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Title/Style of Cause:	Orlando Garcia Villamizar, Pedro Pablo Silva Bejarano, Rodolfo Espitia Rodriguez, Edgar Helmut Garcia Villamizar, Gustavo Campos Guevara, Hernando Ospina Rincon, Rafael Guillermo Prado J., Edilbrando Joya Gomez, Francisco Antonio Medina, Bernardo Heli Acosta Rojas and Manuel Dario Acosta Rojas v. Colombia
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Decided by:	Chairman: Marco Tulio Bruni Celli; First Vice Chairman: Oscar Luján Fappiano; Second Vice Chairman: Michael Reisman; Members: Oliver H. Jackman; Leo Valladares Lanza; Patrick L. Robinson; Alvaro Tirado Mejía.
Dated:	06 February 1992
Citation:	Garcia Villamizar v. Colom., Case 10.235, Inter-Am. C.H.R., Report No. 1/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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BACKGROUND:

1. On March 8 and June 30, 1988, the Inter-American Commission on Human Rights received a complaint, to which the petitioner later added more information, wherein reference is made to the following:

On October 6, 1981, a car was stopped at the third bridge on the highway north from Bogota. Inside the car were Zuleika Adied Alvarez Rojas and Yadid and Yoluk Alvarez Murillo, who were on their way to school. The car and the children inside were intercepted by four people, one of whom was wearing the uniform of a traffic policeman; the other three claimed to be members of the F-2.

The abduction of the children climaxed in late May and early June 1982, when the Alvarez children were killed by their kidnappers in the hamlets of Murcas and Patio Bonito, in the jurisdiction of the town of Gachala (Cundinamarca), where F-2 agents with the National Police Force found their bodies behind walls on September 18, 1982.

The investigation into this kidnapping was conducted by staff of the DIPEC under the command of then Colonel Nacin Yanine Diaz. They arrested a number of people whom they suspected might somehow be implicated in the kidnapping and murder of the children. Between March 4 and September 13, 1982, as part of the operations conducted by the F-12, thirteen people were arrested-disappeared, two of whom were eventually murdered. The sequence of events was as follows:

On March 4, 1982, as part of these investigations, two young men, Pedro Pablo Silva and Orlando Garcia Villamizar, were arrested near the Universidad Nacional where the two were studying. Various witnesses saw that they were forced into a green panel truck, license plates HL 6794.

On March 8, 1982, two brothers, Samuel Humberto and Alfredo Rafael San Juan Arevalo, were arrested

under similar circumstances. They, too, were university students. Lieutenant Colonel Nacin Yanine, Commandant of the F-2, told the father of these two young men that they were well and that they would turn up sooner or later.

On August 18 of that year, the brother of Orlando Garcia, Edgar Helmut Garcia, left his home for an appointment with Rudolfo Espitia, who was a neighbor, and with another mutual friend. Edgar Helmut took the opportunity to take his four-year old nephew, Camilo Andres, for a walk. The child was the son of Orlando Garcia, who had disappeared. Edgar and Rodolfo never showed up for the appointment with their friend. The boy, Camilo Andres, was delivered to the XV Police Station by Major Alipio Vanegas Torres, DIPEC's Chief of Counterintelligence.

On August 23, 1982, Gustavo Campos Guevara, also a student at the Universidad Nacional, was the victim of a forced disappearance. The young man left his home for the University and never returned. As to his whereabouts, his family received one phone call from him, made from some military facility.

On September 11, 1982, Hernando Ospina Rincon was taken by individuals in civilian dress who identified themselves as members of the F-2. They appeared at his mechanic's shop in the "Las Ferias" neighborhood of Bogota, in a wine-colored Mercedes Benz, license plates FC-9405. They asked for the owner of the shop and when Hernando identified himself as the proprietor they shoved him into a coffee-and-cream colored panel truck, with the identifying numbers 459.

On September 12, 1982, one day later, another student, Rafael Guillermo Prado Useche, a friend of Pedro Silva and the Garcia brothers, was arrested. At the time he was arrested, Rafael Guillermo was on his way to the shop of Hernando Ospina, where he had his car for repairs. The mother and sister of the young Prado Useche say that he was pushed violently into a wine-colored Mercedes Benz, license plate FC-9405, the same vehicle used by the abductors of Hernando Ospina Rincon the day before.

On September 13, 1982, Edilbrando Joya and Francisco Antonio Medina were taken. The former was a student at the Universidad Nacional and a friend of Edgar Garcia. He was apprehended near his house in Bogota, by individuals in a camper with a red carpet. Two days later he was seen in the town of Gachala, heavily guarded by F-2 personnel.

Francisco Antonio Medina left his home on the morning of September 13 and never returned. His brother Arnulfo was taken that same day by F-2 personnel. Arnulfo's captors forced him to confess to his part in a kidnapping, telling him that they had already killed Francisco. On the night of September 13, Francisco Antonio Medina was found dead in a supposed anti-kidnapping operation in the town of Anolaima.

On September 15, 1982, in an F-2 operation in the town of Gachala where Edgar Garcia Villamizar and Edilbrando Joya had been seen, the intelligence corps apprehended the brothers Bernardo Heli and Manuel Dario Acosta Rojas. When Bernardo was arrested, his brother Manuel Dario, who was deaf, rushed at the F-2 agents who were beating up his brother, which was why he, too, was taken. There has been no further news of him. Bernardo Heli was found dead on October 7, 1982, supposedly "shot down" in a police operation conducted by those same agents of the F-2.

These arrests were made in two stages: four of the arrests occurred in March 1982, and the others between August and September. This would appear to indicate that the purpose of the first arrests was to ascertain the whereabouts of the children of Jader Alvarez; the other arrests, which took place after the children's dead bodies were discovered, were for revenge.

The victims of the abductions in question were as follows:

1. Orlando Garcia Villamizar, March 4, 1982.
2. Pedro Pablo Silva Bejarano, March 4, 1982,
3. Alfredo Rafael San Juan A., March 8, 1982.
4. Samuel Humberto San Juan A., March 8, 1982.
5. Rodolfo Espitia Rodriguez, August 18, 1982.
6. Edgar Helmut Garcia Villamizar, August 18, 1982.
7. Gustavo Campos Guevara, August 23, 1982.
8. Hernando Ospina Rincon, September 11, 1982.
9. Rafael Guillermo Prado J., September 12, 1982.
10. Edilbrando Joya Gomez, September 13, 1982.

11. Francisco Antonio Medina, September 13, 1982.
12. Bernardo Heli Acosta Rojas, September 15, 1982.
13. Manuel Dario Acosta Rojas, September 15, 1982.

Of these people, the following were involved in the trial conducted by the 10th Superior Court of Bogota for the kidnapping and murder of the Alvarez children: Pedro Pablo Silva, Edgar Helmut, Orlando Garcia Villamizar, and Rafael Guillermo Prado Useche. Pedro Pablo and Edgar Helmut were convicted subsequent to their disappearance. Orlando Garcia and Guillermo Prado were cleared of all charges. The other young men, who had either disappeared or been murdered, were not named in the trial.

THE PROCESSING OF THE CASE IN ACCORDANCE WITH THE REGULATIONS

2. On September 28, 1988, the IACHR sent the Government of Colombia the pertinent parts of the denunciation.

3. On December 21 of that year, the Government of Colombia replied to the Commission's request. Invoking the provisions of the American Convention and the Commission's Regulations, it asked that the IACHR refrain from examining the petition since the case of the disappearance of the brothers Alfredo Rafael San Juan A. and Samuel Humberto San Juan A. was being examined by the United Nations Human Rights Committee established under the International Covenant of Civil and Political Rights. This letter was sent to the petitioner on December 29, 1988.

4. On January 17, 1989, the Commission asked the Government of Colombia to advise it of the date on which the United Nations Human Rights Committee had taken cognizance of the instant case and whether all the names that appeared in the initial complaint sent to the IACHR also figured in the case being examined by the Human Rights Committee.

5. On January 18, 1989, the petitioner wrote to the Commission. In reply to the communication from the Government of Colombia the petitioner addressed the evidence of the violations denounced and the issue of exhaustion of the remedies under domestic law and asked the IACHR to decide whether the petition was admissible. The pertinent parts of that communication were forwarded to the Government so that it might present its comments.

6. On February 27, 1989, the Government of Colombia sent the IACHR another communication wherein it again pointed out that on July 11, 1985, through decision CCPR/C/25/D/181/1984, the case in question, involving the brothers Alfredo Rafael and Samuel Humberto San Juan Arevalo, had been declared admissible by the Human Rights Committee of the International Covenant of Civil and Political Rights. It went on to say that the United Nations Working Group on Enforced or Involuntary Disappearances was looking into the disappearance of the following persons: Orlando Garcia Villamizar, Pedro Pablo Silva Bejarano, Edgar Helmut Garcia Villamizar, Rodolfo Espitia Rodriguez, Gustavo Campos Guevara, Hernando Ospina Rincon, Rafael Guillermo Prado Useche, Edilbrando Joya Gomez, Francisco Antonio Medina Londono, Bernardo Heli, and Manuel Dario Acosta.

7. On February 16, 1989, the petitioner added more information to his letter of January 18, forwarding a letter from the Attorney General of the Nation, dated December 21, 1988, which supported the petitioner's claim that the remedies under internal law had been exhausted. The letter pointed out that the decision of the Military Criminal Tribunal to order the dismissal of all the charges, was upheld by the higher Military Tribunal on July 6, 1987. This communication was sent to the Government of Colombia. The Commission asked for a swift reply.

8. On June 16, 1989, the Government of Colombia stated that the Special Prosecutor for Human Rights was conducting disciplinary, military and criminal investigations into the matters denounced. That

information was sent to the petitioner for comment.

9. In a letter received on August 18, 1989, the petitioner noted the issue of incompatibility raised by the Government of Colombia as regards the simultaneous processing of this case by the IACHR and by the United Nations Committee of the International Covenant of Civil and Political Rights. The petitioner asked that the Commission bear in mind that the case for incompatibility could be made only in relation to the San Juan Arevalo brothers, where there was an incompatibility; but no such case could be made with regard to the other persons listed as victims in the petition in process.

10. On December 13, 1989, the Commission received the petitioner's response to the Government's observations, wherein he restated his position on the matter of exhaustion of the remedies under internal law. The petitioner pointed out that the proceedings under the military system of criminal justice had ended back in 1987, when all charges against those responsible for these violations were dismissed.

11. On March 13, 1990, the petitioner wrote to the IACHR asking that it issue a decision on the instant case. The petitioner made his case for the admissibility of his petition and for the facts established in connection with each of the alleged victims. This communication was sent to the Government of Colombia on April 10, 1990.

12. On May 8, the Government of Colombia asked the IACHR to extend the time period set for providing the requested information. In a letter dated June 18, the Commission agreed to a 60-day extension.

13. On June 10, the petitioner again asked that the IACHR issue a decision on the case and sent it additional information on the decision of the Office of the Special Prosecutor for the National Police, dated December 29, 1989. That request was made yet again in a communication dated October 3, 1990.

14. During its 78th session, on October 3, 1990, the Inter-American Commission on Human Rights held a hearing for the purpose of hearing the two sides' arguments. The petitioner stated, *inter alia*, that it was established that the remedies under domestic law had been exhausted since the military criminal tribunal had handed down its final decision; he also pointed to the delay in the ordinary criminal justice proceedings, which in his judgment demonstrated that the Colombian Government had no interest in settling this case quickly and effectively. For their part, the representatives of the Colombian Government stated that the machinery of the proceedings in the case was in full motion and that this demonstrated that the ordinary criminal justice system had not reached a final decision on the case. They also pointed to the fact that the Office of the Special Prosecutor was pursuing the investigations against some of officers who had been charged and that, consequently, the disciplinary administrative recourses were functioning as were those of the criminal justice system.

