I. SUMMARY

1. On June 18, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission", the "Inter-American Commission", or the "IACHR") received a petition lodged by the Corporación Colectivo de Abogados "José Alvear Restrepo" (hereinafter the "petitioners") claiming that the Republic of Colombia (hereinafter "the State", the "Colombian State", or "Colombia") is responsible for the murder of María Consuelo Ibarguen Rengifo allegedly perpetrated on February 21, 2000, by members of paramilitary groups and through the omissions of State agents.

2. The petitioners claim that the State is responsible for violations of the rights enshrined in Articles 4 (right to life), 8 (right to a fair trial), 16 (freedom of association) 17 (rights of the family), 22 (freedom of movement and residence), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention") to the detriment of the alleged victim and her family, in relation to the general obligation to respect and ensure the rights established in that treaty as set forth in Article 1(1).

3. The State asked the Commission to declare the inadmissibility of the complaint lodged by the petitioners based on the failure to satisfy the requirement of prior exhaustion of domestic remedies set forth in Article 46(1)(a) of the American Convention. For their part, the petitioners

argued that the exceptions to the requirement of prior exhaustion of domestic remedies set forth in Article 46(2) of the American Convention apply.

4. Based on the analysis of the positions of the parties, the Commission concluded that it was competent to hear the instant complaint and that it was admissible in accordance with the provisions of Articles 46 and 47 of the American Convention. It also decided to notify the parties of its Report and to publish it.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The IACHR registered the petition under number 475/03 and following a preliminary analysis of its content, forwarded the pertinent portions of the petition to the State on December 1, 2003, with a two-month period to submit information in accordance with Article 30(2) of its Rules of Procedure. In correspondence received on February 2, 2004, the State requested a 30-day extension to submit its observations and the Commission granted the extension requested on February 3, 2004. In view of the State's delay in responding, the petitioners requested, in correspondence dated April 12 and June 14, that the petition be declared admissible under the terms set forth in Articles 30(3) and 30(6) of the Commission's Rules of Procedure and that the allegations contained in the petition be presumed to be true. On June 17, 2004, the Commission reiterated its request for information from the State. The State submitted its response on July 6, 2004, and this was duly forwarded to the petitioners on July 23, 2004.

6. The petitioners presented their observations on July 26, 2004, and on that same date the pertinent portions were forwarded to the State with a 30 day time period to submit its observations. On August 25, 2004, the State requested an extension of time to submit its observations, and a 15 day extension was granted on August 27, 2004. The time period elapsed without the State submitting its observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioners indicate that the Urabá region is one of the areas most affected by violence related to the armed conflict in Colombia and that it has been a bastion of armed groups such as the National Liberation Army [Ejército de Liberación Nacional (ELN)], The Revolutionary Armed Forces of Colombia [Fuerzas Armadas Revolucionarias de Colombia (FARC)], and the Popular Liberation Army [Ejército Popular de Liberación (EPL)] whose members had been partially reintegrated into civilian life through peace accords promoted by President Virgilio Barco (1986-1990).[FN1] They likewise state that a significant number of EPL members who benefited from the reintegration were subject to threats and fatal attacks perpetrated by a dissident faction of the same organization that presumably opposed reintegration, and by the FARC. The petitioners alleged that during that period, some EPL members joined the Self-defense Forces [Autodefensas] of Córdoba and Urabá, led by Carlos Castaño.

[FN1] IACHR Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102, Doc. 9 re.1, February 26, 1999, para. 41.

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8. In this context, the petitioners alleged that in the early 1990s, Mrs. Elaine Rengifo Moreno was the owner of a small store on "Carmen Alicia" farm and that in 1992, members of the Hope, Peace, and Freedom Movement—the political party formed by members of the Popular Liberation Army who had been reintegrated into civilian life—asked her to collaborate with the campaign to fill publicly elected posts in the mayoralty of Gerardo Vegas. The petitioners state that despite supporting the candidacy of Hope, Peace, and Freedom members during the campaign, Mrs. Elaine Rengifo had refused to take part in illegal activities such as moving firearms when she was asked to do so by an elected municipal council member. They assert that because of her refusal, she became a target for acts of harassment and intimidation[FN2] and that on one occasion members of paramilitary groups attempted to enter her home late at night.

