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Represented by:	APPLICANT: Corporacion Colectivo de Abogados “Jose Alvear Restrepo”
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I. SUMMARY

1. On May 20, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Corporación Colectivo de Abogados “José Alvear Restrepo” (hereinafter “the petitioners”) against the Republic of Colombia (hereinafter “the State”, “the State of Colombia”, or “Colombia”) alleging that on April 7, 1991, members of the army collaborated with a group of armed plain-clothesmen in the execution of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano (hereinafter “the victims”) in the municipality of Riofrío, Department of Valle del Cauca, Colombia, and in the concealment of the massacre.

2. The petitioners alleged that the State is responsible for violations of the rights to life, humane treatment, and a fair trial established in Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”). The State presented information on the investigation of the events and the proceedings instituted in domestic courts (mainly within military jurisdiction) against members of the army alleged to be responsible. As to the admissibility of the case, the petitioners alleged that judicial remedies made available by the State do not meet the standards established in the American Convention with respect to judicial protection and that therefore the exceptions to the exhaustion of domestic remedies permitted pursuant to Article 46(2) of the American Convention apply.

3. After analyzing the allegations of the parties, the Commission declared the case admissible and found that the State of Colombia was responsible for violating the right to life (Article 4) in the cases of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, and Hugo Cedeño Lozano; the right to life in conjunction with the rights of the child (Article 19) in the case of Dora Estela Gaviria Ladino and Luz Edelsy Tusarma Salazar; the right to humane treatment (Article 5) in the case of Hugo Cedeño Lozano, Miguel Ladino, Cenaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza, and the rights to a fair trial and judicial protection (Articles 8 and 25) in conjunction with Article 1(1) of the American Convention in the case of the victims and their families.

II. PROCESSING BY THE COMMISSION

4. On July 26, 1996, the Commission opened case 11.654 and forwarded the relevant sections of the complaint to the State of Colombia, granting it a period of 90-days in which to present information. The State gave its response on September 26, 1996, and this was duly forwarded to the petitioners. On December 9, 1996, the petitioners presented their observations, and these in turn were conveyed to the State.

5. On March 3, 1997, during the Commission's 95th regular session, a hearing attended by both parties was held. During the hearing, the petitioners presented additional information, which was duly forwarded to the State and the possibility of seeking a friendly settlement was discussed.

6. On August 7 and October 7, 1997, the petitioners furnished further information, which was duly forwarded to the State. In a note dated October 15, 1997, the Commission placed itself at the disposal of the parties with a view to finding a friendly settlement in accordance with Articles 48(1)(f) of the Convention and Articles 45(1) and (2) of its Regulations.

7. On October 8, 1997, a second hearing attended by both parties was held during the Commission's 97th regular session. At the hearing the petitioners furnished additional information in writing, which was forwarded to the State of Colombia. On November 11, 1997, the State requested an extension of 30 days to present its comments, and the extension was granted.

8. On January 10, 1998, the petitioners gave their response to the Commission's offer of a possible friendly settlement of the matter and their response was forwarded to the State. On March 31, 1998, the State requested an extension in which to prepare its response. The petitioners provided further information to the Commission that was forwarded to the State of Colombia on September 10, 1998. On September 28, 1998, the State furnished additional information. On October 7, 1998, the petitioners asked the Commission to consider the attempt to seek a friendly settlement concluded in light of the State's failure to respond to their proposal.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petitioners allege that agents of the State sponsored, permitted, and covered up with impunity the extrajudicial executions of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano.

10. Specifically, they allege that on October 5, 1993, at approximately 5:30 in the morning, a group of armed men, some of whom were wearing military uniforms, appeared in the village of El Bosque, in the district of Portugal de Piedras, Municipality of Riofrío, Valle del Cauca. When they got there, they forcibly removed a number of residents from their homes and took them to the school in the village of San Juan Bosco for questioning on the whereabouts of the members of armed dissident groups that were supposed to frequent the area.

11. They maintain that most of the residents were released, but that the following individuals, Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano were taken to the home of Mr. Javier Ladino at approximately 8:30 a.m. where they were tortured and, at approximately 10:00 a.m. that same day, were executed.

12. The petitioners allege that the armed men remained in the vicinity until approximately 10:30 a.m. when members of the Urban Antiterrorist Squad (PAU) of the Palacé Battalion of the Third Army Brigade arrived. The army personnel are said to have simulated an armed engagement with the occupants of the house, who had by then been killed. To accomplish this, they fired several rounds of bullets and used explosive devices. Immediately afterwards, they changed the scene of the crime around, moving the bodies and placing different types of firearms next to the victims.

13. The petitioners affirm that, after the mock engagement, Lt. Col. Luis Felipe Becerra Bohórquez, Commander of the Palacé Artillery Battalion, and Brigadier General Rafael Fernández López, Commander of the Third Brigade, released a statement through the media, reporting that, as part of operation “Destructor”,

Army units had killed in a skirmish 13 guerrillas known to belong to the “Luis Carlos Cárdenas” wing of the self-proclaimed National Liberation Army (ELN), and had seized weapons. The army suffered no casualties.[FN1]

[FN1] Communication from the petitioners dated March 3, 1997.

The petitioners are of the view that these statements confirm the intention to cover up acts perpetrated by illegal groups acting with the consent of agents of the State.

14. The petitioners allege that these events constitute violations of the right to life and humane treatment recognized in Articles 4 and 5 of the American Convention. Also, at the hearing held during the 95th regular session, they indicated that these acts contravene the provisions of common Article 3 of the 1949 Geneva Agreements and Article 2 of the Second Additional Protocol of these Treaties. At that time, the petitioners also argued that Dora Estela Gaviria Ladino and Luz Edelsy Tusarma Salazar were minors and that their execution therefore violated Article 19 of the American Convention.

