of the right to life. We believe that the case herein discussed […] is a case which is still under judicial scrutiny and that although we found ourselves with a relative lack of promptness in the investigation within the area of the Ecuadorian judiciary, no responsibilities have nevertheless been clearly established. For this reason we exclude Article 4 of the Convention.

9. The State reiterated these statements in its final written arguments.

10. On this matter the Commission stated that "[this acknowledgement] being [made,] the matter and evidences remain limited to Article 4; [that] it [does] not [have] any objection to raise; [and that] it accepts this acknowledgement of liability understanding that it is partial and total: partial in the sense that it involves almost all the Articles invoked and alleged by the Commission, but total in the sense that none of those acknowledgements is conditional". In its final written arguments, the Commission expressed that it "views favorably the partial acknowledgement of liability made by the State" and that this acknowledgement allow "to conclude that the controversy over the inappropriate use of the suspension of guarantees' power

during the state of emergency decreed on September 3, 1992, as well as over the lack of clarification of the facts and the failure to conduct a complete, impartial and effective investigation has been settled". Furthermore, […] the Commission stresses "the significance of the said statement and considers that it constitutes a positive step toward the vindication of the victims' memory and dignity and the mitigation of the damages inflicted to their family members and that it contributes to the efforts aimed at avoiding the repetition of similar situations". Finally, the Commission noted "that the acknowledgement does not include the state responsibility for the violation of the right to life to the detriment of the [alleged] victims, the failure to comply with its obligation to respect rights and the duty to adopt domestic measures, nor does it refers to the reparations due to their family members".

11. The representative expressed that "they accept[ed] the partial acknowledgement of liability made by the State and they request[ed the Court] to take [it] into consideration […] and [to give] it [its] due legal force during the proceedings of [this] hearing and of the instant case". In its final written arguments, the representative requested the Court to "expressly rule on the excessive use of force by state security officers, on the use of the Armed Force to fight against delinquency or social protests and on the ruling over human rights violations in – police or military – jurisdictions, considering the acknowledgement of liability made by the State". Furthermore, the representative considered that the State's declaration also imply an acknowledgement of liability regarding the alleged violation of Articles 1(1) and 2 of the Convention, the latter "for not abolishing provisions in its legislation which attribute jurisdiction to investigate human rights violation to police or military courts and for not amending the legislation regarding the application of the Security law during the intervention of the Armed Forces in the domestic order". Finally, the representative requested that the Court "include a section in which [it shall] summarize the declarations of the witnesses and expert witnesses presented in the instant case, lay down the facts of the instant case […] and specify how the violation [of the articles regarding which the State acknowledged its liability] occurred".

12. Pursuant to Articles 53(2) and 55 of the Rules of Procedure, by exercising its powers inherent to the international judicial protection of human rights, the Court may determine whether an acknowledgement of international responsibility made by a respondent State provides sufficient ground, according to the American Convention, to proceed or not with the merits and the determination of possible reparations and indemnities. To such effect, the Tribunal shall analyze the situation raised in each particular case [FN7]. Consequently, the Court shall specify the terms and scope of the partial acknowledgement of international responsibility made by the State and the extent of the remaining controversy.

[FN7] Cf. Case of Myrna Mack-Chang. Judgment of November 25, 2003. Series C No. 101, para. 105. See also Case of the Rochela Massacre. Judgment of May 11, 2007, para. 9, and Case of La Cantuta. Judgment of November 29, 2006. Series C No. 162, para. 49.

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13. In its application the Commission concluded that the State is responsible for the violation of "its obligations set forth in" Articles 27 (Suspension of Guarantees), 4 (Right to Life), 8 (Judicial Guarantees), and 25 (Judicial Protection) of the American Convention, "in conjunction with" Articles 1(1) and 2 thereof. The representatives alleged the violation of those same provisions, although with some different arguments.

14. The State acknowledged its responsibility for the alleged violation of Articles 27, 8 and 25 of the American Convention (supra para. 8). However, the State did not refer to the alleged failure to comply with the obligations embodied in Article 1(1) and 2 of the Convention in connection with the said provisions; neither did it specify if its acknowledgement of responsibility also concerned the representatives' arguments. The State had not presented arguments with regard to these provisions in its answer to the application.

15. On the other hand, the Tribunal observes that the State has recognized that state agents deprived Mr. Zambrano Vélez, Mr. Caicedo Cobeña and Mr. Caicedo Cobeña of their life during the operation carried out on March 6, 1993, in the city of Guayaquil's Barrio Batallón (infra paras. 73). Nonetheless, the State expressly excluded the alleged violation of Article 4 (Right to Life) of the Convention from its acknowledgement of responsibility.

16. Consequently, the Court considers that the dispute regarding the international responsibility for the failure to comply with the obligations set forth in Article 27 of the Convention and for the violation of Articles 8(1) and 25 thereof has ended, notwithstanding the specifications which will be made in the respective chapters. On the other hand, the Court considers that the dispute over the alleged violation of Article 4 and the alleged failure to comply with Articles 1(1) and 2 of the Convention remains open, as well as the dispute over the corresponding facts.

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17. In turn, the Court observes that the State did not specifically confess the facts of the instant case in its partial acknowledgement of responsibility. Accordingly, considering that the application constitutes the factual framework of the proceedings [FN8] and that the State only specifically contradicted the facts related to the circumstances in which the death of the three alleged victims occurred, this Tribunal considers that the acknowledgement of responsibility regarding the alleged violations of the aforementioned articles also involve an implicit acknowledgement of the facts which according to the application constituted those violations.

[FN8] Cf. Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, para. 59. See also Case of Bueno-Alves. Judgment of May 11, 2007. para. 126, and Case of the Rochela Massacre, supra note 7, para. 30.

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18. Furthermore, the Court takes into consideration that, pursuant to Article 38(2) of the Tribunal's Rules of Procedure, the respondent State shall declare, in its brief containing the answer to the application and comments on the brief on pleadings and motions, "whether it

accepts the facts and claims or whether it contradicts them", and the Court "may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested".

19. As such, the Tribunal considers that the dispute over the facts referred to in the paragraphs of the application's "Legal Arguments" chapter corresponding to the violations of Articles 8, 25 and 27 of the Convention has ended. These facts will be specified in the respective chapters of the instant Judgment. Therefore, the dispute over the rest of the facts of the instant case remains open.

20. The Court points out that two of the alleged victims' family members referred to some facts which were not mentioned in the application, such as the infliction of electricity and the alleged ill-treatment to which the alleged victims would have been subjected before being deprived of their life; some acts of ill-treatment to which the alleged victims' family members would have been subjected; as well as the detention, on the day of the events and for the eight following days, of Ms. Silvia Alicia Macías Acosta, Mr. Segundo Olmedo Caicedo Cobeña's partner. Those alleged facts might be analyzed in the lights of Articles 5 and 7 of the Convention. However, in its Report on the Admissibility and Merits of the case, the Commission expressly concluded that "[…] in the course of the proceedings [before the Commission,] violations of [the rights to humane treatment and to personal liberty] have not been proven[,… so that] the State did not controvert [the rights] set forth in Articles 5 and 7 of the Convention". To conclude as such, the Commission considered, inter alia, the following:

[…] the Commission does not consider as proven that, previously to their death, the three persons to whom this matter refers to would have been subjected to ill-treatments or that their dignity would have been injured.
[…] the Commission observes that the evidence existing at the time of compiling [this] report is not sufficient to conclude that the petitioners were under "formal" custody of State agents before their execution.

21. The Court observes that the circumstances in which Ms. Macías Acosta would have been arrested on March 6, 1993, and the alleged acts of ill-treatment to which the family members would have been subjected at the time of the events, are not part of the object of the dispute in the instant case. With regard to the alleged acts of ill-treatment to which the alleged victims would have been subjected before being deprived of their life, the Court does not find any elements to modify, in the instant case, the Inter-American Commission's conclusions put forward in its Report on the Admissibility and Merits [FN9]. Therefore, the Court will not proceed to the analysis of the said alleged facts.

[FN9] Cf. Case of Bueno Alves, supra note 8, paras. 61-67.

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22. The State did not condition its partial acknowledgement of responsibility to a particular number of persons, nor did it specify the persons to the detriment of whom the acknowledged violations of the Convention had been committed.

23. With regard to Article 27 of the Convention, the Commission alleged the violation of the said provision in general terms without identifying specific victims on this matter. As for Articles 8 and 25 of the Convention, the Commission requested that the Court declare the responsibility of the State for the violation of those provisions, but did not clearly specify in its application the persons to the detriment of whom these violations of the Convention would have been committed, although it can certainly be deduced from its arguments that it would be to the detriment of the alleged victims' family members.

24. Regarding the said aknowledgement of responsibility for the violation of Articles 8 and 25 of the Convention, it is necessary to specify that when it expressed such aknowledgement, the State knew that the Commission had included in its application a list of beneficiaries of 24 persons as family members of Mr. Zambrano, Mr. Caicedo Cobeña and Mr. Caicedo Cobeña [FN10]. The State also knew that the representatives presented in their brief on pleadings and motions a list of family members which corresponded to those included in the application.

[FN10] Those persons are the partners and child of the alleged deceased victims.

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25. In turn, the State was also aware that the Commission submitted an affidavit from Ms. Jessica Marlene Baque Rodríguez after the lodging of the application and the Order from the President (supra para 7), but prior to the public hearing. The Commission pointed out that after "corroborating the existence of family members of the victims which were not initially included [in the application]", it was submitting the statement of Ms. Baque, who was "Mr. Wilmer Zambrano Velez's foster daughter" and has been eyewitness of the facts in the instant case, "in order to provide [… the] Court greater evidentiary elements to establish the truth about the events" and "for [any] relevant purposes". Since her statement had not been ordered by the President and following his instructions, the representatives and the State were informed of the possibility to present any comments they would deem relevant. The representatives requested that the said statement be accepted, on the grounds of the same arguments as presented by the Commission. The State did not present any comments. On the other hand, the representatives also informed the Court, before the public hearing, that Christian Eduardo Zambrano Ruales was the son of Mr. Wilmer Zambrano Vélez. In their final written arguments, the representatives included Ms. Jessica Marlene Baque Rodríguez as well as Mr. Christian Eduardo Zambrano Ruales in the list of the family members of the alleged victims and submitted the birth certificate of the latter.

26. In accordance with article 33(1) of the Court's Rules of Procedure, it lies upon the Commission to precisely identify the alleged victims in a case. Ms. Jessica Marlene Baque Rodríguez and Mr. Christian Eduardo Zambrano Ruales were not identified as victims in the Commission's application. However, the Tribunal points out that the State neither disputed the status as victims of the family members mentioned by the Commission and the representatives,

nor did it dispute the kinship of these family members or raise any objection with regard to the emotional bonds that these family members would have had with the victims. Moreover, considering that the State acknowledged its responsibility in the instant case, the Court does not deem it necessary to analyze the evidence in this regard, since it presumes, on the grounds of the parties' pleadings, that the family members mentioned by the Commission and the representatives effectively have the alleged emotional bonds [FN11].

[FN11] Case of the Rochela Massacre, supra note 7, para. 45.

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27. The Court observes that the State did not make any comments in its partial acknowledgement of liability on the claims for reparations presented by the Inter-American Commission and the representatives. However, in the said public hearing, the State indicated that:

There exists a breach of the Right to truth [… which] underlies Article[s] 8 and 25 of the American Convention […]. The State of Ecuador demonstrates its good faith in recognizing and protecting that right by means of a Truth Commission which has been established by the Executive, by the President of the Republic, and which will thoroughly investigate and collect all the documentary, expert and testimonial evidence necessary in order to start criminal proceedings[,] with respect for the due judicial guarantees[,] and in order mostly to guarantee the alleged victims' right to truth.
[…] The [state of] emergency's regime will be duly regulated and strictly monitored by the representatives who will participate in the next Constituent Assembly which is to take place in Ecuador. This has been an engagement assumed by the National Government, by the Attorney General's Office, which will present some bills and constitutional standards' proposals restricting the indiscriminate use which can be made of the state of emergency in certain situations […].
The State reiterates its will to comply with the eventual reparation measures that the Inter-American Court may order.

28. The State reiterated these statements in its final written arguments, in which it added, inter alia, that:

[t]he unintentional and accidental death resulting from this case deserve to be clarified, as they will surely be through the Truth Commission and consequently, the domestic Justice. The State of Ecuador assumes the responsibility to investigate and punish the responsible parties once the truth about what happened on the day of the events will have been established[; as such, the National Congress is currently debating a law for the attribution of responsibilities [("ley de repetición de responsabilidad"]), which is intended to become a project for the execution of the Inter-American System's judgments and for the attribution of responsibility by the State upon the responsible parties, if such would result from [a decision] on the merits of the case.
Moreover, the State commits itself, through the Attorney General's Office, to run a process of prevention, training and dissemination of an educational public policy in Human Rights for the

public sector [.This] proceeding […] is actually in the process of being implemented through a "Handbook on Proceedings for the Public Sector" which will be disseminated nationally and in which civil society organizations, academic institutions and of course, the State of Ecuador, are intervening […].

29. Notwithstanding the possible legal effects these statements might have, which will be determined in the corresponding chapter, the Court considers that the dispute over the claims for reparations and costs remains open.

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30. The Court considers that the partial acknowledgement of responsibility made by the State constitutes an important step towards the development of this proceeding, the appropriate conduction of the Inter-American jurisdiction on human rights in general, the enforcement of the principles underlying the American Convention and the practice of the States in this matter [FN12].

[FN12] Cf. Case of Bueno Alves, supra note 8, para. 34; Case of the Rochela Massacre, supra note 7, para. 29; Case of La Cantuta, supra note 7, para 56.

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31. Having regard both to its responsibility to watch over the greater protection of human rights and to the context in which the facts of the instant case happened, the Tribunal considers it necessary to issue a judgment in which it adjudicates on the facts and on all the relevant elements of the merits of the case, as well as on the corresponding consequences thereof. Such judgment constitutes a form of reparation to the family members of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo Cobeña and Miguel Caicedo Cobeña, as well as a way to contribute to the preservation of the historical memory, to avoid the repetition of similar facts and to fulfill, in short, the purposes of the Inter-American jurisdiction on human rights [FN13]. As such, notwithstanding the scope of the partial acknowledgement of responsibility made by the State, the Court deems it relevant to appreciate the facts of the instant case, both those acknowledged by Ecuador (supra paras. 17-21) and those presented in the application. Moreover, the Court deems it necessary to clarify certain matters regarding how the violations have taken place in the context and under the circumstances of this particular case, as well as regarding certain consequences related to the obligations established in the American Convention. To that effect, the Court will include in this Judgment the respective chapters, in which it will also analyze the facts, the allegations on the merits of the case and the eventual reparations over which the dispute remains open regarding the international responsibility of the State.

[FN13] Cf. Case of Bueno Alves, supra note 8, paras. 35; Case of the Rochela Massacre, supra note 7, para. 54; Case of La Cantuta, supra note 7, para. 57.

V. EVIDENCE

32. Pursuant to the provisions of Articles 44 and 45 of the Rules of Procedure and to the Court's case-law regarding evidence and its assessment [FN14], the Court will proceed to examine and assess the documentary evidence submitted by the Commission and the representatives at the different procedural stages or as evidence requested by the President to facilitate the adjudication of the case. The Court will also examine and assess the witnesses and expert witnesses' declarations provided by affidavit or before the Court. To that effect, the Court shall abide by the principles of sound criticism, within the corresponding legal framework [FN15].

[FN14] Cf. Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, para. 86; Case of the "White Van" (Paniagua-Morales et al.). Reparations. Judgment of May 15, 2001. Series C No. 76, para. 50 and Case of Bámaca-Velásquez. Reparations. Judgment of February 22, 2002. Series C No. 91, para. 15. See also Case of the Miguel Castro-Castro Prison. Judgment of November 25, 2006. Series C No. 160, para. 183-184; Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, paras. 67, 68 and 69, and Case of Servellón-García et al. Judgment of September 21, 2006. Series C No. 152, para. 34.

[FN15] Cf. Case of the "White Van" (Paniagua-Morales et al.). Judgment of March 8, 1998. Series C No. 37, para. 76; Case of Bueno Alves, supra note 8, para. 38, and Case of the Rochela Massacre, supra note 7, para. 59.

