

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 75/03; Petition 042/02  
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)  
Title/Style of Cause: Jose Milton Canas Cano, Luis Fernando Suarez Suarez (or Luis Fernandez Suarez), Carlos Enrique Escobar Jimenez (or Carlos Escobar), Ricky Nelson Garcia (or Riky Nelson Garcia), Oswaldo Enrique Vasquez Q. (or Oswaldo Henrique Vasquez), Gary de Jesus Pinedo Rancel (or Garri de Jesus Pinedo), Ender Gonzalez Bahena, Robert Wells Gordillo Solano, Wilfredo Perez Serna, Juan Carlos Rodriguez, Diego Fernando Ochoa Lopez, Alejandra Maria Ochoa Lopez (or Maria Alejandra Ochoa), Jaime Cesid Pena Rodriguez, Libardo Londono, Jose Reinel Campos, Fernando Ardila Landines (or Fernando Landinez), Daniel Campos Perez, Melquisedec Salamanca Quintero, Giovanni Herrera, Carlos Arturo Prada (or Carlos Alaix Prada), Wilson Pacheco, Jose Octavio Osorio, Orlando Martinez, Juan de Jesus Valdivieso, Oscar Leonel Barrera, Eliecer Javier Quintero Orozco (or Eliecer Quintero Osorio), Neirn Enrique Guzman (or Nayr Enrique Guzman), Luis Jesus Argüello (or Jesus Argüello Solano), Jose Javier Jaramillo (or Jose Javier Jaramillo Diaz) and Diomidio Hernandez (or Diomidio Hernandez Perez) v. Colombia  
Doc. Type: Decision  
Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Robert K. Goldman, Julio Prado Vallejo.  
Dated: 22 October 2003  
Citation: Canas Cano v. Colombia, Petition 042/02, Inter-Am. C.H.R., Report No. 75/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)  
Represented by: APPLICANTS: the Center for Justice and International Law and the Corporacion Colectivo de Abogados “Jose Alvear Restrepo”  
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## I. SUMMARY

1. On January 22, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by the Center for Justice and International Law (CEJIL) and the Corporación Colectivo de Abogados “José Alvear Restrepo” (hereinafter “the petitioners”) alleging that during an armed incursion into the southern sector of the city of Barrancabermeja, in the department of Santander on May 16, 1998, members of paramilitary groups, acting with the acquiescence and involvement of agents of the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”) disappeared José Milton Cañas Cano, Luis Fernando Suárez Suárez (or Luis Fernández Suárez), Carlos Enrique Escobar

Jiménez (or Carlos Escobar), Ricky Nelson García (or Riky Nelson García), Oswaldo Enrique Vásquez Q. (or Oswaldo Henrique Vásquez), Gary de Jesús Pinedo Rancel (or Garri de Jesús Pinedo), Ender González Bahena, Robert Wells Gordillo Solano, Wilfredo Pérez Serna, Juan Carlos Rodríguez, Diego Fernando Ochoa López, Alejandra María Ochoa López (or María Alejandra Ochoa), Jaime Cesid Peña Rodríguez, Libardo Londoño, José Reinel Campos, Fernando Ardila Landines (or Fernando Landínez), Daniel Campos Pérez, Melquisedec Salamanca Quintero, Giovanni Herrera, Carlos Arturo Prada (or Carlos Alaix Prada), Wilson Pacheco, José Octavio Osorio, Orlando Martínez, Juan de Jesús Valdivieso and Oscar Leonel Barrera, and killed Eliécer Javier Quintero Orozco (or Eliécer Quintero Osorio), Neirn Enrique Guzmán (or Nays Enrique Guzmán), Luis Jesús Argüello (or Jesús Argüello Solano), José Javier Jaramillo (or José Javier Jaramillo Díaz) and Diomidio Hernández (or Diomidio Hernández Pérez) (hereinafter “the victims”).

2. The petitioners allege that the State is responsible for violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 25 (right to judicial protection), and 1(1) (right to the truth) and 19 (rights of the child) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”). The State requested that the Commission declare the case inadmissible on the grounds of a failure to comply with the rule requiring exhaustion of domestic remedies, provided for in Article 46(1)(a) of the American Convention. For their part, the petitioners invoked the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46(2) of the American Convention.