15. The petitioners also maintain that the State has failed to fulfill its obligation to offer proper judicial protection to the families of the victims in accordance with Articles 8 and 25 of the American Convention. In this regard, they note that, on October 5, 1993, the Criminal Investigation Unit of the Buga Prosecutor's Office removed the bodies and examined the scene of the crime. The bodies were taken to the Buga Forensic Medicine facility for autopsies to determine the cause of death.[FN2]. At the same time, on October 6, 1993, the 106th Military Criminal Pretrial Court, attached to the Third Brigade, which sits in Bogota, opened an investigation and established the legal status of those implicated in the events--Major Eduardo Delgado Carrillo, Lt. Alfonso Vega Garzón, Capt. Leopoldo Moreno Rincón, Corporal Second Class Alexander Cañizalez Nuñez, and 30 soldiers. The Court did not impose any security measures against these individuals since no criminal conduct or cover up was considered to have occurred. The Commander of the Third Brigade, in his capacity as Judge of First Instance, ordered that the pretrial proceedings be moved to the 17th Military Criminal Pretrial Court sitting in the city of Cali. On August 4, 1994, the court issued preventive cautionary measures against Lt. Col. Becerra Bohórquez on suspicion of the crime of concealment. On March 30, 1995, the Court officially changed the preventive cautionary measures to recognizance.

[FN2] Communication of the petitioners dated March 3, 1997.

16. The Cali Prosecutor's Office ordered a formal investigation to begin on November 4, 1994, following which warrants were issued for the arrest of members of the army[FN3] and a civilian, Arturo de Jesús Herrera Saldarriaga. In response, the Third Army Brigade filed a motion of conflict of jurisdiction, a motion that was upheld by the Superior Council of the Judiciary on March 30, 1995, on grounds that the events under investigation were a military matter. Once the proceedings had been referred to military jurisdiction, on June 29, 1995, the Commander of the Third Brigade revoked the order for the arrest of Lt. Col. Becerra Bohórquez, with instructions that the investigation continue.

[FN3] On November 21, 1994, the Prosecutor's Office ordered that Major Eduardo Carrillo Delgado be held in preventive detention for his responsibility in the events under investigation. On November 30, 1994, the Prosecutor attached to the National Court heard an appeal filed by

Major Delgado Carrillo and decided to change the charge of multiple homicide to concealment and changed the preventive cautionary measure to recognizance and ordered that he be released.

17. On July 28, 1995, the Military Criminal Pretrial Court, at the request of counsel for the defense, changed the charge from multiple homicide to concealment and accordingly decided to impose recognizance only, and ordered that those charged be released. On September 4, 1995, the Military Criminal Pretrial Court closed the investigation.

18. On September 25, 1995, the agent of the Attorney General's Office (Ministerio Público) asked that proceedings against all of the military personnel implicated in the case be dismissed because they were not considered to be responsible for concealment of a crime. On November 24, 1995, the Commander of the Third Brigade in his capacity as Judge of First Instance denied the petition filed by the agent of the Attorney General's Office. This decision was appealed by the accused and on November 27, 1996, the Superior Military Court declared the proceedings null and void because the courts had previously ordered the investigation closed on grounds that there were "serious gaps in the investigations" in the pretrial discovery proceedings.

19. On July 30, 1997, the 17th Military Criminal Pretrial Court issued a provisional ruling on the legal status of Lt. Col. Becerra Bohórquez and Major Delgado Carrillo, ordering that they be held in preventive detention on suspicion of falsifying public documents in conjunction with charges of concealment. It did not issue preventive cautionary measures against Lt. Col. Becerra Bohórquez on the charges of extortion, bribery, and homicide on grounds that the charges were without merit. This decision was appealed unsuccessfully by the civil parties to the proceedings.[FN4]

[FN4] Judgment of the Superior Military Court of March 18, 1998.

20. On October 8, 1998, Lt. Col. Becerra Bohórquez was sentenced by the Court of First Instance to 12 months of detention for the crime of concealment but was acquitted of the charges of homicide, extortion, and bribery. Major Delgado Carrillo was sentenced to nine months of detention for the same crime, and all charges of concealment against the other accused were dismissed.

21. On the basis of these proceedings, the petitioners consider that the State has failed to fulfill its obligation to provide due judicial protection to the families of the victims in accordance with the standards of the Convention.[FN5] They allege that the decision of the Superior Council of the Judiciary to transfer the investigation of the incident and proceedings against the accused to military criminal jurisdiction contravenes the Convention and the Commission's jurisprudence. They therefore request that the present case be declared to have violated Articles 8 and 25 of the American Convention.

[FN5] Communication of the petitioners dated March 3, 1997.

22. As to the admissibility of the case, the petitioners alleged that the workings of the domestic justice system have proven ineffective for prosecuting and punishing those responsible for executing the victims and covering up the act. Furthermore, they note that the military courts are not an appropriate forum for investigating the matter and trying those responsible since they lack the independence and impartiality that are required in accordance with the guidelines of the Convention.[FN6] They therefore requested that the Commission declare the case admissible on the basis of the exceptions to the exhaustion of domestic remedies requirement contained in Article 48(2) of the Convention.[FN7]

[FN6] Communication of the petitioners dated March 3, 1997.

[FN7] Ibidem.

B. The State's position

23. The State produced information on the proceedings conducted through domestic military criminal jurisdiction, without expressly challenging the petitioners' allegations.[FN8] Also, it reported that on December 27, 1993, the Attorney Delegate for the Defense of Human Rights had begun disciplinary proceedings against members of the Third Army Brigade in connection with the events in the present case.

[FN8] Communication EE/DH 1253 from the Ministry of Foreign Affairs dated September 17, 1996.

24. In the hearing held during the 95th regular session, the State indicated that because of the seriousness and importance of the case, special agents from the Attorney General's Office (Ministerio Público) had been dispatched to monitor the investigation and the proceedings against the accused.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

25. The Commission is competent *prima facie* to examine the complaint filed by the petitioner. The alleged facts adversely affected individuals within the State's jurisdiction and they occurred at a time when the State effectively had obligation to respect and guarantee the rights established in the Convention.[FN9] The Commission then turns to determining whether the present case satisfies the requirements established in Articles 46 and 47 of the American Convention.

[FN9] Colombia ratified the American Convention on Human Rights on July 31, 1973.

B. Admissibility

1. Exhaustion of domestic remedies and time period for submission

26. In its communication dated September 16, 1996, the State reported that the facts of the case were under investigation by the Cali Prosecutor's Office as well as by the military criminal justice system. It also furnished information on the disciplinary proceedings being conducted by the Attorney Delegate for the Defense of Human Rights. As noted earlier, the petitioners alleged that domestic remedies had been inadequate and ineffective in trying and punishing those responsible for the crime.