A) DOCUMENTARY, TESTIMONIAL AND EXPERT EVIDENCE

33. The Court points out that at the time of serving the application, following instructions from the President and considering the Commission's request at paragraph 135 of its application, the State was asked to submit along with its answer to the application and comments on the representatives' brief on pleadings, motions and evidence, complete and legible copies of any judicial or administrative investigation and any other proceedings of any nature initiated at the domestic level in connection with the facts of the instant case, as well as information about their actual status, if applicable. Although this request has been reiterated three times subsequently [FN16], the said information was not submitted by the State. Moreover, the State did not submit the last documentation and information requested for those same effects (supra para. 7). The Court reminds that the parties must submit to the Tribunal the evidence requested, so that it may count on the greater evidentiary elements possible in order to have a thorough knowledge of the facts and ground its decisions.

[FN16] Through notes of this Registry dated February 9, March 19 and April 19, 2007.

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34. The witnesses proposed by the Commission, namely Vanner Omar Olmedo Macías, Teresa María Susana Cedeño Paz and Alicia Marlene Rodríguez Villegas, testified about "the facts which took place in the early morning hours of March 6, 1993, when [allegedly] agents of

the Ecuadorian security forces [would have] violently entered his [or her] house and [would have] executed his father [or her partner, depending on the case] in front of his [or her] family".

35. On the grounds of arguments similar to those put forward by the Commission concerning the testimony of Ms. Jessica Marlene Baque Rodríguez (supra para. 25), the representatives submitted a testimony of Mr. Ubaldo Aquilino Angulo Plaza, who was allegedly living in front of Mr. Segundo Olmedo Caicedo Cobeña's house and who, "on the day of the events, observed from his home how military officers brought [him] out alive and boarded him on an Army truck, of which they subsequently took him out and carried [him] in the house again in which they [allegedly] murdered him". Similarly, the Commission and the State were informed of the possibility to present any comments they would deem relevant. Said comments were not submitted.

36. Furthermore, the affidavit of Mr. Ernesto Teófilo López Freire, an expert witness proposed by the representatives, was submitted. He testified on Ecuadorian law concerning the powers of the Executive to decree states of emergency.

B) ASSESSMENT OF THE EVIDENCE

37. In the instant case as in others [FN17], pursuant to Articles 45(1) and 45(2) of the Rules of Procedure, the Court admits and recognizes the evidentiary value of the documents and clarifications submitted by the parties at the appropriate procedural stage or as evidence to facilitate the adjudication of the case, which have neither been disputed nor objected, and the authenticity of which has not been questioned.

[FN17] Cf. Case of Loayza-Tamayo Reparations. Judgment of November 27, 1998. Series C No. 42, para. 53, See also Case of Bueno Alves, supra note 8, para. 38; and Case of the Rochela Massacre, supra note 7, para. 59.

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38. Regarding the press documents submitted by the parties, the State in its answer to the application declared that "the information [presented therein] is unclear and contradictory[.] Therefore, in view of the doubts with regard to the truthfulness of the facts related, they cannot be considered as proven facts, since these press reports cannot even confirm as between themselves the versions related." The State added that the Court might "ground its judgments on indirect evidence […] when [these] are coherent, [they] confirm [the facts] as between themselves and make it possible to draw strong conclusions about the facts considered". The State reasserted this argument during the public hearing. However, in the said hearing the State alleged, on the grounds of press reports, that the fact that arms have been found in the houses of the alleged victims was "well-known to the public". Having laid down the remaining dispute in the instant case (supra para. 16), the Court will assess the press documents insofar as they refer to public and notorious facts or to statements made by State officials, or when they corroborate aspects related to the instant case [FN18] that are proven by other means [FN19].

[FN18] Cf. Case of the "White Van" (Paniagua-Morales et al.), supra note 15, para. 75. See also Case of Bueno Alves, supra note 8, para. 46, and Case of the Rochela Massacre, supra note 7, para. 59.
[FN19] Cf. Case of Bueno Alves, supra note 8, para. 46, and Case of the Rochela Massacre, supra note 7, para. 59.
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39. With regard to the testimonies and the expert opinion, the Court deems them relevant insofar as they conform to the object defined in the Order of the President in which he requested the submission of the said declarations (supra para. 7). The Court also accepts the affidavits of Ms. Jessica Marlene Baque Rodríguez and Mr. Ubaldo Aquilino Angulo Plaza, submitted respectively by the Commission and the representatives, insofar as they prove to be useful in order to determine the facts of the instant case, taking into account that the parties' right to defense has been guaranteed and that no objection has been made in this regard.

40. The Court considers that the testimonies given by the alleged victims or their family members cannot be assessed separately since they have a direct interest in the outcome of the case. Therefore, the testimonies of the alleged victims' family members will be assessed within the whole body of evidence in the proceedings [FN20].

[FN20] Cf. Case of the "White Van" (Paniagua-Morales et al.). Reparations, supra note 14, para. 70. See also Case of the Rochela Massacre, supra note 7, para. 60, and Case of La Cantuta, supra note 7, para. 64.

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41. Having examined the evidentiary elements incorporated into the case file of the instant case, the declarations of the parties, as well as the partial acknowledgement of international responsibility made by the State (supra para. 8-31), the Court will proceed with the analysis of the alleged violations in the instant case, in light of the acknowledged facts and those that the Court deems proven [FN21] in each corresponding chapter. The Court will also consider the parties' legal arguments which analysis prove to be relevant, taking into account the partial acknowledgement of liability made by the State.

[FN21] Hereinafter, the instant Judgment contains facts that this tribunal deems proven on the grounds of the aknowledgement of facts and responsibility made by the State, in the order and with the relevant precisions with regard to the facts presented in the application. Some of these facts have been completed with other evidentiary elements, in which case the corresponding footnotes are included.

VI. ARTICLE 27 (SUSPENSION OF GUARANTEES) [FN22] IN CONJUNCTION WITH ARTICLES 1 (OBLIGATION TO RESPECT RIGHTS) [FN23], 2 (DOMESTIC LEGAL

EFFECTS) [FN24], 4 (RIGHT TO LIFE), 8.1 (JUDICIAL GUARANTEES) AND 25 (JUDICIAL PROTECTION) OF THE AMERICAN CONVENTION

[FN22] Article 27 (Suspension of Guarantees)
1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.
2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.
3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.
[FN23] Article 1(1) (Obligation to Respect Rights)
1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. […]
[FN24] Article 2 (Domestic Legal Effects)
Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
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42. On the grounds of the partial acknowledgement of responsibility made by the State, the Tribunal considered that the State had acknowledged his responsibility for its failure to comply with Article 27 of the American Convention (supra para. 16). Notwithstanding the foregoing, the Court deems relevant to make some general comments and precisions regarding the said Article concerning the context of the instant case as well as other alleged or acknowledged violations.

43. Regarding the interpretation of Article 27 of the Convention, the Court has established that:

[t]he starting point for any legally sound analysis of Article 27 and the function it performs is the fact that it is a provision for exceptional situations only. It applies solely "in time of war, public

danger, or other emergency that threatens the independence or security of a State Party." And even then, it permits the suspension of certain rights and freedoms only "to the extent and for the period of time strictly required by the exigencies of the situation." Such measures must also not violate the State Party's other international legal obligations, nor may they involve "discrimination on the ground of race, color, sex, language, religion or social origin" [FN25].

[FN25] Cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8. para. 19.

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44. The facts of the instant case took place in a context in which some of the main cities in Ecuador were affected by serious acts of delinquency which led to a climate of insecurity and internal commotion. Faced with the said situation and within the framework of the National Security Law, as recognized by the State (supra para. 17-19), the President of the Republic issued the Decree-Law No. 86 [FN26] on September 3, 1992, which stated:

Whereas
Throughout the national territory and especially in the cities of Quito and Guayaquil, acts of vandalism, attacks against the physical integrity of the persons and considerable damages to public and private property continue to occur, which have resulted in a serious state of internal commotion;
It is essential to maintain and protect the legal and democratic system of the Republic, as well as to safeguard the order and security of ECUADOR's inhabitants, by adopting the adequate measures; and
In the exercise of its legal powers,
FIRST ARTICLE - The intervention of the Armed Forces throughout the national territory is hereby ordered, as a mean to safeguard the security of the persons and of the public and private property.
SECOND ARTICLE - The present Decree shall enter into force as of the present date, notwithstanding its publication in the Official Registry and its implementation which is entrusted to the Minister of National Defense.

[FN26] Cf. Decree-Law N° 86 of September 3rd, 1992, published that same day in the "Official Register" and signed by the President of the Republic, Sixto Durán Ballén, and by the Minister of National Defence, José Gallardo Román (annexes to the brief on pleadings and motions, Annex 45, folio 916).

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45. In this regard, the Court reminds that

[s]ince Article 27(1) envisages different situations and since, moreover, the measures that may be taken in any of these emergencies must be tailored to "the exigencies of the situation," it is clear that what might be permissible in one type of emergency would not be lawful in another.

The lawfulness of the measures taken to deal with each of the special situations referred to in Article 27(1) will depend, moreover, upon the character, intensity, pervasiveness, and particular context of the emergency and upon the corresponding proportionality and reasonableness of the measures [FN27].

[FN27] Cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), supra note 25, para. 22.

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46. Along the same line, the European Court of Human Rights has declared that for a state of emergency to be justified, there must: a) exist an exceptional situation of crisis or emergency; b) which affects the whole population, and c) which constitutes a threat to the organized life of the community [FN28].

[FN28] Cf. ECHR, Lawless v. Ireland (no. 3), judgment of 1 July 1961, Series A no. 3, p. 14, para. 28.

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47. It is the obligation of the State to determine the reasons and motives that lead the domestic authorities to declare a state of emergency and it is up to these authorities to exercise appropriate and effective control over this situation and to ensure that the suspension decreed is limited "to the extent and for the period of time strictly required by the exigencies of the situation", in accordance with the Convention. States do not enjoy an unlimited discretion; it is up to the Inter-American system's organs to exercise this control in a subsidiary and complementary manner, within the framework of their respective competences. In this case, the Court analyses the conformity of the State actions within the framework of the obligations enshrined in Article 27 of the Convention, in conjunction with other provisions of the Convention under dispute.

48. In the instant case, the state authorities considered that "a serious state of internal commotion […throughout] the national territory and especially in the cities of Quito and Guayaquil" existed, as a consequence of "acts of vandalism, attacks against the physical integrity of the persons and considerable damages to public and private property", which required the adoption of exceptional measures. However, analyzing the aforementioned Decree-Law No. 86, the Court observes that the said decree did not set a defined territorial limit. On the contrary, it provided for "the intervention of the Armed Forces throughout the national territory […] as a means to safeguard the security of the persons and of the public and private property" (supra para. 44). In such terms, the Decree-Law neither fixed a time limit for the military intervention, which would allow knowing its duration; nor did it lay down the rights which would be suspended, that is, the material scope of the suspension. The National Security Law neither established those limits. With regard to the aforementioned, the United Nations Human Rights Committee has held that a state of emergency must meet the requirements of "duration, geographical coverage and material scope" [FN29].

[FN29] Cf. United Nations Human Rights Committee, General Comment No. 29, adopted at the 1950th meeting, on 24 July 2001, CCPR/C/21/Rev.1/Add.11, August 31, 2001, para. 4.

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49. In this regard, the State alleged that the "decree-law [establishing the state of] emergency has been issued in a context of national [and] continental violence", "a context of alarming insecurity, increasing violence and citizen panic", and that such decree-law "is justified since at that time in Ecuador, the subversive group "Puca Inti" or "Sol Rojo" was beginning to establish itself in the national territory". The State declared that "the concept of national security, defined in Article 2 of the [National Security] Law, does not only imply the preservation of domestic order, but also the preservation of collective values related to the survival of the Nation[; the] fact that Ecuador is presently a country with a small number of subversive elements is due to the prompt intervention of government forces in specific moments of the history with the ultimate objective of defending social peace".

50. With regard to the decree-law establishing the state of emergency, the Commission alleged that "the state of emergency or suspension of guarantees was declared […] in Ecuador at least seven times from mid-1992 to mid-1996". Quoting from its 1999 Annual Report, the Commission considered, regarding Ecuador, that "fight[ing against] crime […] by [means of] the suspension of guarantees [under the declaration of] the state of emergency does not comply with the American Convention's guidelines as to when such declarations are admissible [and that the] State has — and is required to have — other mechanisms for channeling social unrest and fighting crime that do not involve suspending the population's fundamental guarantees" [FN30]. In turn, the State "reject[ed] the representative's opinion [to the effect that] issuing decree-laws establishing a state of emergency and the suspension of constitutional guarantees in an indiscriminate manner and as systematic mechanisms to fight against common crime constitutes a modus operandi of the Ecuadorian government".

[FN30] Cf. 1998 Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.102, Doc. 6 rev. 1, April 16, 1999, Chapter V, Ecuador, para. 44.

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51. The Court points out that in certain states of emergency or in situations of disturbance of law and order, States use the Armed Forces to control the situation. In that respect, the Court deems absolutely necessary to emphasize the extreme care which States must observe when they decide to use their Armed Forces as a mean for controlling social protests, domestic disturbances, internal violence, public emergencies and common crime. As stated by the Court, "States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces" [FN31]. The strict fulfillment of the duty to prevent and protect the endangered rights must be assumed by the domestic authorities in observance of a clear demarcation between military and police duties. In this sense, some progress can be noted, such as the "Declaration of Minimum Humanitarian Standards" applicable in situations of state of emergencies ("Turku Declaration") [FN32], which considers

that it is important to reaffirm and develop principles governing behavior of all persons, groups, and authorities in situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency; as well as to confirm that certain standards can never be derogated in such situations; for the following reasons:

Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;
Concerned that in such situations human rights and humanitarian principles have often been violated; […]
Recognizing the importance of respecting existing human rights and humanitarian norms;
Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;
Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, color, sex, language, religion, social, national or ethnic origin[.]

[FN31] Cf. Case of Montero-Aranguren et al. (Detention Center of Catia). Judgment of July 5, 2006. Series C No. 150, para. 78.
[FN32] "Declaration of Minimum Humanitarian Standards" ("Turku Declaration"), Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo (Finland), 30 November – 2 December 1990 and subsequently reviewed in a meeting of the Norwegian Institute of Human Right celebrated in Oslo (Norway) on September 29-30, 1994. United Nations Economic and Social Council, Commission on Human Rights, 51º Period of Sessions, Topic 19 of the provisional program, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 46º Period of Sessions.
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52. The Court considers that once a military intervention with such a wide scope and based on purposes as broad and vague (supra para. 48) has been carried out, the suspension of guarantees which took place in the instant case and which was admitted by the State through its acknowledgement of responsibility for the alleged violation of Article 27 of the Convention, exceeded the powers attributed to the States by the Convention in the first section of this provision. Although the facts of the instant case only refer to the enforcement of the said Decree-Law No. 86 - and the Court limits its analysis to this context – it is of the outmost importance to remind that suspension of guarantees must be used as a strictly exceptional mean to face real situations of emergency "to the extent and for the period of time strictly required by the exigencies of the situation", and not as a mean to fight common crime. Thus, the Court views favorably the State's declaration to the effect that it is currently "in the process […] of democratizing […] the regime of exception[, which] will be duly regulated and strictly

monitored […] in the next Constitutional Assembly to take place in Ecuador[, … in order to] limit […] the indiscriminate use of state[s] of exception which can sometimes be made due to the Executive's power to decree a state of emergency".

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53. Regarding the material scope of the suspension of guarantees, the Court will analyze Article 27(2) of the Convention in conjunction with Article 2 thereof, over which the dispute has remained open (supra para. 16).

54. The Court considers that the State has the obligation to ensure that the indispensable judicial guarantees for the protection of rights and freedoms enshrined in the Convention remain in force in all circumstances, including during states of exception. This Court has previously established as indispensable guarantees those judicial proceedings that are normally essential to guarantee the full exercise of the rights and freedoms [FN33], which will vary according to the affected rights [FN34]. The said guarantees are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the rule of law, even during the exceptional legality that results from the suspension of guarantees [FN35]. The said indispensable judicial guarantees must be preserved in order to verify the necessity, reasonability and proportionality of the specific measures adopted in exercise of those exceptional powers [FN36].

[FN33] Cf. similarly, Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), supra note 25, para. 29.
[FN34] Cf. similarly, Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), supra note 25, para. 28.
[FN35] Cf. similarly, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 38. See also Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, para. 107.
[FN36] Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights), supra note 35, para. 21. See also Case of Durand and Ugarte, supra note 35, para. 99.

