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Decided by: Chairman: Carlos Ayala Corao;  
First Vice Chairman: Robert K. Goldman;  
Second Vice Chairman: Jean Joseph Exume.  
Commissioner Alvaro Tirado Mejia, a Colombian national, did not participate in the consideration and vote on this report, pursuant to Article 19(2)(a) of the Commission's Regulations.  
Dated: 7 April 1998  
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## I. SUMMARY OF THE CASE

1. This case involves the alleged arbitrary detention and mistreatment of Ceferino Ul Musicue and Leonel Coicue, members of the Paez indigenous community located in San Francisco, Toribio, Department of Cauca, Colombia. A Colombian Army unit allegedly detained Mr. Ul and Mr. Coicue arbitrarily on December 3, 1986. The two individuals were held by the Army and forced to accompany the soldiers on patrol until December 12, 1986 when they were released. Members of the Army allegedly beat Mr. Ul and Mr. Coicue during the time they were being held. Based on the information submitted and its investigation and analysis in the case, the Inter-American Commission on Human Rights (the "Commission") concludes that the Republic of Colombia (also "Colombia", "the State" or "the Colombian State") is responsible for violations of Articles 1, 5, 7, 8 and 25 of the American Convention on Human Rights (the "Convention").

## II. PROCESSING BEFORE THE COMMISSION

2. The Commission received the original petition in this case on January 23, 1987. The Commission opened case No. 9853 on February 3, 1987 and sent the pertinent parts of the petition to the Colombian State for its response.

3. On March 18, 1987, the Commission received a communication from the State requesting that the Commission not consider the petition on the grounds that the United Nations Working Group on Enforced or Involuntary Disappearances had initiated a proceeding in relation to a similar petition.

4. The Commission reiterated its request for information regarding the petition on March 4, 1988 and on July 11, 1988. In its communication of July 11, 1988, the Commission informed the State that the existence of a proceeding on a similar petition at the United Nations Working Group on Enforced or Involuntary Disappearances did not preclude the Commission from considering the petition.
5. The State provided its answer in the case on September 5, 1988, informing the Commission of the existence of a disciplinary proceeding related to the alleged detention of Mr. UI and Mr. Coicue.
6. On March 22, 1989, the Commission requested information regarding the results of the disciplinary proceedings and copies of medical evidence obtained in those proceedings.
7. On June 6, 1989, the State responded to the Commission's request for information and provided copies of certain documents which formed part of the disciplinary proceedings.
8. The Commission again requested that the State provide information regarding the status of the domestic investigations on June 25, 1991. The State requested an extension of time to respond to this request, which was granted on July 31, 1991.
9. The State responded to the Commission's request for information on October 1, 1991. In its October 1, 1991 communication, the State raised an objection to the Commission's jurisdiction over the case based on a purported failure to exhaust domestic remedies.
10. In a communication dated November 12, 1996, the Commission again asked the State to inform the Commission regarding the status of the domestic proceedings and to provide other information.
11. The Commission reiterated its request to the State for information on March 31, 1997. In that same communication, the Commission informed the State that it had decided to place itself at the disposition of the parties for the purpose of seeking a friendly settlement of the case. The Commission communicated to the petitioner its decision to place itself at the disposition of the parties for the purpose of arriving at a friendly settlement on the same date.
12. On May 5, 1997, the State sent a response to the Commission's request for information of November, 1996. The information sent by the State included a copy of the decision reached in the domestic disciplinary proceedings.
13. In a communication dated June 19, 1997, the Commission requested further information from the State regarding the domestic investigations which were carried out in relation to the case. The Commission received a response from the State on August 25, 1997.

### III. ANALYSIS

#### A. Admissibility

## 1. Procedure for Deciding Admissibility

14. The State originally asked that the Commission not process this case on the grounds that the United Nations Working Group on Enforced or Involuntary Disappearances had begun processing a similar case. However, in communication of July 11, 1988, the Commission clarified that it did not consider that it was precluded from processing the case on these grounds. The State then ceased to object to admissibility on this ground. In its response to the Commission's communication of July 11, 1988, the State suggested that it would address the Commission's position regarding the possible duplication in proceedings at a later date. The State never again addressed the point.

