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HAVING SEEN:

1. The complaint received by the Inter-American Commission on Human Rights, the pertinent parts of which were transmitted to the Government of Colombia on September 17, 1985, in the following terms:

According to all eyewitness accounts, Mr. LUIS FERNANDO LALINDE was arbitrarily detained on October 3, 1984. He was stopped between 5:30 a.m. and 6:00 a.m. by units of the Ayacucho Battalion of the Colombian Army in the Village of Verdun in the municipality of El Jardin, Antioquia. In spite of numerous requests to the Government of Colombia, neither the place of Mr. Lalinde's detention nor the reason for it has been revealed.

2. The Government's answer dated February 24, 1986, whereby:

Through Note No. 000742, dated October 12, 1985, Major General Nelson Mejia Henao, Prosecutor for the Armed Forces, reported that the Office of the Regional Prosecutor of Pereira, administered by Dr. Elbert Rojas Leal; Dr. Arnaldo Ayos Guerrero, Judge 21 of the Military Court of Criminal Investigation; and Dr. Oscar Garcia Motta, an official in the Armed Forces Office, had made inquiries to ascertain if LUIS FERNANDO LALINDE had been seized by units of the Armed Forces and to determine his whereabouts.

Having completed the mandatory investigation, they concluded that at no time had that individual been seized by members of the Armed Forces nor was he being held in military facilities. Lastly, the Prosecutor said that there was some question about the alleged guerrilla nicknamed "Jacinto" might be LUIS FERNANDO LALINDE. That individual had been killed while engaged in combat with the military patrol on October 4, 1984, in the Village of Verdun in the municipality of El Jardin, Department of Antioquia.

However, the competent authorities exhumed the body of "Jacinto" to try to confirm if the deceased was LUIS FERNANDO LALINDE, which was impossible to ascertain since there was no flesh on the corpse's fingers. The matter under investigation was, therefore, clarified.

3. The complainant's observations on the Government's reply, transmitted to him on July 14, 1986, in which he states that:

I wish to draw attention to the fact that Judge 13 of the Court of Criminal Investigation, Dr. Bernardo Jaramillo Uribe, who on three occasions went to the village of Verdun in the municipality of El Jardin, Antioquia, and from statements made by the inhabitants of that village, was able to establish that Luis Fernando Lalinde had clearly been detained at the time indicated on October 3 and taken away alive in an army truck on the same day at approximately 6 o'clock in the afternoon.

A letter from that same judge, which I attach as an appendix to this communication, clearly states that: "What I am able to assert as a result of the investigation is that Luis Fernando Lalinde was seized in the village of Verdun in the municipality of El Jardin, Antioquia, apparently, on October 3, 1984, by units of the Ayacucho Infantry Battalion and that he has been missing since then."

I also consider it very significant that: In the Ayacucho de Manizales Battalion, charges have been brought (Case No. 230) against the Military Patrol of Infantry Battalion No. 22 for the death of "Jacinto N.N." Unfortunately, I suspect that the person seized by the Army, namely, Luis Fernando Lalinde Lalinde, was later according to the death certificate, buried as N.N. alias "Jacinto" in Riosucio, Caldas, a place that we have not yet been able to locate.

In the last line of your "GOVERNMENT'S REPLY" the word "clarified" is used to refer to the matter under investigation, when that is obviously not the case since the facts show that Luis Fernando Lalinde Lalinde was seized alive by the Ayacucho Infantry Battalion No. 22 on October 3, 1984, in the village of Verdun El Jardin, and that nothing further has been learned about him, apart from the suspicion, not confirmed by the investigation that, according to the government's report was carried out by "competent authorities," without its being determined if N.N. "Jacinto" was one and the same Luis Fernando Lalinde. We, therefore, consider that the Government's reply to the Inter-American Commission on Human Rights is unsatisfactory and that the Government should clarify where Luis Fernando Lalinde is and what has been done with him.

4. The note from the Government of Colombia dated August 4, 1986, which says that:

Before proceeding to contact the competent authorities regarding the complainant's observations, I would ask for the following explanation:

In the fourth (4th) paragraph of the complainant's observations, reference is made to the Government's reply, in which the word "clarified" was used and to which the complainant objected. When the official document was transcribed, the word "clarified" (aclarado) was inadvertently typed instead of "shelved" (archivado).

Accordingly, I would ask you to make that change so that the paragraph would read as follows:

"... However, the competent authorities exhumed the body of "Jacinto" to try to confirm if the deceased was LUIS FERNANDO LALINDE LALINDE, which was impossible to ascertain since there was no flesh on the corpse's fingers. The matter under investigation was therefore shelved..."

