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Decided by:	Chairman: Claudio Grossman; First Vice-Chairman: Juan E. Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo.
Dated:	22 February 2001
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Represented by:	APPLICANTS: Colectivo de Abogados “Jose Alvear Restrepo” and the Center for Justice and International Law
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I. SUMMARY

1. On October 6, 1999, Colectivo de Abogados “José Alvear Restrepo” and the Center for Justice and International Law (CEJIL) lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Colombia (hereinafter “the State”), in which they allege that between July 15 and 20, 1997 approximately one hundred members of the paramilitary group known as the Autodefensas Unidas de Colombia [United Self-Defense Groups of Colombia] (hereinafter “the AUC”) deprived of liberty, tortured, and massacred approximately 49 civilians, after which they mutilated their corpses and threw the remains into the River Guaviare, in the Municipality of Mapiripán, Department of Meta, with the collaboration, by deed or omission, of members of the Colombian National Army.

2. The petitioners allege that members of the Colombian National Army participated both actively and passively, in coordination with the AUC, in planning and carrying out the massacre, and that, therefore, the State is directly responsible for the violation of the rights to life, personal liberty, fair trial, freedom of conscience, and judicial protection enshrined in Articles 4, 5, 7, 8(1), and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), as well as for failing in its obligation to ensure respect for the rights recognized in said Treaty.

3. The State held that the domestic judicial proceedings instituted to clarify the events that occurred at Mapiripán and to try those responsible are still underway. Accordingly, it requested

that the Commission find the case inadmissible on grounds of non-exhaustion of domestic remedies pursuant to Article 46(1)(a) of the American Convention. In reply, the petitioners argued that the case qualifies for the exceptions from the requirement to exhaust domestic remedies provided in Article 46(2) of that Treaty because certain members of the Army alleged to be involved in the events were being prosecuted by the military criminal courts.

4. Based on its examination of the positions of the parties, the Commission finds that it is competent to take up the petitioners' complaint and that the case is admissible pursuant to the provisions contained in Articles 46 and 47 of the American Convention.

II. PROCESSING BY THE COMMISSION

5. The Commission acknowledged receipt of the petition on October 13, 1999. The petitioners presented supplementary information to the original petition on October 22 and 27, 1999, November 8, 1999, and January 31, 2000. On March 7, 2000 the Commission entered the case as N° 12.250 and transmitted the pertinent portions of the petition to the Colombian State, requesting that it present information within 90 days.

6. The State submitted its reply on June 9. In notes dated June 14 and 30, 2000, respectively, the State presented additional information, which was duly forwarded to the petitioners for their comments. The petitioners submitted their comments to the State's reply on July 17, 2000. The Commission conveyed to the State the petitioners' reply on July 19, 2000, asking that it present its comments within 30 days. On August 19, 2000, the State requested an extension, which was duly granted.

7. On October 10, 2000, in the framework of the 108th session of the IACHR, a hearing of the case was held with both parties in attendance. At the hearing the petitioners presented documentary evidence, which was transmitted to the State. The State presented its comments on November 28, 2000.

II. POSITIONS OF THE PARTIES

A. The petitioners

8. The petitioners allege that around the middle of July 1997 members of the Colombian National Army, including senior officers in charge of the military units garrisoned in the area, deliberately allowed close to one hundred members of the AUC to enter the area of the municipality of Mapiripán, Department of El Meta, by air and river, and mobilized the military forces to other localities, in order to enable the paramilitary forces to have complete freedom to terrorize and massacre the civilian population.

9. The petitioners' briefs, supported by official documents, state that at the time of the events the area of Mapiripán was under the control and protection of the Joaquín Paris Battalion of San José del Guaviare, commanded by Colonel Carlos Eduardo Avila Beltrán, assigned to the Seventh Brigade under the command of General Jaime Humberto Uscátegui Ramírez. Despite the critical status of public order in the area,[FN1] from early to mid-July 1997 the Seventh

Brigade supervised the mobilization of the Joaquín Paris Battalion to the localities of Calamar, El Retorno, and Puerto Concordia. As a result, the residents of San José del Guaviare and Mapiripán were left without military protection.[FN2]

[FN1] Testimonies of Municipal Court Judge [Juez de la localidad], Leonardo Iván Cortés Novoa and Colonel Mauricio Hernán Martínez, Commander of the Seventh Brigade, cited by the Human Rights Unit of the Prosecutor General’s Office in its decision of June 21, 1999, on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