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55. On the other hand, regarding the general duty embodied in Article 2 of the Convention, the Court has repeatedly held that:

[u]nder the law of nations, a customary law prescribes that a State that has signed an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken. This principle is universally valid and has been characterized in case law as an evident principle ("principe allant de soi"; Exchange of the Greek and Turkish populations, advisory opinion, 1925, C.P.J.I., series B, no. 10, p. 20) [FN37].

[FN37] Cf. Case of Garrido and Baigorria.Reparations. Judgment of August 27, 1998. Series C No. 26, para. 68. See also Case of La Cantuta, supra note 7, para. 170, and Case of Almonacid Arellano et al., supra note 14, para. 117.

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56. This principle is enshrined in Article 2 of the Convention, which sets forth the general duty of each State Party to adjust its domestic law to the provisions of the Convention to guarantee the rights enshrined therein [FN38], which implies that the domestic legal measures must be effective (effet utile principle) [FN39].

[FN38] Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.). Judgment of February 5, 2001. Series C No. 73, para. 87. See also Case of La Cantuta, supra note 7, para. 171, and Case of Almonacid Arellano et al., supra note 14, para. 117.
[FN39] Cf. Case of Ivcher-Bronstein. Competence. Judgment of September 24, 1999, para. 37; Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.), supra note 38, para. 87. See also Case of La Cantuta, supra note 7, para. 171, and Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 205.

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57. Certainly, Article 2 of the Convention fails to define which measures are appropriate to adjust the domestic law to the Convention; obviously, this is so because it depends on the nature of the rule requiring adjustments and on the circumstances of each specific situation. Therefore, the Court has interpreted that such adjustment implies adopting two sets of measures, knowingly: (i) repealing rules and practices of any nature entailing violations of the guarantees provided for in the Convention or disregarding the rights enshrined therein or impeding the exercise of such rights, and (ii) adopting rules and developing practices aimed at effectively ensuring the said guarantees [FN40]. The Court has taken the view that the first set of duties is breached while the rule or practice running counter to the Convention remains in the legal system [FN41] and is therefore satisfied by modifying [FN42], derogating, or otherwise annulling [FN43] or amending [FN44] such rules or practices, as appropriate [FN45].

[FN40] Cf. Case of Castillo-Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, para. 207. See also Case of La Cantuta, supra note 7, para. 172, and Case of Almonacid Arrellano et al., supra note 14, para. 118.
[FN41] Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.), supra note 38, para. 88. See also Case of La Cantuta, supra note 7, para. 172,
[FN42] Cf. Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, paras. 113 and 212. See also Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, paras. 97 and 130.
[FN43] Cf. Case of Caesar. Judgment of March 11, 2005. Series C No. 123, paras. 94 and 132. See also Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 254.
[FN44] Cf. Case of Raxcacó-Reyes. Judgment of September 15, 2005. Series C No. 133, paras. 87 and 125.
[FN45] Cf. Case of La Cantuta, supra note 7, para. 172,

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58. According to this interpretation framework, the remaining dispute must be considered within the first set of measures to be adopted in order to adjust the domestic rules to the Convention. That being said, the facts and the practices of the State must be analyzed as a whole in order to appreciate the compliance by the State of the general duty enshrined in Article 2, in conjunction with the other rules.

59. The Commission and the representatives alleged that the National Security Law, which would still be in force, is contrary to the American Convention, since Articles 145 and 147 of such law stipulate that during states of emergency, actions constituting the crimes set forth in the said Law as well as crimes punishable by imprisonment must be judged under the Military Criminal Code. Furthermore, the Commission added that "a rule of this nature, giving military courts full jurisdiction to try civilians for the crimes referred to, is incompatible with and in contravention of Article 27(2) of the American Convention, which states that there are some rights and freedoms that cannot be suspended under any circumstance, including 'the judicial guarantees essential for the protection of such rights'". Therefore, according to the Commission, the said rule "undermines the right to a fair trial before an independent [and] impartial court", as well as the right of the victims to access information regarding such proceedings. Moreover, the Commission argued that "on limiting the procedural guarantees to a special jurisdiction, the rights of the victims and their family members [have been] violated", so that the State would not have taken the appropriate domestic legal measures to give effect to the rights of the family members.

60. Along the same line, the representatives added that as such, "the armed forces play a dual role", since "when [their] members argue, as in the instant case, that a confrontation took place […] it is not even possible to file a claim in the said courts of exception". In its final written arguments, the representatives requested the Court to "accept the aknowledgement of liability made by the State for the failure to fulfill the obligation imposed by Article 2 […] of the American Convention, for not repealing provisions in its legislation which gives jurisdiction to investigate human rights violation to police or military courts and for not amending the legislation as to the application of the [National] Security Law during the intervention of the Armed Forces in the domestic order".

61. During the public hearing, the State indicated that "in 1993, when these facts occurred, another Constitution was in force in Ecuador; [in] 1998, [this Constitution] changed[; the Constitution in force] in 1993 specifically provided for the application of the National Security Law's rules during states of emergency, a situation which […] was reject[ed] by the constituents in 98; there no longer exist any references to this Law in the current Ecuadorian Constitution, at least in the application of the state of emergency". Furthermore, the State alleged that Article 191 of the Constitution which entered into force in 1998 established the "jurisdictional unity" in Ecuador. On the other hand, in its final arguments, the State declared that "the Supreme Court of Justice can review the judgments issued by the Police and Military Courts, according [to] a decision [which was adopted on March 1st, 2006, and which entered into force on May 19, 2007. Said decision was adopted] unanimously, [by] the former members of the Constitutional Court, who declared the unconstitutionality of article two of the Ley de Casación [(Law on Appeal to

the Supreme Court)] in force in the country[,] which stipulated that 'appeal to the supreme court is not admissible… for judgments and orders delivered by Police and Military Forces' special courts'[. Therefore, with] this decision, all judgments can get to the Supreme Court of Justice's chambers."

62. The fact that the National Security Law (No. 275 of 1979) was in force at the time of the events is not in dispute. Some of its articles stipulated the following:

ARTICLE 2.- The State ensures the survival of the community, the defence of the national patrimony and the achievement and maintenance of the National Objectives; and its primary function is to strengthen the national unity, to ensure the respect of the fundamental rights of man and to promote the economic, social and cultural progress of its inhabitants, by counteracting both internal and external adverse elements, through political, economic, social and military actions and precautions.
[…]
ARTICLE 144.- In times of peace, the offences set out in this Law will be judged by the respective magistrates attending the jurisdiction of the offender, in accordance with the provisions set forth in the Codes of Criminal Procedure.
ARTICLE 145.- In times of war or when mobilization has been decreed, the infractions specified in the previous Chapter will be judged with respect to the provisions set forth in the Military Criminal Code, and no jurisdiction will be recognized.
[…]
ARTICLE 147.- Once the State of Emergency has been declared, the offences punished with imprisonment will be judged in accordance with Article 145.

63. The representatives referred to various laws which govern the police and military sectors and which confer jurisdiction to police and military tribunals to investigate and prosecute members of the government force charged with certain offences, when such offences occurred in the performance of their duties [FN46]. The representatives allege that this situation allowed for the killings committed by militaries to remain unpunished in certain situations, and that the reform to the Constitution in 1998 did not change this situation, since the way in which article 187 of the Political Constitution is currently written allow for special jurisdictions to remain in force for members of the government force.

[FN46] Both in their final arguments and in their brief containing evidence to facilitate the adjudication of the case, the representatives point out Articles 5 and 6 of the Code of Military Criminal Procedure, Articles 6 and 7 of the Code of Criminal Procedure of the National Police; Article 172 of the Organic Law of the Judiciary; Article 84 of the Organic Law of the National Police and Article 110 of the Law on the National Police Staff.
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64. The Court observes that pursuant to Articles 145 and 147 of the Ecuadorian National Security Law in force at the time of the facts of the instant case, criminal acts perpetrated during a state of emergency declared on the grounds of the said law and which could constitute crimes of certain seriousness would fall under military criminal jurisdiction. As such, irrespective of

who would commit the offence, military courts automatically had jurisdiction to hear these facts; that is, to eventually prosecute and punish civilians and members of the armed forces who had committed offences against civilians. That is, within the declaration of a state of emergency, those rules would confer to military courts jurisdiction usually attributed to ordinary courts.

65. Furthermore, as it arises from a document presented by the representatives in their brief on pleadings and motions [FN47], the Code of Military Procedure does not foresee particular accusation – the only mean by which a victim, or other persons in the absence of any victim, could take part in the trial – within the means by which an examining magistrate must initiate military criminal proceedings to hear punishable acts. Such assertion has not been disputed by the State.

[FN47] Cf. notes No. 335 and 482 of July 10 and October 16, 2002, signed by the President of the Military Court of Justice (annexes to the brief on pleadings and motions, Annex 41, folios 885 and 887).

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66. Regarding military jurisdictions, the Court reminds that:

[such courts] should have a restrictive and exceptional scope, bearing in mind that they should only judge members of the armed forces when they commit crimes or misdemeanors that, owing to their nature, affect rights and duties inherent to the military system. [FN48] In this regard, when the military justice system assumes jurisdiction over a matter that should be heard by the ordinary justice system, the right to have a case tried by the appropriate judge is affected. [FN49] This guarantee of due process should be examined taking into account the object and purpose of the American Convention, which is the effective protection of the individual. [FN50] For these reasons, and due to the nature of the crime and the rights and freedoms damaged, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations [FN51].

[FN48] Cf. Case of Durand and Ugarte, supra note 35, para. 117. See also Case of the Rochela Massacre, supra note 7, para. 200, and Case of La Cantuta, supra note 7, para. 142.
[FN49] Cf. Case of Castillo-Petruzzi et al., supra note 40, para. 128. See also Case of the Rochela Massacre, supra note 7, para. 200, and Case of La Cantuta, supra note 7, para. 142.
[FN50] Cf. Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 173. See also Case of the Rochela Massacre, supra note 7, para. 200.
[FN51] Cf. Case of La Cantuta, supra note 7, para. 142. See also Case of the Rochela Massacre, supra note 7, para. 200.

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67. Certainly, the decree-law establishing the state of emergency did not stipulate the suspension of the right to life, which is in dispute in the instant case, nor did it stipulate the suspension of “the judicial guarantees essential for the protection of such rights” (Article 27(2) of the Convention). However, considering that such decree-law was declared within the

framework of the National Security Law, the rules stipulated in such Law would have applied if an investigation had been initiated in criminal courts, whether military or ordinary, as it should have happened at the moment the alleged victims were deprived of their lives (infra paras. 88-90, 109-110). These rules would result in the infringement of the right to be heard by a competent judge of either the individuals who would have committed a criminal act punishable with detention during a state of emergency, or those who would have been affected by such act or their family members. Such rules might also hinder the appropriate and independent control of the compatibility of the suspension of guarantees with the Convention and would hinder the participation of individuals or their family members in the proceedings.

68. Regarding the State's allegations about the alleged lack of legal effects of special and military jurisdictions (supra para. 61), the reading of both Article 191 and the sixteenth transitory provision of the 1998 Ecuadorian Constitution suggests that "jurisdictional unity" was established, so that "all the magistrates and judges which depend on the Executive Branch would move to the Judicial Branch and, as far as the laws do not stipulate anything different, they will observe their own organic laws [and t]his provision includes military, police and juvenile judges". The State did not demonstrate that, effectively, the said National Security Law had been modified by these provisions, nor did it demonstrate the way in which such decision would rectify the incompatibilities emerging from the application of this law, as exposed in the previous paragraphs. Besides, according to information submitted to the case file by the representatives in their final arguments and not disputed by the State, this National Security Law, which is in force since August 9, 1979, would have been amended five times since the facts in the instant case took place, the last time being in June 2003, five years after proclaiming the Constitution presently in force. Moreover, in their brief on pleadings and motions the representatives presented documentation showing that between April 2005 and March 2006, the State issued at least six decree-laws in which a state of emergency was declared on the grounds of the National Security Law and the Constitution [FN52], for example in cases of "conflicting situations provoked with clear aims of vandalism by groups interested in causing chaos" [FN53]; in the most of these decree-laws, it was also stipulated that Art. 145 of the said Law would apply to punish infractions committed in the security zone established by such decree-laws, and some proceedings would effectively have been initiated pursuant to that law, according to the representatives. That is, the said Law would have continued to be in force until at least March 2006 and in any case, continued to have legal effect after the entry into force of the 1998 Ecuadorian Constitution.

[FN52] Cf. Decree-Law N° 1269 of March 21, 2006, Proclamation No. 1. Chief Officer of the Joint Operation Force No. 1. March 21, 2006; Decree-Law N° 1204 of March 7, 2006; Decree-Law of March 13, 2006 which reforms the Executive Decree-Law N° 1204 of March 7, 2006; Decree-Law N° 1179 of February 21, 2006; Decree-Law N° 426 of August 17, 2005 and Decree-Law N° 2752 of April 15, 2005 (annexes to the brief on pleadings and motions, annex 46, folios 917-930).

[FN53] Cf. Decree-Law No. 426 of August 17, 2005 (annexes to the brief on pleadings and motions, annex 46, folio 927).

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69. Finally, the State has admitted that at the time of issuing the Decree-Law No. 86 on September 3rd, 1992, the other States Parties have not been immediately informed, through the Secretary General of the Organization of American States (hereinafter "OAS"), of the Convention's provisions of which it had suspended the application, of the reasons that gave rise to the suspension and of the date set for such suspension to end, as required by Article 27(3) of the Convention. In this regard, the Court views favorably the declaration made by Ecuador in its aknowledgement of responsibility, to the effect that:

[…] States in the region must be conscious [of the requirements of] Article 27(3) of the American Convention […,] a duty with which States often do not comply and with which the State of Ecuador has not complied in the instant case[, h]ence the acknowledgement made in good faith by the State […].

70. The Court considers that the international obligation of States Parties to the American Convention under Article 27(3) constitutes a mechanism within the framework of the notion of collective guarantee underlying this treaty, which aim and purpose is the protection of human beings. Such obligation also constitutes a safeguard to prevent the abuse of the exceptional powers of the suspension of guarantees and allows other State Parties to evaluate if the scope of this suspension is consistent with the provisions of the Convention. Therefore, the non-compliance of this duty to inform implies a breach of the obligation set forth in Article 27(3). Even then, the State is not exempted from justifying the existence of an emergency situation and the adequacy of the measures therefore established, as set forth previously (supra paras. 47, 51, 52 and 54).

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71. Having regard to the foregoing considerations, the Court finds that the State has breached its obligations set forth in Article 27(1), 27(2) and 27(3) of the Convention, in relation with the rights and obligations set forth in Articles 1(1), 2, 4, 8.1 and 25 thereof.

VI. ARTICLE 4(1) (RIGHT TO LIFE) [FN54] IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION

[FN54] Article 4(1) of the Convention states that: "[e]very 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".

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72. As mentioned in the chapter on the Partial Aknowledgement of Responsibility (supra para. 16), the dispute over the responsibility of the State for the alleged violation of Article 4 of the Convention remained open. The Court will therefore proceed to the analysis of the relevant facts and arguments.

73. The following facts are acknowledged and undisputed: on March 6, 1993, the three branches of the Armed Forced – the Navy, the Air Force and the Army - along with the National Police, carried out a joint operation in a peripheral area of the city of Guayaquil called “Barrio Batallón,” located between “40th” street and “K” street. This operation, carried out within the framework of the state of emergency declared by decree-law six months earlier (supra para. 44), was planned three months ahead of time. It included the participation of around 1,200 agents with the support of army trucks, boats and one helicopter. During the operation, members of the Armed Force hooded with balaclavas used explosives to open the doors of the homes and entered into the houses of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña, alleged victims in the instant case, who were to be found along with their partners and some of their children and were deprived of their life by gunshots fired by state agents.

74. According to the State’s declaration, “the main objective of the operation was to arrest criminals, drug traffickers and terrorists”. Representatives of the Armed Forces told the press that they acted based on the National Security Law as well as military intelligence information [FN55]. Moreover, an official communiqué issued by the Armed Forces related a version of the facts [FN56] which is coherent with a report on the March 11, 1993 military operation addressed to the Chief of the Joint Command of the Armed Forces [FN57], as well as with a report on the March 22, 1993 military operation signed by the then General of the Army and Minister of National Defence and addressed to the President of the National Congress [FN58].

[FN55] Cf. Press reports of March 9, 1993, of the newspaper “El Hoy”, “Armed Forces explain the violent operation to counter crime" (annexes to the application, annex 28, folio 569).

