REPORT No. 51/10[1]
PETITION 1166-05
ADMISSIBILITY
TIBÚ MASSACRES
COLOMBIA
March 18, 2010

I. SUMMARY

1. On October 18, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by the Association for Alternative Social Promotion (MINGA) (hereinafter "the petitioners") alleging that in the municipality of Tibú, department of Norte de Santander, on May 29, 1999, 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 Alfredo Muralla, Gerardo Méndez, Jorge Camilo González Prada, José Rafael Claro Ortiz, and Omar Osorio; that on July 17, 1999, they killed Henry Alonso Soto Suárez, Juan de Dios Mendoza, Luis Alfonso Guerrero García, Atelmo Rodríguez Romero (or Atiliano Rodríguez Romero), Hender Leonardo Avendaño Pineda, Nelson Rodríguez Mogollón, Francisco Franky Pérez, Marcelino Arenas Caicedo, Álvaro Ortega Valderrama, Luis Lara, and Luis Enrique Díaz, and violated the physical integrity of Andrés Bermon Martínez; and that on August 21, 1999, they killed José Joaquín Losada Espinosa, José Benedicto Duarte Bermúdez, Eulogio García Ruiz, Alfonso Mejía Bonilla, Orlando Morales Quintero, Humberto Becerra, Eugenio Marin Bedoya, Elizabeth Umbarina Laguado, José Alfonso Cacua Castilla, Jhon Jairo Romeo Roa, Nelson Ascanio Castilla, José Manuel Villegas Mendoza, Gabriel Ángel Ortiz Rodríguez, Juan José Molina Barrera, Yolanda Esthela Sánchez, Alfonso Rojas Roso, José Guillermo Serrano Hernández, Ramiro Rojas Medina, Pedro Caadena Peñaloza, Lencer Vargas Alvis, Humberto Quintero Santander y Gerardo Rangel, Sonia Montejo Álvarez, Pedro Herrea Trigos, Juan Heli Mosquera, Jairo Cáceres Silva, Daniel Antonio Bayona, Alcira María Guerrero, and Mariela Buitrago.[2] They also allege that the paramilitary incursion of May 29, 1999, caused the forced displacement of 2,670 identified individuals[3] and approximately 830 persons still not identified.

2. The petitioners claimed that the State was responsible for violating the right to life, to humane treatment, to personal liberty, the rights of the child, to private property, to movement and residence, to a fair trial, and to judicial protection, as established in Articles 4, 5, 7, 8, 19, 21, 22, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in conjunction with the obligation to respect rights set forth in Article 1.1 thereof. With regard to the admissibility of their claims, the petitioners invoked the exceptions to the rule requiring the prior exhaustion of domestic remedies provided for in Article 46.2 of the American Convention.

3. In turn, the State maintained that the petitioners' claims were inadmissible on the grounds that the criminal and civil judicial remedies for protecting the right to property had not been exhausted, nor had the *amparo* relief remedy, and because there were still proceedings pending before criminal, administrative, and disciplinary venues. It also held that the IACHR lacked the competence to analyze claims regarding the displacement of persons who had not been fully identified.

4. After analyzing the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the IACHR, 4.1, 5.1, 8.1, 19, 21, 22, and 25 of the

[1] As provided by article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in discussing or deciding this case.

[2] They also claim that on August 21, 1999, an unidentified nine-year-old boy was killed. Original petition received on October 18, 2005, p. 2.

[3] In the original petition the petitioners submitted a list of 254 identified individuals and referred to a total of 3,500 alleged victims of displacement. See Annex 1, List of 2,670 alleged victims of displacement, list included with the petitioners' comments submission received on October 25, 2007.

American Convention, in conjunction with Article 1.1. The Commission also decided to find the case inadmissible for examining the petitioner's contentions regarding the alleged violation of Articles 7 of the American Convention, thereof, to notify the parties, and to order its publication.

II. PROCESSING BY THE COMMISSION

5. The IACHR recorded the petition as No. P1166-05 and, on April 6, 2006, proceeded to convey a copy of the relevant parts to the State, along with a deadline of two months for it to submit information in compliance with Article 30.2 of the Commission's Rules of Procedure in force until December 30, 2009. On June 2, 2006, the State requested a thirty-day extension of the deadline for returning its comments, which the IACHR granted on June 6, 2006.

6. On July 27, 2006, the IACHR repeated its request that the State submit information; the State replied on October 12, 2006, and that reply was forwarded to the petitioners on November 7, 2006, for their comments within the following month. The petitioners returned their comments on December 8, 2006, which were forwarded to the State on December 11, 2006.

7. On February 6, 2007, the State submitted its comments, which were forwarded to the petitioners for their comments on March 21, 2007. On August 3, 2007, the petitioners asked the IACHR for a hearing to be convened. On September 10, 2007, the IACHR called the parties to a public hearing, which was held on October 10, 2007, during its 130th regular session.

8. On October 25, 2007, the petitioners submitted additional information, which was conveyed to the State on October 31, 2007, for its comments within the following month. On December 5, 2007 the State requested a one-month extension of the deadline for returning its comments. On December 18, 2007, the State submitted its final comments, the annexes to which were received on April 10, 2008.

III. POSITIONS OF THE PARTIES

A. Petitioners

1. Facts

9. As background information, the petitioners report that on March 15, 1999, the newspaper *El Tiempo* published an interview with the paramilitary leader Carlos Castaño in which he announced the imminent launch of an assault against the El Catatumbo region in Norte de Santander department. They state that on April 22, 1999, the former military intelligence informant Luis Arsenio Durán, aka "Tajo de Yuca," appeared on the Tibú to La Gabarra road. They claim that on April 23, 1999, the Live Force for the Salvation of El Catatumbo movement publicly reported that approximately 5:30 p.m. on April 21, 1999, soldiers attached to the Héroes de Saraguro Counterguerrilla Battalion headquartered in Tibú fired their service weapons into the air, terrifying the inhabitants of Once de Febrero, Miraflores, and adjacent neighborhoods, and temporarily occupied the premises of a secondary school, where they attacked teachers and pupils. As a result, Norte de Santander Regional Ombudsman asked various authorities to investigate the incident and to adopt preventive measures to protect the right to life of Tibú's inhabitants.

10. The petitioners claim that in the middle of May 1999, approximately 250 paramilitaries were brought by land from the department of Córdoba to an estate located in San Bernardo, municipality of Tamalameque, department of Cesar. They state that on May 27, 1999, those paramilitaries were transported in six cattle trucks by drivers who were forced to take them to Tibú municipality.

11. They claim that the six trucks traveled along main roads and, over three days, passed through six locations where permanent army and national police checkpoints were usually deployed, which had been lifted in a coordinated action to enable them to pass freely. They contend that the paramilitaries passed in front of the Ocaña Police Battalion, the checkpoints located at the Santander Infantry Battalion (where more than a thousand men were stationed), and the permanent checkpoint on

the road from Aguachica, Cesar, to Ocaña, Norte de Santander. They also report that the paramilitaries met no opposition from the armed forces at the Norte de Santander towns of Abrego and Sardinata, through which they passed.

12. They state that on May 29, 1999, at the "Ye de Astilleros," where the road from Ocaña forks off to the municipalities of Cúcuta, Sardinata, and Tibú, the paramilitaries were halted for a half-hour by a mobile army checkpoint, whose personnel had confused them with guerrillas. They claim that the incident caused a dispute between the army and the paramilitaries, which was resolved through the mediation of a senior officer of the National Army using a radio transmitter. They state that the army troops stationed in Tibú helped them on their way by opening up the checkpoints at La Cuatro and at the base of the Héroes de Saraguro Battalion, and that the Tibú police deactivated their control and security post at the Ecopetrol facility on the Tibú to La Gabarra road.

13. They report that at approximately 9:00 a.m. on May 29, 1999, the paramilitaries were surrounded by guerrillas on the road shortly before reaching La Gabarra. As a result, the paramilitaries perpetrated various crimes and murdered the local community activists Alfredo Muralla, Gerardo Méndez, Jorge Camilo González Prada, José Rafael Claro Ortiz, and Omar Osorio. They also report that they set up a base and permanent checkpoint at Mata de Coco on the road that runs between Tibú and La Gabarra. They maintain that the military stated that they only learned of the fatalities on the morning of May 30, 1999.

14. The petitioners contend that the imminence of a paramilitary attack on La Gabarra and the vulnerability of their situation led more than three thousand local people to relocate – some to Santander and others to seek refuge in the Bolivarian Republic of Venezuela, in a chaotic and disordered fashion. They state that the first group of refugees numbered 2,229 people and gathered on June 2, 1999, at the towns of Casiagua El Cubo and La Vaquera in the Venezuelan state of Zulia.[4]

15. They claim that the pressure from public opinion and the international community led the Colombian Government to order that the headtown of La Gabarra be retaken by June 2, 1999. They report that military troops were brought in by helicopter but failed in removing the paramilitaries installed on the Tibú–La Gabarra road, who committed targeted killings and forced disappearances in the area.

16. They state that on June 5 and 6, 1999, a crossborder agreement was signed by Colombia and Venezuela whereby the Venezuelan Army took 2,229 displaced Colombian nationals (organized by families) to the border town of Puerto Santander, where they were handed over to Colombian authorities. They claim that those individuals were handed over to Colombia[5] through the mechanism of "voluntary repatriation," a concept thought up by the two governments and unknown to international law.

17. They state that the displaced persons were taken, with much difficulty, to the Eustoquio Colmenares Stadium in the city of Cúcuta, where only 120 of them remained after the others decided to head for the homes of relatives and friends in other parts of the country. The 120 displaced persons remained waiting for a solution to their problem amid problems with food supplies, health conditions, and accommodation. The petitioners report that a second group of more than 700 people left La Gabarra for La Vaquera, El Cerrito, and El Ranchito in the Venezuelan state of Zulia; there they set up "improvised plastic shelters" on the Venezuelan side of the Catatumbo River, where they endured heavy rains, food shortages, and non-existent sanitation. The members of this second group were not promptly dealt with

[4] They report that those people received security, food, and housing from the Venezuelan authorities. In addition to this displacement, after May 29, 1999, hundreds of people were displaced, both individually and by family groups. Original petition received on October 18, 2005, pp. 8 and 10.

[5] The petitioners report that the people were received by officials of the International Committee of the Red Cross (ICRC), the Social Solidarity Network, the Ombudsman of Norte de Santander, representatives of the UNHCR in Colombia, and the Inspector of the Colombian Army, and the lieutenant colonel in command of the General Hermógenes Maza Armored Group from the city of Cúcuta. Original petition received on October 18, 2005, p. 9.

by the governments of Colombia and Venezuela; in addition, they informed Venezuelan NGOs that they feared for their lives and were interested in requesting asylum in Venezuela.