5. The Commission's acknowledgement of the clarification transcribed in paragraph 4 and the repetition of the request to the Government on November 21, 1986, for a response to the complainant's reply.

6. The note from the Government of Colombia dated December 4, 1986, which states that:

We have received your note of November 21, 1986, in which you acknowledge receipt of our communication No. 532 of August 4, 1986, transmitting Note 01/2110 from the Ministry of Foreign Affairs of Colombia, in response to your request of June 14 of the current year, concerning Case No. 9620, in connection with Mr. Luis Fernando Lalinde Lalinde.

At the same time we received a copy of the note that you sent, on the same date, November 21, to the Minister of Foreign Affairs regarding the same case.

Since in the note to this mission you thank us for the information our government provided in response to that request, our government provided in response to that request, it strikes us as contradictory that on the same day in your note to the Minister of Foreign Affairs, you reiterated the request that had been duly acted on by our government. We would appreciate having this point clarified.

7. The reply of the Executive Secretariat of the Commission, dated February 9, 1987, which reads:

I have the honor to address Your Excellency in response to your kind communication No. 934 in which you requested clarification of the apparent contradiction in expressing thanks for the information provided in communication No. 532 from the Government of Colombia while at the same time on November 21, 1985, reiterating the request for information.

To clarify this apparent misunderstanding, allow me to point out that communication No. 552 from the government transmitted note 01-2110 which simply contained information to correct a typographical error in Note 01-0598 dated February 24, 1986, sent with Note No. 222 of March 25 of the same year. Inasmuch as the typographical error did not affect the substance of the complainant's observations on the Government's reply, the request for response to the complainant's observations was reiterated.

8. The additional information provided by the complainant and forwarded to the Government of Colombia on July 30, 1987, according to which:

In my capacity as a member of the Peace Commission, I had the opportunity to become thoroughly familiar with some aspects relating to Mr. Lalinde's disappearance. That information follows.

On October 20, 1984, a group of members of the Peace Commission went to the region of Jardin (Antioquia) with two spokesmen for the People's Liberation Army (EPL) to gather information on the alleged clashes between that group and national army troops. In carrying out that mission, we received information about the case of a person who had been seized and tortured in the village of "Verdun."

We visited the village where an eyewitness showed us the exact place and gave us details on what had occurred. According to those accounts, the individual in question, whose physical description coincided with Mr. Lalinde's, was detained on October 3, tortured, and taken from the spot in an army vehicle. They added that a hooded individual, who was allegedly a guerrilla working with the army, helped in the seizure.

On the basis of the information, another trip was made to Manizalez and Armenia in the company of Mr. Lalinde's relatives and EPL spokesmen to obtain more information on the case. The information gathered at that time makes it possible to establish the following:

1. Mr. Lalinde had allegedly gone to the area of Jardin to rescue a wounded EPL member.
2. Before the trip, he was to wait for confirmation from the EPL on whether it was necessary to go.
3. Some friends were to lend him a car for the trip, and he was to pick it up on October 3.
4. Mr. Lalinde left his house, mentioned that he was expecting calls regarding instructions and the loan of the vehicle, and indicated the time at which he would be back to pick up those messages. That was the last time that his relatives saw him. The calls were received, with the following messages:
 - a. That it was not necessary to travel.
 - b. That the car was ready for him to pick up when he needed it.

Despite the foregoing, Mr. Lalinde left Medellin without having received any of the messages.

There is confused information about the two guerrillas called "Jacinto" and "Aldemar" and it has been assumed that one of them might be Mr. Lalinde. In the case of "Jacinto," the information indicates that he was killed in Ventanas, between Jardin and Riosucio, either while engaged in combat or when trying to flee. The guerrilla "Aldemar," also seized by the Army, regularly appears throughout this case either as a prisoner or as a combat casualty. Mr. Lalinde's relatives were hopeful that "Aldemar" was under arrest and was in fact their relative.

The name "Aldemar" was given by the army to a prisoner who allegedly responds to the name Orlando Vera Mucoz. According to some reports, Mr. Vera was incarcerated in the prison of Manizales. On-site investigation indicated that he was not and had never been an inmate of that prison.

This case is further complicated by the fact that, in the fighting in Riosucio two months earlier, 13 guerrillas had died and at that time, the identification papers of four persons had been found. One of the documents was in the name of Orlando Vera Mucoz.

Additional information from Mr. Lalinde's relatives indicate that:

- a. Mr. Lalinde had recently been promoted to EPL Political Commissioner.
- b. In early September, Mr. Lalinde received "costly" field equipment. After receiving it, he informed his household that he would be traveling for a long period of time and would probably not return until the end of the year.
- c. A few days after leaving, he called from Manizalez to say that he was returning to Medellin as he had decided to curtail his trip.

