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First Vice-Chairman: Claudio Grossman;  
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Commissioners: Marta Altolaguirre; Robert K. Goldman; Peter Laurie; and  
Julio Prado Vallejo  
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## I. SUMMARY

1. On December 16, 1992, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition submitted by the Corporación Colectivo de Abogados "José Alvear Restrepo" (hereinafter "the petitioners") against the Republic of Colombia (hereinafter "the State," "the Colombian State," or "Colombia") alleging the extrajudicial executions of Darío Coicué Fernández, Ofelia Tombé Vitonas, Carolina Tombé Ñusque, Adán Mestizo Rivera, Edgar Mestizo Rivera, Eleuterio Dicué Calambas, Mario Julicué Ul (or Mario Julico), Tiberio Dicué Corpus, María Jesús Guetia Pito (or María Jesusa Güeitía), Floresmiro Dicué Mestizo, Mariana Mestizo Corpus, Nicolás Consa Hilamo (or Nicolás Conda), Otoniel Mestizo Dagua (or Otoniel Mestizo Corpus), Feliciano Otela Ocampo (or Feliciano Otela Campo), Calixto Chilgüezo Toconas (or Calixto Chilgüeso), Julio Dagua Quiguanas, José Jairo Secué Canas, Jesús Albeiro Pilcué Pete, Daniel Gugu Pete (or Daniel Pete) and Domingo Cáliz Soscué (or Domingo Cáliz Sescué) and harm to the physical integrity of Jairo Llamo Ascué, members of the Paez indigenous community of northern Cauca (hereinafter "the victims").

2. The petitioners allege that on December 16, 1991, at "El Nilo" hacienda, municipality of Caloto, state agents violated the victims' rights to life, humane treatment, judicial guarantees and judicial protection, enshrined in Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), and in Articles I, XVIII, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the "Declaration" or the "American Declaration").

3. During the processing of this case, the State recognized its responsibility for the facts alleged by the petitioner. On September 7, 1995, the parties began to pursue a friendly settlement with the good offices of the Commission. Despite the efforts by the State and the petitioners, and

despite the State's acknowledgment of responsibility, on October 5, 1998, the parties ended their pursuit of friendly settlement, and it was decided to continue to process this case.

4. After analyzing the elements of fact and of law brought forth by the parties during the process, and the acknowledgments that resulted from the friendly settlement process, the Commission declared the case admissible, determined that the State is responsible for violating Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention, and evaluated the measures taken to make reparation for the harm caused.

## II. PROCESSING BEFORE THE COMMISSION

5. On January 21, 1993, the Commission opened the case under number 11.101, and forwarded the pertinent parts of the complaint to the Colombian State, giving it 90 days to submit information. On March 17, 1993, the petitioner sent additional information on the case, which was duly transmitted to the State.

6. The State submitted its answer on June 10, 1993. The petitioners presented their observations and additional information on August 25, September 10, and December 30, 1993, which were duly forwarded to the State.

7. On January 27, 1994, during the 85th regular session of the Commission, a hearing was held in this case. On March 9, 1994, the State presented written information that was duly forwarded to the petitioners. The petitioners, in turn, sent in additional information on June 24, 1994. On September 26, 1994, a hearing was held during the Commission's 87th session. On October 5 and 7, 1994, the State provided additional information on domestic remedies, and on February 3 and 7, 1995, the petitioners submitted additional information on the domestic proceedings.

8. On February 22, 1995, the Commission made itself available to the parties to pursue a friendly settlement of the matter, giving them 30 days to respond. On March 22, 1995, the State requested an extension, which it was given. On March 22, 1995, the petitioners stated their position on the proposal. On May 12, 1995, the State expressed its interest in initiating the effort to reach a friendly settlement, and indicated that it would be willing to create a Comité de Impulso, or committee to give impetus to the investigations under way. The petitioners submitted observations on June 29, July 21, and September 6, 1995, as to the criteria which, from their point of view, should guide the search for a friendly settlement.

9. On September 7, 1995, during its 90th session, the Commission held a hearing in which the parties reiterated their interest in initiating a process to seek friendly settlement as provided under Article 48(f) of the American Convention. Accordingly, an act of understanding was signed to create the Comité de Impulso for the Administration of Justice. On September 14, 1995, the State sent a communication regarding the case. On December 12, 1995, a Commission delegation participated in a meeting of the Comité de Impulso in Colombia to learn about its operation, initiatives, and progress.

10. On February 23, 1996, during the Commission's 91st regular session, a second hearing was held in which the Comité de Impulso submitted a final report setting forth several recommendations. At that meeting, the parties agreed to continue to pursue a friendly settlement by creating a Comité de Seguimiento a las Recomendaciones formuladas por el Comité de Impulso, or Coordinating Committee for following up on the recommendations of the Comité de Impulso (hereinafter "Comité de Seguimiento").

11. On May 21, 1996, the State submitted a copy of the act of understanding signed by the State and the petitioners creating the Comité de Seguimiento. On October 8, 1996, during the Commission's 93rd regular session, the parties expressed their views on the obstacles to the operation of the Comité de Seguimiento in evaluating progress in the friendly settlement process. On October 9, 1996, the State submitted a "Report on Implementation of the Recommendations on the cases of Los Uvos, Caloto, and Villatina." On October 18, 1996, the Commission urged the parties to overcome the difficulties that had arisen in the process of following up on the Comité's recommendations. In February 1997, Commissioner Robert K. Goldman, Rapporteur for Colombia, Ambassador Jorge E. Taiana, Executive Secretary of the Commission, and Denise Gilman, then a Commission Specialist, traveled to Colombia to participate in a series of meetings on the status of the friendly settlement process.

12. On October 7, 1997, in the context of a hearing held during the 97th session of the Commission, the Comité de Seguimiento submitted a report evaluating implementation of the recommendations made by the Comité de Impulso. On October 16, 1997, the Commission issued a Resolution in which it resolved to continue efforts to achieve a friendly settlement to this case by its 98th session.

13. On February 16, 1998, the chairperson of the Comité de Seguimiento informed the Commission that the parties would submit their reports to the Commission separately. In a hearing held on February 23, 1998, during the 98th regular session of the Commission, the parties expressed their intent to consider the friendly settlement procedure to have ended and requested a pronouncement on the merits of the case. On that occasion, the petitioners submitted their observations with respect to compliance with the recommendations contained in the report of the Comité de Seguimiento, which had been submitted to the Commission in October 1997. On March 3, 1998, the Commission asked the State to provide additional information on the measures adopted to investigate and try the persons responsible in the regular criminal courts. On March 31, 1998, the State requested a 30-day extension, which it was granted. On July 31, 1998, the State sent to the Commission a copy of the speech by the President of the Republic in the act of acknowledgment of responsibility for the events in the Caloto case, among others. On October 5, 1998, during the Commission's 100th regular session, a new hearing was held in which the parties reiterated that it was impossible to reach a friendly settlement. On March 2, 1999, during the Commission's 102nd session, the petitioners reiterated their request for a pronouncement on the merits, pursuant to Article 50 of the Convention.

### III. POSITIONS OF THE PARTIES AND ATTEMPT TO REACH FRIENDLY SETTLEMENT

#### A. Position of the petitioner

14. The petitioners allege that on December 16, 1991, approximately 80 persons belonging to the Paez indigenous community of northern Cauca, inhabitants of the Resguardo de Huellas, responded to a call to meet, apparently from the new owners of that property, in the mountainous part of the "El Nilo" hacienda, district of El Palo, municipality of Caloto. The meeting was allegedly convened for the purpose of discussing the presence of the indigenous community, as well as to acknowledge the improvements they had made to the land during the previous four years. At approximately 9:00 p.m., heavily armed men went to the site of the meeting. The petitioners indicated that according to the testimony taken, some of these armed men were wearing uniforms of the security forces. Some of these individuals were alleged to have proceeded to hold and intimidate the group of indigenous persons who had gathered, while the rest went in search of the other members of the indigenous community, who had remained in their homes. Once all the indigenous persons living on the farm were gathered, the armed men identified the supposed leaders of the community and shot them. The petitioners allege that the assailants shot indiscriminately at the rest of the members of the community who, in panic, tried to flee. As a result, the following persons lost their lives: Darío Coicué Fernández, Ofelia Tombé Vitonas, Carolina Tombé Nusque, Adán Mestizo Rivera, Edgar Mestizo Rivera, Eleuterio Dicué Calambas, Mario Julicué Ul (or Mario Julico), Tiberio Dicué Corpus, María Jesús Guetia Pito (or María Jesusa Güeitía), Floresmiro Dicué Mestizo, Mariana Mestizo Corpus, Nicolás Consa Hilamo (or Nicolás Conda), Otoniel Mestizo Dagua (or Otoniel Mestizo Corpus), Feliciano Otela Ocampo (or Feliciano Otela Campo), Calixto Chilgüezo Toconas (or Calixto Chilgüeso), Julio Dagua Quiguanas, José Jairo Secué Canas, Jesús Albeiro Pilcué Pete, Daniel Gugu Pete (or Daniel Pete) and Domingo Cáliz Soscué (or Domingo Cáliz Sescué). Jairo Llamo Ascué suffered a gunshot wound in the right arm. The petitioners also note that after the massacre, the rustic dwellings that the indigenous community had built on the property were destroyed and burned, along with all the household equipment and goods, and domestic animals.