15. The State later raised the question of compliance with the requirement of exhaustion of domestic remedies, presumably as an objection to the admissibility of the petition. However, the State raised this objection for the first time in its communication dated October 1, 1991, more than four years after the Commission opened the case. The State had already provided three previous response briefs in the case before raising this objection. The Inter-American Court of Human Rights (the "Court") has repeatedly noted that an objection based on non-exhaustion of domestic remedies, "must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." [FN1]

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[FN1] I/A Court H.R., Velásquez Rodríguez Case, Judgment of June 26, 1987, Preliminary Objections, par. 88; see also I/A Court H.R., Neira Alegría Case, Judgment of December 11, 1991, Preliminary Objections, par. 30 (citing Velásquez Rodríguez, par. 88).

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16. It is thus not clear that the State has raised serious and timely objections to admissibility in this case. The Commission will therefore address the issues relating to admissibility only in a brief manner and then will proceed to set forth the facts and state its conclusions regarding the petition at issue, in accordance with Article 50 of the Convention.

## 2. Formal Admissibility Requirements

17. The petition fulfills the formal admissibility requirements contained in the Convention and the Regulations of the Commission. In accordance with Article 47(b) of the Convention, the Commission is competent to examine this case as it alleges violations of the Convention. As to the requirement of Convention Article 47(d), the Commission has received no information indicating that the subject of the petition duplicates a petition previously examined by the Commission.

18. The State's original objection to this case, based on the existence of the proceeding before the United Nations Working Group on Enforced or Involuntary Disappearances, was made in reliance on Article 46(1)(c) of the Convention. That provision requires, for the admission of a petition, "that the subject of the petition or communication is not pending in another international proceeding for settlement."

19. The Commission has made clear that it will not refuse to take up a petition on Article 46(1)(c) grounds when the proceeding which has been initiated before another international organization will not result in a decision regarding the specific facts of the petition presented to the Commission or will not provide an effective remedy for the violation alleged. In this connection, the Commission considers that it is not precluded from carrying out its own proceedings where the proceeding before the other body is not of the same quasi-judicial nature as that carried out by the Commission.[FN2] The Commission's proceedings result in a merits determination as to State responsibility for human rights violations and, where State responsibility is found, in the formulation of specific recommendations to repair the human rights situation. The Commission does not find a basis for inadmissibility, pursuant to Article 46(1)(c), where the other international proceeding invoked does not provide similar relief. The Commission has previously held that, pursuant to these standards, the processing of a petition by the United Nations Working Group on Enforced or Involuntary Disappearances does not preclude the Commission from processing a petition presented to it which addresses the same facts.[FN3]

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[FN2] See, e.g., I/A Comm. H.R., Report No. 30/88 (Peru), September 14, 1988, Annual Report of the Inter-American Commission on Human Rights 1988-1989; I/A Comm. H.R., Report No. 33/88 (Peru), September 14, 1988, Annual Report of the Inter-American Commission on Human Rights 1988-1989.

[FN3] Id.

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### 3. Time for Filing the Petition

20. The State has never alleged that the petitioners presented their claim to the Commission outside of the relevant time period for the filing of a petition provided for in Article 46(1)(b) of the Convention and Article 38 of the Regulations of the Commission.[FN4] The Commission therefore determines that the case is admissible without reference to the question of the time period in which the application was submitted.

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[FN4] See Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, par. 30 (indicating that the Government bears the burden of proof on this question and may waive an objection on these grounds).

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### 4. Friendly Settlement

21. In accordance with Article 48(1)(f) of the Convention, the Commission, in a letter to the parties dated March 31, 1997, offered to place itself at their disposal for the purpose of arriving at a friendly settlement. The Commission requested a response to its communication within 30 days. No response was received from the petitioners. The State indicated, in its communication of August 25, 1997, that it did not consider the friendly settlement of the case to be possible at the moment. It has thus not been possible to initiate a friendly settlement proceeding in this case.

The Commission notes, however, that the parties may at any moment during the processing of a case in the inter-American system decide to enter into friendly settlement negotiations, notwithstanding an initial decision by either of the parties not to engage in that exercise.