[FN2] Testimonies of Colonel Lino Hernando Sánchez Prado and Major Hernán Orozco Castro, cited by the Human Rights Unit of the Prosecutor General’s Office in its decision of June 21, 1999, on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

10. The petitioners allege that members of the AUC, aboard a series of irregular flights from Neclocí and Apartadó, landed in San José del Guaviare on July 12, 1997. The passengers, together with their equipment, were picked up on the airport runway in the style of a military operation, without being subjected to any type of control, despite the permanent presence there of a police counter-narcotics base.[FN3] It should be mentioned that one of the aircraft was allegedly carrying cargo intended for Army personnel.[FN4]

[FN3] Testimonies of Sergeant José Miller Ureña Díaz and Corporal Cabo Leonardo Montoya Rubiano, cited by the Human Rights Unit of the Prosecutor General’s Office in its decision of June 21, 1999, on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

[FN4] The petitioners say that “onboard one of the aircraft (a DC 3993P) used to transport the paramilitary group from Urabá [...] a strange package was left behind that was addressed to a Colonel and a General of the Army in the region, which a number of noncommissioned officers were very eager and anxious to recover at the control tower. This fact is shown by the testimonies of the air traffic controller at San José airport and the air traffic controller at Villavicencio airport, and in the transcription of the radio communications between these two officials.” Communication of October 6, 1999.

11. On their way from San José del Guaviare to Mapiripán, the paramilitary group is alleged to have passed through troop training areas of the Second Mobile Brigade commanded by Colonel Lino Hernando Sánchez Prado, to be precise the area known as “El Barrancón”, without being challenged or stopped by the military forces. The paramilitaries eventually entered Mapiripán on July 15, 1997 by land and river.

12. The petitioners allege that over the five days that followed the paramilitaries terrorized the local residents and brutally tortured and murdered members of the community. After being dismembered, disemboweled and beheaded, the corpses of the victims were thrown into the River Guaviare. As a result, the judicial authorities allegedly were prevented from establishing the exact number of the deceased.

13. The petitioners allege that General Uscátegui Ramírez was informed of these brutal acts by Official Communication 2919 of July 15, 1997.[FN5] However, he is alleged to have instructed the wording of the aforementioned official communication to be altered, and ordered, that same day, the mobilization of the remaining companies of Joaquín Paris Battalion to Calamar, despite the fact that there was allegedly no confirmation of public disturbances of public order in said municipality. The Battalion is said to have returned to Mapiripán on July 23, 1997, after the massacres had been carried out and the paramilitary group had left the area.[FN6]

[FN5] See Enquiry of the official Orozco Castro and copy of the substitute official communication, cited by the Human Rights Unit of the Prosecutor General's Office in its decision of June 21, 1999, on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

[FN6] Declaration of the Regional Government Prosecutor of San José del Guaviare at the time of the events, cited by the Human Rights Unit of the Prosecutor General's Office in its decision of June 21, 1999, on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

14. The petitioners hold that these acts constitute serious violations of Articles 4, 5, and 7 of the American Convention and that the State is responsible for the consequences of the acts perpetrated by members of the AUC in coordination and cooperation with the National Army. To be exact, they said:

The Mapiripán massacre succeeded thanks to a coordinated effort between members of the United Self-Defense Groups of Colombia and members of the Second Mobile Brigade of the Seventh Brigade of the National Army. All the acts carried out by that paramilitary group were possible thanks to the active participation and omissions of the commissioned and noncommissioned officers who have been implicated by the investigation.[FN7]

[FN7] Communication of the petitioners of October 6, 1999. See also Human Rights Unit of the Prosecutor General's Office, Decision of June 21, 1999 on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army, p.14.

The petitioners consider that the conduct adopted by the Army personnel was not confined to their failure to defend the liberty, physical integrity and life of the residents of Mapiripán, but that their participation by deliberate action and by omission was part of a preconceived plan to enable the massacre to proceed.

15. As to the clarification of the massacre in the domestic jurisdiction, the petitioners say that on July 23, 1997, a preliminary enquiry was opened by the Twelfth Government Prosecutor's Office Assigned to the Regional Courts, based in San José del Guaviare. On July 21, 1998 the Human Rights Unit of the Prosecutor General's Office issued a warrant for the arrest of Sergeant Juan Carlos Gamarra Polo and Noncommissioned Officer José Miller Ureña Díaz as author and coauthor of the offences of conspiracy, terrorism, aggravated homicide, and aggravated abduction. On May 20, 1999 the Human Rights Unit issued a warrant for the arrest of General Jaime Humberto Uscátegui Ramírez for the offences of homicide, aggravated abduction, and falsification of a public document.