3. After examining the parties’ positions and the fulfillment of the requirements stipulated in Articles 46 and 47 of the Convention, the Commission declared the case admissible.

## II. PROCESSING BY THE COMMISSION

4. The IACHR classified the petition as number P042/02. Following a preliminary review of the petition’s contents, the Commission forwarded a copy of its pertinent parts to the State on February 21, 2002, and advised the State that it had two months in which to provide information, pursuant to Article 30(2) of the Rules of Procedure. On April 19, 2002, the State applied to the Commission seeking a 30-day extension of the deadline for submitting its response. On May 25 and July 23, 2002, the petitioners called the Commission’s attention to the State’s tardiness in providing information on the petition and asked the Commission to presume the facts to be true. On August 14, 2002, the Commission asked the State to present its response within 15 days. The State’s response was filed on September 6, 2002, and duly forwarded to the petitioners on September 9, 2002.

5. On October 7, 2002, the petitioners requested an extension of the deadline originally set for submission of their observations on the State’s response. On October 8, 2002, the Commission granted an extension up to December 8, 2002. The petitioners presented their observations on December 20, 2002. The pertinent parts were then forwarded to the State on January 16, 2003. That same day, the Commission asked the State to submit the relevant observations within 30 days.

6. On February 14, 2003, the State requested an extension of the deadline for filing its observations. On February 26, 2003, the Commission informed the State of its decision to grant it a 30-day extension. The State finally presented its observations on April 3, 2003.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioners

7. The inland river port city of Barrancabermeja is in the region called Magdalena Medio, one of the areas hardest hit by the violence engendered by the internal armed conflict in Colombia. The petition states that at the time of the events in question, the low-income neighborhoods of the city, particularly the southeastern and northeastern quarters, were regarded as strongholds of the urban militia of the Fuerzas Armadas Revolucionarias de Colombia (FARC) [Revolutionary Armed Forces of Colombia], the Ejército de Liberación Nacional (ELN) [National Liberation Army] and the Ejército Popular de Liberación (EPL) [People's Army of Liberation], armed dissident groups that had for some time been active in that area. It also states that sometime during the latter half of the 1990s, paramilitary groups launched an armed strategy aimed at expanding their presence in, and control, of the area. The strategy consisted mainly of a campaign of terror that had both large-scale and selected targets, such as social leaders and residents suspected of being sympathizers of dissident armed groups. The petitioners also make reference to the military forces in Barrancabermeja -where the Nueva Granada Battalion is stationed- and to the National Army's presence at "Pozo Siete" and at the "Los Comuneros" electric power substation. The petitioners observe that in late April and early May 1998, the Administrative Department of Security [Departamento Administrativo de Seguridad] (DAS) sent two urgent communiqués to "Nueva Granada" Battalion reporting on the possibility of a paramilitary incursion in the area.

8. The petitioners contend that at approximately 9:30 p.m. on May 16, 1998, three vehicles carrying between 30 and 50 men in civilian dress, wearing hoods and bullet-proof vests and carrying small arms and long-range firearms, machetes and other bladed cutting tools, entered Barrancabermeja via the southwestern quarter of the city. They state that earlier that day, prior to the incursion, Colonel Oscar Diego Sánchez Vélez had ordered a permanent checkpoint set up at the place known as the "Y" or "El Retén," outfitted with military vehicles and armed infantry units. The petitioners allege that this checkpoint was abruptly removed at 9:30 p.m., around the time the police patrols and marines stopped.