[FN56] Cf. Official communiqué published by the Armed Forces on the operation carried out in “Barrio Batallón” on March 6, 1993 (application, files on the merits, folio 15):

Upon request from the citizens, medias and public opinion generally that the Armed Force intervene in view of the incontrollable growth of criminal activities, the joint command of the Armed Forces, protecting the domestic security of the Nation, ordered that an operation be carried out in the city of Guayaquil, on the basis of information collected by the military intelligence, operation which was carried out on Saturday, March 6, at 6:00 AM, with the participation of personnel of the three branches of the Armed Forces quartered in the province.

The objectives of the operation were to capture subversive elements, criminals, drug dealers, arms and related materials. The result of such operation is the following: Three criminals were killed when putting up resistance. 39 [were] arrested, whom, according to their preliminary declarations, have participated in various assaults, murders, violations, drug dealing and consumption. […]

[…] Citizens must be aware that a military operation involves the use of force and as such opposing resistance to such operation can carry out regrettable consequences; therefore, from now on we ask for the collaboration of every citizen.

Taking into account the manner in which such operation has been planned and executed, the State considers that it was a clean operation, since except for the criminals who offered resistance nobody got hurt. If houses have resulted in a mess it was for the imperious necessity to find drugs and arms which […] ended up to be positive.

Citizens must have the certainty that the Armed Forces will act similarly in the future, with the sole objective of fighting such elements who are trying to alter law and order".
[FN57] Cf. Note 002-WF-R-93 of March 11, 1993, operative report submitted to the Chief Officer of the Joint Command of the Armed Forces by the Chief Officer of the Air Battle Command and Air Force No. 2 (annexes to the application, annex 39, folio 594):
"[t]he individuals identified are criminals who have committed, according to their records a great number [sic] of assaults mostly in the city of Guayaquil, and who were members of a Foreign Drug Dealers Network for the distribution and sell of Drugs […]
[The operation] strictly respected what had been planned which is why [sic] there would have been only [sic] three deaths, whom were the only individuals to oppose [sic[resistance with arms […].
[The operation] succeeded in disintegrating a Gang of Banks and Commercial Institutions Robbers who was operating in various parts of the city and whom money was distributed both for the subversion and to satisfy their vices".
[FN58] Cf. Report on the March 22, 1993, military operation (Annexes to the application, Annex 51, folio 620):
"The level of criminality in the city of Guayaquil not only affects the independence of the State, forcing him to use a big part of its resources for the repressive fight against this adverse element, but also affects the juridical order and hinder the already difficult progresses toward the country' social and economic development.
The strategic previsions in the event that this phenomenon was not neutralized in a timely manner could indicate social disintegration and violence which would affect the domestic security of the Nation.
The concept of national security, defined in Article 2 of the National Security Law, does not only involve the maintenance of domestic order, but also the preservation of important and transcendental values, both individuals and collectives, which are related to the survival of the Nation itself. It concerns therefore a transcendental mission, for which the Armed Force have been entrusted by this constitutional rule.
[I]t is important that the crime, considered as a constant phenomenon of any conglomeration of persons, remains within reasonable limits. When it exceeds the level of tolerance, when it threatens to take possession of a city or country, affecting the production and commerce, threatening the existence of a society itself, when the action of the National Police is not sufficient, it is legitimate and necessary to use the Armed Forces, as was ordered by the Chief of the Executive Power […]
[B]ecause the military and the police who confronts an ambush, a trap, the perfidious use of machine guns by individuals who are not arrested, or the murder of innocents, they ask themselves if they do not have human rights as well, because they do not hear any voice of solidarity or protest in their favor on behalf of organizations who work for the protection of such rights. On the contrary, it is really common to defend the human rights of terrorists, with attitudes that exceed the corresponding loable acts of humanity and solidarity.
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75. The dispute between the parties remains open regarding the circumstances in which these persons were deprived of their life, the legal qualification of these facts and the corresponding assessment of the State's international responsibility under Article 4 of the American Convention.

76. The Commission alleged that the use of force by state agents was not reasonable, restricted nor controlled, but rather excessive given the alleged planning of the military operation, the number of persons involved and the characteristics of said operation. It also pointed out that special care and attention were called for in the planning stage of the intervention of the Armed Forces, in order to prevent harm to private individuals. This contrasts with the facts that damages were inflicted on the property and integrity of private individuals. Moreover, there is no documentation indicating that judicial proceedings were held on these matters, nor that any reparation was made for the harm done. Furthermore, comparing the number of soldiers who participated in the operation with the number of weapons seized, and given that no information was provided regarding acts of resistance in the course of the operation, the Commission indicated that it is not possible to demonstrate the urgency required or to justify the volume of force used. As such, the Commission considers that the State "failed in its duty to prevent the deaths" of the alleged victims, "made disproportionate use of force, and thereby arbitrarily deprived [these persons] of their lives" and is therefore responsible for violating Article 4(1) of the Convention. Then, in a different chapter regarding the alleged failure to comply with Articles 1(1) and 2 of the Convention, the Commission qualified the deprivation of life of the alleged victims as extrajudicial executions.

77. The representatives alleged that the planning of the military raid contemplated the extreme use of force, but failed to provide sufficient safeguards to guarantee the proportionality and necessity of the force used. They also claimed that in the course of the alleged fight against subversion, government forces were not respecting the law and were "chas[ing] everyone who appeared in their records as former members [of subversive groups,] fearing a possible reappearance of the subversion". They alleged that the soldiers used excessive force in this context, since their intervention was not selective and the results were inconsistent with those purposes, even more if the alleged planning is taken into account. Furthermore, they claimed that "the possibility that alleged criminals or foreign instructors linked to subversive groups were hiding themselves in the zone in which the operation was carried out does not in itself justify the use of lethal force, including the use of firearms". Since there is no evidence demonstrating that agents of the security force attempted to use less lethal means of intervention, the representatives considered that "the operation appeared much more like an attack and an attempt to execute the suspects than an effort to prevent crime".

78. The Court has considered on various occasions that the right to life is a fundamental right, the full exercise of which is a prerequisite for the enjoyment of all other human rights [FN59]. Any restrictive approach to the said right is therefore inadmissible [FN60]. In accordance with Article 27(2) of the Convention, this right is one of the fundamental rights that cannot be derogated insofar as it is enshrined as one of the rights that may not be suspended in time of war, public danger or other emergency that threatens the independence or security of States Parties [FN61].

[FN59] Cf. Case of the "Street Children" (Villagrán-Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144. See also Case of Miguel Castro-Castro Prison, supra note 14,

para. 237, and Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 63.
[FN60] Cf. Case of the "Street Children" (Villagrán-Morales et al.), supra note 59, para. 144. See also Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 63, and Case of Ximenes-Lopes. Judgment of July 4, 2006. Series C No. 149, para. 124.
[FN61] Cf. Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 119. See also Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 63, and Case of Baldeón-García. Judgment of April 6, 2006. Series C No. 147, para. 82.
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79. Pursuant to the fundamental role ascribed to this right by the Convention, States have both the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur, as well as the duty to prevent the infringement of the said right by its officials or private individuals [FN62]. The object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (effet utile) [FN63].

[FN62] Cf. Case of the "Street Children" (Villagrán-Morales et al.), supra note 59, para. 144. See also Case of Miguel Castro-Castro Prison, supra note 14, para. 237, and Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 64.
[FN63] Cf. Case of Baldeón-García. supra note 61, para. 83. See also Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 64, and Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 129.
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80. In prior cases, the Court has indicated that compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction [FN64].

[FN64] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra note 59, para. 144. See also Case of Miguel Castro-Castro Prison, supra note 14, para. 238, and Case of Vargas-Areco. Judgment of September 26, 2006. Series C No. 155, para. 14.
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81. Based on the foregoing, States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction [FN65].

[FN65] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 66. See also Case of Miguel Castro-Castro Prison, supra note 14, para. 238, and Case of Servellón-García et al., supra note 14, para. 102.

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82. The Court has had the opportunity, in other cases, to decide on the criteria which determine the legitimate use of force by governmental security forces. The facts of the present case are analyzed in light of those criteria:

1) Exceptionality, necessity, proportionality and humanity

83. The use of force by law enforcement officials must be defined by exceptionality and must be planned and proportionally limited by the authorities. As such, the Tribunal has considered that force or coercive means can only be used once all other methods of control have been exhausted and have failed [FN66].

[FN66] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 67.

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84. The use of lethal force and firearms against individuals by law enforcement officials – which must be forbidden as a general rule – is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all circumstances and never exceed the use which is "absolutely necessary" in relation to the force or threat to be repealed [FN67]. When excessive force is used, any resulting deprivation of life is arbitrary [FN68].

[FN67] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 68. Similarly, see also ECHR, Huohvanainen v. Finland, 13 March 2007, no. 57389/00, paras. 93-94,; ECHR, Erdogan and Others v. Turkey, 25 April 2006, no. 19807/92, para. 67; ECHR, Kakoulli v. Turkey, 22 November 2005, no. 38595/97, paras. 107-108; ECHR, McCann and Others v. the United Kingdom, judgment of 27 September 1995, Series A no. 324, paras. 148-150, 194, and Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly, Order 34/169 of December 17, 1979, Article 3.

[FN68] Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 68. See also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eight Congress of the United Nations for the Prevention of Crime and the Treatment of Criminals, Havana, Cuba, August 27 - September 7, 1990, Principle 9.

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85. The use of force must be limited by the principles of proportionality, necessity and humanity. Excessive or disproportionate use of force by law enforcement officials that result in the loss of life may therefore amount to arbitrary deprivations of life. The principle of necessity justifies only those measures of military violence which are not forbidden by international law and which are relevant and proportionate to ensure the prompt subjugation of the enemy with the least possible cost of human and economic resources. The principle of humanity complements and inherently limits the principle of necessity by forbidding those measures of violence which are not necessary (i.e. relevant and proportionate) to the achievement of a definitive military advantage. In peacetime situations, state agents must distinguish between persons who, by their actions, constitute an imminent threat of death or serious injury and persons who do not present such a threat, and use force only against the former [FN69].

[FN69] Cf., similarly, Inter-American Commission on Human Rights. Report on terrorism and human rights (OEA/ser.4 V/II.116), October 22, 2002..See also, United Nations. Provisional Report on the world situation respecting extrajudicial, summary and arbitrary executions presented by Philip Alston, Special Rapporteur (A/61/311), September 5, 2006.

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2) Existence of a legal framework to regulate the use of force

86. Domestic law must establish standards clear enough to regulate the use of lethal force and firearms by members of the State security forces [FN70], as well as to guarantee an independent control of its legality (infra paras 88-90).

[FN70] Following the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, the rules and regulations on the use of firearms by law enforcement officials should include guidelines that: (a) specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; (d) regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; (e) provide for warnings to be given, if appropriate, when firearms are to be discharged; (f) provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty. See also Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 75.

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3) Planning of the use of force - education and training of state armed forces and security agencies

87. An appropriate legislation would not fulfill its goal if, inter alia, States would not educate and train members of their armed forces and security agencies on principles and rules of human rights protection and on the limits to which the use of weapons by law enforcement officials

must be subject to in all circumstances [FN71]. In fact, the European Court of Human Rights held that the matter of whether firearms should be used, and in which circumstances, must be decided according to clear legal provisions and appropriate training [FN72]. It is essential for government officials to be aware of the legal rules authorizing the use of firearms and to be appropriately trained in order to have all the necessary information to decide whether or not to use such arms if they have to make such a decision [FN73].

[FN71] Cf. Case of the Caracazo. Reparations. Judgment of August 29, 2002. Series C No. 95, para. 127. See also Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 77.
[FN72] Cf. ECHR, Erdogan and Others v. Turkey, supra note 66, para. 68; ECHR, Kakoulli v. Turkey, supra note 66, para. 109-110; ECHR, Kiliç v. Turkey, no. 22492/93, para. 62, 28 March 2000, y ECHR, Simsek and Others v. Turkey, nos. 35072/97 and 37194/97, paras. 104-108, 26 July 2005.
[FN73] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 78.
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4) Appropriate control and verification of the legitimacy of the use of force

88. The general prohibition to arbitrarily deprive someone of his life, which state officials must observes, would be ineffective without proceedings to verify the legality of the lethal use of force by state officials [FN74]. The Court has considered that the general duty under Article 1(1) of the Convention to ensure the free and full exercise of the human rights recognized therein entails the obligation to investigate violations of any substantive right which must be protected or guaranteed [FN75]. Such general obligation is particularly important in cases involving the lethal use of force. Upon learning that firearms have been used by members of its security forces and that such use had lethal consequences, the State has the obligation to initiate, ex officio and without delay, a serious, independent, impartial and effective investigation [FN76] (infra paras. 119-124). This obligation is a fundamental and determining element of the protection of the right to life which is affected in such situations.

[FN74] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, paras. 79-83.
[FN75] Cf. Case of the Pueblo Bello Massacre, supra note 61, para. 142. See also Case of La Cantuta, supra note 7, para 110; Case of Vargas-Areco, supra note 64, para 74; Case of Goiburú et al. Judgment of September 22, 2006. Series C No. 153, para. 88; Case of Servellón-García et al., supra note 14, para. 108; Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 66; Case of Ximenes-Lopes, supra note 60, para. 177; Case of the "Mapiripán Massacre", supra note 8, paras. 232-234; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, paras. 111-112; Case of Myrna Mack-Chang, supra note 7, paras. 156-157; Case of the “Street Children” (Villagrán Morales et al.), supra note 58, para. 125; Case of Godínez-Cruz. Judgment of January 20, 1989. Series C No. 5, para. 175, and Case of Velásquez-Rodríguez. Judgment of July 29, 1988. Series C No. 4, paras. 166 and 176.

[FN76] Cf. Case of Juan Humberto Sánchez, supra note 75, para. 112. See also Case of Miguel Castro-Castro Prison, supra note 14, para. 256, and Case of Vargas Areco, supra note 64, para. 77. Similarly, see also ECHR, Erdogan and Others v. Turkey, supra note 66, paras. 88-89; ECHR, Kakoulli v. Turkey, supra note 66, paras. 122-123, and ECHR, Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, paras. 111-112, 6 July 2005.

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89. The European Court of Human Rights held that investigations on the excessive use of force must be open to public scrutiny, in order to assert the responsibility of state officials both in theory and in practice [FN77]. Moreover, the said Court held that the evaluation of the use of force involving the use of arms must take into consideration all the surrounding circumstances and the context in which the facts occurred, including such matters as the planning and control of the actions under examination [FN78].

[FN77] Cf. ECHR, Sergey Shevchenko v. Ukraine, no. 32478/02, para. 65, 4 April 2006; ECHR, Tanis and Others v. Turkey, no. 65899/01, para. 204, 2 August 2005, and ECHR, Isayeva v. Russia, no. 57950/00, para. 214, 24 February 2005.

[FN78] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 83, and Case of Baldeón-García. supra note 60, para. 97. Similarly, see also ECHR, Erdogan and Others v. Turkey, supra note 66, para. 68; ECHR, Makaratzis v. Greece [GC], no. 50385/99, para. 59, 20 December 2004, and ECHR, McCann and Others v. the United Kingdom, supra note 66, para. 150.

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90. In short, any deficiency or fault in the investigation affecting the ability to effectively determine the cause of death or to identify the actual perpetrators or masterminds of the crime involve a failure to comply with the obligation to guarantee the right to life [FN79]. As such, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions pointed out that:

Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process. A judicial procedure, respectful of due process and arriving at a final judgment, is generally the sine qua non without which a decision by the State and its agents to kill someone will constitute an “arbitrary deprivation of life” and, thus, violate the right to life. [FN80]

[FN79] Cf. Case of the “Mapiripán Massacre”, supra note 8, para. 219; Case of the Pueblo Bello Massacre, supra note 61, para. 144; Case of Baldeón García, supra note 61, para. 97, and Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 83.

[FN80] Cf. Provisional Report on the world situation regarding extrajudicial, summary and arbitrary detention presented by Philip Alston, Special Rapporteur. United Nations General Assembly. (Doc. A/61/311), LIX period of sessions, September 5, 2006, para. 36.

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91. It is appropriate to analyze the facts of the instant case in the light of the aforementioned criteria, starting with the objectives defined by the State with regards to the actual use of lethal force in the instant case.

92. In the first place, the State pointed out that at the time of the operation, the three alleged victims, "who had criminal records and [had committed] a great number of assaults mostly in the city of Guayaquil, and who were members of a foreign drug dealers network[,] died in their attempt to repel the authority". In this regard, the representatives asserted that it is false to say that the alleged victims were dangerous criminal and members of an organized criminal group and presented to that effect a certificate from the National Direction of the Judicial Police and Investigations, which certifies that three criminal proceedings had been opened against Wilmer Zambrano Vélez between 1984 and 1989 and that Messrs. Caicedo Cobeña did not have any criminal records.

