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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 2/94; Case No. 10.912
Session:	Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause:	Pedro Miguel Gonzalez Martinez, Jose Bienvenido Gonzalez Martinez, Jose Mesa Sanchez, Jose Joaquin Mendoza, Ivan Dario Molina, Rodrigo Guzman Espitia, Manuel Espitia Cogollo, Enrique Guizao Giraldo, Rito Martinez Reyes, Santiago Ortiz Caudo, Nestor Marino Galvez, Jose Indovel Pineda, Nataniel Rojas Restrepo, Omar Ochoa, Guillermo Leon Valencia, Manuel Durango, Jose Francisco Blanco, Julian Carrillo, Alirio Rojas and Adel Menese Pineda v. Colombia
Doc. Type:	Report
Decided by:	Chairman: Professor W. Michael Reisman; First Vice-Chairman: Dr. Alvaro Tirado Mejía; Second Vice-Chairman: Dr. Leo Valladares Lanza; Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor Claudio Grossman; Ambassador John Donaldson.
Dated:	01 February 1994
Citation:	Gonzalez Martinez v. Colom., Case 10.912, Inter-Am. C.H.R., Report No. 2/94, OEA/Ser.L/V.85, doc. 9 rev. (1993)
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1. On June 2, 1991 the Inter-American Commission on Human Rights received the following complaint:

I. THE FACTS

At the Honduras farm:

At approximately 1 a.m. on March 4, 1988, 20 armed men in civilian clothes arrived at the Honduras farm situated in the jurisdiction of Currulao, municipality of Turbo, Department of Antioquia, in the Golfo de Uraba area of Colombia. They banged on the door of the room where the workers on the Honduras farm and their families were sleeping, and calling each one by name, forced them to come out and lie down on the floor. Women, children and those workers who had not been selected were made to stay in their rooms and turn off the lights. The attackers then fired on the totally defenseless workers with short and long-range weapons, killing the 17 they had selected.

At the La Negra farm:

After the crime, the individuals proceeded to the La Negra farm, not far from the Honduras farm, and murdered three other workers there.

II. THE VICTIMS

2. The murdered workers from the Honduras farm, all active members of the Antioquia Agricultural workers Trade Union, SINTAGRO, were:

1. PEDRO MIGUEL GONZALEZ MARTINEZ: 20 years of age;
2. JOSE BIENVENIDO GONZALEZ MARTINEZ: 20 years of age;
3. JOSE MESA SANCHEZ: married;
4. JOSE JOAQUIN MENDOZA: 30 years of age;
5. IVAN DARIO MOLINA: 35 years of age;
6. RODRIGO GUZMAN ESPITIA: 35 years of age;
7. MANUEL ESPITIA COGOLLO: 40 years of age;
8. ENRIQUE GUIZAO GIRALDO: 47 years of age;
9. RITO MARTINEZ REYES: 28 years of age;
10. SANTIAGO ORTIZ CAUDO: 40 years of age;
11. NESTOR MARICO GALVEZ: 45 years of age;
12. JOSE INDOVEL PINEDA: 29 years of age;
13. NATANIEL ROJAS RESTREPO: 48 years of age;
14. OMAR OCHOA;
15. GUILLERMO LEON VALENCIA;
16. MANUEL DURANGO; and
17. JOSE FRANCISCO BLANCO.

The workers murdered at the La Negra farm were:

1. JULIAN CARRILLO;
2. ALIRIO ROJAS; and
3. ADEL MENESE PINEDA.

Total: 20 workers murdered.

III. BEFORE THE MASSACRE

3. The events preceding the massacre are as follows:

Eight days before the events, on February 24, 1988, a patrol of the Voltijeros battalion of the army under lieutenant of the B-s Military Intelligence, PEDRO BERMUDEZ LOZANO, accompanied by individuals in civilian dress, conducted searches at the Honduras, La Toyosa and Agripina farms. There they threatened to kill workers to prevent them from voting in the elections that were to be held on March 13 and gave them 14 days to leave the area. They also arrested PASCUAL FUENTES RAMOS: JOSE ALBERTO GARCIA FERNANDEZ, JESUS PALACIOS ASPRILLA and OLGA LUCIA RESTREPO, 16 years of age, and took them to the barracks where they questioned them, using duress and threats and forcing them to declare that several workers on the honduras and la negra farms belonged to the guerrilla movement people's liberation army (EPL). Olga Lucia was also taken to those farms mentioned and indicated the place where the workers, alleged members of the EPL, lived.

At the barracks the detainees met two individuals whom they identified as "Lenin" and "Zacarias", former members of the EPL, and realized that they were working as army informers. These individuals took part in their interrogation and offered them money to work for the army and turn over their colleagues. The detainees recalled that at one stage in the interrogation "Lenin" told a B-2 corporal that the Honduras, La Negra, la Toyosa and Oro Verde farms were guerrilla cells, to which the noncommissioned officer replied that he shouldn't worry because they would soon be paying them a visit.

Two days before the massacre, on March 2, the troops of the Voltijeros battalion under Captain Luis Felipe Becerra appeared at the La Zumbadora farm, located near the Honduras and La Negra farms, accompanied by a masked individual who pointed out some workers. Six workers were detained there and beaten in front of their colleagues. The captain told them that he would not kill them himself, but that he would have someone else do the job, and again warned them against voting for the Union Patriótica in the elections.

IV. FORMALITIES OF THE CASE

4. On July 2, 1991 the pertinent parts of the petition were transmitted to the Government of Colombia.

5. The Government of Colombia replied to the Commission on October 4, 1991, informing it that the case was undergoing a thorough internal inquiry, and promised to inform the Commission as soon as it received the additional information it had requested on the investigations taking place of the murders at the Honduras and La Negra farms, and informed the Commission that the domestic remedies had not been exhausted and were still in process.