9. The petitioners further contend that the armed men moved in a northeasterly direction, via the southern perimeter of the city. They abducted a number of people on the streets, in bars, pool halls, and on a soccer field where a bazaar was in progress with some 200 people in attendance. The individuals seized, whom the petitioners identified as Juan de Jesús Valdivieso (age 16), Pedro Julio Rondón, Libardo Londoño, Orlando Martínez, José Octavio Osorio, Wilfredo Pérez Serna, José Milton Cañas, Diego Fernando Ochoa, María Alejandra Ochoa, Giovanni Herrera, Osvaldo Enrique Vasquez, Ender González Bahena, Rober Wells Gordillo, José Reinel Campos, Fernando Ardila Landinez, Garri de Jesús Pinedo, Oscar Leonel Barrera, Juan Carlos Rodríguez, Luis Fernando Suárez, Jaime Yesid Peña R. and José Javier Jaramillo—

the last two being 16 years of age-were forced into one of the trucks in which the armed men were traveling.

10. The petition states that some of the armed men then headed off for “Barrio 9 de abril,” south of Barrancabermeja. There they blocked the road in the vicinity of the access road to the thermoelectric power station. The local inhabitants had taken refuge in a recreation center, which was riddled with shots from small arms and long-range firearms. The petitioners note that the recreation center was just 150 meters from the military base where the Nueva Granada Battalion was stationed. That battalion guards the thermoelectric power station.

11. In the meantime, the other paramilitaries detained Ricky Nelson García and Wilson Pacheco, who were riding on a motorcycle, Daniel Campos, Luis Jesús Argüello, Diomidio Hernández and Carlos Enrique Escobar (age 16), Melquiceded Salamanca Quintero, Carlos Alaix Prada, and Germán León Quintero. Germán León Quintero was shot in the legs as he tried to run away, after which he was dragged and then shot multiple times in the head and killed right in the street. Then, after the two groups had joined up again and were heading in the direction of “Pozo Siete” and the “Barrio La Esperanza,” the paramilitaries seized Neir Enrique Guzmán and Eliécer Javier Quintero Orozco. They left Barrancabermeja at around 10:30 p.m., headed for Bucaramanga. The petition alleges that the paramilitaries drove right through the Army checkpoint controlling access to the city, without being stopped. It was in the vicinity of the “Patio Bonito” section that they killed Eliécer Javier Quintero Orozco, Neir Enrique Guzmán, Luis Jesús Argüello, José Javier Jaramillo and Diomidio Hernández. Their bodies were discovered on May 17, 1998.[FN1]

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[FN1] In a communication dated December 20, 2002, the petitioners rectified the victims’ names.  
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12. After these events, family and friends of the persons seized went to the authorities requesting that the whereabouts of their loved ones be determined. The petitioners claim that when the authorities did nothing, a civic stoppage lasting several days was staged at the Barrancabermeja refinery. This elicited a pledge from the authorities to arrange the release of the hostages, although nothing came of it. The petitioners also claim that the National Human Rights Unit of the Office of the Attorney General of the Nation launched an investigation into the events and ordered Corporal Second Class Rodrigo Pérez Pérez, of the Nueva Granada battalion, bound over for trial as the alleged co-author of the crimes of homicide and kidnapping. The petitioners further state that civilians Guillermo Cristancho Acosta (now deceased), Alvaro Noriega and Graciliano Alarcón (not yet apprehended) were also indicted, as was Mario Jaimes Mejía, currently in prison for other crimes.

13. The petitioners allege that the State is responsible for the violations committed during the paramilitary incursion on May 16, 1998, both because of the law enforcement’s failure to put a stop to the activities of the outlaw group and by virtue of the conduct of State agents whom eyewitnesses say were directly involved in the commission of these acts. The petitioners also contend that the State is to blame for the judicial system’s failure to solve these crimes. They

allege that its lack of diligence was evident in the State's failure to take evidence by such measures as exhumation of the bodies, autopsies, photographs and ballistics testing, and that these omissions were fatal from the standpoint of solving the crimes. The petitioners argue that the lines of investigation have not been exhausted and that the troopers in Nueva Granada Battalion who were subjected to a disciplinary inquiry have not been implicated in the criminal investigations and that the only member of the Army who was taken into custody was released on bail. The petitioners add that the investigation undertaken did not extend to the criminal responsibility that the military troops posted at the thermoelectric power station incurred by their failure to take any action; it is the petitioners' contention that these troops had to have heard the shooting. They also allege that the witnesses to the events have not had the guarantees necessary to cooperate in the investigation. They point out that three witnesses were killed and that a representative from the Prosecutor's Office was forced into exile because of the threats he received. They specifically mention that on July 11, 2000, Mrs. Elizabeth Cañas Cano, a witness to the events and the mother of two of the disappeared, was assassinated after testifying in the tribunals of opinion established in Colombia and Canada.[FN2]