16. On June 2, 1999, the Office of Commander of the National Army presented a petition challenging the jurisdiction of the Human Rights Unit, inasmuch as it considered that the charges against the aforementioned officers and noncommissioned officers should be investigated by the military criminal courts. On June 21, 1999 the Human Rights Unit rejected the petition and referred the record to the Tribunal of Judicial Discipline of the Superior Council of the Judicature.[FN8]

[FN8] Human Rights Unit of the Prosecutor General's Office, Decision of June 21, 1999 on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army.

17. On August 18, 1999, following an incidental proceeding on impediment and another on recusation of two of its members, the Superior Council of the Judicature decided to award to the military courts jurisdiction over the prosecution of General Uscátegui Ramírez and Lieutenant Colonel Orozco Castro. It further decided to refer the cases against Colonel Sánchez Prado and Sergeants Gamarra Polo and Ureña Díaz to the ordinary jurisdiction. The petitioners consider that this situation infringes upon the rights to a fair trial and judicial protection provided in Articles 8 and 25 of the American Convention.

18. With respect to fulfillment of the admissibility requirements set forth in the American Convention, regarding exhaustion of the remedies under domestic law, the petitioners say that,

By awarding the military criminal courts competence to take cognizance of serious human rights violations, the Superior Council of the Judicature places us in the position described in Article 46(2)(b) of the Convention [...] regarding prevention of the injured party to have access to and exhaust the remedies under domestic law [...][FN9]

[FN9] Ibidem.

In other words, the petitioners have argued that the exception to the requirement of prior exhaustion of domestic remedies provided in the Treaty is applicable. The petitioners further assert that military criminal justice has not constituted an effective remedy in the investigation, prosecution and punishment of the alleged culprits.[FN10]

[FN10] Ibidem.

19. As to the arguments of the State concerning failure to meet the requirement of prior exhaustion of domestic remedies (see *infra*), the petitioners again invoked the exception provided in Article 46(2)(b) of the American Convention.[FN11] In that regard they mentioned that the Constitutional Court of Colombia itself has prescribed the limits of competence of the military courts and has found that said courts are a special judicial recourse that may not be used in cases concerning serious offences, such as crimes against humanity. The petitioners claim that in the instant case the decision of the Superior Council of the Judicature to settle the conflict of jurisdiction advanced by the military courts in favor of the latter is in breach of the standards set by the jurisprudence of the Constitutional Court. They are of the opinion that, The military courts prove an inadequate recourse, that is, they lack the requisite suitability to uphold in a judicial proceeding the rights [...] of the victims and to grant them or their families the necessary protection and just reparation.[FN12]

[FN11] Communication of the petitioners of July 17, 2000.
[FN12] Ibidem.

Therefore, they consider that in the instant case they are exempt from the requirement to exhaust the remedies under domestic law prior to resorting to the regional system of protection provided in the American Convention.

B. The State

20. The State holds that the complaint presented by the petitioners does not meet the requirements set forth in Article 46(1) of the American Convention, inasmuch as “the remedies under Colombian law designed to ensure that justice is done in the instant case are still in progress.”[FN13]

[FN13] Note EE/1138 of the Office of the Director General of Special Affairs of June 9, 2000.

21. The State has presented information to the effect that the Specialized Circuit Criminal Courts of Bogotá are currently conducting public prosecution proceedings against Carlos Castaño Gil and Luis Hernando Méndez Bedoya for the alleged crimes of aggravated homicide, aggravated abduction, terrorism, and conspiracy; Julio Enrique Flórez González, charged with carrying out the crimes of aggravated homicide, aggravated abduction, terrorism and conspiracy; Sergeant, Second Class Juan Carlos Gamarra Polo, charged with conspiracy and participation in the crimes of aggravated homicide, aggravated abduction and terrorism; Sergeant José Miller Ureña, charged with being an accessory during the fact to the crimes of conspiracy, aggravated homicide, aggravated abduction, and terrorism; José Vicente Giraldo, charged with conspiracy; Juan Manuel Ortíz Matamoros, charged with falsification of a private document and participation in conspiracy; Helio Ernesto Buitrago León, charged with participation in conspiracy; and Jorge Luis Almeira Quiróz, charged with falsification of a public document. The State also said that the Specialized Circuit Criminal Courts of Villavicencio charged Lieutenant Colonel Lino Hernando Sánchez Prado. According to the information furnished by the State, all the forenamed are allegedly detained, with the exception of Juan Carlos Gamarra Polo and Carlos Castaño Gil. The State has also mentioned that there has been a stay of proceedings to enable the Human Rights Unit to continue the investigation in order to identify and detain the rest of the alleged culprits.[FN14]

