I. BACKGROUND

1. On March 1, 2004, the IACHR (henceforth "the Inter-American Commission" or "the IACHR") received a petition lodged by the Asociación para la Promoción Social Alternativa (MINGA), (henceforth "the petitioners"), pleading the international responsibility of the Republic of Colombia (henceforth "the State") for the death of the social leader and human rights defender José Rusbell Lara, on November 8, 2002, in the municipality of Tame, department of Arauca and lack of judicial clarification of the facts.

2. Petitioners indicated that the facts denounced were violations of the rights enshrined in Articles 4, 8, 13, 16 and 25 of the American Convention on Human Rights ("the American Convention") in connection with the obligations derived from Article 1(1) of the said international instrument. The State indicated that the complaint is inadmissible because remedies under domestic law were not exhausted. According to the State, in this case there has not been unwarranted delay of investigations owing to the complexity of the matter. Regarding the admissibility of the complaint, the petitioners indicated that the requirement of prior exhaustion of remedies under domestic law is not applicable owing to the unwarranted delay in the investigation of the facts reported. They consider that the complaint is admissible under the exception enshrined in Article 46(2) (c) of the American Convention.

3. Following the analysis of the positions of the parties, the Commission concluded that, without prejudging the merits of the case, it has the competence to decide on the complaint submitted by the petitioners and, therefore, decides that the case is admissible according to Articles 46 and 47 of the American Convention regarding the alleged violations to the rights

enshrined in Articles 2, 4(1), 8(1), and 25 of this instrument, in relation with its Article 1(1), and declared the petition inadmissible with regard to the rights enshrined in Articles 13 and 16 of the same international instrument.

II. PROCEDURES BEFORE THE COMMISSION

4. On July 29, 2002, the petitioners requested the implementation of precautionary measures in order to protect the life and personal integrity of 14 social leaders and human rights defenders from the department of Arauca, including José Rusbell Lara. That same day, the Commission requested the Colombian government to implement precautionary measures under the number 218/02.[FN1] On November 8, 2008 petitioners informed the IACHR that José Rusbell Lara had died as a result of an attack with a firearm. On November 12, 2002, the IACHR declared, in a press release, its repudiation against the circumstances in which the beneficiary of the precautionary measures died.[FN2]

[FN1] See Informe Anual de la CIDH 2002 OEA/Ser.L/V/II.117. Doc.1 rev. 1, Chapter III, Precautionary Measures, paragraph 38.
[FN2] See Press Release 45-02, available in: http://www.cidh.oas.org/Comunicados/English/2002/45.02.htm

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5. On March 1, 2004, the petitioners requested the IACHR to examine a "petition on the violation of the precautionary measures beneficiaries' conventional rights". On December 6, 2004, the IACHR asked the petitioners to provide additional information. On March 29, 2006, the complaint on the death of José Rusbell Lara was registered under the number P1514/05. On April 27, 2006 and February 7, 2007, the petitioners submitted additional information. On February 22, 2007, the IACHR transferred the relevant sections of the complaint to the State and requested the submission of observations within a two-month term, pursuant to Article 30(2) of the Rules of Procedure.

6. The State submitted an answer on May 31, 2007 and the corresponding appendixes on June 22, 2007. Such answer was sent to the petitioners for their observations on September 18, 2007. On May 8, 2008, the IACHR reiterated the petitioners' observations. On May 12, 2008, the petitioners submitted their answer, which was sent to the State for observations on May 16, 2008. On July 18, 2008, the State presented its answer. On August 27, 2008, the petitioners filed a request for a hearing, which was denied.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners claim that from the year 2000, members of the Armed Forces and paramilitary groups conducted "criminal actions towards groups of populations that favored the insurgence and social leadership" in the department of Arauca.[FN3] They indicate that Mr. José

Rusbell Lara was a well-known human rights defender in the municipality of Tame and member of the directive board of the Human Rights Regional Committee "Joel Sierra".

[FN3] Petitioners' Observations of February 7, 2007, page 3.

