Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 45/07; Petition 1268-05
Session:	Hundred Twenty-Eigth Session (16 – 27 July 2007)
Title/Style of Cause:	Chengue Massacre v. Colombia
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated:	23 July 2007
Citation:	Chengue Massacre v. Colombia, Petition 1268-05, Inter-Am. C.H.R., Report No. 45/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Corporacion Colectivo de Abogados "Jose Alvear Restrepo"

I. SUMMARY

1. The Inter-American Commission on Human Rights received a petition on November 7, 2005, filed by the Corporación Colectivo de Abogados [Lawyers' Collective Corporation] "José Alvear Restrepo" (hereinafter "the petitioners"), in which they contend that, on January 17, 2001, with the acquiescence and participation of agents of the Republic of Colombia (hereinafter "the State," "the Colombian state," or "Colombia"), members of paramilitary groups killed Videncio Segundo Quintana Barreto, Pedro Manuel Barreto Arias, Néstor Montes Meriño, Pedro Adán Ramírez, Luís Oscar Hernández Pérez, Arquímedes López Oviedo, Cristóbal Meriño Pérez, Rusbel Manuel Oviedo Barreto, Giovanni Barreto Tapias, Luís Enrique Buelvas Olivera, César Segundo Meriño Mercado, Videncio Quintana Meza, Mario Manuel Quintana Barreto, Dairo Rafael López Meriño, Francisco Santander López Oviedo, Jaime Rafael Meriño Ruiz, Luís Miguel Romero Berrio, Ramón Andrés Meriño Mercado, Manuel Guillermo Rodríguez Torres, Juan Carlos Martínez Oviedo, Rafael Romero Montes, Elkin David Martínez Oviedo, Alejandro Rafael, Monterroza Meriño, Néstor Meriño Caro, Assael López Oviedo, Dairo Rafael Morales Díaz, Julio César Lora Canole, and Edison Berrio Salas, and forcibly caused the disappearance of Delis Peluffo and José Monterrosa (whose remains were later found); they caused the forced displacement of more than one hundred families[FN1] in the corregimiento (district) of Chenque, jurisdiction of the Ovejas Municipality, Department of Sucre.

[FN1] The list of the displaced persons can be found in the annexes to the original petition dated November 7, 2005.

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2. The petitioners claim that the State is responsible for the violation of the rights to life, to humane treatment, to personal liberty, of the rights of the child, to property, to freedom of movement and residence, to a fair trial and to judicial protection, provided for by Articles 4, 5, 7, 8, 19, 21, 22 and 25 of the American Convention on Human Rights (hereinafter the "Convention," or "the American Convention"), in connection with the duty to guarantee rights and to enact domestic legislation, pursuant to Articles 1(1) and 2 of said treaty. For its part, the State contends that the petitioners' claims are inadmissible since the matter has been partially resolved within its domestic jurisdiction, and that there has been a lack of compliance with the requirement of prior exhaustion of domestic remedies, provided for by Article 46(1) of the American Convention. The petitioner, in turn, claims the exceptions to the requirement of prior exhaustion of domestic remedies, established by Article 46(2) of the American Convention.

3. The Commission, after examining the positions of the parties and their compliance with the requirements established by Articles 46 and 47 of the American Convention, decided to declare the case admissible to the effect of the examination of claims regarding the alleged violation of Articles 2, 4(1), 5(1), 7(2), 8(1), 19, 21(1), 22(1), 25, in connection with Article1(1) of the American Convention, and to notify the parties of the decision, and order its publication.

II. PROCESSING BEFORE THE COMMISSION

4. The IACHR registered the petition under number P1268-05 and, on November 21, 2005, forwarded copies of its relevant portions to the State, granting it two months to submit information, pursuant to Article 30(2) of the IACHR's Rules of Procedure. The State requested a 30-day extension to submit its observations on January 17, 2006, which was granted by the IACHR.

5. The State filed its response on May 22, 2006.[FN2] In this response, which was forwarded to the petitioners for them to submit their observations, the State contests, inter alia, a host of alleged facts found in several paragraphs of Chapter III, Section B of the original petition, which do not appear to be related to the subject matter of the claim. The petitioners responded to the State's challenge in a December 19, 2006 brief, in which, inter alia, they withdrew the assertions they had put forward in paragraphs 2, 3, 4, 9, and 10 of Chapter III, Section B, of the original petition, since they had been included in the petition by involuntary error. Given this declaration on the part of the petitioners, the arguments contained in said paragraphs shall not be taken into consideration by the Commission in its report or in its subsequent processing of the case.

[FN2] Communication DDH.GOI No. 7925/0419 from the Ministry of Foreign Relations of Colombia, dated May 22, 2006.

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6. The relevant parts of the petitioners' observations were forwarded to the State on December 27, 2006, granting it one month to submit observations. The State presented its observations on May 23, 2007.[FN3]

[FN3] Communication DDH GOI No. 25891/1222 from the Ministry of Foreign Relations of Colombia, dated May 23, 2007.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. Chenque is a corregimiento [district] of the Municipality of Ovejas, in the Department [Province] of Sucre, in the Montes de María region. It is a zone of strategic importance due to its proximity to the economic centers of the Caribbean Sea and its energy resources, and in them illegal armed groups have been operating since the 1980s. The petitioners claim that around the second half of 1999, the acts of intimidation and violence perpetrated by the Autodefensas Unidas de Colombia (AUC) [United Self-Defense Forces of Colombia], in connivance with members of the Security Forces of the zone, were reported to the departmental authorities.[FN4] They said that on October 6, 2000, the inhabitants of Chengue, Don Gabriel, and Salitral sent a letter to the president of the Republic, expressing their concern over publicized plans to victimize them with acts of violence, and requesting the protection of the State. [FN5]