THE INTERNAL INVESTIGATION PROCESS

With the Ordinary Courts:

In 1982, three investigations of the disappearances and murders were launched, on the following dates: September 11, 1982. An investigation was undertaken based on the complaint brought by the wife of Hernando Ospina. The trial judge was from the Bogota Circuit Criminal Court, while the examining magistrate was from the Bogota's 37th Criminal Court of Inquiry.

December 2, 1982. The investigations of the crimes committed against the Acosta Rojas began, based on a complaint filed by the family of the two young men. The examining magistrate was from the Gachala Municipal Court, while the trial judge was from Bogota's 28th Superior Court.

December 19, 1982. The investigation was launched into the abduction of Guillermo Prado Useche, based

on a complaint filed by the family of the young man who had disappeared. The trial judge was from the 28th Criminal Circuit Court of Bogota, while the examining magistrate was from Bogota's 56th Criminal Court of Inquiry.

At the request of the National Bureau of Criminal Investigations, these inquiries, and the others related thereto, were joined in a single case. The examining magistrate was from Bogota's Ambulatory Criminal Bench, while the trial judge was from the 35th Criminal Court of Bogota.

On October 29, 1984 the 35th Criminal Circuit Court forwarded the case to the Office of the Inspector General of the Police to continue the proceedings involving the members of the police force who had been implicated.

The 35th Criminal Circuit Court of Bogota, which was the trial judge, continued the proceedings against Maria Lilia Rojas, mother of one of the children of Jader Alvarez. On July 7, 1987, prosecution of this case was with the 34th Criminal Court of Inquiry, which referred the proceedings to the Technical Corps of the Judicial Police where they are now on file.

With the Military System of Criminal Justice:

Once the case was received in October 1984, the Office of the Inspector General of the National Police referred it to the Bogota Police Department to act as lower court judge, i.e., the examining judge. In April 1985, the 77th Criminal Court of Military Inquiry was designated to take evidence.

On September 26, 1985, the Commander General of the Military Forces appointed the Inspector General of the National Police as Sole Judge of First Instance. That same month, the 53rd Criminal Court of Military Inquiry was designated to conduct the proceedings.

On March 1, 1987, the Office of the Inspector General of the National Police ordered the dismissal of all charges against the accused. This decision was upheld on July 6, 1987, by the Superior Military Tribunal.

With the Office of the Attorney General of the Nation:

As in the case of the criminal investigations, in response to the many complaints received from the families of the victims, various delegates from the Office of the Attorney General launched preliminary government inquiries that were joined in 1983 upon establishment of the Special Committee headed by Dr. Federico Torres Donado.

Between March and August 1984, the Special Committee presented the Attorney General with a number of reports wherein it asked that criminal and disciplinary proceedings be instituted against a number of those responsible. After the reports were presented the case was referred to the Office of the Special Prosecutor for the National Police, where it remained until 1989.

On January 10, 1989, the Attorney General instructed the Special Prosecutor for Human Rights to make a determination.

On December 29, 1989, the Ad Hoc Special Prosecutor for the National Police decided to begin a disciplinary inquiry against four of those implicated in three of the disappearances. The final ruling exonerated the commandant of F-2 and 17 others who had been implicated and against whom the Investigating Committee had sought criminal and disciplinary sanctions.

Current standing of the investigations:

There is no possibility that any of the investigations still in progress will result in criminal sanctions against state officials who committed the violations, as they were exonerated when the case was dismissed. That verdict was upheld by the Military Superior Court on July 6, 1987, thereby making it res judicata. The investigation being conducted by the Office of the Attorney General will produce nothing other than administrative sanctions. The criminal investigation -which is still underway technically speaking, but in fact is filed with the judicial police- could, if activated, only be targeted at private individuals (and not against members of the Armed Forces) who were involved in the disappearances.

Consequently, there are no other remedies to be exhausted.

THE FACTS AS ESTABLISHED BY THE INVESTIGATIONS CONDUCTED

15. Despite the dismissals handed down in the lower military court, the higher military court and then the Military Superior Court clearing those members of the police force who had been charged with being the authors of the illegal arrest and subsequent enforced disappearance of the victims, the charges against each of them, individually, were proven in the course of the impartial investigations that the organs under the authority of the Office of the Attorney General conducted.

16. The facts established by the petitioner on the basis of those investigations and not refuted by the Government are, case by case, the following:

The case of Pedro Pablo Silva Bejarano:

17. A medical student at the Universidad Nacional, Pedro Pablo Silva Bejarano disappeared on March 4, 1982, in the vicinity of the university in Bogota where he was taking courses. Pedro Pablo was taken on March 4 along with Orlando Garcia Villamizar and forced into a green panel truck bearing license plates HL 6794. The individuals who apprehended him identified themselves as belonging to the F-2. In August 1983, the National Transportation Institute certified that these and 44 other pairs of plates had been delivered to the DIPEC (F-2 Intelligence).

During the investigations, the Public Prosecutor's Office was able to establish that Pedro Pablo's name was on the lease of the house where the Alvarez children had been held captive. From that the Special Committee appointed by the Attorney General concluded that the only individuals who might have an interest in apprehending these young men were the F-2 agents in charge of the kidnapping investigation. Then, too, there was the fact that the car into which Silva Bejarano was shoved belonged to F-2.

The individuals who seized Pedro Pablo did so in a public place, so that there were many witnesses when he was taken, among them Mr. Hector Barbosa Rubio, whose statement was summarized in the judicial proceeding of March 12, 1987, by the Commandant of the National Police.

Some students at the University also witnessed what happened and called Pedro Pablo's family. His father Trino Josue and his sister Maria Elizabeth Silva Bejarano made inquiries with several government offices in an attempt to establish Pedro Pablo's whereabouts. At the sixth police station, Maria Elizabeth was told that a young man whose clothes fit the description of those that Pedro Pablo had been wearing that day, had been buried in a common grave some days earlier. Later, in a news report, Miss Silva thought she recognized her brother as the young man reported as having been killed in the outskirts of the city. However, when she went to the authorities to ask to identify the body, she was not permitted to do so. Pedro Pablo Silva never reappeared and is still missing today.

The case of Orlando Garcia Villamizar:

18. Orlando Garcia was taken with Pedro Pablo Silva Bejarano on March 4, 1982, and also forced into a green panel truck bearing license plates HL 6794, which belonged to the F-2. The Attorney General's office made the identification of this vehicle. It established that even though the plates were not on record with the police, the National Transportation Institute (INTRA) had delivered them to Lieutenant Victor Manuel Paez Guerra for official business.

As in the case of Pedro Pablo, the students who witnessed the arrest alerted Orlando's family about what had transpired. His family also had the painful task of making inquiries as to his whereabouts with all

official departments, which denied that he had been arrested. However, among the evidence compiled are summaries of statements made by Raúl Esmir Garcia Villamizar, Orlando's brother, Jose Garcia and Drigerio Morales Chacon. From their accounts, there is no doubt whatever that Orlando Garcia was seen by a brother of the attorney Guillermo Neisa in the infirmary of the Brigade of Military Institutes, subsequent to his capture. Between June and July 1982, this attorney established that Orlando was indeed in the Brigade infirmary. That statement was supported by Jose Garcia's testimony to the effect that a B-2 agent, Jairo Torres, told him that Orlando was being held at the Brigade.

The case of Edgar Helmut Garcia Villamizar:

19. Edgar Garcia Villamizar, a young man 21 years of age and a sociology student at the Universidad Nacional, left his home on August 18, 1982, to meet Rodolfo Espitia, who lived in the same neighborhood. The two were scheduled to go to the Colombian Institute for the Advancement of Higher Education to file a job application. Edgar Helmut took his four-year old nephew, Camilo Andres, with him. The child was the son of Orlando, who had disappeared. Edgar and Rodolfo never reached the ICFES, where their friend Orlando Badillo was waiting for them. The child, Camilo Andres, was brought into the XV Police Station by Major Alipio Vanegas Torres, DIPEC's Chief of Counterintelligence.

The Intelligence Group at F-2 told the Inspector General of the Police, who had been designated Lower Court Judge, that Edgar Helmut had been apprehended by police, together with Rafael Prado Useche, on August 19, 1982, in "La Tercera" church, as "they were protesting against the government," and that they had been released immediately (page 67 of the proceedings of March 12, 1987, on file). This version is inconsistent with what occurred with Edgar Helmut Garcia and Rodolfo Espitia, since were it true, then how does one explain the presence of Camilo Andres at the XV police station, taken there directly by Major Vanegas, much less the fact that Edgar Helmut was seen in Gachala in September 1982.

The F-2 contradicted itself when it initially claimed that the boy Camilo Andres had been found lost in the street, but later said that he had been picked up on the basis of a telephone tip (page 7 of the proceedings). The little boy told his family that his uncle had been taken by men in civilian clothes and put in a truck.

Moreover, a number of witnesses saw Edgar Garcia Villamizar in the town of Gachala on September 15, 1982. The young man had a broken nose; he was in handcuffs and guarded by F-2 agents. Mrs. Ana Elvira Zarate made a statement to that effect.

The foregoing was corroborated by the testimony given by Gloria Berenice Villamizar and Jose Garcia, the parents of Orlando and Edgar Helmut; the latter telephoned his parents in September and told them that his brother Orlando was under arrest and that they would release him, which shows that at the time he was still alive.

Based on statements taken from the witnesses who saw the treatment inflicted upon Edgar Garcia, Edilbrando Joya, and the Acosta brothers in Gachala, the Public Prosecutor, in a proceeding on January 30, 1987, imposed a token disciplinary action against the three officers implicated, consisting of a 20-day suspension; that sanction, which was later reduced to 15 days, is important since it contradicts the F-2 report to the effect that Edgar Garcia was arrested and immediately released.

The case of Rodolfo Espitia Rodriguez:

20. Rodolfo Espitia, a tailor's assistant, left his home on August 18, 1982, to meet his friend "Mauricio," whom the parents of Rodolfo later identified in a photograph as being Edgar Garcia Villamizar. He never returned. The circumstances of the arrest of Rodolfo, who was 21 at the time he disappeared, are identical to those of Edgar Helmut.

Rodolfo had to go to the driving school he had enrolled in the day before, but he never arrived, according to what his parents were told. The authorities, including the F-2, denied having arrested Rodolfo, and Major Vanegas told Rodolfo's father that there was an arrest warrant out against Edgar Helmut, Orlando and Pedro Pablo, but not against Rodolfo Espitia.

Rodolfo's parents, Siervo Ignacio and Bertilda, told the authorities that a friend of their son, called Antonio Sanchez, had told them he had learned that Rodolfo was in the DAS facilities in Cali, under another name; Sanchez had gotten that information from a member of Army intelligence by the name of Hector Daza. When the time came to make a sworn statement in court, Sanchez denied his earlier story. Officer Daza threatened Siervo Ignacio for having made that statement in the presence of the Public Prosecutor, according to testimony given by Siervo Ignacio on February 23, 1984.

Later, on September 12, 1982, at the family home of Siervo Espitia, a telephone call was received from Rodolfo. With his voice breaking, he said "I'm lost." That was the last anyone heard from him. He is still missing.

The case of Hernando Ospina Rincon:

21. Hernando Ospina Rincon, a welder by trade, was taken on September 11, 1982, by individuals in civilian dress who identified themselves as members of the F-2. They appeared at his shop in the "Las Ferias" district of Bogota, in a wine-colored Mercedes Benz, bearing license plates FC-9405.

Once there they asked for the owner of the shop and Hernando identified himself as the proprietor. At that they shoved him toward a cream colored panel truck with the numbers 459. Ospina's employees -Antonio Tavera, Giovanni Rodriguez and his nephew Luis Ospina- tried to help Hernando, but two of the men threatened them, identifying themselves as F-2 agents.

The Public Prosecutor's Office established that the Mercedes Benz was the property of the mother of the kidnapped girl, Zuleika Alvarez, and that the F-2 had a panel truck with the numbers 459, which fit the description of the one that Hernando Ospina was forced into.