18. They report that on June 9 and 10, 1999, under orders from the Venezuelan authorities, this group of displaced persons was moved to the Army Operations Theater No. 2 in Casiagua El Cubo. The men and adolescents in the group were identified, registered, and photographed by the Venezuelan authorities. They claim that 100 of them refused to board the helicopters out of fear of being repatriated, and instead headed for the Colombian jungle.

19. They state that at approximately 9:00 p.m. on July 17, 1999, the paramilitaries left the Tibú–La Gabarra road and entered the municipal seat of Tibú, meeting no resistance from either the police officers stationed at the district headquarters or the members of the 25th Héroes de Saraguro Counterguerrilla Battalion. They claim the paramilitaries conducted inspections and searches in the Tibú urban area, and that they entered the restaurant located in the El Morichal Center and killed Henry Soto Suárez, Juan de Dios Mendoza Galván, Luis Alfredo Guerrero García, Atiliano Rodríguez Romero, Hender Leonardo Avendaño Pineda, Nelson Rodríguez Mogollón, and Francisco Franky Pérez. They also detained Marcelino Arenas Caicedo, Álvaro Ortega Valderrama, Luis Alberto Lara Pérez, Luis Enrique Díaz, and Andrés Bermon Martínez, forced them into the vehicles they were using, took them to a place known as Carboneras – by way of the police checkpoint located at the Ecopetrol facility – and shot them dead on the highway. They claim that the paramilitaries shot Andrés Bermon Martínez in the head with a pistol[6] and, believing him to be dead, left him with the other bodies. Andrés Bermon Martínez survived the attack.

20. The petitioners maintain that although the paramilitaries perpetrated the massacre in the Tibú urban area and then withdrew through areas controlled by the security forces, the agents of the State failed to provide the civilian population with efficient protection or to keep the paramilitaries from coming or going.

21. They state that on August 21, 1999, at approximately 8:00 p.m., between 30 and 50 paramilitaries traveling in three vehicles entered La Gabarra, where they pillaged the town and then executed José Joaquín Losada Espinosa, José Benedicto Duarte Bermúdez, Eulogio García Ruiz, Alfonso Mejía Bonilla, Orlando Morales Quintero, Humberto Becerra, Eugenio Marin Bedoya, Elizabeth Umbarina Laguado, José Alfonso Cacua Castilla, Jhon Jairo Romeo Roa, Nelson Ascanio Castilla, José Manuel Villegas Mendoza, Gabriel Ángel Ortiz Rodríguez, Juan José Molina Barrera, Yolanda Esthela Sánchez, Alfonso Rojas Rozo, José Guillermo Serrano Hernández, Ramiro Rojas Medina, Pedro Caadena Peñaloza, Lencer Vargas Alvis, Humberto Quintero Santander, and Gerardo Rangel. They also claim that the paramilitaries shot and wounded Sonia Montejo Álvarez, Pedro Herrea Trigos, Juan Heli Mosquera, Jairo Cáceres Silva, Daniel Antonio Bayona, Alcira María Guerrero, and Mariela Buitrago.[7]

22. They claim that during this incursion, more than 100 army troops were on a base located at the far end of town from where the paramilitaries arrived and left and that they failed to protect the civilian population.

2. Proceedings before the military criminal courts

23. Regarding the judicial investigation of these incidents, the petitioners report that the 25th Military Criminal Investigating Court opened a preliminary inquiry on August 26, 1999, for the alleged crime of perverting the course of justice through omission on the part of members of the army by failing to act as needed to prevent the massacres. The individuals named in that inquiry were the members of the military who, at the time of the events, held the following positions: commanding officer of the 5th Brigade

[6] They attest that the bullet entered through the rear of his head and exited through the upper jaw. Original petition received on October 18, 2005, p. 11.

[7] In addition, they claim that an unidentified nine-year-old boy was killed. Original petition received on October 18, 2005, p. 12.

of the National Army, commanding officer of the Hermógenes Maza Armored Group, and commanding officer of Buffalo Company of the Héroes de Saraguro Counterguerrilla battalion.[8] They report that on June 30, 2000, the military judge in charge of the inquiry halted the proceedings against the three officers. They further report that in June 1999, the prosecutor's office named the paramilitary José Antonio Hernández Villamizar and three civilians as persons of interest in the inquiry.[9]

24. They state that on September 6, 1999, the 26th Military Criminal Investigating Court began a preliminary inquiry into the events in La Gabarra of August 21, 1999, and, in December 1999, the commanding officer of the La Gabarra military base at the time[10] was named as a person of interest in the inquiry for reckless homicide through undue omissions, and measures were imposed on him to ensure his appearance at trial.

25. On June 26 and July 3, 2000, the Human Rights Unit of the office of the National Attorney General (hereinafter "UDH/FGN") asked the military courts to hand over the proceedings against the commanding officer of the Hermógenes Maza Armored Group. That request was denied by the Third Military Criminal Prosecutor before the Superior Military Court, and the denial was upheld on appeal and consequently became irrevocable.

26. They report that the UDH/FGN asked the military criminal judge to hand over the case against the commanding officer of the La Gabarra military base on jurisdictional grounds, or to face proceedings to resolve the conflict of jurisdiction. The military judge declined this request, holding that the alleged actions were related to military duty, and referred the dispute to the Disciplinary Chamber of the Superior Council of the Judicature, which found on behalf of the regular courts.

3. Investigation by the regular courts into the events of the massacre of May 29, 1999.

27. The petitioners state that the case was investigated by the regular courts as Case No. 536 and that, on July 3, 2000, the commanding officer of the Hermógenes Maza Armored Group was named as a person of interest in the inquiry for multiple aggravated homicides for the purposes of terrorism and conspiracy; that decision was, they say, then overturned on March 21, 2002, on the grounds that the military criminal justice system had already prosecuted the commanding officer for perverting the course of justice through omission in connection with the same incident. Similarly, the commanding officer of the Héroes de Saraguro Counterguerrilla Battalion was named as a person of interest for multiple aggravated homicides and conspiracy and measures to ensure his appearance at trial were imposed, and he has been in custody since December 2003 under a different set of proceedings for acts of corruption and drug trafficking. They also report that the commanding officer of the Tibú District Police was named as a person of interest in the inquiry[11] and that, on November 24, 2006, he was placed in preventive custody for the crimes of conspiracy and multiple aggravated homicides[12] but that he is currently a fugitive from justice.

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[8] Resolutions of November 18, 1999, November 19, 1999, and February 18, 2000, respectively. Original petition received on October 18, 2005, p. 13.

[9] The civilians were Argemiro Miguel Olea Salgado, José López López, and Yovany Torrado Aro. Petitioners' submission received on October 25, 2007.

[10] Luis Fernando Campuzano Vásquez was named as a person of interest in the inquiry

[11] The petitioners claim that members of the army have made statements against that person (Luis Alexander Gutierrez Castro), accusing him of having coordinated the entry into the Tibú area of the paramilitaries responsible for the massacre. They state that he appears on the list of paramilitaries demobilized during the first half of 2005, as the commanding officer of the Libertadores del Sur Bloc. Original petition received on October 18, 2005, p. 16.

[12] The petitioners state that Luis Gutierrez was a resident of the since closed Santa Fe de Ralito Location Zone, which cannot be considered a detention facility since that would be an affront to the institutional order and a clear breach of Judgment C-370 of 2006, whereby the Constitutional Court ruled that Article 31 of the Law 975 of 2005 – which stated that the presence of demobilized personnel in that zone could be calculated toward any prison term imposed on them, equating residence by a demobilized person in that area with forced custody in a detention center – was inadmissible. Petitioners' comments submission received on October 25, 2007.

28. They report that on February 6, 2001, Jhovanny Velásquez Zambrano gave a voluntary statement to the Technical Investigation Corps (CTI) indicating that he belonged to paramilitary groups, out of fear for his life, and confessed that he was part of the paramilitary contingent that entered Tibú on May 29. He stated that members of the National Army participated in planning and coordinating the paramilitaries' journey from Córdoba to Tibú, by ensuring them "calm and safe transit."[13]

29. The petitioners state that on October 8, 2002, MINGA applied for recognition as a plaintiff representing the people in the investigation of the crime of conspiracy affecting the collective right of public security, but that the application was rejected by the prosecutor in summary proceedings No. 536. That rejection was, they indicate, upheld on appeal. An application for relief was filed against that decision, which was ruled inadmissible by the Criminal Cassation Chamber of the Supreme Court of Justice. That ruling was, they state, overturned by the Fifth Review Chamber of the Constitutional Court, which awarded the relief and reaffirmed the right of individuals and associations to secure recognition as plaintiffs representing the people in criminal trials brought against actions that affect collective rights or involve crimes against humanity or serious human rights violations. Under that decision, MINGA secured recognition as a plaintiff in proceedings No. 536.

30. The petitioners indicate that on March 23, 2006, the paramilitary leader and former army captain Armando Alberto Pérez Betancourt, aka "Camilo," was named as a person of interest in the inquiry[14] and that although his preventive custody was ordered, it was not carried out because he fled the location zone in Santa Fe de Ralito. The paramilitary leader Salvatore Mancuso was also named as a person of interest, but he was later extradited to the United States for drug trafficking offenses.[15]

31. They claim that although the alleged perpetrators of the massacres – that is, the members of the Catatumbo Bloc of the AUC – were demobilized in early 2005, the Attorney General's office made no efforts to identify and name the more than 200 men who participated directly in the paramilitary raid and massacre of May 29, 1999.

32. They report that an additional six individuals were named as persons of interest in the proceedings,[16] some of whom were officers in the INPEC Custodial Corps at the Ocaña Judicial District Prison, for the crime of conspiracy, but that they were acquitted by the Fifth Criminal Court of the Bogotá Specialized Circuit.

4. Investigation of the massacre of July 17, 1999, by the regular courts

33. The petitioners report that this incident was investigated by the UDH/FGN as proceedings No. 538, in which 12 police officers,[17] who at the time of the massacre were attached to the Tibú Police District, and a retired member of the National Army were named as persons of interest in connection with the establishment of paramilitary groups, aggravated homicide, and attempted homicide. They say that on August 31, 2006, the Criminal Decision Chamber of the Superior Court of the Cúcuta Judicial District resolved the appeal lodged by the plaintiff by upholding the acquittal of all the police officers and overturning the decision handed down with respect to the commanding officer of the Héroes de Saraguro

[13] The petitioners state that Yhovanny Velásquez was prosecuted for conspiracy to commit multiple aggravated homicides and was convicted by the Second Criminal Court of the Cúcuta Specialized Circuit to 266 months in prison for his responsibility in the events of May 29, 1999, in Tibú. Original petition received on October 18, 2005, p. 17.