6. The Government of Colombia having duly replied to the complaint, the Commission continued to deal with the case in accordance with the rules set forth in the American Convention on Human Rights and its Regulations, giving each of the parties the opportunity to state what it deemed appropriate concerning the observations formulated by each of them.

7. During the process of receiving and examining information from the various parties, the Commission placed at the disposal of the Government of Colombia the relevant parts of the communications sent by the petitioner formulating observations on its allegations and/or making reference to new or known evidence. The following is the order of the correspondence from the Commission to the Government of Colombia:

Note of July 2, 1991, forwarded the pertinent parts of the complaint.

Note of July 3, 1992, forwarded the petitioner's observations on the reply from the Government of Colombia to the complaint.

Note of May 19, 1992, forwarded the petitioner's observations on its Official Letter of February 4.

Note of June 10, 1993, requested additional information with regard to this case.

Notes of August 31 and September 1, acknowledged receipt of Note No. 705 from the Mission, dated August 20, 1993.

8. The Commission also informed the petitioner and forwarded the relevant parts of the notes sent in reply by the Government of Colombia. The order of the notes sent to the petitioner by the Commission is as follows:

Official letter of July 2, 1991, informed it of the initiation of the formalities of the case.

Official letter of October 17, 1991, transmitted the Government's reply.

Official letter of January 3, 1992, acknowledged receipt of observations on the Government's reply.

Official letter of February 24, 1992, forwarded the Government's reply dated February 19, 1992.

Official letter of May 19, 1992, acknowledged receipt of observations on a further reply from the Government.

V. EXHAUSTION OF DOMESTIC REMEDIES

9. The following is a summary of the information provided to the Commission by the petitioner and by the Government of Colombia, of the investigations conducted on the aforementioned massacre:

A) THE POLICE INVESTIGATION

The D.A.S., Administrative Department of Security, given the seriousness of the events, prepared a confidential report entitled Investigation of murders at La Honduras and La Negra, Uraba, April 16, 1988. It stated that the problem started when the EPL stepped up its campaign of kidnapping, murder and extortion against the farmers of the region, who formed self-defense groups to join forces with the army; this led to the polarization of positions and transformed the area into a war zone, generating a power vacuum that encouraged all manner of atrocities.

THE CONTEXT: The Honduras farm consisting of 120 hectares of banana cultivation and 60 hectares devoted to stock raising, one of the most prosperous in the Uraba area in Antioquia, was like the others, the object of the guerrilla attacks and invasion of lands supported by the agricultural union SINTAGRO, which resulted in 40 families taking over the farm, creating a confrontation between the owners and the trade union, with presumed links to the FARC's, and subsequently, at the time of the events, to the EPL.

THE CONCLUSION: In the case of the Honduras and La Negra massacres, the Colombian army used ex-guerrillas who had deserted from the EPL as guides, incorporating them into their patrols, by locating, identifying and eliminating alleged subversives and, for the same purpose, with hired assassins (paramilitary troops) financed by ACDEGAM, or Association of Farmers and Stockbreeders of Magdalena Medio.

This conclusion was corroborated by:

- a) the statements by PASCUAL FUENTES RAMOS, who identified the individual called Lenin as a former leader of the EPL who offered him money for every 10 EPL members he turned over, and a fixed wage if he worked for the army, and by OLGA LUCIA RESTREPO CORREA, who also pointed out ZACARIAS as an EPL member who showed the troops to the La Negra, Honduras, Oro Verde and other farms;
- b) proof that prior to the massacre masked men were seen pointing out the future victims, the inference being that only acquaintances would hide their faces to avoid identification by victims and witnesses;
- c) the assassins' knowledge of the victims whereabouts, their certain knowledge that weapons existed, and the repeated visits by armed personnel accompanied by civilians, inquiring about persons involved in subversion;
- d) verification that the victims of the massacre, initially presented as simple farm-workers, did indeed have links with the EPL and that the others were active members of SINTAGRO;
- e) By the fact that, prior to these events several workers abandoned some farms in the area, because they were aware of or involved in the plot, and
- f) the participation in both massacres of a similar number of people using similar weapons and the brutality used to annihilate totally defenseless victims, behavior typical of paramilitary fanatics, who are quite unscrupulous.

The D.A.S. concluded by pointing out that Public Order Court No. 2 had sufficient background and data in its possession, provided by the DAS itself, to initiate an investigation, order arrests, raids and other pertinent actions.

B) JUDICIAL INQUIRY UNDER THE GENERAL PENAL CODE

On March 8, 1988, the Department of Criminal Proceedings, taking the DAS report into account, set up a

commission of inquiry under the orders of the Second Public Order Court of Bogota, which initiated a preliminary inquiry. After three months of investigation, on June 25, 1988, the Judge of the Second Public Order Court of Bogota, Dr. Martha Lucia Gonzalez Rodriguez, pronounced a decision with the following conclusions:

ON THE PRELIMINARY EVENTS. On the evening of February 24, 1988, Lieutenant PEDRO VICENTE BERMUDEZ LOZANO commanded a patrol that searched the Honduras, La Toyosa and La Agripina farms. During that operation four persons were arrested at the La Toyosa farm: JESUS PALACIOS ASPRILLA and OLGA LUCIA RESTREPO were discovered by a soldier, manuel Morales, while they were hiding a bag containing weapons; then they arrested PASCUAL FUENTES RAMOS and JOSE ALBERTO GARCIA, whom the first two claimed were accomplices.