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8. They state that on November 8, 2002 at around 1:00 p.m., when Mr. José Rusbell Lara was going to supervise a construction work where he worked as building contractor, he was attacked by two "paramilitaries [who] usually patrolled the urban area in Tame." They state that "[…] without saying anything they shot him [in] the head at point-blank range with a handgun, leaving him severely injured"[FN4], afterwards two people took him to the Hospital of Tame, where he died at 2:00 p.m. that same day.

[FN4] Petitioners' Observations of February 7, 2007, page 4.

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9. The petitioners indicate that the urban area of Tame has a Battalion of the National Army, a police post and an agency of the Department of Administrative Security (Departamento Administrativo de Seguridad - DAS). However, they state that none of such institutions carried out actions to arrest the alleged murderers of Mr. Lara.

10. They claim that the State is responsible for the violation of the right to life since at the time of the murder Mr. Lara was beneficiary of precautionary measures. They specifically indicate that the risk study carried out within the framework of the precautionary measures No. 218/02 concluded that Mr. José Rusbell Lara was exposed to low risk and, therefore, he had not taken any self-protection measures. They indicate that, as shown in the procedures of the precautionary measures No. 218/02, three days before the murder of José Rusbell Lara, the State presented information that confirms that to that date, Mr. José Rusbell Lara did not enjoy any protection scheme and that the security technical study had not been carried out.[FN5] They indicate, therefore, that the authorities did not fulfill their obligation of taking the measures needed to protect his life and personal integrity.

[FN5] Petitioners quote the note made by the State dated November 5, 2002, where it states that "the Departamento Administrativo de Seguridad –DAS was asked to carry out the Technical Study of Risk Level and the National Police was required to take protective security mechanisms". Petitioners' Observations of May 16, 2008, page 5.

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11. In response to the arguments of the State regarding the adoption of administrative measures favoring Mr. Lara (as the delivery of a mobile phone and a self-protection handbook) by virtue of the precautionary measures (see Infra III.B), they indicate that the mobile phone was delivered before the precautionary measures entered into force, and that in any event it was not an effective protection measure since it lacked the capacity of "minimizing the risk resulting

from the action of criminal groups who harassed and threatened Mr. José Rusbell Lara." With regard to the self-protection handbook or the security recommendations given to the President of the Joel Sierra Human Rights Regional Committee, the petitioners indicated that these cannot be considered effective measures to mitigate the risk "resulting from the action of paramilitary groups that were acting sponsored by and in collusion with the public forces" and that they would be insufficient to guarantee the duty of protection and guarantee on the part of the State.[FN6]

[FN6] Petitioners' Observations of May 16, 2008, page 2.

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12. Likewise, the petitioners claim that the "murder of Mr. José Rusbell was carried out as retaliation against his opinions and to punish his membership to a Human Rights NGO and, therefore, the said conventional rights were undeniably also damaged".[FN7] They, therefore, plead the violation of the rights protected under Articles 13 and 16 of the American Convention.

[FN7] Petitioners' Observations of May 16, 2008, page 10-11.

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13. With regard to the judicial clarification of Mr. José Rusbell Lara's death, the petitioners indicate that the Public Prosecutor Office of Tame started a preliminary investigation on November 26, 2007 and that on September 1, 2003, the investigation was transferred to the Human Rights National Unit of the Public Prosecutor Office, Support Unit of Cúcuta, under the investigation number 1777. They plead that the witness Jaime Orlando Reuto Manosalva would have been murdered on January 29, 2005 in response to his accusations of collusion between local authorities and paramilitary groups. They indicate that a resolución inhibitoria ("writ of inhibition" or refusal to proceed) was issued on January 31, 2005 to file a preliminary investigation owing to the impossibility of identifying the alleged perpetrators of Mr. José Rusbell Lara's death. The resolución inhibitoria ("writ of inhibition" or refusal to proceed) was revoked on June 14, 2005 and the gathering of evidence was ordered. They indicate that on April 11, 2007, the prosecutor ordered the opening of criminal proceedings against Victor Manuel Mejía Múnera and Miguel Ángel Melchor Mejía Múnera, as alleged (intellectual) co-perpetrators of murder. Petitioners claim that the State is allegedly responsible for the violation of Articles 8 and 25 of the Convention, by virtue of the delay in the substantiation of the criminal proceedings, which would have generated the denial of justice.

