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Title/Style of Cause:	Massacre of Montes de Maria v. Colombia
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza.
Dated:	19 March 2009
Citation:	Massacre of Montes de Maria v. Colombia, Petition 1-06, Inter-Am. C.H.R., Report No. 15/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: the Association of Displaced Persons of El Salado Bolivar and the National Mutual Assistance Association

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I. SUMMARY

1. On January 3, 2006, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or "the Commission") received a petition presented by the Association of Displaced Persons of El Salado Bolívar (Asociación de Desplazados del Salado Bolívar, ASODESBOL) and the National Mutual Assistance Association (Asociación Nacional de Ayuda Solidaria, ANDAS) (hereinafter "the petitioners"), alleging that, between February 15 and 19, 2000, some 350 members of paramilitary groups, acting with the acquiescence and participation of agents of the Republic of Colombia (hereinafter "the State", "the Colombian State" or "Colombia") killed Miguel Antonio Avilez Díaz, Gilfredo Brochero Bermúdez, Emiro Castillo Castilla, Liborio Antonio Cortés Rodríguez, Daniel Francisco Díaz Morales, Juan González, Benjamín José González Anaya (or Benjamín J. González Anaya), Dairo de Jesús González Olivera (or Darío de Jesús González Olivera), Moisés Gutiérrez Causado, Miguel Antonio Martínez Narváez, Manuel Antonio Martínez Rodríguez, Amaury de Jesús Martínez Simanca (or Amauri Martínez), Jorge Eliécer Mercado Vergara, David Rafael Núñez Sánchez, Johnny Alberto Núñez Sánchez (or Yonis Alberto Núñez Sánchez), Ever Alberto Núñez Sánchez, Rafael Antonio Núñez Sánchez, Luis Alfonso Peña Salcedo, Félix Antonio Pérez Salcedo, Daribel Restrepo, Ezequiel Salcedo Montes, Jairo Alvis Garrido, Alejandro Alvis Madrid, Helen Margarita Arrieta Martínez (or Gelen Margarita Arrieta Martínez) , Neivis Judith Arrieta Martínez (or Neldis Judith Arrieta Martínez), Wilfrido Barrios Parra (or Wilfrido Enrique Barrios Parra), Francisca Cabrera de Paternina (or Francisca Elena Cabrera Montes), Edith Cárdenas Ponce (or Edith Marina Cárdenas Ponce), Marco José Caro Torres (or Marcos José Caro Torres), Edgar Cohen Castillo (or Edgar Alfonso Cohen Castillo), Hermides Cohen Redondo, Ornedis Cohen Sierra (or Ornedis

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Rafael Cohen Sierra), Emiro Enrique Cohen Torres, Manuel del Cristo Chamorro Hernández, Margoth Judith Fernández Ochoa (or Judith Margoth Fernández), Desiderio Lambraño Salcedo (or Desiderio Francisco Lambrano Salcedo), Roberto Segundo Madrid Rodríguez (or Roberto Madrid Rodríguez), Carlos Daniel Martelo Pimienta, Enrique Antonio Medina Rico, Jainer Medina Rodríguez, Fredy José Montes Arrieta, Eduardo Rafael Novoa Alvis (or Eduardo Navas Alvis), Nayibe Osorio Montes, Justiniano Pedroza Teherán (or Justiniano Pedrozo Teran), Rogelio Rafael Ramos Olivera (or Rogelio Ramos Olivera), Luis Donaldo Romero Díaz, Luis Pablo Redondo Torres, Edilberto Sierra Castillo (or Edilberto Sierra Mena), Néstor Aníbal Tapias Arias, José Manuel Tapia (or José Manuel Tapias Arias), Rosmira Torres Gamarra (or Rosmira Elena Torres Gamarra), Pedro Aníbal Torres Montes, Eduardo Torres Pérez, Eliseo Torres Sierra, Dora Judith Torres Rivero, Euclides Torres Zabala (Euclides Rafael Torres Zabala), Libardo Trejos Garrido (or Libardo Rafael Trejos Garrido), Éver Urueta Castaño (or Víctor Urueta Castaño), José Irene Urueta Guzmán (or José Irenes Urueta Guzmán) and other persons yet to be identified, destroyed dwellings, and forcibly displaced more than 1,500 families[FN1] in the districts (corregimientos) of Canutal, Canutalito and Flor del Monte, within the jurisdiction of the municipality of Ovejas, Department of Sucre, and in the district of El Salado, jurisdiction of the municipality of El Carmen de Bolívar, in the region of Montes de Maria, Department of Bolivar.

[FN1] A list of the 706 displaced persons identified to date is contained in the Annex to this report.

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2. The petitioners argued that the State was responsible for violating the rights to life, to humane treatment, freedom from slavery, the right to personal liberty, to privacy, the right of assembly, to freedom of association, the rights of the family, the rights of the child, the right to property, the freedom of movement and residence, and the right to a fair trial and judicial protection established in articles 4, 5, 6.2, 7, 8, 11, 15, 16, 17, 19, 21, 22 and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to the duties to guarantee and adopt domestic legal provisions pursuant to articles 1.1 and 2 of that treaty and article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "Convention of Belém do Pará"). The State, for its part, contended that the petitioners' claims were inadmissible because, despite the complexity of the case, the events had been clarified before the domestic courts and the petition did not satisfy the requirement of prior exhaustion of domestic remedies, as stipulated in article 46.1.a of the American Convention. The petitioners, in turn, invoked the exception to the requirement of prior exhaustion of domestic remedies contained in article 46.2.c of the Convention.

3. After examining the positions of the parties and assessing the requirements of articles 46 and 47 of the American Convention, the Commission has decided to declare the claim admissible for examination with respect to the alleged violation of articles 4.1, 5.1, 5.2, 6.2, 7.2, 8.1, 11, 17, 19, 21.1, 22.1 and 25, in connection with article 1.1 of the American Convention and article 7 of the Convention of Belém do Pará. It has therefore decided to so notify the parties and to order the publication of this report.

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II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR registered the petition under number P1-06 and on April 19, 2006, having performed a preliminary analysis; it transmitted a copy of the pertinent portions to the State, giving it two months to present information pursuant to article 30.2 of the Rules of Procedure.

5. In response, the State requested an extension of 30 days to present its observations, which was granted by the IACHR. The State presented its observations on May 9, 2007,[FN2] and these were transmitted to the petitioners for their observations. The petitioners presented additional information on May 17, 2007, and on June 29, 2007 they submitted their observations on the State's response, which were transmitted to the State with a deadline of one month. On September 27, 2007, the State presented its response.[FN3] On December 19, 2008 the Commission, in accordance with article 30.5 of its Rules of Procedure, requested updated information from the State on the legal proceedings undertaken to clarify the facts. On January 19, 2009, the State requested an extension, which the Commission granted. On February 18 and 24, 2009, the State presented the requested information.[FN4]

[FN2] Note DDH.GOI/20630/0986 from the Ministry of Foreign Relations of Colombia, dated April 26, 2007.
[FN3] Note DDH.GOI/47606/2599 from the Ministry of Foreign Relations of Colombia, dated September 25, 2007
[FN4] Observations of the State, DDH.GOI No. 8547/0395 of February 18, 2009 and y observations of the State DDH.GOI No. 9611/0452 of February 24, 2009.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. As background, the petitioners maintained that in late 1995 the Rural Self-Defense Forces of Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá) consolidated their presence in the region of Montes de Maria[FN5] and that by 1999 they were exercising control over the municipalities of El Carmen de Bolívar, Maríalabaja, San Juan Nepomuceno, San Jacinto, Córdoba Tetón, Zambrano and El Guamo, in the department of Bolivar, and over the municipalities of Colosó, Chalán, Ovejas, San Onofre, Morroa, Tolúviejo and Los Palmitos, in the department of Sucre.[FN6]

[FN5] The Montes de Maria zone comprises municipalities belonging to the Department of Sucre and to the Department of Bolivar: Canutal, Canutalito and Flor del Monte are districts of the municipality of Ovejas, in the Department of Sucre, and El Salado is a district of the municipality of El Carmen de Bolivar, in the Department of Bolivar, all located within the Montes de Maria zone. This is a zone of strategic importance because of its proximity to the economic centers of the city of Valledupar, the Department of Cesar, and the Caribbean Sea. It

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has significant energy as well as agricultural and agro-industrial resources. The petitioners claim that these factors helped to consolidate the presence of outlaw armed groups from the 1980s on.
[FN6] The petitioners mention a series of episodes involving acts of violence committed in recent years in the Montes de Maria zone, including the massacres of El Salado, Pechilín, Colosó, Tolúviejo, Macayepo and Chengue. Original petition received at IACHR on January 3, 2006, paragraph 11. See also IACHR, Chengue Massacre, Admissibility Report 45/07, Petition 1268-2005, July 23, 2007.
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7. The petitioners allege that the authorities knew about the presence and activity of outlaw armed groups in the zone.[FN7] On February 15, 2000, the Sectional Director of the Technical Investigations Unit (Director Seccional del Cuerpo Técnico de Investigación, CTI) of Bolivar sent a note to the Commander of the First Marine Infantry Brigade warning him that the United Self-Defense Group of Colombia (Autodefensas Unidas de Colombia, AUC) were beginning action in the area located between the municipalities of San Jacinto and El Carmen de Bolivar, and indicating moreover that, according to the information received, the group would initially be operating with somewhere between 80 and 100 men.[FN8] Despite this warning, the petitioners maintain, no actions were taken to protect the civilian population.