[14] The petitioners report that Armando Pérez was demobilized from his position as commanding officer of the Catatumbo Bloc on December 10, 2004. Petitioners' comments submission received on October 25, 2007.

[15] It is common knowledge that on May 13, 2008, Salvatore Mancuso Gómez was extradited to the United States, along with other AUC paramilitary leaders, to face drug trafficking charges.

[16] Gustavo Balmaceda Cañizares, Alfonso Balmaceda Cañizares, Moisés Urbina Rincón, Carlos Angarita Navarro, Agustín de Jesús Bayona Álvarez, and Moisés de Jesús Urbina.

[17] Maj. Harbey Fernando Ortega Ruales and police officers Arturo Elías Velandia Narváez, Luis Elías Tolosa Arias, Miguel Hernández Acosta, Ciro Alfonso Ortiz, Gustavo Lobo Ortega, José Ordóñez Cuy, Milton Ayala Lobo, Luis Alfonso Pérez Gallo, Cesar William Pinilla Pinilla, Yimis Ellis Martínez, Luis Hernando Arias Guevara, and Eleuterio Mosquera Rengifo.

Battalion, who was sentenced to a 40-year prison term as the joint perpetrator of multiple aggravated homicides and attempted homicides, on the grounds that he had taken no action to protect the people of Tibú under a prior agreement with the perpetrators. They report that an appeal for annulment was lodged against this decision by the defense and also by the plaintiff and the prosecutor, as regards the acquittal of the police officers. On August 27, 2007, the petitioners indicate, the Supreme Court of Justice admitted the appeal for annulment in whole as lodged by the defense and in part as lodged by the plaintiff, while rejecting the appeal lodged by the public prosecutor.[18]

34. The petitioners also state that the military courts launched a parallel investigation and named members of the security forces as persons of interest for the crime of perverting the course of justice through omission. They report that the UDH/FGN filed a conflict of jurisdiction suit with the Disciplinary Chamber of the Superior Council of the Judicature, which was resolved in favor of the regular courts. They state that the prosecutor named 13 National Police officers and two civilians as persons of interest in perpetrating the massacre and the crime of conspiracy and ordered their preventive custody.[19] They report that on October 10, 2003, the First Criminal Court of the Cúcuta Circuit acquitted the police officers, finding that "the evidence against them was nebulous and ethereal and lacked substance to override the presumption of innocence."[20] The appeal lodged against that decision is still pending resolution. In addition, they note that the two civilians named as persons of interest were acquitted.

35. They report that Germán Alberto Estupiñán Aparicio, a paramilitary and army informant, was charged with these crimes and acquitted by the Second Criminal Court of the Cúcuta Specialized Circuit on November 21, 2003. The Superior Court of the Cúcuta Judicial District overturned that sentence and convicted him to a prison term of 40 years for multiple aggravated homicides, attempted homicide, and conspiracy. The appeal lodged by his defense is pending resolution, and no warrant for the arrest of the accused has been issued. The petitioners add that the other civilian charged, Gustavo Pinto, was acquitted.

36. They also report that in 2003 the public prosecution service identified a junior police officer as a person of interest for the crimes of conspiracy and homicide, and that the appeals filed by the prosecutor and the plaintiff against his acquittal are still pending resolution by the Pamplona District Superior Court.

5. Proceedings before the regular courts for the massacre of August 21, 1999

37. The petitioners report that in connection with this incident, the public prosecution service launched an inquiry before the criminal judges of the Cúcuta Specialized Circuit on August 22, 1999. On December 20, 1999, they state, a formal investigation was opened and three civilians were named as persons of interest. The military courts were also asked to hand over the case file on the disciplinary proceedings against the commanding officer of the La Gabarra military base. Following the refusal of the military justice system, the Administrative Chamber of the Superior Council of the Judicature resolved the conflict of jurisdiction in favor of the regular courts.

38. The petitioners state that on February 28, 2001, the UDH/FGN accused the military base's commanding officer of multiple aggravated homicides with terrorist ends and belonging to a group

[18] The petitioners report that Mauricio Llorente Chávez is currently detained at Colombia's La Picota Central Penitentiary, but for corruption and drug trafficking, and that he was removed from active service at the discretion of the government, in contrast to the prison sentence imposed in the proceedings for the Tibú massacre, which he served in a barracks for army officers. Petitioners' comments submission received on October 25, 2007.

[19] Maj. Harbey Fernando Ortega Ruales and officers Arturo Elías Velandia Narváez, Luis Elías Tolosa Arias, Miguel Hernández Acosta, Ciro Alfonso Ortiz, Gustavo Lobo Ortega, José Ordóñez Cuy, Milton Ayala Lobo, Luis Alfonso Pérez Gallo, César William Pinilla Pinilla, Yimis Ellis Martínez, Luis Hernando Arias Guevara, and Eleuterio Mosquera Rengifo, and the civilians Gustavo Pinto and Germán Estupiñán. Original petition received on October 18, 2005, p. 20.

[20] Original petition received on October 18, 2005, p. 20.

of contract killers, which was later amended to the crime of conspiracy with terrorist ends.[21] They report that his acquittal was ordered on all counts.[22] The prosecutor and plaintiff filed an appeal for annulment against that decision and, on September 12, 2007, the Criminal Chamber of the Supreme Court found the commanding officer of the military base guilty of being the joint perpetrator of the crimes of aggravated homicide and conspiracy and sentenced him to a 40-year prison term.[23] They report that the convicted officer was captured on September 12, 2007, and sent to a military detention center. The petitioners believe that this decision made a partial contribution to restoring justice.

6. Other proceedings

39. The petitioners report that the office of the National Ombudsman (PGN) pursued two sets of disciplinary proceedings for the three massacres: first, against National Police Captain Luis Alexander Gutiérrez Castro, who on June 20, 2001, was found guilty of dereliction of duty by having helped coordinate and facilitate the paramilitary incursion of May 29, 1999, and was suspended from duty for 90 days; and, second, against five members of the National Army, which was archived with respect to four of the accused[24] on the grounds that there was no evidence of their guilt, with the remaining officer[25] found guilty of having failed to take steps to protect the population of La Gabarra and punished with a 90-day suspension from duty.

40. The petitioners further state that as compensation for the moral damages inflicted by the displacement caused by the paramilitary incursion of May 29, 1999, a total of 265 people were indemnified through a resolution of the Third Section of the Council of State in a class-action suit on June 22, 2004, in an amount of up to 50 times the minimum monthly wage. The petitioners state they are aware of two suits for direct redress for the deaths of two individuals in the massacre of August 21, 1999, that are still pending with the Administrative Tribunal of Norte de Santander.

41. They indicate that the Fund for the Defense of Collective Rights and Interests of the office of the Ombudsman ordered payment of the compensation awarded to 130 of the beneficiaries, who obtained close to US$10,000 each. The others, they explain, lodged no claims because they did not learn of the judgment issued in their favor, and, in addition, at least 10 beneficiaries who reported to the office of the Ombudsman to register as members of the group and claim their compensation were refused on

[21] The petitioners indicate that the latter offense was applied in accordance with the principle of favorability, pursuant to Law 599 of 2000. Original petition received on October 18, 2005, p. 22.

[22] The petitioners indicate that the judge found the accused's guilt had not been proved because there was no direct or circumstantial evidence indicating that he belonged to a group of contract killers, on the grounds that dismantling a checkpoint at irregular hours and the doubts about the attack on the base did not lead to the conclusion that he had committed an offense. He also found him not guilty of omission, because he was the formal, not material, guarantor of the lives of the people of La Gabarra. In addition, they report that the judge found that even if he had been the guarantor of their lives, a conflict of interests would have existed with protecting his soldiers' lives, and that he acted in accordance with a need that relieved him of all responsibility. Original petition received on October 18, 2005, p. 23.

[23] The petitioners report that in his decision, the judge concluded: that "the evidence indicates, beyond any doubt, the permissive attitude of the members of the army who, instead of combating the illegal armed group installed there, tolerated their movements and illegal checkpoints, supporting the conclusion that this was done so that their illegal actions and presence met no obstacles in the area"; that "the actions of the accused, as indicated above, with respect to the actions of the group consisted of allowing them to do whatever they wanted and to go wherever they wanted, turning a blind eye to his unavoidable duty of combating the irregular group that left a trail of blood in its path, and refusing to protect the civilian population, of whose lives he was the guarantor, arguing that if they were guilty, they deserved it; it is undeniable that the accused allowed the massacre on the tragic night in question, not only through his omissions but also through positive actions... that he tacitly and expressly allowed the AUC to act freely, as they had announced; that he agreed to refrain from combating them, announced that intent, and effectively did so, allowing them to do whatever they wished to the civilian population"; and that "the guilt of the accused officer consequently arises from his approval, from his acceptance, from his authorization, from his assent, from his agreement, from his compliance – in a word, from his acquiescence with the massacre that the AUC had announced, through every available channel, that they would perpetrate on the citizenry, for being guerrillas or for assisting the guerrillas." Petitioners' comments submission received on October 25, 2007.

[24] Gen. Alberto Bravo Silva, Lt. Col. Víctor Hugo Matamoros Rodríguez, Maj. Mario Llorente Chávez, and Capt. Jorge Escobar.

[25] Lt. Luis Fernando Campuzano Vásquez.

the grounds that the deadline for registration had passed. They state that one of them consequently filed for relief against the violation of due process by the office of the Ombudsman with the Administrative Tribunal of Cundinamarca, which was granted on May 23, 2007, and upheld on appeal by the Council of State on August 20, 2007.

42. They further report that the direct redress actions in connection with the incident that are before the Administrative Tribunal of Norte de Santander and the Administrative Courts of Cúcuta are still at the evidentiary stage. They also claim that there have been no effective forms of redress, or real restitution of property, or reestablishment of the conditions of protection to enable the victims to travel through the Catatumbo region safely and without fear.

43. Regarding the prior exhaustion of domestic remedies requirement, the petitioners claim that the crimes committed are publicly actionable and that the military courts are not an impartial, independent, and competent authority and do not satisfy the standards set by international law; consequently, the victims and their next-of-kin were not afforded an effective judicial remedy and the crimes remain unpunished. They therefore hold that the exception to the domestic remedy exhaustion rule applies. They also claim that when the inhabitants of Tibú were forced from their homes, forced displacement was not an offense under Colombian law. Finally, they maintain that in light of the time that has gone by without the guilty parties being identified and punished by the regular courts, the exception provided for in Article 46.2.c is applicable.