[FN2] The petitioners cite, among the acts of intimidation, the pressure brought to bear to oust Mrs. Rengifo from a community tree nursery that she administered. They allege that the citizen supervisor, Freddy Hinestroza brought a series of legal actions against her before the Police Inspector's Office, the Employment Office, and the District Attorney's Office. The petitioners state that Mrs. Rengifo was exonerated of all charges made against her but that she had to desist from her commercial activities.

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9. The petitioners indicate that since that time, Mrs. Elaine Rengifo and her daughter, María del Consuelo Ibarguen, became active in community activities. They say that María del Consuelo began working as a health promoter and attended training programs at the local hospital. They allege that during this period, Councilmember Silvia Berrocal and other militants of Hope, Peace, and Freedom threatened Maria del Consuelo, saying, "...that if she didn't stop doing the training they were going to kill her and if she opened her mouth they were going to kill them all."

10. In this context, in 1995, Elaine Rengifo Moreno and her daughter Maria del Consuelo Ibarguen testified before members of the Technical Body of the Medellín District Attorney's Office in proceedings in which the accused were former EPL members who, after having been reintegrated into civilian life, had formed the so-called popular commandos and joined the ranks of the Self-defense Forces of Córdoba and Urabá. In view of Elaine Rengifo and her daughter's precarious security situation, their testimonies were given under conditions of confidentiality and prosecution officials assured them that they would implement the necessary security measures. The petitioners state that these testimonies led to the arrests of alleged paramilitary suspects.

11. Councilmember Jairo Suárez Ospina was arrested on February 2, 2000, and former Mayor of Apartadó Manuel Teodoro Díaz, alias "Comandante Antonio" was arrested on February 17. The petitioners claim that on that same day, Mr. Mario Agudelo, alias Condorito, stated that "...he had known the identity of the person who denounced him since 1995 and things

were not going to be left like that." In view of the situation of imminent danger, Mrs. Rengifo reiterated to the District Attorney's office the urgency of adopting measures to protect her family. The petitioners allege that despite these requests, and despite the fact that the confidentiality protecting the identity of Elaine Rengifo and her daughter María del Consuelo Ibarguen had been breached and the constant reports of acts of harassment and threats presented to the District Attorney's Office, measures were not taken to protect the witnesses and their family members.

12. The petitioners claim that on February 21, 2000, at approximately 9:30 p.m., four men allegedly belonging to the Peasant Self- defense Forces of Córdoba y Urabá entered the home where Mrs. Elaine Rengifo Moreno lived with her common-law husband, Sérbulo Romana Ramos, and her four granddaughters—the daughters of María del Consuelo. The petitioners alleged that these paramilitary men murdered María del Consuelo Iribarguen Rengifo with a sharp weapon, in the presence of Mr. Romana Ramos and her daughters, then ages eleven, nine, six, and five. Mrs. Rengifo Moreno was able to flee through the kitchen patio to the Regional Police of Judicial Investigation [Policía Regional de Investigación Judicial (SIJIN)]. Immediately afterward, Elaine Rengifo Moreno, Serbulo Romana Ramos, and the girls were forced to leave the area to protect their safety.[FN3]

[FN3] The petitioners indicate that Mrs. Rengifo Moreno has been listed in the National Registry of Displaced Persons since October 2000. Based on the extrajudicial execution of María del Consuelo Ibarguen Moreno, the Attorney General of the Nation entered the victim's mother into the witness protection program from February 22, 2000 until October of that year. Feeling unsafe, Elaine Rengifo Moreno requested precautionary measures from the Commission. In response, the IACHR requested information from the Government of Colombia on November 1, 2000, regarding the measures adopted to protect Mrs. Rengifo Moreno.