14. Additionally, petitioners indicate the Delegate Office of the Procurator General for the Defense of Human Rights opened a disciplinary inquiry; file 879-780-2002, in order to investigate the possible perpetration of disciplinary transgressions on the part of public officials who did not took the protection measures in favor of José Rusbell Lara, such as the departmental commander of the Arauca Police. On July 7, 2005 it was determined that the Police had not perpetrated any "misconduct in the disciplinary right" and, therefore, the case was closed.[FN8]

[FN8] With regard to the file of the prior decision, the petitioners alleged that such resolution was based on inaccurate information, including the statement that the security scheme was located in the municipality of Saravena, where Mr. Lara supposedly lived. According to the petitioners, this statement was false because no security scheme had been set in the municipality of Saravena to protect the beneficiaries living in that area. Additionally, the petitioners stated that until the day when Mr. José Rusbell Lara died, he had established his address in the urban area of the Tame municipality. Petitioners' Observations of February 7, 2007, page 6.

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15. Based on the afore-mentioned arguments, the petitioners claim that the State is responsible for the violation of the rights protected under Articles 4, 8, 13, 16 and 25 of the American Convention.

16. With regard to the exhaustion of remedies under domestic law, the petitioners claim that the identification of the alleged material perpetrators responsible for Mr. José Rusbell Lara's death is pending. With regard to the intellectual perpetrators, they indicate that the investigation has only involved the twins Mejía Múnera "paramilitary chiefs and drug traffickers who acted as chiefs of the paramilitary group allegedly responsible for the […] crime".[FN9] They indicate that the paramilitary leader Víctor Manuel Mejía Múnera is one of the United Self-Defense Forces of Colombia (AUC) leaders whose extradition has been requested by the United States to the Government of Colombia. They also claim that the investigation of the government officers who disregarded their obligation of protecting Mr. Lara's right to life and personal integrity is also pending. Based on the above-mentioned, they pledge that the complaint should be exonerated from the prior exhaustion of remedies under domestic law required by Article 46(1) of the American Convention and that the situation is in line with the exceptions of Article 46(2)(c) of the American Convention.

[FN9] Petitioners' Observations of February 7, 2007, page 7.

B. Position of the State

17. The State acknowledges that Rusbell Lara was murdered in November 2002, while "he was under the protection of precautionary measures [No. 218/02]". It indicates that in compliance with the precautionary measures a list of recommendations was given to Mr. Vicente Murillo Tobo, President of the "Joel Sierra"Human Rights Regional Committee, in order to "minimize any risk factor to which [the members of such Committee] were exposed"; that direct phone numbers of the Commander of Station were provided to meet their own requirements; and that the members of the "Joel Sierra" Committee were asked to inform the police authorities on any change of address and displacement of its members in order to enable the authorities to take security measures in the other municipalities of the department. [FN10]

[FN10] Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 26791/1269 of May 29, 2007, page 4.

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18. With regard to the situation of Mr. José Rusbell Lara, it indicates that on January 1, 2002, the Comité de Reglamentación y Evaluación de Riesgos (Committee of Risk Regulation and Assessment) of the Ministry of the Interior gave him a mobile phone. It states that the Head Office of Intelligence of the National Police of Arauca classified the risk of Mr. José Rusbell Lara as medium, taking into account that in Arauca there was a strong influence of armed groups outside the law. It states that he enjoyed preventive protection for minimizing the risk conditions and vulnerability owing to his activity. However, by virtue of the "constant displacement of Mr. Lara through the rural areas of Tame and Saravena, it was impossible to assign a scheme other than the scheme reported". Additionally, the State indicated that Mr. Lara lived in the municipality of "Saravena and not in the [municipality] of Tame, where he died. Therefore, the basic security scheme was located in his municipality of residence where the 'Joel Sierra' Committee was based."[FN11]

[FN11] Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 26791/1269 of May 29, 2007, pages 4 and 5.