27. According to the positions presented by the parties, the case was initially investigated by Regional Prosecutor's Office in Cali and the military criminal justice system. However, on March 30, 1995, the Superior Council of the Judiciary upheld motion on the conflict of jurisdiction filed by the Third Army Brigade. The matter was therefore investigated by the military courts and tried before the Third Brigade's Council of War, which handed down a decision of first instance.[FN10] The sentence was appealed and reviewed by the Superior Military Court.[FN11]

[FN10] Decision of the Council of War of the Third Army Brigade of October 8, 1998.

[FN11] The Commission took cognizance of the fact that on December 1, 1999, in an appeal the Superior Military Court changed the sentence under appeal and convicted Major Delgado Carrillo to three years and one month in prison, as primarily responsible for the crimes of falsifying information in the performance of his duty for the punishable action of concealment and as a secondary punishment. Also, it declared criminal proceedings against Lt. Col. Luis Felipe Becerra Bohórquez and SS Leopoldo Moreno Rincón to have lapsed because they were acknowledged to be dead. It upheld the acquittal of Major Eduardo Delgado Carrillo on charges of homicide, extortion, and bribery. In March 2000, the civil party presented to the Supreme Court of Justice a request to have December 1, 1999, decision of the Superior Military Court overturned, and a decision has not yet been returned.

28. The Commission has ruled repeatedly that military jurisdiction is not an appropriate forum and therefore does not offer adequate remedies for investigating, prosecuting, and punishing violations of human rights established in the American Convention, allegedly committed by members of the armed forces or with their collaboration or acquiescence.[FN12] Also, the Inter-American Court recently reaffirmed that this jurisdiction is a suitable forum only for prosecution of members of the military for the crimes or misdemeanors that by their very nature pose a threat to judicial property belonging to the military.[FN13]

[FN12] IACHR. Third Report on the Human Rights Situation in Colombia (1999), p. 175; Second Report on the Human Rights Situation in Colombia (1993), p. 246; Report on the Human Rights Situation in Brazil (1997), p.p. 40-42.

[FN13] Int. Ct. H.R. Durand y Ugarte Case, Judgment of August 16, 2000, paragraph 117.

29. According to the Inter-American Court, whenever a State alleges that domestic remedies have not been exhausted by the petitioner it bears the burden of demonstrating that the remedies not exhausted are “adequate” enough to rectify the alleged violation, that is that the functioning of such remedies within the domestic justice system are suitable to address an infringement of a legal right.[FN14] In the present case, the Commission feels that military criminal justice does not provide a suitable remedy for investigating, prosecuting, and punishing conduct of the type involved in the instant case, and therefore the requirements set out in Article 46(1)(a) and (b) do not apply.

[FN14] Int. Ct. H.R. Vélasquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.

30. Undoubtedly, invoking the exceptions to the rule for exhaustion of domestic remedies provided for in Article 46(2) of the American Convention is closely linked to determining possible violations of certain rights established in the Treaty such as the guarantees of a fair trial and judicial protection. However, Article 46(2), by its nature and purpose, is a standard that stands alone vis-à-vis the substantive standards of the Convention. Therefore, ascertaining whether or not exceptions to the rule of exhaustion of domestic remedies apply in the instant case has been carried out previously, separate from the analysis of the alleged violations of Articles 8 and 25 since it depends on a standard of evaluation other than the one used to determine violations of substantive provisions of the Convention. It is important to clarify that the causes and effects that impeded exhaustion of domestic remedies will be analyzed below in the analysis of the merits in order to determine whether they effectively constitute violations of the American Convention.

2. Duplication of procedures and res judicata

31. There is nothing in the case file to indicate that the subject of the petition is pending in another international proceeding for settlement or that the petition is substantially the same as one previously studied by the Commission or another international organization. Therefore the requirements established in Articles 46(1)(c) and 47(d) of the Convention must be considered to have been fulfilled.

3. Characterization of the alleged facts

32. The Commission is of the view that the petitioners’ allegations concerning the alleged violations of the rights to life and humane treatment against the victims, and lack of effective prosecution and punishment of the guilty parties could be characterized as a violation of the

rights recognized in Articles 4, 5, 8, 19, 25, and 1(1) of the American Convention and therefore satisfy the requirements contained in Articles 47(b) and (c) of the American Convention.

C. Conclusions on competence and admissibility

33. The Commission considers that it is competent to analyze the petitioners' complaint and that the present case is admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

V. ANALYSIS OF THE MERITS

34. The Commission now turns to analyzing alleged points of fact and of law in order to determine whether the State is responsible for violating the rights to life, humane treatment, and judicial guarantees and protection against Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano.

35. First, the Commission will refer to the questions of fact. In this regard, it will cover separately the facts surrounding the deaths of the victims, the perpetration of these events, and their concealment by members of the army. Second, the Commission will refer to responsibility in the facts proven and whether they constitute violations of the rights protected under the American Convention.

A. Analysis of the facts

1. The massacre

36. According to the evidence produced by both parties in the proceedings held in military criminal jurisdiction and disciplinary jurisdiction, on October 5, 1993, at approximately 5:30 a.m. a group of armed men, some of whom were wearing military uniforms, appeared in the village of El Bosque, in the district of Portugal de Piedras, Municipality of Riofrío, Valle del Cauca.

37. The armed men identified the members of the Ladino and Molina families and took them to the home of Mr. Javier Ladino. The Commission feels that the testimony given by Mrs. Aurora de Ladino, who was 75 at the time of the events and who survived the massacre, should be cited. A summary of her testimony with respect to the killing of three of the victims, María Cenaida Ladino, Carmen Emilia Ladino, and Dora Estela Gaviria Ladino, reproduced by the Prosecutor General of Colombia, is as follows:

She heard the first shots at 5:00 in the morning. Going into the hall, she found her daughters lying face down, and she was ordered to do the same. She asserts that María Cenaida was then beaten. Next, she and her daughters María Cenaida, Dora Estela, and Carmen and four children were taken into a room. They began to be taken out one by one. She heard shots and did not see

them again. She says the gunfire lasted from 5:30 a.m. to 11:00 a.m. [...] she said that she did not see how her sons were taken.[FN15]

[FN15] Resolution of the Attorney Delegate for the Defense of Human Rights of the Office of the Public Prosecutor of Colombia, of May 11, 1998, p. 535.