15. The petitioners allege that the massacre was perpetrated by civilians and members of the National Police. They consider that the evidence, expert ballistic reports, and inspections in the criminal and disciplinary proceedings point to the responsibility of officials of the National Police. Concretely, they allege that two Police officials and several agents at the service of "narco-terratenientes" had participated in the massacre.

16. As for the duty to provide due judicial protection with respect to the violations perpetrated, the petitioners allege that the State organs have committed various acts and omissions that have resulted in impunity for those responsible. They argue that initially the investigation was headed up by Lt. Libardo Morales Lagos, a member of the National Police and Chief of the MECAL Investigative Unit, who presented a witness whose testimony accused the Fuerzas Armadas Revolucionarias de Colombia (FARC) of being responsible for the acts committed. Maj. Gen. Miguel Antonio Gómez Padilla, Director General of the Police, asserted that an internal investigation confirmed that the Police had not participated in the events. The petitioners also argue that despite the seriousness of the information collected, from the outset, tending to incriminate Maj. Durán Argüelles and Capt. Castañeda Mateus, these officials were not questioned with the celerity called for given the circumstances of the case. The petitioners note that some of the witnesses, in declarations subsequent to the initial questioning, retracted their accusations against officials of the National Police and other civilians, and that these

retractions were given weight, tending to obstruct the investigation and cover up the participation of, or exonerate of any liability, the perpetrators of and accomplices in the massacre. In the petitioners' opinion, the criminal proceedings were conducted with the aim of ruling out the possibility of finding the members of the National Police criminally liable. The petitioners have also questioned the actions of the Office of the Procurator General of the Nation in the investigation into the relationships of the implicated officers with civilians Luis Alberto Seijas and Orlando Villa Zapata.

17. Based on these grounds, the petitioners allege that the State violated the rights to life, humane treatment, personal liberty, judicial guarantees, and judicial protection provided for at Articles 4, 5, 7, 8, 25, and 1(1) of the American Convention, and Articles I, XVII, and XXVI of the American Declaration. They allege that there has been a denial of justice so as to fall under the exemption to the requirement to exhaust domestic remedies set out in Article 46(2)(c) of the Convention. In addition, they consider that the investigation and trial of the persons presumably responsible has been subject to unwarranted delay.

B. Position of the State

18. The State has not questioned the version of the facts submitted by the petitioners. Nor has it called into question the alleged violations of the American Convention and the American Declaration. During the initial stages of the processing it provided information about the status of the domestic proceedings,[FN1] and later alleged that domestic remedies had not been exhausted and that in that context, one could not consider explicit recognition of State responsibility.[FN2]

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[FN1] Communications of June 10, 1993 and March 9, 1994.

[FN2] Communications of October 5, 1994 and May 12, 1995.

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19. At a later stage and in light of the settlements in the contentious-administrative jurisdiction and the conclusions of the Comité de Seguimiento, which was established in the framework of the effort to reach a friendly settlement, the State acknowledged its international responsibility in this case.[FN3] Specifically, on July 29, 1998, the President of the Republic publicly acknowledged the responsibility of the Colombian State for the acts and omissions of public servants in the occurrence of the violent events at Caloto.[FN4]

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[FN3] Informe Final del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the hearing held in the 97th regular session of the Inter-American Commission, p. 19.

[FN4] Speech by the President of the Republic in the act of recognition of state responsibility in the violent events at Villatina, Caloto, Los Uvos, and the cases of Roison Mora and Faride Herrera.

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C. The parties' efforts to reach a friendly settlement

1. The creation and work of the Comité de Impulso

20. On September 7, 1995, during the Commission's 90th session, Carlos Vicente de Roux, representing the State, and María Victoria Fallon, Gustavo Gallón Giraldo, and Juan Carlos Gutiérrez, representing the petitioners, agreed to issue an act of understanding calling for the creation of a Committee to give impetus to the administration of justice in relation to this case, in the framework of an effort to arrive at friendly settlements under Article 48(f) of the American Convention.

21. The Comité de Impulso was defined as a body for promoting domestic judicial proceedings, which precluded it from receiving and directly assessing evidence or ruling on the responsibilities of individuals and institutions. The mandate of the Comité de Impulso was to: (1) work to ensure judicial and disciplinary proceedings are carried out that guarantee prompt judicial proceedings; (2) identify evidence regarding the incidents in question and work for them to be brought before the courts; (3) promote the protection of witnesses as well as any judicial or disciplinary officers conducting the investigations; (4) support the due exercise of the right to defense of the accused and of the rights and activities of the civil party; (5) when so required for the investigation, work for the reassignment of trials and the creation of special units of the Prosecutors' Offices and of the Technical Investigations Corps; (6) work for reparation of the damage caused by the acts in question; (7) present a report to the next regular session of the IACHR regarding performance of the tasks listed in the above points and the results of the steps taken, indicating the factors that impacted on their success or failure.[FN5]

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[FN5] Act of Understanding signed September 7, 1995, by Carlos Vicente de Roux, Presidential Adviser for Human Rights, on behalf of the State, and María Victoria Fallon, Gustavo Gallón Giraldo, and the Colectivo de Abogados "José Alvear Restrepo" on behalf of the petitioners before the Inter-American Commission on Human Rights. Commissioners Claudio Grossman and Leo Valladares participated as qualified observers, on behalf of the Commission.  
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22. The Comité de Impulso included: representatives of the victims in a series of cases before the Commission, in the Caloto case the Colectivo de Abogados "José Alvear Restrepo" and the then Comisión Andina de Juristas/Seccional Colombiana; representatives of the Ministry of Foreign Affairs, the Ministry of Defense, and the Office of the Presidential Adviser for Human Rights; and on behalf of the State oversight organs, representatives from the Office of the Human Rights Ombudsman, the Prosecutor-General, and the Procurator General, and representatives of the Colombian Bishops Conference.[FN6] The Comité de Impulso was formally installed on September 29, 1995, in Bogotá in a public act, and it submitted its final report in February 1996, at the 91st regular session of the Commission. Given the consensus on the value of the work done by the Comité de Impulso, the Commission will take into account its conclusions and recommendations throughout this analysis.

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[FN6] The Comité de Impulso also included the Bureau of Indigenous Affairs of the Ministry of Interior of Colombia, the Consejo Regional Indígena del Cauca (CRIC), and the mothers of the victims in the Villatina massacre, as observers.

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23. In general, the recommendations are focused on the circumstances of the indigenous population in the region of Colombia in question. In this regard, the Comité de Impulso concluded that the Caloto massacre affected the entirety of the Paez indigenous community of northern Cauca, and that the measures to be adopted in the case should take into account the claims and grievances of this community, in addition to having a preventive purpose, to prevent a recurrence of the events like those in this case. The Comité de Impulso's recommendations indicate that the State should attend to its obligation to protect the fundamental rights of the indigenous peoples, whose first right, the right to life, should be understood in collective terms, as well as the right to ethnic and cultural reproduction, the right to territory, and the right to self-determination. It should be noted that prior to the events in this case, the State entered into agreements with the representatives and authorities of the Paez indigenous community of northern Cauca for the purpose of completing its territory and guaranteeing its self-determination by adjudication of lands and setting in motion an alternative development plan. The report notes that those commitments have been partially implemented.[FN7] On December 23, 1991, the State undertook to purchase and transfer 15,663 hectares, of which only 5,296 hectares had been purchased. In addition, on May 14, 1992, it was agreed to carry out an Alternative Development Plan consisting of 16 projects to be implemented in northern Cauca, although financing had been obtained for only two of these. In view of these commitments, the Comité de Impulso urged the State to implement them promptly and fully, and made some proposals to complement and facilitate this process.[FN8] Finally, the Comité de Impulso asked the Commission, independent of the processing and conclusion of Case 11.101, to stay abreast of the developments on issues having to do with the territory and self-reliant development of this community, and its potential impact on the occurrence of future violent incidents and human rights violations.[FN9]

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[FN7] Informe Final del Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, p. 142.