[FN14] Note EE 2733 of the Office of the Director General of Special Affairs of November 28, 2000.

22. As for the investigation of retired Brigadier General Jaime Humberto Uscátegui Ramírez and Lieutenant Colonel Hernando Orozco Castro for what the State terms “alleged failure to carry out military duties,” the latter reported that that case was assigned to the Commander of the Air Force as Special Judge of First Instance, since the Commander of the National Army, who was originally presiding, declared that he was prevented from continuing to hear the case by reason of a testimony presented at the Attorney-General’s Office. On July 26, 2000 the Commander of the Air Force issued a warrant for the arrest of Lieutenant Colonel Hernán Orozco Castro and revoked the parole pending criminal sentencing granted to retired Brigadier General Uscátegui Ramírez, who is currently allegedly detained at the headquarters of the Thirteenth Brigade.

23. As regards the assertions of the petitioners regarding the suitability of the military criminal courts as an adequate and effective recourse in the instant case, in its communication of June 14, 2000, the State said that,

When the 1991 Constitution entered into force new and strict controls were placed on the military courts designed to prevent proceedings from ending in decisions that run contrary to the Constitution and the law, or that might be described as biased. Indeed, the Justice Department is involved as a matter obligation throughout the process, and has the power to request the taking of evidence, to adduce such evidence as it deems pertinent, to challenge decisions, and to present written arguments [...] Furthermore, the inclusion of a civilian party in a criminal proceeding under this jurisdiction is now recognized as being wholly valid.[FN15]

[FN15] Note EE 1176 of the Office of the Director General of Special Affairs of June 14, 2000.

In its communication of November 28, 2000, the State added that,

This jurisdiction is a respectful and obedient institution of the Colombian State, which, furthermore, as the Honorable Commission is aware, has undergone significant reforms designed to strengthen it and which are already being applied in proceedings.[FN16]

[FN16] Note EE 2733 of the Office of the Director General of Special Affairs of November 26, 2000.

The State also said that the military courts are only hearing the proceedings brought against two of the members of the Army implicated in the events in question, based on a decision of the Superior Council of the Judicature. In this connection it said that,

By no means is there a policy to benefit members of the country's Armed Forces, but, rather, for legal reasons adopted by competent bodies in accordance with Colombian law, it was decided to pursue investigations of some implicated parties in the framework of a jurisdiction different to that which befitted other alleged culprits.

The State added that there still remain remedies to be pursued under domestic law for "allaying the petitioners' concerns regarding the legitimacy of the examination of the case by the military courts." Specifically, the State referred to a writ for protection [acción de tutela] presented by the petitioners regarding the compatibility of the decision of the Superior Council of the Judicature in the case of retired Brigadier General Uscátegui and Lieutenant Colonel Orozco with the jurisprudence of the Constitutional Court concerning the scope of the jurisdiction of the military courts, which, after being disallowed by the Chamber of Criminal Cassation of the Supreme Court of Justice is pending review by the Constitutional Court, on the initiative of the National Ombudsman.

24. The State also provided information on cases related to the facts in the instant case that are currently being examined in administrative and disciplinary proceedings. In connection with the latter jurisdiction, it should be mentioned that Brigadier General Uscátegui Ramírez was punished with suspension from duties.

25. The State maintains that it is in compliance with its international obligations inasmuch as internal investigations are proceeding designed to clarify the events that occurred at Mapiripán and to punish the culprits, as a result of which concrete progress has been made in the identification and indictment of some implicated parties, including three members of the National Army.[FN17] The State refrained from advancing any other observations regarding the facts alleged by the petitioners on the merits of the matter.

[FN17] Note EE. 1176 of the Office of the Director General of Special Affairs of June 14, 2000.

I. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission

26. The Commission has prima facie competence to take up the complaint lodged by the petitioners. The facts alleged in the petition occurred when the duty to respect and ensure the rights recognized in the Convention was in force for the Colombian State.[FN18]

[FN18] Colombia ratified the American Convention on Human Rights on July 31, 1973.

27. The petition describes alleged violations of the American Convention committed against individuals who were under the jurisdiction of the State at the time of the events. With respect to the number and identity of the victims, the petition identifies Messrs. José Ronald Valencia and Sinaí Blanco as members of a group of approximately 49 civilians who died as a result of the events alleged in the instant case. In this regard, it should be mentioned that official documents contained in the record confirm that the AUC claimed responsibility for the murder of 49 people during the massacre perpetrated in Mapiripán between July 15 and 20, 1997, and that the judicial authorities have allegedly been unable to recover and, therefore, identify the corpses of the victims,[FN19] which were allegedly mutilated and thrown into the River Guaviare. The State has not advanced any objections or clarifications in that respect. In view of these circumstances, the Commission finds that it is competent to examine the admissibility of the alleged violations of the American Convention committed in Mapiripán between July 15 and 20, 1997, in connection with José Ronald Valencia, Sinaí Blanco, and approximately 47 other as yet unidentified persons.

[FN19] Accusation of the Human Rights Unit of the Prosecutor General's Office of November 16, 1999, against Lieutenant Colonel Lino Hernandío Sánchez Prado for the crime of conspiracy and for failure to carry out duties, in respect of the crimes of aggravated homicide, aggravated abduction and terrorism, p.2.

B. Admissibility Requirements

1. Exhaustion of domestic remedies and deadline for lodging the petition

28. The State has requested that the Commission find the case inadmissible on the grounds that decisions are pending on domestic remedies. The petitioners, for their part, have alleged that the prosecution of some of the culprits by the military courts deprives the victims of access to an

adequate and effective remedy. Accordingly, they have requested that the case be found admissible under the exceptions set forth in Article 46(2) of the American Convention.

29. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. As the Inter-American Court has found, a State claiming non-exhaustion of domestic remedies on the part of the petitioner has the burden of showing that the remedies that remain to be exhausted are “adequate” for repairing the alleged violation, in other words that they are suitable to address an infringement of a legal right.[FN20]

[FN20] Inter-Am. Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

31. The Commission deems it appropriate to refer to the circumstances surrounding exhaustion of domestic remedies in the instant case, first in connection with the cases referred to the military criminal courts by decision of the Council of the Judicature, and second in relation to the prospects for the effectiveness of the cases before the ordinary courts and the outstanding investigations.

32. The Commission notes that in the instant case the Human Rights Unit of the Prosecutor General’s Office found that there were sufficient grounds to bring charges against Brigadier General Uscátegui Ramírez and Lieutenant Colonel Orozco for coparticipation in the crimes of abduction and homicide.[FN21] However, following the conflict of jurisdiction advanced by the Commander of the Army, the case against these two senior officers was transferred to the military courts under the charges of alleged failure to carry out military duties and falsification of a public document. It has come to the attention of the Commission that on February 13, 2001 retired Brigadier General Uscátegui was sentenced to 40 months imprisonment for breach of duty by omission and acquitted of the charge of falsification of a public document, in addition to which all proceedings against him concerning the accusations of murder, torture, membership of paramilitary groups, and abduction for purposes of extortion were dismissed. Further, Lieutenant Colonel Orozco was sentenced to 38 months imprisonment for the crime of failure to carry out military duties.

[FN21] The Human Rights Unit has said, “the charge is supported by the fact that the aim of the omissions and the positive manifestations of consent that occurred was not simply to fail to carry out a duty, but to cause illegal effects to do with the deprivation of freedom and subsequent

murder of the victims.” Human Rights Unit of the Prosecutor General’s Office, Decision of June 21, 1999 on the conflict of jurisdiction advanced by the Commander of the National Army in cases UDH 244 and 443 concerning Brigadier General Jaime Humberto Uscátegui and four other officers of the Colombian National Army, p. 14.