[FN7] The petitioners allege that on February 15, 2000, the Investigations Unit of the Technical Investigations Unit (CTI) in El Carmen de Bolívar received information that Fronts (Frentes) 35 and 37 of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and members of the National Liberation Army (Ejército de Liberación Nacional, ELN) operating in the region of Montes de María were planning a guerrilla takeover of the municipality of El Carmen de Bolívar in reprisal for the selective killings of street vendors, allegedly at the hands of vigilante groups. Exposición 0089 U.I. C.T.I. C.B. of February 16, 2000. Annex to the original petition received at IACHR on January 3, 2006. The petitioners allege that, by means of communications No. 0335 and No. 0336 of February 17, 2000, the Police Department of Sucre warned the commander of the First Marine Infantry Brigade about a group of 100 to 120 persons, wearing camouflage uniforms of the military and police forces, who were executing peasants (campesinos) in the districts of Flor del Monte, Canutal, Canutalito, El Cielito and La Peña. Annex to the original petition, received at IACHR on January 3, 2006. The petitioners also allege that, by means of communication No. 0483 of February 18, 2000, the Administrative Department of Security advised the Commander of the First Marine Infantry Brigade of confrontations between the AUC and guerrilla groups in the Montes de María zone. Annex to the original petition received at IACHR on January 3, 2006.
[FN8] The petitioners are referring to communication 000087 from the Sectional Director of the Technical Investigations Unit to the Commander of the First Marine Infantry Brigade, of February 15, 2000. Page 42 of Annex No. 1 to the criminal case file. Annex to the original petition received at IACHR on January 3, 2006.
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8. The petitioners maintain that, between February 15 and 19, 2000, approximately 350 members of the AUC, commanded by Carlos Castaño and Salvatore Mancuso, staged an armed takeover of the districts of Canutal, Canutalito and Flor del Monte in the municipality of Ovejas,

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Department of Sucre, and the district of El Salado, municipality of El Carmen de Bolivar, Department of Bolivar, and that they subjected the inhabitants to violent acts of torture and murder. They contend that the paramilitaries were carrying short and long-range weapons, they wore uniforms exclusive to the Armed Forces, and used land, water and air routes to enter and travel through the region.[FN9]

[FN9] Original petition received at IACHR on January 3, 2006, para. 16. The Office of the Procurator General (Procuraduría General de la Nación) reports a group of approximately 250 persons, heavily armed, some in camouflage and others in civilian garb, transported in five flat-bed trucks. Disciplinary Case File, page 64. Annex to the original petition received at IACHR on January 3, 2006.

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9. According to the petitioners, on February 16, 2000, sometime after 3 AM, members of the AUC entered the districts of Canutal, Canutalito and Flor del Monte, municipality of Ovejas, where they murdered at least 21 people.[FN10] Some of the victims were shot with firearms, others had their throats cut with knives or machetes, still others were decapitated or strangled,[FN11] some were beaten with a heavy hammer or their faces were covered in a plastic bag and they were then given the “coup de grace”.[FN12] The petition maintains that some of the victims suffered mutilation to parts of their body before they were executed, and others were forced to strip naked and to kneel down or dance in front of the dead.[FN13]

[FN10] Miguel Antonio Avilez Díaz, Gilfredo Brochero Bermúdez, Emiro Castillo Castilla, Liborio Antonio Cortés Rodríguez, Daniel Francisco Díaz Morales, Juan González, Benjamín José González Anaya (or Benjamín J. González Anaya), Dairo de Jesús González Olivera (or Darío de Jesús González Olivera), Moisés Gutiérrez Causado, Miguel Antonio Martínez Narváez, Manuel Antonio Martínez Rodríguez, Amaury de Jesús Martínez Simanca (or Amauri Martínez), Jorge Eliécer Mercado Vergara, David Rafael Núñez Sánchez, Johnny Alberto Núñez Sánchez (or Yonis Alberto Núñez Sánchez), Ever Alberto Núñez Sánchez, Rafael Antonio Núñez Sánchez, Luis Alfonso Peña Salcedo, Félix Antonio Pérez Salcedo, Daribel Restrepo, Ezequiel Salcedo Montes. Original petition received at IACHR on January 3, 2006, para. 23.
[FN11] The petitioners cite Despacho Comisiorio No. 12, hearing to receive testimony from José Ángel Bohórquez and Rigoberto Jiménez of the Administrative Court of Cundinamarca, March 15, 2004. Annex to the original petition received at IACHR on January 3, 2006.
[FN12] The petitioners cite Criminal Case File, Volume 1, page 254, Declaration of Gloria Martínez. Original petition received at IACHR on January 3, 2006
[FN13] Original petition received at IACHR on January 3, 2006, para. 18.

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10. According to the petitioners, the AUC remained in these districts until February 17, 2000, and before leaving they sacked and burned dwellings and machinery in the rural areas of Ovejas. They also made off with some 400 heads of cattle.[FN14] They cut off all communication within the zone through constant patrols and the establishment of control posts which local people were forbidden to approach under pain of death.[FN15]

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[FN14] The petitioners cite communication FGN-CTI-SIA No. 49 of the Office of the Prosecutor, Local Unit Coordinator CTI, June 16, 2000.

[FN15] Original petition received at IACHR on January 3, 2006, para. 22. Communication 00298 of the Sectional Ombudsman, February 21, 2000.

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11. On February 16, 2000, the petition reports that members of the AUC intercepted a vehicle carrying Edith Cárdenas Ponce and three other persons from El Salado to the city of El Carmen de Bolivar. The petitioners allege that the occupants of the vehicle were forced to lie face down while they were questioned and their documents reviewed. They allege that the AUC indicated Edith Cárdenas as a member of the guerrilla group and executed her, stabbing her in the right lung, and subsequently threw her body into the bushes. The driver of the vehicle escaped, and the other two occupants were released.[FN16]

[FN16] The petitioners cite Criminal Case File, Volume 1, Page 73 and ff. Statement given by María del Carmen Cabrera Torres, June 22, 2002. Annex to the original petition received at IACHR on January 3, 2006.

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12. The petitioners claim that on February 18, 2000, at around 11 a.m., the same AUC members who had perpetrated the attack in the districts of the municipality of Ovejas entered the district of El Salado, a village of some 850 houses in the municipality of El Carmen de Bolivar, where they sacked the stores and houses and murdered at least 38 people.[FN17] The petition indicates that the AUC posted a guard around the village, and they herded most of its inhabitants into the central square and the basketball court, where they classified the victims by sex and age and then killed them, while drinking alcohol and making music.[FN18] It is indicated that the AUC killed their victims, among which were Rosmira Torres Gamarra [FN19] and Luis Pablo Redondo, using guns and knives, strangling them or slitting their throats.[FN20] Some of the victims had parts of their bodies severed before they were shot.[FN21]