[FN8] The proposals made were: 1. To issue a presidential decree containing: (a) The order to expand the territory of the Paez people by 10,367 hectares, which was the amount in the land purchase plan that was part of the December 23, 1991 agreement. (b) The allocation of resources specially earmarked for the Agrarian Reform Institute (INCORA) to provide for that purchase. (c) The establishment of a special emergency process for those purchases. (d) The declaration of the areas for expanding the territories to be purchased as an "agricultural reserve for food crops" to rebuild the traditional Paez economy. 2. To expedite immediately the Paez people's Alternative Development Plan, in accordance with the commitment taken on by the government of Colombia, through the funds of the National Co-financing System, and to establish a procedure for that purpose.

[FN9] Informe Final del Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the hearing held in the 91st regular session of the Inter-American Commission, p. 143.

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24. As regards the Caloto massacre itself, the Comité made approximately 30 recommendations regarding further procedural steps, such as taking additional statements from witnesses, incorporating evidence into the criminal proceedings for the purpose of clarifying the facts, and trying and punishing the persons responsible.[FN10] The recommendations regarding the disciplinary proceedings were aimed at expediting the proceedings for the purpose of determining the corresponding responsibilities and sanctions.[FN11] As for the proceedings in the contentious-administrative jurisdiction, the Comité de Impulso urged the parties to enter into settlement agreements.

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[FN10] The main recommendations regarding criminal justice made in the Informe final del Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the hearing in the 91st regular session of the Inter-American Commission, are as follows: (a) Verify the existence of the alleged documents regarding the supposed search of the La Josefina farm (under the command of Lt. Marín, of the Third Brigade of Cali), days before the massacre, and introduce copies into the proceedings. Carry out the procedures needed to determine the full identity of Lt. Marín and hear his sworn version. (b) Introduce into the investigation the bills, from the telecommunications company, showing long-distance phone calls made from the telephones of the persons involved in the incident, and from the Police Command at Santander de Quilichao, from October 1991 to March 1992. (c) Take further declarations from members of the García Ciclos indigenous community, to state whether Maj. Jorge Enrique Durán Argüelles, Capt. Fabio Alejandro Castañeda Mateus, or other upper-level commanders knew that the two police agents had been at the Canaima, La Selvita, and La Selva farms. And in addition, to carry out the procedures necessary to identify fully the police, their rank, commanding officers, and offices to which they were assigned. To take sworn statements from them. (d) To inquire into the checking and savings accounts in the name of Jorge Enrique Durán Argüelles and Fabio Alejandro Castañeda Mateus, in the banking and savings institutions of the country, attaching excerpts, statements of account, deposit receipts, and origin of transfers. With the cooperation of the Property Unit of the Office of the Prosecutor General, investigate the origins or possible increases in the property of these officers, in their names or in the names of third persons, and determine the possible relationship between these incidents and the purpose of the Caloto massacre. (e) Determine whether Luis Alberto Bernal Seijas has or has not had links to the official sector, specifically the military or police forces, in what capacity or status, and when. Request copies, from the Office of the Prosecutor General before the Regional Justice Courts (Fiscalía Regional) of Cali, of the record in the preliminary investigation against Luis Alberto Bernal Seijas, José Antonio Bernal Seijas, and Liliana Díaz Cadena, for the alleged crime of illicit enrichment. (f) Determine the book in which the record of the entry and exit of persons from the institution is kept. Verify whether the book used for this purpose exists and whether it includes persons who entered the police station on December 16. (g) Do the intelligence work needed to establish the nature of the links between officers Durán Argüelles and Castañeda Mateus and the declarants (the President of the Council and the Secretary for Municipal Government) to determine the probative value of their versions. (h) Receive the statements from all agents who were on duty the day of the incident at the police stations at Santander de Quilichao and Caloto, in order to determine the tasks carried out in the days leading up to and after December 16, 1991, the activities of Capt. Castañeda Mateus and Maj. Durán

Argüelles, among others. (i) Ask the National Police to provide a copy of the record of the steps taken in the internal investigation carried out by the National Police, and to introduce them into the record. (j) Inquire into the course of the criminal investigation in the death of Mr. Valencia Vacca (alleged purchaser of the Hacienda El Nilo), who was murdered the day after the massacre, and attach copies thereof to the record. (k) Take the statement from the member of the National Police who warned indigenous community member Lino Adrián Zapata of the imminence of an attack on his community. (l) Further question Maj. Durán Argüelles and Capt. Fabio Alejandro Castañeda on the circumstances of time, manner and place in which the criminal acts were planned and executed. (m) Reiterate the arrest warrants for Carlos Vahos Mejía and Luis Alberto Bernal Seijas, and call on the authorities entrusted with the execution of those orders to report on the steps taken to that effect. (n) Evaluate the security situation of each of the witnesses in the process and, together with the Office for Witness Protection and Human Rights of the Ministry of Interior, study the possibility of including them in these programs. (o) Request information from the Office of Special Investigations of the Office of the Procurator General as to the status of the investigation that office is carrying out into the death of attorney Oscar Elías López, legal adviser to the CRIC, who was advising the indigenous community in the investigation of the massacre.

[FN11] The following recommendations were made with respect to the disciplinary proceedings: (a) Request information from the Office of the Procurator General for the Department of Cauca as to whether that office did or did not carry out a disciplinary investigation into the mayor and the municipal ombudsman. If so, what was the result. If there was no such investigation, request that the Delegate Procurator for Human Rights assume the investigation because of the dilatory and negligent attitude of those officials; (b) request the Procurator General of the Nation to provide information on the results of the petition brought by the Human Rights Ombudsman on August 10, 1993, in which he asked that a Public Order Commission be formed to study the possibility of directly reversing the ruling of the Delegate Procurator for Human Rights of July 8, 1993, that exonerated the National Police officials of the accusations against them; (c) reiterate to the Procurator General the need to directly reverse the ruling in the terms requested by the Human Rights Ombudsman. (d) Reiterate to the Office of the Procurator General the request for information on the punishment of members of the National Police questioned about their ties of friendship with some of the direct perpetrators and planners of the massacre, and for covering up irregular relationships. And insist on a pronouncement on the merits as soon as possible. (e) Request the Delegate Procurator for Human Rights to forward the investigation into alleged torture, to determine the impact it may have had on the decision of July 8, 1993, by which the Delegate Procurator for Human Rights exonerated the National Police officers of the charges against them. A more in-depth effort should be undertaken to clear up the facts regarding the omissions, which presumably constitutes a disciplinary breach, of the mayor and the municipal ombudsman, as the statements in the record incriminate them. The mayor, in his presentation, recognizes at least the dilatory attitude and negligence in the failure to call for the intervention and assistance of other authorities who could have impeded the aggressiveness that culminated in the genocide. (f) Request the Delegate Procurator for Agrarian Matters, the Office of the Procurator General for the Department of Cauca, and the Office of the Procurator General for the Province of Santander de Quilichao to send the results of the disciplinary investigations undertaken into the events at Caloto, and the Delegate Procurator for Human Rights on the legality of the land titles. (g) Request the Office of the Procurator General of the Nation to culminate its investigation into Ms. Tahí Barrios Hernández, Delegate Procurator for Human

Rights, for the alleged irregularities committed in the performance of her duties in the Caloto One disciplinary investigation, in accordance with the considerations of the Human Rights Ombudsman in his request for a Direct Reversal of the Ruling, and the arguments contained in the complaint submitted by former Senator Anatolio Quirá and members of the CRIC.

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2. The creation and work of the Comité de Seguimiento

25. In February 1996, during the Commission's 91st regular session, the parties agreed to create the Committee to follow up on the recommendations agreed upon by the Comité de Impulso (hereinafter "Comité de Seguimiento"). The mandate of the Comité de Seguimiento was to: (a) seek out, collect, centralize, and transmit to the Inter-American Commission on Human Rights information on the promotional measures agreed upon; (b) submit periodic reports to the Inter-American Commission on Human Rights regarding the development of its functions and the result thereof; (c) report to the Commission on the obstacles encountered in the performance of its functions; and (d) submit a report to the Commission at its next regular session regarding the performance of the functions assigned to it, and on the results of the steps taken, indicating the factors that, in the Committee's opinion, influenced their success or failure.[FN12]

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[FN12] Acta de entendimiento que crea el Comité de Coordinación para el seguimiento de las recomendaciones acordadas por el Comité de Impulso para la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina.

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26. The Comité de Seguimiento submitted its assessment of compliance with implementation of the Comité de Impulso's recommendations on October 7, 1997, during the 97th regular session of the Commission.[FN13] The Comité de Seguimiento received the acknowledgment of the State's international responsibility as a positive development, and concluded that there had been partial implementation of the Comité de Impulso's recommendations. It recommended that the friendly settlement proceedings continue in connection with recommendations that were being implemented or that were awaiting additional administrative steps.

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[FN13] For reasons of internal organization, the Comité de Seguimiento did not submit its report to the Inter-American Commission on Human Rights on the date set. In addition, it faced operational problems such as budgetary limitations, handling information under seal in the criminal and disciplinary investigations, and lack of agreement on the election of its Chairperson, although eventually an agreement was reached. A delegation from the IACHR visited Colombia to support the work of the Comité de Seguimiento.