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19. The State indicates that it does not pretend to open a discussion on the effectiveness of the administrative measures to fulfill the precautionary measures, since such discussion should be addressed in the merits stage and the IACHR Rules of Procedure indicate that the provision of precautionary measures do not constitute prejudgment on the merits of the case. In this regard, it indicates that the statement made by the petitioners regarding the "alleged responsibility of the State" for Mr. Lara's death when he enjoyed precautionary measures, due to a supposed non-compliance with its duty to protect constitutes a prejudgment of the responsibility of the Colombian State, involves an early sentence, and therefore, the petitioners' arguments should be rejected by the Commission.

20. It indicates that on November 14, 2002, the Delegate Office of the Procurator General for the Defense of Human Rights carried out an investigation to identify the possible disciplinary responsibility in the execution of Mr. Lara's protection scheme (file 0008-79780-02). On July 7, 2005, investigations were closed due to lack of evidence on the either direct or indirect involvement of public officials in the murder of Mr. Lara. The decision indicates that by "moving from one town to another in a careless and reckless way [Mr. Lara], assumed the risks and consequences of his actions […]". Remedies were not lodged in national courts regarding the decision of closing such investigation and, therefore, it was confirmed on July 25, 2005. [FN12]

[FN12] The State indicates that it only "reported the information that the office of the prosecutor had found in the disciplinary process opened to examine the facts of this case and that such statements were not a formal and final opinion of the State regarding this particular case". Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 36477/1790 of July 18, 2008, page 3.

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21. With regard to the exhaustion of remedies under domestic law, the State claims that the unwarranted delay was not verified in the administration of justice, as the petitioners declare. In this regard, the State indicates that on November 12, 2002, the Commander of the Batallón Ingenieros No. 18 presented a claim for Mr. José Rusbell Lara's death before the Sectional Public Prosecutor assigned to the Criminal Circuit Courts of the city of Arauca. On November 26, 2002, the Sectional Prosecutor Office of Tame ordered the opening of preliminary investigation, prior inspection of Mr. Lara's corpse by the Police. On September 1, 2003, by means of the Resolution No. 001260, the case was transferred to the Human Rights and Humanitarian Law National Unit of the Public Prosecutor Office. On October 1, 2003, the Human Rights and Humanitarian Law National Unit of the Public Prosecutor Office ordered various inquiries to clarify the facts. In November 2004, Mr. Jaime Orlando Reuto Manosalva, Major of the municipality of Tame at the time when the facts occurred, declared that Mr. Lara belonged to a human rights organization and that the alleged perpetrators were the United Self-Defense Forces of Colombia (AUC), since alias "Caremica" and "Mazudo" had threatened him. On January 31, a resolution of dismissal of such cause was pronounced. On June 14, 2005 the latter resolution was revoked and the gathering of evidence was ordered.

22. On January 29, 2005, witness Jaime Orlando Reuto Manosalva died. By virtue of this, the investigation was assigned to the Prosecutor 42 of the Human Rights Unit. Such investigation concluded that the alleged perpetrators of Mr. Lara's death were members of the Bloque Vencedores de Arauca of the United Self-Defense Forces of Colombia (AUC). On April 11, 2007, the resolution to open criminal proceedings against Victor Manuel Mejía Múnera and Miguel Ángel Melchor Mejía Múnera as alleged perpetrators of the murder of Mr. José Rusbell Lara was ordered. The State indicates that the arrest warrant was issued against brothers Mejía Múnera who were initially subject to the demobilization process and the Justice and Peace Law, and that after they abandoned such process. Victor Manuel Mejía Múnera died on April 29, 2008 in the municipality of Tarazá, Antioquia, in a confrontation with the National Police and Head Office of Judicial Police (DIJIN). Miguel Ángel Melchor Mejía Múnera was captured in May 2008 in the municipality of Honda, department of Tolima and was linked again to the proceedings of Justice and Peace Law, by means of which the voluntary deposition proceedings started on July 2, 3 and 4, 2008, in which he referred to Mr. José Rusbell Lara's death. The State indicates that the seizure of Mr. Miguel Ángel Melchor Mejía Múnera as alleged intellectual perpetrator of the murder is essential to establish "not only the way it was planned and executed […] but mainly to know the causes of the murder of Mr. Lara […]".[FN13] It is, therefore, an important achievement in the identification of the material perpetrators of the facts described in the complaint.