[FN17] Jairo Alvis Garrido, Alejandro Alvis Madrid, Helen Margarita Arrieta Martínez (or Gelen Margarita Arrieta Martínez), Neivis Judith Arrieta Martínez (or Neldis Judith Arrieta Martínez), Wilfrido Barrios Parra (or Wilfrido Enrique Barrios Parra), Francisca Cabrera de Paternina (or Francisca Elena Cabrera Montes), Edith Cárdenas Ponce (or Edith Marina Cárdenas Ponce), Marco José Caro Torres (or Marcos José Caro Torres), Edgar Cohen Castillo (or Edgar Alfonso Cohen Castillo), Hermides Cohen Redondo, Ornedis Cohen Sierra (or Ornedis Rafael Cohen Sierra), Emiro Enrique Cohen Torres, Manuel del Cristo Chamorro Hernández, Margoth Judith Fernández Ochoa (or Judith Margoth Fernández), Desiderio Lambraño Salcedo (or Desiderio Francisco Lambrano Salcedo), Roberto Segundo Madrid Rodríguez (or Roberto Madrid Rodríguez), Carlos Daniel Martelo Pimienta, Enrique Antonio Medina Rico, Jainer Medina Rodríguez, Fredy José Montes Arrieta, Eduardo Rafael Novoa Alvis (or Eduardo Navas Alvis), Nayibe Osorio Montes, Justiniano Pedroza Teherán (or Justiniano Pedrozo Teran),

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Rogelio Rafael Ramos Olivera (or Rogelio Ramos Olivera), Luis Donaldo Romero Díaz, Luis Pablo Redondo Torres, Edilberto Sierra Castillo (or Edilberto Sierra Mena), Néstor Aníbal Tapias Arias, José Manuel Tapia (or José Manuel Tapias Arias), Rosmira Torres Gamarra (or Rosmira Elena Torres Gamarra), Pedro Aníbal Torres Montes, Eduardo Torres Pérez, Eliseo Torres Sierra, Dora Judith Torres Rivero, Euclides Torres Zabala (Euclides Rafael Torres Zabala), Libardo Trejos Garrido (or Libardo Rafael Trejos Garrido), Éver Urueta Castaño (or Víctor Urueta Castaño), José Irene Urueta Guzmán (or José Irenes Urueta Guzmán). Original petition received at IACHR on January 3, 2006, para. 24.

[FN18] The petitioners refer to the statement of Yesenia Torres Vizcaíno: "[…] They brought musical instruments out of the library and started to play the drum. They said we were going to play a guerrilla game. They took a mother, with her son who is a teacher, and they held them there, and one of them said we are going to start counting from 1 to 50 and whoever comes up number 50 will die. They counted from 1 to 50, from 1 to 40, from 1 to 30, from 1 to 20, from 1 to 10 and they selected all those who came up with zero, they put them all in a circle, they asked them some question and if they didn't know they were killed, I don't remember who was the first one killed, but I saw them kill ROBERTO MADRID, MARCOS CARO, PEDRO TORRES, ROSMIRA […], LUIS PABLO REDONDO, DEIVIS […]". Criminal Case File, Volume 1, Case Number 721 U.N.D.H., pages 274 to 280. Annex to the original petition received at IACHR in January 3, 2006.

[FN19] The petitioners refer to the statement of Yesenia Torres Vizcaíno: "They took the mother [Rosmira] they tied a rope around her neck, and two paramilitaries pulled on each end of the rope until she was choked, then they cut off her ears and to make her feel pain they tied a bag around her head, they struck her with knives, they cut her hair, they beat her and then they shot her". Criminal Case File, Volume 1, Case Number 721 U.N.D.H., pages 274 to 280. Annex to the original petition received at IACHR on January 3, 2006.

[FN20] The petitioners refer to the statement of Yesenia Torres Vizcaíno: "The teacher Luis Pablo Redondo, they took him and they tied his hands behind his back, they started to strike him with a knife, they hit him in the head with a hammer, they took out his brains and one paramilitary showed the brains around to everyone in the circle, then they shoved them back in his head and they shot him. They had also tied a rope around his neck and they started to pull it. Then they killed a whole bunch of men and women […]". Criminal Case File, Volume 1, Case Number 721 U.N.D.H., pages 274 to 280. Annex to the original petition received at IACHR on January 3, 2006.

[FN21] The petitioners cite the ruling of the Specialized Circuit Criminal Court, Case Number No. 010/02, of February 28, 2002. Annex to the original petition received at IACHR on January 3, 2006

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13. The petitioners claim that among the victims was a six-year-old child, Helen Margarita Arrieta Martinez. According to the petition, the paramilitaries captured her and Mrs. Pura Chamorro and placed them under the sun with no access to water or food. After three days under these conditions, the child died.[FN22] Allegedly the paramilitaries also raped a number of women and children.[FN23]

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[FN22] The petitioners refer to the sworn statement given by Dominga Torres Pérez, Criminal Case File, Volume 1, pages 262-263. Annex to the original petition received at IACHR on January 3, 2006. They declare that the death of young Helen Margarita Arrieta Martínez is mentioned in the ruling of the Specialized Circuit Criminal Court, Case Number No. 010/02, of February 28, 2002. Annex to the original petition received in IACHR on January 3, 2006.
[FN23] The petitioners refer to the statement of a girl, YTV, in which she claims she was raped by a paramilitary identified as "Carlos" at the same time that "María", another AUC member, was beating her. Criminal Case File, Volume 1, Case Number 721 U.N.D.H., pages 274 to 280. Annex to the original petition received at IACHR on January 3, 2006
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14. The petitioners allege that through these acts of violence, some 1,500 families were forced to leave the districts of Canutal, Canutalito, Flor del Monte and El Salado.[FN24] It is indicated, that between March and September of 2000, some persons displaced from the municipality of Ovejas returned, without any official accompaniment, to the rural area of the municipality to gather harvests and to retrieve any movable goods that had not been destroyed. On the other hand, persons displaced from El Salado began a dialogue with the authorities in order to organize a safe return.[FN25] They claim that at the time the petition was submitted some persons had returned voluntarily but without any significant assistance from the local or national governments. They further indicate that those who returned face a situation of insecurity due to the abandonment of the authorities,[FN26] and that several persons were murdered after returning to Ovejas and El Salado.[FN27]

[FN24] The list of those displaced persons who could be identified is contained in the Annex to the original petition of January 3, 2006. The municipal registry of Ovejas identified approximately 600 persons displaced from that municipality. Report of February 29, 2000.
[FN25] Original petition received at IACHR on January 3, 2006, para. 30.
[FN26] Original petition received at IACHR on January 3, 2006, paras. 31 and 32
[FN27] Original petition received at IACHR on January 3, 2006, para. 138. The petitioners refer to the statement of Alejandro de la Rosa, municipal registrar of Ovejas: "In September of that year [2000] there was another massacre in the area, which halted this spontaneous return. It occurred precisely on September 13, 2000, or seven months after the massacre that included [E]l Salado, that September 13 was the day of love and friendship and people were celebrating in the district when the paramilitaries arrived and shot two people dead. They went on to [F]lor del [M]onte were they killed one person, and then on to [P]ativaca where they killed another person who was said to be mentally retarded and was known as Joaquín Pérez". Administrative Tribunal of Sucre, Acción de Grupo 2002 0007, page 2.
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15. The petitioners claim that the civilian authorities in the area as well as the government security forces were aware of the risks to the population of the municipalities of Ovejas and El Carmen de Bolivar, and yet they failed to take the steps necessary to prevent those risks. The petitioners indicate that the region of Montes de Maria is under the jurisdiction of the First Marine Infantry Brigade[FN28] and several battalions of the National Navy as well as various police squads operate therein. They allege that on February 16, 2000, the day the massacre

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began, it is claimed that the Commander of the Third Police District sent a report to the Mayor of El Carmen de Bolivar describing the difficult public security situation and requesting the dispatch of an anti-guerrilla group.[FN29] They claim that on February 17, 2000, the Commander of the Police Department of Sucre warned the Commander of the First Marine Infantry Brigade about a group of persons wearing camouflage uniforms of the military and police forces and carrying long-range weapons, who were executing peasants in the districts of Flor del Monte, Canutal, Canutalito, El Cielito and La Peña.[FN30]

[FN28] The petitioners refer to the spontaneous statement given by Rear Admiral Rodrigo Quiñónez Cárdenas: "The jurisdiction of the First Marine Infantry Brigade has roughly 14,000 km² and covers municipalities in the departments of Bolívar, Sucre and Córdoba and at that time San Andrés and Providencia. The jurisdiction in the continental area is very hilly and includes the so-called Montes de María which contains perhaps 25 hills or mountains of heights varying between 500 and 850 m above sea level […]". Disciplinary Case File, September 11, 2001, Annex to the original petition received at IACHR on January 3, 2006. The petitioners also refer to the spontaneous statement given by Lieutenant Colonel Harold Afranio Mantilla Serrano: "Between February 16 and 19 of that year [2000] troops were deployed as follows: two squads at the Cerro La Pita communications station, […] four squads in operations launched on February 15 [2000] in Macayepo and Lázaro, in pursuit of members of Front 35 of the FARC […], two squads near the municipality of Córdoba in the Department of Bolívar, which on February 15 established a ring around the town on the orders of the brigade commander and at the request of the civilian population , who were threatening to move into town for fear of an outlaw invasion […]. The last two squads were mobilized to support the population and the police of Córdoba, where the overflight of a helicopter had terrorized people. In addition, two squads were posted as guards at the command post." Disciplinary Case File, August 18, 2001, Annex to the original petition received at IACHR on January 3, 2006.