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27. As regards clarification of the facts in the case, the Report concluded that there was impunity with respect to the National Police officials implicated in the massacre, and that this was attributable to the action of the military criminal courts. A similar conclusion was reached in the disciplinary jurisdiction. As a result, the Comité de Seguimiento made recommendations

regarding the duty of the Colombian State to investigate, try in the regular jurisdiction, and punish the persons responsible for the incidents in question.

28. In the contentious-administrative jurisdiction, the Comité de Seguimiento noted that settlement agreements were reached in the pending proceedings. As for the social reparation measures, it recommended full implementation of the agreements on adjudication of lands through more expeditious procedures and within a reasonable time, in conjunction with the indigenous communities. In this regard, the Comité de Seguimiento considered that transitory Article 56 of the Constitution applies for purposes of making full reparation.[FN14] The Comité considered that the State had not carried out its commitment to develop the legal procedure for the purchase and adjudication of lands. With respect to the projects of the Indigenous Alternative Development Plan for Cauca, it determined that these projects were in the course of being carried out and that no resources had been allocated for the others.[FN15]

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[FN14] That article states: "Until such time as the law referred to by Article 329 (Organic Law on Territorial Organization, which is to determine how the indigenous territorial entities are to be established) is issued, the Government may issue the tax laws needed, and all other laws relating to the operation of the indigenous territories and their coordination with all other territorial entities." Constitution of Colombia, 1991.

[FN15] Informe del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso para la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the 97th session of the Inter-American Commission.

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29. On October 16, 1997, the Commission issued a resolution in which it acknowledged the parties' efforts to reach a friendly settlement in the case, as well as the State's decision to recognize its international responsibility. The Commission also recommended that the State make monetary reparation to the victims' families that had not been paid compensation, pursuant to Law 288 of 1996. It also decided to continue to pursue a friendly settlement until the subsequent regular session, after which it would make a decision on its final processing of the case. To this end, the Commission asked the parties to submit additional information on any progress on a possible friendly settlement.

3. Breakdown of the friendly settlement process and degree of compliance with the commitments

30. Given that it was not possible to carry out all the commitments of the friendly settlement within the time frames agreed upon, this process was considered concluded on October 5, 1998, during the hearing in the Commission's 100th regular session. The parties asked the Commission to issue a ruling on the merits, and to duly acknowledge the partial implementation of the recommendations made by the two Committees created in the framework of the friendly settlement process. The parties indicated that this would facilitate reparation for the surviving victim and the families of the victims who were killed that have not yet been awarded compensation in the contentious-administrative jurisdiction through the mechanism provided for in Law 288/96.[FN16]

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[FN16] Law 288/96 establishes a mechanism for implementing the compensatory aspects of the decisions issued by inter-governmental organs in connection with state responsibility for human rights violations.  
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#### IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

##### A. Jurisdiction

31. The Commission has jurisdiction to examine the claim submitted by the petitioners. The facts alleged in the petition affected natural persons subject to the jurisdiction of the State when the obligation to respect and ensure the rights established in the Convention had already come into force for the State.[FN17] The Commission proceeds, then, to analyze whether this case meets the requirements established in Articles 46 and 47 of the American Convention.

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[FN17] Colombia ratified the American Convention on Human Rights on July 31, 1973; the Convention entered into force on July 18, 1978.  
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##### B. Admissibility requirements

###### 1. Exhaustion of domestic remedies and the time requirement for lodging a petition

32. Prior exhaustion of domestic remedies is a rule established in the interests of the State and for its benefit; it can therefore be waived.[FN18] In this case, on July 29, 1998, the State expressly acknowledged its responsibility for the incidents that are the subject matter of this case; therefore, this requirement should be considered to be met.[FN19]

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[FN18] I/A Court HR, In the matter of Viviana Gallardo et al., November 13, 1981, para. 26; Case of Velásquez Rodríguez, Preliminary Objections, para. 88; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, para. 87; and Case of Godínez Cruz, Preliminary Objections, para. 90.

[FN19] Informe Final del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the hearing held in the Inter-American Commission's 97th regular session, p. 19. Along the same lines, on July 29, 1998, the President of the Republic accepted the responsibility of the Colombian State for the acts or omissions of public servants in the occurrence of the violent events at Caloto, in the Act of Recognition of State Responsibility in the violent events at Villatina, Caloto, Los Uvos, and in the cases of Roison Mora and Faride Herrera.  
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33. As regards compliance with the requirement of presenting the petition within six months from notification of the final decision in the domestic courts, it is linked to the exhaustion of domestic remedies, and therefore is not applicable to this case.

2. Duplication of procedures and *res judicata*

34. It does not appear from the record that the subject matter of the petition is pending before any other international procedure for settlement, or that it addresses the same matter as a petition already examined by this or any other international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

3. Characterization of the facts alleged

35. The Commission considers that the petitioners' allegations regarding the alleged violation of the rights to life, humane treatment, and personal liberty, as well as the lack of any effective punishment of the persons responsible and the delay in the investigation, could characterize a violation of the rights guaranteed at Articles 4, 5, 8, 25, and 1(1) of the American Convention. As it is not evident that these aspects of the claim are groundless or inadmissible, especially as the State has expressly recognized its responsibility, the Commission considers the requirements established in Article 47(b) and (c) of the American Convention to have been met.

C. Conclusions on jurisdiction and admissibility

36. The Commission considers that it has jurisdiction to examine the claim submitted by the petitioners, and that this case is admissible pursuant to the requirements established in Articles 46 and 47 of the American Convention.

V. ANALYSIS OF THE MERITS IN LIGHT OF THE ACKNOWLEDGMENT OF STATE RESPONSIBILITY

37. Two preliminary issues must be addressed before moving on to analyze the merits of the case. First, the Commission must determine whether the alleged violations of the American Declaration are properly before it. In this regard, it should be noted that the American Convention entered into force for Colombia on July 18, 1978. Since then the Convention, and not the Declaration, became the source of law applicable by the Commission<sup>[FN20]</sup> so long as the claim refers to the alleged violation of rights that are substantially identical in the two instruments, and not a continuing violation.<sup>[FN21]</sup> In this case, the rights allegedly violated by the Colombian State under the Declaration are similarly protected under the Convention, and the facts that were the basis for the petitioners' claim occurred after the entry into force of the American Convention for Colombia. Accordingly, the Commission will refer only to the alleged violations of the Convention, and not to the alleged violations of the Declaration.

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[FN20] On making a pronouncement on the legal value of the American Declaration, the Court confirmed that in principle, for the States Parties to the Convention, the specific source of obligations with respect to the protection of human rights is the Convention. Inter-American

Court of Human Rights, Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man, of July 14, 1989, para. 46. The Inter-American Commission has stated similarly: see Report 38/99, Argentina, Annual Report of the IACHR 1998, para. 13.

[FN21] The Commission has established that it has jurisdiction to examine violations of the Declaration and the Convention whenever there is a continuing violation of the rights protected in these instruments, such as that caused, for example, by a denial of justice whose origins pre-date ratification of the Convention by the state in question, and which continues after the expression of consent or entry into force of the Convention for that state. See, e.g., Res. 26/88, Case 10.190, Argentina, Annual Report of the IACHR 1987-1988.

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38. Second, the Commission should establish interpretative standards for its own use, in light of the facts and the characteristics of the violations alleged and acknowledged by the State in this case. Article 29(b) of the American Convention provides that no provision of the Convention may be interpreted so as to limit the enjoyment and exercise of any right recognized in any other treaty to which the State in question is a party.[FN22] It should be noted in this connection that Colombia is a party to ILO Convention 169 on Indigenous and Tribal Peoples (hereinafter "Convention 169").[FN23]

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[FN22] See I/A Court HR, Advisory Opinion OC-1/82, "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Article 64 of the American Convention on Human Rights), September 24, 1982, Series A N° 1.

[FN23] Convention 169 on Indigenous and Tribal Peoples, International Labor Organization (1989). Colombia ratified this Convention on August 7, 1991. The Convention entered into force on September 6, 1991. Article 1 provides that it applies to tribal peoples whose social, cultural, and economic conditions distinguish them from other sectors of the national community, and who are governed in full or in part by their own customs or traditions, or by special legislation, and to peoples considered indigenous by the fact that they descend from populations that inhabited the country or a geographic region of which the country was a part at the time of the conquest or colonization, or upon establishment of the current state borders, and who, independent of their legal situation, preserve all or part of their own social, economic, cultural, and political institutions.

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39. Article 2 of Convention 169 establishes the obligation of the States to develop coordinated and systematic action to protect the rights of indigenous or tribal peoples and to guarantee respect for their integrity. This action should include measures:

- (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
- (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 4 of Convention 169 provides that the States Parties should adopt special measures as necessary to safeguard the persons, institutions, property, labor, culture, and environment of these peoples, and that such special measures should not be contrary to their freely expressed wishes.