According to information from other sources, Mr. Lalinde was involved in the fighting in Riosucio and returned to Medellin, eluding the Army's siege. When he arrived in Medellin, he allegedly received the order to rejoin his group, which he was trying to do when he was detained. It should be mentioned that the same account indicates that Mr. Lalinde might have been informed on and betrayed by his own people. Possible reasons could be the fact that he abandoned his post in Riosucio fighting or his rapid ascent through the EPL ranks.

In connection with the torture, senior Army officers said that investigations of the incidents had been initiated. However, all information gathered was turned over by the Peace Commission to the National Criminal Investigation office so that, in conjunction with the Office of the Government Prosecutor, inquiries and investigations could continue in accordance with established procedures.

9. The repetition, dated July 30, 1987, of the requests to the Government for reports, contained in the notes of June 14, 1986, and November 21, 1986.

10. The note from the Government of Colombia dated September 10, 1987, which reiterates the information provided in its reply dated February 24, 1986, except with regard to the circumstances surrounding the death of the guerrilla nicknamed "Jacinto" who is now claimed to have died in an escape attempt and not in combat as had been reported earlier.

11. At its 71st period of session held in September 1987, the Commission approved resolution 24/87, taking into consideration that both the certificate issued by Court of Criminal Investigation No. 13 and the statements contained in the note sent to the Commission by Mr. Carlos Morales Hendry as member of the Peace Commission constitute sufficient evidence to consider that Mr. Luis Fernando Lalinde Lalinde was detained on October 3, 1984, in the village of Verdun in the municipality of Jardin in Antioquia by forces of the Ayacucho Infantry Battalion, that he has been missing since then, and that the authorities who detained him have not provided any convincing answer regarding his whereabouts; and that the Government of Colombia's reply contained in a note dated February 24, 1986, does not provide any information that makes it possible to refute the complainant's statements. The operative part of the resolution (OEA/Ser.L/V/II.71, doc.18), reads as follows:

1. To declare that the Government of Colombia has violated the right to personal liberty embodied in Article 7 of the American Convention on Human Rights, and the right to life, recognized in Article 4 of that international instrument, through the actions of its agents that led to the detention and subsequent disappearance of Luis Fernando Lalinde, which occurred in the village of Verdun in the municipality of Jardin, Antioquia, on October 3, 1986.

2. To recommend to the Government of Colombia that it conduct a thorough investigation of the facts reported in order to identify the persons responsible and bring them to justice so that they may receive the sanctions warranted by such serious conduct, and that it adopt the necessary measures to

prevent a repetition of such serious acts.

3. To transmit this resolution to the Government of Colombia so that it may make such observations as it deems pertinent within a period of ninety days, calculated from the date of its remittal.

12. That resolution was transmitted to the Government of Colombia by note of September 28, 1987, informing it that the period set forth in paragraph 3 thereof for the submission of observations on resolution 24/87, would run from the date of the respective note.

13. By note 4588 dated December 21, 1987, within the deadline referred to in paragraph 3, the Government of Colombia presented its observations on that resolution which may be summarized as follows:

I. CONSIDERATIONS OF LAW

1. Article 46 of the American Convention on Human Rights and Article 37 of the Commission's Regulations establishes as a requirement for admissibility of a petition "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of International Law."

2. Article 48.c of the Commission's Regulations states that "a petition or communication may also be declared inadmissible or groundless based on supervening information or evidence." In that connection, the Colombian Government's petition is based on the fact that the reasons for admitting the petition have now been nullified by supervening information or evidence and the fact that the Commission had disinformation regarding our judiciary system and the procedures set forth in the Colombian Code of Criminal Procedure.

We will now turn to demonstrating both alleged grounds, beginning with the latter, i.e. disinformation regarding our judiciary system:

a. Article 55 of our Constitution says that the branches of the government are the legislature, the executive and the judiciary. It adds that the congress, the government and the judges have separate functions, but they work together harmoniously in achieving the goals of the State.

b. Article 58 of the Constitution says that justice is administered by the Supreme Court, the Higher District Court and any other courts and tribunals established by law.

The communication to which the Commission refers where the word SHELVED (archivado) or CLARIFIED (aclarado) appears, did not originate with a Court of the Republic but rather with an Office of the Public Prosecutor, which in Colombia has no judiciary functions.

Article 142 of our Constitution says that the functions of public prosecutor shall be exercised under the supreme authority of the Government by a General Prosecutor of the Nation, the prosecutors of the Higher District Courts and any other prosecutors designated by law.