ON THE PROSPECTIVE VICTIMS. Both at the barracks and before the Court, OLGA LUCIA RESTREPO recognized that they were members of the People's Liberation Army, EPL, a statement confirmed by PASCUAL FUENTES RAMOS and JOSE ALBERTO GARCIA, and that they were also active members of the "JOSE DOLORES" urban unit commanded by "el Pajaro", whose second-in-command was CHUCHO, and another leader was MOLINA. That members of this unit were EL DONALD, FRANCISCO, HUGO, RAMON, YOLANDA, GARCES, EL ZAORRO, ENCARNACION, ANDRES MOZOS, EDWIN, TERESA, BADILLO CARTAGENA, INOCENCIO, ALBETO, SILVIO, ALVARO, FAUSTINO, ALIRIO, IVAN ZAPATA, JOAQUIN, CAMPILLO, PEDRO, most of whom worked at the Honduras farm. That LUIS ENOC MENESES is el Pajaro; JAVIER DE JESUS QUINTERO, Chucho; IVAN DARIO MOLINA, Molina; LUIS ALBERTO PAEZ, Alberto; MANUEL GARCES ESCOBAR, Garces; LUIS SILVIO BERMUDEZ, Silvio; ALIRIO ROJAS, Alirio; IVAN ZAPATA; PEDRO GONZALEZ, Pedro; and RAMILLO CAMPILLO, Campillo; JOSE DEL TRANSITO MURILLO, el Diablo or Demonio; ABEL MENESES, el viejo, and LIBARDO YANEZ, N.N. HOMBRE, Rambo. This proved to the court that the victims were mostly guerrillas and that the massacre was the result of the dirty and clandestine that was being waged.

ON EX-GUERRILLA INFORMERS. Lieutenant Bermudez Lozano and Sergeant Lagos Aranda confirmed to the court that LENIN and ZACARIAS lived in the Voltijeros battalion where they had sought refuge when they deserted the guerrilla group, thereby confirming their involvement.

ON PARAMILITARY TROOPS ON THE DAY OF THE MASSACRE. On February 24, the armed men in civilian clothes who accompanied Lieutenant BERMUDEZ, Corporal OCHOA and Captain BECERRA - were present at the operation during which they arrested OLGA LUCIA RESTREPO, PASCUAL FUENTES RAMOS, JESUS AMIN PALACIOS ASPRILLA and JOSE ALBERTO GARCIA FERNANDEZ. The same 38 persons who had been dispatched by ACDEGAN in mid-February, shortly before the events, from Puerto Boyaca to Uraba, to "purge" the area of guerrillas with the help of members of the Armed Forces and the national Police.

It is also proved that it was those same persons who accompanied Olga Lucia to identify the place where the workers accused of being members of the EPS lived and that this version was corroborated by several witnesses among those present who were able to identify and describe them.

That those civilians were the same people who participated on March 4, 1988, in the massacre at the Honduras and La Negra farms, and that it was possible to identify them (1) because they had participated in and been seen at various other army raids, and (2) they had been seen by surviving relatives of the murder victims.

ON THE COMPLICITY OF THE ARMY: It was determined during this investigation that the responsibility of the members of the army on active service, attached to the B-2 Voltijeros battalion, such

as Lieutenant PEDRO VICENTE BERMUDEZ LOZANO, referred to participation as a collaborator in the murder under investigation; that the officer knew the assassins who came to URABA from Magdalena Medio for the purpose of murdering the individuals who were active members of the extreme left; that not only did they go out with those criminals for the February 24 operation when they detained PASCUAL FUENTES and OLGA LUCIA RESTREPO, but also allowed them to enter the battalion, and to carry long- and short-range weapons reserved for the Armed Forces; finally, Lieutenant BERMUDEZ and his colleagues were accused of accepting, facilitating, assisting and permitting the murder of March 4, 1988, acting as ACCOMPLICES to that act since they had effectively contributed to its occurrence.

It is obvious that in committing the multiple homicide at the Honduras and La Negra farms, those individuals relied on the complicity of the Army, a fact corroborated before the court by one of the assassins, EULISES BARRERO, who added that on occasion, members of the Army collaborated with the organization by giving it support and helped to coordinate their activities with them, and allowing them to move about even if armed.

That Lieutenant Bermudez had lied when he stated that the Voltijeros battalion only learned of the massacre at 11 a.m. through a telephone call from Bogota. This was denied by the police Commandant who says that he informed the battalion before 10 o'clock in the morning, in addition to the fact that members of the battalion were seen picking up spent cartridges and projectiles from the site of the massacre and witnessed the removal of the corpses.

THE DECISION OF THE COURT. The court decided to order Lieutenant BERMUDEZ LOZANO's arrest as an accessory to the crimes of aggravated homicide; not to arrest him in connection with the offense of robbery with which he had also been charged, and not to issue an order of distraint or seizure of his property since it was unaware whether he possessed any; to instruct the authorities to establish an identification file on the accused, and to request the Commander of the Armed Forces to suspend him from active service in his army position, so as to render the arrest effective.

ON PARAMILITARY LEADERS AS INTELLECTUAL PERPETRATORS OF THE MASSACRE. The court succeeded in establishing the link and responsibility of the ASOCIACION CAMPESINA DE GANADEROS DEL MAGDALENA MEDIO, ACDEGAM, with headquarters in Puerto Boyaca, where the murder gang had its base in the el Diamante farm belonging to Fidel Castano. They were trained at the Diamante Dos farm, which belonged to Fidel Castano. It was proved that these squads with armed heavy weapons reserved for exclusive use by the Armed Forces, moved about freely on the various highways without being stopped by the police or army, although the areas where law and order are most disturbed are heavily patrolled by military units through which they would have had to pass.