## 5. Exhaustion of Domestic Remedies

22. Article 46(1)(a) specifies that admission of a petition requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The State has mentioned two domestic proceedings in relation to its argument that domestic remedies have not been exhausted. First, the State has made reference to the disciplinary proceedings initiated to investigate the possible arbitrary detention and mistreatment of Mr. Ul and Mr. Coicue.[FN5] Second, it has made reference to the contentious-administrative complaint process as a domestic remedy which should have been exhausted in this case.[FN6]

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[FN5] The Office of the Procurator General ("Procuraduría General de la Nación"), an oversight body of the Colombian State that operates within the Public Ministry ("Ministerio Público"), has jurisdiction to adopt disciplinary decisions against State agents. Constitution of Colombia, arts. 275, 277.

[FN6] The contentious-administrative jurisdiction is instituted by the Constitution to try administrative disputes and litigation arising from the acts of public agents and entities. It is a legal proceeding by which Colombian citizens can seek compensation for the violation of a right by State agents. Constitution of Colombia, art. 237; Contentious Administrative Code, art. 82.

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23. The Commission considers that the domestic disciplinary proceeding has been exhausted to the extent possible. That proceeding was originally initiated on February 16, 1987 by the Second Delegate Procurator for Judicial Police and Human Rights ("Procuraduría Segunda Delegada para Policía Judicial Derechos Humanos"). It was subsequently transferred to the Delegate Procurator for the Military ("Procuraduría Delegada para las Fuerzas Militares") on January 22, 1988. On July 12, 1990, the Delegate Procurator for the Military issued a decision closing the disciplinary investigation and abstaining from filing formal charges.[FN7]

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[FN7] See Decision of the Delegate Procurator for the Military, July 12, 1990, Bogotá.

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24. The State has noted that the decision states that the disciplinary proceeding might subsequently be reopened. However, the State has informed the Commission of no action in that regard and has not notified the Commission of any further investigations carried out subsequent to the decision issued in 1990. In addition, as the decision makes clear, no further disciplinary proceedings may be carried out once the statute of limitations has expired. It would appear that the applicable statutes of limitations would have expired, since ten years have elapsed since the events involved in this case occurred. The State has not made any argument to the contrary. The Commission thus considers that the disciplinary proceedings have been exhausted.

25. Moreover, even if the Commission accepted the State's argument that the disciplinary proceedings have not concluded, the Commission would be justified in concluding that an exception to the requirement of exhaustion of domestic remedies applies in this case. Article 46(2)(c) of the Convention provides that the requirement of exhaustion of domestic remedies does not apply where "there has been unwarranted delay in rendering a final judgment." More than ten years have passed since the events which originally formed the subject of the disciplinary proceedings took place. If the final definitive decision in the disciplinary proceedings remains pending, then there has manifestly been excessive delay in the rendering of that decision.

26. As to the contentious-administrative remedy, the Commission refers to the Inter-American Court's clear jurisprudence which indicates that those remedies which must be exhausted are those which are adequate and effective. Adequate remedies "are those which are suitable to address an infringement of a legal right." [FN8] The Commission reaffirms its conclusion, reached in other cases involving Colombia, that the Colombian contentious-administrative proceeding is "intended only as a means of supervision of the State's administrative activity and to obtain compensation for damages caused by abuse of authority." [FN9] The Commission has clarified in those previous cases that the contentious-administrative proceeding is generally not an adequate "means of redress of human rights violations" and thus need not be exhausted in a case such as this one. [FN10] Accordingly, exhaustion of the contentious-administrative proceeding is not a prerequisite for the admissibility of the present case.

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[FN8] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 64.

[FN9] See, e.g., I/A Comm. H.R., Report No. 15/95 (Colombia), September 13, 1995, Annual Report of the Inter-American Commission on Human Rights 1995, OEA/Ser.L/V/II.91, Doc. 7 rev., February 28, 1996, at p. 71.

[FN10] Id.

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## B. Merits

### 1. Findings of Fact

27. The Commission finds that members of the Colombian Army removed Mr. Ul and Mr. Coicue from their homes and detained them on December 3, 1986. The Commission further concludes that the Army held Mr. Ul and Mr. Coicue and forced them to accompany an Army unit on patrol for nine days before releasing them on December 12, 1986. These findings are based on the testimony of Mr. Ul and Mr. Coicue. [FN11] That testimony is consistent and has not been contradicted by any other evidence in the record before the Commission.