[FN4] The petitioners contend that as far back as August 16, 1999, the inhabitants of Chalán, La Ceiba, Buenos Aires, Don Gabriel, Salitral, Chengue, Los Números and El Tesoro reported the paramilitary troops' preparations to carry out attacks against the civilian population, "in coordination with and receiving assistance from some politicians of the region and with the indulgence of some military commanders of the department." Radicado [Registration Number] 5677-6, Fiscalía Delegada ante la Corte Suprema de Justicia [Prosecutor Delegate before the Supreme Court of Justice], Annex AZ to the original petition. The petitioners claim that in communication No. 054 of March 15, 2000, the municipal ombudsman of Ovejas alerted the authorities regarding threats against the inhabitants of Don Gabriel, Chengue, and Salitral, published by the AUC in the newspaper Universal on March 14, 2000. They also claim that in April 2000 threats were spread against eight teachers of the zone and since that time a massacre in Chengue was announced, according to the witness accounts annexed to the original petition (pages 13-15 of Notebook No. 14 and pages 269-278 of Notebook No. 1, Registration Number 956C.

[FN5] Page 25 of Notebook No. 1 of Registration Number 956C, annexed to the original petition received by the IACHR on November 7, 2005.

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8. Subsequently, the petitioners said, on October 9 and 16 of 2000, paramilitary troops under the command of "Cadena" ["Chain," an alias] perpetrated the massacre of Macayepo, a neighboring district to Chengue. They contended that on November 23, 2000, a meeting of the

Technical Council for Security was held, which issued an order for an search and surveillance operation in the vicinity of "El Palmar" farm, were a group of approximately 80 armed men had been seen.[FN6] They contended that the search operation was carried out in the wrong place, i.e., another of a similar name, although it was commanded by the same officer who reported paramilitary presence on said farm.[FN7]

[FN6] In Communication No. 1095 CBAFIM5 – S2-259 of October 21, 2000, the Commander of the First Brigade of the Infantry Marine was informed that "…the sites most used by the Self-Defense Forces of San Onofre, to spend the night and plan their murderous attacks are: the "El Palmar" far […]. They spend the night at this farm even up to three days and they have a great network of collaborators strategically located along the road that leads from San Onofre to the corregimiento [District] of Berrugas […]. Another farm used by these bandits as a resting base is the "Las Melenas" farm, that is located along the road that leads from Toluviejo to the Municipality of San Onofre, in the District of Pueblito. Sporadically they visit the other farms within the jurisdiction of San Onofre. This group is made up of approximately 80 armed men and 20 others assigned to intelligence and logistics work, called "Urbanos" [urban operatives], who are spread out in the general areas of the municipalities of Toluviejo and San Onofre." Page 189, Notebook No. 7, Registration Number 956C, annexed to the original petition received by the IACHR on November 7, 2005.

[FN7] The petitioners contend that the information given to the Security Council on the presence of paramilitary troops on the "El Palmar" farm, located close to the road from the Municipality of San Onofre to Verrugas, was provided by Lieutenant César Pablo Cruz Delgadillo, Commander of the Counterguerrilla Forces of the National Police, deployed in the Municipality of San Onofre, the same person who participated in the search in the "wrong place." In this respect the petitioners assert that General Quiñónez Cárdenas, in his voluntary testimony offered to the Office of the Attorney General, stated that the Lieutenant Cruz's story striked him as odd, because "the decision to go to the 'El Palmar' farm was taken in the Security Council, according to the information provided, if I am not mistaken, by the Police itself, and there it was decided to deploy units of BACIM 33 and the Police counterguerrilla forces, who,according to what transpired in that Council, knew the El Palmar Farm […] Then, I do not understand how, if the order, the decision, was clear to search "El Palmar" and its surrounding area, and if the Lieutenant himself and his commander, according to the Security Council meeting, said that they not only knew the farm but also the site where the bandits would concentrate, he now comes and says that they did not go to "El Palmar" but to another place, having disobeyed instructions." Continuation of the procedure of voluntary testimony, August 17, 2001, National Directorate of Special Investigations of the Office of the Attorney General of the Nation. Original petition received by the IACHR on November 7, 2005, pages 9 and 10.

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9. The petitioners added that, in December 20, 2000 communications, the Office of the People's Defender, issued an early warning to the governor of the department and the commander of Fusiliers Batallion No. 5 of the Marine Infantry (BAFIM 5), headquartered in Sincelejo, requesting special security and surveillance in the Municipality of Ovejas, given the announcement of the possibility of more massacres.[FN8]

[FN8] Communications Nos. 02853 and02852. Annex to the original petition received by the IACHR on November 7, 2005, p. 6.

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10. The petitioners allege that Marine Infantry Master Sargeant Euclides Rafael Bossa Mendoza met with "Cadena" at "El Palmar" farm, handing over to him weapons and ammunition in exchange for money.[FN9] They further allege that, hours later, three trucks, with armed men dressed in garments to be used exclusively by the Armed Forces, were traveling the road from San Onofre to Toluviejo. State agents had this information, but they nevertheless did not comply with their duty of prevention by taking appropriate measures.

[FN9] The petitioners affirm that this can be inferred from the evidence collected at the site and from the testimony of Elkin Valdiris Tirado, who confessed his participation in the massacre, and of José Feliciano Yepes, cook for the paramilitary troops. Original petition received by the IACHR on November 7, 2005, pp. 11 and 12.