93. In its ruling in other cases, the Court has pointed out that it is not a criminal court which can analyze the criminal responsibility of individuals [FN81]. This applies to the instant case, which does not concern the innocence or guilt of Mr. Zambrano, Mr. Caicedo Cobeña and Mr. Caicedo Cobeña, but rather the conformity of the acts of state agents with the American Convention, regarding the deprivation of the life of these alleged victims.

[FN81] Cf. Case of Suárez Rosero. Judgment of November 12, 1997. Series C No. 35, para. 37. See also Case of the Pueblo Bello Massacre, supra note 61, para. 122; Case of Fermín Ramírez, supra note 42, para. 63, and Case of Raxcacó-Reyes, supra note 44, para. 55.

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94. As laid down in the previous chapter (supra paras. 42-71), the decree-law establishing the state of emergency did not set any geographical, time and material limits to the suspension of guarantees "to the extent and for the period of time strictly required by the exigencies of the situation". The Court considers that once it has been established that a military intervention with such a wide scope and depending on purposes as broad and vague has been carried out (supra paras. 48-52), and that the specific objectives of the March 6, 1993 operation have been set in such general terms ("to arrest criminals, drug dealers and terrorists") (supra para. 74), the planning of an intervention of such a magnitude can end up to be so difficult as to render ineffective the appropriate security measures which can reasonably be planned to prevent and protect life and other guarantees which can not be suspended. Moreover, it makes it practically impossible to carry out an appropriate control and verification of the legality of the use of force in the instant case (supra paras. 83-90), especially concerning the criteria of exceptionality, necessity and proportionality, since this examination must depend strictly on the specific objectives, considering the circumstances of a particular situation. It is now appropriate to determine how the aforementioned considerations affected the specific circumstances in which the alleged victims were deprived of their life.

95. The representatives alleged that "information gathered by national and international human rights organisms […] demonstrate a modus operandi of the security forces[:] when they extrajudicially execute individuals, they always say that it occurred during a confrontation or that the alleged criminal tried to escape". Those arguments have not been proven. In this regard, the State alleged that what did exist at that time was "a context of alarming insecurity, increasing violence and citizen concern". Besides, the operation was justified by the joint command of the Ecuadorian Armed Forces in consideration of its duty to protect "the domestic security of the [N]ation" and "to fight those elements who seek to alter the citizen peace", and was motivated by "the request from the citizens, medias and public opinion generally that the Armed Force intervene in view of the incontrollable growth of criminal activities" (supra paras. 74).

96. The Court observes that the "criminal", "subversive" or "terrorist" threat invoked by the State as a justification for the actions carried out can certainly constitute a legitimate reason to use state security forces in specific cases. However, States' fight against criminality must take place within the limits and in accordance with the proceedings which allow for the preservation of both public security and the full respect of human rights of the individuals under their jurisdiction [FN82]. The country's circumstances, no matter how difficult they are, do not release State Parties to the American Convention of their obligations established therein; these obligations remains especially in cases such as the one presently before the Court [FN83]. It is necessary to stress that no matter the circumstances in any State, there exist an absolute prohibition of torture, forced disappearances of individuals and summary and extrajudicial executions; and that such prohibition constitutes a mandatory rule of International Law not subject to derogation [FN84].

[FN82] Cf. Case of Castillo Petruzi et al., supra note 40, para. 89. See also Case of Raxcacó-Reyes, supra note 44, para. 55, and Case of Fermín Ramírez, supra note 42, para. 63.
[FN83] Cf. Case of Bámaca-Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 207. See also Case of Goiburú et al., supra note 75, para. 89, and Case of the Pueblo Bello Massacre, supra note 61, para. 146.
[FN84] Cf. Case of the Rochela Massacre, supra note 7, para. 132; Case of Miguel Castro-Castro Prison, supra note 14, para. 404; Case of La Cantuta, supra note 7, para. 157; Case of Goiburú et al., supra note 75, para. 84; Case of Almonacid Arellano et al., supra note 14, para. 99; Case of Caesar, supra note #43, para. 59, and Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, para. 41.

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97. The State admitted that the state of emergency "could have shown some excess in the planning of the objective which was pursued", but it alleged that "it does not in itself demonstrate in any way an extrajudicial execution attributable to the State, which would allow the Court [… to] declare the violation of Article 4 of the Convention".

98. The Commission and the representatives alleged, on the grounds of the testimonies given by some family members of the deceased persons and by some unidentified neighbors living in that zone, that the militaries extrajudicially executed the three alleged victims upon entering their homes. Moreover, the Commission alleged that "[t]he State has not produced any evidence that

suggests that [any of the alleged victims would have been] bearing arms at the time of his death, and that therefore the state agents [would have] acted in self-defense", nor has it produced any evidence demonstrating that one of its agents would have been wounded by a firearm by one of the alleged victims. The Commission found that the fact that each of the alleged victims was killed in his home would show that their possible resistance to the agents of the government forces was individual. The representatives claimed that the alleged victims were under custody of state agents at the time of their death and that there are enough evidentiary elements - such as press reports, testimonies of family members and reports from human rights organizations – to conclude that the victims have been executed extrajudicially. Furthermore, they alleged that the State did not submit any evidence demonstrating that agents of the security force who participated in the events would have attempted to use less lethal means of intervention.

99. In its answer to the application, the State asserted that the death of the three alleged victims "irrefutably [… took place in the context of] self-defence" on behalf of state agents. The State alleged that in this case "sophisticated armaments [and] material for drug dealing were seized in the house of the deceased, which is the reason why they were about to be arrested for the corresponding investigations[;] however in contempt of the authority [and] in self-defence they ended up injured to death". Regarding Mr. Zambrano Vélez, the State alleged that he died in an armed confrontation with the public forces and that "although [the death] was committed by an agent of [the public forces,] it does not constitute a criminal offence [… and therefore] international responsibility cannot be attributed to the State for an act committed by a [state] agent in self-defence, not only individual but [also] of the whole society". As such, the State invoked the Criminal Code of the National Police in force at that time, which establishes in its Article 21 the circumstances in which police or the Public Forces members would be exempted of responsibility. Furthermore, the State alleged that the Commission "refers to the [United Nations] Code of Conduct for Law Enforcement Officials [sic] […] and to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [sic] [… and that] both foresee the exception of self-defence"; and that Article 51 of "the Charter of the United Nations recognizes and reaffirms the right to use military force in self-defence". Similarly, the State invoked Articles 22 and 29 of the Charter of the OAS.

100. However, in its final oral arguments the State declared that "the said self-defence could be assumed on the grounds of the autopsies" of the three alleged victims and the alleged gunshot received by a state agent, since there is no judicial decision which specifies the circumstances of the death of the three alleged victims. Then, in its final written arguments, the State asserted that "two clear possibilities [were to be considered]: the configuration of either an extrajudicial execution or acts of self-defense". Moreover, the State alleged that in order to be qualified as an extrajudicial execution, the death of an individual must be deliberate and unjustified, which has not been proven by the representatives or by the Commission, and therefore a reasonable doubt over what happened remains.

101. As mentioned, in this case Mr. Zambrano Vélez, Mr. Caicedo Cobeña and Mr. Caicedo Cobeña were deprived of their lives by state agents that made use of lethal force, in the framework of a security operation and in the exercise of their functions. Effectively, the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials both prohibit the use

of firearms, “except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender” and “except in self-defence or defence of others [… or] to arrest a person presenting [imminent threat of death or serious injury] and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.” [FN85] In the instant case, it has not been demonstrated that those persons were deprived of their life in any of those exceptional situations.

[FN85] Cf. Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly, Resolution 34/169 of December 17, 1979, Article 3; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eight Congress of the Unites Nations for the Prevention of Crime and the Treatment of Criminals, Havana, Cuba, August 27 - September 7 1990, Principle 9.

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102. Moreover, regarding the State’s plea concerning Article 51 of the Charter of the United Nations and Articles 22 and 29 of the Charter of the OAS (supra para. 99), it is important to clarify that this concept of “self-defence” found within these instruments refers to a State’s power which is limited in scope and which is recognized by International Law as an exception to the general prohibition of war and the use of force, in order to maintain international peace and security. This understanding of “self-defence” would not apply, in any way, to the determination by this Court of the international responsibility of the State under the American Convention for acts or omissions by state agents in a security operation.

103. Furthermore, this Court has held that Article 1(1) is fundamental for deciding whether a violation of the human rights recognized in the Convention may be attributed to the State Party to its full extent. Thus, any violation of human rights enshrined in the Convention that can be attributed to acts or omissions by any public authority, according to the rules of International Law, constitutes a fact attributable to the State which compromises its international responsibility in the terms set forth in the said Convention and according to general International Law. It is a principle of International Law that the State must respond for acts and omissions of its agents in their official capacity, even if they overstep the limits of their authority [FN86].

[FN86] Cf. Case of Velásquez-Rodríguez, supra note 75, para. 170. See also Case of the Rochela Massacre, supra note 7, para. 67; Case of the Pueblo Bello Massacre, supra note 61, para. 111.

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104. On the other hand, regarding the State’s argument according to which norms of the Criminal Code of the National Police would exempt members of its security forces from any responsibility (supra para. 99), the Court reminds that according to a basic principle of international law on State’s responsibility States must fulfill their international treaty obligations in good faith (pacta sunt servanda); and that domestic law may not be invoked to justify non-fulfillment, as previously indicated by this Court and as set forth in article 27 of the Vienna Convention on the Law of Treaties [FN87]. In order to hold whether a violation of the human

rights enshrined in the Convention has occurred, it is not necessary to determine, as it is in domestic criminal law, the guilt of the perpetrators or their intention; nor is it necessary to identify individually the agents to whom the violations are attributed [FN88]. It is sufficient to demonstrate that public authorities have supported or tolerated the violation of the rights established in the Convention [FN89], that they are responsible for omissions which allowed the perpetration of such violations, or that the State failed to comply with one of its obligations [FN90].

[FN87] Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35. See also; Case of Miguel Castro-Castro Prison, supra note 7, para. 394, and Case of Almonacid Arellano et al., supra note 14, para. 125.

[FN88] Cf. Case of the "White Van" (Paniagua-Morales et al.), supra note 15, para. 91. See also Case of the Rochela Massacre, supra note 7, para. 68, and Case of La Cantuta, supra note 7, para. 156.

[FN89] Cf. Case of the "White Van" (Paniagua-Morales et al.), supra note 15, para. 91. See also Case of the Rochela Massacre, supra note 7, para. 68, and Case of 19 Tradesmen, supra note50, para. 141.

[FN90] Cf. Case of the "White Van" (Paniagua-Morales et al.), supra note 15, para. 91. See also Case of the Rochela Massacre, supra note 7, para. 68, and Case of the "Mapiripán Massacre", supra note 8, para. 110.

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105. As mentioned, two possibilities regarding the circumstances of the deprivation of the life of the alleged victims have been put forward in the instant case. On the one hand, according to the official communiqué issued by the Armed Forces in relation to the operation, Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña would have died while offering resistance [FN91]:

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

[FN91] Cf. Official communiqué published by the Armed Forces on the operation carried out in "Barrio Batallón" on March 6, 1993 (application, files on the merits, folio 15).

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106. On the other hand, the version which mostly emerges from the testimonies of the alleged victims' family members suggests that they were under detention or custody of state agents before being deprived of their lives [FN92]:

Vanner Omar Caicedo Macias:

[…] at 5:30 in the morning approximately […] my mom woke up my dad and told him that there were people outside, that she was hearing noise. […] my mom [went out to the room] when the door exploded […] my mom[, injured,] fell to the floor […] due to [the explosion] mi dad stood up and shouted that they had killed her, trying to help her […]. At this moment members in uniforms came in […] and threw him on the floor. They picked us up and took us to the part of the room near the dining room and put us on the floor along with my mom. After that I hear[d] how […] they were beating at my dad […] and threatening him and they were telling him to say that "yes he was"[…,] that he should tell them "how much they are, where they are from" and they were beating him. And I could hear how he was complaining and imploring them not to hit him that he did not know anything and many times […] they threatened him that if he would not talk they would kill his family and he was imploring them not to involve his family, that if they wanted that could they do anything to him, but not to his family neither to his children [nor] his spouse. […] There was a moment when everything remained silent, […] like 5-10 minutes like that in silence, then […] I heard again that they were telling him that if he wouldn't talk they would kill him, then I heard two gunshots, […] only two and it stopped, and he shouted complaining for the pain. This was the last thing we heard from my dad in that moment.
[…] After I found out from the neighbors in the front part and talking […] with my brother, that [my father was] taken to the outside part of the house to a car which was parked in the outside part. They had taken him out with white shorts with a cover on the head and that later they put him again […] into one of these trucks that the militaries have; […] they say that they put him in and after a while they took him out and they carried him in the house again and then they heard gunshots, because the neighbors also heard the gunshots […].

Alicia Rodríguez Villegas:

we were sleeping when they came in. [We woke up] when we heard the explosion of the bomb in the door […]. I was with my daughter aside in the other bedroom. [My daughter saw the facts] because […] she was under the bed and since her bedroom has no door she saw when they shot him […] she tells me "mom they shot two times at Wilmer but I didn't hear the gunshots" […].
[When the militaries] took us out, they put [us] in the military truck with the eyes blindfolded and then we did not see anything else […]. We came back the truck took us around and they took us out and they put us against the wall in a house on the corner and then to those who had already brought the dead man and they told us we could enter our rooms.

Teresa María Susana Cedeño Paz:

[…] We woke up because of the explosion of a bomb. We heard it as a sound of a gas tank […,] I was very scared[,…] when I leant out of the window […] – because I was […] the one who could get up because my husband could not get up – [I saw that] they were a lot of militaries and [that] they had put the bomb. [After there was] an explosion [and … militaries] came in my house [around] 5:30 in the morning. [The militaries] entered by the door where […] they had put the bomb [and] came in [saying] that they were looking for a certain Luis Mejía and they were telling [my partner]: "Are you Luis Mejía?" and he said: "No, I am Miguel Caicedo, I am not Luis Mejía". And they were beating him, beating him and beating him. [One military] told him:

"But if you are lame it must be because you are stealing, killing". [My partner] told him: "No, I came from Chone, I've just been here nine months. I came for the problem with my leg. They operated me in the hospital and I don't know anything about what you are asking me."
[Miguel] could not stand up [nor put up resistance; moreover, there were no arms in the house,] only […] knifes […] to cook. […] They continued to beat him and they brought me to the room where my kids were and I was listening clearly when they were putting [electric] current on him and he was saying: "Don't put current on me, leave me alone" […]. One of my son came out […] to see his father' shout [and] as a result of the blows they were giving him […] he fell on the floor and then [Miguel] said that if they were to kill his wife and his son, that they kill him. He was [also] saying that [… he would] change [his] life […] for ours […] Then they took us out of the house and they brought us nearby in another house and there they left us [for a limited time] so that we would not listen [but we could still listen] how they were beating him[.] Then they took him up and brought him to the patio – because when we heard the gunshot they were coming from the patio. […] We heard two gunshots [and] then nothing more afterwards […]. Then some dump truck full of militaries came and […] they brought us in the front […] like at one block [to] a school. They put us [against] the wall, […] with the hands behind […], we could not talk. […] From there I could see that four militaries were carrying [him], two by the hands and two by the feet and then they shook him like this and they threw him to the bucket. [In the patio there were traces of blood.]

[FN92] Cf. testimonies presented by Mr. Vanner Omar Caicedo Macías, Mrs. Teresa Susana Cedeño and Mrs. Alicia Marlene Rodríguez Villegas during the public hearing held in the instant case, on May 15, 2007 (supra para. 7).

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107. The said testimonies cannot be assessed separately since they were given by family members of the alleged victims (supra paras. 40). Therefore, even though these family members would have been eyewitnesses on the day of the events, their statements would not by themselves demonstrate the specific circumstances under which the alleged victims would have been executed at that place. Moreover, the statements made in some testimonies refer to what was heard from third parties. The autopsies made by the Police Department itself show that each of the bodies of the three alleged victims had between five and twelve gunshots in various parts of the body [FN93]. This evidence is not conclusive regarding the way in which the alleged victims would have died. On the other hand, the State did not present any evidence, other then the aforementioned military report itself, suggesting that the alleged victims would have been carrying arms at the time of their death, nor that one of them would have been the perpetrator of the alleged gunshot received by a military agent. Even more, Mr. José Miguel Caicedo Cobeña was recovering from an operation according to the evidence submitted.