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[FN2] The assassination of Mrs. Elizabeth Cañas Cano, a member of the Barrancabermeja branch of the Asociación de Familiares de Detenidos-Desaparecidos de Colombia (ASFADDES), prompted the Inter-American Commission to file a brief with the Court, dated July 12, 2000, seeking expansion of the provisional measures that the Inter-American Court had ordered in the *Álvarez et al.* (No. 11.764). By order of the President of the Court, dated July 17, 2000, the provisional measures were expanded inasmuch as the assassination of a member of ASFADDES was concrete evidence of the danger faced by members of that association. That order also required the Colombian State to investigate the facts denounced by the Commission and to punish the guilty parties. The President's order was ratified by the Inter-American Court by order dated August 10, 2000.

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14. The petitioners are therefore requesting that the State be found responsible for violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 25 (right to judicial protection), and 1(1) of the American Convention, to the detriment of the eight deceased persons and the 25 disappeared and their next of kin, and for violation of Article 19 of the American Convention in the case of the victims who were minors at the time.

15. As for fulfillment of the admissibility requirements, particularly the rule requiring prior exhaustion of the remedies under domestic law, the petitioners argue that the exceptions provided for in Article 46(2) of the Convention apply, given the inefficacy of the judicial remedies to shed light on the facts. They further maintain that the constant danger with which the civilian population of Barrancabermeja must contend has rendered the remedies available to the victims and their next of kin ineffective and inaccessible. They argue that the State has failed to take the necessary measures to ensure the physical safety of the witnesses and officers of the court involved in the investigation. The petitioners also contend that the disciplinary proceeding does not satisfy the obligations established by the American Convention in the matter of judicial protection, as such proceedings are not, by themselves, an effective means, or adequate mechanism, for redressing cases of human rights violations.

16. In response to the State's allegations as to the inaccuracies in the victims' names (see below), in later briefs the petitioners corrected the names on the list of persons assassinated and disappeared. They identified the eight persons killed as: Jaime Arturo Monroy, Germán León Quintero, Pedro Julio Rondón Hernández, Neir Enrique Guzmán Lozano, Diomidio Hernández Pérez, Luis Jesús Arguello Lozano, Eliécer Javier Quintero Orozco and José Javier Lozano. The 25 disappeared persons were identified as: Juan de Jesús Valdivieso, Orlando Martínez, Jaime Yesid Peña, José Octavio Osorio, Wilfredo Pérez Serna, José Milton Cañas, Diego Fernando Ochoa, María Alejandra Ochoa, Giovanni Herrera, Oswaldo Enrique Vásquez, Ender González Bahena, Libardo Londoño, Robert Wells Gordillo, José Reinel Campos, Fernando Landínez, Garri de Jesús Pinedo, Óscar Leonel Barrera, Juan Carlos Rodríguez, Luis Fernández Suárez, Riky Nelson García, Wilson Pacheco, Daniel Campos, Carlos Escobar, Melquisedec Salamanca Quintero and Carlos Alaix Prada. The petitioners contend that because of its lack of due diligence in investigating and clarifying the facts, the State is to blame for whatever problems there may have been in the identification of the victims.

B. Position of the State

17. In its response to the original petition, the State pointed out that the number and identity of the victims of the events of May 16, 1998, did not match the information that official sources had on record.[FN3] However, the State did not file any objection to the correction of the victims' names and their number that the petitioners later reported to have entered into the case file (see above, paragraph 16).[FN4] It did point out, however, that contrary to what the petitioners claim, these inaccuracies ought not to be blamed on the Government.

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[FN3] Nota DDH 33002 from the Human Rights Office of the Ministry of Foreign Affairs, dated September 6, 2002.