40. In the Americas, standards have also been adopted that are to be taken into account by the Commission, in analyzing the rights and the scope of the State's obligations under the Convention. The norm of interpretation set forth in Article 29(d) of the American Convention establishes that the rights protected shall not be interpreted so as to exclude or limit the effect of international acts similar in nature to the American Declaration. In this regard, it should be noted that the Inter-American Charter of Social Guarantees of 1948 refers to the duty of the States to adopt the measures necessary to protect the life, liberty, and property of the indigenous population.[FN24] The Commission itself, in its resolution on "Special Protection for Indigenous Peoples," has recommended that the member States adopt measures to ensure that their agents act with great diligence in this task.[FN25]

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[FN24] Inter-American Charter of Social Guarantees, adopted at the Bogotá Conference of 1948, Article 38.

[FN25] IACHR, Resolution on Special Protection for Indigenous Peoples, OEA/Ser.L/V/II.29, doc. 38, rev. (1972). See also, Proposed American Declaration on the Rights of Indigenous Peoples, approved by the IACHR during its 95th session, Annual Report of the IACHR 1996, p. 633.

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41. In the instant case, the Comité de Impulso recognized that the events in the Caloto massacre affected the entire Paez indigenous community in northern Cauca, and that the measures to be adopted to make reparation for the damage should be preventive, and should address the claims and grievances of that community.[FN26] Accordingly, in this case the Commission considers it necessary to interpret the obligations established in the American Convention in light of the special obligations to protect the life, physical integrity, property, culture, environment, and labor of indigenous or tribal peoples, as provided for in Convention 169, the Inter-American Charter of Social Guarantees, and the resolution on "Special Protection for Indigenous Peoples."

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[FN26] Informe del Estado Colombiano en el marco del "Comité de Seguimiento de las recomendaciones acordadas por el Comité de Impulso a la administración de justicia en los casos de Villatina, Los Uvos y Caloto," p. 34.

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A. The right to life and physical integrity

42. The report of the Comité de Impulso indicates that on December 6, 1991, the company Sociedad Agropecuaria Piedra Blanca Ltda., purchased the "El Nilo" property, knowing that it was inhabited by indigenous persons who had effectively possessed part of the farm for approximately four years. Once the property was purchased, the company attempted to have the indigenous persons abandon the land in exchange for the value of their rustic dwellings and of the improvements made to the property. After the offer was rejected, the indigenous persons became the victims of harassment and pressure, including the destruction of some of their rustic dwellings days before the massacre, to force them to leave the property. On December 16, 1991, a group of individuals went to the main house of the "El Nilo" hacienda bearing arms that are restricted to use by the armed forces and national police. Some of these individuals had their faces painted, and others wore ski masks. These individuals forced the victims to lie on the ground in a row, face down, where they executed them.[FN27]

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[FN27] Informe Final del Comité de Impulso a la Administración de Justicia en los Casos de Villatina, Los Uvos y Caloto, p. 70.  
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43. The Comité de Impulso reached the conclusion that there were clear indicia of the participation of the Police in the massacre.[FN28] The State, for its part, considering the conclusions resulting from the effort to reach friendly settlement, accepted its international responsibility, as it acknowledged that its agents had committed the acts.[FN29]

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[FN28] Among these, telephone company bills showed calls made from the Police Command of the zone to the home of Mr. Bernal Seijas, legal representative of the Sociedad Agropecuaria Piedra Blanca Ltda. and to the home of its administrator. In addition, witnesses indicated that the following day, Police agents collected the shells that the witnesses had found at the site, which affected the significance of the ballistics test in the proceedings, *id.*, pp. 80-81.

[FN29] Informe Final del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, submitted at the hearing held in the Inter-American Commission's 97th regular session, p. 19. Along the same lines, on July 29, 1998, the President of the Republic accepted the responsibility of the Colombian State for the acts or omissions of public servants in the occurrence of the violent events at Caloto, in the Act of Recognition of State Responsibility in the violent events at Villatina, Caloto, Los Uvos, and in the cases of Roison Mora and Faride Herrera.  
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44. Article 4(1) of the American Convention establishes that no one shall be deprived of his or her life arbitrarily. This obligation of the State should be interpreted in light of its duty to afford special protection to the indigenous and tribal peoples who live in its jurisdiction. The Commission considers that the facts, as established by the Comité de Seguimiento, created by the State and the petitioners under the auspices of the Commission--and as has been acknowledged by the State--constitute a grave violation of the obligation to guarantee the right of all persons to

have their lives respected and of the special duty to protect the members of the Paez indigenous community of northern Cauca. The motivations for the massacre--to evict the indigenous persons from the property on which they lived lawfully--and the method by which it was carried out--identifying and executing the community leaders, with the clear intent to terrify the remaining members--constitute a serious violation of the State's international obligations pursuant to Article 4 of the American Convention, in light of the controlling standards on special protection.

45. As appears from the disciplinary investigation, Mr. Jairo Llamo Ascué suffered a gunshot wound in his right arm during the episode. The Commission considers this to constitute a violation of Article 5(1) of the American Convention, which establishes the right of all persons to respect for their physical, mental, and moral integrity.[FN30]

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[FN30] Informe evaluativo de la Procuraduría Delegada para la Defensa de los Derechos Humanos, File 134918, folio 259.  
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46. Based on the foregoing considerations of fact and of law, and in view of the recognition of State responsibility, the Commission concludes that on December 16, 1991, a group of civilians acting jointly with agents of the National Police arbitrarily deprived the following persons of the right to life: Darío Coicué Fernández, Ofelia Tombé Vitonas, Carolina Tombé Nusque, Adán Mestizo Rivera, Edgar Mestizo Rivera, Eleuterio Dicué Calambas, Mario Julicué UI (or Mario Julico), Tiberio Dicué Corpus, María Jesús Guetia Pito (or María Jesusa Güeitía), Floresmiro Dicué Mestizo, Mariana Mestizo Corpus, Nicolás Consa Hilamo (or Nicolás Conda), Otoniel Mestizo Dagua (or Otoniel Mestizo Corpus), Feliciano Otelá Ocampo (or Feliciano Otelá Campo), Calixto Chilgüeso Toconas (or Calixto Chilgüeso), Julio Dagua Quiguanas, José Jairo Secué Canas, Jesús Albeiro Pilcué Pete, Daniel Gugu Pete (or Daniel Pete) and Domingo Cáliz Soscué (or Domingo Cáliz Sescué) and wounded Jairo Llamo Ascué, at the "El Nilo" hacienda, district of El Palo, municipality of Caloto, in violation of the obligations established at Articles 4(1) and 5(1) of the American Convention on Human Rights in light of the special duty to protect indigenous populations.

B. The right to judicial protection and the State's obligation to respect and ensure the rights protected by the Convention

47. As arises from the information provided by the parties, as well as the report by the Comité de Seguimiento, the Public Order Court of Investigation of Cali initiated the investigation in December 1991, and determined that National Police Maj. Jorge Enrique Durán Argüelles, who had been commander of the Police district of Santander de Quilichao, and Captain Fabio Alejandro Castañeda Mateus, Head of Antinarcotics of Santander de Quilichao were, implicated in the incident. On April 7, 1992, the Public Order Investigative Judge of Cali refrained from issuing measures to ensure the officers' appearance at trial. The Public Ministry representative appealed this decision, but it was affirmed on appeal. On January 28, 1994, the investigating judge determined the charges and it was decided to continue the investigation into National Police officers Maj. Jorge Enrique Durán Argüelles and Capt. Fabio Alejandro Castañeda Mateus, and civilians Orlando Villa Zapata, Leonardo Peñafiel Correa, Edgar Antonio

Arévalo Peláez, and Nicolás Quintero Zuluaga. Some of the civilians chose to “plea bargain” and were found guilty of the crimes of homicide, attempted homicide, arson, and illegal possession of weapons restricted to use by the armed forces and police. On September 4, 1996, the prosecutor in the case, under the Human Rights Unit, assessed the merits of the investigation and handed down an indictment against officers Jorge Enrique Durán Argüelles and Fabio Alejandro Castañeda Mateus for multiple homicide in a combination of a series of related criminal acts (“concurso real homogéneo heterogéneo”) and as co-perpetrators responsible for the offenses of attempted homicide, illegal possession of arms restricted to use by the armed forces and police, and damage to the property of another. That decision was appealed and affirmed on appeal.