Article 143 says that "officials of the Public Prosecutor's Office defend the interests of the Nation; see to the enforcement of laws, judicial sentences and administrative provisions, monitor the conduct of government employees and prosecute those who commit crimes and offenses that disturb the social order."

c. Based on the duties we have just indicated, the Prosecutor for the Armed Forces (i.e., the prosecutor who monitors the administrative conduct of the Armed Forces) regarded the case of MR. LUIS FERNANDO LALINDE as being shelved, but only with regard to possible violation of the provisions of the Armed Forces internal regulations, without seeking to terminate the activity of the courts of the republic, as will be seen below. It should be noted that the Prosecutor for the Armed Forces is today a civil official directly appointed by the General Prosecutor of the Nation.

d. The correctness of what we have just stated is shown by the fact that the Examining Magistrate for Criminal investigations of Andes, Department of Antioquia, has sent us a detailed list of the cases tried by our judges, which was started on December 15, 1984, and has not yet been completed, and their activities have been intensive up to the present time (see attached list).

e. Under our existing Criminal Procedures, the investigation must continue until the persons who caused the disappearance of Mr. LALINDE have been identified.

When that identification has been accomplished, the real criminal trial will begin (Articles 339 and 353 of the Code of Criminal Procedure), i.e., the accused will be arraigned at an inquest, after which there will be a period in which evidence is taken to complete this first stage of the proceedings, with the formulation of charges through an indictment (RESOLUCION ACUSATORIA). In signing the indictment, there will be a short period for taking evidence, and finally, the proceedings will be closed and sentence passed.

It should be noted that there is a remedy available for each of the stages mentioned, so the decisions of the Court may be challenged by the parties (Articles 354 and the following in the code.).

f. So that the detailed list of the Examining Magistrate for Criminal Proceedings of Andes, Department of Antioquia, constitutes the only evidence valid in Colombia to affirm that the proceedings, rather than being shelved or exhausted, are in the investigation stage and are being actively and vigorously pursued.

The first grounds consisting of “supervening information or evidence” are hardly logical if it is believed that the Commission did not know of the Certification of the Third Examining Magistrate for Criminal Investigation of Andes, Department of Antioquia, and that in reaching its conclusions, it took into consideration a document issued by an official not of the judiciary. Therefore the evidence added here is supervening and nullifies the claims of the interested party and the underlying basis of resolution 24 of 1987, referring to case 9620.

II. NEW FACTS

To group together the Government’s reasons for submitting this petition to the Commission, we would like to point out the following:

1. As you know, in its decision of July 19, 1985, the Prosecutor for the Military Forces decided to file the case because at that time he did not have evidence that the act being investigated had been perpetrated by the Army. As indicated previously, filing the case was without prejudice to continuing the criminal investigation.

2. However, on November 3, 1987, the Prosecutor said that the administrative investigation of the case would continue, and on November 6, of this year ordered the administrative records to be filed, and requested photocopies of the criminal proceedings that, since it is suspected that Mr. Lalinde was murdered, are being continued in the Third Court of Criminal Investigation of Andes, Antioquia.

3. From the new investigation conducted, the Prosecutor arrived at the following conclusions: “While it is shown in the disciplinary records that Mr. LUIS FERNANDO LALINDE LALINDE left his house in the city of Medellin on October 2, 1984, telling his brothers that, if he had not returned by 10 o’clock that night, he would do so early the following morning, and that was the last time he was seen by his family.

Mrs. FABIOLA LALINDE LALINDE learned through Mr. OSCAR WILLIAM CALVO, Director of the Marxist/Leninist Communist Party, that the young man had been detained by members of the Armed Forces in the village of Verdun, and turned over to the Eighth Brigade of the City of Armenia under the orders of the Riosucio Command. Accordingly, the LALINDE family made every effort possible to learn of his whereabouts.

In visits by their agents to the various military installations, no records were found that LUIS FERNANDO LALINDE LALINDE was brought in as a detainee, nor was any evidence found to corroborate the rumors circulating about him, assumptions that were combined with other steps taken to shelve the investigation provisionally.

The Thirteenth Court of Criminal Investigation, empowered to investigate the disappearance of LUIS FERNANDO LALINDE LALINDE, heard testimony from a number of campesinos from the village of Verdun. As stated, a true copy of the proceedings was remitted to that investigation, and the testimony incriminates the members of the Ayacucho Battalion who were operating in the general area of the municipalities of Riosucio, Caldas, and El Jardin, Antioquia.

The same report on the operations of the Third Division of October 26, 1984, sent to the Commanding General of the Military Forces, Major General RAFAEL FORERO MORENO, states in paragraph 4 that, according to data from the Commander of the Ayacucho Battalion, the individual N.N., alias "Jacinto" was killed. He was captured on October 4, 1984, at 5:30 hours in an ambush in the village of Verdun, the Municipality of El Jardin, Department of Antioquia. He was carrying a 38-long revolver and 40 38-caliber cartridges, and was recognized by a captured guerrilla (anti-social) as N.N. alias "Jacinto." He was killed when he tried to escape after attacking a sentry.