[FN4] Nota DDH 11370 from the Human Rights Office of the Ministry of Foreign Affairs, dated April 1, 2003.

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18. As for the admissibility of the petition, the State alleges that the remedies under domestic law have not been exhausted, as required under Article 46(1) of the American Convention. Its view is that the arguments made by the petitioners regarding the exception to the rule requiring prior exhaustion of domestic remedies does not apply to the present case because the criminal investigation being conducted by the National Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation into the facts in question is still in full progress. Hence, the State believes, the exceptions that Article 46 of the Convention provides to the rule requiring exhaustion of domestic remedies do not apply.

19. The State also reports that the investigation implicated Army corporal second class Rodrigo Pérez Pérez and three civilians—Alvaro Noriega, Graciliano Alarcón León and Mario Jaimes Mejía—who were ordered taken into pending trial. The State also indicates that the investigation was closed on September 4, 2001. Then, on November 29 of that year, the preliminary inquiry resulted in a finding of probable cause, and the three above-named civilians

were ordered bound over for trial on charges of conspiracy to commit crime, multiple homicide, kidnapping and extortion. The State also points out that one of the three-Mr. Mario Jaimes Mejía- is currently being held for the February 28, 1998 massacre, also in the municipality of Barrancabermeja, and that the other two arrest warrants are still in force. It also reports that the classification of the crimes charged led to a preclusion ruling that went in Corporal Pérez Pérez' favor, a decision that the civil party appealed. The State argues that the foregoing demonstrates that the petitioners are able to avail themselves of the local remedies and that those remedies are operating within a reasonable time frame.

20. The State further contends that the decision not to indict members of the Nueva Granada Battalion, delivered on February 15, 2000, was appealed and upheld on April 28, 2000, on the grounds that there was no evidence that battalion members had prior knowledge of the crime committed or that they were instrumental in its commission. The State argues that the foregoing disproves the petitioners' assertions that object to the conduct of the administration of justice in this case. The State further points out that the disciplinary proceeding classified as number 008-14383/98, which ended on August 22, 1999, resulted in punitive measures against ten public servants.[FN5] The State notes that this decision was upheld on appeal on October 11, 2000, and that the proceeding was closed on April 17, 2001. The State argues that disciplinary action is intended to punish agents of the State who fail to perform their duties or abuse their authority. It reasons that the effectiveness of the system of justice must be evaluated by taking it as a whole, which includes remedies of this type. It argues that administrative remedies, which function in tandem with the criminal law system, also offer victims forms of reparation.

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[FN5] According to the State, the public servants sanctioned were National Police Lieutenant Colonel Joaquín Correa López, commandant of the Magdalena Medio Special Operations Command; Police Captain Mario Camacho Avellaneda; National Police Lieutenant Celis Hernando Juan Carlos, head of the Barrancabermeja SIJIN Investigative Unit; Army Sergeant Mario Alberto Fajardo Garzón; DAS detectives Alfonso Rafael Lechuga and Oscar Ortiz Cubides; and members of the National Army Oswaldo Prada Escobar, Lieutenant Antonio Enrique Daza and Second Lieutenant Jhon Héctor Guzmán Santos. The punitive action taken against these last three was summary dismissal. Nota DDH 33002 from the Human Rights Office of the Ministry of Foreign Affairs, dated September 6, 2002, and Nota DDH 11370 from the Human Rights Office of the Ministry of Foreign Affairs, dated April 1, 2003.

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21. The State notes that by Decree No. 1015/98, it created a Truth Commission whose first report was instrumental in launching a number of measures related to the investigations. It also noted that this case was among those being handled by the Special Committee created by 1998 Decree No. 2429 to press for investigations into human rights violations.