[FN29] Original petition received at IACHR on January 3, 2006, para. 38. e). Annexes to the Disciplinary Case File. Communication 0061 from the Bolívar Police Department, Third District, to the Mayor of El Carmen de Bolívar, pages 130 and 131.

[FN30] The petitioners cite Communications No. 0335 and 0336 from Lieutenant Colonel, Mario Nel Flores Álvarez, Commandant of the Sucre Police Department to Colonel Rodrigo Quiñónez, Commandant of the First Marine Infantry Brigade, February 17, 2000. Annexes to the original petition received at IACHR on January 3, 2006.

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16. The petition reports that on February 18, 2000 a Security Council was held at the headquarters of the First Marine Infantry Brigade to consider the alteration of public safety in the rural area of El Carmen de Bolivar, Zambrano and Córdoba and in the districts of Canutal and Ovejas, caused by confrontations between the AUC and Front (Frente) 37 of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC).[FN31] Despite this, the petitioners maintain, that no measures were taken to prevent AUC attacks on the civilian population of Montes de Maria.[FN32]

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[FN31] The petitioners claim that the Security Council discussed matters relating to the theft of 500 heads of cattle, the overflight of a helicopter with AUC troops in the municipality of Córdoba, which was intercepted by the security forces, and alleged confrontations between the AUC and the FARC. Original petition received at IACHR on January 3, 2006, para. 39.a.
[FN32] The petitioners refer to the disciplinary case file, Volume of copies, pages 107-122, Acta No. CBRIM1-2001, Security Council held at the command headquarters of the First Marine Infantry Brigade on February 18, 2000. Annex to the original petition received at IACHR on January 3, 2006.
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17. The petitioners claim that despite the prolonged presence of paramilitary groups in the area, the government security forces took no action to combat them. They indicate that it was only in the afternoon of February 19, after the massacre was over, that the National Navy (ORCA Company - BAFIM 3 Battalion) entered the urban perimeter of El Salado,[FN33] and that on February 20 other military companies arrived.

[FN33] The petitioners claim that the entry of the ORCA Company into the El Salado district is mentioned in the statement given by a Navy volunteer Alfonso Enrique Benítez Espitia, on March 17, 2000, Annex to the original petition received at IACHR on January 3, 2006: "We reached El Salado at 6 PM but they had already left, there were only the paras who were giving signals. They already knew we were coming, because on February 23 or 24, 2000, we met with the paramilitaries at a place near Las Yeguas and the one I spoke with told me this was the signal to open up there, the three groups of paras that were there, I don't recall his name, just that he was a sailor from BAFIM 5 […]"
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18. The petitioners allege that the government security forces assisted both in perpetrating the massacre of Montes de Maria and in the flight of the paramilitary, ensuring that the event went off without difficulties.[FN34] They allege that an example of the links between the security forces and the AUC, is that after the massacre, between February 23 and 24, 2000, the ORCA Company of the National Navy held meetings with paramilitary leaders identified with the aliases "07" and "09",[FN35] and shared information on the lack of coordination between the armed actions of the company and the paramilitary group.[FN36] In the last of those meetings, the petitioners allege, ORCA Company traded weapons and delivered supplies to the paramilitaries.[FN37]

[FN34] Original petition received at IACHR on January 3, 2006, para. 45.
[FN35] The petitioners claim that according to the statement given by Navy volunteer Alfonso Enrique Benítez Espitia, alias "07" there was a retired army captain with the surname of "Iraquive" (sic) whom he knew from his military service in the Battalion Vélez de Carepa, Urabá. Alias "09" was identified as a retired Navy sergeant. Statement given by Navy volunteer Alfonso Enrique Benítez Espitia, March 17, 2000, Annex to the original petition received at IACHR on January 3, 2006.

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[FN36] The petitioners refer to the statement given by Navy volunteer Alfonso Enrique Benítez Espitia, March 17, 2000, Annex to the original petition received at IACHR on January 3, 2006.
[FN37] The petitioners refer to the statement given by Navy volunteer Alfonso Enrique Benítez Espitia, "They proposed to my captain Pita that for two mortar grenades and six of MG-1 they would give us two AK-47 rifles so that we could legitimize them and say that we had taken them in combat, and the grenades were legalized right there; we also gave them food, supplies, rice, salt and some hens that we had with us […]", March 17, 2000, Annex to the original petition received at IACHR on January 3, 2006.
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19. Following the massacre, the petitioners maintain that members of the Marine Infantry attended meetings of ASODESBOL and took notes on what happened at those meetings. They affirm that the presence of military personnel interfered with the right of assembly of members of the Association.

20. The petitioners claim that, several years after the events, judicial investigations have been pursued only against the 15 arrested members of the paramilitary, and the prosecution has failed to identify, investigate and punish more than 300 other members of the paramilitary who took part in the massacre, and the State agents who were involved. Moreover, they claim that the judicial decisions rendered took no account of the killing of at least 21 persons in the municipality of Ovejas, the rape of Yesenia Torres Vizcaíno, and the forced displacement of residents of these communities.[FN38]

[FN38] Observations of the petitioners received at IACHR on May 17, 2007.
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21. Specifically, the petition reports that on February 21, 2000 the Delegate Prosecutor 43 of El Carmen de Bolivar ordered a preliminary investigation of the case identified as 721 A UDH. On February 22, 2000 11 members of the AUC[FN39] were captured by the Marine Infantry, and on February 28, 2000 four more members[FN40] of the same group were arrested. Between March 10 and 27, 2000, the National Human Rights Unit of Bogotá ordered preventive detention without bail for the 15 prisoners. On March 7, 2001, the prosecution laid charges against the prisoners as co-authors of the crimes of aggravated murder and forming paramilitary groups, decision that was confirmed by a resolution of September 17, 2001. The petitioners indicate that after the case was remitted to the Single Specialized Criminal Court of the Circuit of Cartagena, that court issued a judgment convicting the defendants on February 28, 2003.[FN41] The defendants' lawyers appealed that ruling and on February 14, 2007 the Chamber of Justice and Peace of the Superior Court of the Judicial District of Barranquilla upheld the ruling.[FN42]

[FN39] 1. Eliécer de Jesús Hernández Morales, 2. José David Vizcaíno Márquez or Jacir Alonso Hernández Rivera, 3. Sofanor Hernández Alemán, 4. Eliécer Augusto Guao Arias, 5. Edwin David García Crespo, 6. Sócrates Celedon Díaz, 7. William José Gómez Méndez, 8. José Meza Mercado, 9. Martín Villa Montoya, 10. Manuel Salvador Escorcia and 11. Edgardo Hernández Muñoz. Annex "A" Chart of AUC Captured Personnel BRIM1, Judgment of the Criminal Court

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of the Specialized Circuit, Case Number No. 010/02, February 28, 2003, Annex to the original petition received at IACHR on January 3, 2006.
[FN40] 1. Luis Alberto Flores Rivera, 2. Alberto Antonio Hernández Rodríguez, 3. Mijaiz Antonio Neira Pacheco and 4. Pascual Manuel Villadiego Hernández. Annex "A" Chart of AUC Captured Personnel BRIM1, Judgment of the Criminal Court of the Specialized Circuit, Case Number No. 010/02, February 28, 2003, Annex to the original petition received at IACHR on January 3, 2006.
[FN41] The petitioners refer to the Judgment of the Criminal Court of the Specialized Circuit, Case Number No. 010/02, February 28, 2003, Annex to the original petition received at IACHR on January 3, 2006.
[FN42] The petitioners refer to the judgment of the Chamber of Justice and Peace of the Superior Court of the Judicial District of Barranquilla, Case Number No. 006-2004, February 14, 2007, Annex to the original petition received at IACHR on January 3, 2006.
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22. With respect to establishing the responsibility of State agents, the petitioners indicate that the Military Criminal Investigations Court 109 of the Marine Infantry Fusiliers Battalion 4 of Corozal, Department of Sucre, issued preliminary order no. 088 calling for an investigation to be opened or, otherwise, for an auto inhibitorio ("writ of inhibition" or refusal to proceed) to be issued with respect to the events that occurred between February 14 and 20, 2000. On February 7, 2002 the court issued an auto inhibitorio, on grounds that the existing evidence was insufficient to establish a connection between members of the Armed Forces and the self-defense forces.[FN43]