It is, therefore, an undeniable fact that N.N., alias "Jacinto," was seized and cruelly attacked by members of the patrol as stated under oath by the local people. Apparently this was the same person who has been so widely sought, i.e., LUIS FERNANDO LALINDE LALINDE:BERNARDO JARAMILLO JARAMILLO. When outsiders who came to the village were asked whether they had seen the youth whose picture was shown them (they were shown the photograph of LUIS FERNANDO, page 144) they said: "... Yes sir, I saw him when the Army was beating him terribly. Now I will show you where they seized him... they put us over here nearby ... afterwards, they grabbed the boy and took him up over there where they tied him to a tree and blindfolded him. LUCIA RAMIREZ OCAMPO (page 145): "... they had the boy over there lying face down diagonally and in the middle of the soldiers. Then I saw the boy raise his head and the soldiers kicked him so he would not raise it... I heard some words and some screams and a horrible racket." FLOR ANGELA ESCOBAR RODRIGUEZ (page 146): "... When the photograph of LUIS FERNANDO LALINDE was show to he she said: "... yes sir, I saw that boy here ... I remember well that it was on October 3 of last year the day the troops came was the only day I saw him... The children going to the Concentracion School saw him tied to a guamo tree." JOSE YARCE CARDONA (page 147), when he was shown the photograph of LUIS FERNANDO, said: "... Yes, that boy, yes, that's him, yes sir... I saw him on October 3 of last year--to be more exact, I saw him when they took him from the manger over there. He was all muddy in back and bleeding here in the back of the neck..." JOSE EMIDIO MONTOYA RESTREPO (page 148): "when I saw that boy who looks a lot to me like the one in the picture, they had him tied to a beam with handcuffs, and then the asked me if I knew the guy..." RUBEN DARIO JARAMILLO JARAMILLO (page 149): when he saw the photograph of LUIS FERNANDO, said: "... that's the one I saw them take from the manger... they were treating him bad; they were calling him names; they were kicking him; there were rope marks on his neck, and he was bleeding from the neck... the guys that came here were in uniform, the same as the ones who took the boy..." These were the accounts of eyewitnesses of the events. They are believable because they showed no fear at all, and their testimony was given impartially, clearly and in their own words.

THE SAME PERSON IS INVOLVED

What we have here, is that only one person was detained in the village of Verdun (page 165) by Units of the National Army, more specifically by the patrol commanded by Captain JAIRO ENRIQUE PICEROS SEGURA on October 4, 1984, around 5:30 in the morning, and the person was cruelly treated and tortured under the frightened gaze of the people living in the area, who were terrorized by this merciless and brutal conduct of the uniformed personnel. The person detained was undoubtedly the same one who had left the city of Medellin on October 2 of that same year without his family being able to have him returned. He is the same LUIS FERNANDO LALINDE LALINDE.

The above testimony is corroborated by the description given by the peasants of his physical description and the clothing he was wearing on the day the events took place. Their description tallies with the clothing his family said he was wearing when he went to that area and also, with the clothing found with the remains of the individual N.N., alias "Jacinto," who was killed by the Army and buried in the mountains in the jurisdiction of the village of Ventanas (Records of Exhumation and Autopsy) (page 231 CO).

Regarding the manner in which N.N., alias "Jacinto," or LUIS FERNANDO LALINDE LALINDE, could have been killed, there is not proof different from the version given by the uniformed personnel, and to date it has not been possible to determine the circumstances surrounding that event because the Thirteenth

court of Criminal Investigation of Medellin, empowered to investigate the case, has been unable to exhume the corpse again because of lack of cooperation in indicating the place where the remains were buried, by the Military criminal Justice authorities, or more exactly by the persons who took part in the exhumation and autopsy conducted by the 121st Military Court of Criminal Investigation on November 21, 1984.

Conclusions

So that is where the matter stands. It is hardly logical to ask for explanations from the members of the Patrol of the Ayacucho Battalion composed of Captain JAIRO ENRIQUE PECEROS SEGURA, Second Lieutenants, JAIME ANDRES TEJADA GONZALEZ and SAMUEL JAIMES SOTO, and Second Corporal MADARDO ESPINOSA AREIZA, for their irregular behavior without the slightest concern for human decency, violating the most elementary standards of decent behavior and proper treatment, and what is worse, disregarding human rights and the supra legal guarantees set forth in our Constitution, and proceeding to mistreat with the most degrading forms of torture a helpless, who, though apparently he had a background of belonging to a subversive group, should not for that reason have been the victim of violent and outrageous treatment, which is unworthy of the National Army.