[FN93] Cf. autopsies of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña (annexes to the application, annexes 1, 2 and 3, folios 513, 515 and 517).

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108. However, with respect to the argument put forward by the State regarding the importance of the lack of any domestic judicial decision (supra para. 100), besides the aforementioned (supra para. 88-90) this Court has held that "whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements" [FN94]. Certainly, in proceedings over alleged violations of human rights, the defence of the State cannot stand on the impossibility of the plaintiff to submit evidence which, in most cases, cannot be obtained without the cooperation of the State [FN95]. Furthermore, there is no evidence demonstrating that agents of the armed forces who participated in the operation attempted to use less lethal means of intervention in the specific case of the alleged victims, and the State did not prove that the action of its security forces was necessary and proportional in relation to the exigencies of the situation. Under the aforementioned criteria, the use of lethal force by state agents against individuals who no longer represent a threat, such as individuals under custody of the authorities, would amount to an extrajudicial execution, in flagrant violation of Article 4 of the Convention.

[FN94] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 80; Case of Miguel Castro-Castro Prison, supra note 14, para. 273, and Case of Baldeón-García, supra note 61, para. 120. Similarly, see also Case of Juan Humberto Sánchez, supra note 75, para. 111.

[FN95] Cf. Case of Velásquez Rodríguez, supra note 75, para. 135. See also Case of the Gómez-Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 154. and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 128.

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109. Finally, the suitable way of determining what happened was an appropriate control and verification of the legitimacy of the use of force, through an investigation of the facts at the domestic level (supra paras. 67, 88-90, 94). Moreover, considering the facts set out in the previous paragraphs and in accordance with articles 1(1) and 4 of the American Convention, the Court considers that the State had the obligation to investigate the death of Mr. Zambrano Vélez, Mr. Caicedo Cobeña and Mr. Caicedo Cobeña. The analysis of the obligation to ensure the right to life through a serious, complete and effective investigation of the facts will be made in Chapter VIII of this Judgment. In order to decide on the violation of Article 4 of the Convention in this case, it is sufficient to say that the State has not effectively ensured the right enshrined in the said provision.

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110. In conclusion, considering that the following have been established: the illegitimate use of force in the operation carried out by the Ecuadorian Armed Forces in the Batallón neighborhood of the City of Guayaquil on March 6, 1993; the lack of a satisfactory and convincing explanation by the State regarding the justification for the lethal use of force with firearms; and the failure to fulfill its obligation to effectively ensure the right to life through an investigation of the events; the Court is of the view that the alleged victims have been executed extrajudicially by state agents. Such extrajudicial execution constitutes an arbitrary deprivation

of their life and the State is therefore responsible for the violation of Article 4(1) of the Convention, in conjunction with Article 1(1) thereof, to the detriment of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña.

VIII. ARTICLES 8(1) AND 25 (JUDICIAL GUARANTEES AND JUDICIAL PROTECTION) [FN96] IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION

[FN96] Article 8(1) (Judicial Guarantees)
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.
Article 25 (Judicial Protection)
1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b. to develop the possibilities of judicial remedy; and
c. to ensure that the competent authorities shall enforce such remedies when granted.
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111. In Chapter IV of the present Judgment, it has been established that the State acknowledged its international responsibility for the violation of Articles 8(1) and 25 of the Convention (supra paras. 8-31), both in the public hearing and in its final arguments. Notwithstanding the foregoing, the Court deems relevant to make some precisions with regard to the arguments of the Commission and the representatives as well as to some declarations made by the State.

112. The Commission alleged that when the use of force causes injuries or death, the State has the international obligation to determine, through independent and impartial judicial organs, if the force used was excessive, and if so, to punish the perpetrators and to compensate the victims or their family members. Moreover, the Commission argued that the State cannot discharge on the family members or their representatives the duty to investigate and prosecute the perpetrators. The Commission alleged that the judicial apparatus of the State has not been set in motion, which clearly shows that the family members of the alleged victims did not have an effective remedy which would guarantee them the possibility to be heard and to take part in the respective proceedings, both to clarify the facts and to punish the persons responsible, as well as to seek appropriate reparations. “In addition, under the standards applied by the Inter-American Court, the lapse of more than thirteen years [without any] proceeding [being] initiated is far lengthier than the limits and standards for what constitutes a reasonable time[…] This situation thus has given rise to a framework for total impunity attributable to the Ecuadorian State”.

113 The representatives agreed with the Commission in their arguments. Moreover, they argued that the right to independent and impartial judicial proceedings involves not only the right to certain guarantees in the course of the proceedings already initiated, but also the right to have access to the courts; and that the domestic law recognizes the right of the affected party to formulate an accusation in a criminal trial "in normal circumstances", but in this case the facts occurred during a state of emergency in which military law was to be applied, restricting the possibility for the victims or their family members to make any formal criminal complaint. Moreover, they alleged that the domestic law does not establish that the sole invocation of self-defence constitutes an automatic ground for exemption of the obligation to investigate and to assess the responsibility of the agents; and that "both military and police authorities, as well as the Government and the Judiciary, refused to or were unable to investigate [the facts] and punish [the persons responsible] and to assist the individuals who wanted to ascertain the truth about the events, since members of the Congress, human rights organisms, family members of the victims and neighbors requested an impartial investigation at the judicial level[, …] petitions to which the Government did not pay attention, agreeing with the partial version of the Armed Forces whom were active actors of the reported violations". They claim that both the family members of the alleged victims and the society have a right to know the truth about the events.

114. The Court has held that, in relation with the general obligation of the States to ensure to all persons subject to their jurisdiction the free and full exercise of the rights recognized by the Convention (Article 1(1)), State Parties have, under the American Convention, the obligation to provide effective judicial remedies to the victims of human rights violation (Article 25) and that these remedies must be provided in accordance with the principles of due process (Article 8(1)) [FN97].

[FN97] Cf. Case of Godínez-Cruz, Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 93. See also Case of the Rochela Massacre, supra note 7, para. 145, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 381.

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115. This Court has stated that the right to access to justice must ensure, within a reasonable time, the right of the alleged victims or their family members that everything necessary to know the truth about the events or to punish the possible responsible persons be done [FN98].

[FN98] Cf. Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 114; Case of the Rochela Massacre, supra note 7, para. 146, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 382.

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116. By acknowledging the violation of these provisions, the State certainly admitted that "the state of emergency was not entirely legitimate due to the lack of judicial investigation", and that "since 1993 no criminal proceedings have been initiated regarding the death of the alleged victims".

117. The Court points out that the facts of this case occurred in March 1993 and that, as admitted by the State, no criminal proceedings have been initiated in ordinary jurisdiction to investigate these facts, to identify the perpetrators and, if the case may be, to punish them. Furthermore, in spite of reiterated requests to the State to submit to the Court copies of any judicial or administrative investigation or of any other proceedings initiated in the domestic jurisdiction in relation to the facts of the instant case (supra para. 7 and 33), the State did not do so. Neither is there any evidence indicating that some proceeding is actually pending before military or ordinary courts.

118. In spite of the foregoing, the State mentioned that "no petition or particular accusation has been submitted by the injured individuals or their family members". During the public hearing, the State insisted that the facts have not been proven within a domestic criminal proceeding, which should be – according to the State - the appropriate forum to determine the circumstances of the deprivation of the life of the victims. Moreover, in its final arguments, the State expressed that "although the judicial guarantees and the judicial protection established by the American Convention regarding the proceedings of the accused take effect once a lawsuit has been opened[;] and although in this case judicial proceedings have not even been initiated, […] so that a violation of the said guarantees inherent to the opening of a proceeding cannot be established[; …] the State […] acknowledges the breach of the right to truth, [which is] an emerging principle underlying Articles 8 and 25 of the Convention respectively".

119. As indicated in the previous chapters (supra paras. 67, 94, 88-90, 109 and 110), upon learning that three persons had been deprived of their life as a consequence of the lethal use of force by state agents, by means of firearms and in an operation of such nature, the State should have activated, ex officio and without delay, mechanisms to carry out an appropriate control and verification of the legality of the use of force, through a serious, independent, impartial and effective investigation of the fact at the domestic level.

120. The Court has established that the obligation to investigate is not to be undertaken by the State as a mere formality condemned beforehand to be unsuccessful [FN99], or as a mere reaction to private interests, which would depend on the procedural initiative of the victims or their family members or on the submission of evidentiary elements by private individuals [FN100]. This is not contrary to the right of the victims of human rights violations or their family members to be heard during the investigation and the judicial proceedings, as well as to their right to participate extensively in them [FN101].

[FN99] Cf. Case of Velásquez Rodríguez, supra note 75, para. 177. See also Case of the Miguel Castro-Castro Prison, supra note 14, para. 255; Case of Ximenes Lopes, supra note 60, para. 148.
[FN100] Cf. Case of Velásquez Rodríguez, supra note 75, para. 177. See also Case of the Miguel Castro-Castro Prison, supra note 14, para. 255, and Case of Goiburú et al., supra note 75, para. 117.
[FN101] Cf. Case of the "Street Children" (Villagrán-Morales et al.), supra note 59, para. 227. See also Case of Miguel Castro-Castro Prison, supra note 14, para. 255, and Case of Goiburú et al., supra note 75, para. 117.

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121. This Court has specified that the effective determination of the truth within the framework of the obligation to investigate the death of a person must be showed in the first stages of the proceeding, with all diligence. In this regard, on the grounds of the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this Court has defined the guiding principles that should be observed when it is considered that a death may be due to extrajudicial execution. The State authorities that conduct an investigation must, inter alia, (a) identify the victim; (b) recover and preserve the probative material related to the death, in order to facilitate any investigation; (c) identify possible witnesses and obtain their statements in relation to the death under investigation; (d) determine the cause, method, place and moment of the death, as well as any pattern or practice that could have caused the death, and (e) distinguish between natural death, accidental death, suicide and murder. In addition, it is essential to search exhaustively the scene of the crime and autopsies and analyses of human remains must be carried out rigorously by competent professionals, using the most appropriate procedures [FN102].

[FN102] Cf. Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 149. See also Case of the Miguel Castro-Castro Prison, supra note 14, para. 383, and Case of Vargas Areco, supra note 64, para. 91. Similarly, see also the United Nations Handbook for the Effective Prevention and Investigation of Extra-legal, Summary and Arbitrary Executions, Doc. E/ST/CSDHA/.12 (1991).

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122. Moreover, in such cases, it is particularly important that the competent authorities adopt all reasonable measures to guarantee the necessary probative material in order to carry out the investigation [FN103] and that they be independent, both de jure and de facto, from the officials involved in the facts of the case [FN104]. The foregoing requires not only hierarchical or institutional independence, but also real independence.

[FN103] Cf. Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 81. Similarly, see also Erdogan and Others v. Turkey, supra note 66, para. 89; ECHR, Kakoulli v. Turkey, supra note 66, para. 123, and ECHR, Hugh Jordan v. the United Kingdom, 4 May 2001, no. 24746/94, paras. 107-108.

[FN104] Cf. Case of Durand and Ugarte, supra note 35, paras. 125-126; Case of Montero Aranguren et al. (Detention center of Catia), supra note 31, para. 81. Similarly, see also ECHR, Nachova and Others v. Bulgaria [GC], supra note 75, para. 112; ECHR, Isayeva v. Russia, supra note 76, para. 211, and ECHR, Kelly and Others v. the United Kingdom, no. 30054/96, para. 95, 4 May 2001.

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123. The said investigation must be carried out with all available legal means and must be directed towards the determination of the truth and the investigation, pursuit, capture,

prosecution and possible punishment of all the masterminds and perpetrators of the facts, particularly when State agents are or may be involved [FN105].

[FN105] Cf. Case of the Pueblo Bello Massacre, supra note 61, para. 143. See also Case of the Rochela Massacre, supra note 7, para. 148, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 256.

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124. The Court has held that by implementing or tolerating actions aimed at carrying out extrajudicial executions, failing to investigate them adequately and, when applicable, failing to effectively punish those responsible parties, the State violates its obligations to respect and ensure the rights of the alleged victims and their family members enshrined in the Convention, prevents society from knowing the truth about the events and reproduces the conditions of impunity for this type of acts to be repeated [FN106].

[FN106] Cf. Case of Myrna Mack Chang, supra note 7, para. 156. See also Case of the Rochela Massacre, supra note 7, para. 148, and Case of the Pueblo Bello Massacre, supra note 61, para. 146.

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125. Moreover, in the two preceding chapters the existence of rules which prevented an adequate control of the state of emergency and of the legitimacy of the use of force and of the operation in question, through an independent and impartial investigation, was established (supra paras. 53-68 and 94). It is reasonable to suppose that the legislation on which the suspension of guarantees and the operation in question were grounded was one of the reasons – although not a justification – for which an investigation had not been initiated in the ordinary criminal jurisdiction. As such, those judicial guarantees in effect ended up to be suspended.

126. Furthermore, the time elapsed since the facts of the instant case excessively exceeds the period of time which could be considered reasonable for the State to carry out the corresponding investigation proceedings, all the more since to the time already elapsed should be added the time necessary for initiating and carrying out the criminal proceeding, with the various stages that such proceeding involves, until the final decision. This lack of investigation for such a long time constitutes a blatant denial of justice and a violation of the right to access to justice of the family members of the victims.

127. As such, the State mentioned that "it demonstrates its interest to protect such rights, considering that the President has created [[FN107]…] 'The Truth Commission', in charge of investigating, clarifying and preventing impunity with regard to the violent facts which took place between 1984 and 1988 and in other periods, and which constituted violations of human rights; and that as such, the State will thoroughly investigate and collect all the documentary, expert and testimonial evidence necessary to initiate [criminal proceedings] at the domestic level, with respect to the due judicial guarantees". The State also expressed that "the deaths […that occurred in] this case must be clarified, as they will surely be through the Truth Commission and

consequently, the domestic justice. Ecuador assumes the responsibility to investigate and punish the perpetrators once the truth will have been established on what happened on the day of the events[; as such, the National Congress is currently debating a law for the attribution of responsibilities ("ley de repetición de responsabilidades"), which is intended to become a project for the execution of the Inter-American System's judgments and for the attribution of responsibility by the State against the responsible agents, if such would result from [a decision] on the merits of the case".

[FN107] By means of an Executive Decree, published in the Official Registry No. 87 of Friday May 18, 2007, according to information presented by the State.

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128. The Court deems that the establishment of a Truth Commission - depending on its object, proceedings, structure and purposes - can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society. The recognition of historical truths through this mechanism should not be understood as a substitute to the obligation of the State to ensure the judicial determination of individual and state responsibilities through the corresponding jurisdictional means, or as a substitute to the determination, by this Court, of any international responsibility. Both are about determinations of the truth which are complementary between themselves, since they all have their own meaning and scope, as well as particular potentialities and limits, which depend on the context in which they take place and on the cases and particular circumstances object of their analysis. In fact, the Court has granted a special value to reports of Truth Commissions as relevant evidence in the determination of the facts and of the international responsibility of the States in various cases which has been submitted before it [FN108].

[FN108] Cf. Case of the Miguel Castro-Castro Prison, supra note 14, para. 97; Case of La Cantuta, supra note 7, para. 80; Case of Almonacid Arellano et al., supra note 14, para. 82; Case of Baldeón García, supra note 61, para. 72; Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 54; Case of De la Cruz-Flores. Judgment of November 18, 2004. Series C No. 115, para. 61; Case of the Plan de Sánchez Massacre. Judgment of April 29, 2004. Series C No. 105, para. 42; Case of Maritza Urrutia, supra note 95, para. 56, and Case of Myrna Mack Chang, supra note 7, paras. 131-134.

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129. The Court views favorably the intention of the State to clarify the said facts which can amount to violations of human rights, through the establishment of a Truth Commission by presidential decree. However, in a case of denial of justice such as the instant case, the State's obligation to ensure access to justice must not be understood as conditional to the eventual establishment or operation of such Truth Commission. Therefore, notwithstanding the potential contributions of the said Truth Commission to the knowledge of the facts, the State must fulfill its obligations to investigate and punish, through the relevant judicial means, all the facts constituents of human rights violations established in this Judgment. As such, the State must take into account the different aspects of the case which were decided by this Court in the present

Judgment, including the considerations made regarding the victims, the rights held as violated and the determination of the seriousness and magnitude of the said violations.