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13. The petitioners allege that while the Peasant Self-defense Forces of Córdoba and Urabá and former members of the demobilized Popular Liberation Army were directly responsible for the murder of María del Consuelo Ibarguen Rengifo, the State is responsible under the American Convention for failing to fulfill its obligation to adopt the security measures necessary to protect the life and personal integrity of Elaine Rengifo Moreno and Maria del Consuelo Ibarguen Rengifo in their capacity as witnesses. They maintain that the State's international responsibility stems from the Attorney General of the Nation's breach of the procedural benefit of withholding identity that protected Mrs. Rengifo and her daughter after they gave testimony regarding offenses perpetrated by members of Hope, Peace, and Freedom, by the Peasant Self-defense Forces of Cordoba and Urabá, and by members of the public security forces. Finally, they allege that the Colombian State is responsible for failing to have adopted effective measures to investigate, prosecute, and punish the material and intellectual authors of the extrajudicial execution in order to avoid impunity for this crime.

14. Therefore, the petitioners request that the State be held responsible for the violation of the rights set forth in Articles 4 (right to life), 8 (right to a fair trial), 16 (freedom of association), 17 (rights of the family), 22 (right to freedom of movement and residence), 23 (right to participate

in government), 25 (judicial protection) and 1(1) of the American Convention, to the detriment of Maria del Consuelo Ibarguen Moreno, her mother Elaine Rengifo Moreno, and the children, Alexandra Cortes Ibarguen, Elaine Ibarguen Rengifo, Aury Janeth Ibarguen Rengifo, and Wuyny Lorena Moreno Ibarguen.

15. With respect to the admissibility of the complaint, the petitioners invoke the exceptions set forth in Article 46(2) of the American Convention concerning the requirement of prior exhaustion of domestic remedies. They claim that that the pre-trial investigation phase of the proceedings initiated with respect to the material facts of this case has been going on for over four years and that this constitutes an unwarranted delay in the administration of justice. They likewise claim that in four years, only one of the material authors of the murder has been identified and the respective arrest warrant has not been carried out.

16. With respect to the State's allegations concerning the remedies that should have been exhausted before qualifying for international jurisdiction (see infra), the petitioners respond that the disciplinary jurisdiction does not satisfy the obligations set forth in the Convention concerning judicial protection in cases of extrajudicial execution and therefore it need not be exhausted. Insofar as the contentious administrative jurisdiction or the protective remedy of tutela are concerned, they indicate that these are not adequate remedies to redress human rights violations such as those denounced in this case.

B. Position of the State

17. The State believes that the petitioners' complaint is inadmissible due to the applicability of the requirement of prior exhaustion of domestic remedies set forth in Article 46(1) of the American Convention. In this regard, it indicates that domestic proceedings to clarify the murder of María del Consuelo Rengifo are pending resolution.

18. Specifically, it states that criminal investigation 335066 carried out by District Attorney's Office 16 under the Terrorism Sub-unit of the Delegated District Attorney's Office before the Criminal Judges of the Specialized Circuit Court was opened on August 28, 2000, and that in an April 22, 2001 resolution, one of the individuals who participated in the extrajudicial killing of María del Consuelo Rengifo was identified. It claims that in view of these results, and the due respect for legal due process, the time taken in carrying out the pre-trial investigation cannot be considered excessive. It points out that the resolution opening the pre-trial examination [instrucción] phase was issued on March 5, 2004, and that the regulations in force establish a period of 18 to 24 months, beginning on that date, to characterize the offense for its substantiation and resolution, whether that be through preclusion of the examination phase or an indictment. It therefore claims that the exception to the requirement of exhaustion of domestic remedies set forth in Article 46(2) of the American Convention due to the delays and ineffectiveness of domestic remedies does not apply.

19. The State also claims that criminal prosecution is not the only remedy that should be considered for the purpose of evaluating the petitioners' compliance with the requirement to previously exhaust domestic remedies under Article 46(1) of the American Convention. It believes that the contentious administrative and disciplinary jurisdictions—whose purpose is to

establish official responsibility and punish state agents who fail to fulfill their duties—and the protective remedy of writ of protection (tutela) through which it is possible to challenge in a brief and preliminary manner acts and omissions of the authorities for violations of fundamental rights, are adequate remedies that the petitioners should have pursued in this case.