44. In response to the State's claim regarding the existence of civil suits for asserting the right to property and the right to movement and residence (see III B, *infra*), the petitioners state that the purpose of such actions – notwithstanding their public nature – is to resolve conflicts arising exclusively between private citizens in which the object of the dispute is purely private; and that is not the case with the claims in the instant petition presented by victims of human rights violations. They maintain that for the crimes they allege, civil action does not offer an appropriate remedy, in contrast to criminal action.

45. Regarding the State's claim with respect to the nonexhaustion of relief action (see III B, *infra*), the petitioners respond that relief was not an appropriate remedy, in that it would not have guaranteed the victims: (a) the restitution of their property rights and right to movement and residence, (b) comprehensive redress, including adequate compensation for the harm suffered, and (c) the clarification by the courts of the actions that affected them, with the consequent identification, prosecution, and criminal punishment of those responsible for the affronts on public security whereby their interests were harmed.

46. To summarize, the petitioners claim that the Colombian State is responsible for the massacres carried out by paramilitaries with the assistance, through actions and omissions, of members of the security forces, for the failure to investigate and punish the perpetrators of those crimes, and for violating the right to life and the right to judicial protection set forth in Articles 4 and 25 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Alfredo Muralla, Gerardo Méndez, Jorge Camilo González Prada, José Rafael Claro Ortiz, Omar Osorio, Henry Soto Suárez, Juan de Dios Mendoza Galván, Luis Alfredo Guerrero García, Atiliano Rodríguez Romero, Hender Leonardo Avendaño Pineda, Nelson Rodríguez Mogollón, Francisco Franky Pérez, Marcelino Arenas Caicedo, Álvaro Ortega Valderrama, Luis Lara y Luis Enrique Díaz, José Joaquín Losada Espinosa, José Benedicto Duarte Bermúdez, Eulogio García Ruiz, Alfonso Mejía Bonilla, Orlando Morales Quintero, Humberto Becerra, Eugenio Marin Bedoya, Elizabeth Umbarina Laguado, José Alfonso Cacua Castilla, Jhon Jairo Romeo Roa, Nelson Ascanio Castilla, José Manuel Villegas Mendoza, Gabriel Ángel Ortiz Rodríguez, Juan José Molina Barrera, Yolanda Esthela Sánchez, Alfonso Rojas Roso, José Guillermo Serrano Hernández, Ramiro Rojas Medina, Pedro Caadena Peñaloza, Lencer Vargas Alvis, Humberto Quintero Santander, and Gerardo Rangel, as well as the unidentified nine-year-old boy

47. They further claim that the Colombian State is responsible for violating the rights to humane treatment, to judicial protection, and to personal liberty set forth in Articles 5.1, 25, and 7, sections 1 and 2, of the American Convention, in conjunction with Article 1.1 thereof, with respect to

Andrés Bermon Martínez, Sonia Montejo Álvarez, Pedro Herrea Trigos, Juan Heli Mosquera, Jairo Cáceres Silva, Daniel Antonio Bayona, Alcira María Guerrero, and Mariela Buitrago.

48. The petitioners claim that the State is responsible for violating the right to private property, the right to movement and residence, and the right to judicial protection set forth in Articles 21, 22, and 25, sections 1, 3, and 5, of the American Convention, in conjunction with Article 1.1 thereof, with respect to 2,670 persons who were displaced as a result of the paramilitary incursions in the municipality of Tibú in 1999. They also claim that the State is responsible for violating the rights of the child, as set forth in Article 19 of the American Convention, in conjunction with Article 1.1 thereof, with respect to the minor children who were displaced.

49. In regard to the State's claim about fully identifying the victims of the displacement (see III B, *infra*), the petitioners contend that under the IACHR's Rules of Procedure, full identification of the victims is not a requirement for the analysis of a petition's admissibility. They maintain there is no provision in those Rules of Procedure whereby the failure to fully identify the victims causes a petition to be ruled inadmissible.[26] They claim the existence of objective facts that prevented the full identification of all the displacement victims, in that the incidents caused public panic and a widespread climate of fear that prevented the victims from reporting the facts; as a result, it has not been possible to identify them in full. They maintain that other victims did offer information on their situation to agencies of the State, which is confidential in nature; consequently, the State's assistance is needed in order for the petition to list the displaced persons identified in official records.

50. In connection with this, the petitioners point out that in cases involving multiple victims and in compliance with Article 62 of the Convention, the Inter-American Court has used various methods to overcome the failure to identify some of the alleged victims in an application and it has asked the IACHR to deal with such cases by submitting lists of alleged victims subsequent to the application. They also state that in cases in which the alleged victims "have or have not been identified or individualized" in the application, the Court has ordered the State to "individualize and identify the victims […] and their next-of-kin" for the purpose of reparations. They further note that the Court has also taken the initiative of addressing the failure to identify the alleged victims in an application through its own analysis of the evidence submitted by the parties, even when the parties have admitted that certain persons "were excluded by error from the lists of alleged victims." In addition, they contend that the Court has identified as "possible victims" individuals identified in the evidence submitted by the parties, even when those persons were not identified in the Commission's application.

51. Regarding the State's claim that the petition constitutes an *actio popularis* as regards the displacement (see III B, *infra*), the petitioners contend that the violated rights are neither collective nor deal with the State's observation of generic or indeterminate obligations, nor do they equally belong to a group of subjects. They maintain that the petition deals with individual rights, the satisfaction or violation of which affects the persons on an individual basis, and that situation is not changed by the fact that joint protection for those rights is being sought by reason of their having been affected by incidents occurring at the same time and place.

52. Regarding the State's claim that the IACHR lacks the competence to deal with displacement on the grounds that it is an action in breach of international humanitarian law, the petitioners argue that the Inter-American Court has already ruled on the reasons why the inter-American human rights system is competent to address violations caused by forced displacements at times of armed conflict.[27]

[26] The petitioners indicate that Article 28.e of the Commission's Rules of Procedure states that the petitioner shall indicate, in his petition, "if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged," and that it therefore follows that full identification of the victims of alleged violations of Convention-protected rights, while desirable, is not a regulatory requirement for a complaint to be examined. Petitioners' comments submission received on October 25, 2007.

[27] The petitioners cite: I/A Court H. R., *Case of the Mapiripán Massacre,* Judgment of March 7, 2005, Series C No. 122. Petitioners' comments submission received on December 8, 2006, p. 10. They also cite: IACHR, Report No. 88/03, Petition 11.533,

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B. State

53. The State invokes the context in which the incidents occurred and notes that the Catatumbo region, by reason of its particular geographical situation, is a vital strategic point for the criminal activities of members of illegal armed groups.[28] It also notes that the Catatumbo region extends toward Maracaibo in the Republic of Venezuela.

54. It reports that in the communities of Catatumbo, the conflict between guerrillas and paramilitaries for territorial control led to targeted killings, massacres, and other attacks on the civilian population. In 1999, the State notes, illegal groups settled in the region in order to secure access to and control over the routes whereby coca was distributed and sold in the Venezuelan plains.[29] It explains that in the late 1990s, self-defense forces from Cesar continued their advance from Ocaña to Tibú, which culminated in 1999, when the Tibú massacres occurred.

55. The State questions the petitioners' claims regarding violations of the rights to private property and to movement and residence arising from the displacement of approximately 3,500 people following the events of May 29, 1999. It maintains that the IACHR lacks the competence to analyze those claims, since the petitioners neither identify nor individualize the 3,500 alleged victims;[30] instead, they merely provide a list of 260 names, without indicating age, gender, occupation, or activity, and they fail to establish that those persons were inhabitants of La Gabarra at the time of the events. The State further claims that the petitioners fail to provide serious and accurate information on the time they had resided in the area, whether the area was their place of residence, and whether they were property owners, tenants, or mere occupants, all of which is vital information for determining the affectation of the rights they claim were violated. The State maintains that competence *ratione personae* demands the individual and collective identification of the alleged victims, in that the inter-American system seeks the specific protection of victims of human rights violations and not the abstract protection of potential or unidentified victims, since the provisions governing competence *ratione personae* do not admit *actio popularis*.

56. The State holds that the IACHR and the Court have ruled that any case brought before the inter-American system in which the individuals are not identified becomes an "abstract case," which is beyond their jurisdiction.[31] It maintains that pursuant to the jurisprudence of the Court and the IACHR: (i)

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Annual Report 2003; Report No. 34/01, Case 12.250, Mapiripán Massacre; Report No. 78/00, Case 12.053, Maya Indigenous Communities and their Members, Annual Report 2000; Report No. 78/06, Petition 12.094, Aboriginal Community of Lhaka Honha; and Report 86/06, Petition 499-04, Marino López (Operation Genesis). Petitioners' comments submission received on October 25, 2007.

[28] The State cites reports from the office of the Vice President of the Republic, Observatory of the Presidential Human Rights Program: *Dinámica de la confrontación armada en la confluencia entre los Santanderes y el sur del Cesar, Dinámica reciente de la confrontación armada en el Catatumbo*, July 2006. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, pp. 3-5.

[29] The State maintains that the strengthening of guerrilla groups in Catatumbo is closely related to the cultivation of coca and the processing of its products, with the town of La Gabarra becoming the main center of production; since that time, this has had an impact on the civilian population, who have had to endure acts of violence and intimidation at the hands of armed groups. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, pp. 3-5.

[30] The State notes that the number of people displaced in June 1999 by violence in the department of Santander and, in particular, the Catatumbo region, is estimated at more than 3,500 personas. However, it cannot be claimed that all of them were from the municipality of Tibú or were displaced on the dates identified by the petitioners in the case at hand; rather, they are a part of a large group of inhabitants of different municipalities and towns in the department of Norte de Santander who were forced to abandon their homes as a result of actions of extreme violence committed by all the conflict's participants. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 64369/3454 of December 14, 2007, p. 5.

[31] To support its arguments, the State cites: IACHR, Report 51/02, Janet Espinoza Feria *et al*., October 10, 2002, paragraphs 35 and 36; ECHR, *Case of Open Door and Dublin Well Woman v. Ireland*, September 26, 1992; I/A Court H. R., Advisory Opinion OC-14 *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2)*, of December 9, 1994, Series A No. 14, paragraph 46; IACHR, Report 11/07; and UN Human Rights Committee, *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Communication No. 3511978, U.N. Doc. CCPR/C/OP./1 at
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in principle, the victims must be identified from the onset, (ii) obstacles to identifying the victims may exist, on account of the nature of the violations in question, and (iii) in all cases, even when the victims are pending identification, they must be individualized within a specific period of time. Finally, the State contends that the petition must be restricted to the 260 people listed by the petitioners in the complaint.