The F-2 denied any part in this affair. When doca Maria Elena Ruiz, wife of the disappeared, inquired for Hernando at the F-2 facilities, Captain Venancio Galvis told her that Ospina Rincon was not there and that the Mercedes Benz with license plates FC-9405 had once belonged to the F-2, but had recently been sold. The Public Prosecutor's Office disproved that story when it established that the car had never belonged to the F-2.

Later, Mr. Jose Santos Sosa, a friend of Hernando and his wife Maria Elena, received a telephone call from someone who identified himself as Gustavo Ramirez. He told him that Hernando was in "serious trouble."

The case of Rafael Guillermo Prado Useche:

22. Rafael Guillermo Prado, a law student in his last year at the Universidad Nacional, left his home in the vicinity of the Bogota Polo Club on September 12, 1982. His mother Faustina Useche de Prado and his sister Ana Cecilia Prado saw how Rafael Guillermo was forced into a wine-colored Mercedes Benz bearing license plates FC-9405 and then beaten once inside.

This was the same car that the F-2 agents had used the day before when arresting Hernando Ospina Rincon. Rafael Guillermo's car was at Ospina's shop for mechanical repairs and young Prado was headed

there when he was stopped and arrested.

Rafael Guillermo Prado was linked to the investigation being conducted into the kidnapping of the children of Jader Alvarez. When the time came for the Court to hand down a verdict, the case was dismissed. However, DIPEC F-2 believed that Rafael Guillermo was involved in the kidnapping, which makes the motive for and authorship of the disappearance obvious. This was what the Investigating Committee reported to the Office of the Attorney General of the Nation when it asked that those responsible be punished. That punishment was never imposed.

The case of Edilbrando Joya Gomez:

23. Edilbrando Joya, a student of mechanical engineering at the Universidad Nacional, was seized on September 13, 1982, near his home in Bogota, by men driving a red camper.

Shortly before his disappearance, on August 20, 1982, Edilbrando had been a witness to the murder of Dr. Alberto Alaya Montenegro, a professor at the Universidad Nacional. He saw the assailants and helped pick up the university professor's lifeless body. Thereafter, vehicles with features like those used by the F-2 secret police could be seen in the vicinity of Edilbrando's home.

On September 15 -in other words, two days after his arbitrary arrest-, Edilbrando was seen in the town of Gachala by Mr. Guillermo Calderon Farfan, who gave the lower court judge and then to the Investigating Committee appointed by the Attorney General a detailed account of what he saw. He said that he had known Edilbrando before. When he saw him in Gachala's town square, he went over to greet him and saw that he was handcuffed and surrounded by four or five individuals who he later learned were members of the F-2.

The mother of the young man who disappeared described in detail her futile efforts to establish his whereabouts when he failed to return home. Among the many authorities she approached was the F-2, where she spoke with Major Vanegas, the officer in charge of the investigation into the kidnapping of the children of Jader Alvarez. The officer told her that he did not know that Edilbrando was being sought for any reason; however, in order to be able to help investigate his whereabouts, he needed a photograph of the young man and some specifics about him. Edilbrando's family complied with this request, but the photograph and the information that they supplied to Major Vanegas appeared in the newspaper, identifying him as one of the abductors of Gloria Lara de Echeverry, a wealthy lady who had been kidnapped in June 1982. In a proceeding where Major Vanegas was brought face-to-face with Joya's mother, the former denied having furnished that information, stating that the published photograph had been taken by the journalists, which was obviously not only false but also impossible.

In the same proceeding, Joya's mother said she had received information from a lieutenant by the name of Herrera to the effect that her son was at the facilities of the Brigade of Military Institutes. In his original version, Lieutenant Herrera denied this completely. However, in a face-to-face proceeding with Joya's mother, he admitted to being confused because of the number of people who came to the Brigade.

The case of Gustavo Campos Guevara:

24. Gustavo Campos Guevara, a systems engineering student at the Universidad Nacional, left his home on August 23, 1982, headed for the university, where he was taking courses. He never returned.

One year earlier, in October 1981, Gustavo had been arrested by F-2 agents, along with the rest of his family, moments after an explosion near their home. At the time the Campos Guevara family was accused of making bombs, but was later released. Since that time, Gustavo had been followed by F-2 agents, one

of whom was the same agent who had arrested him in 1981.

On September 10, 1982, the Campos Guevara family received a phone call. With his voice faltering and without saying where he was, Gustavo said he was well. A few days later they received another call from a man who identified himself as a former agent with military intelligence. He told them the young man was at a military facility.

Gustavo's sister, Gladys Cecilia Campos de Vargas, told national authorities that on two occasions she had spoken with a former B-2 agent (military intelligence) who asked for money in exchange for information on her brother's exact whereabouts. He told her that Gustavo was being held at a military facility.

As in the case of Edilbrando Joya, the newspaper El Caleco published a report to the effect that the F-2 was conducting intensive investigations to determine the whereabouts of Gustavo, as they believed him to be involved in the kidnapping of Gloria Lara de Echeverry.

The cases of Bernardo Heli and Manuel Dario Acosta Rojas:

25. Bernardo Heli and Manuel Dario Acosta Rojas, peasants from the Gachala region and farmers and tailors by trade, were taken by members of the F-2 on September 15, 1982, during an operation being conducted in that town under the command of then Colonel Nacin Yanine Diaz. The arrest of Bernardo Heli took place in Gachala's town square, in the presence of many people. They knew the Acosta brothers lived in the region. When he saw Bernardo taken, Manuel Dario Acosta, who was deaf, rushed at the F-2 agents who had just seized his brother and were mistreating him. At this, the F-2 agents took Manuel Dario, too.

The Acosta brothers, along with Edilbrando Joya and Edgar Garcia Villamizar, were forced to board a helicopter of the kind leased by Jader Alvarez and were taken to the town of Murcas in the jurisdiction of the town of Gachala. This has been established through testimony given by Ana Elvira Zarate de Alvarado, Flor Marina Alvarado Zarate and Cleotilde Garzon, who not only saw the helicopter that landed near the latter's house, but also recognized Bernardo Heli. Ana Elvira Zarate said that the F-2 intelligence agents spent the night in her house, along with Edgar Garcia, nicknamed "the horse", and Bernardo Heli Acosta, whom the F-2 agents kept tied up against a wall. He was not allowed to eat (page 14 of the report of the Special Committee, March 9, 1984).

The records that DIPEC keeps of arrests shows that the Acosta brothers were arrested on September 16 and ordered released on September 17, 1982. But the fact of the matter is, they never returned home. As the Attorney General's Special Committee pointed out (page 15 of the report of March 1984), "the disappearance of Manuel Dario Acosta Rojas is the work of F-2 agents; his disappearance was unjust in every respect, as he had never been involved in anything criminal and there was not the slightest suspicion of guilt in his case; he was not suspected of being involved in any crime. His release, said to have taken place in room where DIPEC holds its prisoners, was a setup calculated to cover up a monstrous crime done to the person of this individual."

Bernardo Heli Acosta was found dead on October 7, 1982, supposedly shot in a police operation conducted by the very same F-2 agents who had been involved in the investigation into the kidnapping of the Alvarez children.

The case of Francisco Antonio Medina Londoco:

26. Francisco Antonio Medina, a farmer 36 years of age, left his house in the Ricaurte neighborhood

of Bogota, on the morning of September 13, 1982, which was the last time he was seen alive.

Medina Londoco, his wife Mariela and six children, shared their home with Francisco's brother Arnulfo Medina and his family. On September 13, Francisco planned to keep an appointment with a former boss, Mr. Antonio Ricaurte, and then meet his brother Arnulfo. When Francisco did not keep the appointment, Arnulfo decided to return to the home that the two brothers shared. When he arrived there he found that F-2 agents, under the command of Major Vanegas, had conducted a search of the premises. Arnulfo was arrested and tortured by F-2 agents, who tried to get him to confess that he and his brother were involved in a kidnapping. During the torture one of the agents told him that he had better confess since they had already killed his brother; if he refused to confess, the agent said, the same thing would happen to him.

On the night of September 13, Francisco Antonio was found dead, supposedly killed in a anti-kidnapping operation in the town of Anolaima. The F-2's official version was that Francisco Antonio belonged to a band of kidnappers and that he had been shot during the rescue of Mrs. Stella Rodriguez and her little son, who had been abducted in Bogota.

WHEREAS:

1. On the question of admissibility:

a. That the Commission is competent to examine the subject matter of this case given that it involves human rights violations contemplated in the American Convention on Human Rights, specifically, Article 4 on the Right to Life, Article 7 on Personal Liberty, and Article 24 on Judicial Protection as provided for in Article 44 of the Convention to which Colombia is party.

b. That the petition satisfies the formal requirements for admissibility, as set forth in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

c. That in the instant case it is obvious that the petitioners have been unable to secure effective protection from the internal jurisdictional organs which, in spite of the irrefutable evidence available to them, cleared the responsible police officers of all charges by ordering that the case be dismissed; therefore, whether or not the remedies under domestic law have been exhausted, the Government of Colombia cannot invoke those remedies to argue in favor of suspending the Commission's processing of this case: the protracted internal investigation of this case is unjustified and the proceedings that the civil criminal courts are conducting at this time apply only to civilians but not to the police officers who, by all the evidence presented in the body of this report, are the guilty parties but who have been cleared by the military courts, as said earlier.

d. That except for the case of the brothers Samuel Humberto Sanjuan Arevalo and Alfredo Rafael Sanjuan Arevalo, which has been the subject of a ruling by the Human Rights Committee of the International Covenant of Civil and Political Rights of the United Nations, the present petition is not pending settlement in any other international arrangement; nor is it a copy of a petition already examined by the Commission, since the fact that it was examined by the Working Group on Enforced or Involuntary Disappearances of the United Nations does not prevent the IACHR from taking cognizance of the case and issuing its opinion on it.

2. On the Colombian Government's investigations:

a. The serious investigations that the Government of Colombia has conducted through the Office of the Attorney General and the Special Prosecutor for Human Rights charge members of Colombia's police forces with responsibility for the events and stand in contrast to the ruling by the military court, which disregarded those investigations and dismissed all charges against the accused.

In effect, the investigation by the Public Prosecutor concludes by stating categorically:

From what the facts show, there is not the slightest doubt that the disappearance of Orlando Garcia Villamizar, Edgar Helmut Garcia Villamizar, Bernardo Heli Acosta Rojas, Manuel Dario Acosta Rojas, Pedro Pablo Silva Bejarano, Hildebrando (sic) Joya Gomez, Alfredo Rafael and Samuel Humberto San Juan Arevalo, Manuel Guillermo Prado Useche, Hernando Ospina Rincon, and Rodolfo Espitia Rodriguez was a reprisal for the politically motivated abduction, since the kidnappers were a cell similar to M-19. Jader Alvarez played an active role in these events, with the consent of F-1 and some private individuals.

For its part, the Office of the Special Prosecutor for Human Rights, who also concluded that a number of Colombian police officers were responsible for what had happened, issued a decision involving a formal disciplinary action against those police officers.

3. On other aspects of the processing of this petition:

a. That the facts which gave rise to this complaint are not by their nature amenable to friendly settlement procedures and the parties did not request this procedure as provided for in Article 48.1.f of the Convention and Article 45 of the Commission's Rules of Procedure.

b. At present, the friendly settlement procedure of which Article 48.f of the American Convention and Article 45 of the Regulations of the Commission speak are not applicable, so that the Commission must comply with Article 50.1 of that Convention by issuing its opinion and conclusions on the matter put to it for consideration.

c. In prosecuting the instant case, all the legal and statutory procedures set forth in the Convention and in the Commission's Regulations have been exhausted.