[FN13] Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 36477/1790 of July 18, 2008, page 10. The State indicated that Víctor Mejía Múnera was requested by the Court of the Columbia District in United States for drug trafficking. Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 26791/1269 of May 29, 2007, page 13. Footnote 15.

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23. The State indicates that, as acknowledged by the Inter-American Court, the criminal proceedings are the adequate remedy that should be exhausted in any similar case and that the afore-mentioned is still unresolved in the domestic court. Likewise, it states having fulfilled its duty of executing an ex officio investigation through the Office of the Attorney General of the Nation. It claims that the actions described show the "will of the judicial and police authorities, and in general of the Colombian State, to clarify Mr. Lara's death."[FN14]

[FN14] Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 36477/1790 of July 18, 2008, page 9.

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24. With regard to the alleged delay in the criminal proceedings, claimed by the petitioners, the State considers that the complexity of the case should also be considered. Thus, the State argued that in the municipality of Tame, where Mr. Lara was murdered, there was a strong presence of guerrilla and paramilitary groups.[FN15] It states that the modus operandi of the self-defense groups is characterized by the destruction or concealment of the evidence that might lead to identify the material elements of the crime and, therefore, it was difficult for the public prosecutor office to identify or individualize the perpetrators. Consequently, it alleges that in the present case, the context of the municipality of Tame, the characteristics of the crime and mainly the modus operandi of the self-defense groups in the area should be considered. In this regard, it indicates that several procedural pieces of the criminal proceedings related to the murder of Major Reuto had to be cross-examined to identify the perpetrators of the crime. In conclusion, the Colombian State alleges that the complexity of this case is evident and, therefore, the plea of exception of the rule of prior exhaustion of remedies under domestic law is not justified.

[FN15] The State specifically indicated that Tame, Arauca had a strong presence of fronts 10 and 45 of the Revolutionary Armed Forces of Colombia (FARC), and of front Domingo Laín Sáenz of the National Liberation Army (ELN) and the Bloque Vencedores de Arauca from the United Self-Defense Forces of Colombia (AUC).

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25. On the other hand, the State indicates that petitioners did not use the remedy of direct reparation before the administrative jurisdiction in the domestic court. In this regard, it indicated that such action is the appropriate remedy for reparations in the domestic legal system owing to the alleged responsibility of the State. The State argues that such remedy has a two-year statute

of limitations period and, therefore, it prescribed in November 2004. It indicates that according to the Colombian law, the action of direct reparation cannot be activated by the State and, therefore, since the alleged victims did not initiate such remedy "they decided to tacitly renounce to the right of obtaining pecuniary damages in agreement with the domestic legal system".[FN16] According to the State, the prior situation inhibits the Commission from analyzing certain matters that only could be subject to its jurisdiction if the adequate and effective remedies, in compliance with the domestic legal system, have been exhausted.

[FN16] Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores de la República de Colombia, Note DDH GOI 36477/1790 of July 18, 2008, page 15.

IV. ADMISSIBILITY ANALYSIS

A. Competence of the Commission ratione materiae, ratione personae, ratione temporis and ratione loci

26. The petitioners are eligible in principle under Article 44 of the American Convention to submit petitions to the Commission. The petition indicates that the alleged victim is person, for whom the Colombian State has undertaken to respect and guarantee the rights established in the American Convention. As for the State, the Commission notes that Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. The Commission therefore has ratione personae competence to examine the petition.