38. The paramilitary group remained in the vicinity until approximately 10:30 a.m., at which time members of the Third Army Brigade's Palacé Battalion arrived.

2. The perpetrators of the crime

39. The evidence contained in the case file indicates that a group of six to eleven armed men (hereinafter “the paramilitaries”), some of whom were in uniform carried out the execution of the victims. According to the summary of María Aurora de Ladino’s testimony:

As to the perpetrators, she indicated that she did not know the exact number but saw approximately six men “some in civilian clothes and others dressed as soldiers...” who insulted them verbally and “...the only thing I remember them saying was why did we continue helping the guerrillas...” and they said they were looking for weapons.[FN16]

[FN16] Ibidem.

The decision of the Military Superior Court of November 1996 confirms that

Several people were seen being taken from the Molina's house and screams were heard coming from the community hall (Caseta Comunal), as a result of the actions of a group comprising individuals in green uniforms and civilian personnel, facts that further reinforce the hypothesis that the Commander of the Third Tactical Unit at least was not totally unaware of the outrage.[FN17]

[FN17] Decision of the Military Superior Court on November 27, 1996, p. 10.

It adds that

Between 9:00 a.m. and 10:00 a.m., before the arrival of the Palacé Battalion at the scene, a green colored official vehicle left the area, a circumstance that highlights the fact that one or more members of the military were fully aware of the situation and goes some way to supporting the charge that has the Battalion Commander having agreed to the perpetration of these acts with individuals acting outside the law.[FN18]

[FN18] Ibidem.

These facts suggest the presence and even the direct participation of agents of the State in perpetrating the massacre.

40. There is also evidence to establish that a coordinated action took place between the Palacé Battalion and the paramilitary group through an individual who acted as an informant for the army. In its decision, the Attorney Delegate for the Defense of Human Rights reports that:

moments before when it was decided to take the lives of the victims, Mr. HOLMES MOTATO CIFUENTES an informant for the army who was at the scene with the victims went to the municipality of Buga and telephoned the Palacé Battalion and reported to Col. LUIS FELIPE BECERRA BOHÓRQUEZ of what the assassins were doing, thus carrying out his mission to report when the members of the subversive group were in the house previously identified as the guerrillas retreat. The Colonel gave orders for the operation and instructed Major DELGADO CARRILLO to fetch the informant and bring him back to base. When Major DELGADO found Mr. MOTATO and was informed about the events then taking place, he delayed his return to base to allow the perpetrators enough time to finish their task.[FN19]

[FN19] Decision of the Attorney Delegate for the Defense of Human Rights of the Office of the Public Prosecutor of Colombia, dated May 11, 1998, p. 603.

The testimony of María Aurora de Ladino further corroborates evidence that a certain individual was present during the massacre and what was called “Operation Destructor”:

It seems to me that amongst the soldiers who arrived afterwards was one who had been there in the morning and that’s why I felt so afraid and didn’t want to say any more [...] he was different from the soldiers so I looked at him. [...] He was with them, with the army as if he were a member of the group.[FN20]

[FN20] Resolution of the Attorney Delegate for the Defense of Human Rights of the Office of the Public Prosecutor of Colombia, dated May 11, 1998, p. 536

In analyzing this part of the testimony, the Attorney Delegate was of the view that it was an informant who had been at the scene at dawn, when the executions took place, and again later with the army.[FN21]

[FN21] Resolution of the Attorney Delegate for the Defense of Human Rights of the Office of the Public Prosecutor of Colombia, dated May 11, 1998, p. 547

41. There is also evidence to show that before the Palacé Battalion arrived on the scene, the Commander of “Operation Destructor” knew for certain that the victims had already been executed. Specifically, the way in which the battalion approached the home of Mr. Javier Ladino indicates that it was not on the alert for a possible attack from that quarter. To this end, the Attorney General of the Nation has stated:

Numerous factors show that the operation was poorly planned and improperly executed, thus confirming that in normal circumstances the troops would undoubtedly have been ambushed, suffering many casualties, possibly even the loss of their entire number. Such a situation seems to suggest that based on experience, given the fact that the people planning the operation were extremely capable, they knew very well right from the outset that there would be no armed confrontation at the site of the operation.[FN22]

[FN22] Resolution of October 2, 1998, of the Attorney General of the Nation, Official Letter N° 008-145867, p. 73.

This confirms that the perpetrators of the massacre coordinated their attack with the arrival of the Palacé Battalion, whose mission was to hide all traces of the massacre.

42. In view of the foregoing, the Commission feels that there is sufficient evidence to conclude that agents of the State acted jointly and in coordination with a paramilitary group in planning and carrying out the massacre of the thirteen victims.

3. The cover up

43. According to the evidence contained in the case file, when the paramilitary group withdrew from the scene, apparently with the exception of the individual who was acting as an informant, members of the Palacé Battalion simulated an armed encounter with the victims. To achieve this effect, they fired several rounds towards and away from Mr. Ladino’s house and changed the scene of the crime around.

44. The occurrence of fighting has been discredited by the expert investigation conducted at the scene of the crime and by the autopsies performed on the bodies. Here, the expert report of the Technical Unit of the Cali Regional Investigation Unit indicates inter alia discrepancies between the shots fired by the army and the impact of the bullets found at the scene and their trajectories and the fatal wounds found on the victims’ bodies.[FN23]

[FN23] The experts reported that “...it was established that the relationship of the number of shots fired by the different army groups does not match the impacts found at the scene of the crime. This is based on testimony that each group fired from one hundred and twenty (120) to

one hundred and forty (140) rounds, in which case there would be more bullet holes in the building, confirming that precision firearms such as Galils were used.