57. The State contends that the jurisprudence cited by the petitioners to support their claims regarding the non-identification of the victims (see III A, *supra*) is not applicable in that the group of allegedly displaced victims in the instant case lacks the homogeneity of indigenous peoples or of communities of African descent, nor are they dead or disappeared, whose remains would be difficult to locate, as in the cited jurisprudence.

58. The State is opposed to the list of 600 alleged victims submitted by the petitioners, holding that it does not allow the different alleged violations of the Convention to be characterized by failing to specify the actions whereby those rights were allegedly violated. It further claims that after May 1999, in the department of Norte de Santander, the Catatumbo region in particular, the actions of paramilitary groups led to multiple displacements in a majority of the department's municipalities.

59. Regarding the petitioners' claim on the impossibility of exhausting domestic remedies since at the time of the incidents forced displacement was not a crime under Colombian law (see III A, *supra*), the State responds that the American Convention subjects the right of residence to the terms of the law and that the Criminal Code criminalizes a series of actions that protect economic assets, including property rights. It contends that when the right to property is affected, the owner first of all has the right to civil action to reclaim ownership from anyone arbitrarily disputing his property and, as a final resource, criminal proceedings are available through which a judge can order the return of property that was arbitrarily taken away. It notes that to bring civil or criminal action, the plaintiff must demonstrate not only his ownership of the property, but also the impact, violation, and harm suffered by his property rights, to provide certainty in the ensuing judicial proceedings. It points out that the petitioners' claims do not specify the violations the victims suffered in their property rights and their rights of residence and movement, and that the text of their petition itself indicates that the enjoyment and exercise of those rights was restored and, at the current time, the alleged violations no longer exist.

60. The State reports that in connection with forced displacement, on June 6, 2000, the government passed Law 589, which criminalized the forced displacement of persons through a provision of current criminal law in Colombia, and that the definition thereof refers to a form of conduct inherent to international humanitarian which the competence of the agencies of the inter-American human rights protection system does not cover; consequently, the IACHR lacks the competence to analyze that particular conduct.

61. In addition, the State holds that the petitioners did not exhaust the remedy of *amparo* relief for protecting the rights referred to in the petition.

62. Furthermore, the State contends that the petitioners' claim does not meet the requirements set in Article 46.1 of the American Convention in that remedies under Colombian law are still in process in order to ensure justice in the case at hand. Colombia maintains that *ex officio* criminal investigations were commenced and are progressing with the pursuit of the alleged perpetrators of the crimes described and their accomplices in order to correctly identify and individualize them and, subsequently, to file charges against them, bring them to trial, and impose the applicable penalties. The State maintains that the idea of domestic remedies covers not only the criminal investigation of the alleged facts and the prosecution of those responsible, but also administrative and disciplinary remedies, and that the latter must be exhausted before the jurisdiction of the IACHR can be triggered, since they constitute "a complementary and comprehensive whole with respect to justice, truth, and redress."[32]

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67 (1984), paragraph 9.2. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 64369/3454 of December 14, 2007, pp. 7-9.

[32] Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 9.

63. The State claims it has ensured the victims and their next-of-kin participation as plaintiffs in the criminal proceedings since, under the Constitutional Court's judgment C 228 of 2002, the definition of 'plaintiff' was expanded and now means that victims are not only entitled to economic redress, but also to the determination of truth and justice through a criminal trial; thus, their role in criminal trial proceedings is that of an assistant to the court.

64. The State reports that on June 9, 1999, the Cartagena prosecutor's office ordered the opening of an investigation, following the capture of three individuals belonging to the United Self-Defense Forces of Colombia (AUC), who confessed their involvement in the events in La Gabarra on May 29, 1999. In addition, Argemiro Olea Salgado, José López, and Ulises Castellanos Arenas were named as persons of interest. It notes that on June 10, 1999, the prosecution service in the city of Cúcuta ordered the commencement of a preliminary investigation and formally named Argemiro Olea Salgado as a person of interest.

65. On June 12, 1999, Colombia states, Ulises Castellanos Arenas was named as a person of interest and, on June 30, 1999, the prosecutor's office attached to the Cúcuta regional judges resolved the legal situation of Argemiro Olea Salgado and ordered him placed in preventive custody for the crime belonging to a gang of contract killers.[33] It report that the investigation was assigned to the UDH/FGN. On August 9, 1999, Colombia states, a regional public prosecutor attached to the UDH/FGN took cognizance of the investigation, which was recorded as proceedings No. 536. It reports that on August 10, 1999, the legal situation of Ulises Castellanos Arenas was resolved and his preventive custody was ordered for the crime of belonging to a gang of contract killers.

66. On September 1, 1999, it states, former police officer Luis Alexander Castro Gutiérrez was named as a person of interest and a warrant for his arrest was issued. On September 19, 1999, Luis Arcenio Durán Montaguth was named as a person of interest and, on December 3, 1999, his legal situation was resolved and his preventive custody was ordered.

67. The state reports that on November 19, 1999, Juan Tito Prada Rueda was named as a person of interest in the inquiry and his arrest was ordered, and that on December 20, 1999, Yovany Torrado was named as a person of interest in the inquiry and a warrant for his arrest was issued.[34] It further notes that on January 6, 2000, Agustín de Jesús Bayona Álvarez, Alfonso Balmaceda Cañizares, Carlos Omar Angarita Navarro, Moisés de Jesús Urbina Rincón, Luis Marcelino Florez Ortiz, Gustavo Balmaceda Cañizares, and Gabriel Ángel Álvarez Duarte were named as persons of interest in the inquiry, and the corresponding arrest warrants for them to appear in the proceedings were issued. The State reports that Agustín de Jesús Bayona and Alfonso Balmaceda were identified as persons of interest on January 13, 2000, as were Carlos Omar Angarita Navarro and Moisés de Jesús Rincón on January 17, 2000.

68. It reports that on January 28, 2000, seven civilians' legal situation was resolved with the imposition of preventive custody, without release benefits, for the crime of belonging to a gang of contract killers.[35] On April 24, 2000, Colombia reports, Carlos Castaño Gil was named as a person of interest and the corresponding arrest warrant was issued. It states that on May 25, 2000, Gabriel Ángel Álvarez Duarte was named as a person of interest *in absentia*, and his legal situation was resolved on August 29, 2000, with the imposition of preventive custody, for collaborating with self-defense groups.

[33] The State explains that that offense was defined in Article 2 of Decree 1194 of 1989. Resolution No. 388 of July 12, 1999. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 12.

[34] The State explains that his naming was ordered by the prosecutor in proceedings No. 538, which was itemized and added to proceedings No. 536 on January 5, 2000. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 13.

[35] Moisés de Jesús Urbina Rincón, Luis Marcelino Florez Ortiz, Carlos Omar Angarita Navarro, Agustín de Jesús Bayona Álvarez, and Alfonso Balmaceda Cañizares. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 13.

69. It notes that on October 4, 2000, the investigation was partially closed with respect to Argemiro Miguel Olea Salgado, José López, Ulises Castellanos Arenas, and Luis Arcenio Durán Montaguth.[36] It states that on November 17, 2000, an accusation for the crime of belonging to a group of contract killers was filed against Luis Arcenio Durán, who filed an appeal against that decision.

70. It also reports that on October 4, 2000, the investigation was partially closed with respect to Agustín de Jesús Bayona Álvarez, Alfonso Balmaceda Cañizares, Carlos Omar Angarita Navarro, Moisés de Jesús Urbina Rincón, Luis Marcelino Florez Ortiz, and Gustavo Balmaceda Cañizares. It states that on January 2, 2001, the merits of the investigation were assessed and accusations were filed against the named individuals for the crime of belonging to gangs of contract killers. This decision, it explains, caused a split in the investigation and the proceedings continued as No. 536 B. In March 2001, Colombia reports, the accusation made against Luis Arcenio Durán Montaguth was upheld.

71. In proceedings No. 536 B, the State reports that on February 7, 2001, Jhovanny Velásquez Zambrano was registered as a person of interest in the investigation after he voluntarily reported to the CTI facility in the city of Santa Marta, stated his wish to surrender to the justice authorities, and confessing his involvement in the incidents that occurred in La Gabarra, municipality of Tibú. Colombia states that Jhovanny Velásquez was formally named in the investigation on February 8, 2001, and his legal situation was resolved by a resolution of February 16, 2001, that imposed measures to ensure appearance at trial for the crime of aggravated homicide with terrorist ends, on multiple counts, and for the separate crime of belonging to gangs of contract killers.

72. Colombia states that on June 8, 2001, a hearing was held to issue an advance judgment on Jhovanny Velásquez Zambrano, who admitted the charges of belonging to an outlawed group, in conjunction with multiple homicides with terrorist ends, and those proceedings were referred to the criminal judges of Cúcuta for the corresponding advance sentence to be handed down. It reports that on November 30, 2001, he was convicted as the joint perpetrator of aggravated multiple homicide, in conjunction with conspiracy to organize and promote armed illegal groups, and sentenced to 266 months and 20 days in prison and a fine of 55.56 times the minimum monthly wage, with an accessory sentence of suspension of public rights and functions for a period of ten years. In addition, the investigation was split, continuing as proceedings No. 536 C.

73. In proceedings No. 536 C, the State reports that on July 3, 2001, the following persons were named as persons of interest in the investigation: Salvatore Mancuso Gómez, Alexander Londoño aka “El Zarco” or “David,” Armando Alberto Pérez Betancourt aka “Camilo,” José Antonio Hernández Villamizar, Mauricio Llorente Chávez, and Víctor Hugo Matamoros Rodríguez, the last two being army officers.

74. In addition, proceedings for a conflict of jurisdiction were commenced as regards the two members of the security forces, in which the prosecution service was asked to halt its investigation of the two army officers. Colombia reports that on July 6, 2001, the Superior Council of the Judicature ruled that the regular courts were competent to continue with the investigation.

75. Colombia states that on July 27, 2001, the partial conclusion of the investigation with respect to Gabriel Ángel Álvarez Duarte was ordered, against whom an accusation was made on October 2, 2001.[37] Colombia reports that he appealed against that decision and that an order was given for the proceedings to be split, with the investigation continuing as proceedings No. 536 D. It states that on March 10, 2003, the prosecution office assigned to the Bogotá Superior Court revoked the charges made against Gabriel Ángel Álvarez and ordered an end to the inquiry with respect to him, thus cancelling the measures imposed to ensure his appearance at trial and the warrants for his arrest.