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11. The petitioners contend that at more or less 4:00 a.m. on January 17, 2001, a group of approximately 80 members of the Heroes of Montes de María front of the AUC entered the Chengue district.[FN10] They further affirm that the paramilitary troops assumed absolute control of the hamlet, closing roads, cutting off electricity, and keeping the inhabitants in their houses, while they carried out acts of torture, homicide, and forced disappearance.[FN11]

[FN10] The Chengue district is located in the region known as Montes de María. It is a mountainous zone, difficult to access, considered as a strategic zone because of its vicinity to the economic centers of Valledupar, Bucaramanga, Cartagena, Barranquilla and Santa Marta, and because it has oil pipelines and gas wells, among other natural resources. The illegal armed groups have been in the zone since the 1980s and the zone is used for drug trafficking.
[FN11] Original petition received by the IACHR on November 7, 2005, p. 55.

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12. The petition asserts that the AUC forced some of the villagers to meet in the main square and present their citizen identity cards, in order to confront them with the names of persons on a list. Once their identity was verified, 24 men were killed using "la mona",[FN12] machetes and firearms. Messrs. Videncio Segundo Quintana Barreto and Pedro Barreto Wilches were taken away alive, but later their bodies were found with gunshot wounds. The petitioners also allege that, in escaping on the road leading to the Municipality of Macayepo, the paramilitary troops encountered Edison Berrio Salas and Julio César Lora Canole, whom they murdered by striking their heads; the latter was also decapitated. In addition, they claim, Delis Peluffo and José Monterrosa were reported as having disappeared. The body of Monterrosa was subsequently found.

[FN12] In the Montes de María zone, the almádena, or sledgehammer to break stone, is known as "la mona" [female monkey]. Original petition of November 7, 2005, p. 2.

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13. The petitioners state that, during their escape using the highway to the Municipality of Macayepo, the paramilitary troops beat Edison Berrio Salas and Julio César Lora to death, and buried them along the road. They affirm that Mr. José Miguel Lora Canole, brother of Julio César Lora Canole, managed to escape.

14. The petitioners contend that, before leaving, the AUC sacked and set fire to more that 20 houses, whose owners are identified in the petition.[FN13] In addition, they allege that because of the acts of violence, 104 families were forcibly displaced from the district of Chengue, according to the census carried out by the Personería [Municipal Representative and Ombudsman] of Ovejas.[FN14] They state that up to the date of the submission of the petition, no measures necessary to ensure the safe return of the displaced persons had been adopted.

[FN13] The petitioners state that the original petition contains the list of the victim families, as drawn up by the Office of the Municipal Ombudsman of Ovejas, and submitted to the Prosecutor General of the Nation. Original petition received by the IACHR on November 7, 2005, pp. 70-71.

[FN14] The list of displaced persons can be found on pages 37-63 of Notebook No. 1, Registration Number 956 C, annexed to the original petition received by the IACHR on November 7, 2005.

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15. Regarding state actions to pursue and capture the perpetrators of the massacre, the information provided by the petitioners indicates that Security Forces helicopters flied over the zone at 9:00 a.m., nearly three hours after the flight of the paramilitary troops. The petitioners assert that they were seen from the air but not only were they not captured, they were not even pursued, and their trail was lost.[FN15]

[FN15] In this respect the petitioners say that the paramilitary trooper Elkin Valdiris stated that: "…helicopters were flying over us, because we left Chengue at six o'clock in the morning and the helicopters arrived at nine; we were already leaving Macayepo; we had rested and everything, and they flew over us when we were leaving Macayepo; that town's houses were also sacked and burned." The petitioners add that the helicopter pilots' reports coincide with the following testimony given by a navy commander: "Around 09:30 the pilots reported that there were two trucks in Macayepo, one blue and one red, with people, but because of the altitude they could not determine what was in the trucks, whether they were uniformed or not, or if they were civilian personnel. They received the order of keeping the trucks, which were heading out towards Aguacate, under surveillance. Once they were there, they were able to determine that the trucks were carrying civilian personal from Macayepo to Aguacate. Later, at around 10:20, the pilots requested permission to leave the area to refuel, since they were running out of fuel, and then they returned to the airport."

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16. The petitioners also assert that, although the office of the prosecutor searched "El Palmar" farm, it did not take steps to arrest "Cadena," who at the time was in the nearby "El Cerro" farm, allegedly because of the Marine Infantry's refusal to participate in the procedure.[FN16] They further assert that the legal situation of the owners and managers of the searched farms, who were questioned by the prosecutor's office, has not been clarified, nor has the analysis of the evidence collected at the farms been finished.

[FN16] The events are narrated in the testimony of prosecutor Yolanda Paternina Negrete, Captain Julián Crisóstomo Caballero Bernal of the SIPOL of Sucre, and Luís Eduardo Hernández Álvarez, chief of the Judicial Police Unit of the CTI of Sincelejo, who were forceful in referring to the unjustified obstruction of the procedure on the part of Captain Martínez of the Marine Infantry. Original petition received by the IACHR on November 7, 2005, p. 23.

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17. Regarding the judicial clarification of the facts, the petitioners state that the National Human Rights Unit undertook an investigation, under radicado [registration number] 65, assigned by Decision No. 000119.[FN17] They affirm that on February 9, 2001, Elkin Valdiris Tirado appeared before the Office of the Attorney General to confess his guilt as abettor and perpetrator of the massacre, along with members of the Marine Infantry. Elkin Valdiris opted for a guilty plea [sentencia anticipada] and was sentenced to 82 months in prison. The arrest of Ingrid Guerra Soler is also on record, as well as her trial and sentence given to her by the Criminal Court of the Special Circuit [Juzgado Único Penal del Circuito Especializado] of Sincelejo, as part of the investigation carried out under No. 2003-0003.