[FN43] Ministry of Defense, National Navy, Military Criminal Investigations Court 109, Auto Inhibitorio of February 7, 2002, Annex to the original petition received at IACHR on January 3, 2006.
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23. With respect to the disciplinary investigation, the petitioners indicate that on July 25, 2001 the Office of the Procurator General Office (Procuraduría General de la Nación) began disciplinary proceedings against 11 public servants for the massacre of 38 persons in the district of El Salado, and on August 28, 2003 disciplinary charges were brought against four of those public servants. On December 23, 2004 the Office Procurator General Office (Procuraduría General de la Nación) found Colonel Carlos Alberto Sanchez Garcia guilty of "lack of diligence and promptness in responding to orders and of having ignored the severity of the events"[FN44] and it found Captain (Capitán de Corbeta) Héctor Martín Pita Vásquez responsible for "failing to go into combat when he could and should have done so, withdrawing improperly, failing to pursue the enemy when in a capacity to do so with the forces at his command, and failing to provide the necessary assistance."[FN45]

[FN44] The petitioners refer to the non-appealable ruling issued by the Office of the Procurator General (Procuraduría General de la Nación), Massacre of 38 persons in the district of El Salado,

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municipality of El Carmen de Bolívar, page 68, Annex to the original petition received at IACHR on January 3, 2006.
[FN45] The petitioners refer to the non-appealable ruling issued by the Office of the Procurator General (Procuraduría General de la Nación), Massacre of 38 persons in the district of El Salado, municipality of El Carmen de Bolívar, page 80, Annex to the original petition received at IACHR on January 3, 2006.
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24. In short, the petitioners allege that the massacre was perpetrated by a group of approximately 350 paramilitaries operating in the region of Montes de Maria, led by Carlos Castaño,[FN46] with the direct collaboration, through acts and omissions, of members of the government security forces, prior and subsequent to the events.[FN47] They also claim that the ordinary justice system failed to conduct investigations against members of the government security forces allegedly involved, and that only 15 of the more than 350 civilians involved have been tried and convicted.

[FN46] The petitioners indicate that, in a letter addressed to the Ombudsman, Carlos Castaño Gil publicly claimed authorship of the massacre, as then-General Commander of the AUC.
[FN47] The petitioners make direct reference to the alleged involvement of Rodrigo Alfonso Quiñónez Cárdenas, Oscar Eduardo Saavedra Calixto, Camilo Martínez Moreno, Rubén Darío Rojas Bolívar and Euclides Rafael Bossa Mendoza.
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25. Consequently, the petitioners hold the State responsible for violating the right to life, the right to humane treatment and the right to personal liberty protected in articles 4, 5 and 7 of the American Convention, to the detriment of Miguel Antonio Avilez Díaz, Gilfredo Brochero Bermúdez, Emiro Castillo Castilla, Liborio Antonio Cortés Rodríguez, Daniel Francisco Díaz Morales, Juan González, Benjamín José González Anaya (or Benjamín J. González Anaya), Dairo de Jesús González Olivera (or Darío de Jesús González Olivera), Moisés Gutiérrez Causado, Miguel Antonio Martínez Narváez, Manuel Antonio Martínez Rodríguez, Amaury de Jesús Martínez Simanca (or Amauri Martínez), Jorge Eliécer Mercado Vergara, David Rafael Núñez Sánchez, Johnny Alberto Núñez Sánchez (or Yonis Alberto Núñez Sánchez), Ever Alberto Núñez Sánchez, Rafael Antonio Núñez Sánchez, Luis Alfonso Peña Salcedo, Félix Antonio Pérez Salcedo, Daribel Restrepo, Ezequiel Salcedo Montes, Jairo Alvis Garrido, Alejandro Alvis Madrid, Helen Margarita Arrieta Martínez (or Gelen Margarita Arrieta Martínez) , Neivis Judith Arrieta Martínez (or Neldis Judith Arrieta Martínez), Wilfrido Barrios Parra (or Wilfrido Enrique Barrios Parra), Francisca Cabrera de Paternina (or Francisca Elena Cabrera Montes), Edith Cárdenas Ponce (or Edith Marina Cárdenas Ponce), Marco José Caro Torres (or Marcos José Caro Torres), Edgar Cohen Castillo (or Edgar Alfonso Cohen Castillo), Hermides Cohen Redondo, Ornedis Cohen Sierra (or Ornedis Rafael Cohen Sierra), Emiro Enrique Cohen Torres, Manuel del Cristo Chamorro Hernández, Margoth Judith Fernández Ochoa (or Judith Margoth Fernández), Desiderio Lambraño Salcedo (or Desiderio Francisco Lambrano Salcedo), Roberto Segundo Madrid Rodríguez (or Roberto Madrid Rodríguez), Carlos Daniel Martelo Pimienta, Enrique Antonio Medina Rico, Jainer Medina Rodríguez, Fredy José Montes Arrieta, Eduardo Rafael Novoa Alvis (or Eduardo Navas Alvis), Nayibe Osorio Montes,

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Justiniano Pedroza Teherán (or Justiniano Pedrozo Teran), Rogelio Rafael Ramos Olivera (or Rogelio Ramos Olivera), Luis Donaldo Romero Díaz, Luis Pablo Redondo Torres, Edilberto Sierra Castillo (or Edilberto Sierra Mena), Néstor Aníbal Tapias Arias, José Manuel Tapia (or José Manuel Tapias Arias), Rosmira Torres Gamarra (or Rosmira Elena Torres Gamarra), Pedro Aníbal Torres Montes, Eduardo Torres Pérez, Eliseo Torres Sierra, Dora Judith Torres Rivero, Euclides Torres Zabala (Euclides Rafael Torres Zabala), Libardo Trejos Garrido (or Libardo Rafael Trejos Garrido), Éver Urueta Castaño (or Víctor Urueta Castaño), José Irene Urueta Guzmán (or José Irenes Urueta Guzmán) and other persons yet to be identified. They also hold the State responsible for violating the right to life, according to article 4 of the American Convention, of the inhabitants that were murdered by paramilitary groups after their return to Ovejas and El Salado.[FN48]

[FN48] Original petition received at IACHR on January 3, 2006, para. 138.

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26. The petitioners maintain that the State is responsible for violating the right to freedom from slavery enshrined in article 6 of the Convention, to the detriment of the persons who were obliged to play musical instruments and to herd the stolen livestock while the paramilitary were killing other inhabitants of the zone.[FN49] They also hold the State responsible for violating the right to privacy protected by article 11 of the Convention, to the detriment of the persons whose houses were invaded by AUC members, who also insulted the inhabitants and then drove them from their homes.[FN50]

[FN49] Original petition received at IACHR on January 3, 2006, paras. 150-151.
[FN50] Original petition received at IACHR on January 3, 2006, paras. 152-154.

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27. The petitioners argue that the State is responsible for violating the right to property protected in article 21 of the American Convention, to the detriment of the families whose dwellings and machinery were sacked and destroyed and whose livestock were stolen by the perpetrators of the massacre. They also argue that the State failed to fulfill its obligations under article 22 of the Convention with respect to the more than 1,500 families who were displaced, and that it violated article 17 with respect to those whose family unit was disrupted by the displacement, and for whom the State has so far failed to take the steps necessary for their reunification. The petitioners also allege breach of the obligation to take special measures for the protection of the children who were killed, such as Helen Margarita Arrieta Martinez, age 6, and those displaced from Ovejas and El Salado,[FN51] in violation of article 19 of the American Convention.

[FN51] The petitioners allege that some of those displaced by the massacre were children. Original petition received at IACHR on January 3, 2006, para. 157.

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28. The petitioners also hold the State responsible for violating the rights of assembly and freedom of association protected in articles 15 and 16 of the American Convention, to the detriment of the members of ASODESBOL.[FN52]

[FN52] Original petition received at IACHR on January 3, 2006, paras. 166-169.