4. Other considerations:

a. As this case has developed, it has been established, and the Government of Colombia has not denied, that members of the Colombian police participated in the seizure and subsequent disappearance of the persons listed as victims under paragraph 1 in the section titled "Background" in this report, all of whom were involved or suspected of being involved in the abduction of the Alvarez children. This was borne out by the findings of the reports prepared by the Colombian Government's competent organs.

b. The kidnapping and murder of the children of Mr. Jader Alvarez is an atrocity, but the response of a State of law to the commission of a punishable crime must be decided by the courts and it is inadmissible to punish those who by law are called upon to investigate.

c. In resolutions AG/RES. 666 (XIII-0/83) and AG/RES.742 (XIV-0/84) the General Assembly of the Organization of American States declared that "the forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

Based on these considerations, the Commission reached the following conclusion:

That under the terms of Article 1.1 of the American Convention on Human Rights, the Government of Colombia has violated articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 25 (right to equal protection of the law) of that Convention, of which Colombia is a State Party, with respect to the abduction and subsequent disappearance of the following persons: Orlando Garcia Villamizar; Pedro Pablo Silva Bejarano; Rodolfo Espitia Rodriguez; Edgar Helmut Garcia Villamizar; Gustavo Campos Guevara; Hernando Ospina Rincon; Rafael Guillermo Prado; Edilbrando Joya Gomez; Francisco Antonio Medina; Bernardo Heli Acosta Rojas, and Manuel Dario Acosta Rojas.

Moreover, its position was that Colombia must pay compensation to the victims' next-of-kin, and recommended to that Government that, pursuant to the recommendations made by the Investigating Committees of the Attorney General of the Nation and the Special Prosecutor for Human Rights, it order that a thorough and impartial investigation of the facts denounced be reopened and that in view of the

charges made by both those bodies and to avoid censurable acts that strike at the very foundation of the legal system, it order a review of the very grave but never disproven charges against the officers whose case was dismissed, taking into consideration the principle whereby *res judicata* does not exist when there has been serious judicial error.

To request that the Government of Colombia guarantee the safety of the witnesses to the events, who have risked their lives to provide their invaluable and valiant cooperation in the efforts to ascertain the facts, and that it give them the protection they require.

In furtherance of the provisions of Article 50 of the American Convention on Human Rights, the Commission sent its report to the Government of Colombia. In a note dated July 2, 1991, the Government of Colombia argued for reconsideration of the Commission's decision, as follows:

I am hereby requesting that the Inter-American Commission on Human Rights reconsider case 10,235 in respect of the background information, facts, evidence, conclusions and recommendations contained in the Honorable Commission's report.

I am invoking the provisions of Article 54 of the Regulations of the IACHR, as amended at the 70th session held in June-July 1987.

This request for reconsideration is being presented within the allowed thirty (30) days, which began on June 4 of this year, as noted in the communication received from the Executive Secretariat of the Inter-American Commission on Human Rights.

The legal grounds for the request are as follows:

1. The petition should not have been admitted

When the petition was brought before the Commission, the remedies of internal jurisdiction had not been exhausted, as the interested parties themselves concede in their petition.

The Government of Colombia believes that the internal remedies have still not been exhausted. At the time the petition was submitted, the following actions and proceedings were in progress:

1. A disciplinary inquiry in the Office of the Attorney General of the Nation, in which the Special Prosecutor for Human Rights will render a decision on the merits.

2. An action with the regular court system which is making an investigation of certain individuals in connection with the events.

The regular criminal proceeding is underway. The Government also feels it is important to point out that apart from the proceedings conducted by the military criminal courts, the interested parties can file an action with the administrative-adjudicatory jurisdiction charging the State with negligence; the purpose of that jurisdiction is to determine whether there is any culpability on the part of the State and to compensate the victims should fault or negligence be proven.

2. Neither military nor regular criminal proceedings can be reopened under Colombia's system of criminal law, the Chief Executive cannot seek a reopening of a military criminal proceeding that ended in dismissal of the charges against the accused. This would violate the separation of powers and the principles of *res judicata* and *non bis in idem*, which are expressly upheld in Colombian law. Decisions taken by the Judicial Branch are respected by the Executive Branch, and Colombian law does not give the Chief Executive the authority to seek to have criminal investigations reopened. The Colombian legal system does have an extraordinary remedy that the interested parties or the Office of the Attorney General can file with the Supreme Court of Justice for a review of criminal proceedings.

The law allows such reviews specifically in the case of verdicts involving punishment. In the instant case, this remedy does not apply since the decision was for dismissal.

To be as clear as possible on this point, we shall cite the guidelines that the Office of the Attorney General of the Nation has in that regard:

As for judicial error in a case of *res judicata*, the domestic legal system makes provision for the ordinary remedy of appeal and the extraordinary remedy of review. However, the latter applies only in cases of decisions involving punishment.

Though these are viable remedies, if the interested parties believed there was some egregious judicial error, they could have made a case for disciplinary action against the civil servant who, in the opinion of the interested parties, made the decision either mistakenly or in bad faith.

3. Nature of the decisions of the Office of the Special Prosecutor for Human Rights

The decisions of the Office of the Special Prosecutor for Human Rights are strictly administrative and concern administrative and procedural irregularities. No court of law has found the Police Agents criminally responsible, because there was no evidence to support the charges made against them. Therefore, the first statement in the report on Case 10.235 on the responsibility of the Colombian Government is legally unfounded, since it has never been proven that the Police Officers and Agents were responsible for the alleged disappearances denounced in the petition.

4. Assessment of the facts and evidence cited in report number 11/91 concerning case 10.235

The Government of Colombia would like to clarify the following in connection with the background information, facts and evidence presented in the report in question:

Case of Orlando Garcia Villamizar and Pedro Pablo Silva Bejarano

The following statement appears on the first page of the Commission's report, in the fourth paragraph under section one:

The investigation into this kidnapping was conducted by personnel of DIPEC under the command of the Commandant, then Colonel Nacin Yanine Diaz. They arrested a number of people they believed might have been implicated in the kidnapping and murder of the children.

An important point here is that in Colombia all criminal investigations are conducted by and in the hands of the jurisdictional branch of the public power. Contrary to what the report indicates, under no circumstances was the investigation conducted independently by the former DIPEC. At the outset, it was in the hands of the Tenth Superior Court of the Bogota District, with assistance from the State Security Agencies. Though such agencies have Judiciary Police functions, they are always under the court's control.

Furthermore, Colombia respectfully wishes to point out to the Honorable Commission that the statement that is made here is a clear prejudgment of a fact that neither had nor has been proven in the proceedings conducted by the Inter-American Commission: "They arrested a number of people they believed might have been implicated in the kidnapping and murder of the children."

This statement is without legal foundation, as the examination of each case will show.

In the paragraph that concerns the alleged arrest of the two young men, Pedro Pablo Silva and Orlando Garcia Villamizar, the following should be pointed out:

If one studies the cases, one concludes that though there are several pieces of evidence, there is not one piece of direct evidence that proves with certainty that the alleged events happened and who the guilty parties are. To support this assertion, we cite the statements made by Mr. Jose Garcia on March 16, 1982, for the office of the Special Prosecutor for the National Police. The reason for this testimony was the account of the events given by his daughter, Miss Nancy Garcia Villamizar, who had not witnessed the alleged events directly but had heard the story from third persons. These third parties are not identified in the proceedings and the deponents do not know their names.

In the statement given by Miss Nancy Garcia Villamizar, on April 20, 1982, for that same office, she said that some boys she did not know had told her that her brother had been detained. In her statement she said that the license plate on the panel truck, according to the unknown eyewitnesses, was JT 0876.

Later, on April 29, 1982, Miss Garcia Villamizar made additions to her original statement and said that the license plate on the vehicle into which her brother Orlando had allegedly been pushed, according to these unknown third parties, was not the number given earlier, but rather number HL 6794.

This correction was made because in the days following her first statement, Miss Garcia Villamizar had seen a green panel truck on the streets of Bogota, which she assumed was the same one since the description of the driver fit the one that they had given her.

By the same token, Miss Garcia said that the panel truck was going fast and she was unable to see

whether or not it bore the marks of the accident that was said to have occurred on the day of the incident; however, she was able to see the driver extremely well, so well that in her statement she says that he was between 35 and 40 years of age, had an olive complexion and was heavysset; he had a mustache but did not wear glasses.

As the Honorable Commission can easily see, the testimony given by Miss Garcia Villamizar is not the kind of evidence that can be counted as proof positive or even the slightest clue as to how and by what means the alleged events occurred.

Even though the Inter-American Commission does not name the persons who allegedly witnessed the events in question, thereby denying the Colombian State its right to defend itself and refute the charges, we would like to examine the statement made by one of the individuals who, it would seem, witnessed the events. We are referring to Mr. Hector Miguel Barbosa Rubio, who made his statement on May 3, 1982, in the Office of the Special Prosecutor for the National Police.

Mr. Barbosa was the guard at the Dental Equipment Company, located at Calle 36 N° 22-38, in Bogota. He states that he saw someone being taken away as if he were under arrest. He did not see anyone running and believes that the persons who were taking the individual away could have been from the F-2 because they were carrying weapons in their hands. He does not remember the color of the vehicle into which the individual was put. He also contradicts Miss Nancy Garcia Villamizar and says that he never gave her a description of the person who appeared to be arrested. He also says that he cannot say whether the individual was young or old.

In the report in question, the Inter-American Commission on Human Rights states that Mr. Pedro Pablo Silva Bejarano was also detained, under the same circumstances as Mr. Orlando Garcia Villamizar. As proof it offers the statement of Mr. Hector Barbosa Rubio, saying that he was one of the eyewitnesses to the alleged arrests. However, after examining the statement made by Mr. Barbosa, one concludes, beyond a shadow of a doubt, that the information he supplied did not refer to an arrest involving two people. In his own words he saw only one man being driven away. He did not identify him and was unable to see whether the individual in question was young or old; he concluded that they were F-2 agents simply because they were bearing arms.

At the proceeding where Mr. Hector Barbosa' statement was taken, the Court showed him various photographs so that he might identify Orlando Garcia Villamizar and Pedro Pablo Silva. However, he was unable to identify either one as being the individual he had seen climb into the vehicle cited in the statement.

Mr. Barbosa commented that perhaps the events he had witnessed and the events under investigation were not the same.

As the Honorable Commission can appreciate, this statement makes a weak argument and is not convincing enough to enable one to say with certainty what transpired and who the authors were.

In the decree of August 5, 1983, in which the Judge of the Tenth Superior Court of Bogota ruled on the preliminary proceedings conducted to investigate the circumstances and the authorship of the kidnapping and murder of the Alvarez children, he was persuaded that the disappearance of Mr. Pedro Pablo Silva Bejarano was due to the latter's eagerness to avoid the law, since it had already been proven in court that he was the holder of the lease on the house in Bogota where the Alvarez children were held captive.

In the third paragraph on page 9 of the report, in connection with the case of Orlando Garcia Villamizar, a statement appears to the effect that among the evidence supplied are summaries of statements made by Raul Esmir Garcia Villamizar, brother of Orlando, Jose Garcia and Drigerio Morales Chacon; and the uncontestable conclusion drawn from their accounts is that Orlando Garcia was seen by a brother of the attorney Guillermo Neisa.

First of all, the Government of Colombia would like to point out that to label these accounts as uncontestable, to use the language of the report, is to go against the principle of challenging the evidence, since the accounts in question are accepted as truth without first being examined. Furthermore, as the testimony shows, none of the individuals in question was able to explain why Mr. Orlando Garcia was there since none of them was present. This is nothing more than hearsay.

The third statement is not true because the only contact that Mr. Orlando Garcia's relatives had was with

Mr. Guillermo Neisa, who never saw a young man by the last name Garcia in the infirmary of the Military Institutes Brigade. This is confirmed by the statement he made on May 5, 1983, before the Ninth Ambulatory Criminal Court of Bogota.

The first paragraph on page 9 of the report states that a number of university students were also witness to the events and notified the family of Pedro Pablo Silva Bejarano. However, despite the numerous inquiries conducted during the investigations, the identities of the alleged eyewitnesses to the events are still unknown.