That the main leaders are GONZALO PEREZ, HENRY PEREZ, MARCELO PEREZ, FIDEL CASTACO, CESAR CURE, ALAN ROJAS, HERNAN GIRALDO, among others, but that those responsible for the massacre at the Honduras and La Negra farms were GONZALO PEREZ, HENRY PEREZ and MARCELO PEREZ, who hired the 8 "mayordomos" with families to go to URABA accompanied by another 30 men, some of whom, after committing the murders in that region, went on to Monteria, Cordoba, where they were received by FIDEL CASTACO at his JARAGUAY farm.

Based on evidence collected, the Second Public Order court also linked Captain Becerra and Corporal Ochoa Ortiz to the accused and ordered the arrest of a paramilitary group including Fidel Castano and Luis Alfredo Rubio (at that time Mayor of Puerto Bayaca). The Public Order Tribunal upheld those arrests.

JUDGES THREATENED AND MURDERED: During the first week of September 1988, Second Judge, Dr. Martha Lucia Gonzalez, who had passed the sentence, was obliged to leave the country because she

was persistently threatened with death if she continued the investigation. On July 4, 1989, despite the judge's withdrawal and as a reprisal against her, her father, the lawyer Alvaro Gonzales, was murdered. To replace Dr. Gonzalez, the Department of Criminal Proceedings transferred the case to the city of Medellin where the investigation fell to Dr. Maria Elena Diaz, Third Public Order Judge, who undertook the investigation into the massacre and continued examination of the evidence, and on June 17, 1989, upheld the decision to arrest Lieutenant Bermudez and on June 22 the arrests of Mayor Becerra and Corporal Ochoa.

Very shortly after taking over the case the judge, dr. Maria Elena Diaz, received death threats and was murdered on July 26, 1989.

Forty days after the murder of Judge Maria Elena Diaz, the Higher Public Order Tribunal of Medellin granted a provisional release to Lieutenant Bermudez. In September 1989 the case was referred to the first Public Order Court of Bogota, which on November 1 of that year granted a provisional release to Mayor Becerra and one month later, on December 1, 1989 revoked the rulings for the arrest of mayor Becerra, Lieutenant Becerra and Corporal Ochoa. The agent of the Ministry of the Interior appealed against this decision on August 17, 1990, and the Public Order Tribunal revoked the decision and confirmed the rulings for the arrest.

On June 17, 1991, Court 103 of the Public Order Jurisdiction, Bogota Section, passed the following sentences on the following individuals for the murders at the "HONDURAS", "LA NEGRA" and "PUNTA COQUITOS" farms:

Ricardo Rayo, 30 years' imprisonment for crimes of homicide for terrorist purposes and terrorism as an accomplice in the perpetration of punishable acts, payment of 50 minimum monthly wages and a cumulative penalty of interdiction of rights and public functions for a period equivalent to that of the main sentence; Mario Zuluaga Espinal, 30 years' imprisonment for crimes of homicide for terrorist purposes and terrorism as an accomplice in the perpetration of punishable acts, as intellectual author of those crimes. He was also fined 200 minimum monthly wages and condemned to the cumulative penalty of interdiction of rights and public functions; Victor Hugo Martinez Barragan and Mario Usuga Guez, 20 years' imprisonment, a fine of 50 minimum monthly wages and cumulative penalty of interdiction of rights and public functions for a period equivalent to that of the principal sentence; Victor Suarez Sanchez, 22 years' imprisonment and a fine of 50 minimum monthly wages for crimes of homicide for terrorist purposes and illegal possession of arms and cumulative penalty of interdiction of rights and public functions for a period equivalent to that of the principal sentence; Luis Alfredo Rubio Rojas, former Mayor of the town of Puerto Boyaca, Henry Perez Jimenez, Marcelo de Jesus Perez, Gonzalo Perez, Fidel Antonio Castano Gil, Adan Rojas Ospino, Hernan Giraldo Serna and Reinel Rojas each sentenced to 20 years' imprisonment for the offense of conspiracy to commit a crime with aggravating circumstances and cumulative penalty of interdiction of rights and public functions for a period of time equivalent to that of the principal sentence passed, but they were acquitted of the charge of material and intellectual authorship of homicide for terrorist purposes; Ricardo Rayo, Mario Zuluaga Espinal, Victor Hugo Martinez Barragan, Victor Suarez Sanchez, Luis Alfredo Rubio Rojas, Henry Perez Jimenez, Marcelo de Jesus Perez, gonzalo Perez, Fidel Antonio Castano Gil, Adan Rojas Ospino, Hernan Giraldo Serna and Reinel Rojas, sentenced to pay compensation of 2,000 grams of gold for the material damage and 500 grams of gold for the moral damages caused.

The court decided to add the following to the sentence:

To disallow the nullities raised on behalf of the defense by the attorney for Fidel Castano Gil and Ricardo Rayo; to deny Ricardo Rayo's appeal; to grant the remedy of appeal invoked by the Ministry of the Interior against the sentence of June 17 of this year; to grant the remedy of appeal invoked by the

attorneys for Luis Alfredo Rubio Rojas, Mario Zuluaga Espinal, Hernan Giraldo Serna, Adan Rojas Ospino and Ricardo Rayo. With regard to Gonzalo Rodriguez Gacha, the Court decided not to pass any judgement as proof of his death existed in the court records, which was confirmed by the Higher Public Order Tribunal. In the case of Pablo Escobar Gaviria, accused of conspiracy to commit a crime and confined with security measures upheld by the Public Order Tribunal, the court granted the appeal sought by his attorney, on the grounds that there was no direct charge against him nor any serious accusations connecting him to the events of the night of March 4, 1988, thereby acquitting him of responsibility.