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130. Considering the foregoing, the Court holds that the State is responsible for violating the rights enshrined in Article 8(1) and Article 25 of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Alicia Marlene Rodríguez Villegas, Karen Lisette Zambrano Rodríguez, Johanna Elizabeth Zambrano Abad, Jennifer Karina Zambrano Abad, Ángel Homero Zambrano Abad, Jessica Marlene Baque Rodríguez and Christian Eduardo Zambrano Ruales, family members of Mr. Wilmer Zambrano Vélez; Silvia Liza Macías Acosta, Vanner Omar Caicedo Macías, Olmedo Germán Caicedo Macías, Marjuri Narcisa Caicedo Rodríguez, Gardenia Marianela Caicedo Rodríguez, Elkis Mariela Caicedo Rodríguez, Richard Olmedo Caicedo Rodríguez, Iris Estrella Caicedo Chamorro and Mayerlin Chamorro, family members of Mr. Segundo Olmedo Caicedo Cobeña; and Teresa María Susana Cedeño Paz, María Magdalena Caicedo Cedeño, Jessica Soraya Vera Cedeño, Manuel Abelardo Vera Cedeño, Brimer Ramón Vera Cedeño, Kleber Miguel Caicedo Ponce, Mariuxi Mariela Caicedo Ponce, José Kelvin Caicedo Ponce, Cira Seneida Caicedo Ponce, Gina Loyobrígida Caicedo Ponce, family members of José Miguel Caicedo Cobeña.

IX. REPARATIONS (Application of Article 63(1) of the American Convention) [FN109]

[FN109] Article 63(1) sets forth that :
If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

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131. It is a principle of International Law that any violation of an international obligation that has caused damage gives rise to a duty to adequately redress said violation [FN110]. Such obligation to redress is governed by International Law in all its aspects [FN111]. The Court has based its decisions in this regard on Article 63(1) of the American Convention.

[FN110] Cf. Case of Velásquez-Rodríguez. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25. See also Case of Bueno Alves, supra note 8, para. 128, and Case of the Rochela Massacre, supra note 7, para. 226.
[FN111] Cf. Case of Aloeboetoe et al. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 44; Case of La Cantuta, supra note 7, para. 200, and Case of Dismissed Congressional Employees (Aguado Alfaro et al.). Judgment of November 24, 2006, para. 142.

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132. Within the framework of the acknowledgement of responsibility made by the State (supra paras. 8-31), in accordance with the aforementioned considerations on the merits and the violations of the Convention held in the previous chapters, and in light of the criteria established in the Court's jurisprudence regarding the nature and scope of the obligation to redress [FN112], the Court will proceed to analyze the arguments presented by the Commission and the representatives with respect to reparations, so as to order the relevant measures to redress the damages.

[FN112] Cf. Case of Velásquez-Rodríguez. Reparations, supra note 110, paras. 25 and 26; Case of Garrido and Baigorria, supra note 37, para. 43, and Case of the "White Van" (Paniagua-Morales et al.). Reparations, supra note 14, paras, 76-79. See also Case of La Cantuta, supra note 7, paras. 200-203; Case of the Miguel Castro-Castro Prison, supra note 14, paras. 414-416.

A) INJURED PARTY

133. The Court will now proceed to determine who should be considered as "injured party" under Article 63(1) of the American Convention and therefore as beneficiaries of the reparations set by the Court.

134. First of all, the Court considers Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña as "injured party", due to their status as victims of the violation established in the present Judgment (supra paras. 110), and therefore as beneficiaries of the reparations ordered by the Court for both pecuniary and non-pecuniary damages, if applicable.

135. Moreover, the Court considers the family members of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña as "injured party", whom were found to be victims of the violation of the rights enshrined in Article 8 and Article 25 of the American Convention, in conjunction with Article 1(1) thereof (supra paras. 130). The family members of the victims are to be considered as beneficiaries of the reparations ordered by the Court for non-pecuniary damage. The following persons are considered as "injured party":

a) Wilmer Zambrano Vélez and his family members: Alicia Marlene Rodríguez Villegas (partner), Karen Lissette Zambrano Rodríguez (daughter) [FN113], Johanna Elizabeth Zambrano Abad (daughter), Jennifer Karina Zambrano Abad (daughter), Ángel Homero Zambrano Abad (son), Jessica Marlene Baque Rodríguez (foster daughter) and Christian Eduardo Zambrano Ruales (son).
b) Segundo Olmedo Caicedo Cobeña and his family members: Silvia Liza Macías Acosta (partner), Vanner Omar Caicedo Macías (son), Olmedo Germán Caicedo Macías (son), Marjuri Narcisa Caicedo Rodríguez (daughter), Gardenia Marianela Caicedo Rodríguez (daughter), Elkis Mariela Caicedo Rodríguez (daughter), Richard Olmedo Caicedo Rodríguez (son), Iris Estrella Caicedo Chamorro (daughter) y Mayerlin Chamorro (daughter).
c) José Miguel Caicedo Cobeña and his family members: Teresa María Susana Cedeño Paz (partner), María Magdalena Caicedo Cedeño (daughter), Jessica Soraya Vera Cedeño (daughter),

Manuel Abelardo Vera Cedeño (son), Brimer Ramón Vera Cedeño (son), Kleber Miguel Caicedo Ponce (son), Mariuxi Mariela Caicedo Ponce (daughter), José Kelvin Caicedo Ponce (son), Cira Seneida Caicedo Ponce (daughter), Gina Loyobrígida Caicedo Ponce (daughter).

[FN113] This person has been identified as "Linda Zambrano Rodríguez" in the application and in the brief on pleadings and motions. Subsequently, the representatives submitted the document of citizenship of "Karen Lissette Zambrano Rodríguez" and in their final written arguments, they indicated that "by affection they called her LINDA". As such, the Court considers that the correct name of this family member is Karen Lissette.

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136. Regarding the distribution of compensations between the family members of the deceased victims for the corresponding pecuniary and non-pecuniary damages, the Court determines according to criteria applied in various cases [FN114] that it shall be made according to the following:

a) fifty per cent (50%) of the compensation will be divided in equal parts between the sons and daughters of the victims;
b) fifty per cent (50%) of the compensation will be given to the person who was partner of the victim at the time of his death; and
c) if there was to be no family members in one or more of the categories defined in the aforementioned subparagraphs, the amount of compensation which would have corresponded to the family members from this or those categories shall proportionally increase the part corresponding to the others.

[FN114] Cf. Case of the Rochela Massacre, supra note 7, para. 237; Case of the Miguel Castro-Castro Prison, supra note 14, para. 421 and Case of Goiburú et al., supra note 75, para. 148.

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137. As for the victims' family members that are beneficiaries of the compensations ordered in the instant Judgment who would have passed away or should pass away before receiving the respective compensation, the said compensation shall be given to their rights-holders, in accordance with the applicable domestic law.

B) COMPENSATIONS

138. The Court has developed, in its case-law, the concept of pecuniary damage and the situations in which it shall be compensated [FN115].

[FN115] Cf. Case of Bámaca-Velásquez. Reparations, supra note 14, para. 43. See also Case of La Cantuta, supra note 7, para. 213, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 423. Similarly, Case of Caballero-Delgado and Santana. Reparations. Judgment of January 29, 1997. Series C No. 31, para. 39.

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139. After analyzing the information submitted by the parties, the facts of the case and its own case-law, the Court observes that even though no receipts were submitted for the expenses, it can be presumed that the family members of the three deceased victims incurred several expenses as a result of their deaths. As such, the Court deems it appropriate to fix in equity the amount of US$2.000,00 (two thousand United States dollars) as compensation for expenses incurred to each of the three affected victims. These compensations shall be divided between the family members of the deceased victims, in accordance with paragraph 163 of the present Judgment. The State shall make the said payments within one-year from the notification of the present Judgment.

140. With regard to the victims' loss of income, the Court fixes in equity and considering the life expectancy of each of the victims the amounts of $US 42,000.00 (forty-two thousand United States dollars) in favor of Mr. Wilmer Zambrano Vélez; $US 30,000.00 (thirty thousand United States dollars) in favor of Mr. Segundo Olmedo Caicedo Cobeña; and $US 41,000.00 (forty-one thousand United States dollars) in favor of Mr. José Miguel Caicedo Cobeña. The said amounts shall be divided between the family members of the deceased victims, in accordance with paragraph 136 of the present Judgment. The State shall make the said payments within one year from the notification of the present Judgment.

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141. The Court must now determine reparations for non-pecuniary damages, as understood by the Court in its case-law [FN116].

[FN116] Cf. Case of Cantoral Benavides. Reparations. Judgment of December 3, 2001. Series C No. 88, para. 53 and 57; See also Case of Velásquez-Rodríguez. Reparations, supra note 110, para. 50; Case of La Cantuta, supra note 7, para. 216, and Case of the Miguel Castro-Castro Prison, supra note 14, paras. 430 and 431.

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142. International case-law has established in various occasions that a judgment constitute per se a form of reparation [FN117]. However, the Court considers necessary, in the instant case, to fix a compensation for the non-pecuniary damages suffered as a result of the aforementioned violations.

[FN117] Cf. Case of Suárez-Rosero. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 72. See also Case of Bueno Alves., supra note 8, para. 203 and Case of the Rochela Massacre, supra note 7, para. 264.

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143. As indicated by the Court in similar cases [FN118], the non-pecuniary damage inflicted upon Wilmer Zambrano Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo Cobeña appears evident since it is inherent to the human nature that any person executed

extrajudicially experiment suffering, anguish, fear, helplessness and insecurity before dying, and therefore no evidence is required for such damage. Taking into account the various aspects of the resulting non-pecuniary damage, the Court fixes in equity the amount of US$ 50,000.00 (fifty thousand United States dollars), which shall be paid by the State in favor of each of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña. These amounts shall be distributed between the family members of the deceased victims, in accordance with paragraph 136 of the present Judgment.

[FN118] Cf. Case of Neira-Alegría. Reparations. Judgment of September 19, 1996. Series C No. 27, para. 57; Case of the Gómez-Paquiyauri Brothers, supra note 95, para. 217; Case of Juan Humberto Sánchez, supra note 75, para. 174; Case of the "White Van" (Paniagua-Morales et al.). Reparations, supra note 14, para. 106; Case of Myrna Mack-Chang, supra note 7, para. 262, and Case of Castillo-Páez. Judgment of November 27, 1998. Series C No. 43, para. 86 See also Case of the Rochela Massacre, supra note 7, para. 256; Case of La Cantuta, supra note 7, para. 217, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 432.

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144. Moreover, the Court considers necessary to fix compensation for non-pecuniary damages suffered by the family members of the victims with regard to the violations held by the Court. These damages consist of the lack of protection due to the lack of effective access to judicial guarantees and judicial protection so that the competent authorities might determine the circumstances of the extrajudicial execution of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña. The Court therefore fixes in equity the amounts of US$ 25,000.00 (twenty-five thousand United States dollars) in favor of each of the partners of the victims and US$ 20,000.00 (twenty thousand United States dollars) in favor of their daughters and sons, which shall be paid by the State to each of them.

145. As such, the compensations fixed by the Court for non-pecuniary damages are as follow:

Beneficiaries	Amount
Segundo Olmedo Caicedo Cobeña (executed)	US$ 50,000.00
Silvia Alicia Macías Acosta (partner)	US$ 25,000.00
Vanner Omar Caicedo Macías (son)	US$ 20,000.00
Olmedo Germán Caicedo Macías (son)	US$ 20,000.00
Marjuri Narcisa Caicedo Rodríguez (daughter)	US$ 20,000.00
Gardenia Marianela Caicedo Rodríguez (daughter)	US$ 20,000.00
Elkis Mariela Caicedo Rodríguez (daughter)	US$ 20,000.00
Richard Olmedo Caicedo Rodríguez (son)	US$ 20,000.00
Iris Estrella Caicedo Chamorro (daughter)	US$ 20,000.00
Mayerlin Chamorro (daughter)	US$ 20,000.00
Wilmer Homero Zambrano Vélez (executed)	US$ 50,000.00
Alicia Marlene Rodríguez Villegas (partner)	US$ 25,000.00
Karen Lisette Zambrano Rodríguez (daughter)	US$ 20,000.00
Johana Elizabeth Zambrano Abad (daughter)	US$ 20,000.00
Jennifer Karina Zambrano Abad (daughter)	US$ 20,000.00

Ángel Homero Zambrano Abad (son)	US$ 20,000.00
Christian Eduardo Zambrano Ruales (son)	US$ 20,000.00
Jessica Marlene Baque Rodríguez (foster daughter)	US$ 20,000.00
José Miguel Caicedo Cobeña (executed)	US$ 50,000.00
Teresa María Susana Cedeño Paz (partner)	US$ 25,000.00
María Magdalena Caicedo Cedeño (daughter)	US$ 20,000.00
Jessica Soraya Vera Cedeño (daughter)	US$ 20,000.00
Manuel Abelardo Vera Cedeño (son)	US$ 20,000.00
Briner Ramón Vera Cedeño (son)	US$ 20,000.00
Klever Miguel Caicedo Ponce (son)	US$ 20,000.00
Mariuxi Mariela Caicedo Ponce (daughter)	US$ 20,000.00
José Kelvin Caicedo Ponce (son)	US$ 20,000.00
Cira Seneida Caicedo Ponce (daughter)	US$ 20,000.00
Gina Loyobrigida Caicedo Ponce (daughter)	US$ 20,000.00

146. The State shall make the payment of compensations for non-pecuniary damages directly to the beneficiaries within one year from the notification of the present Judgment, as set forth in paragraphs 163, 164, 166 and 167 infra.

C) MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION

147. In this section the Court will determine such measures of satisfaction of a non-pecuniary nature and which seek to repair non-pecuniary damages; the Court will also order measures of a public scope or repercussion.

a) Obligation to investigate the facts which generated the violations in the instant case, and to identify, prosecute, and punish those responsible parties

148. In accordance with the breaches and violations to the Convention already held (supra paras. 71, 110 and 130), pursuant to the general obligation to guarantee rights under Article 1(1) of the American Convention, and complying with its obligation to investigate and, if applicable, punish the perpetrators of the facts, the State must use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction and as such, to avoid the repetition of facts similar to those in the instant case. The State cannot allege any law or provision of its domestic laws to exempt itself of the order of the Court to investigate, and if applicable, criminally punish those responsible for the extrajudicial execution of Wilmer Zambrano Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña.

149. Finally, the State must ensure to the victims' family members full access and capacity to act in all stages and instances of the said investigations and proceedings, pursuant to the domestic laws and the provisions of the American Convention [FN119]. The right to truth, which underlies the right of the victims or their family members to obtain from the competent organs of the State a clarification over the violations and corresponding responsibilities, through the investigation and prosecution [FN120]; and which, recognized and exercised in a particular situation, constitutes an important measure of reparation and gives rise to an adequate expectation of the victims, which the State must satisfy [FN121].

[FN119] Cf. Case of Juan Humberto Sánchez, supra note 75, para. 186. See also Case of Bueno Alves, supra note 8, para. 211, and Case of La Cantuta, supra note 7, para. 228.
[FN120] Cf. Case of Bámaca-Velásquez. Reparations, supra note 14, para. 75. See also Case of the Rochela Massacre, supra note 7, para. 147, and Case of Almonacid Arellano et al, supra note 14, para. 148.
[FN121] Cf. Case of Bámaca-Velásquez. Reparations, supra note 14, para. 76. See also Case of Velásquez-Rodríguez, supra note 75, para. 181; Case of the Rochela Massacre, supra note 7, para. 264, and Case of La Cantuta, supra note 7, para. 222.

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b) Public act of aknowledgement of responsibility

150. In order to ensure that both the partial aknowledgement of responsibility made by Ecuador and the findings by the Court in this case have full effects of reparation to preserve the memory of Mr. Wilmer Zambrano Vélez, Mr. José Miguel Caicedo Cobeña and Mr. Segundo Olmedo Caicedo Cobeña and to apologize to their family members; as well as to ensure that such acknowledgement by the State and findings by the Court serve as non-repetition guarantees, the Court deems important that the State carry out a public act of aknowledgement of its responsibility for the extrajudicial execution of the victims and for other violations committed in the instant case. Such act shall be carried out in the presence of the family members of the aforementioned individuals, if they wish to assist, and shall also involve the participation of high State authorities. The said act must be celebrated within six months from the notification of the present Judgment.

c) Publication of the judgment

151. As ordered in other cases [FN122] and as a measure of satisfaction, the State shall publish at least once in the Official Gazette and in other newspaper of broad national coverage, paragraphs 8 to 130 of the present Judgment and the operative paragraphs therein. The said publications must be made within six from the notification of the present Judgment.