48. In February 1997, the Court of First Instance of the National Police asserted its jurisdiction. Accordingly, by resolution of March 1997, the regional judges of Cali forwarded the proceeding to the military criminal courts. The appeal of this decision was declared inadmissible. In September 1997, the military courts as a nullity all the proceedings in the regular jurisdiction, revoked the orders to take measures to ensure the appearance at trial against the Police officers accused, and ordered the unconditional release of Capt. Alejandro Castañeda Mateus, the only member of the Police who was detained. The civil party requested that the case be sent back to the regular courts, pursuant to Judgment C-358 of the Constitutional Court of Colombia, which provides that cases involving serious human rights violations must be judged in that jurisdiction. This request was dismissed by the military criminal judge. The Commission has learned that finally, on July 26, 1999, the Superior Military Tribunal ruled to cease all proceedings against Maj. Durán Argüelles and Capt. Castañeda Mateus.

49. It should be noted that the Office of Special Investigations of the Office of the Procurator General began the disciplinary investigation on January 10, 1992, as a result of an evaluative report by the Public Order Judge of Cali on October 22, 1992, which established that “the evidence collected ... provides serious indicia that National Police officers Maj. Jorge Enrique Durán Argüelles and Capt. Fabio Alejandro Castañeda Mateus had relations with persons who planned to terrify a group of indigenous persons in the Paez Community, one of them directing, the other participating directly. There are sufficient grounds for opening a formal disciplinary inquiry into the Police officers.”[FN31] The inquiry was forwarded to the Delegate Procurator for Human Rights, who drew up a list of charges against Maj. Durán Argüelles and Capt. Fabio Alejandro Castañeda Mateus on December 18, 1992. On July 8, 1993, a ruling was handed down exonerating these individuals of disciplinary liability. On August 10, 1993, the Human Rights Ombudsman submitted considerations on this resolution and asked that the Procurator General study the possibility of reversing it. On August 14, 1996, the Office of the Presidential Adviser for Human Rights and the Ministry of Interior joined in the request. On September 30, 1997, the Procurator General informed the Comité de Seguimiento that the matter was currently before his office. Nonetheless, in its final report, the Comité noted the fact that five years after the massacre, it was not possible to bring additional actions. As a result, one must conclude that the officers implicated have not been and apparently will not be subject to any disciplinary sanction whatsoever.[FN32]

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[FN31] Informe Final del Comité de Impulso a la Administración de Justicia en los Casos de Villatina, Los Uvos y Caloto, pp. 60 and 61.

[FN32] Informe Final del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, p. 9. The Office of the Delegate Procurator for the National Police opened an investigation into officers and non-commissioned officers of the Police for ties of friendship with alleged drug traffickers or persons known in the region as perpetrators of criminal acts. Yet this inquiry, known as "Caloto 2," is not directly related to the facts in this case. In any event, on October 30, 1997, the Delegate Procurator for the National Police terminated the disciplinary proceedings early based on the principle of favorability, on motion of the accused.

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50. The victims' family members submitted claims for compensation in the contentious-administrative jurisdiction. The State carried out the recommendation of the Comité de Impulso that it enter into settlement agreements in these proceedings.[FN33] Nonetheless, the agreements were challenged by the persons who were notified of a suit pending for which they may be potentially liable (i.e., the police agents). Even though the Council of State had decided that the challenge was inadmissible, the Commission has no indication that the agreements were carried out. Accordingly, the victims' family members may not have actually been paid compensation.

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[FN33] *Id.*, pp. 9-10.

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51. The petitioners allege that the State has breached its duties to investigate the facts in the case, and to try and punish the persons responsible pursuant to Articles 8 and 25 of the American Convention. The Comité de Seguimiento, for its part, concluded in its final report that the impunity of the members of the National Police responsible for the massacre is attributable to the action of the military criminal justice system.[FN34] The Commission must determine whether the judicial activity of the State--which has extended over eight years and has been developed largely in the military and disciplinary jurisdictions--meets the standards established by the American Convention. Article 8(1) establishes:

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[FN34] Informe Final del Comité de Coordinación para el Seguimiento de las Recomendaciones acordadas por el Comité de Impulso a la Administración de Justicia en los casos de Los Uvos, Caloto y Villatina, p. 8.

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

Article 25 provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

recognized by the constitution or laws of the state concerned or by the Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy;
- c. to ensure that the competent authorities shall enforce such remedies when granted.

These norms establish the obligation to provide access to justice with the guarantees of legality, independence, and impartiality within a reasonable time and with due protections, as well as the general obligation to provide an effective judicial remedy in the face of the violation of fundamental rights, incorporating the principle of the effectiveness of the procedural instruments or mechanisms. As the Inter-American Court of Human Rights (hereinafter "the Court") has indicated,

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction.[FN35]

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[FN35] I/A Court HR, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, para. 91.  
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52. The State acknowledged its international responsibility for the acts of its agents in relation to the massacre. Nonetheless, eight years after the fact, criminal responsibility has been established in respect of only some of the civilians implicated. The Commission notes that even though an investigation was begun into the members of the National Police implicated in the massacre, after a jurisdictional challenge the case was transferred to the military criminal justice system.

53. The Commission must point out that in the cases in which the violation of a protected right results in the commission of conduct considered a criminal offense under domestic law, the victims or their family members have the right to have a regular court determine promptly and effectively the identity of the persons responsible, try them, and impose the corresponding punishment, and for the punishment to be effectively carried out. These cases clearly require a criminal proceeding that includes a criminal investigation and criminal sanctions, as well as the possibility of reparation.

54. In the instant case, the trial of the officers implicated in the massacre of the 20 members of the Paez indigenous community of northern Cauca was transferred to the military criminal justice system. In that jurisdiction, all proceedings in the regular justice system were decreed null

and void, and in July 1999 the Superior Military Tribunal decided to cease all proceedings against the accused, Maj. Durán Argüelles and Capt. Castañeda Mateus.

55. The Commission has repeatedly stated that given its nature and structure, the military criminal jurisdiction does not meet the requirements of independence and impartiality set out in Article 8 of the American Convention. The inadequacy of the military criminal courts as a forum for investigating, trying, and punishing cases involving human rights violations has already been the subject of a pronouncement by the Commission:

The military criminal justice system has several unique characteristics which prevent access to an effective and impartial judicial remedy in that jurisdiction. First, the military justice system may not even be properly referred to as a true judicial forum. The military justice system does not form part of the judicial branch of the Colombian State. Rather, this jurisdiction is operated by the public security forces and, as such, falls within the executive branch. The decision-makers are not trained judges, and the Office of the Prosecutor General does not fulfill its accusatory role in the military justice system.[FN36]

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[FN36] IACHR, Third Report on the Human Rights Situation in Colombia (1999), p. 156, para. 20. See also Second Report on the Situation of Human Rights in Colombia (1993), pp. 245-246, where it states: "The military tribunals do not guarantee that the right to a fair trial will be observed, since they do not have the independence that is a condition sine qua non for that right to be exercised. Moreover, their rulings have frequently been biased and have failed to punish members of the security forces whose involvement in very serious human rights violations has been established."  
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In its decision of August 5, 1997, the Constitutional Court of Colombia established that:

For the military criminal justice system to have jurisdiction over an offense, there must be, from the beginning, a clear link between the offense and the activities particular to military service. In other words, the punishable act must constitute an excess or an abuse of power that takes place in the context of an activity directly related to a legitimate function of the armed forces. The nexus between the criminal act and the activity related to military service is broken when the offense is extremely grave, as in the case of crimes against humanity. In such circumstances, the case must be removed to the civilian justice system.[FN37]

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[FN37] Constitutional Court of Colombia, Judgment C-358 of August 5, 1997.  
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56. The Commission considers that the massacre of 20 members of an indigenous community in order to evict them from the property they inhabited on the "El Nilo" hacienda in the municipality of Caloto cannot be considered part of the legitimate functions of security force agents. Accordingly, the trial of accused in the military criminal jurisdiction constitutes a

violation of the right to judicial protection and of the guarantees of impartiality of the court enshrined in Articles 8(1) and 25 of the American Convention.

57. The lack of an adequate and effective remedy to address the violation of rights recognized in the Convention is itself a violation of the Convention. Judicial remedies and mechanisms must not only be provided for formally in the legislation, but must be effective and swift in establishing whether there has been a violation of human rights, and in making reparation for the consequences. The Inter-American Court has established that:

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN38]

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[FN38] I/A Court HR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 176.  
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58. The Commission concludes that after eight years, the State has not adequately and effectively investigated or tried and punished its agents for their criminal liability in the Caloto massacre.

59. The judicial protection that the State has a duty to provide also includes the duty to make reparation to the victims or their family members for the consequences of the violations experienced. The surviving victim and the family members of the deceased victims have a right to reparation that includes monetary compensation for the harm inflicted. According to the information provided by the parties and collected during the friendly settlement process, a series of settlement agreements were reached in the proceedings brought in the contentious-administrative jurisdiction that have yet to be implemented. In the framework of the friendly settlement process, the State also undertook to carry out commitments to make social reparation involving the assignment of lands to the Paez indigenous community. These commitments are in the process of being carried out. Specifically, a budget item of 1.5 billion Colombian pesos was to be earmarked for the purchase of lands in the current year, and one billion pesos for next year.