On January 30, 1992, the Higher Public Order Tribunal (now National Tribunal) upheld the earlier decision against which LUIS ALFREDO RUBIO ROJAS, HERNAN GIRALDO SERNA, FIDEL CASTANO GIL and RICARDO RAYO (who was under arrest) had appealed. Since March 31, 1992, the case has been before the Court of Appeal of the Supreme Court of Justice. Bearing in mind the legal provisions for processing the remedy of appeal, it is likely that the Supreme Court of Justice could hand down a decision at the end of this year.

In march 1992, the Disciplinary Tribunal decided that the soldiers involved, that is, Captain Becerra (by then a Lieutenant Colonel), Lieutenant Bermudez (promoted to captain) and Sergeants Felix Antonio Ochoa and Jose Ramiro Lagos, would be tried by military court, acceding to the request made by the attorney for one of the officers.

C) INVESTIGATION BY THE OFFICE OF THE ATTORNEY GENERAL OF THE NATION. SUMMARY OF ITS DECISIONS

(1) DECISION OF AUGUST 19, 1992

The office of the Assistant Attorney General for the Armed Forces instituted a disciplinary investigation against Captain (promoted to Lieutenant Colonel) Luis Felipe Becerra Bohorquez; Lieutenant (promoted to Captain) Pedro Vicente Bermudez Lozano and Corporal (promoted to Sergeant Class II) Felipe Ochoa Ruiz, and in the light of the evidence accumulated against them, brought the following charges.

1. That as an Officer of the National Army, attached to the Tenth Brigade of which he was Commander, he carried out the operation at the La Toyosa and Honduras farms, located in the municipality of Turbo (Antioquia) on February 24, 1988, which he visited accompanied by a number of heavily armed assassins, individuals who during the night of March 4, of that year killed 20 farmers who worked at the Honduras and La Negra farms.
2. That also on February 24, 1988, he brutally mistreated staff working and living in specific buildings of the La Toyosa and Honduras farms.
3. That he threatened to kill the workers at Sumadera farm on March 2, 1988, warning them that if they did not leave the region within 14 days they would be murdered.
4. That as Commander of the Voltijeros battalion, he permitted Olga Lucia Restrepo, who had been in detention since February 24, 1988, to move about unlawfully in various parts of the region so as to force her to point out persons who were sympathizers or militants of subversive groups, especially at the Honduras farm.

Having considered the pleas of the accused and the evidence against them, the Assistant Attorney General DECIDED:

1. To penalize the captain of the national army, now Lieutenant Colonel BECERRA, with DISMISSAL FROM HIS POSITION (permanent separation from the armed forces) as the person responsible for the acts with which he was charged, without prejudice to any penal action;
2. To penalize lieutenant of the national army, now Captain Pedro Vicente BERMUDEZ, with

DISMISSAL FROM HIS POSITION (permanent separation from the armed forces) as the person responsible for the acts with which he was charged, without prejudice to any penal action.

3. To penalize Corporal Class I of the national army, now Sergeant Class II Felix Antonio OCHOA RUIZ, with DISMISSAL FROM HIS POSITION (permanent separation from the armed forces) as the person responsible for the acts with which he was charged, without prejudice to any penal action.

The attorneys for the accused soldiers appealed this DECISION.

(2) DECISION OF FEBRUARY 1993 of the Office of the Assistant Attorney General:

DENIED the appeal of the petitioner and confirmed the decision appealed and did not modify or revoke the decision of August 29, 1992.

(3) DECISION OF APRIL 20, 1993

On April 20, 1993, although the five-year period of limitation on disciplinary action from the last act of the offense had elapsed, and employing a procedure not applicable in disciplinary proceedings, the new Assistant Attorney General for the Armed Forces, through Decision No.221 of the date indicated, revoked decision No.255 of August 19, 1992, upheld by Resolution 093 of February 8, 1993, which ordered the dismissal of the soldiers responsible, allowed them to go absolutely unpunished on the grounds that the evidence provided in the various lawsuits were inconsistent, and further declared all disciplinary action at an end.

D) INVESTIGATION BY THE MILITARY PENAL COURT

The military penal court took over the trial of the officers involved on the basis of the decision of the Public Order Court to suspend the case against them, on the grounds that the actions of which they were accused had been carried out in the exercise of their military duties.

Eight months after the case was passed to the military court, through the judicial order of November 9, 1992, the Commander of the Tenth Brigade headquartered in tolemaida, in his capacity as Judge of the First Instance, declared that in this case there was no evidence to justify court-martialling the accused and he therefore pronounced all proceedings against them at an end. This decision was appealed and is still before the Higher Military Tribunal.

E) THE JURISDICTION FOR SUITS UNDER ADMINISTRATIVE LAW

The parties agree that the victims' relatives have not made any claim before the jurisdiction for suits under administrative law, formulated the observations and have comments reproduced in the next section.

10. With regard to these proceedings, the parties have declared their corresponding pleas, which have been summarized below:

VI WHAT THE GOVERNMENT OF COLOMBIA DECLARED ABOUT THE INVESTIGATIONS

About the events under investigation

That it rejected the petitioner's statement that the Colombian army was the perpetrator of the massacre in collusion with paramilitary troops, declaring that only the Judges of the Republic, according to the evidence produced at the trials, can take such a decision and not officials of the Government or the

Executive Branch and that private citizens were not entitled to make declarations of this kind.