The behavior of the uniformed personnel possibly makes them guilty under Decree 1776 and 1979, Disciplinary Rules for the Armed Forces, Articles 71 and 156 subparagraph a) and b), in accordance with Articles 16, 23, and 26 of the Constitution, so I request the Prosecutor for the Armed Forces to draw up charges accordingly.”

By virtue of the above, the Prosecutor for the Armed Forces opened on December 10, 1987, a formal disciplinary investigation against Captain JAIRO ENRIQUE PECEROS SEGURA, Second Lieutenants JAIME ANDRES TEJADA GONZALEZ AND SAMUEL JAIMES SOTO and Second Corporal MEDARDO ESPINOSA AREIZA, suspected of the torture and verbal physical abuse of LUIS FERNANDO LALINDE LALINDE or N.N., alias “Jacinto.” These events occurred in the village of the Department of Antioquia, on October 4, 1984, and therefore disciplinary action was taken against them by drawing up charges, in accordance with the formalities stipulated in Articles 18 and 19 of Law 28 of 1974 (a copy of the records of the case are attached to this note).

4. The administrative investigation is therefore fully under way, and the accused have been notified. They have 8 days to answer the charges and request and submit evidence. The investigation of the General Prosecutor of the Nation may end, depending, of course, on the findings, in appropriate disciplinary penalties for those responsible, and also, if grounds are found for it, in their being involved in the criminal case that is being tried in the Third Court of Criminal Investigation of Andes, Antioquia, mentioned in Part I of this answer.

5. The Colombian Government promises the Commission not only to keep it informed of the progress of the investigation, but also, as is its policy, to punish to the full extent of the law, in accordance with our legal system, those who are guilty of any crime in connection with the events reported. In addition, the General Prosecutor of the Nation will continue to monitor the criminal proceedings under way.

OTHER CONSIDERATIONS

1. It should be mentioned that the family of Mr. LALINDE, particularly his mother Mrs. FABIOLA LALINDE DE LALINDE, became parties to a civil suit subject to the provisions of the law. This suit was filed with the Third Court of Andes on October 12, 1985, and admitted by a ruling of October 16 of that year. In the event that government agents are found responsible for the acts reported, the party concerned may have recourse to the remedies available to it under the law to sue the Colombian Government for damages.

2. It is obvious in light of the new information obtained in the investigation that the operative part of the resolution is not in accord with what the competent Colombian authorities actually did, and there is valuable evidence for examining this case, which the Colombian Government is seriously interested in fully clarifying.

3. Regarding the operative part of the resolution, the Colombian Government wishes to point out that, probably because of a transcription error, there is a mistake in paragraph 1, which states that the events occurred on October 3, 1986. The events that are the subject of administrative and judicial investigation by the appropriate authorities occurred in October 1984.

4. In the spirit of continuing cooperation that the Colombian Government has always shown for the Inter-American Commission on Human Rights, the Government would like to point out that, although three years have passed since the case was reported, investigations of this kind are usually slow and difficult, as is shown by the complete report of the proceedings filed by the Third Court of Criminal Investigation of Andes, Antioquia. However, the investigations show that criminal proceedings were at no time brought to a standstill, and still less has there been an unwarranted delay in reaching a decision on the remedies of internal jurisdiction as the text of the resolution would seem to indicate.

5. The Colombian Government is aware of the seriousness that situations of this kind represent for the protection of human rights, as cause that the country has always committed to as is shown by its long democratic tradition; its devotion to a government of law; its ratification and/or accession to numerous international treaties both international and regional, such as the American Convention on Human Rights, and the acceptance of the jurisdiction of the Court for an indefinite period and for events that occurred after the date of acceptance, and its recent accession to the United Nations Convention on Torture.

6. Accordingly, the present Government, convinced of the need to improve the legal instruments available to the Colombian State to guarantee an effective defense of human rights, has established under Decree 2110 of November 8, 1987, the Presidential Council for Human Rights, whose functions include giving fundamental priority to coordination with the government agencies responsible for conducting investigations, so they can be effectively concluded and so those responsible for abused that the Government neither promotes nor tolerates can be charged or punished.

CONCLUSION

The Colombian Government understands that in the area of human rights the Courts of Justice have the first responsibility in each country for safeguarding those rights, and international courts or organizations have a subsidiary responsibility.

In this case, the Commission can be sure that the Colombian Government will fully exercise its constitutional obligation to see to it that justice is done.