[FN17] F.227-228 Notebook No.1, registration number 956 C, annexed to the original petition received by the IACHR on November 7, 2005.

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18. The petitioners state that on July 16, 2002, Carlos Castaño Gil was placed under investigation in absentia. The prosecutor's office also placed Rodrigo Antonio Mercado Peluffo alias "Cadena", Julio Rafael Navarro Méndez alias "Barreton", and Nidia Esther Velilla Pérez under investigation in absentia. A warrant for their arrest and preventive detention was issued against them on February 20, 2003, but it had not been carried out. Uber Enrique Banquez Martínez was included in the investigation on September 23, 2004. Despite the inclusion of these individuals, seven years after the massacre there has been no charges pressed against any of these paramilitary troops, except the one who turned himself in.[FN18]

[FN18] Original petition received by the IACHR on November 7, 2005, p. 29 and brief with observations submitted by the petitioner and received by the IACHR on December 19, 2006.

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19. Regarding the establishment of responsibility to state agents, the office of the prosecutor, based on the testimony of Elkin Valdiris, charged Master Sergeant Euclides Rafael Bossa Mendoza with criminal conspiracy. He was, however, acquitted by the Superior District Court of Sincelejo on January 31, 2003.[FN19] The Office of the Special Prosecutor of the National Human Rights Unit, under registration number 956, charged Master Sergeant Rubén Darío Rojas Bolívar with criminal conspiracy. However, the Criminal Court of the Special Circuit of Sincelejo acquitted him; this decision was confirmed by the Superior District Court of Sincelejo.[FN20] The petitioners also state that a preliminary investigation was launched by the Prosecutors' Unit assigned to the Supreme Court of Justice against Rear Admiral Rodrigo Alfonso Quiñónez Cárdenas for breach of public duty by ommission, but proceedings were stayed for non-action by the prosecution.[FN21]

[FN19] Judgment of January 31, 2003, confirmed by the Criminal Chamber of the Superior Court of the District of Sincelejo on October 19, 2004.
[FN20] Case No. 2002-00005-01. Judgment confirmed on May 3, 2004 by the Criminal Chamber of the Superior Court of the District of Sincelejo.
[FN21] Decision confirmed on May 4, 2005, by the Assistant Prosecutor General [Vicefiscal General de la Nación], which cannot be appealed.

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20. The petitioners also informed the Commission that at least two criminal proceedings have been carried forward. The first, before the Juzgado 109 de Instrucción Penal Militar [109th Military Criminal Investigative Court] consists of a preliminary investigation of captains Oscar Eduardo Saavedra Calixto and Camilo Martínez Moreno, for whom no warrant for their arrest was issued. The second was carried forward by the 166th Military Court for Criminal Investigation [Juzgado 166 de Instrucción Penal Militar]; the current stage of its proceedings is unknown. The petitioners report that the Human Rights Unit of the Office of the Attorney General requested, unsuccessfully, for the cases to be remanded to ordinary criminal jurisdiction. They further state that, despite efforts of the civilian parties in these criminal proceedings to establish a conflict of jurisdiction, to date there had been no decision forthcoming from the Office of the Prosecutor [Fiscalía] in this respect.[FN22]

[FN22] Original petition received by the IACHR on November 7, 2005, pp. 31-33.

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21. The petitioners contend that during the criminal investigation two CTI investigators working on the case were murdered. Their job consisted of the identification and collection of evidence against the 80 paramilitary troopers who committed the Chengue massacre.[FN23] They also state that on August 29, 2002, the prosecutor Yolanda Paternina Negrete was assassinated; she had conducted the investigation in Sincelejo and headed the search and seizure procedures on the farms in San Onofre, on the days following the massacre.[FN24]

[FN23] Oswaldo Enrique Borja Martínez died on February 6, 2002.

[FN24] The investigation (No. UNDH179) of the murder of prosecutor Paternina is underway. On July 28, 2004, Rodrigo Antonio Mercado Peluffo alias "Cadena", was formally charged as an accomplice in the criminal conspiracy leading to the aggravated homicide of the prosecutor. Original petition received by the IACHR on November 7, 2005, p. 27.

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22. Regarding the disciplinary investigation, the petitioners claim that on June 6, 2001, the Office of the Attorney General iniciated disciplinary proceedings against ten public servants for the Chengue massacre. On December 12, 2003, Rear Admiral Rodrigo Alfonso Quiñones Cárdenas, Captain Oscar Eduardo Saavedra Calixto and Camilo Martínez Moreno were found to be disciplinarily liable for "failing to pursuing the enemy, being able to do so." Rubén Darío Rojas Bolívar and Euclides Rafael Bossa Mendoza were found to be disciplinarily liable for "taking part, enabling, or facilitating actions against the security of the security forces and other state institutions." The investigation case files for the other public servants, the petitioners state, were closed.[FN25]

[FN25] Original petition received by the IACHR on November 7, 2005, pp. 33-35.