20. Based on these elements, the State requests that the complaint lodged by the petitioners concerning its responsibility in the events denounced by the petitioners with respect to the murder of Maria Consuelo Ibarguen and the failure to clarify it in judicial proceedings be declared inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

21. The Commission will analyze below the requirements for admissibility set forth in the American Convention.

A. Competence

22. The petitioners, in principle, are entitled to lodge petitions before the Commission under Article 44 of the American Convention. The petition identifies as the alleged victim a physical person on whose behalf the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. Colombia has been a State Party to the American Convention since July 31, 1973, on which date it deposited its ratification instrument. Therefore, the Commission has competence ratione personae to examine the petition.

23. Likewise, the Commission has competence ratione loci to take up the petition as it claims violations of rights protected by the American Convention that allegedly occurred in the State's jurisdiction. The Commission has competence ratione temporis to examine the complaint because the obligation to respect and ensure the rights protected in the American Convention were in force for the State on that date that the violations claimed in the petition allegedly occurred. Finally, the Commission has competence ratione materiae, because the petition claims potential violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies and timeliness of the petition

24. The State argues that the petitioners' complaint should be declared inadmissible because it failed to satisfy the requirement of prior exhaustion of domestic remedies set forth in Article 46(1) of the American Convention and because the petitioners failed to pursue all adequate remedies to address the alleged violations at the domestic level. The petitioners, for their part, claim that that the exception to the requirement of prior exhaustion of domestic remedies set forth in Article 46(2) of the American Convention is applicable in view of the delay and ineffectiveness of the investigation.

25. In view of the allegations of the parties, it is first necessary to clarify what domestic remedies should be exhausted in a case such as this one, in light of the jurisprudence of the Inter-American system. The jurisprudence of the Commission recognizes that whenever a prosecutable

crime of public action committed, the State has the obligation to set the criminal law system into motion and to process the matter until the end[FN4] and that this constitutes the ideal forum for clarifying the facts, prosecuting those responsible, and establishing the appropriate criminal penalties, in addition to opening up the possibility of other types of monetary compensation. In this case, the facts alleged might involve the violation of fundamental rights such as life and personal integrity which constitute prosecutable offenses under domestic law, the investigation and prosecution of which must be undertaken by the State itself.

[FN4] IACHR, Report Nº 52/97, Case 11.218, Arges Sequeira Mangas, IACHR, Annual Report 1997, paras. 96 and 97. See also Report N° 55/97, para. 392.

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26. In this regard, the Inter-American Court has stated that only those remedies that are adequate to address an alleged violation must be exhausted. Adequate means that the function of those remedies in the domestic law system must be suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. This is indicated by the principle that a norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN5]

[FN5] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para 63.

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27. In the case at hand, the State claims that the petitioners should have pursued remedies under the disciplinary and contentious administrative jurisdiction, as well as an action of tutela before qualifying for the Commission’s jurisdiction. However, in cases claiming alleged human rights violations such as those denounced in this case, the IACHR has established that disciplinary or contentious administrative decisions are a mechanism to supervise the administrative actions of the State aimed at obtaining, respectively, disciplinary sanctions, such as removal from a post, or compensation for damages incurred by the abuse of authority.[FN6] In general, such proceedings do not constitute adequate mechanisms, in and of themselves, to address human rights violations of the sort denounced here or to satisfy the obligation to clarify judicially what happened. Therefore, it is not necessary to exhaust this type of remedy in a case such as this one, when another avenue is available for pursuing reparations for damages as well as the prosecution and punishment demanded.

[FN6] IACHR, Report N° 15/95 IACHR, Annual Report 1995, para 71; Report N° 61/99, IACHR, Annual Report 1999, para. 51

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28. With respect to the application of the exception to the requirement of exhausting domestic remedies lodged by the petitioners, Article 46(2) of the Convention establishes that this requirement is not applicable 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 the 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.