22. Summing up, the State alleges that the admissibility of the petition should not be considered until the judges in the regular court system have delivered a ruling and until the proceedings in the courts having contentious jurisdiction have been decided. It goes on to say that any witnesses or public officials requiring protection because of their involvement in the inquiry into the events that are the subject of the petition, should request that protection.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

23. Under Article 44 of the American Convention, the petitioners are, in principle, empowered to lodge petitions with the Commission. The persons named in the petition as the alleged victims are individuals whose Convention-protected rights the Colombian State pledged to respect and to ensure their free and full exercise. As for the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition. Although in its response to the original petition, the State observed that the number and identity of the victims of the events of May 16, 1998, did not match the information in the official records, it did not file objections when the petitioners later entered the correction of the number and names of the victims into the case file (see *supra*, paragraph 16).

24. The Commission also has competence *ratione loci* inasmuch as the petition alleges violations of rights protected under the American Convention, said to have occurred within the territory of Colombia, a State party to the Convention. The Commission has competence *ratione temporis* because the obligation to respect and guarantee the rights protected under the American Convention was already binding upon the State on the date the events alleged in the petition were said to have occurred. Finally, the Commission has competence *ratione materiae* by virtue of the fact that the petition reports facts that could constitute violations of human rights protected by the American Convention.

##### B. Admissibility requirements

###### 1. Exhaustion of local remedies and timeliness

25. The State alleges that the petition does not satisfy the rule requiring exhaustion of the remedies under domestic law, set forth in Article 46(1)(a) of the American Convention, since the criminal law courts have not yet handed down a final ruling on the matter. It also contends that the victims' next of kin must, before turning to the Commission, exhaust the contentious-administrative remedies available under domestic law. The petitioners, for their part, contend that the exceptions that Article 46(2) provides to the rule requiring exhaustion of local remedies apply, because the internal remedies have proved to be ineffective in prosecuting and punishing the violations committed against the victims and their next of kin—a problem compounded by the sense of insecurity that the persons involved in the investigation feel.

26. Under Article 46(1)(a) of the American Convention, one of the conditions for admissibility is the prior exhaustion of the remedies available under domestic law in accordance with generally recognized principles of international law. Given the allegations made by the parties, the Commission must begin with a series of observations about which remedies have to be exhausted under the jurisprudence of the inter-American system.[FN6]

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[FN6] IACtHR Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999, paragraph 33; IACtHR Cantoral Benavides Case, Preliminary Objections, Judgment of September 3, 1998, paragraph 31; IACtHR Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, paragraph 40; IACtHR Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, paragraph 40.

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27. The Commission's case-law holds that whenever a crime is committed that can be prosecuted at the State's own initiative, it is the State that has the obligation to set the criminal law process in motion and pursue it to its end.[FN7] In such cases, this is the proper avenue for investigating the facts, prosecuting those responsible and punishing them in accordance with the law, and for making possible other forms of pecuniary reparations. The Commission considers that the facts alleged by the petitioners in this case involve the alleged violation of such fundamental rights as the right to life and the right to humane treatment. As these are indictable offenses under domestic law, it is the State itself that must investigate and prosecute them. Therefore, it is the development of this criminal law process that the Commission must consider in order to determine whether local remedies have been exhausted, or indeed whether the corresponding exceptions apply.

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[FN7] Report No. 52/97, Case 11,218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paragraphs 96 and 97. See also Report No. 55/97, paragraph 392.

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28. The State contends that the contentious-administrative remedy available under domestic law must also be exhausted before the case can qualify for the Commission. However, in cases similar to the instant case the Commission has held that the contentious-administrative jurisdiction is exclusively a mechanism for supervising the administrative activity of the State, aimed at obtaining compensation for damages caused by the abuse of authority.[FN8] In general, this process is not an adequate mechanism, by itself, to make reparation for human rights violations and hence need not be exhausted when, as in the present case, there is another means for securing redress for the harm done and the prosecution and punishment that the law demands.[FN9]

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[FN8] Report No.57/00, Case 12,050, La Granja Ituango, Annual Report of the IACHR 2000, paragraph 41; Report No. 15/95 Annual Report of the IACHR 1995, paragraph 71; Report No. 61/99, Annual Report of the IACHR 1999, paragraph 51.

[FN9] Report No. 57/00, Case 12,050, La Granja Ituango, Annual Report of the IACHR 2000, paragraph 41; Report No. 5/98, Case 11,019, Alvaro Moreno Moreno, Annual Report of the IACHR 1997, paragraph 63.