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23. In sum, the petitioners contend that the massacre was perpetrated by paramilitary troops under the orders of Rodrigo Antonio Mercado Peluffo alias "Cadena" or "Cadenita", commander of the paramilitary group operating in the region of Montes de María, and Carlos Castaño,[FN26] with the direct collaboration, by action and by ommission of members of the Security Forces, before and after the facts.[FN27] They further contend that the members of the Security Forces allegedly involved, who were the subjects of investigations under ordinary jurisdiction, were acquitted or the proceedings in their cases were stayed; others are being investigated within the venue of military justice. Regarding the more than 80 civilians involved, they argue only two were found guilty and that one of the two had turned himself in, in exchange for procedural benefits.

[FN26] In a letter to the People's Defender, Carlos Castaño Gil publicly claimed to be responsible for the massacre, in his capacity at the time of commander general of the AUC.
[FN27] The petitioners refer directly to the alleged involvement of Rodrigo Alfonso Quiñones Cárdenas, Oscar Eduardo Saavedra Calixto, Camilo Martínez Moreno, Rubén Darío Rojas Bolívar and Euclides Rafael Bossa Mendoza.

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24. Therefore, they consider that the State is responsible for the violation of the rights to life, human treatment, and personal liberty of Videncio Segundo Quintana Barreto, Pedro Manuel Barreto Arias, Néstor Montes Meriño, Pedro Adán Ramírez, Luís Oscar Hernández Pérez, Arquímedes López Oviedo, Cristóbal Meriño Pérez, Rusbel Manuel Oviedo Barreto, Giovanni Barreto Tapias, Luís Enrique Buelvas Olivera, César Segundo Meriño Mercado, Videncio Quintana Meza, Mario Manuel Quintana Barreto, Dairo Rafael López Meriño, Francisco Santander López Oviedo, Jaime Rafael Meriño Ruiz, Luís Miguel Romero Berrio, Ramón

Andrés Meriño Mercado, Manuel Guillermo Rodríguez Torres, Juan Carlos Martínez Oviedo, Rafael Romero Montes, Elkin David Martínez Oviedo, Alejandro Rafael, Monterroza Meriño, Néstor Meriño Caro, Assael López Oviedo, Dairo Rafael Morales Díaz, Julio César Lora Canole, Edison Berrio Salas, Delis Peluffo and José Monterrosa, pursuant to the provisions of Articles 4, 5, and 7 of the American Convention. The petitioners also consider that the State is responsible for the violation of the rights to humane treatment and personal freedom of José Miguel Lora Canole, in accordance with Articles 5 and 7 of the American convention.

25. The petitioners claim that the State is responsible for the violation of the right to property protected by Article 21 of the American Convention, with prejudice to more than twenty families whose houses were sacked and destroyed by the perpetrators of the massacre. They also claim that the State failed to comply with its obligations under Article 22 of the American Convention and the Guiding Principles on Internal displacement, regarding the over one hundred families who were displaced. They further claim the lack of compliance with the obligation to adopt special measures of protection for the children of Chengue,[FN28] in violation of Article 19 of the American Convention.

[FN28] The lists provided along with the original petition include the ages of the displaced persons, among which are many children. Original petition received by the IACHR on November 7, 2005, pp. 57-69.

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26. The petitioners also claim that the lack of exhaustive judicial investigation of the facts subject of the petition constitutes a violation of the right to a fair trial provided for by Articles 8(1) and 25 of the American Convention. They further allege that the State has failed to comply with its general obligation to ensure the respect for the rights provided for by the Convention, as well as to adopt legislative measures to that end. Specifically, they consider that the use of the venue of military jurisdiction has obstructed the work of ordinary jurisdiction and that the enactment and enforcement of Law 975, known as the "Law of Justice and Peace," as well as other decrees of a similar scope, such as Decree 128 of 2000, violate the Convention.[FN29]

[FN29] Original petition received by the IACHR on November 7, 2005, pp. 47-55.

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27. With respect to compliance with the requirement of prior exhaustion of domestic resources, established by Article 46(1)(a) of the American Convention, the petitioners claim that the exception provided for by Article 46(2) is applicable, given that, several years after the massacre, most of the civilians involved have not yet been put on trial, and the criminal responsibility of state agents has not yet been established.

28. Regarding the arguments of the State on the alleged resort to the jurisdiction of the IACHR as a court of the fourth instance (see Position of the State, infra), the petitioners consider that it is up to the Commission to examine the competence of national authorities, in order to

determine if the measures adopted by the State's entities to investigate the crimes reported in the complaint are consistent with the obligations imposed upon the State by the Convention.[FN30]

[FN30] The petitioners cite the jurisprudence of the Inter-American Court in the Vargas Areco v. Paraguay Case. Judgment of september 26, 2006. Series C No. 155, para. 108. Brief with observations submitted by the petitioner and received by the IACHR on December 19, 2006.

B. Position of the State

29. In response to the petitioners' complaint, the State casts doubt on their allegations regarding the responsibility of its agents and the alleged omission to adopt necessary measures in order to protect the civilian population from incursions of illegal armed groups. It contends that the facts reported have already been investigated in the domestic ordinary jurisdiction and therefore the IACHR lacks competence to decide on evidence already considered, and on the basis of which the investigated state agents were acquitted. It consequently requests that the IACHR declare the petition inadmissible based on the doctrine of the "fourth instance."