As for the last part of that paragraph, where it states that the authorities prevented the family from identifying the body of a young man found on the outskirts of the city, this is patently untrue, as evident from the statement made by Mrs. Maria Elizabeth Garcia Bejarano, sister of Mr. Pedro Pablo, in Bogota on March 24, 1983, in the office of the Ninth Ambulatory Criminal Court. Quite to the contrary, in her statement she makes reference to the authorities' willingness to cooperate.

The Government of Colombia has the same observations here that it had in the previous case, i.e., that the alleged students who observed the events were never identified. In other words, the Commission is accepting as truth a version of events that the deponents themselves did not witness personally, but rather heard about elsewhere. Hearsay has no evidentiary value.

Case of Edgar Helmut Garcia Villamizar

On pages 9 and 10 of the IACHR report, the Commission attempts to draw some connection between the alleged disappearance of Mr. Edgar Helmut Garcia Villamizar and the fact that, apparently, little Camilo Andres was brought to the XV Police Station by Major Alipio Vanegas Torres. From the evidence and testimony compiled in the investigation conducted by the Ninth Ambulatory Criminal Court of Bogota, the conclusion is that Major Alipio Vanegas Torres, DIPEC Chief of Counterintelligence at the time, did not bring the young Camilo Andres to the XV Police Station, contrary to what the Commission' report states. The child was found alone, by a DIPEC patrol that was on duty at the time; because the patrol could not abandon its post, it asked its immediate superior, who in this case was Major Vanegas, for permission to take the child in.

On page 10 of the report, the Honorable Commission states that the F-2 contradicted itself because it had originally said that Camilo Andres had been found lost in the street, but later said that he had been picked up as the result of a telephone tip.

The facts are somewhat confused in the Commission's statement on this point. The telephone call was, in fact, the one made by the patrol that found the child, to request permission to take the child to the Women's Police. The two versions given by the Commission do not appear in the records.

Agent Gladys Marina Ramos Garcia, a member of the patrol that discovered the child, took him personally to the Women's Police, as recorded in the statement she made on September 6, 1983, before the Ninth Ambulatory Criminal Court of Bogota.

Case of Rodolfo Espitia Rodriguez

The IACHR's report on the alleged disappearance of Mr. Espitia does not contain any evidence to substantiate the statement it makes to the effect that his alleged disappearance and that of Mr. Edgar Helmut Garcia Villamizar occurred under identical circumstances. There were no eyewitnesses to the alleged events. Moreover, Mr. Espitia was not wanted by the law. He was not linked to any investigation; the inference is that his disappearance was due to motives other than those cited by the Commission.

The testimony given by the parents of Mr. Espitia, Mr. Siervo Ignacio Espitia and Mrs. Bertilda Espitia, and by his brother, do nothing to shed light on these events. Mr. Siervo Espitia, in a statement made on February 22, 1982, before the Ninth Ambulatory Criminal Court of Bogota, stated that he had merely assumed that his son had suffered the same fate as Edgar Helmut.

Furthermore, from the version given by the minor Camilo Andres, the conclusion is that this uncle never met with Mr. Rodolfo Espitia.

On page 11 of the IACHR report, the Commission states categorically that an alleged member of Army Intelligence by the name of Hector Daza threatened Mr. Siervo Ignacio Espitia.

In this regard, the only reference made to one Hector Daza in the statements taken during the various investigations appears in the testimony given by Mr. Siervo Ignacio Espitia, received by the Ninth Ambulatory Criminal Court of Bogota. There, Mr. Siervo Ignacio stated that he simply knew someone by the name of Hector Daza, who was connected to the neighborhood through the scouts. Mr. Siervo Ignacio also said that he assumed that the alleged Hector Daza belonged to a secret group attached to the Army.

Colombia refuses to allow something that has not been substantiated by proof to be accepted as fact, as happens in the portion of the IACHR report that concerns Mr. Hector Daza. The only facts that can be taken as truth are those that have been proven in some type of legal proceeding.

In the IACHR report, Mr. Siervo Ignacio Espitia's statement to the Prosecutor's Office on February 23, 1984, to the effect that he had been threatened by "Officer" Daza, is also accepted as fact.

The only evidence to warrant the Commission's referring to the alleged Hector Daza as an "Officer" is the statement made by Mr. Siervo Espitia who, as said before, said only that he assumed -though did not confirm- that the individual in question was in the Army. The Court in charge of the investigations explored every avenue in efforts to locate the alleged Hector Daza, but to no avail, because the information supplied to that office as to the identity and whereabouts of the alleged person was inadequate.

The report also states that Mr. Siervo Ignacio Espitia was threatened by "Officer" Hector Daza. On this point, after reading the statement made by Mr. Espitia, one concludes that he received a telephone call from an unidentified person who told him that he was going to sue him because of his statement. Nevertheless, Mr. Siervo Ignacio's own words were that he was not certain that the voice was that of the alleged Mr. Daza; he merely believed that it was his voice, though he could not swear to it.

Lastly, on July 19, 1983, Mr. Orlando Espitia Rodriguez, brother of Rodolfo, stated before the Ninth Ambulatory Criminal Court of Bogota that he was not told by one Hector Daza that his brother had been seen in the DAS facilities at Cali. He learned of this because of the question put to him by the Court. He said that he knew his mother had received a telephone call; it was not from Rodolfo, but from other people who called to inquire about the disappearance of Rodolfo Espitia.

As for that part of the report that states that in his statement before the Court, Mr. Antonio Sanchez denied the matter of the information supplied by Hector Daza to the effect that Rodolfo Espitia was in the DAS facilities in Cali, registered under another name, it should be pointed out that in a statement made on December 14, 1983, before the 36th Criminal Court of Bogota, Mr. Sanchez said that Mr. Hector Daza did not tell him that Rodolfo Espitia was being held in Cali. What Mr. Sanchez said was that of the many possibilities, Mr. Hector Daza speculated that he might be in detention in Bucaramanga, Cali or any other city, in some military institution or government facility.

Finally, Mr. Antonio Sanchez said flatly that he had no idea what Mr. Hector Daza's business or profession might be.

As is plain, this is mere speculation and has no value as evidence.

Case of Gustavo Campos Guevara

With regard to page 14 of the Commission's report, where it states that Mr. Gustavo Campos was being sought by the F-2, the Government of Colombia would like to make the following clarifications, based on the investigations conducted by the Office of the Attorney General of the Nation. As seen from the statements made by Siervo Campos Navarrete, Blanca Maria Guevara de Campos, Gladys Cecilia Campos de Vargas, Rosalba Campos Guevara, Luis Eduardo Campos Guevara, and Jorge Alberto Campos Guevara, Mr. Gustavo Campos Guevara was never the target of threats. Apparently what happened was that on two or three occasions, according to their testimony, Mr. Campos Guevara was on the same bus with a neighbor whom the Campos family assumed was a member of F-2; from what Gustavo Campos told them, he had the impression that the neighbor was watching him with a bad look on his face.

As for the telephone call that Mrs. Gladys Cecilia Campos de Vargas says she received, the Honorable Commission can see that the information provided in that statement was not sufficient for the authorities to identify the alleged B-2 agent. It was impossible to make an identification based on that information. Compounding this was the fact that the call was not repeated.

As for the third paragraph on page 14 of the IACHR report, concerning the account that Mrs. Gladys Cecilia Campos de Vargas gave the authorities of the conversation that she apparently had with a former B-2 agent, it is important to point up the following, in order to show the Commission the inconsistencies in the statements made by the alleged witnesses in this case and how little information they contain:

In a statement made before the Office of the Special Prosecutor for the National Police on October 19, 1982, Mrs. Gladys Cecilia Campos de Vargas stated that following her brother's disappearance, two individuals claiming to be from B-2 came to her home. She did not know their names nor did she see their identification. Moreover, the alleged former B-2 agents never returned.

However, in a statement made before the Ninth Ambulatory Criminal Court on March 4, 1983, Mrs. Gladys Cecilia Campos de Vargas stated that there was only one agent, not two. She also said that she saw him once or twice. She did not know either his name or his address. She said the alleged B-2 agent never returned.

As these statements show, Mrs. Gladys Cecilia was convinced that the individuals or individual -because her versions on this point contradict each other- was a former B-2 agent simply because the persons or person said so.

The investigations conducted and still in progress have been unable to confirm Mrs. Gladys Campos' account, since the information was too sketchy.

As for the report that appeared in the newspaper El Caleco concerning the case of Mr. Campos and the alleged F-2 investigations that linked him to the kidnapping of Mrs. Gloria Lara, with all due respect the Government of Colombia wishes to remind the Commission that in Colombia we enjoy freedom of the press. Hence, there are numerous publications in circulation in the country that print sensationalist stories that are utterly unconfirmed. Therefore, the Colombian State believes that the Honorable Commission should be careful about relying on such publications and not take their news as fact.

It is obvious that there was no investigation to which Mr. Gustavo Campos Guevara was linked that might explain his disappearance. Nor is there any serious evidence that agents of the State took part in his alleged disappearance. Moreover, the reasons for his alleged disappearance are unknown.

Finally, in the context of the criminal and internal proceedings, no relationship or nexus has been found between the kidnapping and murder of the Alvarez children and the case of Mr. Gustavo Campos Guevara. His case should not, therefore, be part of the collective proceedings being conducted by the IACHR.

Case of Hernando Ospina Rincon

From the statements made by Mr. Antonio Tavera and Mr. Giovanni Rodriguez, who do bodywork on automobiles and were eyewitnesses to the events, the individuals who came to Mr. Hernando Ospina's body shop said they were with F-2, but did not show any identification papers. When Mr. Hernando Ospina Rincon was taken from his shop to Avenida 68, his employees tried to help him and asked why he was being detained, whereupon they were threatened by the two subjects, who told them they were with F-2.

The IACHR report gives full credence to the statement made by the two men to the effect that they were F-2 agents, two men who were in fact criminals who took Mr. Ospina away by force.

These individuals did not identify themselves by showing the documents to be used in procedures of this type. They merely said they were F-2 agents. Unfortunately, in the commission of many crimes, criminals resort to all manner of devious means calculated to deceive and overcome any resistance. To achieve their illicit ends, for example, they might claim to have some type of authority, as happened in the case of the Alvarez children, whose kidnappers, at the time the children were abducted, claimed to be F-2 agents but in fact were not.

As for the wine-colored Mercedes Benz, license plate FC 9405, which the IACHR report says belongs to Mrs. Maria Lilia Rojas, mother of the kidnapped child Zuleika Alvarez, the Government of Colombia must inform the Commission that two detectives from the Security Administration Department (DAS), Alvaro Castro Velasquez and Maria Amparo Guevara, in compliance with an order issued by the Criminal Court, went to the Traffic Offices of Soacha, a suburb of Bogota, and there discovered that the plates in question belonged to a brown Mercedes Benz, not a wine-colored car like the one apparently used in certain alleged abductions.

As for the fact that Mr. OSPINA was forced into a brown and yellow panel truck with the numbers 459 on it, no evidence was found to confirm this statement. The only related information is a reference found in the statement that Mr. Antonio Tavera, who does bodywork on cars, made before the Ninth Ambulatory Criminal Court of Bogota. There he says that he was in a cafeteria when he heard that Mr. Hernando Ospina had been forced into a vehicle of that description. Mr. Tavera was unable to identify the person who made this comment.

The detectives from the Security Administration Department who investigated Mr. Ospina's disappearance said the same: when they looked into the matter, they located the cafeteria in question and spoke with Mr. Tavera, who told them that the remark he had heard was made by someone he did not know, at the cafeteria located in front of Mr. Hernando Ospina's shop.

The DAS detectives also found that the alleged brown and yellow panel truck, with the number 459 on it, did not belong to the F-2, contrary to what the IACHR report states.

As for the statement made by Mr. Jose Santos Sosa, received by the Ninth Ambulatory Criminal Court of Bogota on March 24, 1983, he said that he did not receive any phone call in reference to Mr. Hernando Ospina, contrary to the statement made on page 12 of the IACHR report.