33. The Commission has held on several occasions to the effect that the military courts are not an appropriate forum and, therefore, do not provide an adequate remedy to investigate, prosecute and punish violations of human rights enshrined in the American Convention allegedly committed by the security forces, or with their cooperation or acquiescence.[FN22] Furthermore, the Inter-American Court has recently determined that the military courts are only an adequate venue to try military personnel accused of crimes or offences, which, by their nature, harm legally protected military interests.[FN23]

[FN22] IACHR, Third Report on the Situation of Human Rights in Colombia (1999), p.175; Second Report on the Situation of Human Rights in Colombia (1993), p.246; Report on the Situation of Human Rights in Brazil (1997), pp.40-42.

[FN23] Inter-Am. Ct.H.R., Durand y Ugarte Case, Judgment of August 16, 2000, paragraph 117.

34. In the instant case, the transfer to the military courts of the case against the senior military officers allegedly involved in the massacre, coupled with the reduction of the charges originally brought in the ordinary jurisdiction, suggest that the families of the victims have been denied access to an adequate remedy to investigate, prosecute and punish those responsible for the serious acts alleged by the petitioners, in accordance with Article 46(2) of the American Convention and the jurisprudence of the Inter-American Court.

35. As to the measures adopted by the ordinary courts, the information furnished by both parties indicates that arrest warrants have been issued for a number of persons under investigation, including known leaders of the AUC and members of the Army, some of whom are allegedly being prosecuted. However, as the petitioners have mentioned and the State has acknowledged, there are arrest warrants that have not been served more than three years after the serious crimes alleged in the petition occurred, in spite of concerning persons who are in daily contact with the press and in some cases, as is public knowledge, with government officials. Furthermore, the investigation aimed at detaining the rest of the approximately one hundred members of the AUC that took part in carrying out the massacre remains open.

36. As a general rule, a criminal investigation should be carried out promptly to protect the interests of the victims, preserve evidence, and furthermore to safeguard the rights of such persons as might be regarded as suspects in the investigation. The Commission regards highly the efforts of the Human Rights Unit of the Prosecutor General’s Office; however, for the purposes of the requirement provided for in Article 46(2) of the American Convention, the failure to detain the vast majority of the participants in the facts of the instant case, coupled with the failure to capture the ringleader and alleged co-architect of the massacre, are an expression of delay and of the unlikelihood that this remedy will be effective.[FN24] As the Inter-American

Court has held, although all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.[FN25]

[FN24] See Report on Admissibility N° 57/00, La Granja, Ituango, October 2, 2000.

[FN25] Inter-Am. Ct.H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 93.

37. Therefore, given the characteristics of the instant case, the Commission finds that the exception provided in Article 46(2)(c) of the American Convention is applicable, and, therefore, that the requirements prescribed in the American Convention on exhaustion of domestic remedies and, consequently, the six-month deadline for lodging the petition, are not applicable.

38. All that remains is to mention that invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely associated with examination of the existence of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Therefore, to determine whether or not the exceptions to the rule of exhaustion of domestic remedies provided in said provision are applicable to a particular case requires an examination carried out in advance of and apart from the analysis of the merits of the case, since it depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant case will be examined, if pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine if they do indeed constitute violations of the American Convention.

2. Duplication of proceedings and res judicata

39. According to the record, the subject matter of the petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements set forth in Articles 46(1)(c) and 47(d) have also been met.

3. Nature of the alleged violations

40. The Commission finds that the allegations of the petitioners regarding the violations of the rights to life, humane treatment, and personal liberty allegedly committed against approximately 49 persons in the area of Mapiripán from July 15 to 20, 1997, as well as the delay in the investigation and the failure to prosecute and effectively punish those responsible, could constitute a violation of the rights recognized in Articles 4, 5, 7, 8, and 25, pursuant to Article 1(1) of the American Convention. The Commission finds that the petition meets the requirements set forth in Articles 47(b) and (c) of the American Convention.

CONCLUSIONS

41. The Commission finds that it is competent to take up the complaint lodged by the petitioners and that the case is admissible in accordance with the requirements provided in Articles 46 and 47 of the American Convention.

42. Based on the factual and legal arguments given above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the alleged violation of Articles 4, 5, 7, 8(1), 25 and 1(1) of the American Convention to the detriment of José Ronald Valencia, Sinaí Blanco, and approximately 47 other, as yet unidentified, persons in the area of Mapiripán between July 15 and 20, 1997.
2. To notify the Colombian State and the petitioners of this decision.
3. To continue with its analysis of the merits of the case; and
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 22nd day of February, 2001. Signed: Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, and Hélio Bicudo, Commission members.