45. The petitioners alleged that after the simulation of a skirmish, Lt. Col. Luis Felipe Becerra Bohórquez, Commander of the Palacé Artillery Battalion and Brigadier General Rafael Fernández López, Commander of the Third Brigade, claimed in news reports that thirteen members of an armed dissident group known as the ELN had been killed in a confrontation with troops, and that no casualties had been sustained by the army. This claim led to an investigation that culminated with the decision on December 1, 1999, of the Military Superior Court rendered after the death of Col. Becerra Bohórquez, in which Major Delgado Carrillo was sentenced to three years and one month in prison as principally responsible for falsifying evidence in the performance of his duties through concealment but was acquitted of the charges of homicide, extortion, and bribery.

46. The claim also led to the aforementioned investigation by the Attorney Delegate for the Defense of Human Rights which prepared an indictment against certain officers that included disciplinary proceedings against Lt. Col. Becerra Bohórquez and Major Delgado Carrillo for concealment of irregular conduct by members of the national army and the perpetrators of the massacre, simulating an armed encounter, and claiming credit for the guerrillas killed, tampering with the scene of the crime, and destroying evidence, amongst other things.[FN24] On October 2, 1998, the Prosecutor General in an appeal changed the sentences against Lt. Col. Becerra Bohórquez and Major Delgado Carrillo agreed on with the Attorney Delegate for the Defense of Human Rights from discharge from the army to a severe reprimand.

[FN24] The Prosecutor's Office decided to acquit Brigadier General Rafael Hernández López, to discharge Lt. Col. Becerra Bohórquez from the army, to discharge Major Delgado from the army, to suspend Lt. Alfonso Vega Garzón from duty without pay for a period of 90 days, to suspend 2nd. Lt. (SS) Armando Aguilera Escobar from duty without pay for a period of 90 days and to acquit the non-commissioned officers Corporal Leopoldo de Jesús Moreno Rincón and Alexander Cañizales Núñez of all disciplinary responsibility in the charges filed against them. Following an appeal, on October 2, 1998, the Prosecutor General upheld the acquittal of Brigadier General Hernández, changed the sentences agreed on against Lt. Col. Becerra Bohórquez and Major Delgado Carrillo from a military discharge to a severe reprimand, overturned the sentences of a 90-day suspension from duty without pay against Luis Alfonso Vega Garzón and Armando Aguilera Escobar, and upheld the acquittals of Leopoldo de Jesús Moreno Rincón and Alexander Cañizales Nuñez.

47. It is important to notes in an internal hearing it was established that agents of the State were responsible for concealment of the massacre that took place on April 7, 1991, that involved a simulated armed encounter to justify the killing of the victims and also to claim an alleged victory by the military over an armed group of dissidents. The concealment of the killings by members of the army as the final touch to the massacre reflects the close ties between the

paramilitary group responsible for perpetrating the incident and the agents of the State implicated.

B. Analysis of law

48. Before turning to the analysis of the alleged violations of the standards of the American Convention, it must be ascertained whether the acts of the individuals implicated in the incident in violating such fundamental rights as the rights to life and humane treatment are attributable to the State of Colombia and therefore call into question its responsibility in accordance with international law. In this regard, the Inter-American Court has noted that it is sufficient to show that the infringement of the rights recognized in the Convention has been supported or tolerated by the government.[FN25]

[FN25] Int. Amer. Ct. H.R. Paniagua Morales et al Case, Sentence of March 8, 1998, paragraph 91.

49. First, it should be said that, as noted by the IACHR in its Third Report on the Human Rights Situation in Colombia, the State has played a leading role in developing the paramilitary or self-defense groups, that it allowed them to act legitimately with the protection of the law during the 1970s and 1980s[FN26], and that it is generally responsible for their existence and for strengthening them.[FN27]

[FN26] In fact, Decree 3398 of 1965 (National Defense Act) and Law 48 of 1968 authorized the creation of civil patrols that received arms for private use from the State security forces by authorization of the Ministry of Defense. Pursuant to Article 25 of Decree 3398 of 1965, "All Colombian men and women not called to do mandatory military service, may be used by the government in activities and efforts intended to restore normal conditions".

[FN27] Third Report on the Human Rights Situation in Colombia (1999), Chapter IV, paragraph 236.

50. These groups sponsored or accepted by branches of the armed forces were created mainly to combat armed groups of dissidents.[FN28] As a result of their counterinsurgency purposes, the paramilitaries established links with the Colombian army that became stronger over a period of more than twenty years. Eventually, on May 25, 1989, the Supreme Court of Justice declared Decree 3398 unconstitutional, thereby removing all legal support for their ties to national defense. In the wake of this action, the State passed a number of laws to criminalize the activities of these groups and of those that supported them.[FN29] Despite these measures, the State did little to dismantle the structure it had created and promoted, particularly in the case of groups that carried out counterinsurgency activities and, in fact, the ties remained in place at different levels, which in some instances requested or permitted paramilitary groups to carry out certain illegal acts on the understanding that they would not be investigated, prosecuted, or

punished.[FN30] The toleration of these groups by certain branches of the army has been denounced by agencies within the State itself.[FN31]

[FN28] See IACHR, Third Report on the Human Rights Situation in Colombia (1999), Chapter I, paragraphs 17-19.

[FN29] Decree 1194 of June 8, 1989, and Decree 2266 of 1991.

[FN30] See IACHR, Third Report on the Human Rights Situation in Colombia (1999), Chapter I, paragraphs 17-19. See also the Report of the United Nations High Commission for Human Rights on the Office in Colombia, April 2000, paragraph 30, in which it is stated that "...The Office has received testimony concerning the direct involvement of members of the armed forces [...] in some cases the resident of the communities affected recognized members of the armed forces forming part of the paramilitary contingents that carried out the massacre. Also, the law enforcement agencies adopted an attitude of ignoring which undoubtedly enabled the paramilitaries to carry out their mission of extermination".

[FN31] Third Report on the Human Rights Situation in Colombia (1999), Chapter IV, paragraph 237-239.

51. As a result of this situation, the Commission has established, for the purposes of determining the international responsibility of the State in accordance with the American Convention, that in cases in which members of paramilitary groups and the army carry out joint operations with the knowledge of superior officers, the members of the paramilitary groups act as agents of the State.[FN32]

[FN32] See Report 37/00 1999 IACHR Annual Report, Volume I, paragraph 64.