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29. The petitioners allege that the lack of an exhaustive judicial investigation of the events constitutes a violation of the right to judicial protection established in articles 8 and 25 of the American Convention. They also argue that the State is in breach of its general obligation to ensure respect for the rights enshrined in the Convention and to take legislative measures to this effect. Specifically, they cite the auto inhibitorio issued by the military criminal court, the failure of the ordinary criminal justice system to investigate members of the Armed Forces and other paramilitary members involved in the massacre, and the adoption and application of Law 975, known as the "Justice and Peace Law," and other decrees of similar effect, such as Decree 128 of 2003, as constituting violations of the State's obligations under the Convention.[FN53]

[FN53] Original petition received at IACHR on January 3, 2006, paras. 112-134.

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30. With respect to the requirement of prior exhaustion of domestic remedies, contained in article 46.1.a of the American Convention, the petitioners argue that the exception contained in article 46.2.c is applicable because several years have elapsed since the massacre and yet most of the civilians involved have not been tried, and the criminal liability of State agents has not been established. The petitioners also maintain that the investigations failed to take into account the acts of violence that occurred in the municipality of Ovejas, and the forced displacement of inhabitants of the municipalities of Ovejas and El Carmen de Bolivar, resulting in impunity for those crimes.[FN54]

[FN54] Original petition received at IACHR on January 3, 2006, paras. 80-99.

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31. As to the arguments of the State to the effect that the victims were not individually identified (see Position of the State, below), the petitioners insist that the persons who died in the events in question were fully identified and named in the petition and in subsequent submissions. With respect to the alleged victims of displacement, the petitioners allege that they have identified 706 victims and that they will be able to name the remaining ones during processing of the case.[FN55] In response to the State's arguments about the failure to exhaust domestic remedies with respect to the rights protected in articles 15 and 16, the petitioners leave it to the Commission to examine this question when it considers the merits of the case.

[FN55] Communication from the petitioners, June 29, 2007, paras. 21-31.

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B. Position of the State

32. With respect to the alleged victims of violations of the rights to life, to humane treatment and to liberty, the State considers that the Commission is competent only to examine the claims relating to the 59 persons named in the petition. It affirms that this is not the case with respect to those displaced persons who were killed after returning to El Salado, as their names and the personal data needed to identify them have not been supplied.[FN56]

[FN56] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 13.

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33. The State maintains that, consistent with the interpretation of article 44 of the American Convention in the jurisprudence of the Inter-American System, for a petition to be acceptable there must be specific victims named and identified.[FN57] It argues that the petitioners have failed to identify the 1,500 families they indicate as displaced[FN58] and that they have provided no serious and reliable information on the 706 persons identified as displaced in an annex to their original petition. It also argues that, to demonstrate forced displacement, the relationship to the place from which the person was displaced must be proven, and that the petitioners have provided no information to determine whether the municipalities of Ovejas and El Carmen de Bolivar were the places of residence of the persons identified as displaced, or to show whether they were owners, holders, lessees or merely tenants of the lands they inhabited.[FN59] The State insists that, if the petition is declared admissible, the Commission would only have competence with respect to the 706 persons listed in the annex to the petition only "if and when it can be demonstrated that they were displaced by the events under analysis".[FN60]

[FN57] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 15.
[FN58] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, paras. 15, 19 and 20.
[FN59] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 18. The State also insists on the need for identification numbers for the 706 names supplied by the petitioners “because, as the Social Action Agency's Office for Displaced Persons reported, some names are the same, which makes it difficult to identify these persons within the universe of displaced persons recorded in the system managed by the agency. The State also wishes to know the source from which the petitioners took these names, since the country has a Single Registry of Displaced Persons, that is managed exclusively by the Social Action Agency.”
[FN60] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, section 3, subsidiary claim 4.

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34. With respect to the alleged violation of the rights of assembly and association (articles 15 and 16 of the American Convention), the State maintains that the petitioners submitted groundless allegations that stand in conflict with what the government authorities and the control

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agencies found in their visit to the zone, and with the information provided by the inhabitants of El Salado and by members of ASODESBOL in July 2005.[FN61] It claims that those inhabitants insisted that if the government security forces were withdrawn from El Salado there would be further displacements, and they therefore wanted the Marine Infantry troops to remain in their village.[FN62] The State reports that two acciones de tutela (requests for writs of protection) were filed in 2003, alleging that the presence of the Marine Infantry in El Salado posed a risk to the safety of the inhabitants, and those motions were ruled out of order.[FN63] The State argues that it is impossible to conclude that the presence of the government security forces in itself constitutes a violation of the right to association and assembly, as that presence helps to prevent situations that could threaten the life and safety of the inhabitants. The State also claims that Marine Infantry's presence was confined to open meetings that were attended not only by members of ASODESBOL but also by inhabitants of El Salado, who requested a permanent presence for the government security forces.

[FN61] The State challenges the representation of ASODESBOL and ANDAS and claims that the State must have assurance "at least that the petitioners are acting in the interests of those they represent and in accordance with the mandate granted by them, since the written complaint contains a clear contradiction between what the petitioners are claiming before the Commission and what […] ASODESBOL and the other inhabitants of the district said on other occasions." Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, paras. 9 and 24.

[FN62] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 9.

[FN63] The State reports in its observations that in 2003 two acciones de tutela were filed. One of these was denied by the Administrative Tribunal of Bolívar and the other, filed by the Comisión Colombiana de Juristas, was denied by the Sectional Council of the Judicature of Cundinamarca. In its ruling of January 16, 2004, the Jurisdictional Disciplinary Chamber of the Superior Council of the Judicature of Cundinamarca declared that there were written submissions from many citizens of the District in which they "express their satisfaction with the work of the Military Forces in that place […] [and] that they also feel safe in the town because the Marine Infantry is protecting them." Sectional Council of the Judicature of Cundinamarca, Jurisdictional Disciplinary Chamber, M.P. Rodolfo Pardo Acosta, Acción de Tutela, Rad. 20035387, Bogotá, D.C., January 16, 2004. Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, pages. 10-12.

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35. The State also challenges the petitioners' allegation that the criminal investigations and the subsequent rulings of first[FN64] and second[FN65] instance took no account of the events that occurred in the municipality of Ovejas, or of other crimes committed at the same time as the murder of 38 persons in El Salado[FN66] and that they failed to cover members of State entities who were responsible for the events, as well as the claim that only 15 persons[FN67] were convicted from among the more than 300 members of the AUC who committed the deeds. The State argues that the appeals ruling "could relate only to the points that were appealed and only to the persons who could be identified and who could be shown to have participated in the events at El Salado, in the course of the investigation. For this reason as well, it is impossible to refer to the alleged participation of State agents."[FN68]

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[FN64] The State refers to the judgment of the Criminal Court of the Specialized Circuit, Case Number No. 010/02, out February 28, 2002. Annex to the original petition received at IACHR on January 3, 2006.
[FN65] The State refers to the judgment of the Justice and Peace Chamber of the Superior Tribunal of the Judicial District of Barranquilla, Case Number No. 006-2004, February 14, 2007. Annex to the original petition received at IACHR on January 3, 2006.
[FN66] The State mentions, among other things, the alleged rape of Yesenia Torres Vizcaíno and the displacement of the community after the massacre, among other acts described in the original petition. Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 2.
[FN67] Eliécer de Jesús Hernández Morales, Jacir Alonso Hernández Rivera, Sofanor Hernández Alemán, Eliécer Augusto Guao Arias, Edwin David García Crespo, Sócrates Celedon Díaz, William José Gómez Méndez, José Meza Mercado, Martín Villa Montoya, Manuel Salvador Escorcia, Edgardo Hernández Muñoz and Alberto Antonio Hernández Rodríguez were sentenced to 40 years in prison; Luis Alberto Flores Rivera and Mijaiz Antonio Neira Pacheco were sentenced to 34 years in prison; and Pascual Manuel Villadiego Hernández was sentenced to 30 years and nine months in prison. Judgment of the Criminal Court of the Specialized Circuit, Case Number No. 010/02, February 28, 2002. Annex to the original petition received at IACHR on January 3, 2006. The State maintains that Carlos Castaño Gil was identified as the intellectual author of the massacre but that proceedings were subsequently stayed because of his death, confirmed by a DNA test of remains found in mid-2006. Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 43.
[FN68] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 3.