For all the above reasons, we would like to repeat our request for reconsideration of resolution 24/87 on Case 9620 and also our offer to furnish any information the CIDH might wish for the purpose of clarifying this case.

14. In a note dated February 23, 1988, the Commission forwarded to the petitioner the pertinent parts of the observations of the Government of Colombia and asked him to provide any new or additional information on the case.

15. In the course of its 72nd (March 14-25, 1988), the Commission took note of the observations and the request for reconsideration from the Government of Colombia and, in accordance with Article 54 of the Regulations of the IACHR, decided to continue its study of the case.

16. Pursuant to that decision, the Commission contacted the Government of Colombia, by a note dated March 29, 1988, to request information on the outcome of the proceedings against captain Jairo Enrique Peceros Segura, Lieutenants Jaime Andres Tejada Gonzalez and Samuel Jaimes Soto, and Second Corporal Medrado Espinoza Areiza, those allegedly responsible for the physical torture and abuse of Luis Fernando Lalinde Lalinde and, in the event that a decision has been rendered, a copy of the judgment.

17. In that note, the Commission also told the Government of Colombia that it hoped to receive a

reply within 120 days from the date on which the note was sent.

18. This decision was also forwarded to the petitioner, by a note dated March 29, 1988.

19. In the course of its 72nd session, the Commission held a hearing at which it received Mr. Alvaro Tirado Mejia, Presidential adviser for the Defense of Human Rights in Colombia, who reported in regard to those allegedly responsible for the physical torture and abuse in the case of Luis Fernando Lalinde Lalinde: that Lieutenant Jaime Andres Tejada had died in a traffic accident in June 1987 and that Second Corporal Medardo Espinoza had died in combat in clashes with subversive groups in 1987.

20. In a note dated July 6, 1988, the Commission reiterated its request for information to the Government regarding the outcome of the proceedings, in order that it could be considered during the next session.

21. By note dated July 26, 1988, the Government requested of the Commission a 90-day extension of the deadline in which it was to respond.

22. By note dated August 12, 1988, the Commission informed the Government of its decision to grant only a 30-day extension of the deadline, to provide the information requested, without prejudice to the request mentioned in the above paragraph which would be considered by the Commission during its 74th period of sessions (September 1988).

23. In the course of its 74th Session (September 6-16, 1988), the Commission considered the request for an extension of the deadline mentioned above and also the information presented by the Government of Colombia on September 15, 1988, and decided to confirm its resolution on the merits of the case.

CONSIDERING:

1. That the new information provided by the Government of Colombia on the investigation conducted in this case, forwarded to the Commission on December 21, 1987, is not sufficient, in the opinion of the Commission, to proceed to a new examination of the matter nor does it warrant reconsideration of resolution No. 24/87, adopted at the 71st regular session of the Commission.

2. That the request for a declaration of inadmissibility made by the Government, in the same note, on the basis of supervening information or evidence is groundless, since this evidence does not alter the acts committed by units of the Ayacucho Battalion of the Colombian army. On the contrary, in its observations the Government corroborates these facts, as follows: "It is an incontrovertible fact that N.N. alias "Jacinto" was deprived of his freedom and cruelly attacked by members of the patrol, as sworn under oath by neighbors from the area, and that he was apparently the same much sought after individual that is, Luis Fernando Lalinde Lalinde." [FN1]

[FN1] See p. 11 of the observations of the Government of Colombia.

3. That, similarly, the Government adds that "the earlier statements are corroborated by the description the peasants gave of his physical appearance and that of the clothing he was wearing on the day of the events, which corresponded to the clothing that his relatives said he was wearing when he went to that area and even more so with the clothing found with the remains of the individual N.M. alias "Jacinto," who was killed by the army and buried in the mountains in the district of the village of Ventanas." (Exhumation and autopsy report, folio 231 CO) [FN2]

[FN2] Ibid., p. 12.

4. As seen from paragraphs 2 and 3, the Government points out that the individual N.N. alias “Jacinto” is the same person as Luis Fernando Lalinde, thereby no longer constituting a “disappearance” since the identity of the victim was confirmed. However, the violation of the right to life continues since N.N. “Jacinto” or Luis Fernando Lalinde was killed by members of the Ayacucho Battalion. Even though the Government points out in its observations, that there is no proof different from the version given by the uniformed personnel: “he was killed when he tried to escape after attacking a sentry,” is the same Government, who point out “and to date it has not been possible to determine the circumstances surrounding that event because the Thirteenth Court of Criminal Investigation of Medellin, empowered to investigate the case, has been unable to exhume the corpse again because of lack of cooperation in indicating the place where the remains were buried, by the Military Criminal Justice authorities, or more exactly by the persons who took part in the exhumation and autopsy conducted by the 121st Military Court of Criminal Investigation on November 21, 1984.” (The underline is from the Commission).