52. In the present case, according to analysis of the facts mentioned above, there is evidence to show that agents of the State helped to coordinate the massacre, to carry it out, and, as discovered by domestic courts, to cover it up. Therefore, the only conclusion is that the State is liable for the violations of the American Convention resulting from the acts of commission or omission by its own agents and by private individuals involved in the execution of the victims.

1. The right to life

53. As noted earlier, the petitioners allege that an illegal armed group, with the complicity of agents of the State, executed the victims, two of whom were minors, on October 5, 1993, in the municipality of Riofrío, in the Valle del Cauca. They allege that to conceal all evidence of the executions members of the army forced the victims to put on combat uniforms and, when they had been executed, placed arms next to their lifeless bodies and simulated a scene of combat. They allege therefore that the State is responsible for violating Articles 4 and 19 of the American Convention as well as common Article 3 of the 1949 Geneva Conventions and Article 2 of its Second Additional Protocol. The State has not accepted or expressly disputed the facts alleged by the petitioners but has limited itself to presenting additional information on the proceedings of

the case before courts within the country.[FN33] It must now be determined whether the State is responsible for violating the right to life established in the American Convention.

[FN33] Note EE/D.H. 1253 of the General Directorate of Special Matters of September 17, 1996.

54. Article 4 of the American Convention establishes that every person has the right to have his life respected and no one shall be arbitrarily deprived of his life. It is also important to note that intentional mistreatment, and particularly extrajudicial execution of civilians under the control of one of the parties in any kind of armed conflict is absolutely prohibited in all circumstances in light of the basic considerations of humanity reflected in common Article 3 of the Geneva Conventions.[FN34]

[FN34] Common Article 3 of the 1949 Geneva Conventions establishes certain minimal standards to be applied during hostilities in order to protect persons taking no active part or no longer taking a direct and active part in the hostilities including agents of the State or members of armed groups of dissidents that laid down their arms, are taken prisoner, or placed hors combat. This provision expressly prohibits at any time and in any place whatsoever "Violence to life and person or persons taking no active part or no longer taking an active part in the hostilities".

55. In the present case, the available evidence shows that the victims were defenseless and under the effective control of individuals who were acting in coordination with agents of the State at the time of their death and that there was no justification whatsoever to deprive them of their lives in light of the standards of present international law. The testimony and expert evidence gathered in the course of the disciplinary proceedings, and even in the military courts, clearly indicates that the victims put up no resistance to the actions of their executioners.

56. The Commission therefore considers that there are sufficient grounds to conclude that the victims in the present case were executed extrajudicially by a group of armed men who acted in collaboration with agents of the State and that subsequently members of the army attempted to cover up the executions by manipulating and manufacturing evidence.

57. In the present case, the Commission is of the view that the State is responsible for the acts of its agents as well as for those perpetrated by individuals who acted with their complicity to make it possible to carry out and cover up the execution of the victims in violation of their right not to be arbitrarily deprived of their lives, as established in Article 4 of the American Convention. Also, as indicated by the petitioners, amongst the victims were two minors, Dora Estela Gaviria Ladino and Luz Edelsy Tusarma Salazar, who were 16 years of age. The evidence shows that Luz Edelsy was pregnant at the time of her death. The Commission is of the view that the State is not only responsible for violating the right to life of these two victims but also failed to fulfill its obligation to provide them special protection as minors in accordance with Article 19 of the American Convention.

58. Based on the foregoing considerations of fact and of law, the Commission finds that on October 5, 1993, a group of armed men, acting in complicity with agents of the State, arbitrarily deprived Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano of their right to life in violation of the obligations established in Article 4(1) of the American Convention. Moreover, the State is responsible for failing to fulfill its special duty to provide protection to the minors Dora Estrella Gaviria Ladino and Luz Edelsy Tusarma Salazar pursuant to Article 19 of the American Convention.

2. The right to humane treatment

59. The petitioners allege that prior to their execution the victims were subjected to acts of torture that violated their right to humane treatment. In their allegations, the petitioners do not specify the nature of the lesions inflicted or whether some or all of the victims were affected.

60. Article 5 of the American Convention states that

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. [...]

61. In the instant case, statements taken from neighbors in the village as well as from Mrs. María Aurora Ladino who was in the dwelling where the executions took place, confirm that the sounds of blows to the victims and their screams were heard before they were killed.[FN35] The testimony does not confirm whether all of the victims were tortured before they were executed.

[FN35] In their depositions, Carlos Enrique Gaviria Londoño and María Edilma Gutiérrez indicated that the victims were beaten before they were killed and that their screams were heard. These depositions are cited in the Decision of the Prosecutor General of the Republic of May 11, 1998.

62. However, the autopsies conducted by the Attorney Delegate for the Defense of Human Rights effectively confirm that “lesions caused by blunt objects before death” were found on the bodies of Hugo Cedeño Lozano, Miguel Ladino, Cenaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza.[FN36]

[FN36] Cited in the Decision of the Prosecutor General of the Republic on October 2, 1998, p. 24.

63. Therefore, the Commission is of the view that in the present case there is sufficient evidence to conclude that the State is responsible for violating the right to humane treatment of Hugo Cedeño Lozano, Miguel Ladino, Cenaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza before they were executed.

C. The right to judicial protection and the obligation of the State to respect and guarantee the rights protected under the Convention

64. The petitioners allege that the State failed to fulfill its obligation to investigate the facts of the case and to bring to trial and punish those responsible in accordance with Articles 8 and 25 of the American Convention. In their view, the State deprived the families of the victims of access to an impartial court when the Superior Council of the Judiciary transferred the case to the jurisdiction of military courts.

65. Therefore, it falls to the Commission to determine whether the judicial proceedings instituted by the State, which have lasted for more than seven years now and taken place largely in military jurisdiction, meet the standards established by the American Convention for access to a fair trial and judicial protection.

66. Article 8(1) of the American Convention states that:

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 made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

According to Article 25 of the Convention:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

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; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

67. These standards set out the obligation of the State to ensure access to a fair trial with the guarantee that it be legal, independent, and impartial within a reasonable period as well as the general obligation to provide effective judicial remedy in the face of the violation of the fundamental rights, incorporating the principle of the efficiency of the procedural instruments or mechanisms. The Inter-American Court of Human Rights has ruled that:

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.[FN37]

[FN37] Int. Amer. Ct. H.R. Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 91.