[FN122] Cf. Case of Cantoral Benavides. Reparations, supra note 116, para. 79; Case of Bueno Alves, supra note 8, para. 215, and Case of the Rochela Massacre, supra note 7, para. 277.

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d) Adequacy of the legislation with conventional standards

152. The Commission requested the Court to order the State to adopt all necessary measures in the domestic order to adapt its legislation on states of exception so as to bring it strictly in line with the American Convention, the jurisprudential interpretations of the Inter-American Commission and the Inter-American Court as well as other applicable international standards. Furthermore, the Commission is of the view that it is necessary to “amend the Criminal Code of the National Police, so as to clarify the guidelines on application of special jurisdiction and

ordinary jurisdiction; and adequately regulate the use of firearms by the Armed Forces and National Police". The representatives consider appropriate for the Court to order the State to carry out all necessary legal reforms to give way to the jurisdictional unity and that as such, every violation of human rights would be judged in the regular jurisdiction and the military tribunals would only have jurisdiction over offences of a strictly military nature and which affect the institution. They specifically request that the National Security Law be amended so that military tribunals do not immediately have jurisdiction over facts taking place during states of emergency, and to ensure under all circumstances that such tribunals do not have jurisdiction to judge civilians.

153. The Court reminds that the State must prevent further violations of human rights such as the ones committed in the instant case and it must therefore adopt all legal, administrative and other measures necessary to prevent further occurrence of similar facts, pursuant to its obligations to prevent and guarantee the fundamental rights protected under the American Convention.

154. Especially, the State must adapt its domestic legislation on states of emergency and suspension of guarantees, and in particular the provisions of its National Security Law, so as to bring it in line with the American Convention. More specifically, the State must ensure the adequacy of its legislation so that military jurisdiction could not assume the competences of the common jurisdiction, as set forth in the present Judgment (supra paras. 53-68).

e) Education in human rights

155. The Court takes note of the intention of the State "to run a process of prevention, training and diffusion of a public policy on education to human rights within the public sector, proceeding which is actually in the process of being implemented through a 'Handbook on Proceedings for the Public Sector'; [i]n order to fulfill its obligations assumed internationally and even more, with the aim to constitute an initiative at the regional level on the respect, protection and guarantee of human rights."

156. The Court views positively such initiative and considers it is a form of reparation. As such, the violations imputable to the State in the instant case have been committed both by members of the security forces and by the members of the Judicial, in violation of the imperative norms of International Law.

157. The Court has indicated [FN123] that in order to adequately ensure the right to life and humane treatment, embers of security forces must receive proper training and education, with a particular emphasis on the use of force and states of emergency. As such, the State shall implement, within a reasonable time, permanent programs of education in human rights for members of the Military Forces and National Police, in all hierarchical levels.

[FN123] Cf. Case of the Caracazo. Reparations, supra note 71, para. 127; Case of La Cantuta, supra note 7, para. 239, and of Montero-Aranguren et al. (Detention Center of Catia), supra note 31, para. 147.

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158. As ordered in other cases [FN124], the Court also requires the State to adopt necessary measures to train and educate prosecutors and judges, including officers of military criminal courts, on international standards related to the judicial protection of human rights. As such, the State shall also implement, within a reasonable time, permanent programs of education in human rights for the aforementioned officers.

[FN124] Cf. Case of La Cantuta, supra note 7, para. 241. See also Case of the Rochela Massacre, supra note 7, para. 303, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 452.

D) LEGAL FEES AND EXPENSES

159. As previously indicated by the Court, costs and expenses are contemplated within the concept of reparations enshrined in Article 63(1) of the American Convention [FN125].

[FN125] Cf. Case of Garrido y Baigorria. Reparations, supra note 37, para. 79; Case of the "White Van" (Paniagua-Morales et al.). Reparations, supra note 14, para. 212; See also Case of La Cantuta, supra note 7, para. 243, and Case of the Miguel Castro-Castro Prison, supra note 14, para. 455.

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160. The Court takes into account that the Comisión Ecuménica de Derechos Humanos (CEDUH) has incurred expenses in order to bring this case before the Inter-American Commission and before this Court. Likewise, the Court notes that the CEDUH "has as its mission the defence of victims or their families, free of cost, before state authorities or before the Inter-American system; nevertheless, as an original petitioner it has incurred expenses in order to bring this case throughout the proceedings" before the Inter-American system. For that reason, the CEDUH considered that US$10,000.00 was a "reasonable amount," although it asked to be allowed to present evidence on its future expenses. In its final written arguments, the CEDUH presented evidence on some expenses, which would add up to a total of US$1,871.63 for its most recent expenditures. Hence, even though the representatives solicited reimbursement of their costs and expenses, they only presented before this Court some documents evidencing those costs and expenses incurred in bringing this case before the Court.

161. Considering the foregoing, the Court fixes in equity the amount of US$10,000.00 (ten thousand United States dollars) to be reimbursed by the State to the CEDUH, in order to compensate the costs made throughout the proceedings before the Inter-American system.

162. The State shall make the payment for costs and expenses within one year of the notification of the present Judgment.

E) TERMS OF COMPLIANCE WITH THE PAYMENTS ORDERED

163. Payment of compensations ordered in favor of the family members of Mr. Wilmer Zambrano Vélez, Mr. José Miguel Caicedo Cobeña and Mr. Segundo Olmedo Caicedo Cobeña shall be made directly to these individuals. With regard to compensations ordered in favor of minors, the State shall deposit the said amounts in a solvent Ecuadorian banking institution. The deposit shall be made within one year, in the most favorable financial conditions allowed by the legislation and banking practice, and for as long as the beneficiaries remain minors. The amounts might be claimed by these persons once they reach majority, if applicable, or before then if it is in the child's best interest, as determined by a competent judicial authority. If the compensation has not been claimed once ten years have been elapsed from the date on which the individual reached majority, the amount shall be returned to the State, with the interests accrued.

164. If for reasons attributable to the beneficiaries of the compensations, it was not possible for them to receive the payment within the term indicated (supra para. 139, 140 and 146), the State shall deposit the said amounts in favor of the beneficiaries in an account or a certificate of deposit of a solvent Ecuadorian banking institution, under the most favorable financial conditions allowed by the legislation and banking practice. If the compensation has not been claimed after ten years, the amounts shall be returned to the State, with any interest accrued.

165. The payment ordered as compensation for costs and expenses incurred by the representatives throughout the said proceedings shall be made directly to the CEDUH.

166. The amounts set forth in the present Judgment as compensations and reimbursement of costs and expenses may not be affected or made conditional by tax laws currently in force or to take effect in the future. Therefore, they shall be fully paid to the beneficiaries as set froth in the preset Judgment.

167. Should the State falls behind, it shall pay interests over the amount due, corresponding to banking default interest rates in Ecuador.

168. In accordance with its constant practice, the Court retains its authority, inherent to its functions and derived from Article 65 of the American Convention, to monitor full execution of this Judgment. The instant case shall be closed once the State has fully complied with the provisions ordered herein. Within one year from the notification of the instant Judgment, Ecuador shall submit a report to the Court on the measures adopted in compliance with this Judgment.

X. OPERATIVE PARAGRAPHS

169. Therefore,

THE COURT

DECLARES:

Unanimously that:

1. It accepts the partial aknowledgement of international responsibility made by the State for the violation of the rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, and for failing to fulfill its obligations regarding the suspension of guarantees established in Article 27 of the American Convention on Human Rights, as set forth in paragraphs 8 to 31 of the present Judgment.
2. The State failed to fulfill its obligations regarding the suspension of guarantees, established in Article 27(1), 27(2) and 27(3) of the American Convention on Human Rights, in conjunction with its obligations to respect rights and to adopt domestic measures with regard to the rights to life, judicial guarantees and judicial protection, respectively enshrined in Articles 1(1), 2, 4, 8(1) and 25 of the said Convention, as set forth in paragraphs 42 to 71 of the present Judgment.
3. The State violated the right to life enshrined in Article 4(1) of the American Convention on Human Rights, in conjunction with its obligations to respect and ensure the rights recognized therein established in Article 1(1) of the said Convention, for the arbitrary deprivation of the life of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña, who were subject to extrajudicial execution, as set forth in paragraphs 72 to 110 of the present Judgment.
4. The State violated the rights to judicial guarantees and judicial protection enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, in conjunction with its obligations to respect and ensure the rights recognized therein established in Article 1(1) of the said Convention, to the detriment of Alicia Marlene Rodríguez Villegas, Karen Lisette Zambrano Rodríguez, Johanna Elizabeth Zambrano Abad, Jennifer Karina Zambrano Abad, Ángel Homero Zambrano Abad, Jessica Marlene Baque Rodríguez and Christian Eduardo Zambrano Ruales, family members of Mr. Wilmer Zambrano Vélez; Silvia Liza Macías Acosta, Vanner Omar Caicedo Macías, Olmedo Germán Caicedo Macías, Marjuri Narcisa Caicedo Rodríguez, Gardenia Marianela Caicedo Rodríguez, Elkis Mariela Caicedo Rodríguez, Richard Olmedo Caicedo Rodríguez, Iris Estrella Caicedo Chamorro and Mayerlin Chamorro, family members of Mr. Segundo Olmedo Caicedo Cobeña; and Teresa María Susana Cedeño Paz, María Magdalena Caicedo Cedeño, Jessica Soraya Vera Cedeño, Manuel Abelardo Vera Cedeño, Brimer Ramón Vera Cedeño, Kleber Miguel Caicedo Ponce, Mariuxi Mariela Caicedo Ponce, José Kelvin Caicedo Ponce, Cira Seneida Caicedo Ponce, Gina Loyobrígida Caicedo Ponce, family members of José Miguel Caicedo Cobeña, as set forth in paragraphs 110 to 130 of the present Judgment.
5. This Judgment constitutes, per se, a form of reparation.

AND DECIDES:

Unanimously that:

6. The State shall immediately carry out the necessary actions and use all available means to render effective the investigation and proceedings in the ordinary criminal jurisdiction to identify, prosecute and if applicable punish those responsible for the extrajudicial execution of Wilmer Zambrano Vélez, José Miguel Caicedo Cobeña and Segundo Olmedo Caicedo Cobeña; and as such, to avoid the repetition of facts similar to those in the instant case, as set forth in paragraph 148 of the present Judgment. Moreover, the State shall satisfy the right to truth of the victims' family members and ensure that they have full access and capacity to act in all stages

and instances of the said investigations and proceedings, pursuant to the domestic laws and the provisions of the American Convention on Human Rights, as set forth in paragraph 149 of the present Judgment.

7. The State shall carry out, within six months from the notification of the present Judgment, a public act of aknowledgement of its responsibility for the extrajudicial execution of the victims and the other violations committed in the instant case, as set forth in paragraph 150 of the present Judgment.

8. The State shall publish at least once in the Official Gazette and in other newspaper of broad national coverage, paragraphs 9 to 130 of the present Judgment and the operative paragraphs therein, within six months from the notification of the present Judgment, as set forth in paragraph 151 of the present Judgment.

9. The State shall adopt all legal, administrative and other measures necessary to prevent further occurrence of similar facts; especially, the State must adapt its domestic legislation on states of exceptions and suspension of guarantees, and in particular the provisions of its National Security Law, to ensure its adequacy with the American Convention, as set forth in paragraphs 152 to 154 of the present Judgment.

10. The State shall implement, within a reasonable time, permanent programs of education in human rights for members of the Military Forces and National Police in all hierarchical levels, with a particular emphasis on the legitimate use of force and states of emergency; and for prosecutors and judges, on international standards related to the judicial protection of human rights, as set forth in paragraphs 155 to 158 of the present Judgment.

11. The State shall pay directly to the family members of Mr. Wilmer Zambrano Vélez, Mr. Segundo Olmedo Caicedo Cobeña and Mr. José Miguel Caicedo Cobeña the amounts set in paragraphs 139, 140, 143, 144 and 145 of the present Judgment, as compensation for pecuniary and non-pecuniary damages, within one year from the notification of the present Judgment, as set forth in paragraphs 163, 164, 166 and 167 of the present Judgment.

12. The State shall pay directly to the Comisión Ecuménica de Derechos Humanos (CEDHU) the amounts set in paragraph 161* of the present Judgment as compensation for legal costs and expenses, within one year from the notification of the present Judgment, as set forth in paragraphs 165 to 167 of the present Judgment.

13. The Court retains its authority, inherent to its functions and derived from Article 65 of the American Convention, to monitor full execution of this Judgment. The instant case shall be closed once the State has fully complied with the provisions ordered herein. Within one year from the notification of the instant Judgment, Ecuador shall submit a report to the Court on the measures adopted in compliance with this Judgment, as set forth in paragraphs 168 of the present Judgment.

Judge Manuel E. Ventura Robles presented to the Court his Separate Opinion, which is joined to the present Judgment.

Drafted in Spanish and in English, the Spanish text being the official one, in San José, Costa Rica, on July 4th, 2007.

Sergio García-Ramírez
President

Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION

I have cast my vote to approve, unanimously, the present Judgment in the case of Zambrano Vélez et al. v. Ecuador, but I feel it necessary to clarify my position on an issue that has been considered during the deliberation of this case and in various cases before the Court over the last three years.

It concerns the interpretation and application of Articles 8(1) and 25 of the Convention in conjunction with Article 1(1) and hence, the nature and purpose of the aforementioned provisions.

Chapter I of the American Convention (General Obligations) refers to the obligations of the States Parties to this instrument: Article 1 (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects). These are provisions of a general nature that permeate all the rights protected in Chapter II (Civil and Political Rights). These protected rights have their own ontological nature, they protect inherent juridical rights, which may be violated by a State Party as a result of certain acts that also entail the violation of Article 1(1) and, if applicable, Article 2, which as I have indicated are provisions of a general nature. This is not the nature of Articles 8 and 25, which also have a specific ontological content, but not as provisions of the Convention with general application and consequently, they can be violated by the State, together with other rights, always in conjunction with Article 1(1), which establishes the general obligation of the States Parties to respect and ensure the rights included in Chapter II of the Convention [FN1].

[FN1] Cf. IACHR., Case of the Constitutional Court. Judgment of January 31, 2001. Series C No. 71; IACHR, Case of Cantos. Judgment of November 28, 2002. Series C No. 97; ICHR, Case of Almonacid-Arellano et al. Judgment of September 26, 2006. Series C No. 154; ICHR, Case of

the Dismissed Congressional Employees (Aguado-Alfaro et al.). Judgment of November 24, 2006. Series C No. 158.

Article 1(1) of the Convention establishes that:

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

Article 8(1) indicates textually that:

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

While Article 25 states that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
   a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
   b) to develop the possibilities of judicial remedy; and
   c) to ensure that the competent authorities shall enforce such remedies when granted.

Moreover, the Court has declared the violation of Article 1(1) of the Convention independently of other violations of other articles [FN2]. In addition, the violation of Articles 8(1) and 25 has also been considered and declared autonomously, without considering them in relation to Article 1(1) of the Convention [FN3]. In addition, the Court has applied Articles 8(1) and 25 in relation to articles of the Convention other than Article 1(1) [FN4].

[FN2] Cf. IACHR, Case of the "Street Children" (Villagrán-Morales et al.). Judgment of November 19, 1999. Series C No. 63.
[FN3] Cf. IACHR, Case of Baena-Ricardo et al. Judgment of February 2, 2001. Series C No. 72; and ICHR, Case of Las Palmeras. Judgment of December 6, 2001. Series C No. 90.
[FN4] Cf. IACHR, Case of Servellón-García et al. Judgment of September 21, 2006. Series C No. 152; ICHR, Case of Vargas-Areco. Judgment of September 26, 2006. Series C No. 155.

Consequently, suggesting that the Court should consider that it cannot declare the violation of Articles 8(1) and 25 independently, as an autonomous violation, but only in relation to another substantive right which cannot be Article 1(1), is to affirm that the American Convention does not protect the right to justice and would be an attempt to bestow on Articles 8(1) and 25 the nature of general provisions, which would permeate the entire Convention just as Article 1(1), and the result of this would be to denature the very content of Articles 8(1) and 25.

To change the Court's case law on this issue, after the more than 20 years of exercising its jurisdictional function, is confusing, in addition to being inappropriate and unnecessary. It introduces an element of distortion in the deliberation of future cases.

Manuel E. Ventura-Robles
Judge

Pablo Saavedra-Alessandri
Secretary