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36. The State challenges the allegations as to the responsibility of its agents, and claims that in none of the testimony freely given under the Justice and Peace Law to date have any of the demobilized self-defense fighters pointed to members of the government security forces as responsible for the events of Ovejas and El Salado.[FN69] The State notes that the Human Rights Unit extended the investigations to two members of the National Navy, Colonel (R) Carlos Alberto Sánchez García and Captain (Capitán de Corbeta) Héctor Martín Pita Vásquez, and ordered their arrest.[FN70] It also notes that, on January 28, 2008, charges were laid against Captain Pita Vásquez as an accomplice to murder and that on February 1, 2008 the prosecution ordered a halt to the investigation of Colonel (R) Sánchez García.[FN71]

[FN69] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 4.
[FN70] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 45 and Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 4.
[FN71] Observations of the State DDH.GOI No. 8547/0395 of February 18, 2009, page 3.

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37. The State questions the petitioners' claim of omissions in taking the steps necessary to protect the civilian population from incursions by outlaw armed groups, arguing that the government security forces arrested 15 members of the self-defense forces who were convicted for those deeds. It declares that the arrests indicate the commitment of the government security

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forces to combating the self-defense groups and that if there was any act or omission on the part of the government security forces it was an isolated event.

38. As to the claimed failure to provide assistance to the population displaced from Ovejas and El Salado, the State claims that in the months immediately following the events, security conditions were not such as to allow the State to guarantee people's safe return, and for this reason there was no institutional support. It declares that the persons who decided to return at that time were doing so at their own risk. It also notes that in November 2001 planning began for an accompanied return and that in February 2002 the first phase known as "retorno laboral" ("back to work") began, involving 100 male heads of family. During the course of the year more heads of family returned, and by the end of 2002 the population had increased to around 450 families. In 2003, the State notes, the primary and secondary schools began functioning normally, and the support plan formulated by the municipal committee went into action.[FN72]

[FN72] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 4.

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39. The State declares that it provided humanitarian aid and funeral expenses to the families of 29 of the victims who lost their lives in the events in El Salado[FN73] and to the families of the 16 victims who died in the events of February 16 and 17 in the districts of Canutal, Canutalito and Flor del Monte, in Ovejas.[FN74] It also declares that it delivered humanitarian assistance to two persons who had lost their property.[FN75]

[FN73] In the amount of $319,000,000 pesos. Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 80.
[FN74] In the amount of $187,000,000 pesos. Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 82.
[FN75] In the amount of $1,040,000 pesos. Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, para. 83.

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40. With respect to military criminal justice, the State confirms that the preliminary investigation against members of the First Infantry Brigade ended with an auto inhibitorio issued on February 7, 2002, in which the court refused to open a formal investigation against those members, for want of evidence.

41. With respect to the investigation underway in the Human Rights Unit of the Office of the Prosecutor General (case 721 B), the State notes that this relates to the murder of 38 victims in El Carmen de Bolivar, District of El Salado, and 19 victims in Ovejas, districts of Flor del Monte, Canutal and Canutalito.[FN76] During these proceedings several charges have been laid against members of the self-defense groups. The investigation has continued with respect to John Jairo Esquivel Cuadrado alias "El Tigre", on whom security measures have been imposed. As well, Salvatore Mancuso, who was demobilized in 2004 and submitted to the Justice and Peace Law,[FN77] has been charged as an intellectual author. Evidence is also being examined to

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determine the involvement of “Chepe” Barrera, Rodrigo Méndez Peludo and NN El Gordo.[FN78]

[FN76] Observations of the State DDH.GOI No. 8547/0395 of February 18, 2009, page 2.
[FN77] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 44.
[FN78] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, page 45.
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42. Furthermore, the State reports that four actions for direct reparations[FN79] have been instituted, and two group actions[FN80] against the State (Ministry of Defense) to obtain reparations for damages and injury for the extrajudicial execution of 33 persons and the forced displacement caused by the events in Ovejas and El Salado. Four cases are at the evidentiary stage, one case is being analyzed by the judges, and another has been resolved in favor of the State.[FN81]

[FN79] Processes No. 2001-01271, 2001-1940, 2002-0097 and 2002-0210.
[FN80] Processes No. 2002-0005 and 2002-0007.
[FN81] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, pages 18 and 19. Observations of the State DDH.GOI No. 8547/0395 of February 18, 2009, pages. 6 and 7.
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43. With respect to disciplinary actions, the State reports that the Office of the Procurator General (Procuraduría General de la Nación) has opened investigations against four members of the Marine Infantry, as a result of which two were punished, one was suspended for 50 days, and the other has been permanently dismissed from the Armed Forces.[FN82]

[FN82] Observations of the State DDH.GOI No. 20630/0986 of April 26, 2007, paras. 66 and 67.
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44. In its final considerations, the State maintains that these criminal proceedings, together with other steps taken by the State in other instances, demonstrate the effectiveness of the domestic justice system. It insists that the State's response has been comprehensive: in addition to pursuing the judicial aspect, the State was prompt to assume its obligations to the relatives of the victims and to the other persons who were displaced from the region.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

45. The petitioners are in principle entitled by article 44 of the American Convention to submit petitions to the Commission. With respect to the State, the Commission notes that

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Colombia has been a State Party to the American Convention since July 31, 1973, when it deposited its instrument of ratification.

46. With respect to the alleged victims of displacement, the State (see Position of the State, above III.B) maintains that article 44 of the American Convention requires that there be specific victims, named and identified, in order for a petition to be admissible before the Commission. It argues that in this case the petitioners have not identified all the persons who are part of the 1,500 families allegedly displaced by the events in question. Consequently, it considers that the Commission has competence solely with respect to the 706 persons listed as displaced in the annex to the original petition, and only "if and when it can be demonstrated that they were displaced by the events under analysis."

47. On this point, the Commission notes that the wording of article 44 of the Convention places no limits on the Commission's competence in terms of identifying the persons affected by a violation. This is a deliberate omission, intended to allow for the examination of human rights violations that, by their nature, may affect an individual or a group of persons who will not necessarily have been fully identified at the time the petition is submitted.[FN83] The Colombian State is correct in its interpretation to the effect that article 28.e of the Commission's Rules of Procedure[FN84] cannot be invoked to examine general or abstract situations. However, that interpretation is not applicable to the case at hand. The Commission observes that the petition does not constitute an abstract complaint about the situation of displaced persons in Colombia. The factual allegations present circumstances of time and place that affected persons in the districts of Canutal, Canutalito and Flor del Monte, municipality of Ovejas, Department of Sucre, and the district of El Salado, in the municipality of El Carmen de Bolivar, Department of Bolivar. The State moreover has mechanisms for registering displaced persons, for which the Commission considers that there are elements for identifying the great majority of the persons affected by the events in question.

[FN83] See IACHR, Report No. 86/06, Marino López et al., (Operation Genesis), Annual Report of the IACHR 2006, para. 34

[FN84] "Petitions addressed to the Commission shall contain the following information: […] if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;"

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48. In light of these elements, the Commission considers that it is competent ratione personae to examine the complaint submitted with respect to possible violation of the rights of the victims displaced from the districts of Canutal, Canutalito and Flor del Monte, municipality of Ovejas, and from the district of El Salado, municipality of El Carmen de Bolivar, because that complaint relates to individuals in regard to whom the Colombian State is committed to respect and guarantee the rights enshrined in the American Convention.

49. The Commission also has competence ratione loci to consider the petition because it alleges violation of rights that are protected in the American Convention that took place within the territory of Colombia, a State Party to the Treaty. The Commission has competence ratione

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temporis because the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State at the time the alleged events occurred.

50. With respect to the allegations of violations of the Convention of Belém do Pará, the Commission notes that Colombia ratified that Convention on April 12, 2005, and that the events alleged in the petition occurred in 2000, i.e. before Colombia ratified the international instrument. Notwithstanding that fact, the Commission has competence ratione temporis to apply the Convention of Belém do Pará with respect to the alleged instances of denial of justice that occurred subsequent to the State's ratification of the Convention.[FN85]

[FN85] IACHR Report No 73/01, Case 12.350 MZ, October 10, 2001, para. 23.

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51. Finally, the Commission has competence ratione materiae, because the petition alleges violations of human rights protected by the American Convention. With respect to the petitioners' allegations of violations of article 7 of the Convention of Belém do Pará, according to article 12 thereof, the Commission will consider them in accordance with the procedural rules and requirements for submitting and processing petitions as stipulated in the American Convention, the Statutes and the Rules of Procedure of the Commission.