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[FN11] See Declaration of Ceferino UI before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987; Declaration of Leonel Coicue before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987.

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28. The State has never denied the facts of the detention. In its response of October 1, 1991, the State did assert that the domestic disciplinary proceedings had been closed, because the disciplinary tribunal considered that no State agent was implicated in the events. In making this reference, the State may have sought to allege, in this case before the Commission, that State agents were not responsible for the detention.

29. However, the Commission notes that the disciplinary tribunal did not base its decision of July 12, 1990 on a finding that State agents were not involved in the case. The decision of the Procurator General of the Nation terminating the proceedings simply states that it had been impossible to identify and locate the individual Army officials who were accused of carrying out the detention of Mr. UI and Mr. Coicue.[FN12] The Commission considers that no evidence has been presented which would controvert the testimony of Mr. UI and Mr. Coicue suggesting that members of the Army detained them.

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[FN12] See Decision of the Delegate Procurator for the Military, July 12, 1990, Bogotá.

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30. The participation of Army officials in the detention of Mr. UI and Mr. Coicue is further confirmed by the testimony of the judiciary police inspector ("inspector policía judicial") who carried out an early investigation of the case. The police inspector testified that the persons who detained Mr. UI and Mr. Coicue were members of the Colombian Army.[FN13]

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[FN13] See Declaration of Mario Pavi, judicial police inspector for San Francisco, before local government officials ("Personería Municipal") for Toribio, Cauca, October 30, 1987.

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31. The Commission further concludes that Mr. UI and Mr. Coicue were tied up and beaten by the Army officials who held them. Mr. UI testified that he was tied up on several occasions as he was taken along with the Army unit. He testified that, on one occasion during his detention, a soldier hit him with a gun in the head. On another occasion, he received three blows to the head at the hands of a soldier.[FN14] Mr. Coicue testified that the soldiers kicked him once and hit him with a gun in his back.[FN15]

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[FN14] See Declaration of Ceferino UI before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987; Declaration of Ceferino UI before the Visiting Attorney for the Sectional Office of the Procurator General for Santander de Quilichao, Cauca, September 7, 1988.

[FN15] See Declaration of Leonel Coicue before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987.

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32. The State has brought to the Commission's attention the fact that a physician issued a certificate indicating that Mr. Ul did not have any scars or other signs of having been beaten. However, the Commission notes that the medical examination resulting in this certificate was not ordered by the local officials investigating the case until November 28, 1987. It was finally carried out on December 2, 1987, one year after Mr. Ul was detained by the Army.[FN16] It is unlikely that the medical examination would find physical signs of the blows and mistreatment described by Mr. Ul one year after the fact. The Commission thus considers that the medical evidence is not inconsistent with Mr. Ul's testimony. Mr. Ul's testimony establishes that he was beaten, and the Commission finds no reason to disregard that evidence and conclude that Mr. Ul did not suffer physical blows at the hands of his Army captors.

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[FN16] See State Response dated October 1, 1991; Decision of the Delegate Procurator for the Military, July 12, 1990, Bogotá. The Commission notes that the record before this body does not contain a copy of the medical report, despite the fact that the Commission specifically requested that the State provide that document on March 22, 1989.

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33. The State also asserts that Mr. Coicue told a representative of the Procurator General's office that he had not been mistreated. In response to a question as to whether Mr. Coicue had visited a hospital or clinic and whether he had been given a certificate of medical unfitness or handicap, Mr. Coicue did state that, "the Army people did practically nothing to me." The Commission understands that Mr. Coicue's response to the question indicates that he did not suffer any serious harm as a result of his mistreatment which would have required hospitalization or which would have resulted in a handicap. However, Mr. Coicue had previously testified, as noted above, that he received physical blows from the soldiers who held him. The statements of the victim, when read together, indicate that he was beaten, albeit without lasting injury.

34. The Commission finally concludes that Mr. Ul and Mr. Coicue were also placed in physical danger from armed combat during the time they were forced to accompany the Army patrol. Mr. Ul testified that he and Mr. Coicue were present when the Army patrol "had battles" ("tuvieron esos combates").[FN17] Mr. Coicue testified that he accompanied the patrol as it "verified" battles and that the soldiers dressed him in camouflage and sent him to the front of the patrol so that he would be shot first in any attack.[FN18] In corroboration of these accounts, the police investigator who handled the case testified that Mr. Ul and Mr. Coicue were detained and obliged to accompany the Army patrol "so that they could serve as guides." [FN19]

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[FN17] Declaration of Ceferino Ul before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987.