[36] The State cites Article 394 of the Criminal Code in force at the time (Law 600 of 2000). Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 13.

[37] The State notes that Mr. Álvarez was charged with a violation of Article 340, section 3, of the Criminal Code. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, p. 16.

76. In proceedings No. 536 D, the State notes that on October 18, 2001, the expiry of criminal action was declared following the death of Ulises Castellanos Arenas and, on November 23, 2001, José Antonio Hernández Villamizar was named as a person of interest in the investigation and a warrant for his arrest was issued. It reports that on December 5, 2001, the expiry of the criminal action was declared following the death of Juan Tito Prada Rueda.

77. It states that on December 11, 2001, the legal situation of Carlos Castaño Gil was resolved with the ordering of his preventive custody for the crime of aggravated homicide, on multiple counts, and for the separate crime of conspiracy. It reports that on November 25, 2002, the partial closure of the investigation was ordered and, on December 15, 2006, the expiry of criminal action was declared following his death.

78. Colombia states that on March 21, 2002, the prosecution service revoked the resolution of July 3, 2001, whereby Col. Víctor Hugo Matamoros Rodríguez of the National Army had been named as a person of interest, finding that he had been investigated by the military criminal justice system in connection with the same incidents, thus invalidating the investigation against him on the grounds of *res judicata*. It reports that on March 21, 2002, the partial closure of the investigation with respect to Argemiro Olea Salgado and José López was ordered.

79. It states that on November 19, 2002, the petitioners' request to be included as a plaintiff in the proceedings was rejected, that the petitioners' appealed that decision, which was upheld at the second instance by means of a decision of March 10, 2003, and that on October 22, 2003, the resolution of March 21, 2002, whereby the inquiry was partially closed with respect to José López, was overturned.

80. It states that on October 23, 2003, José López was named *in absentia* as a person of interest in the inquiry for the crime of conspiracy, in conjunction with the crime of aggravated homicide with terrorist ends. It also states that on December 15, 2003, Salvatore Mancuso Gómez, Alexander Londoño, Armando Alberto Pérez Betancourt, and José Antonio Hernández Villamizar were named *in absentia* as persons of interest, for the crimes of conspiracy and aggravated homicide. It reports that on November 14, 2006, the prosecutor's office attached to the Bogotá Superior Court upheld the resolution of March 10, 2006, which had not ordered the annulment of the proceedings as regards Mr. Salvatore Mancuso. It states that on July 16, 2007, measures to ensure appearance at trial were ordered with respect to Salvatore Mancuso and Armando Pérez Betancourt, the latter of whom is a fugitive from justice.

81. Colombia states that on January 24, 2005, Luis Alexander Castro Gutiérrez was formally named *in absentia* as a person of interest as the suspected perpetrator through undue omission of the crime of aggravated homicide with terrorist ends. It reports that his legal situation was resolved on November 24, 2006, with a preventive custody order, that on December 5, 2006, he was dismissed from service, and that on December 19, 2006, measures to ensure his appearance at trial were also imposed for the crime of aggravated multiple homicide. The State reports that Luis Alexander Castro is at large.

82. It states that on November 25, 2004, José Antonio Hernández Villamizar was named as a person of interest in the investigation, and on November 30, 2004, his legal situation was resolved with the imposition of preventive custody, for the crime of conspiracy. It reports that on January 12, 2007, the application for dismissal with respect to José Antonio Hernández was denied, and he is being held in the National Model Prison.[38]

[38] The State reports that on June 23, 2006, the prosecutor's office attached to the Bogotá Superior Court resolved the appeal lodged against the decision of November 22, 2005, whereby the charge of sedition was amended to aggravated conspiracy, upholding that decision. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 64369/3454 of December 14, 2007, p. 34.

83. It states that on May 23, 2006, Mauricio Llorente Chávez was heard by the inquiry and was legally named as a person of interest in the investigation. It states that on November 14, 2006, the prosecutor's office attached to the Bogotá Superior Court resolved the appeal lodged against the decision of August 4, 2006, whereby the dismissal of the investigation with respect to Víctor Hugo Matamoros Rodríguez was denied, upholding that decision. It reports that on August 1, 2007, the legal situation of Víctor Hugo Matamoros and Mauricio Llorente was resolved and that their preventive custody was ordered, with the reissuing of the warrant for the arrest of Víctor Hugo Matamoros.[39] It reports that an appeal against that decision was lodged by the defense and that the appeal court's ruling is still pending. It notes that Mauricio Llorente is being held at La Picota Penitentiary, where he is serving a sentence imposed by another authority. It claims that the investigation remains open and under way.

84. The State reports that a criminal investigation was opened into the events of July 17, 1999, as proceedings No. 538, which is currently underway. It notes that the following members of the armed forced were named as persons of interest in that inquiry: Mauricio Llorente Chávez, who at the time was the commanding officer of the Héroes de Saraguro Battalion, Harbey Fernando Correa Ruales, commanding officer of the Tibú Police Station, and police officers Luis Alfonso Pérez Gallo, César William Pinilla Pinilla, Yimis Ellis Martínez, Luis Hernando Arias Guevara, Eleuterio Mosquera Rengifo, Arturo Elías Velandia Narváez, Luis Elías Tolosa Arias, Miguel Hernández Acosta, Ciro Alfonso Ortiz, and José Ordóñez Cuy, with respect to whom measures to ensure appearance at trial were ordered, along with accusations for the crimes of aggravated conspiracy, on multiple counts, in conjunction with aggravated homicide and attempted homicide. It reports that on October 10, 2003, the accused were acquitted of the charges against them, and that the plaintiff filed an appeal against that judgment. It states that this investigation was partially closed, with the investigation continuing with respect to other persons as proceedings No. 538 A.

85. In proceedings No. 538 A, the State reports that the prosecution service continued the investigation against Germán Alberto Estupiñán Aparicio and Luis Arcenio Durán Montaguth. It notes that the latter of those two was murdered in the city of Cúcuta, and so the investigation with respect to him was concluded. The State reports that the UDH/FGN accused Germán Estupiñán of the crimes of conspiracy, on several counts, and attempted homicide, and that on June 29, 2007, the Criminal Chamber of the Cúcuta Court overturned the judgment and convicted Germán Estupiñán to a prison term of 40 years and a fine of five hundred times the legal monthly wage.

86. The State reports that the UDH/FGN ordered to continue the investigation of Marco Antonio Rincón Jurado and Jhovanny Velásquez Zambrano in proceedings No. 538 B. It notes that this trial was handled by the Second Specialized Criminal Circuit Court of Cúcuta, which ordered measures to ensure appearance at trial and formalized an accusation. It reports that on October 10, 2003, the First Criminal Court of the Specialized Circuit of Cúcuta acquitted Maj. Mauricio Llorente Chávez of the army and police officers Arturo Elías Velandia Narváez, Luis Elías Tolosa Arias, Miguel Hernández Acosta, Ciro Alfonso Ortiz, Gustavo Lobo Ortega, and José Ordóñez Cuy of the charges of belonging to a gang of contract killers in conjunction with aggravated multiple homicide and attempted homicide, and that it acquitted officers Milton Ayala Lobo, Luis Alfonso Pérez Gallo, César William Pinilla Pinilla, Yimis Ellis Martínez, Luis Hernando Arias, and Eleuterio Mosquera Rengifo of the crime of belonging to a gang of contract killers. That ruling was, Colombia states, appealed by the plaintiff. It reports that on August 16, 2006, the First Criminal Court of the Specialized Circuit of Cúcuta acquitted Marco Antonio Rincón Jurado and Jhovanny Velásquez Zambrano.

87. On August 31, 2006, the State notes, the Criminal Chamber of the Superior Court of the Cúcuta Judicial District partially overturned the acquittal and convicted Mauricio Llorente Chávez for aggravated homicide on several counts and upheld the acquittal of the other defendants. It reports that the UDH/FGN filed for the annulment of that judgment. Thus, on November 14, 2007, the Cúcuta Superior Court resolved to annul the judgment and convicted Harbey Fernando Ortega Rurales, Luis

[39] The State notes that Víctor Hugo Matamoros has been declared absent. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 64369/3454 of December 14, 2007, p. 34.

Elías Tolosa Arias, and Gustavo Lobo Ortega as the joint perpetrators of aggravated homicide with terrorist ends and attempted homicide, sentencing them to prison terms of 40 years.

88. The State notes that the First Criminal Court of the Bucaramanga Specialized Circuit prosecuted Luis Fernando Campuzano Vásquez for the events of August 21, 1999; he was charged with belonging to a gang of contract killers, on multiple counts, in conjunction with multiple aggravated homicides through omission, of which he was acquitted. It reports that as part of the judicial streamlining effort, the appeal in the case has been pending with the Criminal Chamber of the Superior Court of the Pamplona Judicial District since September 2007.

89. The State notes that in the instant case, the military criminal justice system limited itself to investigating the alleged duty omissions of members of the security forces in refusing to provide the support, safeguard, and guarantee functions assigned to them by the Constitution in the maintenance of public order. It reports that a military prosecution was brought against Maj. Mauricio Llorente, Capt. Luis Fernando Campuzano, and other members of the security forces for the crime of perverting the course of justice through omission; those proceedings concluded with the dismissal of the case against them, which was upheld entirely by the Superior Military Court and the case file was archived.

90. The State indicates that Jesús Emel Jaime Vacca and others, representing 260 persons displaced by the events in La Gabarra, filed a class-action suit against the Nation -the Ministry of National Defense-, with the Third Section of the Administrative Tribunal of Cundinamarca. That tribunal, on July 22, 2004, ruled the Nation economically responsible for the moral harm suffered by the group of plaintiffs, the people registered with the Social Solidarity Network, and all those inhabiting La Gabarra in May 1999. It explains that the conviction was based on the forced displacement that took place during the months of May and August 1999.

91. It reports that the first-instance judgment ordered the ministry to pay collective compensation in the amount of 125,000 times the current minimum legal monthly wage, to be distributed in equal shares, with no beneficiary to receive more than 50 times the current minimum legal monthly wage. It also states that the tribunal ordered the money to be handed over to the Fund for the Defense of Collective Rights and Interests, to be administered by the office of the Ombudsman. It reports that this decision was referred for consultation to the Council of State, where the Administrative Chamber, Third Section, resolved to amend the judgment handed down by the Cundinamarca Administrative Tribunal by ordering a payment, as compensation for moral damages, of the weighted amount equal to 13,250 times the current minimum wage, with a minimum of 50 times the legal monthly wage for each of the beneficiaries, and the money to be handed over to the Fund for the Defense of Collective Rights and Interests to be administered by the Ombudsman,[40] and this judgment was covered by a writ of execution on March 9, 2007.