27. The Commission has ratione loci competence to examine the petition, because it alleges violations of rights protected in the American Convention that allegedly occurred in the territory of Colombia, a State Party to that treaty. The Commission has ratione temporis competence because the obligation to respect and guarantee the rights protected in the American Convention was in force for the State when the facts alleged in the petition were said to have occurred. Finally, the Commission has ratione materiae competence because the petition alleges violations of rights protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of remedies under domestic law

28. Article 46(1)(a) of the American Convention stipulates as a requirement for admission of a petition alleging violations of the Convention that remedies under domestic law have been exhausted in accordance with generally recognized principles of international law.

29. Article 46(2) of the Convention provides that the requirement for exhaustion of domestic remedies shall not be 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

According to the Inter-American Court, whenever a State alleges a failure to exhaust domestic remedies, it must demonstrate that there are remedies that remain to be exhausted and that they are "adequate," which means that the function of those remedies within the legal system is suitable to address an infringement of a legal right.[FN17]

[FN17] Article 31(3) of the IACHR's Rules of Procedure. See also I/A Court H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, paragraph 64.

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30. In the present case, the State alleges that remedies under domestic law have not been exhausted, in agreement with Article 46(1)(a) of the American Convention. Firstly, it alleges that the criminal proceedings regarding the facts of the claim is still outstanding and that the exception stipulated in Article 46(2)(c) of the Convention is not applicable, and that the investigation has been carried out in a serious and efficient manner and that important progress has been achieved in identifying the responsibility of involved individuals. It alleges that a final resolution has not been achieved owing to the complexity of the matter regarding the involvement of illegal self-defense groups and their modus operandi to destroy the evidence. It, therefore, considers that there was not unwarranted delay. The petitioners, for their part, allege there has been an unwarranted delay in the criminal proceedings at the internal level and therefore claim that the exception set out in Article 46(2)(c) of the American Convention is applicable. The State alleges that the petitioners did not initiate a proceeding in the administrative jurisdiction.

31. To this respect, the Commission observes that, as a rule, a criminal investigation should be promptly carried out in order to protect the interests of the victims, to preserve the evidence and to safeguard the rights of any person that in the context of the investigation is considered suspicious.[FN18] In general, the passing of time decreases the perspective of the investigation effectiveness. The Commission observes that having passed approximately seven years after the occurrence of the facts of the complaint, the criminal investigation is still in its evidence gathering stage. It is also observed that while twins Mejía Múnera –leaders of the Bloque Vencedores de Arauca– were identified as possible intellectual perpetrators, the material perpetrators have not been yet identified. Besides, the IACHR understands that Víctor Manuel Mejía Múnera died in an operation carried out by the police and that while his brother Miguel Ángel Melchor Mejía Múnera had provided his voluntary deposition under the Justice and Peace Law, his extradition to the United States has already been confirmed.

[FN18] IACHR. Report No. 87/06 (Admissibility). Carlos Alberto Valbuena and Luis Alfonso Hamburger Diazgranados, Colombia. October 21, 2006, paragraph 25.
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32. 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.

33. 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.

34. With regard to the disciplinary and administrative jurisdiction, the Commission has previously[FN19] stated that such proceedings are not adequate remedies to analyze the admissibility of a complaint before the Commission. The disciplinary jurisdiction is not sufficient to judge, sanction or redress the consequences of violations of human rights. The administrative jurisdiction is a mechanism aimed at supervising the administrative activity of the State that only allows obtaining a compensation for damages caused by the action or omission of State agents. Consequently, in this case there is no need to exhaust such remedies before going to the Inter-American System.

[FN19] IACHR. Report No. 74/07 (Admissibility). José Antonio Romero Cruz and others, Colombia. October 15, 2007. Paragraph 34.
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2. Deadline for presentation of petitions

35. The American Convention stipulates that for a petition to be admissible it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the petition under analysis, the IACHR has recognized applicability of the exceptions to the exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention. On this matter, 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.