68. In the present case, although an investigation of the members of the army implicated in the massacre was opened, the case was transferred to the military criminal justice system when a motion on a conflict of jurisdiction was filed.

69. In fact, the Commission notes, that after the security measures were imposed by the Cali Regional Prosecutor's Office against members of the Third Army Brigade, the latter claimed a conflict of jurisdiction. The Superior Council of the Judiciary resolved the dispute on March 30, 1995, with the decision that the case be transferred to the military criminal justice system because it was considered that the "events under investigation occurred in connection with a military operation conducted by members of the military on active service".[FN38]

[FN38] Cited in Resolution of July 2, 1998, by the Superior Council of the Judiciary.

70. In this regard, the Commission should reiterate again that, given its nature and structure, military criminal jurisdiction does not meet the standards of independence and impartiality required pursuant to Article 8(1) of the American Convention, which are fully applicable in the present case. The unsuitable nature of military criminal courts in Colombia as a forum for examining, prosecuting, and punishing cases that involve violations of human rights has been expressly mentioned by the Commission in the past:

The military criminal justice system has several unique characteristics which prevent access to an effective and impartial judicial remedy in this 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.[FN39]

[FN39] IACHR Third Report on the Human Rights Situation in Colombia (1999) pp. 175-186. See also Second Report on the Human Rights Situation in Colombia (1993) p. 237 where it is stated that: "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". See Reports 36/00, 35/00, and 7/00 in the Annual Report of the IACHR 1999, Volume I; Reports 84/98, 62/99, and 61/99 in the Annual Report of the IACHR 1998, Volume I.

71. The Inter-american Court recently confirmed that:

In a democratic State of law military criminal jurisdiction necessarily has a restrictive and special scope and is designed to protect special judicial interests linked to the functions that the law assigns to military forces. Thus, civil proceedings must be excluded from the context of military jurisdiction which should only try members of the military for the commission of crimes or misdemeanors that by their very nature have to do solely with judicial property of a military nature.[FN40]

[FN40] Int. Ct H.R. Durand y Ugarte Case, Judgment of August 16, 2000, paragraph 117.

In previous decisions, the IACHR has indicated that the Constitutional Court of Colombia itself has ruled on the jurisdiction of military courts in examining cases of human rights violations. In this regard, it has noted that:

For the military criminal justice system to have competence over a crime, there must be from the onset an evident link between the crime and the inherent activities of military service. In other words, the punishable action must constitute an excess or abuse of power occurring within the context of an activity that is directly related to a legitimate function of the armed forces. The link between the criminal action and the activity related to military service breaks down when the crime is extremely serious, such as is the case with crimes against humanity. In such circumstances, the case must be referred to the civilian courts.[FN41]

[FN41] Constitutional Court, Decision C-358 of August 5, 1997.

72. The Commission considers that the execution of the victims in the present case as a result of coordinated activities between the army and the paramilitaries and the subsequent cover up is not a legitimate activity of the service that justifies the use of that forum to bring those responsible to trial. Consequently, the fact that the accused have been tried in military criminal jurisdiction contravenes the right of the victims' families to have access to an independent and impartial tribunal, as well as due judicial protection established in Articles 8(1) and 25 of the American Convention.

73. The American Convention imposes on the States the obligation to prevent, investigate, identify, and punish the perpetrators and those that conceal human rights violations. The Inter-American Court has ruled that

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained or the damages suffered. As this court has ruled, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.".[FN42]

[FN42] Int. Ct. H.R. Loayza Tamayo Case, Reparations, November 27, 1998, paragraph 169.

74. To this end, Article 25 bears a close relation to Article 8(1) which establishes the right of every person to a hearing with due guarantees within a reasonable time by an independent and impartial judge or court and confers on the victims' families the right that the deaths of their loved ones be effectively investigated by the authorities, that judicial proceedings be instituted against those responsible, that the appropriate penalties be imposed, and that they be compensated for the injuries suffered.[FN43]

[FN43] Int. Ct. H.R. Durand y Ugarte Case, Judgment of August 16, 2000, paragraph 130.

75. In the present case, the State has not ruled on the necessary means of fulfilling its obligation to investigate the extrajudicial killing of the victims, to prosecute and punish those responsible, and to provide reparations to the victims' families. To this end, the execution of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano has gone unpunished, a fact that according to the Court "fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives".[FN44]

[FN44] Int. Ct. H.R. Paniagua Morales et al Case, March 8, 1998, paragraph 173.

76. Based on the foregoing considerations, the Commission concludes that the State has not fulfilled its obligation to offer proper judicial protection in accordance with Articles 8 and 25 of the American Convention to the victims in the present case and to their families.

D. Obligation to respect and guarantee the rights protected by the Convention

77. The petitioners allege that the State has not fulfilled its obligation to provide guarantees in accordance with Article 1(1) of the American Convention, whereby the States parties must

ensure the exercise of the rights and freedoms recognized in the Convention to all persons subject to their jurisdiction.

78. It should be recalled that the obligation provided for in Article 1(1) is an obligation involving the duty to organize the government apparatus and in general all structures through which public power is exercised so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, States must prevent, investigate, and punish any violation of the rights recognized by the Convention.[FN45] The Inter-American Court has maintained that:

[FN45] Int. Ct. H.R. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.

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.[FN46]

[FN46] Ibidem, paragraphs 174 and 176.

79. In the present case, more than seven years have now elapsed since the massacre and the State has not yet effectively fulfilled its duty to bring to trial and punish those responsible for the extrajudicial execution of the victims and to provide reparations to the families. The Commission considers therefore that the State of Colombia has failed in its obligation to prevent and guarantee the rights to life and humane treatment as well as the right to judicial protection of the victims pursuant to Article 1(1) of the Convention.