Finally, there is neither reason nor evidence to link the alleged disappearance of Mr. Ospina Rincon to the kidnapping and murder of the Alvarez children. For that reason, this case should not have been part of the collective proceeding being conducted by the IACHR.

Case of Rafael Guillermo Prado Useche

It is untrue that the mother and sister of Mr. Rafael Guillermo, Faustina Useche de Prado and Ana Cecilia Prado, were able to watch as Rafael Guillermo Prado was forced into a wine-colored Mercedes Benz, as stated on page 12 of the IACHR report.

This is false, because Mrs. Ana Cecilia Prado, by her own account, given in the statement she made in the Ninth Ambulatory Criminal Court of Bogota, was in the town of El Guamo, in the Department of El Tolima, on the date of the alleged events. Likewise, Mrs. Faustina Useche de Prado also testified that she was in the town of El Chicoral, in that same department, on the day the events allegedly occurred.

As the Honorable Commission can appreciate, neither Mrs. Faustina Useche nor her daughter Ana Cecilia could have witnessed the alleged events.

Nor is there any evidence to verify how, when and where Mr. Prado Useche apparently was detained.

The statement that Mr. Prado Useche had gone to Hernando Ospina's shop at the time he was allegedly captured is also false, since his car was in a shop located in the vicinity of the Polo Club, and not at Hernando Ospina's shop.

Finally, the commission of inquiry from the Office of the Attorney General of the Nation never requested that those allegedly responsible be punished, contrary to what the Commission's report states. It could not have done so since the purpose of the commission was to make preliminary inquiries to determine whether there was sufficient material to launch investigations in the Offices of the competent Special Prosecutors.

Another reason why it could not have recommended sanctions was that all the evidence compiled in the investigation was preliminary; in other words it was not disputed because there was no opportunity to refute it. The proceedings were conducted without a hearing and the parties against whom the allegations were made were not present. Therefore, formal inquiries had to be instituted by the competent Special Prosecutors, which is in effect what happened.

Pursuant to the requests for an investigation -not for sanctions, as the IACHR report contends- filed by the special commission chaired by Dr. Federico Torres Donado, the Office of the Special Prosecutor for the Defense of Human Rights, on orders from the Attorney General of the Nation, appointed a number of attorneys to conduct inquiries for the purpose of establishing whether agents of the State had a hand in the disappearance of Mr. Rafael Guillermo Prado Useche. After a wealth of evidence was compiled, their finding was that there were no grounds to believe that any agent of the State was linked to the alleged events.

Here again, contrary to the way the Commission portrays it, there is no link or nexus between this case and the kidnapping and murder of the Alvarez children. It ought not to have been processed as part of the collective proceeding being conducted by the IACHR.

Case of Francisco Antonio Medina

As for the arrest of Mr. Arnulfo Medina, mentioned in the report, it must be made very clear that he was taken into custody by the Police because of his role in the kidnapping of Mrs. Gloria Stella Rodriguez and her son.

Mrs. Rodriguez identified Mr. Arnulfo Medina as one of the gang of abductors that had held her captive. Furthermore, Mr. Francisco Antonio Medina was killed in the anti-kidnapping operation conducted to rescue Mrs. Stella Rodriguez and her small son on September 13, 1982, in the town of Anolaima.

This was corroborated by the Judge of the Ninth Ambulatory Criminal Court of Bogota in the judicial review conducted in the 51st Military Criminal Court for the purpose of examining the evidence compiled in that court office. In other words, by examining the evidence, the Ninth Court was able to confirm that Mr. Francisco Antonio Medina died in the police rescue of Mrs. Rodriguez and her son.

The Office of the Attorney General of the Nation ordered that the inquiries into the alleged disappearance of Mr. Francisco Antonio Medina be filed, since it had been fully established that he died in a clash with F-2 patrols on September 13, 1982.

Finally, this case, too, is in no way related to the kidnapping and murder of the Alvarez children, as the Commission submits. It should not have been processed as part of the collective case the Commission has under examination.

Case of Bernardo Heli and Manuel Dario Acosta Rojas

Through the investigations conducted by its attorneys at the request of the special commission, the Office of the Attorney General of the Nation established that the Acosta Rojas brothers had been taken into custody by the Police, but were released two days later.

As for Mr. Bernardo Heli Acosta, the Office of the Special Prosecutor for the Defense of Human Rights, temporarily appointed as Special Prosecutor for the National Police, ordered that the case be filed once it was established that the individual in question had died in a clash police on October 7, 1982, as he was driving a car he had stolen some days earlier.

Case of Edilbrando Joya

In a statement made on March 11, 1983, in the Ninth Ambulatory Criminal Court of Bogota, Mrs. Ana Josefa Gomez de Joya, mother of Edilbrando, said that a neighbor by the name of Rafael Rodriguez had told her that he had seen Edilbrando Joya leave the house. There was a red jeep, with a black cab, parked in front of the Joya family home. One of the occupants of the vehicle, a young man, called out to him. It seemed that they were friends, because Edilbrando walked over to the parked car and got in. Mr. Rafael Rodriguez also told her that there were two young men in the vehicle.

On March 24, 1983, Mr. Rafael Maria Rodriguez Barbosa made a statement before the Ninth Ambulatory Criminal Court of the District of Bogota, confirming what Mrs. Ana Josefa Gomez de Joya had said concerning his encounter with Mr. Edilbrando on September 13, at 6:30 a.m., as the latter was leaving his

house. After greeting the occupants of a red jeep with a black cab, Mr. Edilbrando got in the vehicle and drove off chatting. Mr. Rodriguez found the encounter so natural that he didn't give it a second thought. Therefore, the statement made on page 12 of the Commission's report to the effect that individuals driving a red camper abducted Mr. Joya Gomez is not true.

In the first paragraph on page 13 of the IACHR report, it states that vehicles seen in the vicinity of the home of Edilbrando Joya had the distinctive markings of the vehicles used by the F-2 Secret Police. However, no evidence has been uncovered in any of the investigations to warrant such a statement; indeed, the only evidence that makes any reference to this is the statement made by Mrs. Ana Josefa Gomez de Joya to the effect that she saw a van outside a shop near her home. The owner of the shop told her at the time that he thought the vehicle belonged to the F-2.

As the Honorable Commission can see, in an investigation or proceeding such a statement would not be sufficient to link agents of the State to the alleged disappearances of Mr. Joya.

Furthermore, in the statement made by Mr. Guillermo Calderon Farfan before the Office of the Special Prosecutor for Judiciary Police, on February 22, 1984, he said that he saw Edilbrando Joya in Gachala only and was able to speak with him without anyone interfering. Edilbrando told him that he was involved in some business deal. As for the fact that Mr. Edilbrando Joya was handcuffed, as stated in the report of the Commission, Mr. Calderon Farfan, the only person who saw him, stated that Edilbrando's hands were not visible because he was wearing a ruana.

A clarification is also in order with regard to the final paragraph on page 13 of the IACHR report. Lieutenant Alejandro Herrera Fajardo, in charge of the recruits at the time, spoke with Mrs. Ana Josefa Gomez de Joya. When she asked if her son Edilbrando was there at those military facilities, he said that he was going to check the lists of personnel under him; as he said, he thought her question was in reference to the recruits who had joined. Lieutenant Herrera was in no position to provide her with any information about any alleged detainee, since his duties were related exclusively to the recruit personnel; he had nothing to do with detainees. This oral account was taken by the Ninth Ambulatory Criminal Court of Bogota, on October 7, 1983.

Clarification in the case of the Sanjuan Arevalo brothers

As for the alleged statement by Colonel Nacin Yanine Diaz to the effect that he told the father of these two young men that they were well and that sooner or later they would turn up, he was simply trying to cheer up the parents of the Sanjuan Arevalo brothers. This was the statement that Colonel Yanine Diaz made before the Ninth Ambulatory Criminal Court of Bogota on August 23, 1983. Here again the IACHR report has misread the evidence.

Finally, it should be pointed out that the brother-in-law of Colonel Yanine Diaz is related to the father of the Sanjuan Arevalo brothers, which is why he always had taken a personal interest in getting these matters cleared up.

As the Honorable Commission can see, most of the facts and evidence mentioned in report 11/91 concerning case 10.235, have been misinterpreted; some of the statements made are even untrue.

Therefore, a State cannot be found responsible using arguments based on facts that are untrue and evidence that has been improperly weighed.

5. Observations concerning the investigation conducted by the Office of the Attorney General of the Nation

As for the investigations conducted by the Office of the Attorney General, the Government of Colombia would like to make the following points.

Regarding the statements contained under number eight on page 4: Under Article 143 of the Constitution, the function of the Office of the Attorney General of the Nation is to prosecute crimes and monitor the conduct of public officials and employees.

Prosecuting crimes means that it must file criminal charges; it also means that as Attorney General, it may take part in the criminal proceedings conducted against those who have violated the law. In keeping with that provision of the Constitution and its own legal regulations, the Office of the Attorney General does not conduct criminal proceedings, but rather internal disciplinary proceedings. This is why it conducted and is still conducting disciplinary proceedings against members of the National Police charged with irregularities involved in the alleged arrest and alleged mistreatment of a number of citizens in the cities of Bogota and Gachala in 1982, following a number of complaints. Those complaints were brought to the attention of the Special Prosecutors for the Military Forces and the National Police and the Office of the Attorney General of the Nation directly.

As for the Commission's statement under number ten on page 5, it should be noted that the Colombian legal system provides a number of mechanisms for taking action to determine the culpability of its agents. In the case in question, it was proper to conduct proceedings in the military criminal courts; before any decision was handed down in the first action, however, another action could be instituted simultaneously, seeking direct reparation for the State's stet so that the relatives of the victims might receive damages should negligence be proven. This action, provided for in Article 86 of our Administrative Law Code, enables the interested persons, following the procedures that the law stipulates, to be awarded damages.

It is important to note here that the disciplinary action seeks to penalize those public servants who have disregarded their constitutional and legal mandate; in other words, they are answerable on two levels, as citizens and as public servants, for any excess or omission committed in the performance of the function entrusted to them. The civil servant who is subject to disciplinary action can be separated from service and the punishment sought by the Office of the Attorney General and the corresponding investigation can be very useful when one files suit for damages.

As for the second paragraph on page 7, the following clarification is called for:

On January 30, 1987, the Office of the Special Prosecutor for the National Police ordered the formal institution of a disciplinary inquiry, as stated in volume number 14, page 110, original, ordering that charges be brought against:

1. Miguel Torrado Badillo, for mistreatment and for allowing other members of the National Police to mistreat Edgar Helmut Garcia Villamizar, Bernardo Heli Acosta Rojas, and for verbal and physical abuse of Edilbrando Joya Gomez, Edgar Helmut Garcia Villamizar and Manuel Dario Acosta Rojas. Misconduct of this nature is expressly prohibited by the Discipline and Honor Regulations of the National Police, Decree 1835 of 1979.
2. Jairo Otalora Duran, for the allegedly illegal arrest of Bernardo Eli and Manuel Dario Acosta Rojas; for mistreatment of Bernardo Eli Acosta and Edgar Helmut Garcia Villamizar.
3. Luis Angel Perdomo.
4. Luis Ernesto Suarez Ceballos.
5. Oswaldo Moyano Ferrer.
6. Agent Dolores Quesada.

These people answered charges, and at the request of the defendants testimony was taken.

The Special Prosecutor for the National Police declared an impediment, which was resolved by assigning the case to the Special Prosecutor for Judicial Surveillance.

On July 29, 1988, the case against some of the accused was decided and they were sanctioned. Copies of the ruling were certified for the Office of the Special Prosecutor for the National Police who would prosecute the investigation of the case against the remaining defendants.

The Special Prosecutor for the National Police again claimed an impediment. The Attorney General of the Nation immediately concurred and assigned the case to the Special Prosecutor for the Judiciary Police -- Human Rights-- on January 10, 1989.