[FN18] Declaration of Leonel Coicue before local government officials ("Personería Municipal") for Toribio, Cauca, September 30, 1987.



[FN19] Declaration of Mario Pavi, judicial police inspector for San Francisco, before local government officials ("Personería Municipal") for Toribio, Cauca, October 30, 1987.

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2. Conclusions of Law

a. The Right to Humane Treatment

35. Pursuant to Article 5 of the Convention, every person has the right to have his physical, mental and moral integrity respected. Article 5 explicitly states that, "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

36. The Commission concludes that members of the Colombian Army violated the right to humane treatment of Mr. Ul and Mr. Coicue in the present case. The soldiers tied up Mr. Ul and beat both Mr. Ul and Mr. Coicue. They further forced Mr. Ul and Mr. Coicue to accompany the Army unit near and possibly even in combat situations, which inherently involved danger to the physical safety of the two men. Whether or not this treatment of the two victims was committed with a certain purpose and whether or not it otherwise rises to the level of torture,[FN20] it certainly compromised the physical integrity of the victims and constituted cruel treatment in violation of Article 5 of the Convention.

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[FN20] See Inter-American Convention to Prevent and Punish Torture, art. 2 (providing a definition of torture).

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b. The Right to Personal Liberty

37. Article 7 of the Convention provides that every person has the right to personal liberty and security. That Article provides that, "[n]o one shall be subject to arbitrary arrest or imprisonment" and establishes that detentions may only be carried out in compliance with the principle of legality, that is, pursuant to pre-established law.

38. The Commission concludes that Mr. Ul and Mr. Colcue were arbitrarily detained and deprived of their personal liberty by the Army officials who held them from December 3 until December 12, 1987. The detention of Mr. Ul and Mr. Colcue was carried out without an arrest warrant and no legitimate rationale for the arrest, which meets with the requirement of legality, appears on the record.

39. In fact, the domestic tribunals initiated a disciplinary proceeding to investigate a possible arbitrary detention[FN21] and eventually ended the investigation without addressing the alleged arbitrary detention. The investigation was closed for an alleged lack of evidence regarding mistreatment suffered during the detention and regarding the identity and location of the individual persons responsible for the detention. However, the legality of the detention was never demonstrated in that proceeding.

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[FN21] See Response of the State of September 5, 1988.

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40. Because of the arbitrary and illegal nature of the detention, the detainees did not receive the opportunity to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention.

c. Obligation to Respect Rights

41. The underlying violations found to have been committed in the instant case demonstrate that the Colombian State has also failed to uphold the undertaking set forth in Article 1(1) of the Convention "to respect the rights and freedoms recognized herein." The Court has held that:

Whenever a State organ, official or public entity violates . . . rights [named in the Convention], this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention . . . a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law."[FN22]

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[FN22] Velásquez Rodríguez Case, Judgment of July 29, 1988, pars. 169, 170.

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42. In the instant case, agents of the Colombian Army, under color of their official authority as agents of the Colombian armed forces, arbitrarily detained and mistreated Mr. Ul and Mr. Coicue. These incidents resulted in the violation of rights guaranteed in the Convention, and the Colombian State is responsible for those violations committed by State agents in conjunction with a violation of Article 1(1).

d. Denial of Justice

43. Subsequently, Mr. Ul and Mr. Coicue were denied access to justice and an effective legal remedy in relation to the violations they suffered. The Colombian State failed to fulfill its obligations to ensure the human rights of Mr. Ul and Mr. Coicue.

44. Articles 8 and 25 of the Convention provide individuals with the right to access to tribunals, the right to pursue and be heard in judicial proceedings and the right to a decision by the appropriate legal authority. Article 25(1) of the Convention sets forth that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.

Article 8(1) of the Convention provides that every person has the right to be heard "with due guarantees" and within a reasonable time by a competent and independent tribunal.

45. In addition, the second obligation of the State under Article 1(1) of the Convention is to "ensure" the free and full exercise of the rights recognized by the Convention. This obligation implies:

the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights

recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights.[FN23]

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[FN23] Id., par. 166.