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29. As for the exception to the rule requiring exhaustion of local remedies, which the petitioners are asserting, Article 46(2) of the Convention provides that the requirement 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.

The petitioners' arguments allege that the available remedies are ineffective and that the guarantees necessary to enable participation in the process are not present.

30. The Commission notes that according to the information supplied by both parties, five years have passed since the events occurred, and the preliminary inquiry ended with issuance of arrest warrants for three persons. However, as the petitioners have stated and as the State has acknowledged, the only accused person being held is in custody for the alleged commission of events unrelated to the present matter. The other arrest warrants have not been carried out, despite the amount of time that has passed since the close of the investigation. This suggests delay. As a general rule, a criminal investigation must be carried out within a reasonable time, so as to protect the victims' interests, preserve the evidence and even safeguard the rights of any person who might become a suspect in the investigation. As the Inter-American Court has observed, while every criminal investigation must fulfill a set 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.[FN10]

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[FN10] IACtHR Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 93.

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31. To this must be added the environment in which the investigation has been conducted, including the fact that Elizabeth Cañas Caño was assassinated and the officer of the court in charge of the first phase of the proceeding fled the country. In cases similar to this one, the Commission has regarded circumstances of this kind as indicative of the fact that the judicial investigation is unlikely to provide an effective remedy that petitioners must exhaust prior to resorting to international protection of human rights.[FN11]

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[FN11] Report No. 57/00, Case 12,050, La Granja, Ituango, Annual Report of the IACHR 2000, paragraph 45.

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32. Therefore, given the characteristics of the present case and its context, the Commission is persuaded that the exception provided for in Article 46(2)(c) of the American Convention does

apply, since there is little likelihood that the remedies available would be effective; hence, the requirements stipulated in the American Convention apropos exhaustion of local remedies and, by extension, the six-month time period for lodging the petition, do not apply.

33. The invocation of the Article 46(2) exceptions to the rule requiring exhaustion of local remedies is closely related to the determination of possible violations of certain rights upheld in the Convention, such as the guarantees of access to the courts. However, given its nature and purpose, Article 46(2) is, content-wise, quite independent of the Convention's substantive norms. Hence, the determination of whether the exceptions to the prior exhaustion rule apply to the case in question must be undertaken prior to and separate from the analysis of the merits, since the standard that must be met is quite different from the standard that must be met to determine the possible violation of Articles 8 and 25 of the Convention. The causes and effects that prevented exhaustion of local remedies will be examined in the report that the Commission adopts on the merits of the case, in order to determine whether they constitute violations of the American Convention.

b. Duplication of proceedings and *res judicata*

34. There is nothing in the case file indicating that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one already examined by this or any other international body. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

c. Characterization of the facts alleged

35. The Commission considers that the petitioners' allegations regarding the alleged violation of the right to life, the right to humane treatment, the guarantees of due process, the right to judicial protection and the rights of the child, as well as the delay in the investigation and the failure to effectively prosecute and punish the responsible parties, could tend to establish a violation of the rights guaranteed under Articles 4, 5, 8, 19 and 25 in relation to Article 1(1) of the American Convention. Because the Commission does not find, *prima facie*, these aspects of the petition to be manifestly groundless or out of order, the Commission considers that the requirements set forth in Articles 47(b) and (c) of the American Convention have been met.

## V. CONCLUSIONS

36. The Commission concludes that it is competent to examine the claims the petitioners presented concerning the alleged violation of Articles 4, 5, 8, 19, and 25, in relation to Article 1(1) of the American Convention, and that the petition is admissible inasmuch as the requirements established in Articles 46 and 47 of the American Convention have been fulfilled.

37. Based on the arguments of fact and of law made above and without this constituting a prejudgment of the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case concerning Articles 4, 5, 8, 19, 25 and 1(1) of the American Convention, admissible.
2. To notify the Colombian State and the petitioners of this decision.
3. To proceed with the analysis of the merits of the case.
4. To publish this decision and 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 the city of Washington, D.C., on the 22 day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.