5. That, on the contrary, all the information provided by the Government confirms resolution 24/87 of the Commission, paragraph 1 of which declares that the Government of Colombia has violated the right to personal liberty embodied in Article 7 of the American Convention on Human Rights, and the right to life, recognized in Article 4 of that international instrument, through the actions of its agents that led to the arrest and subsequent death of Luis Fernando Lalinde Lalinde, which occurred in the village of “Verdun,” in the Municipality of Jardin, Antioquia, on October 3, 1984; that information does not constitute supervening evidence that alters the facts denounced, but proves that Luis F. Lalinde’s personal integrity was violated, as shown in the testimony of various peasants from the village of Verdun contained in the observations of the Government dated December 21, 1987.[FN1]

[FN1] See pp. 11 of the Observations of the Government.

6. That in its observations the Government said that at no time had the criminal proceedings under way in the Third Court of Criminal Investigation of Andes been stalled; much less had there been an unwarranted delay in the decision on remedies under domestic law, as the text of resolution 24/87 seemed to suggest. In that regard, the Commission pointed that four years had elapsed since the initiation of the legal action (December 15, 1984), without it having been completed, let alone its outcome announced.

7. That the Office of the Prosecutor for the Armed Forces took cognizance of the case and ordered an investigation on February 11, 1985, which was subsequently shelved on July 19, 1985, and only two years later was the case ordered reopened, that is, three months after the Government received resolution 24/87 from the Commission.

Indeed, the Government asserted before this Commission that on December 10, 1987, the Office of the Prosecutor had issued indictments against Captain Jairo Enrique Piceros Segura, Lieutenants Jaime Andres Tejada Gonzalez and Samuel Jaimes Soto, and Second Corporal Medardo Espinoza Areiza as those allegedly responsible for the torture and physical and verbal abuse of the individual Lalinde. However, the Commission held a hearing during its 72nd session at which it received Mr. Alvaro Tirado Mejia, who reported that there had been a delay in issuing the indictment, which finally took place on March 8, 1988. That neither the military court nor the ordinary court trying the case rendered a decision, despite the protected period of time elapsed, which constitutes an unwarranted delay in the

administration of justice.

8. That through a note dated March 29, 1988, the Commission gave the Government of Colombia a period of 120 days to report on the findings of the investigation and later extended that period for another 30 days. To date the Commission has yet to receive any reply from the Government.

The Government of Colombia informed the Commission, during the 74th session, that the investigation was still in process and provided no evidence to contradict the facts presented.

9. That the complaint presented meets all the formal requirements for admissibility established by Article 46 of the American Convention on Human Rights, to which Colombia is a State Party, and by Article 32 of the Regulations of the Commission.

10. That the petitioner has asserted that he has invoked the remedies under domestic law provided for by Colombia's legislation and that to date he has not been able to obtain a satisfactory response to his demands, although almost four years have elapsed since he denounced the arrest of Luis Fernando Lalinde Lalinde by forces of the Ayacucho Infantry Battalion, which also constitutes an unwarranted delay in the administration of justice, as established in Article 46, paragraph 2.c, of the American Convention.

11. That the grounds for the complaint are such that they are not likely to be resolved through the friendly settlement procedure provided for in Article 48, paragraph 1.f, of the American Convention on Human Rights and Article 45 of the Regulations of the Commission.

12. That, since the friendly settlement procedure is not applicable, the Commission must comply with the provisions of Article 51, paragraph 1, of the American Convention and set forth its opinion and conclusions concerning the question submitted for its consideration.

13. That it may be concluded from paragraph 7 that the Government of Colombia has not adopted the recommendations of the Commission set forth in paragraph 2 of resolution 24/87, which recommends that the Government conduct a thorough investigation of the facts reported so that those responsible may receive the sanctions warranted so that those responsible may receive the sanctions warranted by such serious conduct. Thus far the Commission has not been informed that the guilty parties have been punished in accordance with the legal process under Colombian law.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:**

1. To confirm in its entirety the contents of resolution 24/87 on Case 9620. Substituting the phrase "detention and subsequent disappearance" by the phrase "detention and subsequent death" of Luis Fernando Lalinde Lalinde.

2. To declare that the State of Colombia has violated as well, the right to humane treatment upheld in Article 5 of the American Convention on Human Rights, through the actions of its agents.

3. To reiterate to the State of Colombia the recommendations contained in operative paragraph 2 of that resolution, recommending to it that it punish those responsible for the acts.

4. To transmit this resolution to the State of Colombia and the petitioner.

5. To include this resolution in the next Annual Report of the Commission to the General Assembly

of the Organization of American States.