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46. The State has not complied with its duty to investigate, punish and compensate in relation to the violations which Mr. Ul and Mr. Coicue suffered. Nor have Mr. and Mr. Coicue been provided with an adequate opportunity to be heard and effective access to legal recourse.

47. The family members of Mr. Ul and Mr. Coicue notified the local authorities soon after the two victims were taken away by the Army and before they were released.[FN24] There exists no information in the record before the Commission indicating that any investigation or other action was initiated at that time, despite the fact that the two victims were considered disappeared until they were eventually released and returned home. No criminal proceeding was ever initiated in relation to this matter.

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[FN24] See Declaration of Mario Pavi, judicial police inspector for San Francisco, before local government officials for Toribio, Cauca, October 30, 1987.

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48. A disciplinary proceeding was not initiated in the case until February of 1987, several months after the events occurred. The disciplinary investigation was terminated on July 12, 1990 for supposed lack of evidence, and thus no person was sanctioned for the violations suffered by Mr. Ul and Mr. Coicue.

49. The State's duty to investigate and prosecute persons responsible for human rights abuses is not breached "merely because the investigation does not produce a satisfactory result." [FN25] However, the investigation "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective." [FN26]

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[FN25] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 177.

[FN26] Id.

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50. In its July 12, 1990 decision to close the proceedings, the disciplinary tribunal stated that it had been unable to obtain the complete names of the soldiers allegedly involved in the incidents and that it had also been impossible to obtain information regarding the participation of those soldiers in the military operations carried out in December of 1986. Finally, the tribunal noted that it had not been able to locate the implicated soldiers.

51. However, there exists no indication on the record that Colombian disciplinary or other authorities carried out a serious investigation to identify the persons responsible and locate those persons, despite the fact that the two victims provided specific last names of Army officials allegedly involved in their detention and mistreatment.[FN27] The disciplinary investigation seems to have been limited largely to interviews with the affected persons and with the local judicial police inspector who initially investigated the case. The State has provided no information indicating that further investigative procedures were carried out to determine the responsibility of the persons named by the victims and to locate those persons or to otherwise identify the persons responsible for the violations committed.

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[FN27] In a communication dated June 19, 1997, the Commission requested that the State provide information regarding the measures which were taken to investigate and locate the members of the Colombian Army named by the victims. The State has not yet provided any information on this point.

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52. In its decision to close the proceedings, the disciplinary tribunal further found that insufficient evidence existed regarding the mistreatment of Mr. Ul and Mr. Coicue denounced in the disciplinary proceeding. Specifically, the tribunal makes reference to the medical certificate issued in December of 1987, indicating that the physician who examined Mr. Ul did not find any scars or other signs of mistreatment.

53. However, as the Commission noted above, it was extremely unlikely that a physician would find scars or other signs proving the mistreatment described by Mr. Ul when the physical examination was conducted more than one year after the fact. The medical examination was not carried out at an earlier date, because the authorities charged with investigating the case did not order the examination until almost one year after the events. If the medical examination was considered to constitute important evidence, the authorities investigating the case should have ordered the examination within a reasonable time after the events occurred. The negligence of State agents in carrying out the examination until long after it could provide useful results effectively deprived the victims of probative evidence which was treated as crucial in the disciplinary case. As a result, the victims were denied access to judicial protection and to an effective remedy, in violation of Articles 8 and 25 of the Convention.

54. This analysis of the proceedings carried out by the State demonstrates that State agents failed to act with sufficient diligence to investigate, identify and sanction the violations involved

in this case and to provide access to legal recourse. The Commission observes, as a final matter, that the State has not provided monetary or other compensation to the family members of the victims.

#### IV. CONSIDERATIONS IN RESPECT OF THE ACTIONS TAKEN SINCE ADOPTION OF THE ARTICLE 50 REPORT

##### A. Procedure after the adoption of the Article 50 Report

55. The Commission examined this case during its 97<sup>o</sup> Regular Session. On September 30, 1997, pursuant to Article 50 of the Convention, it adopted Report 27/97, which concluded that the Colombian State was responsible for violations of the Convention, including violations of the right to humane treatment (Article 5), to personal liberty (Article 7), and to justice (Articles 8 and 25), in conjunction with a violation of Article 1(1). The Commission recommended that the State adopt specific measures to resolve the situation.