VI. ACTION SUBSEQUENT TO APPROVAL OF REPORT 75/00 IN ACCORDANCE WITH ARTICLE 50 OF THE CONVENTION

80. On October 4, 2000, the Commission approved Report 75/00 pursuant to Article 50 of the American Convention. In this report, the Commission concluded that the State is responsible for violating the right to life of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Ceniaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano. The State is also responsible for failing to fulfill the special duty of protecting the two minors, Dora Estela Gaviria Ladino and Luz Edelsy Tusarma Salazar, in accordance with Article 19 of the American Convention. Moreover, the Commission concludes that the State of Colombia is responsible for violating the right to humane treatment established in Article 5 of the Convention in respect of Hugo Cedeño Lozano, Miguel Ladino, Ceniaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza as well as to fulfill its obligation to offer due judicial protection to the victims in the present case in accordance with Articles 8 and 25 of the American

Convention, in conjunction with Article 1(1) of the Treaty. Also it recommended that the State (1) conduct an impartial and effective investigation under civilian jurisdiction with a view to prosecuting and punishing those materially and intellectually responsible for the massacre; (2) to take the necessary steps to ensure that the victims' families are duly compensated; (3) to take the necessary steps to avoid a repetition of similar events in the future in accordance with the duty to prevent and guarantee the fundamental rights recognized in the American Convention, as well as to ensure that the doctrine developed by the Constitutional Court of Colombia and by the Commission is fully complied with in investigating and prosecuting similar cases through the ordinary criminal justice system. On October 30, 2000, the Commission forwarded this report to the State, according it a period of two months in which to comply with its recommendations.

81. On December 29, 2000, the State asked the Commission for an extension[FN47], which was granted until January 19, 2001. On January 19, 2001, in a written communication to the Commission, the State indicated that

[FN47] Communication EE 2967 of the Director General of Special Affairs of the Ministry of Foreign Affairs dated December 29, 2000.

Once the competent entities had been consulted, the Government of Colombia is pleased to present [...] a proposal to move forward with efforts to satisfy, if necessary, the requirements of justice, truth, and reparations in each case, in accordance with national legislation.[FN48]

[FN48] Communication EE 0110 from the Director General of Special Affairs of the Ministry of Foreign Affairs, dated December 29, 2000.

The proposal referred to indicates that the State has deemed it appropriate to ask the Public Defender to draw up a special report by August 21, 2001, "with a view to complying with the recommendations contained [...] in the context of the legal and constitutional powers in effect in our country".[FN49] The aforesaid proposal indicates that the Public Defender would prepare his report taking into account the opinion of the parties in the case before the IACHR, the victims or their beneficiaries, the judicial and administrative authorities that heard the proceedings in question, the IACHR, and the individuals and institutions whose opinions are considered relevant. The proposal indicates that the Defender would set the deadlines and the conditions for implementing the findings and recommendations of its own final report, which would also be submitted to an Intersector Human Rights Committee for consideration. The proposal indicates that the State "undertakes to address the findings and recommendations contained in the Defender's Final Report".

[FN49] "Proposal of the State of Colombia on certain cases being processed by the Inter-American Commission on Human Rights with respect to which reports have been submitted in accordance with Article 50 of the American Convention on Human Rights" attached to

Communication EE from the Director General of Multilateral Agencies of the Ministry of Foreign Affairs, dated January 19, 2001.

82. The Commission takes note of the proposal presented by the State in response to Report 77/00, approved pursuant to Article 50 of the American Convention in the present case. Also, it appreciates the State's willingness to "address the Commission's recommendations" through an eventual assessment of the findings of Report 77/00 by the Office of the Public Defender. However, the State's response does not indicate the adoption of specific measures or assumption of certain express commitments with respect to implementing the Commission's recommendations. Therefore, the Commission must pursue the proceedings of the case in accordance with Article 51 of the American Convention.

VII. CONCLUSIONS

83. In view of the foregoing points of fact and of law herein analyzed, the Commission reiterates its findings to the effect that the State is responsible for violating the right to life of Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio César Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano. Also, the State is responsible for failing to fulfill its special duty to protect two minors, Dora Estela Gaviria Ladino and Luz Edelsy Tusarma Salazar in accordance with Article 19 of the Convention. The Commission further concludes that the State of Colombia is responsible for violating the right to humane treatment, recognized in Article 5 of the Convention, of Hugo Cedeño Lozano, Miguel Ladino, Cenaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza as well as for failing to fulfill its obligation to provide due judicial protection to the victims in the present case in accordance with Articles 8 and 25 of the Convention, in conjunction with Article 1(1) of the Treaty.

VIII. RECOMMENDATIONS

84. On the basis of the analysis and the findings of the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF COLOMBIA:

1. Conduct an impartial and effective investigation in ordinary jurisdiction with a view to prosecuting and punishing those materially and intellectually responsible for the massacre.
2. Take such steps as are necessary to ensure that the families of the victims are duly compensated.
3. Take the necessary steps to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention as well as the necessary measures to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission on Human Rights in investigating and prosecuting similar cases through the ordinary criminal justice system.

IX. PUBLICATION

85. On February 28, 2001 the Commission transmitted this Report to the Colombian State pursuant to Article 51 of the American Convention and granted a period of one month as from that date to present information on compliance with the above recommendations. On that same date, the Commission transmitted the Report to the Petitioners. On January 28, 2001 the State requested additional time to respond and the Commission granted a seven-day extension.

86. The State presented its response on April 3, 2001 and once more referred to the mechanism of compliance proposed in its previous response to the report adopted pursuant to Article 50 of the American Convention (see *supra* paras. 81 and 82). The State expressed that "it shall follow up on compliance with the recommendations by continuing with the investigations and other pending procedures in each case and shall submit a study on adequate compensation to the instances contemplated in Act N° 288 (1996)."[FN50]

[FN50] Note EE 0705 General Director of Special Affairs (in charge), Ministry of Foreign Affairs, April 3, 2001.

87. Accordingly, pursuant to Articles 51(3) of the American Convention and 48 of its Regulations, the Commission decides to reiterate its conclusions and recommendations included in chapters VII and VIII *supra*; to publish this report and to include it in the Commission's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Colombian State with respect to those recommendations until the State has complied with them.

Done and signed in Santiago de Chile in the sixth day of the month of April of the year 2001. (Signed:) Claudio Grossman, Chairman; Juan E. Mendez, First Vice Chairman; Marta Altolaguirre, Second Vic-Chair; Robert K. Goldman, Helio Bicudo, Peter Laurie, Julio Prado Vallejo, Commissioners.