30. The State challenges the petitioners' claim regarding its lack of compliance with its duty of protection, and argues that the Armed Forces did not have any reasonable possibility of preventing the violations committed against the population of Chengue. In this respect, it challenges the allegations of fact regarding the exact time at which the authorities became aware of the arrival of paramilitary troops to the zone. Specifically, the State asserts, the information on the trucks seen in San Onofre was received in a vague and tardy manner, and did not suffice to justify an order to mobilize troops.[FN31] In addition, it alleges that intelligence information indicated that the massacre was to be committed in Bajo de Don Juan or in the Municipality of Chalán.[FN32]

[FN31] The State contends that the trucks moving the paramilitary troops towards Chengue were sighted at 7:30 p.m. and that authorities received this information between 11:30 and 12:00 p.m. State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pages 28, 32 and 69.
[FN32] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pp. 13, 14 and 72.

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31. The State questions the number and identity of the 31 victims named by the petitioners, on the basis that the Office of the Prosecutor General [Fiscalía General de la Nación] had removed 24 bodies and ordered that four more be exhumed. The State indicates that, according to the list presented by the victims' families before the contentious administrative jurisdiction it can be established that the name Rusbet Quintana Barreto corresponds to Rusbet Oviedo Barreto, as he appears in the petition; that Pedro Manuel Berrio Arias corresponds to the name Pedro Manuel Barreto Arias as he appears in the petition. Pedro Adan Caro Ramirez appears in the petition as Pedro Adan Ramirez. Mairon Quintana Barreto could be Mario Manuel Quintana Barreto and Videncio Quintana Barreto appears in the petition as Videncio Quintana

Meza.[FN33] The State also casts doubt on whether the disappearance of Mr. Denis Peluffo had been reported and whether the it was related to the massacre or not.[FN34]

[FN33] Communication DDH GOI No. 25891/1222 from the Ministry of Foreign Relations of Colombia, dated May 23, 2007, page 21.
[FN34] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, p. 40.

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32. Regarding steps taken immediately afterword, the State asserts that, once the facts were known, orders were issued for several companies that were in the area to be deployed to block the passage of the criminal group and prevent other incursions, and that the National Police immediately began to fly over the area with helicopters.[FN35] The State moreover adds that the density of the zone's forest kept the helicopters from identifying who was in travelling vehicles and that, in any case, their lack of capability to move troops prevented them from starting a large scale pursuit.[FN36]

[FN35] Testimony of Colonel Norman León Arango before the 166th Military Court for Criminal Investigation, confirmed before the Office of the Attorney General of the Nation on July 25, 2001. State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, p. 41.
[FN36] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pp. 47-49.

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33. The State contends, with respect to judicial investigations, that eight paramilitary soldiers were captured during the searches conducted on the farms in San Onofre, and that they were placed in the custody of the National Human Rights Unit of the Office of the Attorney General. Regarding the alleged irregular conduct of Captain Camilo Martínez during the searches, the State reports that he received disciplinary punishment.[FN37]

[FN37] The punishment consisted of dismissal from his post and disqualification for public office for five years, and forfeiture of the right to attend social venues of the Armed forces. Escrito de observaciones del Estado DDH.GOI No. 7925/0419 del 22 de mayo de 2006, pp. 51-52.

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34. The State notes that, with respect to the petitioner's assertions on the alleged lack of assistance rendered to the displaced population of Chengue, it carried out a census and registry of the displaced persons immediately after the events occurred; in addition, the distribution of food rations to two projects benefiting the displaced persons from Chengue was authorized. The State notes that food, first-aid kits, enriched powdered milk (Bienestarina), cooking and personal hygiene kits were provided. [FN38] It further notes that, inter alia, houses and lots have been given to some of these families, and humanitarian assistance has been given to the 19 families of the victims.[FN39]

[FN38] The State refers to Operaciones Prolongadas de Socorro y Recuperación [Protracted Operations of Rescue and Recovery] and asserts that the Red de Solidaridad [Solidarity Network] delivered assistance to the displaced families, and the Instituto Colombiano de Bienestar Familiar [Colombian Institute for Family Welfare] provided psychosocial care. It goes on to add that this psychosocial care was offered for two months, in the stages of crisis, post-crisis, and return. It reports that the children under eight years of age were treated using games with cathartic techniques, and that the "child population rapidly recovered from the events of the massacre." The Office of the Mayor of Ovejas made sure that the displaced children and youths received education services. Escrito de observaciones del Estado DDH.GOI No. 7925/0419 del 22 de mayo de 2006, pp. 55-57.

[FN39] Valued at $ 241,898,800. State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, p. 56.

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35. In response to the petitioner's argument that the exception to the requirement of exhaustion of domestic remedies is applicable to this case, because of investigations being carried out by the military jurisdiction, the State asserts that it is not true that military justice has taken over the investigation of the Chengue events. It notes that the possibility of the existence of collaboration with the group of the self-defense forces that committed the massacre was examined in the first instance in the ordinary criminal jurisdiction, and that military justice had only investigated the crime of breach of public duty by omission, in acts peculiar to the branch's service, against members of the Marine Infantry and the Police of Sucre. The State indicates that there is a difference between the conducts attributed to members of the Armed Forces linked to the investigations carried in each jurisdiction. Specifically it indicates that "the ordinary jurisdiction investigates the possible collaboration with the self-defence group that perpetrated the massacre (breach of duty by action and ommission, aiding and abetting) [and] considers the possible degree of participation that such state agents might have had in the facts, which allows a distinction between both jurisdictions." The State emphasizes that military justice is a jurisdiction acknowledged in the Colombian Constitution.[FN40]

[FN40] Communication DDH GOI No. 25891/1222 from the Ministry of Foreign Relations of Colombia, dated May 23, 2007, pages 7 and 8.