56. Report 27/97 was sent to the Colombian State on October 28, 1997, with a request to the State to inform the Commission as to the measures taken to remedy the situation, in line with the recommendations made. The State was given a two-month period to respond. The petitioners were notified of the adoption of the report in a note of the same date.

57. On December 30, 1997, the Commission received a note from the State requesting an extension of time for the filing of its response. By note dated December 31, 1997, the Commission granted an extension of time of 30 days. On February 9, 1998, the Commission received the State's response to Report 27/97, which was dated February 4, 1998. The Commission wishes to express its concern regarding the late filing of the State's response. The State failed to respond in a timely manner despite having received from the Commission a total period of three months to provide information regarding compliance with the report adopted in accordance with Article 50 of the Convention.

##### B. The State's Arguments Regarding the Commission's Admissibility Decision

###### 1. Procedural Objections

58. The State first questions the Commission's statement, in Report 27/97, that it is "not clear that the State has raised serious and timely objections to admissibility in this case." The State suggests that, beginning with its first response, the State implicitly raised a preliminary objection on the grounds of failure to exhaust domestic remedies by providing information regarding domestic proceedings. The State further suggests that it is inappropriate to invoke the Court's holding in *Velásquez Rodríguez* in this case to suggest that the objection was not made "at an early stage of the proceedings." The State argues that there exists a lack of clarity in this case regarding the appropriate time period for raising an objection on the grounds of failure to exhaust domestic remedies.

59. The Commission notes that, despite finding that it was not clear that the State had raised serious and timely objections to admissibility, the Commission nonetheless proceeded to analyze

the various requirements for admitting a petition, including the requirement of exhaustion of domestic remedies. The procedural question raised by the State thus had no effect on the outcome of the case.

60. The Commission further notes, however, that the State must make clear that it is raising an objection to admissibility, on exhaustion grounds, in order for the Commission to consider that objection. Information regarding activities in and the status of domestic proceedings is an important element of an objection based on the exhaustion requirement. However, to object to admissibility on exhaustion grounds, the State also must explain which adequate remedies have not been exhausted so that the Commission may analyze the alleged shortcomings of the petitioner on this point.[FN28] It is not sufficient simply to provide information regarding domestic proceedings. It must be made clear that the State considers that those or some of those domestic proceedings are adequate and are required to be exhausted. The State must also, of course, explain its reasons for sustaining this position, so that the Commission may analyze those arguments.

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[FN28] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, par. 88.

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61. The Commission also considers that any interpretation of the Court's jurisprudence would lead to the conclusion that the objection raised four years after this case was opened and after the State had responded on three prior occasions to the Commission would not constitute a timely objection raised at an early stage of the proceedings. The Commission thus considers that it properly applied the language in the Velásquez Rodríguez case regarding the waiver of admissibility objections not raised in a timely manner.

## 2. Substantive Objections

62. The State next questions the substance of the Commission's decision on admissibility regarding the requirement of exhaustion of domestic remedies. The State suggests that the Commission has erroneously disqualified the disciplinary and contentious-administrative proceedings as possible effective domestic remedies which must be exhausted. The State argues that the Commission has failed to recognize the integrated nature and the effectiveness of those two proceedings in Colombia.

63. The Commission considers that the State's objection is not applicable in this case, at least as it applies to the Commission's valuation of the disciplinary proceeding. The Commission did not reject that proceeding as a possible remedy in this case. The Commission simply found, as regards that proceeding, that it had been exhausted to the extent possible. The Commission further found that, even if it had not concluded that the disciplinary proceeding had been exhausted, it would have held that the undue delay in the resolution of that proceeding would constitute an exception to any exhaustion requirement.

64. The Commission did find that the contentious-administrative proceeding would not constitute an adequate remedy and thus need not be exhausted. The Commission continues to hold that, in cases involving human rights violations, the possibility for monetary compensation alone provided by the contentious-administrative proceeding is generally not an adequate remedy. The contentious-administrative proceeding thus need not be exhausted before the Commission may admit and decide the case.