The Special Prosecutor for the Defense of Human Rights formed a committee to examine the case and to continue the investigation, which by now amounted to fourteen (14) volumes of documents (each having roughly 200 pages).

Having done this, an order was given to institute a formal disciplinary inquiry against members of the National Police. The report of the Inter-American Commission on Human Rights incorrectly states that

the Prosecutor' Office cleared the Commandant of the F-2 and seventeen (17) of the accused of all charges. In fact, what the Prosecutor ordered was that the disciplinary inquiry against the other members of the National Police be instituted, since by an express legal provision in Decree 3404, of 1983, an investigation can be reopened if new evidence emerges that links members of the Police with the commission of crimes.

The Government of Colombia would like to make clear to the Honorable Commission that the Prosecutor's Office cannot request criminal punishment, because its function is to prosecute the criminal proceeding. It cannot impose penalties of that nature as that is the exclusive purview of the jurisdictional branch. In the case of a disciplinary sanction, moreover, if dismissal is involved the Prosecutor may request it but is not empowered to impose it.

Furthermore, that paragraph on page 17 of the report prepared by the investigators was misinterpreted. It was part of the internal investigation, which described the political and social scenario at the time of the events. Though the investigation was being conducted to determine the responsibility of the agents of the State, this statement did not mean that the members of the Police were being accused as the parties responsible for what happened, since the commission's job was to issue its views about the investigation conducted, so that the competent authority might then decide who was actually responsible. Moreover, the notion of an "accused" is predicated upon some criminal proceeding, and not the kind of disciplinary proceeding that is the purview of the Public Prosecutor' Office.

Finally, according to information supplied by the Special Prosecutor for the Defense of Human Rights, the disciplinary inquiry against four officers of the National Police is in the hands of the Special Prosecutor, who will render a decision within the next few days. For that reason, the Government of Colombia respectfully requests the Honorable Commission to admit the information relative to that decision as part of this note.

6. Reconsideration on the grounds of nonexhaustion of internal remedies

The Criminal Proceeding: The inquiry conducted by the regular criminal courts has not been closed, contrary to the statement that appears on page 8 of the IACHR report. Thanks to recent measures taken by the Technical Corps of the Judiciary Police of Bogota, important clues have been gathered relating to the facts and authorship of the events that are the subject of this investigation. The most recent steps taken by officers of the Judiciary Police are enumerated below and, according to the National Bureau of Criminal Investigation, are strictly confidential:

1. Via a court order of September 11, 1989, the 34th Criminal Court ordered that the court records be sent to the Technical Corps of the Judiciary Police; the agent of the Office of the Attorney General of the Nation was so informed.
2. The Technical Corps received the records on September 27 of that year. On October 22, 1990, via memorandum 292, the files were assigned to an attorney attached to the Human Rights Unit for study.
3. A report dated October 31, 1990, states that two individuals may have been the authors.
4. The Human Rights Unit of Bogota has taken the following measures:
 - a. On June 5, 1991, steps were taken to carry out the proceedings.
 - b. The help of the Coordinator of the Investigative Units was enlisted to submit evidence aimed at locating one of the alleged authors of the events.
 - c. On May 23, 1991, mission A-0100304 was assigned.
 - d. Through note 028 of May 28, 1991, new evidence was requested of the Third Criminal Circuit Court, which is in charge of the inquiry into the alleged disappearance of Mr. Hernando Ospina Rincon.
 - e. Through note 031, dated June 7, 1991, the Human Rights Unit of Bogota and of the Department of Cundinamarca, reported the first findings -confidential in nature- to the National Human Rights Unit.
 - f. Via note 044, of June 25, 1991, the Human Rights Unit said that it needed to procure the evidence gathered in the Sixth Criminal Court of the Bogota Circuit in connection with the present case.

It is obvious that the Technical Corps of the Judiciary Police is still active on the case.

The Administrative-Adjudicatory Process: As for the Commission's statement that there are no more remedies to exhaust, we must reiterate that in Colombia one can file an administrative-adjudicatory action with the proper courts. Though not appointed by the court, any attorney can and ethically must bring such an action before turning to any international body. In the case in question, this was not done.

Hence, the Government does not share the Honorable Commission's view that the criminal process is not active; to the contrary, it has been demonstrated that the procedural dynamic is still in motion.

7. Payment of damages

Under present law and in light of all the above considerations, the Government of Colombia cannot pay any damages as no judge or court in the land has handed down a decision on the facts denounced in Case 10,235, which occurred somewhere between March 4, 1982 and September 15 of that year. Not the American Convention on Human Rights, not the Statute, nor the Regulations of the IACHR give that organ of the OAS the competence to order damages. This recommendation cannot be acted upon since the petitioners have not filed any action with the Council of State.

Honorable Members of the Commission: in view of the above considerations, the Government of Colombia must make the following points:

The internal remedies have not been exhausted. The criminal proceedings in the regular courts have not yet ended. We insist that our administrative-adjudicatory courts are responsible and effective and, though not appointed by the court to do so, any attorney can and ethically must exhaust that avenue before resorting to any international body.

On behalf of the Government of Colombia, I would like to assure Your Excellency of our desire to cooperate in serving the human rights cause. Accept, Excellency, renewed assurances of my highest consideration.

When the petitioner was informed of the observations presented by the Government of Colombia on Report No. 11/91, said petitioner sent the Commission the following observations, dated August 23, 1991, on the Government's allegations:

We reply to your letter of July 10, 1991, received on July 27, bringing to our attention the document received from the Colombian Government wherein it asks the Commission to reconsider the case in question, invoking Article 54 of the Regulations of the Inter-American Commission on Human Rights.

Our response will follow the order of the issues raised in the brief, though in so doing we do not intend to make this stage of the proceedings into a pretext for the Government to delay the execution of the decision:

1. The Colombian Government alleges that at the time the petition was submitted to the Commission the following proceedings and actions were in progress: an administrative-disciplinary investigation by the Special Prosecutor for Human Rights ("who will render a decision within the next few days," the communication reads) and a case in the regular court system, which is conducting an investigation targeted at two individuals in connection with the events denounced.

Among the domestic remedies that have to be exhausted, the Colombian Government would have the Commission include an internal disciplinary proceeding whose purpose is nothing more than to obtain an internal administrative sanction against employees of the State who are implicated in unlawful acts or events.

The disciplinary administrative proceeding is an internal control mechanism used by the State to monitor and sanction public servants who, either by action or omission, have violated the rules governing the functions, duties and obligations of public servants. However, one cannot pretend that it is one of the domestic remedies that must be exhausted before turning to the Inter-American Commission on Human Rights. The disciplinary proceeding being conducted by the Prosecutor's Office is not intended to secure the release of those individuals who were forcibly detained or to have them returned, safe and sound, to their homes, or to prevent a recurrence of such acts.

The Colombian Government itself has admitted as much to the Commission, albeit in very contradictory

fashion. While on page 2 of its brief it contends that the internal remedies have not been exhausted, citing among these the administrative-disciplinary proceeding in the Office of the Special Prosecutor for Human Rights, on page 5 it states that "The decisions of the Office of the Special Prosecutor for Human Rights are strictly administrative and concern administrative and procedural irregularities." This confirms our contention that this is nothing more than an internal control mechanism that the State uses to deal with its employees.

To top it all, the forced disappearance of the persons mentioned here happened nine years ago and it is only now that the Colombian Government announces that the Office of the Attorney General of the Nation will shortly issue a decision on the merits of the case against the members of the National Police, F-2, who were material authors in the disappearances in question. In the Godinez Cruz case, the Inter-American Court of Human Rights stated that if exhaustion of a remedy is to be required, the remedy must be effective, in other words, capable of producing a result; in other words, it must be able to produce an immediate effect. The Colombian Government could hardly invoke this argument to contend that the Commission should refrain from hearing this case.

2. The Colombian Government states that at the present time criminal proceedings are in progress against two individuals who are linked as authors of the events. Though this is true, it contributes nothing to this case, since an internal proceeding against individuals is not among the remedies that must be exhausted before turning to the IACHR.

3. The Government document also states that all the proceedings against the agents of the National Police were dismissed and that the Executive Power cannot, on his own, call for an extraordinary review to reopen the proceedings. In effect, this decision leads to *res judicata*, which merely confirms the fact that the remedies under domestic law have been exhausted.

4. The Colombian Government has also stated that the remedies have not been exhausted because no action has been filed for damages and to find the State negligent in a civil torts case. Here we must point out that a suit for damages is not intended to force the State to investigate those responsible for the disappearance or the whereabouts of the disappeared; it will not punish those responsible and thereby help prevent further human rights violations; nor will it compel the Colombian State to honor the international obligations it has undertaken in the human rights conventions it has signed and ratified. This is not, therefore, one of the remedies under domestic law that have to be exhausted before appealing to the Inter-American Commission on Human Rights.

5. Invoking Article 54 of the Regulations of the Inter-American Commission on Human Rights, the Government of Colombia is trying to transform this stage of the procedure into a debate on the evidence, raising doubts about the Commission' weighing and reading of the evidence, something which neither Article 54 nor any other article of the Regulations allows.

3. That on September 6, the petitioner sent observations to be added to those made in his note of August 23, to the following effect:

As regards the study of this case that the Inter-American Commission on Human Rights is to make at its forthcoming session, I would like to draw your attention to the many pieces of evidence that show the Colombian State to be responsible for the disappearance of eleven individuals. The following are among the pieces of evidence in question:

1. The evidence showing that the vehicle bearing license plates HL-6794 was used to abduct Pedro Pablo Silva and Orlando Garcia Villamizar. According to an INTRA report, these license plates were assigned to the F-2, the National Police.

2. The fact that the minor Camilo Andres Garcia (son of the disappeared Orlando Garcia Villamizar) was handed over at the Fifteenth Police Station by Major Alipio Vanegas Torres and the fact that the uncle who had been with him, Edgar Helmut Garcia Villamizar, is still missing, evidence of who was behind the disappearance of Helmut Garcia Villamizar and Rodolfo Espitia Rodriguez, who was planning to be with Garcia that day, August 18, 1989.

3. The fact that Mrs. Ana Elvia Zarate has stated that F-2 agents who had Edgar Garcia in their custody in Gachala on September 15, 1982, stayed in her home. There are witnesses, moreover, who say they saw Garcia Villamizar and Edilbrando Joya in that town, being mistreated by F-2 agents.

4. The fact that in a statement made before the Investigative Commission of the Office of the Attorney General of the Nation, Jader Alvarez, the father of the kidnapped children, confessed to having paid the F-2 to conduct the police operations and to having supplied a vehicle bearing license plates FC-9405, in which Hernando Ospina Rincon disappeared;

5. That the brothers Bernardo Heli and Manuel Dario Acosta Rojas were apprehended publicly by F-2 personnel in the town of Gachala and taken away in a helicopter, it was later shown that the helicopter had been rented by Jader Alvarez and used by F-2 personnel, according to statements made by Fernando Gutierrez and Oswaldo Moyano, the pilots of that aircraft, who testified that they were in the employ of the F-2 and Mr. Alvarez when flying over the Gachala area on September 14, 15 and 26, 1982;

6. That based on these pieces of evidence and many others, the Investigative Commission of the Office of the Attorney General of the Nation concluded the following in an opinion released on March 9, 1984:

For this Commission, there is no doubt whatever, based on the facts, that this was a reprisal for the kidnapping and subsequent murder of the Alvarez children, a politically-motivated kidnapping inasmuch as the abductors apparently were part of an M-19 cell; it was shown that the father of the kidnapped children who were then murdered, Mr. Jader Alvarez is a wealthy businessman known to be associated with drug trafficking and played an active role in these events with the consent of the F-2 and certain private individuals;

By its request for a reconsideration of the report adopted by the Commission at its February session, the Colombian Government seeks to reopen the proceedings concerning the evidence in this case. That request, which is out of order and contrary to Article 54 of the Regulations of the Inter-American Commission on Human Rights, compels us to remind the Commission that there is sufficient evidence to establish the responsibility of the State in this case, which has been explained and analyzed at length on a number of occasions, as can be seen in our letters of November 8, 1989, March 13, 1990, June 14, 1990, and October 3, 1990. Therefore, we reiterate our petition that any irregular discussion of this topic at the present stage not be permitted.