36. With regard to this complaint, the Commission has concluded that the exception of the requirement of exhaustion of remedies under domestic law is applicable and, therefore, the IACHR shall decide whether the petition was lodged within a reasonable time in relation with the specific circumstances. The Commission observes that the petition was lodged on March 1, 2004, two years after the occurrence of the facts. Besides, the corresponding criminal proceedings are in an initial stage and the claims presented are related to an alleged delay and denial of justice. Consequently, the Commission considers that the petition was lodged within a reasonable period considering the characteristics of the facts denounced and the procedural activity of the State entities and, therefore, this admissibility requirement has been met.

3. Duplication of procedures

37. There is no indication in the file that the subject of the petition is pending in another international proceeding for settlement or that the petition is substantially the same as one previously examined by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the alleged facts

38. For the purposes of admissibility, the Commission must decide whether the facts described in the petition are violations of the rights enshrined in the American Convention, as described in the requirements of Article 47(b) and whether the petition needs to be disregarded for being "manifestly groundless," or "obviously out of order," in agreement with Article 47(c). The IACHR must carry out a prima facie examination to establish whether the petition claims facts that might be violations of the rights protected by the American Convention, not to establish the existence of alleged violations to the American Convention. This examination is not a prejudgment or anticipation of findings on the merits

39. The Commission observes that the petitioners have failed to support their arguments on the alleged violation of the rights enshrined in Articles 13 and 16 of the American Convention and, therefore, there are not elements in this stage to declare such complaints admissible.

40. Based on the analysis of the arguments presented by both parties, the Commission does not consider that the petitioners have formulated "manifestly groundless" or "obviously out of order" claims on Articles 4(1), 8(1) and 25 of the American Convention. If true, the allegations on the right to life could constitute violations of Articles 4(1) of the American Convention in connection with the affirmative obligation to adopt measures for the protection of a beneficiary of precautionary measures granted by the IACHR as well as the responsibility of the State in the appearance of paramilitary groups, allegedly responsible for José Rusbell Lara's death.

41. Also the Commission, iura novit curiae, shall consider in the merits phase the possible failure to comply with the obligation set forth in Article 2 of the American Convention in connection with the decision to extradite one of the alleged intellectual perpetrators of José

Rusbell Lara's death to the jurisdiction of a third State[FN20] while he was at the disposal of the judicial authorities charged with the implementation of the so called Law of Justice and Peace.[FN21]

[FN20] See IACHR Annual Report 2008, Chapter IV, Colombia at http://www.cidh.oas.org/annualrep/2008eng/Chap4eng.htm#COLOMBIA

[FN21] On June 22, 2005, the Congress of the Republic passed Law 975 (2005), which entered into force once the president signed it on July 22, 2005. When reviewing the constitutionality of this law, the Constitutional Court found that demobilized paramilitaries who committed crimes during the armed conflict and who apply for the benefits of Law 975 will have to cooperate with justice so that the victims' rights to the truth, to justice, to reparations, and to non-repetition can be realized. Constitutional Court, Case D-6032, Judgment C-370/06, made public on July 13, 2006

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42. In conclusion, the IACHR considers that, if the statements declared by the petitioners regarding the rights to life, fair trial and judicial protection prove to be true, they could constitute violations of Articles 2, 4(1), 8(1) and 25 of the American Convention, in connection with Article 1(1) of such international instrument.

V. CONCLUSION

43. The Commission concludes that it is competent to examine the petitioners' complaints of the alleged violation of Articles 2, 4(1), 8(1), and 25 in connection with Article 1(1) of the American Convention and that these are admissible under the requirements set forth in Articles 46 and 47 of the American Convention. The Commission also concludes that the complaint on the alleged violation of the rights enshrined in Articles 13 and 16 of the American Convention is inadmissible.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible as regards Articles 2, 4(1), 8(1), and 25 in connection with Article 1(1) of the Convention.
1. To declare the complaint related to the rights enshrined in Articles 13 and 16 of the American Convention inadmissible.
2. To notify this report to the petitioners and to the State.
3. To continue the analysis of the merits of the case.
4. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of the month of August 2009. (Signed) Luz Patricia Mejía, 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.