60. Based on the foregoing considerations of fact and law, the Commission concludes that the State has failed to carry out its obligation to offer adequate judicial protection pursuant to Articles 8 and 25 of the American Convention. Furthermore, the State has partially carried out its obligation to clarify the facts and to make reparation to the family members of the deceased victims and to the Paez indigenous community of northern Cauca.

C. Duty to respect and ensure the rights protected by the Convention

61. Article 1(1) of the Convention establishes the obligation of the States Parties to:

respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination

for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

The Court has interpreted this obligation to include the duty to organize the structures by which public authority is exercised so that they are capable of legally assuring to all persons the free and full exercise of their fundamental rights.[FN39] The Court has established that Article 1(1), in relation to Article 25, obliges the State to guarantee to all persons access to the administration of justice, and in particular to prompt and simple recourse for ensuring that the persons responsible for violations of fundamental rights are tried, and that reparation is obtained for the harm suffered. These norms are directly related to Article 8(1), which enshrines the right of all persons to be heard, with due guarantees, and within a reasonable time, by an independent and impartial judge or court, for determining rights whatever their nature. These obligations are basic pillars of the rule of law in a democratic society, as understood by the Convention.[FN40]

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[FN39] *Id.*, para. 166.

[FN40] I/A Court HR, Case of Castillo Páez, Reparations, Judgment of November 27, 1998, para. 106.

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62. In this case, the State has failed in its obligation to try and punish the persons responsible for the massacre, pursuant to the standards of Articles 8(1) and 25. Nonetheless, it has partially carried out its obligation to guarantee that the case be resolved. Specifically, it has participated actively in the Comité de Impulso and the Comité de Seguimiento, which were installed as part of the effort to reach a friendly settlement in this case, and in the production of reports that have helped to clarify the facts, individual responsibilities, and the difficulties in judicial investigations. In addition, it has partially carried out its duty to guarantee due reparation to the family members of the victims by promoting the settlement agreements in the contentious-administrative jurisdiction, and the process of implementing the projects for making social reparation to the Paez indigenous community of northern Cauca.

63. As the Inter-American Court has indicated, the States Parties to the American Convention have the legal duty to reasonably prevent human rights violations,[FN41] and this duty "includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights." [FN42] The Commission considers that there are grounds for concluding that the State failed to carry out its duty to prevent, in conjunction with the right to life enshrined in Article 4 of the Convention. The information provided by the parties indicates that more than one week prior to the massacre, on December 7, 1991, members of the Paez indigenous community denounced the threats directed at them and requested protection from the authorities.[FN43] The Office of Special Investigations of the Office of the Procurator General indicated:

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[FN41] I/A Court HR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 174.

[FN42] *Id.*, para. 75.

[FN43] Informe Final del Comité de Impulso a la Administración de Justicia en los Casos de Villatina, Los Uvos y Caloto, p. 119.

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As the indigenous persons refused to reach an agreement, they were threatened, according to their assertions ... by the alleged representative of the purchaser company, Gilberto Márquez, who was apparently accompanied by a group of armed men. Faced with this situation, the indigenous persons informed the mayor and the municipal ombudsman; and in a meeting held in the village of El Carrizal, they informed the Regional Manager of INCORA and the Secretary of the Municipal Government as to the situation. This was corroborated by the mayor and municipal ombudsman in their statements [...].<sup>[FN44]</sup>

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[FN44] Office of Special Investigations, Office of the Procurator General of the Nation, Report of January 28, 1992.

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This fact has been corroborated by the report prepared by a delegation from the Colombian Congress that traveled to the Caloto region in January 1992, which stated:

The Government of Cauca was informed in a timely manner, by the indigenous community of the Resguardo de Huellas, of the grave threats to their integrity, yet it did not take any measure to protect them. It was, as the Regional Indigenous Council of Cauca has called it, "a death foretold."<sup>[FN45]</sup>

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[FN45] Informe Final del Comité de Impulso a la Administración de Justicia en los Casos de Villatina, Los Uvos y Caloto, p. 119.

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64. Consequently, the State authorities were aware of the imminent risk to the Paez indigenous community of northern Cauca, yet failed to adopt the measures necessary for protecting their fundamental rights, leaving the victims defenseless and facilitating their subsequent extrajudicial execution.<sup>[FN46]</sup> Days later, state agents participated in perpetrating the serious violations of the right to life and physical integrity foreshadowed by the threats. The Commission considers that these incidents constitute serious omissions in respect of the duty to prevent violations of fundamental rights provided for in the American Convention, and to offer special protection to the indigenous communities.

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[FN46] See, in this regard, Report 24/98, Annual Report of the IACHR 1997, para. 53.

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65. Based on these elements of fact and law, the Commission concludes that the Colombian State has failed in its duty to prevent the violation of and to ensure respect for the victims' rights to life, personal liberty, and humane treatment, as well as their right to judicial protection, pursuant to Article 1(1) of the Convention, in light of the obligation to offer special protection to the Paez indigenous community of northern Cauca.

## VI. PROCEEDINGS AFTER REPORT 114/99

66. On September 28, 1999, the Commission approved Report 114/99, pursuant to Article 50 of the American Convention. In that Report the Commission, based on the information collected during this process, and in view of the acknowledgment of responsibility by the Republic of Colombia, concluded that State agents, together with a group of civilians, violated the right to life of Darío Coicué Fernández, Ofelia Tombé Vitonas, Carolina Tombé Ñusque, Adán Mestizo Rivera, Edgar Mestizo Rivera, Eleuterio Dicué Calambas, Mario Julicué Ul (or Mario Julico), Tiberio Dicué Corpus, María Jesús Guetia Pito (or María Jesusa Güeitía), Floresmiro Dicué Mestizo, Mariana Mestizo Corpus, Nicolás Consa Hilamo (or Nicolás Conda), Otoniel Mestizo Dagua (or Otoniel Mestizo Corpus), Feliciano Otela Ocampo (or Feliciano Otela Campo), Calixto Chilgüezo Toconas (or Calixto Chilgüeso), Julio Dagua Quiguanas, José Jairo Secué Canas, Jesús Albeiro Pilcué Pete, Daniel Gugu Pete (or Daniel Pete), and Domingo Cáliz Soscué (or Domingo Cáliz Sescué), the right to physical integrity of Jairo Llamó Ascué, and the right to judicial guarantees and judicial protection of all of them, pursuant to Articles 5(1) and (2), 8, and 25 of the American Convention. The Commission also concluded that the State had partially failed in its duty to ensure these rights and to take the necessary measures to prevent their violation, pursuant to Article 1(1) of the Convention. In addition, it recommended that the State: "(1) carry out a complete, impartial, and effective investigation, in the regular jurisdiction, in order to try and punish the persons responsible for the massacre. (2) Adopt the necessary measures to make reparations to Jairo Llamó Ascué, and to the victims' family members who had not yet been compensated. (3) Adopt the measures necessary to carry out the commitments relating to social reparation for the Paez indigenous community of northern Cauca. (4) Adopt the measures necessary to prevent similar events in the future, in keeping with the duty of prevention and to guarantee the fundamental rights recognized in the American Convention. (5) To adopt the measures necessary to fully implement the doctrine developed by the Constitutional Court of Colombia and by this Commission in the investigation and trial of similar cases by the regular criminal justice system."

67. On October 19, 1999, the Commission forwarded the Report to the State, giving it two months to comply with these recommendations. On December 20, 1999, the State requested an extension to submit information on implementation of the recommendations, which was duly granted. Finally, on January 24, 2000, the State submitted information on implementation of the commitments agreed upon in the framework of the effort to achieve friendly settlement.

68. First, the State reported that it had fully complied with 21 of the 31 recommendations made by the Comité de Impulso in the area of criminal justice. It stated that it had partially complied with one more recommendation, that it failed to comply with four, and that it had no information on the remaining six. In terms of the proceedings before the criminal military courts, the State argued that the cases against Jorge Durán Argüelles and Fabio Alejandro Castañeda Mateus, which were on appeal before the Superior Military Court, were resolved on July 22, 1999, with a cessation of proceedings favoring the accused. It also noted that the civil party in the proceedings had refrained from pursuing any remedy, even though it was possible to request a confirmation of the judgment of first instance denying the cessation of proceedings, and argue a jurisdictional conflict before the Superior Council of the Judiciary (Consejo Superior de la

Judicatura). In terms of the proceedings before the regular courts, the State indicated that convictions were secured against Second Corporal Pedro Pablo Agredo Montilla and police agents Edgar Montoya Ojeda, Luis Ernesto Soto Cardona, and Héctor Marín Mejía; and Luis Alberto Bernal Seijas, Orlando Villa Zapata, Neimberg Marín Z., Carlos Alberto Flórez Alarcón, and Leonardo Peñafiel Correa, all private individuals, who, it is argued, are in confinement, except for Mr. Alberto Bernal Seijas, who has yet to be detained, and Mr. Orlando Villa Zapata, who was said to have escaped from the Vista Hermosa prison in Cali in mid-1998. This escape was said to be under investigation by the Unit of Crimes against the Administration of Justice, of the Office of the Prosecutor General for Cali. In addition, an investigation is under way into Mr. Carlos Mario Vásquez Velásquez, who has yet to appear before the authorities.