5. On September 12, 1991, the Government of Colombia forwarded the following supplemental information to the Commission:

I have the honor to write you on behalf of the Government of Colombia for the purpose of supplementing the information set forth in our note No. 012541 of July 2, 1991, concerning case 10.235.

As was respectfully requested in the final paragraph of page 51 of the aforesaid note (the ruling that the Office of the Public Prosecutor of the Nation was about to issue being considered part of the response), I wish to inform you that the Public Prosecutor Delegate for the Defense of Human Rights ruled that there had been disciplinary negligence and imposed punishment as follows:

1. Lt. Col. Ernesto Condia Garzon was dismissed from the National Police.
2. Lt. Col. Leonel Buitrago Bonilla was dismissed from the National Police.
3. Major Jairo Alberto Ramirez Buitrago of the National Police was suspended for twenty (20) days.

An appeal for reconsideration or dismissal may be filed at the time of notification or within five (5) days thereafter.

The disciplinary investigations conducted by the Office of the Public Prosecutor of the Nation and the rulings handed down form a part of the State's obligation to investigate and punish government agents guilty of violating disciplinary rules, the Constitution or the law. Disciplinary inquiries may also be used in evidence in the prosecution of criminal or administrative cases.

6. Lastly, on September 18, 1991, the Government of Colombia forwarded the following information:

I have the honor to write on behalf of the Government of Colombia with reference to the observations made by the complainant to the request for reconsideration of resolution 11/90, case 10.235.

In the first place, it is not the intention of the Government of Colombia to reopen the arguments in the

case but, in exercise of its right to respond and contest, to submit the grounds for the request made to the Commission. With due respect for the Inter-American Commission and the complainants, the Government of Colombia therefore makes available all the evidentiary material that served as the basis for the request.

Secondly, the decision handed down by the Public Prosecutor Delegate for the Defense of Human Rights is valuable both as example and punishment. The very existence of supervisory mechanisms by institutions such as the Office of the Public Prosecutor, which is responsible for investigating and punishing agents of the State who act in violation of their duties, constitutes a paramount means for monitoring and weeding out wrongdoing in public agencies and preventing human rights violations.

Moreover, the administrative disciplinary files and related finding may be introduced in any criminal or administrative court proceedings opened by the competent judicial authorities. Although not binding on the court, they do constitute part of the evidence which the trial judge will evaluate in due course.

The Government emphasizes the statements made in its note of July 2 in relation to the existence of the administrative court as a channel for redress in case of extracontractual liability of the State. Such action may be brought by anyone with a legitimate interest in the specific case in question; and it may and should be used, as has been done in many claims brought before the Council of State, as a preliminary step before the case is reported to international authorities.

The Government of Colombia therefore stresses the fact that, unfortunately in this particular case, the complainants did not take their case to administrative court for redress nor did they file a civil suit under criminal procedure and thus obtain a hearing.

Lastly, the Government wishes to repeat its human rights concerns and its commitment to act in line with the Inter-American Commission and other international agreements to which it is party. This commitment is reflected in the new constitutional order and in the agencies and resources introduced such as the Public Defender and the sanctioning of guardianship action, both of which will allow for better observance of the norms and principles inherent to basic human rights.

CONSIDERING:

As to the exhaustion of the remedies under domestic law

1. That the Government of Colombia asserts that "The petition should not be admitted" because "when the petition was filed with the Commission, the remedies under domestic law had not been exhausted." The objection being made as to the alleged inadmissibility of the petition is not pertinent since, as was noted in the report itself, when this specific matter was discussed:

In the instant case, it is obvious that the petitioners were unable to secure effective protection from the domestic jurisdictional organs, which despite of irrefutable evidence made available to them, exonerated the responsible police officers of all charges by ordering the case dismissed. Hence, whether or not the remedies under domestic law had been exhausted, they cannot be invoked in the Colombian Government's behalf to suspend the proceedings in this case with the Commission because of the unwarranted delay of the internal investigation of this process, moreover because the trial before the Civil Criminal Courts at this point in time concerns only civilians but not police officers which all the evidence set forth in the expository part of the present report and dismissed by the military courts points to as being the responsible parties.

2. That, moreover, on this same issue of exhaustion of the remedies under domestic law, as the Colombian Government points out under item 2 of its brief, under the Colombian Penal Code, it is not juridically viable to reopen a criminal proceeding --either in the military or the regular courts-- that ended with a dismissal of the charges, because such a ruling creates *res judicata*. As the petitioners themselves point out in item 3 of their brief of reply, this certainly confirms the fact that the remedies under domestic law have been exhausted.

3. That equally invalid is the Colombian Government's argument that the Commission should consider that the remedies under domestic law have not been exhausted because a disciplinary administrative proceeding against those responsible for the events in question is still under way nine or ten years after the fact, or because now that the military criminal case has ended with a dismissal of all charges against the government employees, a criminal proceeding should continue in the regular courts against other private persons allegedly associated with the events.

As for the merits

4. That the Colombian Government argues that despite of the many pieces of evidence in the record, "there is no direct evidence that proves that the alleged events occurred and who is responsible"; and that the Commission's report that states that the Colombian Government has failed to comply with its obligation to respect and guarantee articles 4, 5, 7 and 25 of the American Convention "is without legal foundation, since it has never been proven that the police officers and agents allegedly implicated were responsible for the alleged disappearances denounced in the petition" (Point 3, second paragraph).

5. That such assertions are completely refuted by the Investigative Commission of the Office of the Attorney General of the Republic of Colombia in its report of August 1, 1984, which is a matter of record; there, in Chapter III, concerning the responsibility of and charges against members of the F-2 of the Staff of the National Police in connection with such disappearances, it states, verbatim, the following:

For this Commission, based on the reported facts, there is no doubt whatever that the disappearance of Orlando Garcia Villamizar, Edgar Helmut Garcia Villamizar, Bernardo Heli Acosta Rojas, Manuel Dario Acosta Rojas, Pedro Pablo Silva Bejarano, Hildebrando Joya Gomez, Alfredo Rafael and Samuel Humberto San Juan Arevalo, Manuel Guillermo Prado Useche, Hernando Ospina Rincon and Rodolfo Espitia Rodriguez, was a reprisal for the kidnapping and subsequent murder of the Alvarez children, a politically motivated kidnapping inasmuch as the abductors were members of what appeared to be an M-19 and E.L.N. cell;

6. That the same report then states that it is also proven that the wealthy businessman, Mr. Jader Alvarez, the father of the two abducted children, played an active part in these criminal acts, with the consent and complicity of the National Police.

7. That in its request for reconsideration, the Colombian Government alleges that "under no circumstances, as indicated in the Commission's Report, was the investigation conducted independently by the former DIPEC" and that the Commission erred when it said, on the first page of its Report 11, paragraph 4, that "The investigation of this kidnapping was conducted by DIPEC personnel under the command of its Commandant, then Col. Nacin Yanine Diaz, who proceeded to make a number of arrests of individuals they believed might have been some how involved in the kidnapping and murder of the children," stating that:

Here it is important to point out that in Colombia, criminal investigations are conducted and are the responsibility of the jurisdictional branch of the public power. Under no circumstances, contrary to what the Commission's report states, was the investigation conducted independently by the former DIPEC. At the outset, it was in the hands of the Tenth Superior Court of the District of Bogota, aided by the State security agencies with court police functions, but always under the control of that Court.

8. That the foregoing clarification is incorrect. The assertion that the investigation was conducted by DIPEC under the command of its Commandant then Col. Nacin Yanine Diaz is not the Commission's invention; it is based on and cited verbatim from the Report of the Office of the Attorney General of the

Republic, dated August 1, 1984, where it states, on page 4, No. II.2, second paragraph:

In mid-April 1982, personnel of F-2 in Bogota, DIPEC, cooperated in the investigation. On August 5 of that year, the Office of the Director General of the National Police ordered DIPEC, F-2 at the national level, to undertake the pertinent investigation.

On September 27, 1982, DIPEC--that is to say, the Staff of F-2 National Police--informed the Court investigating the kidnapping and murder of the minors that based on their investigation, the individuals Orlando Garcia Villamizar, Edgar Helmut Garcia Villamizar, Bernardo Heli Acosta Rojas, Pedro Pablo Silva Bejarano, Juan Eliseo Jurado Cristancho, Hugo Eduardo Parra, Manuel Reyes Peca, Heriberto Linarez, Armando Martinez Ruiz, and Benito Efrain Cortes took part in the kidnapping and murder of the Alvarez children. The report, submitted by the Special Prosecutor for the Military Forces on October 5, 1982, is signed by Lt. Col. Nacin Yanine Diaz;

9. That the Government of Colombia further contends that the Commission makes a clear prejudgment of a fact that it had not and has not proven in the proceedings it has conducted, where it states that members of the Colombian Police "proceeded to make a number of arrests of individuals they believed might have been somehow involved in the kidnapping and murder of the children".

10. That on this point, the Commission regrets to once again have to correct an allegation made by the Colombian Government. The Commission's citation is in no way a "prejudgment of a fact that it has not proven" but quite the reverse; it is the conclusions reached in the investigation conducted by Colombian authorities themselves; one need only cite the statement made in Chapter III, point III.1, second paragraph of that report:

The fact that the vehicle into which Orlando Garcia Villamizar was put after being apprehended belonged to the F2; that the very same police agency accuses them of the crimes in question, and asserts that they were seen at the place where the Alvarez children were held captive: the logical inference from all this is that members of the F-2 staff are the authors of their disappearance (Page 107);

11. That the Government's observations of July 2, 1991, apart from certain comments regarding the Commission's weighing of the facts to which Report 11/91 refers, do not add any new information to refute the facts denounced to this Commission;

12. That in its notes of September 12 and 18, 1991 the Government likewise confirms what is contained in Report N° 11/91, namely that the Attorney General's for Human Rights had issued a judgment against various officers of the National Police for their participation in the events referred to in this case, applying disciplinary sanctions against them, which thus carried out the recommendation provided for in the third paragraph of that Report.

13. That for his part, the petitioner has been persuasive in rebutting the Colombian Government's arguments, making reference to the testimony that is in the record and that proves the facts denounced by the petitioner;

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
In exercise of its authority,
RESOLVES:

1. To declare that under the terms of Article 1.1 of the American Convention on Human Rights, the Government of Colombia has violated articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 25 (right to equal protection of the law) of that Convention, of which Colombia is a State Party, with respect to the abduction and subsequent disappearance of the following persons: Orlando

Garcia Villamizar; Pedro Pablo Silva Bejarano; Rodolfo Espitia Rodriguez; Edgar Helmut Garcia Villamizar; Gustavo Campos Guevara; Hernando Ospina Rincon, Rafael Guillermo Prado J.; Edilbrando Joya Gomez; Francisco Antonio Medina; Bernardo Heli Acosta Rojas and Manuel Dario Acosta Rojas.

2. That Colombia must pay compensation to the victims' next-of-kin.

3. To recommend to the Government of Colombia that, pursuant to the recommendations made by the Investigating Committees of the Attorney General of the Nation and the Special Prosecutor for Human Rights, it order that a thorough and impartial investigation of the facts denounced be reopened and that in view of the charges made by both those bodies and to avoid censurable acts that strike at the very grave but never disproven charges against the officers whose case was dismissed, taking into consideration the principle whereby *res judicata* does not exist when there has been serious judicial error.

4. To request that the Government of Colombia guarantee the safety of the witnesses to the events, who have risked their lives to provide their invaluable and valiant cooperation in the efforts to ascertain the facts, and that it give them the protection they require.

5. To include this report in the next Annual Report to the General Assembly of the Organizations of American States, should no reply be received within 90 days of this report.