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36. Regarding military criminal jurisdiction the State asserts that the investigation of members of the First Infantry Brigade ended with a ruling in favor of the defendants on October 31, 2005, and that on August 17, 2001, the 166th Military Court for Criminal Investigation abstained from starting a formal investigation of five members of the Sucre police. However, the State notes that subsequently an investigation of three of the five and other non-commissioned officers was started before the 31st Military Court for Criminal Investigation [Juzgado 31 de Instrucción Penal Militar] based on a charging document and that the legal status of those under investigation is currently being determined.

37. The State contends, with respect to the investigation underway by the Human Rights Unit of the Office of the Attorney General of the Nation – under registration number 956 – that there has been uninterrupted procedural action. It asserts that any delay there may have been in the capture of the ringleaders of the group that perpetrated the massacre is due to the complexity of the case, the specific circumstances of the zone, the characteristics of the defendants in the prosecution and the form in which they operate, making their identification and pursuit difficult.[FN41] In its initial response the State confirmed that the then latest procedure went back to May 2005. In its later response, it added that in February, 2007 the Chief of Police of the Department of Sucre was linked to the investigation.[FN42] In addition, it does not contest the allegations of fact made by the petitioners with respect to the criminal investigation of General Rodrigo Quiñónez and other members of the First Brigade of the Marine Infantry.

[FN41] The State does not challenge the petitioners' contentions that there are seven paramilitary troopers under investigation, one of whom has been found guilty and sentenced. It notes that there are two sergeants under investigation, one in custody. State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pp. 57-61.
[FN42] Communication DDH GOI No. 25891/1222 from the Ministry of Foreign Relations of Colombia, dated May 23, 2007, page 6.

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38. The State also affirms that nine lawsuits for direct reparations have been lodged against the Nation and one class action suit against the Ministry of Defense – National Navy – National Police, with the purpose of obtaining damages in compensation for the displacement that resulted from the Chengue events, and which is in the evidentiary stage.[FN43] It also mentions five reparation claims for loss of real and personal property during the fire caused by the perpetrators of the massacre.[FN44]

[FN43] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, p. 38.
[FN44] Communication DDH GOI No. 25891/1222 from the Ministry of Foreign Relations of Colombia, dated May 23, 2007, page 6.

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39. The State notes, regarding its disciplinary actions, that the Office of the Attorney General [Procuraduría General de la Nación] launched an investigation of some members of the Marine Infantry, whose result was the absolute discharge from the Armed Forces of five of them and their disqualification from public service for five years. The State also underscores the difference between disciplinary and criminal judgments: the former are intended to clarify damaging effects on the carrying out of duties on the part of the public servant in his or her compliance with the law, and the latter to establish injury to legally protected interests.[FN45]

[FN45] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pp. 65-66.

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40. In its final remarks, the State maintains that it is not responsible for crimes committed exclusively by third parties, in this case a paramilitary group whose link with the Security Forces has already been found to be inexistent by criminal courts. It further contends that it should also be taken into account that, once the facts were known, all means at its disposal were used to re-establish conditions of respect and guarantee of the rights of the population.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

41. The petitioners are in principle authorized, by Article 44 of the American Convention, to lodge petitions before the Commission. The petition names individuals as alleged victims, with respect to whom the Colombian state undertook to respect and guarantee the rights provided for by the American Convention. Regarding the State, the Commission notes that Colombia is a State-party to the Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent ratione personae to examine the petition.

42. The Commission also is competent ratione loci to examine the petition, because it alleges violations of rights protected by the American Convention within the territory of Colombia, a State-Party to said treaty. The Commission is competent ratione temporis because the obligation to respect and guarantee rights protected by the American Convention was in force for the State at the time when the alleged facts in the petition were to have occurred. Finally, the Commission is competent ratione materiae, because the petition reports possible violations to human rights protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

43. Article 46(1)(a) of the American Convention requires, for the admission of a petition regarding alleged violations of the Convention, that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

44. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies 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 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 Inter-American Court has established that whenever a State argues the lack of exhaustion of domestic remedies by the petitioner, it has the burden of proving that said remedies that have not been exhausted are “adequate” to redress the alleged infringement; in other words, that the

function of these remedies within the domestic legal system is suitable to address the legal right infringed upon. [FN46]

[FN46] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paragraph 64.

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45. In the instant case, the State contends that the petition does not meet the requirement of prior exhaustion of domestic remedies, provided for by Article 46(1)(a) of the American Convention, since there is a pending criminal proceeding on the facts object of the petition.[FN47] It adds that the proceedings before military courts were limited to the investigation of possible omissions within the line of service, which would constitute, in the opinion of the State, offense in the course of duty [delito de función].

[FN47] State's brief with observations DDH.GOI No. 7925/0419 of May 22, 2006, pp. 73-75.

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46. For their part, the petitioners contend that the exceptions to the requirement of prior exhaustion of domestic remedies provided for by Article 4(2)(c) are indeed applicable, because a delay in the domestic criminal investigation has been verified. They further argue that the use of the military venue for the investigation and punishment of the crimes object of their complaint does not constitute an adequate remedy to violations of the Convention. [FN48]

[FN48] Brief with observations submitted by the petitioner and received by the IACHR on December 19, 2006.

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47. Bearing in mind the positions of the parties, the Commission notes that more than six years after the events object of the complaint, only one self-confessed paramilitary trooper –who surrendered voluntarily— is serving a sentence, while the investigation launched by the Office of the Prosecutor regarding seven of the approximately 80 paramilitary troopers who had participated in the perpetration of the crimes is still at the evidentiary stage. With respect to the establishment of possible state responsibility, only three agents of the State have been prosecuted, and they were acquitted. The Commission also notes that three justice operators linked to the investigation of the instant case have been murdered, which demonstrates the existence of obstacles to the proper administration of justice in the instant case.