In their initial petition, the petitioners cited the applicability of the exception concerning unwarranted delay of justice based on the length of the pre-trial investigation phase in the proceedings opened in the material facts of this case, which lasted for over three years. The State argued that the prolongation of the pre-trial phase was reasonable in light of the complexity of the investigation and the context in which it was carried out.

29. The Commission observes that, based on the information provided by the parties, more than four years transpired between the initiation of the pre-trial investigation phase and the opening of the pretrial examination [instrucción] phase in March 2004. As the facts presented suggest, during the past four years only one of the material authors of the murder has been identified, and the proceedings are taking place in abstentia since the arrest warrant in the case has not been carried out.

30. In this regard, the IACHR has stated many times that the criminal investigation must be conducted promptly in order to protect the interest of the victims, preserve evidence, and even to safeguard the rights of any individual who is considered a suspect in the context of the investigation. As the Inter-American Court has stated, while all criminal investigations must fulfill a set of legal requirements, the rule of prior exhaustion of domestic remedies should never lead to a halt or delay that would render international action to aid the victims ineffective.[FN7] Besides the consequences of the delay, there is a context of acts of harassment and intimidation against the family affected by the material facts of this case which have materialized into serious acts of violence, allegedly, in reprisal for Elaine Rengifo's and María Consuelo Rengifo's participation as witnesses in efforts to administer justice in cases involving armed groups acting outside the law. As the IACHR has established in similar cases, circumstances of this nature demonstrate that perspectives for the effectiveness of the judicial investigation are not equivalent to those of a remedy that necessarily must be exhausted prior to pursuing international human rights protection.[FN8]

[FN7] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 93.
[FN8] IACHR, Report N°05/03 Admissibility, Jesús María Valle Jaramillo, Colombia, IACHR, Annual Report 2003, para. 32; Report 57/00 La Granja, Ituango, IACHR, Annual Report 2000, para. 40.

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31. In conclusion, given the characteristics and context of this complaint, the Commission believes that the exception set forth in Article 46(2)(c) of the American Convention is applicable in light of the scant potential for effectiveness of the available remedies, for which the requirements set forth in the American Convention regarding the exhaustion of domestic remedies are not applicable. Given the application of this exception and the presentation of the petition within the reasonable period referred to in Article 32(2) of the American Convention, the six-month period referred to in Article 46(1)(b) of the American Convention also is not applicable.

32. It only remains to be stated that the invocation of exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the right to access to justice. However, Article 46(2), by virtue of its nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question should be handled prior to, and separately from, the analysis of the merits of the matter, since it requires a different standard from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

2. Duplication of proceedings and res judicata

33. The file relating to this matter does not indicate that any other international proceeding is pending or that it has been the subject of a prior decision by the Inter-American Commission on Human Rights. Therefore, the IACHR concludes that the requirement set forth in Article 46(1)(c) of the American Convention has been satisfied.

3. Characterization of the alleged facts

34. The Commission believes that the petitioners' claims concerning alleged violations of the right to life, right to a fair trial, and judicial protection could be characterized as a violation of the rights protected under Article 4, 8, and 25 in relation to Article 1(1) of the American Convention. Therefore, these aspects of the complaint do not appear to be groundless or out of order and the Commission believes that the requirements set forth in Articles 47(b) and (c) of the American Convention have been satisfied.

35. The petitioners have not presented substantive grounds regarding the alleged violations of Articles 16 (freedom of association), 17 (rights of the family), 22 (freedom of movement and residence), and 23 (right to participate in government) of the American Convention.

36. The Commission concludes that it is competent to examine the complaints presented by the petitioners regarding the alleged violation of Articles 4, 8, and 25 in relation to 1(1) of the American Convention to the detriment of Consuelo Ibargen Rengifo and her family and that they

are admissible, in accordance with the requirements set forth in Articles 46 and 47 of the American Convention.

V. CONCLUSION

37. Based on the foregoing factual and legal arguments and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to potential violations of Articles 1(1), 4, 8, and 25 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To continue its analysis of the merits of the matter.
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 Washington D.C. on the 13 day of the month of October 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice President; Susana Villarán, Second Vice President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.