C. State Compliance with the Commission's Recommendations

1. Investigation and Sanction

65. In relation to the Commission's recommendation regarding the investigation of the case and the sanction of those responsible for committing the violations, the State announced that it would be impossible at this point to carry out a criminal or disciplinary investigation. The Commission recognizes that prior final decisions or the passage of time may limit the sphere of possible action which a State enjoys in repairing a human rights violation through domestic criminal or other formal proceedings. However, the Commission also considers that monetary compensation, provided either through a contentious-administrative proceeding or through the application of Law 288, is not generally sufficient in a case which would have required a serious investigation and the sanction of those responsible for committing human rights violations.

66. The State should seek legal measures, which may be carried out in conformity with the law, which would allow for the sanction of those responsible. At a minimum, the State should find a means of carrying out a serious, impartial and complete investigation of the events.[FN29] This investigation should end in an official report, adopted by the State, which sets forth an accurate version of the events.

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[FN29] See, e.g., Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 181.  
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67. The Commission finds that the State has failed to comply with its recommendation regarding the investigation of this case and the sanction of those responsible for committing the human rights violations denounced therein. The State has not provided any satisfactory explanation for its failure to comply with the recommendation of the Commission.

2. Reparation

68. As to the recommendation regarding the reparation of the violations, the State has provided important information. The State has notified the Commission that the Government and the petitioners are collaborating to develop an educational project to benefit the Paez indigenous community. The plan would include several educational workshops on human rights. The Commission recognizes the importance of this project. If the project is carried out in a serious manner, it will constitute a valuable means of providing reparation to the community for the human rights violations committed against two of its members.

69. The State also informed the Commission that it will submit this case to the Committee of Ministers created by Law 288 to execute internally the Commission's recommendation that monetary compensation be provided to the victims. The Commission notes once again that the Colombian state has taken an important step in adopting and applying Law 288 in cases decided by the Commission so as to allow for the compensation of victims of human rights violations.

70. The Commission considers that the State has taken important steps to implement the Commission's recommendation that the State make full reparation to the victims. The Commission will continue to supervise the situation to ensure that full compliance with the recommendation is achieved.

Based on the foregoing:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

71. That the Colombian State is responsible for violations of the rights of Mr. Ul and Mr. Coicue to humane treatment (Article 5), personal liberty (Article 7), access to justice (Articles 8 and 25) and failed to uphold its obligations established in Article 1 of the Convention.

RECOMMENDS:

72. That the Colombian State undertake a serious, impartial and effective investigation of the events so that the circumstances of the violations found may be fully detailed in an officially sanctioned account and so that all of the individuals against whom there exist indicia of responsibility for the violations may be submitted to the appropriate judicial processes and may be sanctioned, where appropriate.

73. That the Colombian State adopt measures to make full reparation for the violations found, including providing adequate and fair monetary and other compensation to the victims.

## VII. PUBLICATION

74. In conformity with Article 51(1) and (2) of the American Convention, the Commission sent Report No. 4/98, adopted in the present case, to the Colombian State on February 23, 1988. The Commission granted the State a one-month period to adopt the necessary measures to comply with the foregoing recommendations and to resolve the situation under analysis.

75. The Commission received the response of the Colombian State to Report No. 4/98 on March 25, 1998. The State attached to its communication the proposal for the education project to benefit the Paez Community, which was previously referenced in Report No. 4/98.

76. The Colombian State does not provide, in its response, new information regarding the adoption of measures in order to comply with the recommendations of the Commission.



77. The State notes, in its response, that it hope to apply Law 288 in this case to allow the State to provide monetary compensation to the victims. However, when the one-month period for compliance with the recommendations expired and also when the Commission took its decision regarding publication, the State still had not taken the necessary initial step for the application of Law 288, consisting in the issuance of a favorable opinion regarding the application of the law by the Committee of Ministers established pursuant to the law.

#### VIII. FINAL ANALYSIS AND CONCLUSIONS

78. For these reasons, the Commission decides that the State has not taken all of the appropriate measures to comply with the recommendations set forth in this report.

79. Based on the foregoing and pursuant to Article 51(3) of the American Convention and Article 48 of the Commission's Regulations, the Commission decides to reiterate the conclusions and recommendations contained in Report No. 4/98. The Commission further decides to make public this report and to include it in the Commission's Annual Report to the General Assembly of the OAS.