About the disciplinary administrative investigation

That the Office of the Attorney General of the Nation, exercising its constitutional and legal competence,

- (1) had constantly monitored the criminal trial in the Public Order Criminal Court and the military court, through Dr. Ereira Avila Monroy, Provincial Attorney General of the Municipality of Cauca, Department of Antioquia, who acted as special agent in the case; and
- (2) that she had conducted disciplinary inquiries through the office of the Assistant Attorney General for the Armed Forces.

That the Office of the Assistant Attorney General for the Armed Forces, through decision No.255 of August 19, 1992, had sought the dismissal of the soldiers in question and that this decision had been revoked and directly reversed by the Attorney General of the Nation.

About the inquiry before the common criminal court

That the Higher Public Order Court (today the National Tribunal) upheld the decision of July 9, 1991 through an order of January 30, 1992, against which LUIS ALFREDO RUBIO ROJAS, HERNAN GIRALDO SERNA, FIDEL CASTAÑO GIL, RICARDO RAYO (who was under arrest) brought an appeal after execution of judgment; that since March 31, 1992, the case has been before the Criminal Appeals Court of the Supreme Court. Bearing in mind the legal provisions for the Remedy of Appeal, it is expected that the Supreme Court would hand down a decision at the end of this year.

About the military investigation

That through the order of November 9, 1992, the Commander of the Tenth Brigade headquartered in Tolomaida, in his capacity of Judge of the First Instance, declared that in this case there was no evidence to justify court-martialing the accused, and he therefore brought all the proceedings against them to an end. That this order was appealed and is now before the Higher Military Tribunal.

About the action under administrative law

That the Jurisdiction for Suits under Administrative Law, established to provide those damaged by acts of commission or omission on the part of State officials or the State itself with recourse for compensation for damages suffered, had not been used by the parties and that it is a prior requirement that must be exhausted before recourse to the international forums.

That persons who consider that they have been damaged by acts of commission or omission by State agents can use the judicial remedies offered them by the jurisdiction for suits under administrative law, responsible for monitoring and condemning the State for actions by its agents that violate the human rights of the persons under the jurisdiction of the Colombian State. Making use of the Action of direct Reparation is the first step in a judicial proceeding of responsibility that seeks to condemn the State for damages caused.

That the Jurisdiction for suits under administrative law also provided for those damaged by acts of commission or omission by State officials or by the State itself to sue the entity, the official or both under this Jurisdiction, and that if the suit is successful, the sentence shall include compensation for damage by the entity; and that Colombian legislation (Decree No 01 of 1984, Code of Administrative Law) contains a specific procedure for cases of responsibility against the Nation, which should be exhausted before

recourse to the respective international forums.

That the judicial remedies established in the national domestic legislation have not been exhausted since investigations are being applied by the Military Penal Jurisdiction and the Office of the Attorney General of the Nation, in addition to the possibility of appealing to the Tribunals of Administrative Law.

VII. WHAT THE PETITIONER DECLARED ABOUT THE INVESTIGATIONS

About the events under investigation

That although the Government of Colombia denies authorship of the massacre imputed to members of the National Army in complicity with paramilitary groups, and although the Government states that "neither government officials, members of the Executive Branch, or private citizens may take declarations of this nature", the evidence accumulated was so clear that the charges cannot be denied with such a simplistic argument; furthermore, that the D.A.S. report established unambiguously that both members of the forces of law and order and paramilitary troops took part in the massacre.

That the Colombian State violated Articles 4 and 5 of the American Convention on Human rights because the Colombian army was the perpetrator of the massacre as an accomplice of the paramilitary groups.

That they appealed to the Commission to prevent this crime from going totally unpunished and therefore request the Commission to declare the responsibility of the Colombian State.

About the disciplinary administrative investigation

That the vigilance exercised by the Office of the Attorney General of the Nation over the penal action and the disciplinary action in which charges were brought against two officers and one noncommissioned officer "for presumed participation in the events in question" cannot be regarded as remedies that must be exhausted in order to appeal to this Commission.

That the disciplinary investigations carried out by the Office of the Attorney General of the Nation concluded in February 1993 with the order for the dismissal of Lieutenant Colonel Luis Felipe Becerra Bohorquez, of Captain Pedro Vicente Bermudez Lozano and Sergeant Felipe Ochoa Ruiz, had been revised in April of this year through pronouncement of the new Assistant Attorney General for the Armed Forces, who, disregarded the abundant evidence accumulated and the earlier decisions of the same body which explicitly recognized the responsibility of the members of the Army in the Honduras and La Negra massacres, and revoked all the disciplinary penalties.

On the investigation before the common criminal court

That with regard to the 20 extrajudicial executions referred to in this case, the ideal recourse for reparation of the violation was penal action since it could serve to punish those responsible for the violation, which was not achieved in this case where the civilians were made responsible and the soldiers exonerated from all blame.

About the military criminal investigation

That the action under administrative law is a complementary or alternative remedy whereby the relatives of the victim may obtain economic compensation for the deficiency in the State service, but has not been invoked since the Colombian State had failed in four years to conclude the common criminal investigation or the military penal jurisdiction. Accordingly, the government can hardly expect the

victims' relatives to initiate an action under administrative law before appealing to the Inter-American Commission on Human Rights. The Colombian State's ineffective administration of justice would thus become an impediment to examination of the State's responsibility by an international organization.

Finally, in the present affair of the massacre of the workers at the Honduras and La Negra farms on March 4, 1988, which is, over five years ago, the fact that throughout this period there has been no sanction against the agents of the State involved in the massacre brings into play the exception to the rule of prior exhaustion of remedies under domestic law because of the unwarranted delay in the administration of justice.