69. With respect to the six recommendations of the Comité de Impulso as regards the disciplinary proceedings, the State indicated that four of them were complied with fully, one partially, and the other was not implemented. The disciplinary proceedings in which decisions were pending were resolved to the benefit of the persons investigated. In addition, the State noted that according to information provided by the National Police, in October 1997 Messrs. Alcibiades Escué and Ancízar Bolaños asked the Office of the Procurator General to open a disciplinary investigation into Brig. Gen. Hugo Rafael Martínez Poveda and others. In March 1998 the Office of the Procurator General decided to archive the complaint, considering that it did not refer to a disciplinary breach.

70. In terms of the Comité de Impulso's recommendation to enter into settlement agreements in the contentious-administrative proceedings, the State notes that some of the compensation acknowledged was processed via the application of Law 288 of 1996. In effect, the Committee of Ministers issued Resolution Number 3 of 1997, in light of the recommendations of the Inter-American Commission during its 97th session. The State reported that of a total of 16 claims filed with the Administrative Tribunal of Cauca, settlements were reached in 11, and partial settlements in five. In three of these proceedings, there was no settlement since the guardians ad litem of the minors involved lacked the corresponding judicial authorization, and for that reason, it was said, they were still pending a decision. It also confirmed that a hearing was held to reach a settlement in the Administrative Tribunal of Cauca in January 1998, as a result of which notice was sent to Maj. Jorge Enrique Durán Argüelles and Capt. Fabio Alejandro Castañeda Mateus informing them of suits for which they may be potentially liable. These officers filed an appeal before the Council of State against the measure fully approving the settlement. On December 9, 1998, the Council of State denied the motion and affirmed the first-instance judgment.

71. The State confirmed that neither Mr. Jairo Llamo Ascué--a survivor of the massacre who, as was determined, was wounded--nor any of the family members is registered as a plaintiff in the actions brought before the Administrative Tribunal of Cauca, nor in the settlements under Law 288 of 1996. The State also argues these individuals do not appear on the list contained in the request for settlement payment submitted by the Corporación Colectivo de Abogados "José Alvear Restrepo" to the Ministry of Defense on September 23, 1999.

72. In terms of the recommendations of the Comité de Impulso in respect of social reparation, the State argued that they have met with partial compliance, and that some are still being implemented. Specifically, the State argues that the procedure for purchase and

adjudication is under way, and that some lands will gradually begin to be purchased. The State noted that there were legal difficulties in the disbursement of the resources allocated, and in identifying property owners in the region willing to sell their lands. It reported that to date a total of 6,877,829 hectares had been purchased, and that 8,778,171 hectares remained to be purchased. It affirms that the General Bureau for Indigenous Affairs of the Ministry of Interior continues the task of searching for properties, and it trusts that during the first months of the year it would be purchased. Regarding the development of the works agreed upon in the Indigenous Alternative Development Plan for Cauca, the State indicated that most of the projects proposed have been carried out, and that four remain to be implemented for which the contracts are pending legalization before the Contracts Unit of the Administrative Department, Office of the Vice President of the Republic.

73. Finally, the State highlighted the importance and value of friendly settlement as a mechanism which, in this particular case, made possible major accomplishments in some of the areas addressed during the process, and acknowledged the will and commitment of the parties. In addition, it was agreed to continue to take and foster initiatives aimed at complying with the Commission's recommendations.

## VII. CONCLUSIONS

74. The Commission wishes to express its acknowledgment of the effort made by petitioners and the Colombian State to solve this case by way of friendly settlement, and laments that this procedure broke down in its final stages. In view of the information received during this process, the recognition of state responsibility by the Republic of Colombia, and its response, the Commission reiterates its conclusion that State agents, together with a group of civilians, violated the right to life of Darío Coicué Fernández, Ofelia Tombé Vitonas, Carolina Tombé Ñusque, Adán Mestizo Rivera, Edgar Mestizo Rivera, Eleuterio Dicué Calambas, Mario Julicué Ul (or Mario Julico), Tiberio Dicué Corpus, María Jesús Guetia Pito (or María Jesusa Güeitía), Floresmiro Dicué Mestizo, Mariana Mestizo Corpus, Nicolás Consa Hilamo (or Nicolás Conda), Otoniel Mestizo Dagua (or Otoniel Mestizo Corpus), Feliciano Otela Ocampo (or Feliciano Otela Campo), Calixto Chilgüeso Toconas (or Calixto Chilgüeso), Julio Dagua Quiguanas, José Jairo Secué Canas, Jesús Albeiro Pilcué Pete, Daniel Gugu Pete (or Daniel Pete), and Domingo Cáliz Soscué (or Domingo Cáliz Sescué), the right to physical integrity of Jairo Llamo Ascué, and the right to judicial guarantees and judicial protection of all of them, pursuant to Articles 5(1) and (2), 8, and 25 of the American Convention. The Commission also concludes that the State partially failed in its duty to guarantee these rights and to take the necessary measures to prevent their violation, in light of Article 1(1) of the Convention.

## VIII. RECOMMENDATIONS

75. Based on the analysis and conclusions of this Report,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES  
THE FOLLOWING RECOMMENDATIONS TO THE COLOMBIAN STATE:**

1. To carry out a complete, impartial, and effective investigation in the regular justice system for the purpose of trying and punishing the persons responsible for the massacre.
2. To adopt the measures necessary to make reparation to Jairo Llamó Ascué, as well as the victims' family members who have yet to be compensated.
3. To adopt the measures necessary to carry out the commitments regarding social reparations on behalf of the Paez indigenous community of northern Cauca.
4. To adopt the measures necessary to prevent similar events from recurring, in keeping with the duty to prevent and to ensure the fundamental rights recognized in the American Convention.
5. To adopt the measures necessary to implement fully the doctrine developed by the Constitutional Court of Colombia and by this Commission in the investigation and trial of similar cases by the regular criminal justice system.

## IX. PUBLICATION

76. On February 24, 2000 the Commission transmitted Report 2/00 adopted pursuant to Article 50 of the American Convention to the petitioners and to the State, and granted one month to the State to submit information on compliance with the aforementioned recommendations. On March 23, 2000 the State requested an extension which was duly granted by the Commission. The State finally submitted its response through a communication dated March 31, 2000.

77. As far as the reparation of the surviving victim is concerned, the State informed the Commission that the Committee for Judicial Defense of the National Ministry of the Defense would consider the possibility of compensating Mr. Jairo Llamó Ascué pursuant to Law 288 of 1996. It must be noted once Report 2/00 was adopted, the petitioners informed the Commission that at the time of the events, Mr. Ascué had apparently decided not to file a complaint before the administrative courts due to the state of fear caused by the violent acts which had occurred in the present case. As far as the rest of the victims' families are concerned, the State reported that a conciliatory hearing with the purpose of evaluating the situation of a new list of complainants in the Caloto case had been scheduled. In relation to the Comité de Impulso's recommendation regarding the acquisition of land for the Paez indigenous community of Northern Cauca, the State informed the Commission that \$ 1.000.000.000.00 had been approved for the present fiscal year to execute the project "Acquisition of land for indigenous communities affected by "El Nilo" massacre, Agreement of La María Piendamó" (15.663 hectares), and that the General Bureau for Indigenous Matters would be involved in taking the corresponding steps. At the same time, the projects that were being legalized by the Administrative Department of the Presidency of the Republic would also be in their execution stage. The State also referred to measures adopted to ensure the future application of the Constitutional Court's and the Commission's case law regarding the investigation and trial of facts similar to those that occurred in Caloto before the civilian courts.

78. In the light of the above, and pursuant to Articles 51(3) of the American Convention and Article 48 of its Regulations, the Commission decides to reiterate the conclusions reached in paragraph 74 and its recommendations, to publish this Report and include it in its Annual Report to the General Assembly of the OAS. The Commission, in compliance with its mandate shall

continue evaluating the measures adopted by the Colombian State with respect to the aforementioned recommendations until they have been complied with.

Done in signed by the Inter-American Commission on Human Rights at the 13 day of the month of April 2000 (Signed:), Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; Marta Altolaguirre; Robert K. Goldman; Peter Laurie; and Julio Prado Vallejo, Commissioners.