B. Admissibility requirements

1. Exhaustion of domestic remedies

52. Article 46.1.a of the American Convention requires the prior exhaustion of the available domestic legal resources in accordance with generally recognized principles of international law, as a prerequisite for the admission of claims alleging violations of the American Convention.

53. Article 46.2 of the Convention states that the prior exhaustion of domestic remedies need not be required 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.

As the Inter-American Court has established, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are “adequate” for remedying the alleged violation and that the function of those remedies within the domestic legal system is suitable for protecting the violated juridical situation.[FN86]

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[FN86] I/A Court H.R., Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, para. 64

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54. In the case at hand, the State argues that the petition does not satisfy the requirement of prior exhaustion of domestic remedies, stipulated in article 46.1.a of the American Convention, because criminal proceedings into the facts of the complaint are still underway.[FN87] The petitioners, in turn, insist that the exceptions to prior exhaustion of domestic remedies contained in article 46.2.c are applicable to the case, because of blatant delays in the domestic criminal investigation.[FN88]

[FN87] Observations of the State DDH.GOI No. 47606/2599 of September 25, 2007, pages 20-22.
[FN88] Observations of the petitioners received at IACHR on June 29, 2007.

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55. Given the arguments of the parties, the Commission must first clarify which domestic remedies must be exhausted in a case such as this, in light of the jurisprudence of the Inter-American System. The precedents of the Commission establish that, whenever a publicly actionable crime is committed, the State has the obligation to launch criminal proceedings and to see them through to their conclusion,[FN89] and that in such cases this is the appropriate way to clarify the facts, to try those responsible, and to impose the corresponding criminal penalties, as well as to enable other forms of pecuniary reparations. The Commission considers that the facts alleged by the petitioners would constitute violations of such fundamental rights as the right to life, to humane treatment and personal liberty, violations that in domestic law are publicly actionable crimes which the State must investigate and prosecute at its own initiative.

[FN89] IACHR, report 52/97, case 11,218, Arges Sequeira Mangas, paras 96 and 97. See also report 55/97, case 11.137, Abella et al., para. 392.

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56. On this point, the Commission notes that, as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, to preserve evidence, and to safeguard the rights of any person deemed a suspect in the investigation. As the Inter-American Court has held, while any criminal investigation must respect a series of legal requirements, the prior exhaustion rule must never cause international action in support of the defenseless victim to be halted or delayed until it is ineffective.[FN90] In the present case, the prospects that the judicial investigation will be effective are not such as to make it a remedy that must be exhausted before resorting to the international protection of human rights. As the Inter-American Court has ruled, if a remedy is to be considered effective it must be capable of producing the result for which it was designed.[FN91]

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[FN90] I/A Court H.R., Velásquez Rodríguez. Preliminary Objections, Judgment of June 26, 1987, Series No. 1, para. 93.
[FN91] I/A Court H.R., Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, para. 66
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57. The Commission observes that, more than nine years after the alleged events, only 15 civilians have been found criminally responsible. In the investigation conducted in the Human Rights Unit of the Public Prosecutor's Office various charges have been laid against other members of the self-defense forces, and also against a member of the National Navy, but their guilt has never been clearly established.

58. Given the circumstances of this case and the time that has elapsed since the alleged events, the Commission considers applicable the exception of article 46.2.c of the American Convention, relating to unwarranted delay in domestic judicial proceedings, and consequently the requirement of exhaustion of domestic remedies is not required.

59. With respect to the complaint of forced displacement presumably caused by the alleged acts of violence, the Commission notes that the State has not invoked the exhaustion of domestic remedies in relation to this aspect of the petition, and the Commission also observes that this aspect is intrinsically linked to the alleged violations of the rights to life, humane treatment and personal liberty.

60. With respect to the alleged violations of the rights to assembly and freedom of association, enshrined in articles 15 and 16 of the American Convention, the Commission notes these allegations are based on separate incidents as to which the petitioners have not submitted specific information or arguments about the exhaustion of remedies. Consequently, the Commission concludes that those complaints do not satisfy the requirement established in article 46.1 of the American Convention.

61. The exceptions to the exhaustion of domestic remedies rule of article 46.2 of the Convention are closely linked to the finding of possible violations of certain rights enshrined in the Convention, such as the guarantees of access to justice. However, by its nature and purpose, article 46.2 is a rule that operates independently of the substantive rules of the Convention. Consequently, the question of whether the exceptions to the exhaustion of domestic remedies rule are applicable to this case must be decided in advance of and separate from the analysis of the merits of the case, for it depends on a different standard of appreciation from that is used to determine the violation of articles 8 and 25 of the Convention. The causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the Commission's report on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

2. Filing period

62. The American Convention establishes that, for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged

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victim was notified of the final judgment. In the case at hand, the IACHR has determined the applicability of the exceptions to the exhaustion of domestic remedies contained in article 46.2.c of the Convention. On this point, article 32 of the Commission's Rules of Procedure requires that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

63. In the present case, the petition was received on January 3, 2006; the events alleged in the complaint relate to the period between February 15 and 19, 2000, and their effects in terms of alleged flaws in the administration of justice extend to the present time. Therefore, in light of the context and the characteristics of the present case, and the fact that an investigation is still pending, the Commission considers that the petition was presented within a reasonable period of time and that it satisfies the admissibility requirement relating to the time limit for presentation.

3. Duplication of international proceedings and res judicata

64. Nothing in the case file indicates that the substance of the petition is pending a decision in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

65. In light of the elements of fact and of law presented by the parties and the nature of the matter presented to it, the IACHR considers that the petitioners' allegations as to the scope of the presumed responsibility of the State for the events covered by the petition could characterize violations of the rights to life and humane treatment, the freedom from slavery, to personal liberty, right to privacy, the rights of the family, the rights of the child, the right to property, the freedom of movement and residence, the right to a fair trial and judicial protection covered in articles 4.1, 5.1, 5.2, 6.2, 7.2, 11, 17, 19, 21.1, 22.1, 8.1 and 25, in connection with article 1.1 of the American Convention and article 7 of the Convention of Belém do Pará.

66. With respect to the alleged violation of article 19, in accordance with the standards of interpretation established in the American Convention on Human Rights,[FN92] as well as the criteria established by the Inter-American Court of Human Rights with respect to the tendency to integrate the regional and universal systems,[FN93] and in light of the body of law relating to children,[FN94] the Commission will interpret the scope and contents of the rights alleged to have been violated to the detriment of six-year-old Helen Margarita Arrieta Martinez, the children allegedly executed, the girls allegedly raped, and the children displaced from Ovejas and El Salado, in light of the provisions of the United Nations Convention on the Rights of the Child.[FN95]

[FN92] American Convention article 29. “No provision of this Convention shall be interpreted as:

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b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another Convention to which one of the said states is a party;"

[FN93] I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Article 64 American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Series A No. 1, para. 41.

[FN94] I/A Court H.R., Case of the"Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 194. Case of the "Juvenile Reeducation Institute" Judgment of September 2, 2004. Series C No. 112, para. 148, Case of the Gómez-Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 166. I/A Court H.R., Judicial Status and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras 24, 37, 53.

[FN95] This Convention was adopted on November 20, 1989 and came into effect on September 2, 1990. The Colombian State ratified the Convention on the Rights of the Child on January 28, 1991.

V. CONCLUSIONS

67. The Commission concludes that it is competent to examine the complaints presented by the petitioners relating to alleged violations of articles 4.1, 5.1, 5.2, 6.2, 7.2, 8.1, 11, 17, 19, 21.1, 22.1 and 25, in connection with article 1.1 of the American Convention and article 7 of the Convention of Belém do Pará, and that those complaints are admissible, in accordance with the requirements established in articles 46 and 47 of the American Convention. Furthermore, the Commission concludes that the claims related to the alleged violations of Articles 15 y 16 of the American Convention are inadmissible.

68. Based on the foregoing considerations of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards articles 4.1, 5.1, 5.2, 6.2, 7.2, 8.1, 11, 17, 19, 21.1, 22.1 and 25, in connection with article 1.1 of the American Convention and article 7 of the Convention of Belém do Pará.
2. To give notice of this decision to the Colombian State and to the petitioners.
3. To continue with its analysis of the merits of the complaint.
4. To publish this decision and to 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 19th day of the month of March 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.