CONSIDERING:

1. As regards admissibility

a. That as provided in Article 44 of the aforementioned Convention, of which Colombia is a State Party, the Commission is competent to examine the case since it deals with violations of rights embodied in the American Convention on Human Rights, Article 4, concerning the right to life; Article 8, concerning the right to a fair trial; and Article 25, concerning the right to judicial protection.

b. That the petition meets the formal requirements of admissibility contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

c. That the present petition is not pending in another international proceeding for settlement nor is it the reproduction of a previous petition already examined by the Commission.

2. Regarding the use of the remedies under domestic law

That within the remedies under domestic law considered to be exercised in connection with this case, the following should be cited:

1. The process of police investigation, conducted by the D.A.S. on April 16, 1988, in which it is established that the Colombian Army employed former guerrillas and paramilitary troops to locate, identify and eliminate the alleged members of the EPL guerrilla band at the Honduras and La Negra farms.

2. The Disciplinary Process, compromising the inquiries conducted by the Office of the Attorney General of the Nation against the officers implicated in the aforementioned massacre, ended on April 20, 1992, and exonerated them of all responsibility.

3. The process before the Military Penal Court, initiated with the transmitted to the military penal court of the action filed before the Public Order Court. The decision of the Commander of the Tenth Brigade who declared that there was no evidence to justify court-martialling the accused, bringing to an end all proceedings against them, is under consideration by the Higher Military Court.

4. The process before the Ordinary Criminal Court, initiated by the Public Order Court. In that process a judgement was issued against some civilians involved in the massacre of Honduras and La Negra, excluding the soldiers involved, whose case was referred to the military penal court.

3. Concerning the exhaustion of remedies under domestic law

The Government of Colombia has insisted during the development of the present proceedings that the mechanisms of the domestic jurisdiction have not yet been exhausted and that they continue to be fully effective because a settlement is still pending on the matters submitted both to the ordinary criminal jurisdiction and to the military penal court, and because the relatives of the victims have not resorted to the jurisdiction for suits under administrative law to obtain payment of the civil reparation to which they

may be entitled for the acts that are the subject of the denunciation.

Regarding this allegation, the Commission wishes to specify the following:

a. That the domestic remedies that must be exhausted in order to have recourse to an international forum, as the Inter-American Court of Human Rights duly declared in the case of Saul Godinez, are not all those that may exist in a country's domestic laws, because they are not all applicable in every circumstance, but only those which are appropriate, because "if the remedy is not appropriate in a specific case, it is obvious that it does not need to be exhausted".

b. That as the Government of Colombia has maintained, the jurisdiction for suits under administrative law does not administer justice, does not declare the responsibility of the perpetrators of a punishable crime and imposes neither an administrative nor penal sanction on those responsible, which is precisely what the petitioners seek, being conceived only as a means of transgressions of the administration or executive branch, corrections for such transgressions, and a means whereby the injured individuals may obtain compensation for the damage occasioned by transgressions on the part of the Executive Branch.

c. That the plea of the Government of Colombia in reference to the ordinary criminal trial to the effect that the remedies of the domestic jurisdiction were not exhausted and that they are still pending cannot be taken into consideration, because in the investigations before the Public Order Criminal court alluded to, no soldiers were accused because they were expressly excluded.

d. Furthermore, five years have elapsed since the massacre, and that the internal investigations, despite the evidence brought against the government agents involved, have not resulted in any penalties against them, which constitutes an unwarranted delay in the administration of justice.

e. That this case constitutes the exception to the application of the rule contained in article 46.1 of the Convention to the effect that the remedies under domestic law must be exhausted before admission of a petition, and the automatic application of the second part of that article, 46.2, whereby such provisions are not applicable when, as in the present case, (subpara. a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated, or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies (subpara. c) which would be applicable if consideration were given to the theory of eternal and ineffective remedy, which the Colombian Government appears to be invoking.

4. Regarding the claim for justice and for punishment of the perpetrators

a. That in the present case it is all too evident that the petitioners have not obtained effective protection from the domestic judicial organizations, which, despite the incontrovertible evidence brought before them, have allowed members of the Colombian army who participated in the massacre at the Honduras and La Negra farms to be exonerated from responsibility and, consequently, absolved from blame for the offenses committed, ordering all proceedings against them to be dropped.

b. That the conclusions which resulted from the investigations of the Office of the Assistant Attorney General for the Armed Forces, contained in Decision No. 255 dated August 19, 1992, and its upholding of Decision No. 093 of February 8, 1993, corroborated the conclusions arrived at in the D.A.S. report and unambiguously place responsibility on Captain Luis Felipe Becerra, Lieutenant Pedro Vicente Bermudez and Corporal Felipe Ochoa Ruiz of the Colombian army, promoted to Lieutenant Colonel, Captain and Sergeant respectively, for the multiple murders aimed at eliminating the workers at the Honduras and La Negra farms.

c. That the final conclusions reached by the Colombian authorities of the military penal court are at variance with the judicial decisions of the common criminal court which declares the responsibility of the civilians who acted as accomplices, who would have been unable to commit the acts for which they were punished without the collaboration, support and assistance of the Colombian army through the actions of its agents.

d. That the indefinite delay in the judicial investigation militates against due and prompt administration of justice, and

e. That in a country in which a series of investigations on a single criminal act are conducted simultaneously and where, by law, when the actions constitute a violation of human rights and are attributed to soldiers on active service, the judicial investigations must be carried out by the military institute in question, it is symptomatic, although explainable, that this jurisdiction almost invariably fails to recognize the accusatory evidence presented and exonerates the soldiers involved from responsibility, hindering the truth and the punishment of the perpetrators, as in the present case, thus committing a serious act which directly affects the right of the victims and their families to justice.