92. It states that the law requires the publication, on one single occasion, of an extract from the judgment in a major national daily within one month of the writ of execution or the notification of the deed ordering compliance with the superior court's ruling, to inform all similarly injured parties who did not participate in the proceedings that they may report to the court, within a period of 20 days following publication, to claim their compensation.

93. Colombia reports that said extract was published on October 21, 2007, in the daily *La República*, and that the 20-day period set by law expired on November 20, 2007, and that the money for paying the compensation ordered by the judgment were handed over by the agencies of the State to the

[40] The State cites the judgment of May 26, 2006, handed down by the Third Section of the Administrative Chamber of the Council of State in the class action, which amended the ruling given by the Cundinamarca Administrative Tribunal on July 22, 2004, and instead ruled the Nation, through the Ministry of National Defense, Army, and Police, economically responsible for the harm suffered by the persons forcibly displaced from the town of La Gabarra, municipality of Tibú, Norte de Santander, on the occasion of the "paramilitary" incursion of May 29, 1999. The judgment also set, as the fee for the attorney who representing the plaintiffs, 10% of the compensation received by each member of the group who was not legally represented. Note from the Ministry of Foreign Affairs of Colombia DDH.GOI No. 50808/2375 of October 3, 2006, pp. 23-24.

account of the Fund for the Defense of Collective Rights and Interests held by the office of the Ombudsman on August 8 and October 2, 2007. It states that the office of the Ombudsman proceeded with the compensation payments, after citing, over the radio, the individuals whose names appeared in the Council of State's judgment, for them to prove with the relevant documents that they were entitled to compensation; as a result of this effort, only 130 beneficiaries were paid. It reports that the office of the Ombudsman sought, fruitlessly, the assistance of the legal representative of MINGA in locating and accrediting the remaining beneficiaries, but obtained no response. It notes that the attorney did not exercise his right to challenge the administrative decisions ordering the publication of extracts from the judgment regarding which he is now filing a complaint before an international venue.

94. The State notes that the requirements for joining a class-action suit are flexible, as are the evidentiary standards, and so mere claims of having been displaced or third-party testimonies were accepted. It consequently claims that, if in spite of that flexibility and the 20-day timeframe for reporting to the authorities following the judgment, the petitioners did not succeed in proving the existence of more than 260 displaced persons before the domestic courts, they cannot seek to do so now, before the IACHR, without providing any evidence thereof. It holds that the payment of this compensation covers at least redress for the material harm caused as a result of the forced displacement, and so that claim must be eliminated from the instant petition.

95. The State reports that the Administrative Tribunal of Norte de Santander is hearing 32 suits for direct redress, which are pending resolution. Those suits were brought for the deaths of the following persons: Humberto Quintero Santander (two suits), Nelson Ascanio Castilla, Francisco Franky Pérez, José del Carmen Peñaranda, José Guillermo Serrano Hernández, Alfonso Rojas Roso and Ramiro Rojas Roso, Eulogio García Ruiz, Juan José Molina Barrera (two suits), Liznel Grimaldo Ortiz, César Arturo Quintero Suárez (two suits), Evelio Quintero Suárez, Luis Alfredo Guerrero García, José Benedicto Duarte Bermúdez (two suits), Henry Soto Suárez (two suits), Humberto Becerra, Alonso Mejía Bonilla and Orlando Morales Rodríguez, Atiliano Rodríguez Romero, Jorge Camilo González Prada, Hender Leonardo Avendaño Pineda, Alonso Cacua Garcés, Juan Luber Morales Godoy, Gerardo Méndez, Jorge Camilo González Prada, José Joaquín Losada Espinoza, Ramiro Rojas Medina, Orlando Avendaño, and José Orlando Avendaño Pineda, in addition to a suit for direct redress on behalf of Víctor Manuel Rueda Acevedo for having been forced to abandon property, and one for the displacement suffered by Jairo Cáceres Silva.

96. The State reports that the following disciplinary investigations were launched in connection with the massacres: 008-27689 of 1999, archived on July 30, 2001; 008-46429 of 2000, archived on December 15, 2000; 008-40853 of 2000, archived on July 6, 2000; and 008-30530 of 1999, referred to the National Directorate of Special Investigations.

97. It reports that on July 18, 2000, the Office of the Ombudsman resolved to open a disciplinary investigation against: Brig. Gen. Alberto Bravo Silva of the Army (commanding officer of the Fifth Brigade of the National Army); Col. Roque Julio Sánchez Holguín of the National Police (commanding officer of the Norte de Santander Police Department); Lt. Col. Víctor Hugo Matamoros Rodríguez of the Army (commanding officer of the 5th Armored Group of the Fifth Brigade of the National Army); Maj. Mauricio Llorente Chávez of the Army (commanding officer of the Héroes de Saraguro 46th Counterguerrilla Battalion of the Fifth Brigade of the National Army); Lt. Luis Fernando Campuzano Vásquez of the Army (commanding officer of the Ballesta 6 Military Base in La Gabarra, attached to the Héroes de Saraguro 46th Counterguerrilla Battalion). It states that on January 18, 2002, the proceedings were archived with respect to Brig. Gen. (ret.) Alberto Bravo, Col. Víctor Hugo Matamoros, Maj. Mauricio Llorente, and Col. Roque Julio Sánchez of the National Police, and disciplinary charges were brought against Capt. Luis Fernando Campuzano. It reports that on June 9, 2004, Capt. Luis Fernando Campuzano was suspended from duty for 80 days, without pay, for the disciplinary offenses of omissions in duty, disobeying orders, failing to pursue the enemy, and failing to provide assistance.

98. The State maintains that the political and social context and the complex circumstances surrounding the events alleged by the petitioners have hindered the investigations that were begun and that have continued with the aim of identifying the alleged perpetrators of these violations and their

accomplices. Colombia claims that those factors serve to justify the lengthy criminal proceedings, and so there is no unjustified delay that would trigger the exception provided for in Article 46.2.c of the American Convention.

99. In consideration of the foregoing, the State asks the IACHR to rule the petition under analysis inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

100. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom the Colombian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Colombia has been a party to the American Convention since July 31, 1973, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

101. The State holds that Article 44 of the American Convention requires the "full and complete" individual identification of displacement victims in claims lodged with the IACHR. It therefore holds that the if the petition is ruled admissible with respect to the displacement allegations, the IACHR would be competent to analyze only the claims of the 260 identified victims since, with regard to the others, the IACHR lacks competence *ratione personae*. In turn, the petitioners contend that under the Rules of Procedure of the IACHR, full identification of the victims is not a requirement for analyzing the admissibility of a petition.

102. In connection with this, the Commission first notes that the text of Article 44 of the American Convention, which enables "any person or group of persons, or any nongovernmental entity [...] to lodge petitions with the Commission containing denunciations or complaints of violation […] by a State Party," contains no restriction of competence arising from the "full and complete" identification of the individuals affected by such a violation. This is a deliberate omission, intended to allow the examination of human rights violations that, by their nature, could affect a given person or group of persons who may not necessarily be identified in full.[41] In this petition the difficulty in fully identifying the displacement victims lies in the fact that they are in dispersed locations precisely because they are displaced persons. The IACHR believes that in such cases, the use of formal criteria for identifying the victims does not assist the international protection of the rights of movement, residence, and private property, and so the criteria used to identify the victims at this stage in the procedure must be flexible[42] and the full identification of all the victims is to be determined through the evidence submitted by the parties during the merits phase.

103. The Colombian State's position, holding that the procedure set out in the American Convention for the examination and determination of the State's possible responsibility in individual cases cannot be invoked in examining general or abstract situations, is correct. That is not, however, applicable to the matter at hand. The claim lodged by the petitioners is not an abstract complaint regarding the situation of internally displaced persons in Colombia. The factual allegations indicate circumstances of time and place that affected the inhabitants of Tibú municipality, the location of which in geographical and temporal terms is clear.

104. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Colombia, which is a state party to that treaty. The Commission has competence *ratione temporis* since

[41] IACHR, Report 86/06, Marino López *et al*. (Operation Genesis), paragraph 34; and Report 15/09, Massacre and Forced Displacement of Montes de María, paragraph 47.

[42] IACHR Report 86/06, Marino López *et al*. (Operation Genesis), paragraph 34.

the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

105. The State contends that forced displacement implies a form of behavior inherent to international humanitarian law, which is excluded from the IACHR's competence (see III B, *supra*). In contrast, the petitioners hold that the Inter-American Court has ruled on the reasons why the inter-American human rights system is competent to hear violations produced by forced displacements at times of armed conflict (see III A, *supra*).

106. In this regard, it should be recalled that the Inter-American Court has deemed it necessary to analyze the problems of forced displacement in light of international human rights law and international humanitarian law and, as regards Colombia, also in the light of the manifestation of the displacement phenomenon in the context of the internal armed conflict.[43]

107. Moreover, both the Commission and the Inter-American Court have found that the Guiding Principles on Internal Displacement issued in 1998 by the Representative of the United Nations Secretary-General[44] are of particular relevance in defining the content and scope of Article 22 of the Convention in cases of internal displacement. They have furthermore stated that given the situation of internal armed conflict in Colombia, the rules applicable to displacements contained in Protocol II of the 1949 Geneva Conventions are particularly useful.[45] Consequently, the Commission has competence *ratione materiae* to examine this petition.

B. Admissibility requirements

1. Exhaustion of domestic remedies

108. Article 46.1.a of the American Convention requires the prior exhaustion of the resources available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention. Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall 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 "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is appropriate for protecting the violated juridical situation.[46]

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[43] See: I/A Court H. R., *Ituango Massacres v. Colombia Case*, Judgment of July 1, 2006. Series C No. 148, paragraphs 208 and 209; *"Mapiripán Massacre" v. Colombia Case.* Judgment of September 15, 2005. Series C No. 134, paragraph 171; *Moiwana Community v. Suriname Case.* Judgment of June 15, 2005. Series C No. 124, paragraphs 113 to 120; and IACHR, Report No. 86/06, Marino López *et al*. (Operation Genesis), paragraph 42.

[44] United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, February 11, 1998. IACHR, Report No. 86/06, Marino López *et al*. (Operation Genesis), paragraph 43.

[45] The Inter-American Court has also used the criteria established by the Constitutional Court of Colombia whereby "also, in the Colombian case, the observance of these rules by the parties in the conflict is of particular urgency and importance, since the armed conflict underway in the country has seriously affected the civilian population, as seen, for example, in the alarming data on forced displacements." Constitutional Court of the Republic of Colombia, Judgment C-225/95 of May 18, 1995, paragraph 33, cited by the Inter-American Court in the *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006. Series C No. 148, paragraph 209. IACHR, Report No. 86/06, *Marino López et al. (Operation Genesis)*, paragraph 43.