48. In this respect, the Commission notes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve evidence and even to safeguard the rights of any person that is considered a suspect in the investigation. As the Inter-American Court has stated, although all criminal investigations must meet a number 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 victims ineffective. [FN49] In the instant case, the prospects

for the effectiveness of the criminal investigation are not equivalent to those of a remedy that must necessarily be exhausted before resorting to the international protection of human rights. The Inter-American Court has established that for a remedy to be considered effective, it must be capable of producing the result for which it was designed.[FN50]

[FN49] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 93.
[FN50] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paragraph 66.

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49. With respect to the use of military justice to investigate the involvement of state agents by action or by omission, the Commission must reiterate that military jurisdiction is not an appropriate venue and therefore does not provide adequate recourse to investigate, try, and punish violations of human rights established by the American convention, allegedly committed by members of the Security Forces, or with their collaboration, or acquiescence.[FN51] In addition, the Inter-American Court has confirmed that the scope of criminal military jurisdiction is adequate only to judge the military for the commission of crimes or offenses that by their own nature attempt against legally protected interests of military order.[FN52]

[FN51] IACHR, Third Report on the Human Rights Situation in Colombia (1999), p. 175; Second Report on the Situation of Human Rights in Colombia (1993), p. 246; Report on the Situation of Human Rights in Brazil (1997), pp. 40-42.
[FN52] I/A Court H.R., Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, paragraph 117.

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50. Therefore, given the characteristics of the instant case and the time transpired since the occurrence of the facts object of the petition, it is the opinion of the Commission that the exceptions provided for by Article 46(2)(c) of the American Convention, regarding the undue delay in domestic court proceedings, is applicable, and the requirement of exhaustion of domestic remedies is not enforceable.

51. The plea for the application of the exceptions to the rule of exhaustion of domestic remedies provided for by Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights established in same, such as the guarantees of access to justice. However, Article 46(2), in its nature and purpose, is a norm with independent content vis á vis the substantive norms of the Convention. Consequently, the determination of whether the exceptions to the rule of exhaustioin of domestic remedies are applicable to the case at hand must be made in prior fashion, and separately, from the analysis of the merits of the case, given that it depends on a standard of judgment different from the one used to determine the existence of a possible violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report that

the Commission shall adopt on the merits of the dispute, in order to confirm whether violations to the American Convention have occurred.

2. Timeliness of the petition

52. The American Convention provides that, for a petition to be admissible by the Commission, it must be lodged within six months starting from the date on which the alleged injured party has been notified of the final decision. In the complaint herein examined, the IACHR has established the applicability of the exceptions to the exhaustion of domestic remedies, pursuant to Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

53. In the instant case, the petition was received on November 7, 2005, and the facts object of the complaint occurred on January 17, 2001, and their effects in terms of the alleged absence of the administration of justice extend in time to the present. Therefore, bearing in mind the context and characteristics of the instant case, as well as the fact that an investigation is still pending, the Commission considers that the petition was lodged within a reasonable time period and that the requirement of timeliness of the petition for its admissibility has been met.

3. Res judicata

54. It is not evident from the record that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission finds that the requirements provided for by Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

55. In the petition under examination the State argues that the facts reported, in particular those related to the alleged responsibility of members of the Security Forces, have already been investigated in the ordinary domestic jurisdiction and that consequently the Commission lacks the competence to decide on evidentiary items that have already been considered and on the basis of which the state agents under investigation were acquitted. The State makes a special reference to the proceedings against Rear Admiral Rodrigo Alfonso Quiñones Cárdenas before the Supreme Court, whose investigation was dropped by decision of the Prosecutor General of the Nation. Consequently, it requests that the IACHR declare the complaint inadmissible on the grounds of the application of the doctrine of the "fourth instance."

56. In this regard, it is appropriate to note that the purpose of an international proceeding before the organs of the inter-American system, and particularly the Commission, is not to establish individual responsibility of state agents but to determine the responsibility of the State

vis-á-vis the American Convention. The IACHR is competent to establish whether the State might be resposible in the commission of a massacre.

57. To this end, faced with the grounds in fact and in law submitted by the parties, and with the nature of the case presented for it to be heard by it, the IACHR finds that in the instant case it is appropriate to establish that the arguments of the petitioner regarding the alleged violation of the right to life, to humane treatment, to the right to personal liberty, to the rights of the child, to property, to movement and residence, to a fair trial and to judicial protection, could characterize violations of Articles 4(1), 5(1), 19, 21, 22, 8 and 25 in connection with Article 1(1) of the American Convention. The IACHR also finds that the petitioners' allegations regarding the norms governing the judicial investigation of the facts of this case could possibly characterize violations of Article 2 of the American Convention.

V. CONCLUSIONS

58. The Commission concludes that it is competent to examine the arguments lodged by the petitioner regarding the alleged violation of Articles 2, 4(1), 5(1), 7(2), 8(1), 19, 21(1), 22(1) and 25, in connection with Article 1(1) of the American Convention, and that they are admissible, pursuant to the requirements established by Articles 46 and 47 of the American Convention.

59. Based on the aforementioned arguments in fact and in law, and without prejudging on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible with respect to Articles 2, 4(1), 5(1), 7(2), 8(1), 19, 21(1), 22(1), and 25 in connection with Article 1(1) of the American Convention.
2. To notify the Colombian state and the petitioner of this decision.
3. To continue with the analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.