5. Regarding a friendly settlement

a. That the questions which are the subject of this complaint: the irrecoverable right to life and the irreversible acquittal despite the evidence, that deprives them for ever of the right to justice, cannot, by their very nature, be resolved through a friendly settlement, nor have the parties requested of the Commission this procedure provided for in Article 48.1f of the Convention and in Article 45 of the Regulations of Inter-American Commission on Human Rights, and

b. That since the procedure of friendly settlement is not applicable, the Commission must invoke Article 50.1 of the Convention, stating its opinion and conclusions on the matter submitted for its consideration.

6. Regarding the responsibility of the Government of Colombia

a. That in the present case, there is clear proof of the participation of the soldiers of the Colombian army on active service, before, during and after events.

b. That this has been confirmed through evidence and testimonies set forth in the investigation files cited in the present report, which allege that Captain Becerra, Lieutenant Bermudez and Corporal Ochoa, in the exercise of their functions as members of the Colombian army, were directly involved and made those events possible; and

c. That the acts described constitute a succession of serious events that violate the basic rules of human rights provided under Colombia's domestic legislation and in the American Convention on Human Rights.

7. Regarding the international responsibility of the State

That although the Government of Colombia, in the light of the international petition based on the conclusions of the report of the D.A.S. and of the office of the Attorney General of the Nation, denies and rejects the petitioner's claim that the Colombian army was the author of the massacre in collusion with paramilitary troops, does not deny or challenge the evidence contained in the aforementioned investigations in which their responsibility was established, merely stating that it is for the judges of the Republic, that is, the Judicial Branch, to make such a pronouncement and not the Office of the Attorney or the D.A.S, which are organs of the Executive Branch.

That this evidence, which is neither challenged nor disputed, establishes the responsibility of Captain Becerra, Lieutenant Bermudez and Corporal Ochoa, for using former members of the subversive group and paramilitary troops to murder en masse the workers at the Honduras and La Negra farms, alleged or actual members of the EPL, while they were unarmed and totally defenseless.

That in proceedings before the Inter-American Commission on Human Rights the statements of the Government of Colombia are in conflict with the evidence submitted by its own public investigation organs.

That the fact that the Judicial Branch through the public order courts, has not taken that evidence into account, or that in so doing, on discovering the action investigated had been committed by serving soldiers, was obliged to refer it to the military jurisdiction and desist from its investigation, further attests to the defect in the legal system for the administration of justice in Colombia, which enables public bodies other than the Judicial Branch to discover the truth of events which that Branch should have clarified, which does not occur because the law prevents its judges precisely from investigating the State's responsibility for violation of human rights, such investigations are given to the military courts.

That this situation also generates another irregularity in the system of Colombian administration of justice which has not been rectified: it is that, when it comes to State responsibility or violation of human rights, that the legal truth for the Colombian Government is declared by the military penal justice, because in a criminal trial involving a soldier who has committed an offense in the course of duty, the civil courts must cease hearing the case and refer it to the military courts.

That this system, which has been observed by the Commission, but not corrected, seriously undermines the Colombian's administration of justice. It is therefore pertinent to reiterate the recommendations that Colombia adjust its legislation concerning due process to bring into line with the American Convention, and

That the international responsibility of the Colombian State with regard to human rights, declared or not by the military penal justice, derives from the actions of the public authorities in cases in which, voluntarily or involuntarily, its agents, by commission or omission, violate the right to life, or, also as in the present case, the right to justice for persons, depriving them as it does of their legitimate right to have the author of the homicide punished.

Regarding compliance with the provisions of the Convention

8. That in the prosecution of the present case all the legal and regulatory procedures established in the Convention and in the Regulations of the Commission were observed, fulfilled and exhausted.

9. Other considerations

a. That on December 7, 1993, without presenting any observations on Report N° 26/93 of October 7, 1993, the Government of Colombia sent complementary information on the decision of the Higher Military Court of September 16, 1993, exonerating the military personnel implicated in the massacre on the Honduras and La Negra farms from all responsibility;

b. That in the matters contained in its note of reply the Government of Colombia presented no new information that would refute the facts complained of or show that proper measures had been taken to resolve the situation complained of, and

c. That the Commission is in possession of no new information that would warrant any amendment to the original report,

10. Regarding noncompliance with report 26/93 of October 1993

That the three-month deadline given to the Colombian Government has elapsed and it has not complied with the Commission's recommendations in Report No. 26/93 of October 7, 1993, nor has it replied to the communication of October 22, 1993, notifying it of the adoption of that report and sending it a copy thereof.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. That the Government of Colombia has failed to fulfill its obligation to respect and guarantee articles 4 (right to life); article 8 (right to a fair trial); and article 25 (right to judicial protection) in connection with article 1.1, established in the American Convention on Human rights, of which Colombia is a State Party, and Sections I (life) and XVIII (fair trial) of the American Declaration, concerning the mass murder of the workers at the Honduras and La Negra farms.
2. That the Government of Colombia has not complied with the provisions of Article 2 of the American Convention on Human Rights, by adopting in accordance with its current constitutional and legal procedures, such legislative or other measures as may be necessary for persons to assert their right to obtain justice through punishment of armed forces members on active duty who, in the performance of their duties, commit crimes against the right to life.
3. That the Government of Colombia did not investigate the facts reported, nor punish those responsible, nor pay compensation to the families of the victims.
4. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Colombia did not adopt measures to correct the situation denounced within the time period.