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

109. First of all, the remedies still to be exhausted in the case at hand must be identified. The Inter-American Court has ruled that only those remedies appropriate for resolving the alleged violations need be exhausted. "Appropriate domestic remedies" means those:

> which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[47]

110. The precedents established by the IACHR recognize that whenever a publicly actionable offense is committed, the State is obliged to bring and pursue criminal proceedings[48] and that, in such cases, this is the ideal way for clarifying the events, prosecuting those responsible, and establishing the corresponding criminal sanctions, in addition to enabling other forms of monetary redress. The Commission notes that the petitioners claim the alleged violation of the right to life and humane treatment with respect to certain victims and that the alleged facts also led to the displacement of many others. The alleged facts thus translate into alleged publicly actionable offenses and it is therefore that process, brought by the State itself, which must be pursued to determine the admissibility of the claim.

111. In the case at hand, the State maintains that the petition does not satisfy the requirement of the prior exhaustion of the remedies offered by domestic jurisdiction set out in Article 46.1.a of the American Convention in that criminal, disciplinary, and administrative proceedings are still pending in connection with the facts of the claim.[49] Colombia also holds that the petitioners did not exhaust the remedy of *amparo* relief prior to invoking international jurisdiction. It adds that the proceedings before the military criminal justice system were limited to investigating possible service omissions, which in the State's opinion would qualify as "duty offenses."

112. In turn, the petitioners claim that in this case, the exceptions to the prior exhaustion of domestic remedies set out in Article 46.2, sections (a), (b), and (c), are applicable: because at the time the inhabitants of Tibú were displaced, forced displacement was not a crime under Colombian law; because military courts are not an impartial, independent, and competent authority and do not satisfy the standards established in international law, for which reason the victims and their next-of-kin did not have an effective judicial remedy and the crimes remained unpunished; and because of the length of time that has passed without all the guilty being punished by the regular courts.

113. Having seen the positions of the parties, the Commission notes that more than ten years after the alleged facts on which the petition is based, which allegedly involved some 250 paramilitaries, the prosecution service has begun 21 investigations, in which only two paramilitaries have been convicted, with the remaining proceedings still pending resolution.

114. Specifically, from the 17 investigations opened against paramilitaries for the massacre of May 29, 1999, one paramilitary (Jhovanny Velásquez) – who voluntarily turned himself over to the authorities – is serving a sentence and another (Germán Estupiñán) was convicted and is serving a sentence. The Commission further notes that of the remaining investigations, one has expired because of the death of Carlos Castaño and that the investigation of Salvatore Mancuso was declared invalid.

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[47] I/A Court H. R., *Velásquez Rodríguez v. Honduras Case.* Judgment of July 29, 1988. Series C No. 4, paragraph 63.

[48] IACHR *Report No. 52/97*, *Case 11.218, Arges Sequeira Mangas,* paras. 96 y 97; *Report No. 55/97*, paragraph 392. *Report No. 62/00, Case 11.727, Hernando Osorio Correa*, paragraph 24.

[49] State's comments submission DDH.GOI No. 7925/0419 of May 22, 2006, pp. 73-75.

115. Regarding the determination of the State's possible responsibility in the massacre of May 29, 1999, investigations were initiated against five agents of the State; with respect to four of those, the proceedings are still pending, with the fifth (José A. Hernández) convicted and serving his sentence.

116. It also notes that in connection with the massacre of July 17, 1999, the prosecution service opened investigations against four paramilitaries, of whom one is serving a sentence, two were acquitted, and one died and so his investigation expired. Regarding the determination of the State's responsibility, the prosecution service opened investigations against 14 agents of the State, of whom ten were acquitted, one investigation is pending, and three state agents were convicted and are serving their sentences.

117. Regarding the massacre of August 21, 1999, the Commission notes that the prosecution service began an investigation against one State agent (Luis Fernando Campuzano Vásquez), whose criminal trial has been pending resolution on appeal since 2007. It further notes that no investigations have begun with respect to the 30 or 50 paramilitaries who allegedly perpetrated the massacre.

118. In this regard, the Commission notes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation. As the Inter-American Court has ruled, although all criminal investigations must meet a series of legal requirements, the ruling requiring the prior exhaustion of domestic remedies must not mean that international action in support of the victims is halted or delayed to the point of uselessness.[50]

119. Regarding the use of military courts to investigate the massacres, in which the proceedings were archived, the Commission must again point out that military jurisdiction does not offer an appropriate forum and, consequently, does not afford an appropriate remedy for investigating, judging, and punishing violations of the human rights enshrined in the American Convention that, as alleged in this petition, were committed by members of the security forces or with their assistance or acquiescence.[51] In addition, the Inter-American Court has confirmed that military criminal justice is an adequate venue only for the trials of members of the armed forces for crimes or offenses that by nature attempt against legally protected interests of the military order.[52]

120. Regarding the other pending remedies to which the State refers, the Commission has previously held that decisions issued by disciplinary and administrative tribunals do not meet the requirements set in the Convention. Disciplinary jurisdiction is not an adequate channel for prosecuting, punishing, and offering redress for the consequences of human rights violations. Similarly, administrative jurisdiction is a mechanism to ensure oversight of the State's administrative activity, and can only provide compensation for harm inflicted through abuses of authority. Consequently, in a case such as the one at hand, those remedies need not be exhausted prior to involving the inter-American system.

121. Consequently, in light of the characteristics of this case, and the time that has passed since the events described in the petition, the Commission believes that the exceptions provided in Article 46.2.c of the American Convention are applicable as regards the unwarranted delay in the pursuit of domestic legal proceedings, and the requirement of exhausting domestic remedies is therefore not enforceable.

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[50] I/A Court H. R., *Velásquez Rodríguez v. Honduras Case.* Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 93.

[51] IACHR, *Third Report on the Situation of Human Rights in Colombia* (1999), p. 175; *Second Report on the Situation of Human Rights in Colombia* (1993), p. 246*; Report on the Situation of Human Rights in Brazil* (1997), pp. 40-42. IACHR Report No. 99/09, case 12.335, *Gustavo Giraldo Villamizar Durán,* paragraph 35 and Report No. 72/09, case 11.538, *Herson Javier Caro (Javier Apache) and family,* paragraph 26.

[52] I/A Court H. R., *Durand and Ugarte v. Peru Case.* Judgment of August 16, 2000. Series C No. 68, paragraph 117, *Caso Almonacid Arellano et al v. Chile Case.* Judgment of August 26, 2006. Series C No. 154, paragraph. 131 and *Palamara Iribarne v. Chile Case*. Judgment of November 22, 2005. Series C No. 135, paragraph. 124.

122. Furthermore, the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the Convention, such as its guarantees of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, since it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies in the case at hand will be analyzed in the Commission's future report on the merits of the controversy, in order to determine whether or not the American Convention was in fact violated.

2. Timeliness of the petition

123. The American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. In the instant case, the IACHR has admitted the exceptions to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

124. In the case at hand, the petition was received on October 18, 2005; the events it alleges took place on July 17, August 21, and May 29, 1999; and the alleged failures of the administration of justice continue into the present. Consequently, having seen the context and characteristics of the instant case, together with the fact that the criminal proceedings are still pending, the Commission believes that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed satisfied.

3. *Res judicata*

125. Nothing in the case file indicates that the substance of the petition is pending 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

126. Having seen the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR finds that in the case at hand it is appropriate to state that the petitioners' claims regarding the alleged violation of the rights to life, to humane treatment, to a fair trial, and to judicial protection if proven could establish violations of the rights protected in Articles 4.1, 5.1, 8.1, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

127. In addition, the Commission considers that the petitioners' claims about the alleged violation of the rights of the child could characterize violations to the rights set out in Article 19 of the American Convention in light of the provisions of the United Nations Convention on the Rights of the Child according to the *corpus juris*[53] of the rights of the children who were displaced from Tibú and of the unidentified child killed in the massacre of August 21, 1999.

[53] American Convention, Article 29: "Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as: […] 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; […]."

128. Having seen the petitioners' claims regarding the extradition of the paramilitary leader Salvatore Mancuso, the Commission shall also consider, in accordance with the principle of *iura novit curia,* during the merits phase, the possible failure to comply with the provisions of Article 2 of the American Convention as regards the decision to extradite to the jurisdiction of another State[54] one of the possible perpetrators of the massacres, who had been brought before the judicial authorities in connection with the enforcement of what is known as the Justice and Peace Law.[55]

129. The Commission considers that the petitioners' claims regarding the alleged violation of the rights to private property, and to movement and residence could characterize violations set out in Articles 21 and 22 of the American Convention with respect to the 2,670 identified alleged victims of displacement.[56] Since these aspects of the petition are not manifestly groundless or obviously out of order, the Commission holds that the requirements set forth in Articles 47.b and 47.c of the American Convention have been met.

130. The petitioners also claim that the right to personal liberty was violated. The Commission finds that the petitioners have not submitted sufficient evidence to establish a possible violation of Article 7 of the American Convention, and so it must rule that claim inadmissible.

V. CONCLUSIONS

131. The Commission concludes that it is competent to hear the petitioners' claims regarding the alleged violation of Articles 2, 4.1, 5.1, 8.1, 19, 21, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention. It further concludes that the claim regarding the alleged violation of Article 7 of the American Convention is inadmissible.

132. 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 this case admissible as regards Articles 2, 4.1, 5.1, 8.1, 19, 21, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and to declare the claim inadmissible regarding the alleged violation of Article 7 of the American Convention.

2. To give notice of this decision to the Colombian State and to the petitioner.

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.

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[54] See: IACHR Annual Report 2008, Chapter IV, Colombia, available at: http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm.

[55] On June 22, 2005, the Congress of the Republic of Colombia passed Law 975 of 2005, known as the "Justice and Peace Law," which came into force following presidential assent on July 22, 2005. In reviewing the constitutionality of that legislation, the Constitutional Court found that demobilized fighters involved in the commission of crimes related to the armed conflict wishing to obtain the benefits afforded by Law 975 would have to collaborate with the courts in order to ensure effective enjoyment of the victims' rights to truth, justice, redress, and nonrepetition. Constitutional Court, File D-6032, Judgment C-370/06, reasoning made public on July 13, 2006. See: IACHR, Report No. 70/09, José Rusbell Lara, paragraph 41.

[56] The list submitted by the petitioners, *prima facie,* contains duplicated names. The full identification of the victims will be determined during the merits phase.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission).