ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COURT OF HUMAN RIGHTS

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ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

1992

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006

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I. ORIGIN, STRUCTURE AND JURISDICTION OF THE COURT

A. Creation of the Court

The Inter-American Court of Human Rights (hereinafter "the Court") was brought into being by the entry into force of the American Convention on Human Rights "Pact of San José, Costa Rica" (hereinafter "the Convention" or "the American Convention"), which occurred on July 18, 1978, upon the deposit of the eleventh instrument of ratification by a Member State of the Organization of American States (hereinafter "the OAS" or "the Organization"). The Convention was adopted at the Inter-American Specialized Conference on Human Rights, which took place November 7-22, 1969, in San José, Costa Rica.

The two organs for the protection of human rights provided for under Article 33 of the Pact of San José, Costa Rica, are the Inter-American Commission on Human Rights (hereinafter "the Commission") and the Court. The function of these organs is to ensure the fulfillment of the commitments made by the States Parties to the Convention.

B. Organization of the Court

In accordance with the terms of the Statute of the Court (hereinafter "the Statute"), the Court is an autonomous judicial institution which has its seat in San José, Costa Rica, and whose purpose is the application and interpretation of the Convention.

The Court consists of seven judges, nationals of the Member States of the OAS, who act in an individual capacity and are elected *from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates* (Article 52 of the Convention.)

Article 8 of the Statute provides that the Secretary General of the OAS shall request the States Parties to the Convention to submit a list of their candidates for the position of judge of the Court. In accordance with Article 53(2) of the Convention, each State Party may propose up to three candidates.

The judges serve for a term of six years. They are elected by an absolute majority vote of the States Parties to the Convention. The election is by secret ballot in a General Assembly of the Organization. Judges shall continue to hear the cases they have begun to hear and that are still pending (Article 54(3) of the Convention).

Election of judges shall take place, insofar as possible, at the OAS General Assembly immediately prior to the expiration of the term of the judges. Vacancies on the Court caused by death, permanent disability, resignation or dismissal, shall be filled by election, if possible, at the next General Assembly (Article 6(1) and 6(2) of the Statute.)

In order to preserve a quorum of the Court, interim judges may be appointed by the States Parties (Article 6(3) of the Statute.)

In the event that one of the judges called upon to hear a case is the national of one of the States parties to the case, the other States parties to the case may appoint an *ad hoc* judge. If none of the States parties to a case is represented on the Court, each may appoint an *ad hoc* judge (Article 10 of the Statute.)

States parties to a case are represented in the proceedings before the Court by the Agents they designate according to Article 21 of the Rules of Procedure of the Court ((hereinafter "the Rules") approved in January, 1991, which became effective on August 1, 1991, and apply only to cases submitted to the Court subsequent to that date).

The judges are at the disposal of the Court and, pursuant to the Rules, meet in two regular sessions a year and in special sessions when convoked by the President or at the request of a majority of the judges. Although the judges are not required to reside at the seat of the Court, the President renders his services on a permanent basis (Article 16 of the Statute and Articles 11 and 12 of the Rules.)

The President and Vice-President are elected by the judges for a period of two years and they may be reelected (Article 12 of the Statute.)

There is a Permanent Commission of the Court (hereinafter "the Permanent Commission") composed of the President, Vice-President and a judge named by the President. The President may appoint a fourth judge for specific cases or as a regular member. The Court may also create other commissions for specific matters (Article 6 of the Rules.)

The Secretariat of the Court functions under the direction of the Secretary, who is elected by the Court.

C. Composition of the Court

As of December 31, 1992*, which marks the end of the period covered by this Report, the Court was composed of the following judges, in order of precedence:

Héctor Fix-Zamudio (Mexico), President
Sonia Picado-Sotela (Costa Rica), Vice-President
Rafael Nieto-Navia (Colombia)
Alejandro Montiel-Argüello (Nicaragua)
Máximo Pacheco-Gómez (Chile)
Hernán Salgado-Pesantes (Ecuador)
Asdrúbal Aguiar-Aranguren (Venezuela)

* Doctor Asdrúbal Aguiar-Aranguren was elected Judge by the States Parties to the Convention during the XXII Regular Session of the General Assembly of the OAS, to replace Judge Orlando Tovar-Tamayo (Venezuela), who died on November 21, 1991. Judge Tovar-Tamayo was Vice-President of the Court at the time of his death.

The Secretary of the Court is Manuel E. Ventura-Robles and the Deputy Secretary is Ana María Reina.

D. Jurisdiction of the Court

The Convention gives the Court contentious and advisory functions. One involves the power to adjudicate disputes relating to charges that a State Party has violated the Convention. The second function involves the power to interpret the Convention or *other treaties concerning the protection of human rights in the American states* at the request of the Member States of the OAS. Within their spheres of competence, the organs listed in the OAS Charter may in like manner consult the Court.

1. The Court's Contentious Jurisdiction

The contentious jurisdiction of the Court is spelled out in Article 62 of the Convention, which reads as follows:

> 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
>
> 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
>
> 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Since States Parties are free to accept the Court's jurisdiction at any time, it is possible to invite a State to do so for a specific case.

Pursuant to Article 61(1) of the Convention, *[o]nly the States Parties and the Commission shall have the right to submit a case to the Court.*

Article 63(1) of the Convention contains the following provision relating to the judgments that the Court may render:

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Paragraph 2 of Article 68 provides that the *part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.*

Article 63(2) reads as follows:

> In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

The judgment rendered by the Court in any dispute submitted to it is *final and not subject to appeal.* Nevertheless, *[i]n case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment*. (Article 67.) Moreover, the *States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties* (Article 68.)

The failure of a state to comply with a judgment of the Court is a matter to be dealt with by the General Assembly of the Organization. The Court submits a report on its work to each regular session of the Assembly, and it *shall specify, in particular, the cases in which a state has not complied with its judgments* (Article 65.)

2. The Court's Advisory Jurisdiction

The jurisdiction of the Court to render advisory opinions is set forth in Article 64 of the Convention, which reads as follows:

> 1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
>
> 2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

It should be emphasized that standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention; any OAS Member State may request such an opinion.

The Court's advisory jurisdiction enhances the Organization's capacity to deal with questions arising under the Convention, for it enables the organs of the OAS to consult the Court whenever there are doubts regarding the interpretation of that treaty.

3. Recognition of the Jurisdiction of the Court

Fourteen States Parties to the Convention have now recognized the jurisdiction of the Court. They are Costa Rica, Peru, Venezuela, Honduras, Ecuador, Argentina, Uruguay, Colombia, Guatemala, Suriname, Panama, Chile, Nicaragua, and Trinidad and Tobago.

A table showing the status of ratifications of the Convention may be found at the end of this report (Appendix XII).

E. Budget

The presentation of the budget of the Court is governed by Article 72 of the Convention which states that *the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.* Pursuant to Article 26 of its Statute, the Court administers its own budget.

F. Relations with Other Regional Organizations

The Court has close institutional ties with the other organ provided for in the Convention, the Commission. These ties have been solidified by a series of meetings between members of the two bodies. The Court also maintains cooperative relations with the Inter-American Institute of Human Rights, established under an agreement between the Government of Costa Rica and the Court, which entered into force on November 17, 1980. The Institute is an autonomous international academic institution with a global, multidisciplinary approach to the teaching, research and promotion of human rights. Furthermore, the Court has held working sessions with the European Court of Human Rights, which was established by the Council of Europe and exercises functions within the framework of that organization comparable to those of the Inter-American Court.

II. ACTIVITIES OF THE COURT

A. XXV Regular Session of the Court

The Court held its XXV Regular Session from January 13 to 15, 1992, at the seat of the Court in San Jose, Costa Rica. Present were Judges Héctor Fix-Zamudio (Mexico), President; Sonia Picado-Sotela (Costa Rica), Vice-President; Rafael Nieto-Navia (Colombia); Alejandro Montiel-Argüello (Nicaragua); and Hernán Salgado-Pesantes (Ecuador). Also present were the Secretary and Deputy-Secretary of the Court, Manuel E. Ventura-Robles and Ana María Reina.

During this session, two of the three new judges of the Court were sworn in and took office, namely, Alejandro Montiel-Argüello and Hernán Salgado-Pesantes.

At this session, the Court examined and approved its Annual Report to the OAS General Assembly for 1991, which took place in Nassau, Bahamas, beginning on Monday, May 18, 1992. The Court also heard the report of the Executive Director of the Inter-American Institute of Human Rights on the activities of that body and analyzed administrative and budgetary matters.

B. Reference to the Court of the Cayara Case

On February 14, 1992, the Inter-American Commission on Human Rights submitted joint cases Nos. 10.264, 10.206, and 10.276 to the Court, pursuant to Article 61 of the American Convention on Human Rights. These cases relate to events that occurred beginning on May 14, 1988, in the District of Cayara, Province of Víctor Fajardo, Department of Ayacucho, Republic of Peru.

The complaint of the Commission alleges that the Government of Peru apparently violated several articles of the American Convention (Appendix I).

The Commission appointed the following persons as its delegates in this case: Dr. Marco Tulio Bruni-Celli, Chairman, and Dr. Edith Márquez-Rodríguez, Executive Secretary. Dr. Bruni-Celli was subsequently replaced by Professor W. Michael Reisman. The Government appointed attorney Alonso Esquivel-Cornejo as its Agent and Dr. Manuel Aguirre-Roca to serve as its ad hoc judge.

C. Presentation of the Court's Annual Report to the Committee on Juridical and Political Affairs of the OAS in Washington, D.C.

From March 10 to 12, 1992, the President, Vice-President and Secretary of the Court submitted the Annual Report on the Activities of the Court for the year 1991 to the Organization's Committee on Juridical and Political Affairs in Washington, D.C. In his speech to the Committee, the President described the activities carried out by the Court during the period covered by the report and emphasized the need to provide the Court with sufficient financial resources to enable it to fully comply with its mandate.

Based on the Annual Report presented to the Committee on Juridical and Political Affairs, the Permanent Council transmitted the following draft resolution to the General Assembly:

> 1. To take note of the Annual Report of the Inter-American Court of Human Rights.
>
> 2. To welcome the observations and recommendations made by the Permanent Council of the Organization on the Annual Report of the Inter-American Court of Human Rights and to transmit them to that Court.

3. To urge the member states of the OAS that have not yet done so to ratify or accede to the American Convention on Human Rights "Pact of San José, Costa Rica," and to recognize the binding jurisdiction of the Inter-American Court of Human Rights.

4. To give the Court the financial and functional support it needs to perform the high functions assigned to it in the American Convention on Human Rights.

5. To express its recognition to the Inter-American Court of Human Rights for the work done in the period covered by this report, and to urge it to continue to perform its important function.

The President was received by the Secretary General of the OAS, with whom he discussed specific issues relating to the Court. He was also received by the OAS Committee on Administrative and Budgetary Matters, whose Chairman had been presented with a request for a budget increase, deemed essential for the Court to be able to continue its current activities. The Committee heard the presentation of the President of the Court; the request was granted by the General Assembly in Nassau, Bahamas, in the month of May.

D. Presentation of Advisory Opinion Request OC-13 to the Court

On May 7, 1992, the Governments of Argentina and Uruguay submitted a request for an advisory opinion seeking the Court's interpretation of Articles 41, 42, 44, 46, 47, 50 and 51 of the Convention, as they relate to the situation and circumstances expressed therein. The advisory opinion request was dealt with in the manner prescribed in the applicable rules. The President fixed November 16, 1992 as the deadline for presentation of observations and relevant documents on the issue. Furthermore, pursuant to Article 54(4) of the Rules, the President scheduled a public hearing on this request for advisory opinion for February 1, 1993 (Appendix II).

E. XXII Regular Session of the General Assembly of the OAS

At the XXII Regular Session of the OAS General Assembly, the Court was represented by its Permanent Commission, constituted by the President, Judge Héctor Fix-Zamudio and by Judges Sonia Picado-Sotela (Vice-President) and Rafael Nieto-Navia. Also present was the Secretary of the Court, Manuel E. Ventura-Robles. The General Assembly met in Nassau, Bahamas, from May 18 to 23, 1992.

After hearing the Annual Report on the activities of the Court, the General Assembly passed the following resolution:

1. To take note of the Annual Report of the Inter-American Court of Human Rights.

2. To accept the observations and recommendations made by the Permanent Council of the Organization on the Annual Report of the Inter-American Court of Human Rights and to transmit them to that Court.

3. To urge the member states of the OAS that have not yet done so to ratify or accede to the American Convention on Human Rights "Pact of San José, Costa Rica" and recognize the compulsory jurisdiction of the Inter-American Court of Human Rights.

4. To give the Court additional financial and functional support it needs to continue to perform the critical functions assigned to it in the American Convention on Human Rights, in an amount of up to $70,000.

5. To thank the Court the work done in the period covered by this report, and to urge it to continue to perform its important function.

The President of the Court expressed his gratitude for the budget increase and for the general support accorded to the Court.

- **Election of a new Judge**

During the XXII Regular Session of the OAS General Assembly, the States Parties to the American Convention on Human Rights elected Dr. Asdrúbal Aguiar-Aranguren (Venezuela) Judge of the Court, to complete the term of Judge Orlando Tovar-Tamayo, who died on November 21, 1991. Judge Aguiar-Aranguren's term will end on December 31, 1994.

F. Meeting with the Inter-American Commission on Human Rights

During the XXII Regular Session of the General Assembly of the OAS, the delegation of the Court to that Assembly met on May 22 with the Chairman of the Commission, Dr. Marco Tulio Bruni-Celli, the Second Vice-Chairman, Professor W. Michael Reisman, the Executive Secretary, Dr. Edith Márquez, and other officers of the Executive Secretariat.

Several agreements aimed at strengthening the Inter-American system for the protection of human rights were reached at the meeting. These are being implemented.

G. XXVI Regular Session of the Court

The Court held its XXVI Regular Session from June 22 to July 9, 1992, at its seat in San José, Costa Rica.

At this session, Judges Máximo Pacheco-Gómez (Chile) and Asdrúbal Aguiar-Aranguren (Venezuela) were sworn in and took office. They, together with Héctor Fix-Zamudio (Mexico), President; Sonia Picado-Sotela (Costa Rica), Vice-President; Rafael Nieto-Navia (Colombia); Alejandro Montiel-Argüello (Nicaragua); and Hernán Salgado-Pesantes (Ecuador) composed the Court on this occasion. Also present were Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy-Secretary.

During this session, the Court considered the cases of Neira Alegría *et al.* against Peru, Cayara against Peru and Gangaram Panday against Suriname. To that end, the following *ad hoc* judges (appointed by Peru and Suriname) participated in the meetings of the Court, Jorge E. Orihuela-Iberico (Neira Alegría *et al.* case); Manuel Aguirre-Roca (Cayara case), who was sworn in at this session; and Antônio A. Cançado Trindade (Gangaram Panday case). The Court also began consideration of Advisory Opinion OC-13.

On June 24, the Court held a public hearing on the preliminary objections interposed by the Government of Peru in the Cayara case. After it examines the evidence and the written and oral pleadings presented by the parties, the Court will pronounce judgment on the preliminary objections.

In the case of Neira Alegría *et al.*, the Court, constituted as indicated above with the participation of *ad hoc* Judge Jorge E. Orihuela-Iberico, issued an order on June 29, 1992, which decided the following (Appendix III):

> To continue to hear the case of Neira Alegría et al., except for matters related to the motions filed by the agent of the Government against the judgment of December 11, 1991, which shall be resolved by the Court as it was composed when that judgment was rendered.

Although the order was approved unanimously, Judge Nieto-Navia issued a dissenting opinion and Judges Montiel-Argüello and Orihuela-Iberico each wrote an individual opinion.

On June 30, the Court held another hearing on the disqualification of witnesses in the case of Neira Alegría *et al.* and issued an order whereby, pursuant to Article 37 of its Rules, it rejected the objections and reserved the right to assess the value of the statements that the persons in question might make at some future date (Appendix IV).

On July 1, 1992, the Court issued an order regarding the timing of the presentation of expert evidence offered by the Commission in the case of Neira Alegría *et al.*

A public hearing was held at the seat of the Court on July 8 and 9 on the question of disqualifications witnesses and expert witnesses and the reception of testimony on the merits in the case of Gangaram Panday. The agent of the Government of Suriname withdrew the disqualifications he had interposed. As a result, the statements of the witnesses produced by the Commission were heard.

The Court decided that its XXVII Regular Session would be held from January 25 to February 5, 1993, at the seat of the Court.

H. XII Special Session of the Court

The Court held its XII Special Session from June 29 to July 7, 1992, at its seat in San José, Costa Rica.

For this special session, the Court was composed as follows: Héctor Fix-Zamudio (Mexico), President; Sonia Picado-Sotela (Costa Rica), Vice-President; Thomas Buergenthal (United States of America); Rafael Nieto-Navia (Colombia); Julio A. Barberis (Argentina); and Asdrúbal Aguiar-Aranguren (Venezuela). Also present were Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary.

The *ad hoc* judges appointed by Peru and Suriname --Jorge E. Orihuela-Iberico (Neira Alegría *et al.* case) and Antônio A. Cançado Trindade (Gangaram Panday and Aloeboetoe *et al.* cases)-- also participated in this session.

The Court devoted this special session to consideration of the case of Neira Alegría *et al.* against Peru, namely, the request for revision and interpretation of the judgment on the preliminary objections rendered by the Court with the above composition, and the cases of Aloeboetoe *et al.* and Gangaram Panday against Suriname.

On July 1, a public hearing was held to consider the petitions for revision and interpretation of the judgment on the preliminary objections in the case of Neira Alegría *et al.* Just before the hearing began, the Agent of the Government of Peru submitted a written communication withdrawing the petition for revision that had been filed. On July 3, 1992, the Court issued an order which, by five votes to one, decided as follows (Appendix V):

> 1. Takes note of the Government's withdrawal of its request for revision of the judgment and reserves until later its decision as to court costs, if any.
>
> Judge Jorge E. Orihuela-Iberico casts the dissenting vote.
>
> ...
>
> 2. Rejects as inadmissible the request for interpretation of its judgment of December 11, 1991, on the preliminary objections.
>
> Judge Jorge E. Orihuela-Iberico casts the dissenting vote.

Judge Thomas Buergenthal appended a declaration.

In the case of Gangaram Panday, the Court, pursuant to Article 54(3) of the Convention, unanimously ordered on July 7 *[t]hat this case continue to be heard by the Court as composed after January 1, 1992* (Appendix VI).

On that same date, the Court held a public hearing to consider the disqualifications to witnesses and expert witnesses and the pleadings of the parties with regard to compensation and costs in the case of Aloeboetoe et al. against Suriname. By order of July 7, 1992, the Court rejected the disqualifications against the witnesses and reserved its right to assess the value of their statements at a later date and to summon them to testify as provided in Article 35 of its Rules (Appendix VII).

I. Accession of Brazil to the American Convention on Human Rights

On September 25, 1992, the Government of the Federal Republic of Brazil deposited an instrument of accession to the American Convention with the General Secretariat of the OAS. In acceding to the Convention, the Government of Brazil made the following declaration: *The Government of Brazil understands that Articles 43 and 48(d) do not include an automatic right to carry out visits and in loco investigations by the Inter-American Commission on Human Rights, for which the express agreement of the State shall be required.*

J. Deliberations on a Possible Revision of the American Convention on Human Rights

By note of November 16, 1992 to the President of the Permanent Council of the OAS, the President of the Inter-American Court and the Chairman of the Inter-American Commission replied to the request of the Permanent Council and to an earlier communication of the Committee on Juridical and Political Affairs of the OAS, inviting the Commission and the Court to submit their observations regarding any practical difficulties they might have encountered in the implementation of the provisions of the American Convention as they relate to their own statutes and regulations (Appendix VIII).

K. Requests for Provisional Measures Submitted by the Inter-American Commission on Human Rights

The Commission submitted to the Court the request for provisional measures pursuant to Article 63(2) of the Convention. The first, received on November 23, concerned Case No. 11.083 (Chipoco case) against Peru and currently before the Commission. The second request, received on November 25, related to Cases Nos. 11.015 and 11.048 (Peruvian Prisons cases) against Peru, also before the Commission.

In accordance with the provisions of Article 24(4) of the Rules, the President of the Court determined on December 14, 1992, that in both cases it was premature to order the Government of Peru to adopt the urgent provisional measures requested. The President also decided to submit both requests for provisional measures to the consideration of the Court at its next regular session, in order to enable the Court to make the appropriate decision pursuant to Article 63(2) of the Convention (Appendices IX and X).

L. Reference to the Court of the Caballero Delgado and Santana Case

On December 24, 1992, pursuant to Article 61 of the American Convention, the Inter-American Commission on Human Rights submitted Case 10.310 for consideration by the Court. This case arose as a

result of the events that took place on February 7, 1989 in the locality of Guaduas, Municipality of San Alberto, Department of Cesar, Republic of Colombia.

The complaint of the Commission alleges that the Government of Colombia apparently violated several articles of the American Convention.

The Commission appointed Dr. Leo Valladares-Lanza as its delegate to represent it in this case (Appendix XI).

M. Sessions of the Permanent Commission

The Permanent Commission of the Court, composed of the President, Judge Héctor Fix-Zamudio, the Vice-President, Judge Sonia Picado-Sotela, and the former President, Judge Rafael Nieto-Navia, met on four occasions during 1992. The purpose of these sessions was to advise the President, who has had to issue various orders regarding the cases before the Court (Neira Alegría *et al.* and Cayara against Peru, Aloeboetoe *et al.* and Gangaram Panday against Suriname), and to schedule the activities of the Court and meet with the agents and delegates designated in the aforementioned cases. The Commission also collaborated with the President in the proceedings relating to Advisory Opinion OC-13. The Permanent Commission met at the seat of the Court on January 16, 17 and 18, 1992, after the conclusion of the XXV Regular Session; on March 21, after the Meeting of the Board of Directors of the Inter-American Institute of Human Rights; on May 21 in Nassau, Bahamas, during the OAS General Assembly; and on September 23, 1992, on the occasion of the X Interdisciplinary Course on Human Rights of the Inter-American Institute of Human Rights.

A Special Commission of the Court, established for the case of Neira Alegría *et al.*, met in the month of January to decide on the procedure to be followed as regards the evidence in that case and to meet with the parties to the case. That Commission was composed of the members of the Permanent Commission and *ad hoc* Judge Jorge E. Orihuela-Iberico.

APPENDIX I

February 12, 1992

Mr. Secretary:

I have the pleasure of addressing you in order to transmit the case that the Inter-American Commission of Human Rights submits to the Inter-American Court of Human Rights against the Government of Peru, because of the events that have occured since May 14, 1988 in the District of Cayara, which led to cases 10.264, 10.206 and 10.276 (accumulated).

I have also enclosed report N° 29/91 of February 20, 1991, the Government of Peru's brief of May 27, 1991, and Resolution 1/91 referring to report number 29/91 of November 11, 1991, in addition to the adduced evidence relating to the events that have led to this request.

I write to inform you that the Inter-American Commission on Human Rights has decided to designate as its representatives, Dr. Marco Tulio Bruni-Celli, President of the Commission and Dr. Edith Márquez-Rodríguez, Executive Secretary, who will chose at the appropriate time a lawyer from her staff to assist the delegates in the fulfillment of their duties.

The delegates of the Commission will be assisted by the following advisors: Francisco Soberón-Garrido (co-petitioner) for the Association for Human Rights of Peru, for the National Coordinator of Human Rights of Peru, and representative of the families of the victims; Miguel Talavera, for the Legal Defense Institute of Peru, and for the National Coordinator of Human Rights; Pablo Rojas-Rojas, for the Human Rights Commission of Peru; Javier Zuñiga, Jill Hedges, Wilder Taylor and Peter Archard for Amnesty International, a co-petitioning institution in the cases before the Commission; Juan Méndez and Carlos Chipoco for Americas Watch, a co-petitioning institution in the cases before the Commission; and José Miguel Vivanco, representing the Center for Justice and International Law.

Mr. Secretary, please accept the assurances of my highest and distinguished consideration.

(s) Edith Márquez-Rodríguez
Executive Secretary

Lic. Manuel E. Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

Annexes: indicated

COMPLAINT

FILED BY THE

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

AGAINST

THE PERUVIAN STATE (*)

In connection with the events that began on May 14, 1988 in

the district of

CAYARA

(*) This is a literal transcription of the original text submitted by the Commission.

I. /PURPOSE OF THE COMPLAINT

The Inter-American Commission on Human Rights is petitioning the Inter-American Court of Human Rights that:

1. It find that the Government of Peru, through the acts of its agents, has violated the right to life, the right to humane treatment, the right to personal liberty, the right to a fair trial, the right to property and the right to judicial protection, recognized in articles 4, 5, 7, 8, 21 and 25, all in relation Article 1.1 of the American Convention on Human Rights, as a consequence of the extrajudicial executions, torture, arbitrary arrest, forced disappearance and damage to public property and the property of Peruvian citizens, victims of actions that members of the Peruvian Army took starting on May 14, 1988, in the district of Cayara, Province of Víctor Fajardo, Department of Ayacucho, and the following persons in particular:

ARBITRARY EXECUTIONS AND FORCED DISAPPEARANCES

1. APARI TELLO, HERMENEGILDO
2. ASTO BAUTISTA, ESTEBAN
3. BAUTISTA PALOMINO, GUZMAN (disappeared)
4. BERROCAL PALOMINO, EMILIO
5. CCAYO CAHUAYMI, DAVID
6. CCAYO CAHUAYMI, PATRICIO
7. CCAYO NOA, SOLANO
8. CCAYO RIVERA, JOSE
9. CHOCCÑA ORE, ALEJANDRO
10. CRISOSTOMO GARCIA, FELIX
11. CRISOSTOMO GARCIA, MARTA
12. ECHECCAYA VILLAGARAY, ALEJANDRO
13. GARCIA SUAREZ, JOVITA
14. GARCIA PALOMINO, SAMUEL
15. GARCIA TIPE, ANTONIO FELIX
16. GONZALEZ PALOMINO, ARTEMIO
17. GUTIERREZ HUAMAN, MAGDALENO (disappeared)
18. HUAYANAY BAUTISTA, ALFONSO
19. IPURRE BAUTISTA, HUMBERTO (disappeared)
20. IPURRE RAMOS, GREGORIO (disappeared)
21. IPURRE SUAREZ, IGNACIO
22. MARCATOMA SUARES VDA. DE IPURRE, SECUNDINA (disappeared)
23. NOA PARIONA, TEODOSIO
24. ORE PALOMINO, EUSTAQUIO
25. PALOMINO BAUTISTA, ZACARIAS
26. PALOMINO CHOCCÑA, AURELIO
27. PALOMINO DE IPURRE, BENIGNA (disappeared)
28. PALOMINO QUISPE FERNANDINA
29. PALOMINO SUAREZ, FIDEL TEODOSIO
30. PALOMINO TUEROS, INDALECIO
31. QUISPE PALOMINO, FELIX

32. RAMOS PALOMINO, CATALINA (disappeared)
33. SUAREZ PALOMINO, DIONISIO
34. SULCA HUAYTA, PRUDENCIO
35. SULCA ORE, EMILIANO
36. TAQUIRI YANQUI, ZOZIMO GRACIANO
37. TARQUI CCAYO, IGNACIO
38. TELLO CRISOSTOMO, SANTIAGO
39. TINCO GARCIA, JUSTINIANO
40. VALENZUELA QUISPE, TEODOSIO

TORTURE

PALOMINO DE LA CRUZ, INDALECIO
DE LA CRUZ IPURRE, CESAR
TARQUI QUISPE, AVELINO
ESQUIVEL FERNANDEZ, DOMITILA
VALENZUELA CCAYO, BENEDICTA MARIA
CCAYO RIVERA, CIRO
CRISOSTOMO GARCIA, TEOFILO
VALENZUELA PALOMINO, NESTOR

DAMAGE TO THE PROPERTY OF

IPURRE RAMOS, GREGORIO
SUAREZ PALOMINO, DIONISIO
TELLO, LUCIA
CABRERA DE PALOMINO, PRIMITIVA
GARCIA PARIONA, MODESTO
TORRES TINCO, TEODOSIO
DE LA CRUZ VDA. DE TORRES, CATALINA
SUAREZ BAUTISTA, PAULINA
HUAMANI, APOLONIO
GARCIA PARIONA, ENEDINA
AQUINO PAICO, EMILIANO

DAMAGE TO PUBLIC PROPERTY

CAYARA HEALTH STATION
CAYARA DISTRICT COUNCIL
CAYARA EDUCATION CENTER

2. It find that the Government of Peru has failed to honor its obligation to respect and guarantee the exercise of the rights mentioned in the preceding paragraph, under the terms of Article 1.1 of the Convention.

3. It set the reparations and compensatory damages to which the victims and/or their next-to-kin are entitled as a consequence of the actions of the agents of the Peruvian Government described in this complaint, in accordance with Article 63.1 of the Convention.

4. It instruct the Government of Peru to conduct a thorough and impartial investigation of the facts denounced in this submission, single out those responsible for the violations denounced and bring them to trial so that they may receive the punishment that the law demands.

II. THE FACTS

A. General statement of the facts in this case

On May 13, 1988, at around 21:00 hours, in the vicinity of the hamlet known as Erusco, a Peruvian Army convoy was ambushed by an armed group belonging to the Peruvian Communist Party -also known as the Sendero Luminoso [Shining Path] --, leaving four soldiers dead and another 14 wounded. Erusco is located in the District of Cayara, Province of Víctor Fajardo, Department of Ayacucho, a region that has been the scene of very serious violence dating back to 1980, when the group launched its armed fight against the Peruvian constitutional system. Since December 1982, the Department of Ayacucho has been in a state of emergency and under authority of a Political-Military Command. At the time of the events in question, the Chief of the Political-Military Command was Brigadier General José Valdivia Dueñas, who was promoted to the rank of Division General in December 1990.

The next day, May 14, military troops instituted a series of actions in the Cayara district which resulted in the arbitrary execution of 33 persons, the disappearance of 7, the torture of at least 6 who survived and damage to public and private property, all within the period from May 14, 1988 to September 8, 1989. In committing the violations mentioned herein, the military troops' purpose was to take reprisals --targeted at a community who the military considered to be terrorists-- and to eliminate those persons whose names appeared in a letter that an anonymous informant sent to an Army officer in that area. Some of the persons whose names were mentioned in the letter were killed on May 14, while others were arrested and then killed on May 18. Others were arrested and disappeared on June 29 of that year, while another was summarily executed on December 14. Property belonging to some of the other people on the list was damaged and looted. Apart from the individuals on the list in question, military troops proceeded to execute arbitrarily other persons from the town, while other people were the victims of enforced disappearance. The soldiers also tortured an unknown number of persons to obtain information on the subversive group's activities.

The authors of these actions also committed acts calculated to conceal the truth. Pressure was used to force witnesses to change their testimony and those who would not were physically eliminated. And so it was that on September 8, 1989, the last of the key witnesses was murdered. The authors also took measures to cover up their tracks, which included efforts to wash away the bloodstains in the church and to hide the bodies of the victims, most of which have not yet been found. Their actions were also calculated to thwart the proceedings conducted by those organs of the Peruvian State that were endeavoring to ascertain the facts and, as the case gained notoriety, to obtain from organs of the Peruvian State versions that were consistent with those spread by the Army.

As a result of all these actions, the Office of the Attorney General of the Nation has not indicted any of the authors of these events, though the Special Prosecutor did submit an official report prepared on the basis of his investigations wherein he charges that the individual that bears the principal responsibility for these events is the Chief of the Political-Military Command of Ayacucho. The Government Commission -also known as the Commission of Notables-, appointed by the Executive Power, also failed to arrive at any clear-cut conclusions concerning the responsibility for these actions. It should also be noted that the majority opinion of the Senate Investigating Committee also concurs with the Army's version of what happened, while two minority opinions hold the Army responsible. The Military Court failed to convict anyone for these actions and dismissed the respective case. All this could not have happened without complicity at the highest decision-making levels within the Peruvian State. There events are not unprecedented in Peru, where there have been other killings by the security forces. Moreover, when it comes to the practice of enforced disappearance of persons, Peru is at the top of the list.

APPENDICES:

1. Map of the area.

2. Report of the Office of the Inspector General of the Army, May 31, 1988, on the events under examination.

3. Cayara pleadings.

4. Report of General José Valdivia Dueñas to the Provincial Prosecutor of Cangallo, Dr. Jesús Granda, dated November 18, 1988.

5. Report of the Special Prosecutor, Dr. Carlos Escobar Pineda, dated October 13, 1988.

6. Report of the Provincial Prosecutor of Cangallo, Dr. Jesús Granda.

7. Report of the Prosecutor for Víctor Fajardo, Dr. Rubén Vega Cárdenas.

8. Report to the Senate Investigating Committee.

9. Attachment to the statement made by Amnesty International before the Inter-American Commission on Human Rights, February 1991.

B. Statement of the specific facts

1. Death and subsequent disappearance of Esteban Asto Bautista

On May 14, 1988, the Army seized total control of the area and some 80 soldiers, organized into seven patrols, entered the district of Cayara, province of Víctor Fajardo, Department of Ayacucho.

At the entrance to the town, at the place known as Apajulo, they arbitrarily executed ESTEBAN ASTO BAUTISTA. That night, the soldiers returned to look for the victim's body and removed it.

EVIDENCE:

1. Report of General Valdivia to Prosecutor Granda, dated November 18, 1988, wherein he mentions the operation involving seven patrols and the fact that there was a dead man at the entrance to the town.

2. Testimony of Indalecio Palomino de la Cruz to the Special Prosecutor, dated May 21, 1988.

3. Testimony of Martha Crisóstomo García to the Special Prosecutor, dated May 21, 1988, on what Magda Suárez Valenzuela, wife of Esteban Asto Bautista, had said.

4. Testimony of Marco Antonio Taquiri Infante before the Special Prosecutor, May 26, 1988.

5. Testimony of Maximiliana Noa Ccayo to the Special Prosecutor, dated May 26, 1988.

6. Testimony of Valeriana Ipurre Marcatoma de Apari to the Special Prosecutor, dated May 26, 1988.

7. Minority Report of the Senate Investigating Committee, prepared by Senator Javier Diez Canseco (IACHR Report 29/91, page 88), on statements made by the victim's wife.

2. <u>The Material Damage</u>

The soldiers then entered the town, where they damaged the clinic, the premises of the Town Council and the school. They looted and damaged stores and other private property. Some of the damage and thefts involved property belonging to persons whose names appeared on a "list of subversives" that the Army had in its possession and whose existence it acknowledged. That list was later published by the press. Some of those whose property was damaged were being sought openly by the Army and were killed, either that every day or thereafter. To locate the homes and then identify the persons on the list, the soldiers forced Marcial Crisóstomo de la Cruz to accompany them.

EVIDENCE:

1. On-site inspection conducted by the Special Prosecutor on May 21, 1988 (page 7 of the Report of the Special Prosecutor), an inquiry that concerned the following property:

a. That of Gregorio Ipurre Ramos, located in Cayara; the house was burned completely to the ground.

b. That of Lucia Tello, located in Cayara, which was also the residence of Dionisio Suárez Palomino; the door had been broken down and some of her belongings burned; the flames and gone as high as the ceiling as the rafters were already sooty; damage estimated at I./40,000.

c. That of Primitiva Cabrera de Palomino, located in Cayara; the general store was found to have been looted by soldiers on May 14, 1988; the stolen property was valued at I./.20,000.

d. That of Modesto García Pariona, located, in Cayara; it was established that the general store had been looted by soldiers on May 14, 1988; the economic loss was I/.50,000; the door and the glass shelving had been broken and electrical devices stolen, the value of the loss being I/.30,000.

e. That of Teodosio Torres Tinco, in Cayara; the door of the house had been forced; Army soldiers had stolen cash in the amount of I/.30,000.

f. That of Catalina de la Cruz Vda. the Torres, located in Cayara; Army soldiers stole I/.40,000 in cash from her general store.

g. That of Paulina Suárez Bautista, in Cayara; a food store where Army troops broke down the door and stole I-/2,000 in cash. The inquiry was suspended at 9:00 p.m., to resume on May 26, 1988, at 2:00 p.m.

h. At the Cayara Medical Station, where the witness Agapito Tinco Noa was present; by the time of the inspection everything was found to be in order, though it was said that on May 14 everything had been torn apart by the soldiers.

i. At the premises of the Cayara Town Council; by the time of the inquiry everything has been repaired and recently painted; though one could still see that a door had been forced open.

j. At the home of Apolonio Huamaní, located in Cayara, where the door had been broken down and everything had been torn apart.

k. At the Cayara Education Center, where the inquiry found that there were five aluminum pots missing, which the Army troops were said to have been using.

l. That of Enedina García Pariona, located in Cayara; the door of the general store had been forced open, ripping off the hinges and latches, which were turned over as the *corpus delicti*; Army soldiers were said to have stolen cash and electrical devices valued at I/.15,000.

m. That of Professor Emiliano Aquino Paico, located at Cayara, where the door had been forced.

2. A letter that an anonymous informant sent to an Army Captain, in which the following persons are named as being terrorist:

José Joayo Rivera (killed in Ccechuaypampa on May 14, 1988)
Dionisio Suárez (janitor at the school, home damaged and killed in Ccechuaypampa)
Román Hinostroza Palomino
Gregorio Ipurre (house burned, arrested June 29, 1988 - see II.B.7 - and disappeared)

Justiniano Tinco García (Acting Mayor, murdered on December 14, 1988, while travelling - see II.B.8-)
Guzmán Bautista (school janitor, arrested June 28, 1988 - see II.B.7.- and disappeared)
Ceseliano Apari de la Cruz
Luis Chipana García
Victoriano Apari García
Mauro García Palomino
Samuel García Palomino (arrested, May 18, 1988, murdered and buried at Pucutuccasa, see II.B.6.)
Fidel Ipurre
Arotinco Félix Curo and
Alejandro Echaccaya Villagaray (arrested on May 18, 1988, murdered and buried at Pucutuccasa, see II.B.6).

The existence of this list has been acknowledged in the Report that the Chief of the Ayacucho Political-Military Command sent to Prosecutor Jesús Granda dated November 18, 1988, and to which a copy of the anonymous letter that included that list was affixed. The existence of the list is also acknowledged in Official Communique No. 064/S-2/BCS 34/20.00, which appears in the Report of the Office of the Army Inspector General sent by General Jaime Enrique Salinas Sedó, Acting Commandant of the II Military Region, dated May 31, 1988. The list was published in the magazine OIGA, dated May 23, 1988.

3. Testimony by Fernandina Palomino Quispe before the Special Prosecutor, on June 19, 1988, page 4. She was the wife of Solano Ccayo Noa, who was murdered at Ccechuaypampa and was herself murdered on December 14, 1988, while on the road, see II.B.8.

4. First testimony given by Martha Crisóstomo before the Special Prosecutor, May 21, 1988. Murdered on September 8, 1988, in Ayacucho, see II.9.

3. <u>The Deaths at the Cayara Church</u>

On the morning of that May 14, the soldiers went to the church of Cayara where the festival honoring the town's patron saint, the Virgin of Fatima, was coming to an end; they ordered those inside the church to go outside, to the town square, where they were assembling a number of people. They then proceeded to separate the women and children from five men, whom they ordered back into the church. The women and children heard the men screaming, as if they were being tortured. The men were kept inside the church that night. The soldiers surrounded it and did not allow relatives and townspeople to enter or go near the church.

Inside the church, the soldiers killed:

1. EMILIO BERROCAL CRISOSTOMO
2. PATRICIO CCAYAO CAHUAYMI
3. TEODOSIO NOA PARIONA
4. INDALECIO PALOMINO TUEROS and
5. SANTIAGO TELLO CRISOSTOMO

They then proceeded to move the bodies during the night. In the day that followed, they scrubbed down the church floor with cooking oil and dirt to remove the bloodstains.

The bodies of the victims were later found by their relatives at Quinsahuaycco, where they were buried. On May 30, an attempt was made to conduct an exhumation, but the graves were discovered empty; however, they still contained human hairs and pieces of human skin that, according to the tests conducted by the police, dated from the time these events occurred.

EVIDENCE

1. Testimony of Paulina Gonzalez Cabrera de Noa before Special Prosecutor on May 21, 1988, plus her expanded statement, May 26, 1988.

2. Testimony of Julia Noa Palomino before the Special Prosecutor, May 27, 1988.

3. Testimony of Fabián Suárez Pariona before the Special Prosecutor, on June 11, 1988.

4. Testimony of Victoriana Meza Cabrera before the Special Prosecutor, June 2, 1988

5. Exhumation proceeding conducted on May 30, 1988, by the Judge of Cangallo, Dr. César Amado Salazar, in the company of forensic physicians from Lima, Dr. Víctor Maurtua and Dr. Rodolfo Díaz Cucho, and in the presence of Special Prosecutor and the witness Julia Noa González.

6. Examination Report No. 02384, dated August 10, 1988, from the Peruvian Forensic Medicine Institute.

4. The Deaths and Disappearances at Ccechuaypampa, obstruction of proceedings and concealment

A number of military patrols continued on their way on the afternoon of May 14 and arrived at Ccechuaypampa, a place that is an hour and a half walk from Cayara. There they arrested a group of campesinos who were returning from Ccechua after working on their harvests; the soldiers separated the women and children from the men and began to torture the latter mercilessly, interrogating them about the ambush that occurred the previous day. They cut off cactus leaves and placed them on the backs of the campesinos, as the latter lie face down on the ground; they stepped on the campesinos and beat them. The soldiers then killed them using their own work tools, axes, hammers, knives, sickles and machetes. Those who were not killed outright, they shot. As they killed them, they "piled them up like sheep at the foot of a molle tree" (Testimony of Fernandina Palomino). All of this occurred in the presence of the women and children. It should be noted that some of those tortured survived, as in the case of the minor Ciro Ccayo Huayanay. Those who died as a result of these actions were buried in at least five graves, from which the soldiers removed their bodies. Those killed in these actions were:

1. DAVID CCAYO CAHUAYMI (62)
2. SOLANO CCAYO NOA (29)
3. JOSE CCAYO RIVERA (56)
4. ALEJANDRO CHOCCÑA ORE (58)
5. ARTEMIO GONZALEZ PALOMINO (45)
6. ALFONSO HUAYANAY BAUTISTA (18 student)
7. IGNACIO IPURRE SUAREZ (55)
8. EUSTAQUIO ORE PALOMINO (17 student)

9. ZACARIAS PALOMINO BAUTISTA (58)
10. AURELIO PALOMINO CHOCCÑA (38)
11. FIDEL TEODOSIO PALOMINO SUAREZ (62)
12. FELIX QUISPE PALOMINO (48)
13. DIONISIO SUAREZ PALOMINO (42)
14. PRUDENCIO SULCA HUAYTA (58)
15. EMILIANO SULCA ORE (32)
16. ZOZIMO GRACIANO TAQUIRI YANQUI (40)
17. TEODOSIO VALENZUELA RIVERA (60)
18. IGNACIO TARQUI CCAYO (50)
19. HERMENEGILDO APARI TELLO
20. INDALECIO PALOMINO IPURRE
21. PATRICIO CCAYO PALOMINO
22. ILDEFONSO HINOSTROZA BAUTISTA (20)
23. PRUDENCIO PALOMINO CCAYO (55)
24. FELIX CRISOSTOMO GARCIA

Among those who survived the torture were:

1. CIRO CCAYO HUAYANAY
2. TEOFILO CRISOSTOMO GARCIA
3. NESTOR VALENZUELA PALOMINO

On the night of May 14, 1988, Valeriana Ipurre Marcatoma de Apari, who lives near Ccechuaypampa, received MAGDALENO GUTIERREZ in her home. Gutierrez arrived complaining of a strong pain in the head, saying that they had shot him. Together with her mother, SEGUNDINA MARCATOMA SUAREZ vda. de IPURRE, age 80, the two women dressed Gutiérrez' wound, but did not turn on the light for fear of the soldiers, since both of them had seen what had happened in Ccechuaypampa. At five or six in the morning, Army troops arrived and forced Valeriana Ipurre to leave her home with her children, so that her mother and Magdaleno Gutiérrez remained inside. According to Valeria Ipurre's testimony, she sent her young son to see what was happening. The first day he saw his grandmother and Mr. Gutiérrez, but on the second day he did not see them and they have been missing ever since.

On May 20, 1988, the Provincial Judge of Cangallo, Dr. Simón Palomino Vargas, did an on-site inspection at Cayara and, based on what relatives had told him concerning the existence of bodies at Ccechuaypampa, attempted to reach that point; he was, however, forced to suspend the proceedings when the group heard shots from a nearby hill, whereupon the military escort told them that they must not continue any further.

On May 21, another attempt was made to conduct an exhumation proceeding at Ccechuaypampa but a military control Huancapi, under the command of "Major Yauyos", did not allow the experts accompanying the Judge of Cangallo to continue, thereby thwarting the proceedings yet another time.

On May 25, the soldiers ordered the townspeople not to come out of their houses, loaded the bodies that were at Ccechuaypampa on horseback and took them off in the direction of Huayla. On May 27, 1988, the Judge of Cangallo, Dr. César Carlos Amado Salazar, conducted an exhumation during the

course of which five empty graves were found; the graves had the odor of bodies and the remains that were found were analyzed by forensic laboratories, which established that they were human remains.

On June 11, at the request of the Special Prosecutor, the Judge of Cangallo conducted an on-site inspection in connection with the removal of the bodies denounced by several witnesses; approximately one meter above the path in question, twisted among the plants bordering that path, strands of human hair and pieces of human skin were found, which was consistent with the witnesses statements to the effect that the bodies were taken away on pack animals.

EVIDENCE:

1. Statement by Ciro Ccayo Huayanay before the Special Prosecutor, May 26, 1988.
2. Testimony by Fernandina Palomino Quispe for the Special Prosecutor, May 19, 1988 (II.B.2, para. 3).
3. Testimony by Priscila Isabel García Oré before the Special Prosecutor, May 19, 1988.
4. Testimony by Valeriana Ipurre Marcatoma de Apari before the Special Prosecutor, May 26, 1988.
5. Expanded testimony by Paulina Gonzalez Cabrera before the Special Prosecutor, June 26, 1988 (II.B.3, para. 1).
6. Testimony by Marco Antonio Taquiri Infante before the Special Prosecutor, May 26, 1988, (II.B.1, para. 4).
7. Testimony of Maximiliana Noa Ccayo before the Special Prosecutor, May 26, 1988 (II.B.1, para. 5).
8. Testimony of Delia Ipurre Noa before the Special Prosecutor, May 26, 1988.
9. Testimony of Aurora Palomino Suárez before the Special Prosecutor, June 10, 1988.
10. Testimony by Crescencia Sulca Palomino before the Special Prosecutor, June 10, 1988.
11. Testimony by Urbana Noa Suárez de González before the Special Prosecutor, June 10, 1988.
12. Testimony by Maura Palomino de Oré before the Special Prosecutor, June 10, 1988.
13. Testimony by Lucía Tello de Suárez before the Special Prosecutor, May 21, 1988.
14. Testimony by Teodora Apari Marcatoma de Palomino before the Special Prosecutor, May 21, 1988.
15. On-site inspection report, dated May 20, 1988, performed by the Judge of Cangallo, Dr. Simón Palomino Vargas, in connection with statements by relatives concerning the existence of bodies in Ccechuaypampa, a proceeding that had to be suspended because of shots fired at the retinue from a nearby hill.
16. Report of the Special Prosecutor on the proceeding conducted to exhume the bodies at Ccechuaypampa which procedure was frustrated due to the obstacles imposed by military personnel on May 21, 1988 (Annex No. 6, page 9).
17. A proceeding to exhume and raise bodies, conducted on May 27, 1988, by the Judge of Cangallo, César Carlos Amado Salazar, at Ccechuaypampa, during which the existence of empty graves containing human remains and a strong odor of corpses were discovered.
18. Forensic Biology Opinion No. 1930-88, from the Central Laboratory of the Peruvian Investigating Police Bureau.
19. Forensic Medicine Report No. 3615/88, on the skin of the hand of Eustaquio Oré Palomino.
20. Forensic Biology Expert Report No. 1930-88 to determine the characteristics of the traces of blood and hair.
21. Forensic Medicine Report No. 4286/88, on a piece of cranium.

22. Examination Report No. 02384, conducted in connection with the exhumations of May 27, 1988.
23. The on-site inspection of the Special Prosecutor, dated June 11, 1988.

5. Torture in the Cayara District Council

On the night of May 14, 1988, soldiers took into custody INDALECIO PALOMINO DE LA CRUZ, CESAR DE LA CRUZ IPURRE, AVELINO TARQUI QUISPE, DOMITILA ESQUIVEL FERNANDEZ and BENEDICTA MARIA VALENZUELA CCAYO; the last of these was accompanied by her your child. These people were taken to the premises of the Cayara District Council, where some 15 soldiers proceeded to torture them throughout the night, interrogating them about the ambush that occurred the previous day and about their alleged connections with subversive groups. The torture consisted of beatings, burns and lesions caused by pliers. Four of these people were released the following day; Indalecio Palomino was released on May 16.

EVIDENCE:

1. Testimony of Indalecio Palomino de la Cruz before the Special Prosecutor, May 21, 1988, (ii.B.1, para. 2).
2. Testimony of Benedicta María Benedicta Valenzuela Ccayo before the Special Prosecutor, June 10, 1988.
3. Testimony of Fernandina Palomino Quispe before the Special Prosecutor, May 19, 1988 (II.B.2, para. 3).
4. Testimony of Fabián Suarez Pariona before the Special Prosecutor, June 11, 1988 (II.B.3, para. 3).

6. Arrests and subsequent deaths of Alejandro Echeccaya Villagaray, Samuel García Palomino and Jovita García Suárez

On the morning of May 18, General José Valdivia Dueñas and ordered the townspeople to assembly on the sports field, which is where the helicopters landed. Around midday, he read aloud a list of names asking that the individuals in question turn themselves in since they were regarded as subversives. The list coincided with the names included in the aforementioned letter that the Army had in its possession, wherein an anonymous towns person reported the names of alleged subversives, except in the case of Dionisio Suárez Palomino and José Ccayo Rivera, who had been killed in Ccechuaypampa on May 14. Many people told General Valdivia that the individuals named were not subversives. At that point, none of those named by General Valdivia was found; he left in the helicopter, after having installed a permanent military garrison at the Cayara school.

At around 3:00 on the afternoon of May 18, an Army Patrol arrived under the command of an Army officer dressed in khaki pants, wearing a black cap, with red hair and ruddy complexion; he would later be photographed. The patrol went out in search of those named by General Valdivia. On May 18, en Erusco, this patrol arrested SAMUEL GARCIA PALOMINO and JOVITA GARCIA, the first of whom was on the list. They were placed under arrest and taken to the Erusco school, in the presence of a number of people who lived in that vicinity. Thirty other people were being held at the school at the time. On May 19, ALEJANDRO ECHECCAYA VILLAGARAY was arrested; he, too, figured on the list taken from the anonymous letter.

On May 20, six soldiers took Jovita García to her home, where she was seen by her relative Zózima García, whom soldiers threw out of the house while they conducted a search. They then released Jovita García but withheld her documents. That night, the soldiers again went out in search of Jovita García, and found her at the home of her aunt, Lucía Bautista Sulca, the soldiers arrested Jovita García again and took her away together with ECHECCAYA and GARCIA PALOMINO. When they arrived in Yarccapampa, the military patrol and the detainees spent the night at the home of a campesino by the name of Julio Torres. Fifteen days later, the wives of the two men who had been arrested, Delfina Pariona Palomino and Juana Apari Oré, found articles of clothing and evidence of the existence of a grave on Mount Pucutuccasa. Afraid, they returned a month later and there found the bodies. All the evidence pointed to the fact that the detainees had been executed.

The body of Jovita García was exhumed and identified by her sister Flavia and brother Justiniano García Suárez on August 10, 1988, in the inquiry conducted by Prosecutor Escobar. In that same proceeding, Justiniano García identified the bodies of Alejandro Echeccaya and Sanuel García Palomino; there was also fourth body, which could not be identified. The Special Prosecutor obtained the fingerprints from the body of Samuel García Palomino. Because of a lack of transportation, only the body of Jovita García was transported to the Cangallo Hospital, where an autopsy was conducted and she was identified by her niece Martha Crisóstomo García. Senator Carlos Enrique Melgar requested another exhumation of the body of Jovita García, a proceeding that was to have been conducted on November 9, 1988; it was never conducted, however, because the bodies disappeared from the Cangallo cemetery before the proceeding took place. On August 19, 1988, the Special Prosecutor finally managed to conduct another proceeding to exhume the three bodies found on Mount Pucutuccasa, in the presence of the Senate Investigating Commission; it was discovered that the three bodies had disappeared.

EVIDENCE

1. Testimony of Martha Crisóstomo García before the Special Prosecutor, May 21, 1988.
2. Testimony of Flavia García Suárez before the Special Prosecutor, June 23, 1988.
3. Testimony of Antonia Ccayo Quispe de García before the Special Prosecutor, August 19, 1988.
4. Testimony of Juana Apari Oré before the Special Prosecutor, August 19, 1988.
5. Testimony of Lucía Bautista Sulca before the Special Prosecutor, August 19, 1988.
6. Testimony of Zózima García before the Special Prosecutor, August 19, 1988.
7. Testimony of Delfina Pariona Palomino de Echeccaya before the Special Prosecutor, August 19, 1988.
8. Photograph of the Army officer in command of the patrol that arrested Jovita García, Alejandro Echeccaya and Samuel García Palomino.
9. Report of the exhumation conducted of the body of Jovita García Suárez, August 10, 1988.
10. Autopsy report for Jovita García, August 10, 1988.
11. Report of the proceeding to continue with exhumation of the bodies from the grave on Mount Pucutuccasa, August 19, 1988 wherein it is established that the bodies had disappeared.
12. Forensic Medicine Report No. 5228/88 on portions of the heart, lungs and skin from the body of Jovita García.
13. Forensic Medicine Report No. 5191/88 on fragments from the cranium of Jovita García.
14. Ballistics report No. 2901/88 on the tow shells found on August 10, 1988, during the exhumation conducted on Mount Pucutuccasa.
15. Forensic biology report No. 2569/88.
16. Forensic biologic report No. 2493/88, done on the bloodstains on a hat and on stones.

17. Forensic biology report No. 2522/88, done on fragments of bone, two large leaves and hair.
18. Anatomical pathological study No. 200-88, on portions of the body of Jovita García.

7. Disappearance of Guzmán Bautista Palomino, Gregorio Ipurre Ramos, Humberto Ipurre Bautista, Benigna Palomino de Ipurre and Catalina Ramos Palomino

On the night of June 29, 1988, uniformed Army soldiers arrested GUZMAN BAUTISTA PALOMINO, GREGORIO IPURRE RAMOS, HUMBERTO IPURRE BAUTISTA, BENIGNA PALOMINO DE IPURRE and CATALINA RAMOS PALOMINO in their homes in Cayara, and took them via Army truck to the garrison that had been set up in Cayara. The first two were on the list of names read by General Valdivia, taken from the anonymous letter. They were also key witnesses to the events that occurred in Cayara and had made statements in the presence of Prosecutor Escobar, the Senate Investigating Committee and the Peruvian press. The last three of these individuals were the father, mother and sister of Gregorio Ipurre Ramos, respectively. In the early morning hours, the detainees were put in an Army truck that headed out in the direction of the Huancapi Military Base. To date, the five individuals named here are still listed as arrested-disappeared.

EVIDENCE

1. Investigations No. 476 and No. 477 by the Special Prosecutor into complaints filed by relatives concerning disappearances.
2. Testimony by relatives of the disappeared to members of Americas Watch, published in Tolerating Abuses, Violations of Human Rights in Peru, an Americas Watch Report, October 1988, pp. 49-50.

8. Death of Justiniano Tinco García, Fernandina Palomino Quispe and Antonio García Tipe

On December 14, 1988, the truck carrying JUSTINIANO TINCO GARCIA, FERNANDINA PALOMINO QUISPE and ANTONIO FELIX GARCIA TIPE, along with some 15 other individuals, was stopped by hooded persons in the vicinity of Toccto, near a military control post and communications station guarded by troops of the Security Police, 40 kilometers from Ayacucho. The individuals wearing hoods selected the three people named above and killed them.

Justiniano Tinco was Mayor of Cayara and was on the list taken from the anonymous letter; his wife, Benedicta María Valenzuela Ccayo, had been tortured in the District Council. Fernandina Palomino was the Secretary at the Mayor's Office and a key witness to the events in Cayara, having testified in the presence of Prosecutor Escobar, other authorities and the press, stating that the military were responsible for what happened. The third person was the driver of the truck.

EVIDENCE

1. Press report.

9. Death of Martha Crisóstomo García

On September 8, 1989, eight hooded individuals dressed in military uniform entered the home of MARTHA CRISOSTOMO GARCIA in the neighborhood Cooperativo Ciudad de las Américas, San Juan Bautista de Huamanga, Ayacucho, at 3:00 a.m. They shot her a number of times and killed her.

The victim was an extraordinary witness inasmuch as she had witnessed and testified to a number of the key elements in the chain of evidence in this case and had made direct charges against General Valdivia. It is also important to note that she had identified the body of her aunt Jovita García and had been held for fifteen days at the Huancapi Military Garrison following the central events in Cayara, whereupon she was released thanks to the efforts of human rights agencies.

Martha Crisóstomo García had left Cayara for reasons of safety and on November 19, 1988, had sent an official communication to the Special Prosecutor of Ayacucho asking that she not be transferred to Cayara from the Huamanga Hospital where she was working at the time, because she feared for her life.

Though there were any number of witnesses to the murder who were attracted to the scene because of the victim's screams and despite the fact that three bullets were found in her body, the investigation produced no results whatever; not even the bullets were identified. The case was provisionally filed through a resolution adopted by the Provincial Prosecutor of Ayacucho on January 18, 1990.

EVIDENCE

1. Letter from Martha Crisóstomo to the Special Prosecutor dated November 19, 1988 requesting that he intercede to prevent her being transferred back to Cayara, since she feared for her life.
2. Letter from the Special Prosecutor to the Superior Criminal Prosecutor, dated November 24, 1988, informing him of Martha Crisóstomo's request.
3. Decision of the Provincial Prosecutor of the Third Public Prosecutor's Office of Ayacucho, José Macera Tito, dated January 18, 1990, ordering that the proceedings into the death of Martha Crisóstomo be temporarily filed.
4. Letter from the Attorney General of the Nation to the Secretary General of Amnesty International, dated February 28, 1990, wherein he transmits "a copy of the decision handed down in the investigation into the death of MARTHA CRISOSTOMO GARCIA, a witness in the 'Cayara Case'..."

III. MEASURES TAKEN BY THE STATE

When the facts in this case were made public, a series of measures were taken by various organs of the Peruvian State, including the Department of Justice, the Legislature, the Executive Office and the Army. This subheading is devoted to a brief summation of these measures.

1. The Department of Justice

On May 17 an 18, 1988, various complaints were filed with the Acting Attorney General of the Nation, Dr. Manuel Catacora González and with the Special Prosecutor for Disappearances of Ayacucho,

Dr. Carlos Escobar Pineda. Those complaints recounted the facts that are the subject of this case. On May 19, 1988, the Office of the Attorney General of the Nation ordered that Special Prosecutor Escobar take charge of the corresponding investigation, an order confirmed by the Senior Criminal Prosecutor on May 24.

On October 3, 1988, the Special Prosecutor received a communication dated September 21, from the Senior Criminal Prosecutor, Dr. Pedro Méndez Jurado, asking that he summit the final report on the investigation conducted. On October 13 of that year, Dr. Carlos Escobar Pineda sent in his final report, which included the following (see Annex No. 5):

> . . . that there is sufficient evidence to be able to file a complaint with the Lower Court Judge of Cangallo, since it is within his jurisdiction. The complaint would be for the commission of the crimes of: homicide with extreme cruelty, provided for and punishable under Article 152 of the Penal Code, amended by Decree Law 18968, the victim being Jovita García Suárez; homicide, provided for and punishable under Article 150 of the Penal Code, the victims being Alejandro Echeccaya Villagaray and Samuel García Palomino; violations of individual liberty, provided for and punishable under Article 340 of the Penal Code, the victims being each and every one of those named in this report as disappeared, including those listed as dead and as having been killed in Cayara and Ccechua, until such time as their bodies appear and the charge can be expanded to include the crime of homicide; robbery, provided for and punishable under Article 238 of the Penal Code, the victims being the townspeople listed under point II.B of this report; damages, provided for and punishable under Article 259 of the Penal Code, the victims being the townspeople Gregorio Ipurre Ramos and Lucía Tello de Suárez referred to under point II.B of this report; violation of the administration of justice, provided for an punishable under article 332 of the Penal Code. The Chief of the Political-Military Command of SZSNC-5 of Ayacucho, Peruvian Army General José Valdivia Dueñas, is presumed responsible, under the provisions of Article 100 of the Penal Code, amended by Law 12341. The facts investigates point to commission of a continuous crime that began on May 14, 1988 and ended between May 20 and 21 of that month and year with the death of the three townspeople found at Pucutuccasa, a crime involving material authors, who executed an order, and intellectual authors who intentionally induced others to the commission of those crimes. The Office further finds that there is sufficient evidence to indict the forenamed General as the individual allegedly responsible. During the course of the corresponding preliminary investigations, said general should indicate and identify those who carried out his orders in committing the aforementioned offenses.
>
> As for the crime of rape, which is also part of this investigations, one of the allegedly aggrieved parties has stated that she was not raped, while the other has not been located.

It should be pointed out that in April 1989, the Attorney General of the Nation decided to terminate Prosecutor Escobar's posting in Ayacucho, so that the latter had to leave that city and return to the city of Iquitos, where he took over his duties on May 3 of that year. On July 31, 1989, Dr. Carlos Escobar Pineda was permanently severed from the Office of the Attorney General of the Nation.

On November 11, 1988, the Attorney General sent the Special Prosecutor's file to the Provincial Prosecutor of Cangallo, Dr. Jesús Granda Olaechea, so that he might enlarge upon the investigations. Prosecutor Granda addressed the events that began on May 13, 1988, in Erusco and Cayara, and issued his finding on November 24, 1988 (Appendix No. 6) wherein he decided not to bring any criminal charges for the crimes of homicide, vandalism, robbery, looting, crimes against individual freedom, arson, assault, battery, violations of home, sexual violations and crimes against the administration of justice. He justified his decision on the grounds that it was impossible to either identify or single out the

authors of the "alleged crimes". Therefore, Prosecutor Granda decided to file de proceedings provisionally.

On August 29, 1989, the Attorney General of the Nation, Dr. Manuel Catacora G., nullified Prosecutor Granda's decision and ordered that the investigation be expanded. He assigned the Prosecutor of the Province of Cangallo, Dr. Rubén Vega, to the case. On January 23, 1990 Prosecutor Vega decided not to file criminal charges and to file the case permanently (Appendix No. 7). On January 30, 1990, the Office of the Superior Prosecutor of Ayacucho confirmed Prosecutor Vega's decision. By virtue of those decisions, the case was never brought to trial before the regular courts since, under Peruvian law, it is up to the Department of Justice to file criminal actions with the judiciary.

As for the proceedings conducted in the case of the summary executions of Justiniano Tinco García, Fernandina Palomino Quispe and Antonio Félix García Tipe, which occurred on December 14, 1988, and the murder of Martha Crisóstomo García on September 8, 1989, those cases were provisionally filed by the Department of Justice.

2. The Army

On May 18, 1988 the Security Zone of the Peruvian Army Center issued the following official communique No. 003:

> The national security zone of the Center hereby informs the citizenry of the following:
>
> 1. On Friday, May 13, at approximately 23:00 hours, in the vicinity of the town of Cayara, in the Province of Victor Fajardo, in the Province of Ayacucho, more than a hundred subversive criminals ambushed a patrol consisting of two Army vehicles, which was relieving men on duty between the towns of San Pedro de Huaylla and Huancapi.
> 2. As a result of this criminal action, the following members of the Peruvian Army perished:
> - Infantry Captain Arbulú Sime José, Second Sergeant Vargas Támara Angel, Corporal Roldán Ortiz Fabián, Corporal Espinoza de la Cruz Carlos.
>
> Fifteen Army soldiers were wounded, four of whom are in grave condition.
> The murdered captain was buried in Lima on Monday, May 16, while the other troopers who died were buried that same day in Huaraz.
> - It was also established that in repelling the attack, the soldiers managed to kill six unidentified subversives; the evidence discovered also indicates that there are an undetermined number of wounded among them.
> 3. The Peruvian Army reinforcement patrols began to track down the subversive column that fled in the direction of the town of Cayara. The town was found completely abandoned, except for some children and elderly people who said that there were four bodies in the town church.
> 4. In prosecuting the operations, there were additional clashes in the vicinity of the town and an undetermined number of casualties among the ranks of the subversives.
> 5. On Monday, May 18, the Political-Military Command reported these facts to the Ayacucho Prosecutor's Office so that the appropriate legal action might be taken. For its part, through the competent organs, the Peruvian Army launched the appropriate investigation.
> 6. The unfounded claim made by authorities from the area to the effect that many townspeople of Cayara lost their lives, is utterly false, as are the accounts of a bombing that never occurred; the obvious purpose of such charges is to prevent the forces of law and order from pursuing their efforts to capture the subversive criminals who ambushed the Army patrol.

7. The search operations continued and their results will be reported as soon as they are available.

On May 30, 1988, the Office of the Army Inspector General released a report on the events denounced (Appendix No. 4). On November 18, 1988, the Chief of the Political-Military Command of Ayacucho, General José Valdivia Dueñas, sent the following report to Prosecutor Jesús Granda O. :

1. Concerning the AMBUSH of a MILITARY CONVOY at ERUSCO-CAYARA

a. On May 13, 1988, at approximately 22:30 hours, an Army CONVOY was ambushed in the region of ERUSCO in the district of CAYARA, Province of VICTOR FAJARDO. The assailants were some 200 subversives, consisting of men, women and children. The ambush left one captain (Captain ARBULU SIME JOSE), one sergeant second class and two corporals dead, as well as a number of wounded, five of whom were very gravely wounded; one troop carrier and a number of rifles were also completely destroyed. Ten rifles and other articles also disappeared.

b. During the clash with the surviving military personnel, four subversive criminals died (three men and one woman), and it is assumed that there were a number of wounded as well; they may have been taken to CAYARA because of the considerable trail of blood that was found on the roads leading to that town.

c. Once they learned of the attack, patrols from HUANCAPI, PAMPA, CANGALLO and AYACUCHO descended upon the scene of the events to assist the ambushed patrol and begin to search for and track down the subversives.

d. On May 14, 1988, the first patrol that had gone in the direction of CAYARA following the trail of blood, found a dead body at the entrance to the town and was told by a number of children that there were five people dead inside the church. CAYARA was virtually abandoned.

e. The patrol, which arrived at CAYARA at approximately 15:00 hours after receiving reports to the effect that a large group of criminal subversives had headed in the direction of JESHUA-MAYOPAMPA (on the MANTAS or CANGALLO river), continued to move in that direction. While in route, at around 1:30 hours, the patrol was attacked from a wooded hillside, by individuals carrying rifles and explosives; there was a clash that left six subversives dead; one rifle that had belonged to the ambushed patrol was recovered, as was an MGP pistol (property of the Civil Guard), bags of dynamite and four bloodstained Peruvian Army blankets.

f. When the criminal subversives retreated in the direction of MAYOPAMPA at around 18:00 hours, the patrol followed in pursuit until it reached that community, at around 4:00 hours on May 15, 1988.

g. Another mounted patrol that took the right flank (passing through CHINCHEROS) headed toward MAYOPAMPA, found 500 dynamite sticks in the vicinity of HUAMANMARCA, but no inhabitants; however, on the return, as the patrol crossed the PAMPAS river on May 15, 1988, at 14:00 hours, it was attacked by approximately 25 subversives. The subversives scattered when the patrol fired back, and suffered perhaps two dead and other wounded. The patrol lost one rifle that fell into the river.

NOTE: a diagram is attached (Annex 1)

h. When the first patrol returned from MAYOPAMPA via the same route on May 15, 1988, the six bodies at JESHUA were no longer there nor were the six that had been seen in CAYARA the previous day.

i. On May 16, 1988, through letter No. 063, the Pampa Cangallo Battalion Chief filed a complaint with the Office of the Provincial Prosecutor of GANGALLO and HUANCAPI concerning the terrorist attack; the names of certain individuals who allegedly helped plan and execute the ambush were included in the complaint.

j. Because of a tendentious and intentionally exaggerated report released by the Mayor of HUAMANGA Fermin ASPARRENT TAYPE, on May 17, 1988, both the Office of the Army Inspector General and various delegations of officials and journalists who went to CAYARA have established that there was neither any harassment nor bombing there; no women were raped; no children were killed; there was never any "slaughter" of some 100 campesinos; they were, however, told that some 18 civilians died during the clashes that took place on May 13, 14 and 15, 1988. Moreover, the Office of the Army Inspector General, during the investigation it conducted, proved that the complaint filed with the Huamanga Prosecutor's Office by three alleged survivors of CAYARA concerning the death of 20 individuals and 17 disappearances was false (a copy of documents signed by the alleged dead and disappeared is attached, presented on May 22, 1988, by the authorities of CAYARA, Annex 2).

k. Further, the Office of the Army Inspector General has also established that the people of CAYARA participated in the Erusco ambush on the military convoy, which is obvious from the following facts:

- In the clash that took place at JESHUA between an Army patrol and CAYARA residents, an FAL No. 57786 and four blankets that belonged to the patrol ambushed at Erusco were recovered, as was the submachine gun MGP No. 16606, belonging to the CGP.
- Subversive propaganda and explosive materials were found in various homes in CAYARA and the surrounding area.
- In the home of one CAYARA resident, pieces of Army uniforms and a cap of the kind used by military personnel were found.
- The written complaint (letter to the Chief of the BCS of SAN PEDRO) brought by a resident of CAYARA, to the effect that there were individuals there who were associated with the subversives and that an ambush was being prepared and that the townspeople knew about it; unfortunately, this letter arrived too late (a copy is attached, Annex 3).

1. We believe it is important to point out, Mr. Prosecutor, that the purpose of the subversive propaganda spread in the communications media thanks to the deliberate disloyalty of the Special Prosecutor (ESCOBAR PINEDA) and in connection with the events alleged to have occurred in CAYARA, has been to slander the Army and interfere with the countersubversive operations.

2. Concerning the discovery of an alleged "COMMON GRAVE" and the body of a woman alleged to be JOVITA GARCIA.

a. Since August 12, 1988, newspaper in the capital, particularly LA REPUBLICA and LA VOZ, have repeatedly carried stories on the discovery of a "COMMON GRAVE" where, according to Prosecutor ESCOBAR's version, the bodies of CAYARA campesinos who were allegedly killed by the Army in May 1988 following the attack on the Military Convoy in the area of ERUSCO were said to have been buried. Later, those same newspapers reported that the alleged bodies were those of JOVITA GARCIA SUAREZ and two persons who were said to have been arrested by the Army between May 18 and 19, 1988, and on orders from the Political-Military Chief.

b. In this regard, Mr. Prosecutor, I must report the following:

(1) It is true that on May 18, 1988, the Political-Military Chief of SZSNC-5 went to CAYARA to investigate, firsthand, the alleged excesses that were mentioned in the communique released by the Mayor of Huamanga on May 17, 1988. There, he established that the charges against the Army were false and spoke with townspeople and asked whether the individuals named in the anonymous letter (mentioned earlier) lived in CAYARA and the surrounding area. The answer was yes, but that none of those named was present; it is therefore illogical to asume that those persons were arrested at that time.

(2) Since May 17, 1988, no one from CAYARA and the surrounding area has been arrested by the Army, much less JOVITA GARCIA SUAREZ, who was an Army informant; she was the one that reported the exact place where the ambush on the military convoy occurred and also asserted that residents of CAYARA had participated in the terrorist attack.

(3) According to statements made by the townspeople, JOVITA GARCIA SUAREZ remained in ERUSCO for several days following the events in CAYARA, and her name did not appear in the complaint about persons alleged to have died or disappeared in CAYARA.

c. We believe that the case of JOVITA GARCIA SUAREZ is a premeditated and carefully prepared fabrication by the subversive delinquents of the Sendero Luminoso who have been aided either consciously or unconsciously by Prosecutor ESCOBAR PINEDA and the leftist press in order to discredit the forces of law and order and bring a halt to the countersubversive activities.

Some time ago, we observed Prosecutor ESCOBAR PINEDA's suspicious activities; he quite deliberately allowed seven days to go by before conducting the proceeding to exhume two alleged bodies, which according to newspaper accounts, had been left in a "common grave", whose location only Prosecutor and his witnesses knew. I attach a copy of the letter sent to the Political-Military Command reporting that he would conduct the proceeding on August 17, 1988 (Annex 4).

As for military jurisdiction, it should be noted that the Second Army District Court dismissed the respective case on May 12, 1989, a decision that was upheld on January 31, 1990 by the Supreme Council of Military Justice.

3. The Executive Branch

On May 17, 1988, the Council of Ministers held a meeting where the situation involving the complaints filed concerning the deaths in Cayara was examined and it asked the Attorney General of the Nation to investigate the facts, for which he would have the Executive Branch's full support. These statements were reiterated by the Chairman of the Council of Ministers and Minister of the Presidency, Dr. Armando Villanueva del Campo, to the Attorney General of the Nation, Dr. Hugo Denegri Cornejo, in a letter dated May 23, 1988.

On May 21, 1988, the Office of the Chairman of the Council of Ministers reported that a commission composed of the Minister of Defense, General Enrique López Albújar, the Minister of Justice, Dr. Camilo Carrillo, and escorted by the Dean of the Lima Bar Association, Dr. Raúl Ferrero, and the then Auxiliary Archbishop of Lima, Monsignor Augusto Beuzeville, visited Cayara that same day "having established in-situ that there was no evidence of bombing, fire or fighting in Cayara . . . " and that, "from the testimony given freely by the townspeople who were in Cayara, the versions that alleged that women were raped, that there were fires, bombardments, the murder of some 100 individuals and other acts of genocide allegedly committed in Cayara and attributed to Army personnel were false."

Concerning this Press Release, Monsignor Beuzeville addressed the following communication to the Inter-American Commission on Human Rights on May 17, 1991:

CLARIFICATION

I. Monsignor Augusto Beuzeville Ferro, Auxiliary Bishop in the Diocese of Piura-Tumbes, in the departments of those same names, Republic of Peru, at the urging of the Pro-human Rights

Association (APRODEH), which is the petitioner in cases Nos. 10,206, 10,264, 10,276 and 10.446 (CAYARA Case), and in response to the document of May 27, 1991, containing the Peruvian Government's reply to Report No. 29/91 of the Inter-American Commission on Human Rights, do hereby stipulate the following facts, in writing, to clarify the reply in question:

ONE: In May 1988, the Government of Peru, under the Presidency of Dr. Alan García Pérez, in response to reports that campesinos had been slaughtered by soldiers in Cayara in the Department of Ayacucho, ordered that a Government Commission consisting of the Minister of Justice, Dr. Camilo Carrillo, and the Minister of Defense, General Enrique López Albújar, go to that area to ascertain the facts. The undersigned, who was then Auxiliary Bishop of Lima, and the Dean of the Lima Bar Association, Dr. Raúl Ferrero Costa, were invited to accompany the trip as witnesses. The trip was made on May 21, 1988.

TWO: The report on the visit made to the scene of the unfortunate events was given to the Prime Minister at the time, Armando Villanueva del Campo, in a private meeting and in the presence of the Minister of Justice, the Minister of Defense and the Minister of the Interior.

THREE: To the surprise of Dr. Ferrero Costa and the undersigned, on May 21, 1988, the Office of the Chairman of the Council of Ministers issued an official communique, paragraph 5) of which stated the following: "The individuals in question went to the town of Cayara (. . .), and established that there was no evidence of bombing, fire or fighting in Cayara."

In point 9), the communique states that: ". . . from the testimony given freely by the townspeople who were in Cayara, the versions that alleged that women were raped, that there were fires, bombardments, the murder of some 100 individuals and other acts of genocide allegedly committed in Cayara and attributed to Army personnel were false." Dr. Ferrero and I informed the Prime Minister of our dissatisfaction with this communique since we considered that it was incomplete and inconsistent with the facts, since those campesinos whom they allowed to speak with us in Plaza de Armas told us that on May 14, there was a clash during the night when the Sendero Luminoso ambushed two Army trucks. The following day, every early in the morning, members of the Army took reprisals against the town, burning three or four houses and murdering 27 or 28 campesinos who were working on the harvest. However, we were unable to establish the truth of all this, since we had no decision-making power regarding the inspection schedule, which had already been established by the government authorities.

FOUR: As a result of this conversation, wherein we shared our impression that we suspected this area of Ayacucho had been the scene of excesses on the part of the Armed Forces, the Office of the Chairman of the Council of Ministers issued another communique on May 22, wherein he reported " . . . that he is informing the Office of the Attorney General of the Nation of the accounts given by inhabitants of the area who speak of the death of the townspeople (. . .), since it is up to that authority to prosecute the relevant investigations, which, by their nature, are beyond the means and the scope of the mission appointed."

Further, the communique stated that "The government confirms its decision to get a full clarification of any conflicting accounts that may exist concerning what happened."

FIVE: This final and definite official communique seems to be contradictory and inconsistent with what the Peruvian Government states in its reply to the effect that: "The Executive Branch appointed a Committee of Notables, which visited the area and found that the complaints were unfounded. . ."

In effect, that committee, of which I was part, never said anything about a lack of definitive evidence; on the contrary, given the versions that the committee repeatedly heard both firsthand and via the media, I said that these events had to be investigated by the appropriate authorities such as the Office of the Attorney General of the Nation, the Judiciary and the Congressional Human Rights Commission.

Moreover, that committee never released an official written communique to the public; it reported its impressions in private meetings, whereupon those impressions were conveyed to the general public by the Office of the Chairman of the Council of Ministers.

SIX: Finally, I should point out that my participation in the committee was on a personal basis and not as a representative of the Church, since I considered it a duty and a service to my country to get to the truth amid utterly conflicting versions.

It should also be noted that the then President of the Republic, Dr. Alan García Pérez, visited Ayacucho and Cayara on May 22, 1988 and spoke with residents and area authorities.

4. The Senate of the Republic

On May 23, 1988, the Senate of the Republic decided to form an Investigating Committee to look into the matters that are the subject of this complaint. That committee consisted of Senator Carlos Enrique Melgar López, Senator Esteban Ampuero Oyarce, Senator Ruperto Figueroa Mendoza and Senator Alfredo Santa María Calderón, of APRA; Senator Javier Diez Canseco Cisneros and Senator Gustavo Mohme Llona of the Izquierda Unida and independent Senator José Navarro Grau.

On May 9, 1989, the Senate Investigating Committee released its report (Annex No. 8) which contains majority findings and minority findings. The findings reached by the majority of the members of the committee were signed by Senators Melgar, Ampuero, Figueroa and Santa María and were as follows:

1. It has been established that on May 13, 1988, an Army patrol was ambushed in the vicinity of Erusco by members of the Sendero Luminoso, who blew up one of the trucks using powerful dynamite charges that had been laid in advance on the road; as a result, Infantry Captain José Arbulú Sime, Sergeant Second Class Angel Vargas Támana, Corporal Fabián Ronda Ortiz and Corporal Carlos Espinoza de la Cruz died in the Mobile Surgical Unit from Ayacucho; fifteen Army soldiers were wounded, five of them gravely.

2. It is established that the ambush totally decommissioned the UNIMOC troop-carrier No. 12082, State property, and Senderistas either took and/or destroyed eleven 7.62-caliber light automatic weapons (FAL); a 9 - caliber HK-MPSKA submachine gun, plus 52 FAL cartridges and 14 HK cartridges.

3. It has been established that in spite of the numerical superiority of the attackers and the element of surprise they had in their favor in their ambush on the military convoy, the surviving members of the patrol repelled, to the extent of their abilities, the attack; a number of unidentified subversives were killed at the scene of the events; presumably there were wounded among them, who were taken away by the Senderistas to the neighboring towns before the Army reinforcements from Huancapi arrived.

4. It has been established that Peruvian Army reinforcement patrols, following the plan of operation in effect, principally the "PERSECUTION" plan (Peruvian Army PERSECUCION), began to track down the Senderista column that had fled in the direction of Cayara.

5. The town of Cayara was found semi-abandoned, with only children and elderly people present; they told of five bodies in the town church, who were the subversives who had been wounded during the ambush on the patrol and who died as the subversives fled, there being no time to bury them or to take them with them with fresh military troops in pursuit.

6. As the search and pursuit operations continued in the area near the town of Cayara, specifically in the place called Jeschua, there were new clashes between the forces of law and order and the Senderistas, leaving an undetermined number of casualties among the ranks of the subversives.

7. It has been established that on May 17, 1988, the Mayor of the Provincial Council of Huamanga, Mr. Fermín Dario Asparrent, issued a malicious communique knowingly reporting false criminal acts allegedly committee by members of the Army against the townspeople of Cayara.

8. It has been established that these false criminal actions attributed to military troops, accusing them of supposed excesses in Cayara, gradually filtered to various national and foreign news media, and a manipulative campaign was mounted that purported to be and effort to protect human rights; instead, one of its immediate political objectives was to prevent the forces of law and order from prosecuting their pursuit of the Senderistas following the Erusco ambush.

9. It has been established that to accomplish that political objective, members of the Army were accused of being the material authors of a slaughter of 100 persons in Cayara, which consequently drew public attention both at home and abroad, and from the government, public powers and various political and parliamentary sectors; on the other hand, it generated an obvious sense of solidarity within the aforementioned community and raised suspicions about the military force stationed in Ayacucho, which had to be investigated to clarify the facts and punish those responsible.

10. It is established that this psychological operation, wherein the alleged Cayara excesses were blown out of proportion, maliciously and intentionally, succeeded in paralyzing the contersubversive military actions, thereby thwarting the capture of the Senderistas who operate in Erusco; the psychological operation was also calculated to undermine the morale and fighting spirit of the troops whose commanders were wrongfully placed under suspicion in certain quarters of the media that serve as a sounding board for the subversives, and were accused of being directly responsible for the alleged Cayara excesses.

11. It has been established that when the Chief Prosecutor for the Administrative Jurisdiction, Dr. Manuel Catacora González was serving as Acting Attorney General of the Nation --owing to the absence of the Attorney General-- when he was seized of the allegedly criminal acts committed in the town of Cayara; he immediately sent a telex ordering that the Special Prosecutor for Ayacucho, Dr. Carlos Enrique Escobar Pineda, take charge of the investigation; upon receiving that telex, the latter, rather than transmitting the necessary instructions to the Provincial Prosecutor of Cangallo to file a criminal complaint or institute a preliminary investigation, as required under Article 80 of the Statute of the Office of the Attorney General, unlawfully took upon himself the functions of the hierarchical superior and, exercising functions that pertain to another office, launched his own investigation into the criminal charges,

when that was the exclusive purview of the provincial prosecutors and not the superior prosecutors; he thereby abused his authority by usurping another's authority, a crime provided for and punishable under Article 320 of the Penal Code.

12. It has been established that the Special Prosecutor, Dr. Carlos Enrique Escobar Pineda, has committed criminal and disciplinary offenses by repeatedly violating fundamental procedural provisions and provisions of the Statutes of the Office of the Attorney General and of the Judiciary, with the illegal investigation that he conducted into the alleged excesses committed in Cayara by military personnel, as described in the pertinent part of the present report.

13. It has been established that the Special Prosecutor illegally requested the Office of the Provincial Prosecutor of Cangallo to supply all records in connection with the investigation it was conducting into the criminal offenses committed by the Senderistas in Erusco, thereby preventing that investigation from following its normal course; the investigation has been disrupted by that arbitrary decision, which demonstrates an obvious and manifest concern to obstruct the investigation of these subversive elements being conducted by the Office of the Attorney General.

14. It has been established that the interpreter Alfredo Quispe Arango has violated the public trust and aggrieved the State by identifying himself to the above-named Special Prosecutor using various voting identification papers bearing differing numbers and that belong to other citizens, as has been demonstrated in the body of this report.

15. It has been established that the above-named Special Prosecutor was fully aware that the interpreter Alfredo Quispe Arango betrayed the public trust and aggrieved the State by having various voter identification bearing different numbers; nevertheless, he did not report him, which was his obligation, thereby neglecting the obligations of his office and failing to further the prosecution and punishment of that crime, which is a criminal offense under articles 333, 338, 339 and 361 of the Penal Code.

16. It has been established that Alfredo Quispe Arango, acting as interpreter, has rendered false translations, thereby committing a crime against the administration of justice, to the detriment of the State, and provided for and punishable under Article 334 of the Penal Code, his purpose being to obtain evidence against Army personnel by misrepresenting, with the complicity of the Special Prosecutor, the truth.

17. It has been established that the Special Prosecutor, rather than keep the illegal investigation that he conducted confidential, gave several interviews with a number of media and provided information on how the investigation was progressing, thereby violating the Statute of the Office of the Attorney General.

18. It has been established that the Special Prosecutor has had an obvious and notorious interest in the investigation into Cayara - - even to the point of violating the law - - so as to prevent, through his intervention, the forces of order from furthering their pursuit of the Senderistas in the wake of the Erusco ambush, thereby aiding the psychological warfare that was mounted through several communications media to bring a halt to the contersubversive operations, a campaign that was nurtured by the information that Dr. Carlos Enrique Escobar Pineda provided.

19. It has been established that the Chief Senior Prosecutor of Ayacucho, Dr. Iván Enrique Tello Mondoñedo, was fully aware of the offense that the Special Prosecutor had committed by usurping functions; nevertheless, he failed to take the appropriate measures to correct the illegal

investigation that the Special Prosecutor personally conducted into the Cayara event, and did not instruct the Provincial Prosecutor of Cangallo to conduct the investigation, as the law required, thereby incurring criminal responsibility that must be reported to the Attorney General of the Nation.

20. It has been established that the Provincial Prosecutor of Cangallo, Dr. Jesús E. Granda Olaechea, conducted an extended investigation into the Cayara matter, based on the records and the final report produced by the aforementioned Special Prosecutor.

21. It has been established that at the end of the expanded investigation, the Provincial Prosecutor of Cangallo, on November 24, 1988, issued a decision not to bring criminal charges against the Army personnel for the alleged crimes committed in Cayara, and filed all of the proceedings in Cangallo.

22. It has been established that with the intention of the Provincial Prosecutor of Cangallo, the Office of the Attorney General as the single autonomous agency of the State charged with prosecuting crime, has clarified the truth of what happened and ultimately the falseness of the slanderous complaints against members of the Peruvian Army, thereby redeeming the image of that institution and of its chiefs, officers and troop personnel who served in Ayacucho during 1988.

23. It has been established that the then Political Military Chief of Ayacucho, Peruvian Army General José Valdivia Dueñas, is neither the intellectual nor the material author of any of the crimes with which he is slanderously charged in the complaints and hence bears no responsibility whatever; instead he has been the victim of a treacherous campaign to undermine his authority and command, as part of the strategy that the Sendero Luminoso is following to neutralize and/or destroy the forces of law and order to destabilize the democratic regime and the rule of law in Peru.

24. It has been established that the Lower Court Judge of Cangallo, Dr. César Carlos Amado Salazar, has, at the request of the Special Prosecutor, conducted a number of extra-procedural criminal inquires, taking measures that are pertinent to the examining phase and thereby violating the code of criminal procedure, procedure that ultimately must be carrier out by officers of the court.

25. It has been established that the body found on August 10, 1988 at Pucutuccasa, hidden in a grave, is not that of JOVITA GARCIA SUAREZ, as the Special Prosecutor wrongfully asserted at the outset.

26. That having established that the body is not that of Jovita García Suárez, the death certificate issued in her name and registered at the Cangallo Provincial Council, is null and void, ipso jure, so that the Provincial Prosecutor of Cangallo, as defender of the law, should institute legal proceedings to have that irregular record nullified.

27. It is established that in 1988, the members of the First Correctional Tribunal of Ayacucho acted irregularly in an appeals case in which they were reviewing the irregularities committed by a lower court judge; even though the Tribunal was the higher court, the members did not correct those irregularities by declaring all proceedings null and void and the Superior Prosecutor's petition inadmissible, which would have protected the right of the representative of the Attorney General's office to proceed in accordance with the law.

For his part, Senator Gustavo Mohme Llona arrived at the following conclusions:

1. The clues found by the judicial authorities and the representatives of the office of the Attorney General corroborate the complaint to the effect that campesinos were killed by military troops in Cayara; those clues indicate the need for a thorough investigation on the part of the judiciary.

2. The term "slaughter" is not the proper one in strictly legal terms, because thus far the corpi delicti have not been found; however, one cannot disregard the position taken by the Supreme Court of the Republic in the "Cárpena Case" where a murder was tried without the body of the victim having been found.

3. All of this points to the fact that when the slaughter was publicly denounced, the Political-military Command of Ayacucho decided to destroy the evidence. Therefore, it barred any civilian authority and member of the press from the area until one week later, during which time the bodies were disinterred and taken to higher altitudes in the Cayara area.

4. The military troops did not stop their repressive measures on May 14, 1988, the day of the attack on Cayara; instead, several days later, on May 18, 1988, the Chief of the Political-military Command of the area took into custody Jovita García Suárez, Alejandro Ectuccaja Villagaray and Samuel García Palomino, who 70 days later were found buried in a grave in the Cayara highlands. The entire population of Cayara was witness to the arrest of these townspeople who were later described as "command informers" in order to blame their deaths on the subversives.

5. Responsibility for these very grave events must, beyond question, be borne by the Chief of the Political Military Command, Peruvian Army General Valdivia Dueñas and the immediate authors of the slaughter.

6. Rather than conceal the culpability of the military, the government must convince the highest ranking authorities of the armed forces of the need to know the truth about what transpired in Cayara and to punish those responsible. The forces of order know who they are, since they know the names hidden behind the pseudonyms used by each patrol chief.

Our Committee believes that there is sufficient evidence to warrant an in-depth investigation on the part of the competent authorities, into the events that occurred on May 14, 1988, in the town of Cayara, Province of Víctor Fajardo in Ayacucho, to determine the identity of those responsible for the murder of 28 campesinos in Cayara.

The conclusions reached by Senator Javier Diez Canseco are as follows:

1. The actions that occurred subsequent to May 14 are an immediate and direct consequence of the attack on the military convoy that occurred the previous day in the vicinity of Cayara. The military response had three components:

   a. To provide direct support to those ambushed, which was handled immediately once the survivors were withdrawn.

   b. Pursuit of the subversives, for the purpose of annihilating them and recovering weaponry, which continued until May 15.

c. Punishment of the townspeople, who were considered to be partisan to and participants in the subversion, and the search for specific persons named on a list that the Army had in its possession even before it entered Cayara.

2. The existence of that list of alleged subversive partisans, which the Army has in its possession, is the factor that triggered a crime wave targeted at eliminating all the subversive agents and, in particular, the individuals on the list that military intelligence had in its possession and that, while it began in Cayara on May 14, continued with the arrests-disappearances of May 19, June 30, July 3 and, finally, the murder of Fernandina Palomino, Justiciano Tinco and Antonio García Tipe on December 14. The disappearance of the body of Jovita García Suárez is also part of that crime wave.

3. Judging by the testimony of the witnesses, the remains found by the Special Prosecutor when the graves were opened, and the gaps and contradictions in the information provided by the Ministry of Defense, the Committee concludes that on May 14, 1988, the Military Command ordered an operation to pursue and annihilate subversive forces, which action culminated in a punitive action against the people - - especially the men - - of Cayara for their alleged participation in the ambush of May 13, which involved the indiscriminate slaughter of dozens of civilians and the arrests - disappearances of others.

4. The Committee has found evidence that during the operation, noncombatant civilians were murdered, such as the deaths that occurred on May 14 at the place known as Erusco, at the entry to the town of Cayara and the four people who died later in the town of Mayupampa.

5. The Committee finds that the Army has been unable to prove that the townspeople of Cayara were subversives and participated in the ambush as the conclusions of the report of the Office of the Army Inspector General would suggest, even though it allegedly had the elements to substantiate its version, such as the finger print identification of the Erusco bodies, testimony and evidence to substantiate its claims, and the cartridges recovered at Cayara and Jeshua.

6. The Committee discards as untrue the notion that the disappearance of the bodies was the work of subversives and concludes that because of the complaints that began on May 17, more specifically when Prosecutor Escobar requested the Army's support to go to Cayara to dig up the graves, which happened on May 25, the Army itself retrieved the bodies and caused them to disappear, thereby attempting to destroy all evidence of its enormous crime.

7. There is a deliberate cover-up of information, in violation of the precepts contained in articles 179 y 180 of the Constitution, in that:

a. The complete version of the report of the Investigation conducted by the Office of the Army Inspector General and its appendices have not been provided; instead, only the conclusions have been supplied.
b. The findings of the fingerprint identification of the four bodies found at Erusco have never been reported.

8. The Commission concludes that Division General José Valdivia Dueñas, Chief of the Political-Military Command of that area, which was under a State of Siege, was the individual immediately and ultimately responsible for planning and executing the military actions that began on May 14.

9. The Commission has found evidence to indicate that on May 19, citizens Jovita García, Bautista, Alejandro Echeccaya and Samuel García were arrested by the Army and later kidnapped. It also concludes that the subsequent location of their bodies is evidence that the authors of their deaths would be the same military troops who took them from Cayara.

10. The Commission contends that the ultimate disappearance of the body of Jovita García could only be for the purpose of making it impossible to establish, with legal certainty, that she died at the hands of her abductors.

11. The Commission has found evidence to conclude that, discarding the version of the kidnapping by a column of subversives, on June 30, citizen Gregorio Ipurre Ramos and his family were kidnapped by Army soldiers.

12. The Commission concludes that the remaining complaints involving murders of civilians that occurred during the course of these events, of whom Prosecutor Escobar found unidentified remains, must be clarified by the office of the Attorney General.

13. There has been deliberate and consistent obstructions of the investigations conducted by Special Prosecutor Carlos Escobar Pineda, coupled with a lack of cooperation from the Political-military Command of Ayacucho to enable him to perform his functions.

14. The facts investigated provide evidence that the actions committed are classified as common crimes in our system and can in no way be regarded as military crimes; it is the duty of the office of the Attorney General to investigate those crimes and the duty of the Judiciary to punish them.

15. The Commission concludes that the crimes investigated must be viewed in the general context of the counterinsurgency policy pursued by the present administration, to obtain intelligence, the forces of order used, on modi operandi, such illegal force as torture or threats. These methods are part of a logic of warfare wherein entire communities are classified as the enemy and with which the State only continues to have a coercive relationship.

16. The Commission regrets to point out that the criticism it makes today is precisely the same criticism that the Senate Committee that investigated the events at Pucayaccu and Accomarca made in October 1985, at the start of this Administration; this merely confirms that the change of administration did not bring a change in the anti-subversive policy.

Senator José Navarro Grau, for his part, issued the following opinion:

> Since the majority opinion contains detailed information taken from oral and written statements, from visits and proceedings in the capital as well as in the Department of Ayacucho, I shall not enumerate them again and go instead directly to my conclusions.
>
> The Chairman of the Committee and its members have been quoted frequently by the press that are carrying the problem that has come to be known as "Cayara" as news or as reading material for various sectors of the public. This has created some expectations of this investigating committee, which was to come up with one single version of the facts, since there is only one version of the truth.

However, despite all the effort and publicity, I cannot honestly say that because there is only one truth, that is what has been discovered. I have two different and often conflicting versions, one from the forces of order and another from those who have appeared as witnesses to the events.

Through their Political-Military Command, the forces of order assert that 18 people died and that all the them were shot in the course of combat. They demonstrate their assertion by citing Erusco, Cayara, Coshhua and the Pampas river, where those who died in combat were found. In Erusco they showed the tracks of the fighting that began after an Army vehicle was dynamited. At the other places, they pointed to other signs to support their assertions. They presented the officers and troops who participated and had it not been for the existence of another version from the people of Cayara, we could have been content with that version.

Those who appeared as witnesses state that these were not combat deaths; in other words, that it was a question of genocide, where the victims were seized, transported and executed with machetes, axes, sickles and stones. They cite a number of details which I need not repeat here, since they are recounted in the other opinions.

The disappearance of the bodies makes it impossible to confirm whether of not these people died from bullet wounds. Because the two versions are completely different as to how their deaths occurred, if only a few of the bodies were found, it would be possible to know which version is the truth. A congressman whose fact-finding mission is temporary, only for as long as the investigation lasts, cannot say which of the two parties is telling the truth.

On the one hand, the political-military command performs its functions by a mandate of the Constitutional Government and must do so according to the principles of the Constitution. It is not there of its choosing, but because of the presence of subversive groups that want power to govern by their own rules, different from the rules contained in our 1979 Constitution. Since the struggle is an armed one, it is inevitable that there should be dead and wounded. On the other hand, the people of Cayara and the surrounding areas have not just moved into the area as a subversive movement; instead, they have lived there for generations. One cannot argue that their presence constitutes proof of subversion, therefore, since they find themselves caught between two forces that expect information and support from them; it is understandable why they are mistrustful and introverted. Unfortunately, these people are always victims: whether the casualties be members of the forces of order or of the subversive forces, it is always possible that either one or the other will pressure and even punish, in various ways, these Andean communities. Thus, the action of either of these two parties may ultimately produce conflicting testimony.

The fact that genocide has been committed in years past leads one to suspect that this is yet another case. The fact that a captain was killed when the Army truck was blown up leads one to suppose that the reaction must have been swift and hard against the authors; so if in the past innocent people were accused and punished for much less serious matters, the same may have happened in this case.

On the other hand, the fact that the world was told that there were over 100 deaths and that the killing continued and that the bodies were being left to birds of prey and wild animals and the fact that not one witness cited these figures or these details in his or her charges, lead one to suspect that an attempt has been made here to create a new spectacle, one ultimately intended to waken the system and the forces of order. The figure of 100 deaths, al least, turned out to be a fiction in comparison to the number of people who were not located and who were townspeople who died under the circumstances that each version describes.

When a fact-finding commission of this nature and for a specific time period must conclude its business, the result may be an inconclusive report, as in this case. In other words, it is impossible to say that these excesses did not occur, though it is also impossible to say that the effects and characteristics of the excesses are as described in the denunciations. Cayara did not appear to have been looted; only 7 of its 400 houses had been burned. When the committee visited Cayara, it was somewhat abandoned.

I understand what is happening; the people are afraid, many are suffering terribly. In the end, we can become confused. I am thus unable to contribute anything new to the Senate and to those who, as members of the judicial branch of government, must find the truth that I was unable to find. Having discharged my mission, my duties as a Congressman require nothing further of me.

IV. CONCEALMENT AND OBSTRUCTION OF THE ADMINISTRATION OF JUSTICE

The authors of such grave events as those that began on May 14, 1988, in the Cayara district, took a number of steps to erase the evidence of their guilt and to obstruct the investigations being conducted by the Attorney General's office, and provided a version of the facts that blamed other persons or groups for what happened.

1. Destruction of evidence

To make it impossible to determine what actually happened and the identity of the authors, military personnel cleaned away the bloodstains in the Cayara Church where they had killed the persons mentioned under Point II.B.3.

The military personnel also removed the bodies of the persons killed at the entrance to Cayara, in the church, in Ccechuaypampa and, later, those of the individuals arrested on May 18 and 19, who were buried on Mount Pucutuccasa.

The elimination of evidence is an integral part in forced disappearance of persons, in this case used against two persons in the vicinity of Ccechuaypampa around May 16, 1988, and the five persons arrested on June 29, 1988 (fact II.B.7.).

Another means used to make it impossible to ascertain the facts and identify their authors was to physically eliminate witnesses, a method used in the events described in this complaint under points II.B.7, 8 and 9.

2. Obstruction of Justice

As the authors of these events were beginning to erase any evidence of their actions, they were also obstructing the investigations being conducted both by the press and by the Attorney General's office and the Judiciary. What follows is a list of the most significant measures designed to obstruct these inquires:

a. In the highly militarized zone under the control of the Army, shots were fired from a hillside against the group accompanying the Provincial Judge of Cangallo; the military personnel refused to continue to accompany them, which prevented the group from conducting the proceedings on May 20, 1988, to identify the bodies at Ccechuaypampa (Point II.B.4.).

b. On May 19, the Special Prosecutor requested that the Army provide the transportation facilities offered by the Executive Power but received no cooperation. When the Special Prosecutor attempted to reach Cayara overland, he was delayed by the Army at Cangallo on May 20. The next day, the Army again delayed the Special Prosecutor, this time at Huancapi and did not allow the technical experts accompanying the group to continue on to Cayara, thereby making it impossible to conduct the exhumation, identification and autopsy of the bodies.

c. The Special Prosecutor again requested that the Army supply a helicopter for his trip to Cayara on May 24; he was not supplied that helicopter until May 26, the day after, witnesses stated, the soldiers removed the bodies from Ccechuaypampa.

d. The difficulties encountered in trying to get an identification of the hand skin found in one of the graves at Ccechuaypampa, which the Special Prosecutor believed was that of Eustaquio Oré Palomino, as follows:

i) The report of the experts appointed by the police indicated that they were able to fingerprint only the ring finger, because the rest of the skin had decomposed. Prosecutor Escobar, who had seen for himself that the skin had not decomposed, ordered the commandant to conduct another examination in his presence. In that examination, the prints of the five fingers were taken.

ii) When sent to the Investigating Police, the latter reported that the fingerprints were not those of Eustaquio Oré Palomino. Delving further, it was established that this person was 18 years of age and as such had a police card that was registered when the individual turned 18. On the other hand, the person whom witnesses said had died was 17 years of age and therefore could not have had a card on file with the police.

iii) However, the Prosecutor was informed that the disappeared person had registered with the military, and that the military should have his identification card and fingerprint on file. When a search was ordered, the card was found, but the fingerprint had too much ink to make any comparison possible. Therefore, Prosecutor Escobar asked the Attorney General to compare the print with another copy of the card kept on file in Lima, on the assumption that if one copy had to much ink, the other one might be legible. There is no information as to whether or not the Attorney General took this measure.

e. The Special Prosecutor requested that the Army provide him with a helicopter to conduct the exhumation of the bodies found on Mount Pucutuccasa. When the helicopter was not provided, the Special Prosecutor, the deputy in the Office of the Special Prosecutor, the Provincial Judge of Cangallo and the Court Secretary traveled to the place in two police vehicles. Since they did not have the helicopter requested, they were only able to remove one body from the grave, that of Jovita García, which later disappeared from the Cangallo cemetery after having been identified by her family.

f. The Special Prosecutor returned to Huamanga, Ayacucho, on August 10, by truck from Erusco, following the exhumation. The next day, August 11, the Special Prosecutor telexed a request to the Attorney General that he intercede with the joint command of the Armed Forces to provide the Special

Prosecutor with helicopter transport; the telex was sent again the following day. Despite that request and despite the order from the highest levels of government and from the Attorney General that the Special Prosecutor be given every possible cooperation in his work, the Army did not provide him with that helicopter. Because of that, the Special Prosecutor had to obtain overland transport and conducted the proceeding by traveling overland and then on foot on August 18, as stated in the corresponding record. As indicated in this complaint, under Point II.B.6., by that time the other three bodies on Mount Pucutuccasa has already disappeared.

g. On September 21, 1988, in an official communication that the Special Prosecutor received on October 3, while he was still conducting important inquires to clarify the facts, the Superior Criminal Prosecutor, Dr. Pedro Méndez Jurado, ordered the Special Prosecutor to prepare the final report on his investigation. As indicated earlier, the Special Prosecutor delivered his report on October 13, wherein he concluded that criminal proceedings should be instituted against General José Valdivia Dueñas as the principal responsible party in these events. On November 11, 1988, the Attorney General of the Nation sent the files to the Provincial Prosecutor of Cangallo to expand the investigation. Twelve days later, the Cangallo Prosecutor decided not to file criminal charges and temporarily filed the case. The sequence of events and their nature clearly point to the fact that their purpose was to prevent any court actions in these events. This impression is reinforced with one considers the measures exercised throughout the investigations in connection with witnesses.

h. During the course of the inquires conducted by the Special Prosecutor in Cayara on May 21, 1988, after being delayed by the Army in Huancapi, and on May 26, he was able to observe the pressure brought to bear against witnesses by Army personnel, whose faces were covered with ski caps. He made particular note of the conduct of the officer in command of the military troops, who was known as "Captain Palomino"; he photographed him, as explained in Point II.B.6. This pressure must be consider together with the fact that there was never any response to the Special Prosecutor's request that the identify of "Captain Palomino" be revealed, even though the corresponding photograph was provided to the military authorities for that purpose.

i. The pressure on the witnesses is especially obvious during the course of the expanded inquiry conducted by the Provincial Prosecutor of Cangallo, during which the testimony was taken inside the Huancapi Military Garrison. When witness Delfina Pariona Palomino (wife of Alejandro Echeccaya, whose body was identified -according to the record- at Pucutuccassa), expanded her testimony in the presence of the Provincial Prosecutor of Cangallo, she stated that she had not seen her husband since May 15 when he had gone off with the subversive in the direction of Muyupampa. This statement contradicts her original statement, which was corroborated by the statement made by the widow of Samuel García Palomino, who said that she and Delfina Pariona went to the grave and found the body of Alejandro Echeccaya. It also should be noted that Delfina Pariona had left her fingerprint on the complaint that 19 campesinos from Erusco filed with the Office of the Special Prosecutor for Disappearances, wherein they state that the Army had pressured them to state that terrorists had taken Jovita García.

As for the witness Maximiliana Noa Ccayo, in her expanded testimony in the Huancapi military garrison in the presence of the Provincial Prosecutor of Cangallo, she appears to be retracting the statements she made in the presence of the Special Prosecutor (Section EIGHT of the Report from Prosecutor Granda). However, Maximiliana Noa Ccayo, who is illiterate, had testified before Prosecutor Escobar on May 22 and had said that she was in Cayara on May 14, with her daughter Delia Ipurre Noa, and that they confirmed the death of Ignacio Ipurre Suárez, wife and father, respectively, of the two women (see statement under Evidence No. 7, point II.B.4). In effect, Delia, a minor with an elementary education, speaks Spanish and had testified separately in the presence of Prosecutor Escobar that she had been with her mother that day, May 14, and had seen the soldiers kill her father. This corroborates the

original statement made by witness Maximiliana Noa, and adds yet another element from which to infer that the expanded testimony given in the presence of Prosecutor Granda, under the pressure of being inside the military garrison and after a number of witnesses had been killed, was false.

The same can be said with regard to the witness Teodora Apari Marcatoma de Palomino, who, in her expanded testimony before Prosecutor Granda, appears to say that she was not in Cayara for that entire period, but rather in Ica until June 15, and that she had not seen what the military did; she denied having made any statement to Prosecutor Escobar. The Inter-American Commission has been informed that: a) the testimony of Teodora Apari in the presence of Prosecutor Escobar on May 22, was taped by the parliamentarians who were present at the time; and b) she testified again in presence of the Provincial Judge, on June 11, indicating the place where soldiers had cut off her husband's head, pointing out the area and gathering blood-stained soil from the site, evidence that Prosecutor Escobar sent to the laboratory where experts concluded that it was human blood (See Escobar Report where it mentions the existence of photographs of this witness at the time she was removing the blood-stained soil). This is another case of testimony retracted under duress.

3. Elaboration of self-serving versions

The measures taken to conceal the authorship of these events include the preparation of accounts designed to provide justifications for the action undertaken, to blame other agents and to discredit the work of those whose conclusions differ.

It is possible to discern certain basic lines, both in the Army's versions and in the majority opinion of the Senate Investigating Committee. While it is acknowledged that an undetermined number of deaths occurred, it is alleged that these deaths occurred during the course of armed confrontation, both in Erusco and later in Ccechuaypampa. At a time when the Army had already established complete control over Cayara, Erusco and surrounding areas, and had even set up a military base in the school, these accounts claim that subversive groups removed all of the bodies to prevent them from being identified and that subversives kidnapped Jovita García, Alejandro Echeccaya and Samuel García Palomino and caused them to disappear, again at a time when the military was in full control of the area. The military versions and the majority report of the Senate Committee say that Jovita García was the Army informant who wrote the anonymous letter. Even though the letter was written by "un patriota legal" [a true patriot] who asked that "el nombre del portador" [the name of the bearer] (the masculine gender is used in the Spanish) not be revealed.

The self-serving version also contend that any opinions contrary to their own are calculated to discredit the armed forces and thwart the anti-subversive effort.' Thus, for example, the majority opinion of the Senate Investigating Committee elaborates upon de argument contained in the report filed by General Valdivia with the Provincial Prosecutor of Cangallo concerning the illegal and politically motivated conduct of the Special Prosecutor, adding an attack against the professional ethics of the interpreter.

This argument and the political maneuvering that it triggered, led to the replacement of Prosecutor Escobar by Prosecutor Granda, whose decision to temporarily file the case was based on testimony whose credibility has already been brought into question in this complaint, because it deviated from the original version, was given inside an Army garrison, after a number of witnesses had already been pressured to alter their testimony and others had been detained, killed or disappeared.

V. THE PROOF

1. Documentary evidence

The Inter-American Commission on Human Rights bases the assertions contained in this complaint on the evidence contained in the eight Appendices that are attached hereto and on the documentary evidence that is offered in connection with each specific fact (points II.B.1, 2, 3, 4, 5, 6, 7, 8, and 9).

2. Testimonial evidence

The Inter-American Commission on Human Rights believes that the Inter-American Court of Human Rights should take testimony from the following persons:

2.1. Dr. Carlos Enrique Escobar Pineda.
2.2. Dr. Raúl Ferrero.
2.3. Monsignor Augusto Beuzeville.
2.4. Senator Javier Diez Canseco.
2.5. Senator Gustavo Mohme Llona.
2.6. Dr. Augusto Zúñiga.
2.7. General Jaime Enrique Salinas Sedó.
2.8. Dr. Hugo Denigri Cornejo.

Taking into account the fact that during the course of the investigations conducted in Peru into the facts that are the subject of this complaint, certain witnesses have been physically eliminated while others have been subjected to pressure to force them to change their original testimony, the Inter-American Commission on Human Rights believes that the Inter-American Court must establish a method by which to take a body of testimony in such a way that the personal safety of the witnesses and the integrity and accuracy of their testimony are guarantee. Since the method to be used must take into account the specifics of each individual's unique situation, the Inter-American Commission offers its services to the Inter-American Court to provide it with the specifics required in each case, which should be taken into account when receiving each body of testimony. The names of the witnesses would be reported to the Court once the method described herein has been established.

3. Request for documentation

The Inter-American Commission on Human Rights is petitioning the Court to require the following documents of the Government of Peru:

3.1. The proceedings upon which the Report of the Senate Investigating Committee was based.
3.2. The files upon which the Report of the Office of the Army Inspector General on the facts that are the subject of this complaint was based.
3.3. The proceedings conducted in the Military Courts that led to the dismissal of the case involving the events that are the subject of this complaint.

3.4. Investigations Nos. 476 and 477 of the Special Prosecutor, concerning complaints of the disappearances of relatives of the victims on fact II.B.7.

VI. LEGAL GROUNDS

The Inter-American Commission on Human Rights has processed the instant case in accordance with its Regulations and the pertinent provisions of the American Convention on Human Rights, of which the Republic of Peru is a State Party and has recognized the compulsory jurisdiction of the Inter-American Court of Human Rights on January 21, 1981.

In submitting the present complaint, the Commission is acting under the provisions of Article 50 and 51 of the American Convention, after having analyzed the submission presented by the Government of Peru on May 27, 1991, the led to Resolution 1/91 concerning Report 29/91, which documents are attached to the present complaint. It has also taken into account the fact that the Government of Peru reiterated its positions on January 11, 1992. The Inter-American Commission on Human Rights, therefore, is proceeding pursuant to the provisions of Article 63.1 of the Convention and is requesting that the Inter-American Court fix the amount appropriate for payment of a "fair compensation to the injured party".

As for the exhaustion of domestic remedies, suffice it to say that the matter is thoroughly examined in Report 29/91 and in Chapter III.1. of this complaint on the measures taken by the office of the Attorney General.

The specific facts set forth in this complaint involve multiple violations perpetrated by agents of the Peruvian State, violations of provisions of the American Convention on Human Rights as indicated in point I concerning the purpose of the complaint.

As for forced disappearance, it should be noted that the Commission, the literature, the practice of other international human rights organs, the General Assembly of the Organization of American States and recently the jurisprudence of the Inter-American Court of Human Rights has qualified it as a crime against humanity (Velásquez, paragraphs 151 - 153; Godínez, paragraphs 159 - 161). As has been noted, disappearance is a multiple and continual violation of essential legal rights protected under the American Convention on Human Rights that the states parties, voluntarily and in good faith, have pledged to respect and guarantee (Velásquez, para. 155; Godínez para. 163).

The Commission concurs with the Court where it states that the forced disappearance of persons is one of the most serious violations of human rights that a State Party to the Convention can commit, since it represent ". . . a radical departure from this treaty, inasmuch as it implies a crass abandonment of the values that emanate from human dignity and of the principles that lie at the very foundation of the Inter-American system and this Convention" (Velásquez, para. 158; Godínez para. 166)

Forced disappearance of persons begins with the victim's illegal detention by agents of the State, who normally operate in full daylight. The victim is taken to some secret place or irregular detention center. To relatives and authorities in charge of the investigation, those agents systematically deny the very fact of the detention, the condition of the victim and his/her final whereabouts. The lack of a formal acknowledgment of the illegal detention allows the agents of the State to operate with total impunity, beyond the boundaries of any jurisdictional control. That situation obtains in the case under examination by virtue of the regulations governing states of emergency in Peru, which give the chiefs of the political-military commands extraordinary powers. This unlawful deprivation of freedom constitutes a flagrant violation of Article 7 of the American Convention, which protects the right to personal liberty.

In the instant case, as established in the description of the specific facts (Section II.B. 3, 4, 5, 6 and 7), members of the Peruvian Army made a number of unlawful arrests in a succession of operations that began on May 14, 1988, and ended on June 29 of that year.

The Commission's experience and the characteristics of the instant case confirm that once in captivity, the victim of an unlawful privation of freedom under the conditions herein described, is tortured and subjected to cruel, inhuman and degrading punishment by agents of the State. This constitutes a violation of Article 5 of the American Convention, which recognizes every person's right to physically, psychologically and emotionally humane treatment. In the case being submitted to the Court, the testimony presented in evidence in support of facts II.B.3, 4, and 5 recount the torture of the victims in those incidents.

The legal remedies, especially habeas corpus, which would have been the proper remedy to determine the whereabouts of the person and protect the rights on one detained, are ineffectual, which in itself constitutes a violation of judicial guarantees (Article 8) and the right to judicial protection (Article 25) recognized in the American Convention.

In the case presented in this complaint, the arbitrary arrests and torture were followed by the summary execution of the victims mentioned in the specific facts II.B. 1, 3, 4, 6, 8, and 9, which constitutes a grave violation of the right to life recognized in Article 4 of the American Convention on Human Rights. Two victims of specific fact II.B.4 and the victims of fact II.B. 7 likely met with the same fate. This involves seven victims whose situation, strictly speaking, is enforced disappearance, since unlike the other cases, their death has not yet been established.

It should be pointed out that in the instant case, presented to the Inter-American Court, the Government of Peru, through the actions of its agents, not only has failed to respect and guarantee the exercise and the rights of the victims in accordance with Article 1.1. of the American Convention, but those agents have executed a number of actions to obstruct the administration of justice and make it impossible to identify the authors of these specific facts. Thus, witnesses and/or relatives of victims have been eliminated and threatened, consciously and deliberately; the bodies of the persons executed have been removed; evidence has been destroyed, cover-up operations have been conducted, judicial investigations have been obstructed and the individual who attempted to conduct an independent investigation was threatened and ultimately severed from service with the State and forced to seek refuge abroad. The other objective of all this has been to conceal the whereabouts of the victims and erase the crime from the public's memory.

Finally, the Commission must point to the violations committed by members of the Peruvian Army against public and private property belonging to some of the victims in this case. As recounted under fact II.B.2, agents of the Peruvian State destroyed movable and immovable property belonging both to the State and to private parties. This constitutes a violation of Article 21 of the Convention, which makes it incumbent upon the Peruvian State to protect the right to private property.

The facts in this case reveal that the Peruvian State has international responsibilities that follow from the violation of its obligations under the provisions of the American Convention. In effect, Article 1.1 of the Convention provides that every State Party undertakes the obligation to adopt whatever measures are needed to ensure juridically, to all persons within its jurisdiction, the effective enjoyment of the rights recognized in the Convention. As a result of this obligation, the State must prevent and investigate violations of the human rights recognized in the Convention; try and punish those responsible for those crimes; inform the family of the whereabouts of persons who have disappeared and indemnify (when it is possible to restore the victim in the exercise of his of her rights) for any damages

caused by the human rights violations committed by agents of the State (Velásquez paragraph 166; Godínez paragraph 175).

The background information submitted by the Commission, the attached evidence and those that it will submit to the Court at the appropriate time, demonstrate that the case submitted to the Court caused a public commotion in Peru to the point that the President of the Republic at that time, Dr. Alan García Pérez, visited the scene of the events and publicly pledged to have them fully clarified. The Peruvian press gave extensive coverage to the work of the Commission of Notables and the Senate Investigating Committee, and to the frustrated judicial investigation of the Special Prosecutor, Dr. Carlos Escobar. However, almost four years have passed since this massacre was committed and, despite efforts made by some Peruvian authorities and the Commission, there are still no remains of the disappeared victims nor of the bodies of those executed, nor has anyone been convicted or even indicted for the crimes committed in connection with these events.

The Commission will prove to the Inter-American Court of Human Rights that the Peruvian State has not made any serious attempt to investigate these facts, punish those responsible, adopt the measures necessary to prevent crimes of this nature in the future and compensate the victims and/or their families for the damages suffered. The passive attitude demonstrated by the Peruvian State vis - à - vis a massacre of such proportions, combined with the concealment, obstruction of justice and elimination of evidence by its agents, proves that the Peruvian State has violated its obligations to guarantee the free exercise of the fundamental rights upheld in the Convention, in accordance with Article 1.1 of the American Convention, of which Peru is a State Party.

VII. CONCLUSIONS

In submitting the instant case to the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights reiterates that it is convinced that the Peruvian State is internationally accountable for the violations of the rights recognized in articles 4, 5, 7, 8, and 25 of the American Convention on Human Rights, committed by members of the Army against persons under de jurisdiction of the Peruvian State, during the course of events that began on May 14, 1988, in the district of Cayara, Province of Víctor Fajardo, Department of Ayacucho and that culminated on September 8, 1989.

The Inter-American Commission on Human Rights is equally convinced that the Peruvian State has failed to honor its obligations under the provisions of Article 1.1 of the American Convention on Human Rights, inasmuch as it has not adopted measures to guarantee the exercise of the rights recognized in that international instrument; instead, its agents have systematically attempted to obstruct a clarification of the facts and identification of those responsible. As a result, the grave violations set forth in this action go unpunished and the very institutions of the State charged, under the National Constitution, with safeguarding the rights of the inhabitants of Peru and investigating and punishing those responsible for violations of human rights have been adversely affected. It has thus committed acts classified as crimes under Peru's domestic laws.

APPENDIX II

PUNTA DEL ESTE, December 17, 1991

MR. PRESIDENT,

The Governments of the Republic of Argentina and of the Oriental Republic of Uruguay, as Member States of the Organization of American States and parties to the American Convention on Human Rights and pursuant to Article 64 paragraph 1 of the aforementioned Convention and to the provisions of Articles 49 and 51 of the Rules of Procedure of the Court, have the honor to address the President of the Inter-American Court of Human Rights in order to request an advisory opinion.

The instant request for an advisory opinion seeks the interpretation of Articles 41, 42, 44, 46, 47, 50 and 51 of the Convention, as they relate to the concrete situation and circumstances described below:

1) As regards Articles 41 and 42, the Court is hereby requested to render an opinion as to whether, in order to justify its dealing with a case involving communications alleging the violation of the rights protected by Articles 23, 24 and 25 of the Convention, the Commission is competent to assess and offer an opinion on the legality of domestic legislation adopted pursuant to the provisions of the Constitution, insofar as the "reasonableness," "advisability," or "authenticity" of such legislation is concerned.

2) With respect to Articles 46 and 47 of the Convention, the Court is asked to render an opinion as to whether, in the case of communications submitted pursuant to Article 44 of the Convention, which must be processed within the framework of the Pact of San Jose, it is proper, as a matter of law, for the Commission, after having declared the application inadmissible, to address the merits of the case in the same report.

3) As for Articles 50 and 51 of the Convention, the Court is here being asked to render an opinion as to whether it is proper to combine the two reports provided for under Articles 50 and 51 of the Convention in a single report, and whether the Commission may order the publication of the report to which Article 50 refers before the period specified in Article 51 has expired.

4) None of the standards of interpretation which the Court is being asked to apply in this advisory opinion relates to abstract issues or theoretical hypotheses that might eventually arise in the process of implementing the Convention. They concern concrete cases that have been dealt with by the Commission (e.g., in cases 9768, 9780, 9828, 9850, 9893).

TO THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
DOCTOR HECTOR FIX-ZAMUDIO
SAN JOSE

5) The applicant Governments consider that the instant advisory opinion request presents an issue of great interest and importance to the proper enforcement of the American Convention on Human Rights and to the effective operation of the Inter-American Regional System for the Protection of Human Rights, bearing in mind the noble and exalted aims and goals that should always guide the defense of the human person.

6) The names and addresses of the agents for the applicants are:

Ambassador Alicia Martínez-Ríos, Embassy of the Republic of Argentina in San Jose, Costa Rica.

Ambassador Raquel Macedo de Shepard, Embassy of the Oriental Republic of Uruguay in San Jose, Costa Rica.

The Governments of the Republic of Argentina and of the Oriental Republic of Uruguay reaffirm to the President of the Inter-American Court of Human Rights the assurances of their highest consideration.

(s) *Guido Di Tella*
Minister of Foreign Affairs
of the Republic of Argentina

(s) *Héctor Gros-Espiell*
Minister of Foreign Affairs
of the Oriental Republic
of Uruguay

APPENDIX III

INTER-AMERICAN COURT OF HUMAN RIGHTS

NEIRA ALEGRIA *ET AL.* CASE

ORDER OF JUNE 29, 1992
(ART. 54.3
AMERICAN CONVENTION ON HUMAN RIGHTS)

In the Neira Alegría *et al.* Case,

The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges:

Héctor Fix-Zamudio, President
Sonia Picado-Sotela, Vice-President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge
Jorge E. Orihuela-Iberico, *ad hoc* Judge

Also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

pursuant to Article 44 of the Rules of Procedure of the Inter-American Court (hereinafter "the Rules of Procedure") in force for cases submitted to it prior to July 31, 1991, issues the following order in connection with Article 54(3) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), regarding the memorandum filed with the Court on April 16, 1992 by the *ad hoc* Judge appointed by the Government of Peru (hereinafter "the Government" or "Peru"), Jorge E. Orihuela-Iberico.

I

1. In a memorandum dated March 16, 1992, the *ad hoc* Judge requests the President of the Court

. . .to convene the Court which you presides and which was installed on January 13, 1992 pursuant to Article 54(3) of the American Convention on Human Rights conforming to Article 5(3) of the Statute of the Court, in order to hear the case of "Neyra Alegría et al."

2. In his memorandum, he points out that

[a]t the time the case was submitted, the Court was composed as follows:

(hereinafter "the old Court")

1)	President: Héctor Fix-Zamudio	(Mexico)
2)	Vice-President: Orlando Tovar-Tamayo	(Venezuela)
3)	Thomas Buergenthal	(U. S. A.)
4)	Rafael Nieto-Navia	(Colombia)
5)	Policarpo Callejas-Bonilla	(Honduras)
6)	Sonia Picado-Sotela	(Costa Rica)
7)	Julio A. Barberis	(Argentina) and
8)	Jorge E. Orihuela-Iberico (*ad hoc* Judge)	(Peru)

In January 1991, after the addition of the *ad hoc* Judge, this Court began to hear the case of "Neyra Alegria et al."

. . .

3. In his memorandum, he asks that

. . . the Court comply with Article 54(3) of the American Convention on Human Rights which conforms to Article 5(3) of the Statute of the Court (approved by the General Assembly of the OAS pursuant to Article 60 of the Convention) and unequivocally states that the new Court should be the one to hear the case of "Neyra Alegria et al.", since the case has reached the procedural stage of presentation of evidence but not the judgment stage.

Judge Orihuela points out that it is irrelevant that the four versions of Article 54(3) in the various OAS languages have different meanings. The Spanish and Portuguese versions provide that the judges whose terms have expired shall continue to hear the cases which have reached the judgment stage, whereas the English and French versions indicate that the judges shall continue to hear the cases that are still pending.

. . .

4. In justifying his request, the *ad hoc* Judge submits to the Court that

We are not working in a vaccum or dealing with an obscure provision that would imply or necessitate an elaborate and complex interpretation, nor recourse to the Vienna Convention on the Law of Treaties; for, as I have already stated, the text of Article 54(3) is of itself easy to understand, apply and observe. This is why I take the liberty of demanding faithful compliance therewith.

Furthermore, I must point out that a State Party is being judged under the provisions of the Convention, Statute and Rules of Procedure in the Spanish language, this being the working

language used in the case *sub-litis* (sic), as contemplated in Article 19(2) of the Rules of Procedure of the Court in force.

...

Moreover, Spanish is the language used for the dissemination and application of the Convention and Statute, which contain the rules of procedure that have been approved by the OAS Assembly, and is the version of the Convention that Peru ratified and even incorporated into the current Political Constitution of Peru. For this reason, it is improper to do what is being attempted, that is, to seek to sustain a position by applying a text of the Convention in a language other than that of the case *sub-litis* (sic), something I categorically reject.

...

Similarly, I consider that the new Court should take into account the original text of the sessions, minutes and final text of the Convention at the time of its approval by the State Parties, bearing in mind that the drafting and approval of the Convention were conducted in the Spanish language. This was precisely the language of the seat and the one that, in my opinion, should serve as the basis for the abstract resolution of any matter arising from errors in subsequent translations. This is a problem that is alien and irrelevant to the Court insofar as the decision giving rise to this request is concerned and that could only be useful in the event that the OAS Assembly, with the votes of the States Parties, should decide to put an end to the differences in the translated versions of Article 54(3) noted by Judge Orihuela.

5. Finally, the *ad hoc* Judge states that

Pursuant to Article 54(3) of the Convention, I request the Court that was installed in January 1992 to take over the case of "Neyra Alegria et al." as provided in the aformentioned Article, since the case *sub-litis* (sic) has not reached the judgment stage, a procedural stage that presupposes that no procedural acts are pending other than deliberations, voting and signing of the judgment. This is not true of the instant case, which has reached the procedural stage of presentation of evidence.

II

6. By note of April 6, 1992, the President of the Court acknowledged receipt of the aforementioned memorandum and declared that it "will be submitted to the Court as currently composed, that is, including those judges who took office in January this year", without transmittal to or consultation with the Inter-American Commission on Human Rights. Following the reasoning reflected in this order, that Court determined that it would hear and decide the arguments presented by the *ad hoc* Judge.

III

7. The Court is aware that in his memorandum dated March 16, 1992, the *ad hoc* Judge challenges the jurisdiction of the Court as composed until December 31, 1991 to continue hearing the case here under consideration and that, in his opinion, the judges whose terms expired on that date and who were not reelected are debarred from hearing the case after that date. The *ad hoc* Judge

argues that the Court as composed on January 1992 is the sole body with competence to adjudicate the Neira Alegría *et al.* case on the merits. He recognizes, however, that the "old" (sic) Court is competent to deal with petitions filed by Peru that seek the revision and interpretation of the Court's judgment of December 11, 1991 on the preliminary objections interposed by Peru in the Neira Alegría *et al.* case.

8. The issue raised by the *ad hoc* Judge is governed by the provisions of Article 54(3) of the American Convention, which reads as follows in its four texts:

Artículo 54

3. Los jueces permanecerán en funciones hasta el término de su mandato. Sin embargo, seguirán conociendo de los casos a que ya se hubieran abocado y que se encuentren en estado de sentencia, a cuyos efectos no serán substituidos por los nuevos jueces elegidos.

Article 54

3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Artigo 54

3. Os juízes permanecerão em funções até o término dos seus mandatos. Entretanto, continuarão funcionando nos casos de que já houverem tomado conhecimento e que se encontrem em fase de sentença e, para tais efeitos, não serão substituídos pelos novos juízes eleitos.

Article 54

3. Les juges restent en fonction jusqu'à la fin de leur mandat. Cependant, ils continueront de connaître des affaires dont ils ont été saisis et qui se trouvent en instance; pour ces affaires, ils ne seront pas remplacés par les juges nouvellement élus.

9. An analysis of these four texts of Article 54(3), which were duly certified as equally authentic on April 30, 1970 by the Deputy Secretary General of the Organization of American States (Treaty Series No. 36, OEA Documentos Oficiales, OEA/Ser. A/16 [SEPF]), indicates some differences in wording between the Spanish and Portuguese texts, on the one hand, and the English and French text, on the other.

10. The Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention"), which, as this Court has recognized on innumerable occasions [*Other Treaties Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 45; *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paras. 19, 20 and 26; *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 48; *The Word "Laws" in Article 30 of the American Convention on Human Rights*,

Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 13; *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights)*, Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7, para. 21; *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 14], is fully applicable, addresses this problem in its Articles 31, 32 and 33. They read as follows:

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2 The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

a. any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

b. any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

a. any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

b. any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

c. any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

a. leaves the meaning ambiguous or obscure; or

b. leads to a result which is manifestly absurd or unreasonable.

Article 33

Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

11. For purposes of the instant analysis, paragraphs 3 and 4 of Article 33 are particularly relevant. They indicate, first, that where there is more than one authentic text of a treaty "[t]he terms of the treaty are presumed to have the same meaning in each authentic text." Second, where there appear to be differences in the meaning between the authentic texts, "the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted." Hence, in interpreting the meaning of Article 54(3) of the Convention, one may not assume that one authentic text has precedence over another. Instead, an attempt must be made to reconcile that various authentic texts by reference to the rules of interpretation spelled out in the Vienna Convention.

12. Before undertaking this analysis, it must be noted that the working language chosen for a case being litigated before the Court does not and cannot determine the meaning to be given to a provision of the Convention when the meaning appears to differ in the authentic texts. Were it otherwise, the Convention would have different meanings for different litigants, depending on the working languages they or the Court select. It is obvious that this would "lea[d] to a result which is manifestly absurd or unreasonable." It is equally obvious, therefore, why the Vienna Convention adopts the rules that are set out in Article 33 to deal with this problem.

IV

13. The wording of the Spanish and English texts of Article 54(3) appear to differ in that the Spanish text speaks of "casos. . . que se encuentren en estado de sentencia" ("se encontrem en fase de sentença" in Portuguese), whereas the English text refers to "cases . . . that are still pending" ("qui se trouvent en instance" in French).

14. Furthermore, the Spanish text could lend itself to one of two possible interpretations. The phrase ". . .en estado de sentencia" might be read to mean that the case is at that stage of the proceedings when all that remain is for the judgment to be agreed upon and to be pronounced. It could be a case in which all the evidence has been gathered, the written pleadings have been received and the public hearing have been held, but where the judgment --whether on the merits or of an interlocutory character, such as that pertaining to preliminary objections -- has not as yet been voted on and/or pronounced. The phrase could also be read to mean, however, that the proceedings in the case are continuing or are ongoing in the sense that the case is in the process of moving towards the judgment. This interpretation could be applied to a situation where the Court has begun to deal with at least some of the issues, be they legal or factual, that must be resolved before judgment can be rendered.

15. The phrase employed in the English text ("still pending," which cannot be read as meaning "pending judgment only" without overly forcing the interpretation), similar to the French ("en instance," which the *Dictionnaire de Droit*, Raymond Barraine, Paris, 1967, p. 175, defines as "série des actes d'une procédure ayant pour objet de saisir une jurisdiction d'une contestation, d'instruire la cause et d'obtenir le jugement"), could also be interpreted in two ways, for it can refer either to the moment when the complaint is filed and notified, or to the stage of the proceedings when the judges have addressed the merits of the case either totally or partially.

16. It is necessary to ask, therefore, whether the texts in Spanish and Portuguese and English and French can be reconciled in the manner required by the Vienna Convention.

V

17. Two other points bear on the issue here under consideration. One has to do with the fact that Article 19(3) of the Rules of Procedure currently in force, which was included as a result fo the Court's practice, provides the following:

> When, for whatever reason, a judge is not present at one of the hearings or at other stages of the proceedings, the Court may decide to exempt him from continuing to hear the case, taking into account all the circumstances it deems relevant.

The other point concerns the language of Article 27(3) of the Rules of Procedure applicable to this case, which states that:

> The receipt by the Secretary of a preliminary objection shall not cause the suspension of the proceedings on the merits . . .

18. Article 19(3) of the Rules of Procedure, currently in force, is relevant to the interpretation of Article 54(3) of the Convention in that it reflects the principle that fairness to the litigants and judicial efficacy require that, whenever possible, only the judges who have efficacy require that, whenever possible, only the judges who have participated in all stages of the proceedings should render judgment in the case. This principle would be in conflict with an interpretation of Article 54(3) that asserts that judges whose terms have expired while the case is pending can be removed at any stage of the proceedings so long as the case is not as yet ready for judgment.

19. On the other hand, by providing that the filing of preliminary objections does not suspend the proceedings on the merits, Article 27(3) of the Rules of Procedure applicable to the instant case clearly seeks to ensure that the proceedings suffer no delays, as would be the case if new judges were to replace those already familiar with the case but whose terms have expired.

VI

20. The Draft Inter-American Convention on the Protection of Human Rights, which served as the working document at the San Jose Conference, contained an Article 45(3) which read as follows in Spanish:

> El juez permanecerá en la función hasta el término de su mandato. Sin embargo, seguirá conociendo de los casos a que ya se hubiere abocado, mientras se sustancia el respectivo proceso.

The English text read as follows:

> A judge shall continue in his office until the expiration of his term, provided, however, that he will continue examining the cases of which he has become seized, while such cases are being heard.

21. The language of this draft provision can be traced to some earlier drafts on the subject. The earliest is the Draft Convention on Human Rights, which was prepared by the Inter-American Council of Jurists in 1959 (see *Inter-American Yearbook on Human Rights*, 1968, p. 237).

The Spanish text of draft Article 42(1) provided as follows:

> Con sujeción a lo dispuesto en el artículo 40, todo miembro de la Comisión desempeñará sus funciones hasta que haya sido elegido un sucesor; pero si con anterioridad a la elección del sucesor la Comisión hubiere iniciado el examen de un asunto del [sic] miembro saliente continuará actuando en este asunto en lugar de su sucesor.

The English text read as follows:

> Subject to the provisions of Article 40, each member of the Commission shall remain in office until a successor has been elected. However, if prior to the election of such successor, the Commission should have started the examination of a case, the outgoing member, rather than his successor, shall continue to act in the matter.

Article 67(3) of the Council of Jurists' draft made this provision applicable to the judges of the proposed court.

22. Very similar language is found in the Draft Convention on Human Rights presented by the Government of Chile to the Second Special Inter-American Conference, which met in Rio de Janeiro in 1965 (Ibid., p. 275). It provided in Article 42(3) that

> Los miembros de la Comisión permanecerán en función hasta el término de su mandato. Excepcionalmente, mientras se sustancia el respectivo proceso, seguirán conociendo de los asuntos a que ya se hubieren abocado.

Article 48 of the Chilean draft made this provision applicable to the judges of the Court.

23. The Government of Uruguay in 1965 also presented a draft Convention (*Ibid.*, p. 298). Its provisions on the issue here under consideration (Arts. 47(1) and 72(4)) corresponded verbatim to those found in the Chilean draft.

24. The official documents and proceedings of the San Jose Conference (Conferencia Especializada Interamericana sobre Derechos Humanos (San Jose, Costa Rica, 7-22 de noviembre de 1969), *Actas y Documentos*, OEA/Ser. K/XVI/1.2, Washington, D.C. 1973) contain no reference to any discussion of or any document explaining the reasons for the change in wording form the Spanish text of Article 45(3) of the draft Convention -- working document of the San Jose Conference -- to what became the final text of Article 54(3) of the Convention. The Spanish text of Article 54(3) in its current form appears for the first time in a text prepared by the Style Committee. Since there was no discussion of this subject at the Conference, it is reasonable to assume that draft Article 45(3), which

became Article 54(3) of the Convention, was revised by the Style Committee for stylistic reasons only. That is, it can be assumed that the phrase "sin embargo, seguirá conociendo de los casos a que ya se hubiere abocado, mientras se sustancia el respectivo proceso" -- Article 45(3) of the Draft Convention -- was deemed by the Style Committee to mean the same thing as "sin embargo, seguirán conociendo de los casos a que ya se hubieran abocado y que se encuentren en estado de sentencia" -- Article 54(3) of the Convention.

25. In analyzing the wording of these drafts in both the English and the Spanish versions, one must therefore conclude as a matter of principle that the intent of this provision was to ensure that the judges or Commission members who have begun to deal with a case or issue shall continue to hear it even after their terms have officially ended.

VII

26. Having completed the examination of the drafting history and context of the American Convention, we find that, as regards Article 54(3), the interpretation of the Spanish phrase "en estado de sentencia" as referring to the moment when the Court is about to vote on a judgment -- a very extreme rendering -- is difficult to reconcile with that other extreme interpretation of the English text, according to which "still pending" means the moment when the case is filed and notified. Neither extreme is in accord with the sole criterion that must of necessity govern the "object and purpose" of the provision under examination, namely, to prevent a succession of judges from disrupting the proceedings, which would be likely to occur if judges actively participating in judicial proceedings were to be replaced.

27. The Court finds that the only solution that would satisfy both extremes and be compatible with the stated "object and purpose" is to refer to the moment at which it takes up the merits of the case. The phrase "take up the merits" shall not, however, be interpreted in a restrictive sense, since it is only very rarely that a specific moment can be singled out as the time when the Court "decides" to take up the merits of a case or, what is more likely, the time when it decides not to proceed or to suspend the proceedings.

28. In practice -- and by virtue of the fact that the Rules of Procedure make it possible to continue with the merits, even when preliminary objections have been interposed -- the Court usually takes both up simultaneously. Oral proceedings on the merits would without doubt serve as an indication -- though not the only one -- that the case has been admitted. It can happen, for example, that in analyzing the preliminary objections the Court might have to address the merits in whole or in part, even when it does so in order to decide, as it has in the past, that it will join one or more of the former to the latter (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2 and *Godínez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3).

29. The Statute of the International Court of Justice contains a provision similar to that found in the English text of the American Convention. It reads as follows:

> The Members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun (Article 13(3)).

The International Court of Justice has given very broad application to its statutory provisions, insofar as its composition has sometimes been modified at one stage or another of a given case. In other

words, the court dealing with provisional measures has not necessarily been the one to hear preliminary objections or the merits of the case (See, *inter alia, Barcelona Traction, Light and Power Company, Limited*, Second Phase, Judgment, I.C.J. Reports 1970, p. 3; *Fisheries Jurisdiction (United Kingdom v. Iceland), Jurisdiction of the Court*, Judgment, I.C.J. Reports 1973, p. 3; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 3; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Jurisdiction of the Court*, Judgment, I.C.J. Reports 1973, p. 49; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 175; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility*, Judgment I.C.J. Reports 1984, p. 392; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment I.C.J. Reports 1986, p. 14).

30. The cases heard in that Court, however, are different in structure from those handled by the Inter-American Court. In the former, the sources applied must take into account the equilibrium of relationships between states. As this Court has stated, the area of the protection of human rights is very different, since

> 29. . . .modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting states. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. The distinct character of these treaties has been recognized, inter alia, by the European Commission on Human Rights, when it declared
>
> > that the obligations undertaken by the High Contracting Parties in the European Convention are essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringements by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves. (Austria vs Italy, Application No. 788/60, 4 **European Yearbook of Human Rights** 116, at 140 (1961).)
>
> The European Commission, relying on the preamble to the European Convention emphasized, furthermore,
>
> > that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interest but to realize the aims and ideals of the Council of Europe. . . and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law. (**Ibid**. at 138.)

(*The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2.)

31. The case law of the International Court of Justice cannot be made applicable in blanket fashion to the Inter-American Court. Dividing the proceedings into a series of "watertight compartments" would reconcile neither the practice of the latter nor the provisions of its Rules of Procedure, which stipulate otherwise. It would also not take into account the need to guarantee to the victims the most efficient proceeding possible.

32. For all of these reasons, therefore, the best judge is the Court that began to hear the case. These are the judges who know to what extent they have begun to address the merits, even when oral proceedings have not yet been initiated.

33. In the instant case the Court had rendered judgment on preliminary objections but had not begun to address the merits of the case. The above interpretation of Article 54(3) of the Convention leads to the conclusion that the Court as newly composed is the one that must continue to hear this case.

VIII

34. **THEREFORE**

In view of the fact that the judgment rendered on December 11, 1991 in the case here under consideration rejected every one of the objections interposed by the Government, but the judges who rendered the judgment did not take up the merits of the case,

THE COURT,

composed as state above,

unanimously

DECIDES:

To continue to hear the case of Neira Alegría *et al.*, except for matters related to the motions filed by the agent of the Government against the judgment of December 11, 1991, which shall be resolved by the Court as it was composed when that judgment was rendered.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this twenty-ninth day of June of 1992.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Jorge E. Orihuela-Iberico

(s) Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE NIETO

I have voted in support of the Court's interpretation of Article 54(3) of the American Convention on Human Rights because it is a valid as any other that falls within the parameters of Articles 31 to 33 of the Vienna Convention on the Law of Treaties. Consequently, I concurred with the operative part to the extent that it constitutes the application of that interpretation.

In my opinion, the Court should have included, but did not, an operative point affirming its jurisdiction to respond to the petition presented by the *ad hoc* Judge. Had it done so, the undersigned Judge would have voted against it. Nevertheless, express reference was made to that point in the statement of reasons motivating the order, which is why I attach this dissenting opinion.

I shall not dwell on the fact that the request was submitted for analysis by the Court as currently composed, that is, after the changes brougth about by the elections of judges at the OAS Assemblies in Santiago, in June 1991, and in Nassau, in May 1992, although it must be noted that the latter election was held in order to replace a deceased judge and that the judge thus elected would therefore form part of either Court. It was brought to this Court because that is what the *ad hoc* Judge desired and what the President of the Court decided, without any reason being given in either case; however, one can assume that the President's decision was prompted by a desire to ensure the "transparency" of the proceedings. Nevertheless, this reasoning is vitiated by the fallacy of *petitio principii*. What is being requested is that the Court, as currently composed, take up the case of **Neira Alegría *et al.*** by virtue or an interpretation of the Convention, while the conclusions of that very interpretation are used to justify the position that it is that composition of the Court that should be the one to hear the request.

There is, of course, no express rule that would solve this problem. It is necessary, then, to turn to general principles of law in order to arrive at a conclusion. But this brings us a new complication. Conflicts of jurisdiction in domestic courts are generally raised, at the request of a legitimate party, in order to force one to decline one's jurisdiction in favor of another. Here, however, we are dealing with the same Court; only its composition is different. Nobody would cast doubt on the jurisdiction of the Court, as such, to hear the instant case. Moreover, the *ad hoc* Judge did not challenge the previous judges. Consequently, though useful, the domestic law precedents are not fully applicable to the situation before us.

The general, but of course by no means absolute, rule in domestic law is that every judge has the power to decide his or her own jurisdiction. It may happen that a judge who believes that he has jurisdiction will ask another, who is dealing with a case, to recuse himself and send the file to him. The person who is dealing with the case will, of course, be the one to decide whether or not to act upon such a request. If he refuses to do so, a conflict arises that must be resolved by a higher authority. However, if it is a matter of a judge examining his own jurisdiction at the request of a legitimate party, again it will be he who will decide. In this latter hypothesis it is unlikely that a conflict will arise, unless another judge should refuse to take over the case.

We are here not dealing with two judges who both believe that they have jurisdiction, nor with a higher instance (which, in any event, does not exist in international law) where the conflict might be resolved. It is a petition presented to a group of judges belonging to the same Court, asking them to take over a case that was being heard by another group of judges.

Since the matter involves a single Court and proceeding initiated by one of its members, it would seem logical that the body in process of hearing the case should be the one to be asked to *waive* its jurisdiction in favor of the new composition of the Court. But what is happening, rather, is that the newly composed Court is being asked to take over the case from those who had been hearing it, something that cannot be done arbitrarily when there has been no recusation.

In this connection, in the interests of preserving the institutionality of the organs of the inter-American system and in the absence of a specific provision, the problem must be analyzed and decided by those who are seized of the case and not by a group of judges who have not yet been entrusted with it.

This is, moreover, what can be deduced from the Court's decision in interpreting the Convention. For if it is stated that the judges shall continue to hear cases in which they have already begun to address the merits, only they, of course, will know whether or not they have done so.

I believe that the problem concerning jurisdiction should have been raised with the court as previously composed. That is the only logical solution to this dilemma, considering that there is no higher body able to deal with it. If the Court as previously composed had decided that it should continue to hear the case, the new composition of the Court would not even have had access to the files and, consequently, would have no reason whatsoever to ask that they be delivered to it because one Court is as legitimate as the other. However, the Court as previously composed could also have decided that at the stage reached in the proceedings no disruptions would occur and no damage would be caused to the victims, and that the files should be transmitted to the newly composed Court, which would receive them and hear the case thenceforward. Both hypotheses avoid a conflict that cannot be resolved by a higher authority, defend the interests at stake, which are human rights, and preserve the system for their protection.

I am, therefore, of the opinion that the decision of the Court should have been that, as currently composed, it has no jurisdiction to take up the petition of the *ad hoc* Judge. That petition should have been responded to by the Court with the composition that had been hearing the case of **Neira Alegría *et al.***

(s) Rafael Nieto-Navia

(s) Manuel E. Ventura-Robles
Secretary

INDIVIDUAL OPINION OF JUDGE MONTIEL-ARGÜELLO

1. I have signed the Order issued by the Court regarding its composition, in full agreement with its operative paragraph and with its reasoning, which is an accurate interpretation of the American Convention on Human Rights.

2. I have no doubts whatsoever as to the Court's jurisdiction to issue the Order in question without the need for an express statement in that regard. The very act of issuing an Order suggests the conviction that jurisdiction to do so exists.

3. I consider it advisable for the expression "old Court" to be inserted between quotation marks in the Order, so as to indicate that the phrase is being used exclusively to identify the Court as it was composed before January 1 this year.

4. The expression must on no account be taken to refer to a Court that is in any way different from the Court in its current composition. This is not simply a question of semantics, but one that has a bearing on the determination of the jurisdiction of the Court.

5. If there actually existed an old Court and a new Court and the former were already seized of a case, it would not be possible for the latter to issue any orders with regard to that case. It would be a case of two Courts of the same rank, where one could not prevail over the other and where no common higher authority exists.

6. However, this is not the case, in my opinion. The Court is always the same, regardless of its composition. Consequently, the Court as composed at the present time has full jurisdiction to regulate its composition in any of the cases brought before it, including those cases that have already begun to be considered by Judges who no longer sit on it. This decision can be taken by the Court, either at the request of one of the parties or of one of its members, as in the instant case, or on its own initiative. Furthermore, although in this case it was deemed necessary to issue the instant Order -- both as a reply to the memorandum of the *ad hoc* Judge of Peru and because of the novelty of the situation -- in future cases it should no longer be necessary to issue a formal order, but simply to follow an already established precedent.

7. The Court that is hearing a case, regardless of its composition at the time of making its decision, is the one able to determine whether or not it has taken up the merits of the case, not as a subjective opinion but based on the proceedings on record.

8. In the case here under consideration, the Court to which the case of Neira Alegría *et al.* case has been brought decided that the judges who rendered the judgment of December 11, 1991 had not taken up the merits of the case but had only dealt with the dismissal of the preliminary objections.

9. In my opinion, that decision is perfectly justified.

(s) Alejandro Montiel-Argüello

(s) Manuel E. Ventura-Robles
Secretary

INDIVIDUAL OPINION OF AD HOC JUDGE ORIHUELA-IBERICO

WHEREAS:

1. In its Order of December 11, 1991, the Inter-American Court of Human Rights (hereinafter "the Court") established a Special Commission to regulate the proceedings in the case of Neira Alegría *et al.*;

2. The Special Commission met at the seat of the Court on January 17 and 18, 1992;

3. At that meeting, the *ad hoc* Judge verbally raised the question of the Court's compliance with Article 54(3) of the American Convention on Human Rights (hereinafter "the Convention");

4. At the request of the Special Commission, the *ad hoc* Judge presented the matter in writing and submitted it to the full Court on March 16, 1992;

5. Because of its clarity, the matter of the Court's compliance with Article 54(3) of the Convention does not require the elaborate interpretation contained in the foregoing Order;

6. In accordance with the statement contained in paragraph 34 of that Order regarding the fact that the Court's judgment of December 11, 1991 was circumscribed to a decision on the preliminary objections interposed by the Government of Peru, my individual opinion is that the Court issue the following order:

ORDER:

Pursuant to Article 54(3) of the Convention, the Court installed in January 1992 does on this date take up the case of "Neira Alegría *et al.*" The petitions for revision and interpretation submitted by the Government of Peru shall be decided by the Court as it was composed at the time that it issued the majority vote judgment to reject the preliminary objections, that been the judgment on which the aforementioned petitions have been filed.

(s) Jorge Eduardo Orihuela-Iberico

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX IV

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
JUNE 30, 1992

NEIRA ALEGRIA *ET AL.* CASE

HAVING SEEN:

1. The motion presented by the Government of Peru in its Counter-Memorial of June 27, 1991, in its submission of October 15, 1991 and at the public hearing held at the seat of the Court on June 30, 1992, to disqualify the following witnesses:

Augusto Yamada, Juan Hever Kruger, José Raez González, Agustín Mantilla Campos, Juan de Dios Jiménez Morán, Ricardo Chumbes Paz, César San Martín Castro, César Elejalde Estenssoro, Rolando Ames, César Delgado, Pilar Coll, and José Rojas Mar, "who in exercise of their profession as medical doctors, governmental authorities and judges, have given their functional and jurisdictional opinion in the autopsy reports, their testimony before the judges and the Investigative Commission, in their judgments and jurisdictional resolutions. Therefore, their functional participation in the facts should be judged on the merit of the documents they officially issued, without the need for these persons being summoned as witnesses."

Aquilina M. Tapia de Neira, Sonia Goldenberg, José Burneo and Enrique Zileri, because they cannot "testify when they were not present at the site of the events the subject of this case."

Sonia Goldenberg "because she has admitted her opposition to the Government of Peru in the reports published on the matters denounced" and because she has been refuted by Juan Francisco Tulich Morales, one of the surviving prisoners.

José Burneo "because he was the very lawyer of the petitioners."

Enrique Zileri, "the magazine Caretas under his direction, has declared its opposition to the Government of Peru on the matter denounced" and because he has been refuted by Reverend Father Hubert Lansiers.

2. The motion presented by the Government of Peru to disqualify the following expert witnesses offered by the Commission:

Ing. Enrique Bernardo, Ing. Guillermo Tamayo, Dr. Robert H. Kirschner and Dr. Clyde C. Snow, "because the offer of expert evidence, which is of an instrumental nature, is verified by the presentation of opinions in which the experts present their conclusions, based upon their competence and qualifications. Consequently, those experts need not appear in person before the Inter-American Court, but rather should present their expert testimony by means of written opinions."

3. The Commission's withdrawal of the testimony of Hubert Lansiers, Julio César Duniám, Alberto Torres and Nicolás Lucar, at the meeting of the Special Commission of the Court and the Agent of the Government on January 17, 1992.

4. The Government's objection to receiving testimony when, in its opinion, other documents substantiate the same facts, the testimony would add nothing and would not serve judicial economy.

5. The Commission's submissions at the public hearing of June 30, 1992.

WHEREAS:

1. The Government has objected to all the testimony offered by the Commission and, regarding the testimony of Aquilina M. de Tapia, Sonia Goldenberg and Enrique Zileri, the Government also urged specific grounds for disqualification.

2. Neither the Convention, the Statute, nor the Rules of the Court specify the grounds for the challenge or disqualification of witnesses and, according to article 34.1 of the Rules applicable to the case, the Court may decide whether hearing a witness "seem(s) likely to assist it in the carrying out of its functions". (Cfr. *Velásquez Rodríguez Case, Judgment of July 29, 1988*. Series C. No. 4, para. 143; *Godínez Cruz Case, Judgment of January 20, 1989*. Series C. No. 5, para. 143.)

3. The facts before the Court, rather than the means used to establish them, assist it in determining if there has been a violation of the human rights established in the Convention.

4. The specific grounds for disqualification presented by the Government of Peru refer to situations that must be evaluated in the course of the trial, and the parties must show that a witness' testimony is not true.

5. "The Court's procedure has its own peculiarities which are due to its nature as an international tribunal. Therefore all the elements of domestic procedures are not automatically applicable. Generally valid in international proceedings, this principle is even more cogent in those concerning the protection of human rights. The international protection of human rights should not be confused with criminal justice."(*Velásquez Rodríguez Case, supra*, paras. 132 to 134; *Godínez Cruz Case, supra*, paras. 138 to 140.)

6. The practice of the Court in receiving evidence has been very liberal (*Velásquez Rodríguez Case, supra*, para. 138; *Godínez Cruz Case, supra*, para. 144) because its jurisdiction refers to the fundamental rights of human beings and the finding of state responsibility for those violations would be especially serious. (*Velásquez Rodríguez Case, supra*, para. 129; *Godínez Cruz Case, supra*, para. 135)

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Decides

unanimously

1. Within the terms of Article 37 of the Rules, overrules the motion to challenge or disqualify the witnesses mentioned above and reserves the right to evaluate their declarations.

2. Authorizes the President, in consultation with the Permanent Commission, to decide the dates of the public hearings and the names of the Commission's witnesses who shall be summoned to testify before the Court.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this thirtieth day of June, 1992.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Jorge E. Orihuela-Iberico

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX V

INTER-AMERICAN COURT OF HUMAN RIGHTS

NEIRA ALEGRIA *ET AL.* CASE

REQUESTS FOR REVISION AND INTERPRETATION OF THE JUDGMENT OF DECEMBER 11, 1991 ON THE PRELIMINARY OBJECTIONS

ORDER OF JULY 3, 1992

In the case of Neira Alegría *et al.*,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Thomas Buergenthal, Judge
Rafael Nieto-Navia, Judge
Julio A. Barberis, Judge
Asdrúbal Aguiar-Aranguren, Judge
Jorge E. Orihuela-Iberico, *ad hoc* Judge

Also present,

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

pursuant to Article 44 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court") in force for cases submitted to it prior to July 31, 1991 (hereinafter "the Rules of Procedure"), issues the following Order regarding the requests filed by the Government of Peru (hereinafter "the Government" or "Peru") for the revision and interpretation of the judgment on preliminary objections of December 11, 1991.

I

1. By a communication dated December 13, 1991, Peru filed a "Special Motion for Revision" of the judgment on preliminary objections delivered by the Court on December 11, 1991, which dismissed the preliminary objections interposed by the Government.

2. In justifying its request, the applicant Government relied on the opinion of a legal scholar who identifies the motion for revision as a possible option in very special circumstances.

3. According to the Government, the judgment rejecting the preliminary objection of "Lack of Jurisdiction of the Commission" attached excessive importance to its note of September 29, 1989 to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and did not take into account other facts that were very closely related to the Commission's actions. For that reason, ". . . we enumerate these in our motion for revision of the judgment, so that the Honorable Judges of the Inter-American Court may verify, evaluate and judge them under the law and with conviction of the truth that flows from the record, taken as a whole."

4. The Government specifically points out what it describes as "new facts that the majority judgment should take up in undertaking the revision." They are as follows:

(a) With regard to the note of June 26, 1989 from the Government of Peru, to which the majority judgment refers in its paragraph No. 16 (in fine). The petitioner exercised his right to address it, through his communication of September 13, 1989, and the Commission's Report No. 43/90 refers extensively to it in its "Background No. 13" (pages 8 to 10 of the Report in question), from which we highlight the following statement by the petitioner: ". . .that it has been authoritatively demonstrated that all domestic remedies relating to the writ of habeas corpus, which is the basis for this procedure, have been exhausted."

(b) With regard to the disputed note dated September 29, 1989 from the Government of Peru to the Commission. The majority judgment does not mention --and consequently fails to address the significance of -- the following:

- that the petitioner requested an extension in order to submit his observations, a fact recorded in Report No. 43/90 under "Background No. 15" (page 10 of the Report in question);

- that in submitting his reply, dated February 15, 1990 (See Report 43/90 "Background No. 18: pages 11 to 13), the petitioner repeatedly refers to the appropriatemess of the writ of habeas corpus which he initiated and exhausted on the domestic plane.

(c) In addition to the petitioner's observations, the Commission itself requested of the Government of Peru information regarding the exhaustion of domestic remedies in a note dated February 8, 1990 (See Report 43/90: Background No. 16, paragraph 1, page 10).

Likewise, it is on record that the Government did not heed the petitioner's replies, nor did it respond to the Commission's request for information (See Report 43/90 Background No. 17: page 11).

(d) Lastly, the majority judgment has also not taken into account the preambular section of Report 43/90, which is similar in substance and closely related to the subject dealt with in that judgment, particularly the statements contained in paragraph No. 19.

The whereas clauses of Report 43/90 which are relevant but were not taken into account are the following:

-Whereas No. 2: which declares the proceedings before the Commission to have been exhausted;

-Whereas No. 4: whereby the Commission expresses its certainty about the exhaustion of domestic remedies by the petitioner through the writ of habeas corpus he submitted in order to certify compliance with that requirement;

-Whereas No. 5: regarding the certainty expressed in "Whereas Clause No. 4", based on the case law and Advisory Opinions of the Inter-American Court;

-Whereas No. 7: which analyzes the note of the Government dated September 29, 1989 and its procedural ineffectiveness;

-Whereas No. 8: which appraises the petitioner's comment regarding his repeated assurances that he has exhausted domestic remedies by means of the writ of habeas corpus and the Commission's conviction that the Government has produced no proof as to which remedies have yet to be exhausted.

5. The applicant adds that "[o]ur petition, contained in a special motion for revision, is based on the following":

4.1.- That in considering the objection of Lack of Jurisdiction of the Commission, the majority judgment dismissed it on the grounds that the Government of Peru had incurred in "estoppel" [sic] by virtue of the manifest contradiction between its Note of September 29, 1989 to the Commission and the arguments used in setting forth the Preliminary Objection of "Lack of Jurisdiction of the Commission."

4.2.- Nevertheless, in reaching that conclusion the majority judgment failed to consider the following:

(a) The petitioner's acts (his observations);

(b) The Commission's acts (its requests for information);

(c) Omissions by the Government of Peru (procedural silence in face of the petitioner's observations, from which it can be concluded that the Government did not follow or attempt to defend the thesis contained in its note of September 29, 1989 as well as its failure to present the evidence it should have produced to resolve the matter of non-exhaustion of domestic remedies: all of which confirms that no suit was filed in this regard), and

(d) The majority judgment has also not taken into account the determination which the Commission made in reaching the decision that the Government of Peru had not substantiated the objection it interposed regarding the non-exhaustion of domestic remedies and in concluding as a result that the requirement had been met by means of the writ of habeas corpus.

4.3.- Consequently, the majority judgment does not take into account and therefore fails to evaluate the facts mentioned in paragraph 3 of this motion. Insted, it merely attaches undue importance to the note of September 29, 1989 and makes no mention of the procedure which governs the substantiation of non-exhaustion of domestic remedies, so often repeated in its case law and advisory opinions. In order to verify and evaluate those facts, there is no question that the Inter-American Court must pronounce itself by means of the revision of its judgment, as requested herein.

6. The agent asserts: "since we are dealing here with new facts that have not been considered or evaluated in the majority judgment, I hereby request that the documents evidencing such facts, mentioned in paragraph 3 of the instant motion, be deemed to form part of the record."

II

7. Exercising the powers conferred on him under Articles 25(2) of the Statute and 44(2) of the Rules of Procedure and after consultation with the Permanent Commission of the Court, the President of the Court, by order of January 18, 1992, decided to transmit the motion to the Inter-American Commission and gave the latter until March 18, 1992 to present its observations.

8. The Commission presented its observations on the motion for revision interposed by Peru on March 17, 1992. In them, the Commission requested that the Court dismiss the motion for the following reasons:

a. The legal scholar mentioned by the Government in its motion is referring to final judgments and not to interlocutory decisions such as those relating to preliminary objections.

b. That same legal scholar limits the admissibility of these motions to "particularly unusual cases and assumptions," something that has by no means been shown to be true of the instant case.

c. There are no national or international precedents that would authorize the filing of special motions for revision brought with regard to interlocutory decisions or preliminary objections.

d. The fact that a provision for such a motion is nowhere to be found in the Convention, the Statute or the Rules of Procedure of the Court is sufficient reason for the dismissal by the Court of the challenge to its judgment on the preliminary objections.

e. The general principles governing this type of motion also do not favor its admissibility. The motion for revision, by its very special nature, is eminently restrictive and always goes "against the stability of the proceedings" and the authority of a former adjudication. "For this reason, it can only be admitted when a change has ocurred in the status of the facts (evidence) or when the judgment has been obtained by fraudulent means."

f. The Government did not cite any of the grounds that usually give rise to this motion and the facts that it affirms to be new are not, for they already appeared in the record.

g. It cannot be ignored that the Government, after filing the motion for revision, proceeded to file another motion for the interpretation of that same judgment and that both motions are in conflict with each other, since they are reciprocally exclusive and, consequently procedural inadmissible. The first motion seeks to annul the judgment, while the second seeks the interpretation of that very judgment that is deemed to be invalid. It is the opinion of the Commission that only a pronouncement capable of interpretation is valid, "consequently, in keeping with clear procedural principles, the presentation of the second motion implies the dismissal of the first. This is so in particular because no reservation was made of the right to intervene in the event that the revision should be dismissed (principle of procedural eventuality)."

9. On March 6, 1992, before the deadline granted by the President to the Commission for presentation of its observations on the motion for revision, Peru submitted a request for interpretation of that same judgment of December 11, 1991 on the preliminary objections. This request was based on the provisions of Articles 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 48 of the Rules of Procedure.

10. In its memorandum, the Government requests the following of the Court:

2.1.- Paragraph 11 of the judgment whose interpretation is hereby requested states the following: that the President of the Inter-American Court sent a note dated December 3, 1991, explaining to the Commission that its minutes could not be deemed to be confidential; he added that the failure to transmit the documents requested "could have procedural consequences."

The Honorable Inter-American Court is hereby requested to indicate what procedural consequences have arisen in the instant case and with regard to the judgment whose interpretation is being sought, taking into account that:

(a) It is a fact that the judgment on preliminary objections was rendered on December 11, 1991, and

(b) the Commission, on the other hand, did not deliver to the Court the documents (Minutes) cited as evidence by the Government of Peru until December 18, 1991.

2.2.- Paragraph 15 of the judgment whose interpretation is hereby requested states the following:

> The report on the June 18, 1986 events drawn up by the authorities of the National Penitentiary Institute, whose powers over that prison were suspended pursuant to the aforementioned Supreme Decree, certifies that on that date there were 152 detainees in the San Juan Bautista prison, all of them alive. The three detainees identified in the petition were among this number (all in capital letters in the original).

For this reason a clarification is requested as to whether that statement --there is nothing to indicate that it originated with any of the parties -- should be understood to reflect the conviction of the Honorable Judges who signed that majority judgment. If such were the case, they would already have expressed an opinion on the merits of the case, which is not the subject matter of a preliminary objection; consequently, they would have advanced an opinion that prejudges an issue that has not yet been subjected to evidentiary verification in the proceedings.

2.3.- The second clause of paragraph 29 of the majority judgment to be interpreted states that:

> It could be argued in this case that the proceedings before the Special Military Tribunal do not amount to a real remedy or that that tribunal cannot be deemed to be a court of law (all in capital letters in the original).

Bearing in mind that one of the proofs already presented by the Government of Peru at the Commission's request is precisely an action tried before the Constitutional Tribunal of Military Justice of the Republic of Peru and that it is intimately related to the merits of the case under litigation. A clarification is sought as to whether that statement reflects an already formed opinion by the Honorable Judges who signed the majority judgment as regards the merits of the case. That is not an issue that can be properly taken up in a judgment concerning matters presented as preliminary objections and which were resolved taking into consideration the preliminary nature of this issue which bears on the merits of the case.

2.4.- Paragraphs 31 to 35 of the judgment to be interpreted contain a syllogism that enables the Court to dismiss the Preliminary Objection labelled "expiration of the time-limit for filing of the application."

The Honorable Court is being asked to interpret:

(a) Whether the Inter-American Commission on Human Rights has the power or authority to amend the time-limits that the States Parties agreed to fix on the exercise of its jurisdiction, specifically the period set forth in Article 51(1) of the American Convention on Human Rights.

(b) Whether the Inter-American Court of Human Rights has the power to extend the periods set by the States Parties in Article 51(1) of the American Convention on Human Rights.

2.5.- The majority judgment whose interpretation is here being requested saw fit to include a statement with regard to the absence of the signature of the Honorable Judge Dr. Sonia Picado-Sotela.

The Honorable Court is requested to interpret whether the presence of a Judge at a public hearing complies with the quorum requirements established for the Inter-American Court in rendering its decisions, taking into account the fact that the subject matter of the public hearing in question did not deal with the issue that formed the basis of the deliberations by the judges at that stage of the proceedings. This request for interpretation arises after consideration of the provisions contained in: Article 56 of the American Convention; Articles 16 and 23(1) of the Statute of the Inter-American Court; Articles 45(1)(m) and 46(4) of the Rules of Procedure of the Court of 1980.

11. On March 9, 1992, the request for interpretation was transmitted to the Commission and a period of 30 days granted for the presentation of written comments as seth forth in Article 48(2) of the Rules of Procedure.

12. On April 3, 1992, the Commission submitted its observations on the request for interpretation presented by the Government, characterizing it as unfounded for the following reasons:

a. According to Article 67 of the Convention, the request for interpretation refers specifically to final judgments and not to decision that do not address the merits of the case.

b. That only "the points in the operative provision of the judgment (Ch. IV Art. 48 of the Rules of Procedure of the Court)" are subject to interpretation. This has been the customary practice in this regard.

c. The Commission repeats the argument that a motion for revision of that same judgment on the preliminary objections had previously been filed by the Government and, in the Commission's opinion, these procedural remedies contradict each other.

III

13. A public hearing on the requests for revision and interpretation was held at the seat of the court on July 1, 1992. Shortly before the hearing began, the Agent of the Government submitted a written communication expressly withdrawing the request for revision that he had filed and that was to be taken up at that hearing. As a result, and after consultation with the Commission, the hearing only addressed the request for interpretation. When the hearing opened, the President declared that, notwithstanding the Government's communication, the judges reserved the right to refer to that document and to its effects in its order.

The following persons appeared before the Court:

a) For the Government of Peru:

Sergio Tapia-Tapia, Agent
Julio Vega, Ambassador to Costa Rica
Eduardo Barandiarán, Minister Counselor
Alfredo Avalos,

b) For the Inter-American Commission on Human Rights:

Oscar Luján-Fappiano, Delegate
Jorge Seall-Sasiain, Delegate
José Miguel Vivanco, Advisor.

IV

14. On this occasion, Judge Asdrúbal Aguiar-Aranguren sat on the Court in substitution of Judge Orlando Tovar, who had participated in the proceedings up to the date of his death, November 21, 1991. Pursuant to Article 54(2) of the Convention, Judge Aguiar-Aranguren was elected to replace Judge Orlando Tovar by the States Parties to the Convention on May 22, 1992, during the General Assembly of the OAS held in Nassau, Bahamas. Since his election, he has taken part in all matters relating to this case.

V

15. After consulting with the Commission, the Court granted the Government's motion to withdraw its request for revision of the judgment with the express understanding that the Court may nevertheless address some issues related to that motion. The Court reserved that right in consideration of the fact that the presentation of a request for revision and its withdrawal a few minutes before the public hearing -- after a considerable amount of time and valuable resources had been devoted to this proceeding by both the Commission and the Court -- should be taken into account in determining the Court costs to be borne by the parties to this case.

VI

16. In his request for interpretation, and again during the hearing, the Agent pointed to five aspects of the judgment which needed to be clarified.

17. The Agent asked for the interpretation "of the procedural consequences that have resulted in the instant case" in connection with some documents that the Court demanded of the Commission during the proceedings. The paragraph whose interpretation is requested quotes a letter from the President, dated December 3, 1991, asking the Commission for some documents and adding that "failure to transmit the documents requested 'could have procedural consequences.'" On this issue, the

Court notes that, in fact, the documents in question were received at the Secretariat on December 18, 1991, thus averting the situation the Agent presumes occurred. Moreover, the representative of the Commission read the pertinent sections of the documents in question at the public hearing, which fact is recorded in paragraph 13 of the contested judgment.

18. The Agent mentioned the reference made in paragraph 15 to a report drawn up on June 18, 1986 by the authorities of the National Penitentiary Institute of Peru which, he asserted, does not appear in the file nor "is there any reference indicating that it originated with any of the parties." On this issue, the Court notes that the reference to the report in question (which the agent quoted out of context, since it is part of the description of the facts presented by the petitioner) appears on pages 249 and 272 of the file and that, for the purposes of the judgment whose interpretation has been requested, it is of no consequence whether or not the report itself appears therein. In any event, the Court did not address that issue in the judgment whose interpretation has been requested.

19. The Agent requested an interpretation of a phrase in paragraph 29 of the judgment which, in his opinion, contains an assertion regarding an issue that goes to the merits of the case. On this issue, the Court finds that the phrase in question uses the expression "[i]t could be argued . . . that . . .," which in Spanish does not constitute an assertion. The Court adds that, directly after that phrase, the judgment goes on to state that "[h]ere neither of these assertions would be relevant."

20. The Agent also requested the Court to interpret Article 51(1) of the Convention. The right to request advisory opinions of the Court is reserved to the States and to the organs of the system, as provided in Article 64 of the Convention and after compliance with Articles 51 to 54 of the Rules of Procedure of the Court currently in force.

21. In his final plea, the Agent requested yet another interpretation of the Convention, namely, the provision governing quorum requirements. Here the Court notes in passing that quorum requirements were met both at the hearing and at the time when the judgment was rendered.

VII

22. Having clarified the foregoing, the Court now refers to Article 67 of the Convention, which provides the following:

> The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

The relevant part of Article 48(1) of the Rules of Procedures applicable to the case states, in turn

> [r]equests for an interpretation . . .shall indicate precisely the points in the operative provision of the judgment on which interpretation is requested.

23. The purpose of interpreting a judgment is to make more specific or clarify a judicial decision. It is not a remedy against what has been decided in the judgment, but a means of explaining issues already resolved.

24. At the hearing the Agent of the Government quoted what the Court has stated on two previous occasions, as follows:

> The interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning and purpose, based on the considerations of the judgments. This has been the rule enunciated in the case law of international courts.

(*Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990 (Art. 67 American Convention on Human Rights)*. Series C No. 9, para. 26; *Godínez Cruz Case, Interpretation of the Compensatory Damages Judgment, Judgment of August 17, 1990 (Art. 67 American Convention on Human Rights)*. Series C No. 10, para. 26).

25. In the opinion of the Court and of other international tribunals, the operative parts of a judgment cannot be interpreted in isolation from the considerations on which the judgment is based. This does not mean, however, that isolated facts or descriptive passages or the reasoning behing a decision should be interpreted or clarified without relating it to the operative part of the judgment, which is the part ultimately of interest to the parties. That would contradict the very essence of the interpretation mechanism.

26. In its communication, the applicant does not seek clarification of the operative parts of the judgment of December 11, 1991, nor of any of the preambular paragraphs directly related to them. Consequently, the instant request must be deemed to be manifestly inadmissible and must be rejected.

THEREFORE

THE COURT

By five votes to one,

1. Takes note of the Government's withdrawl of its request for revision of the judgment and reserves until later its decision as to court costs, if any.

Judge Jorge E. Orihuela-Iberico casts the dissenting vote.

By five votes to one,

2. Rejects as inadmissible the request for interpretation of its judgment of December 11, 1991, on the preliminary objections.

Judge Jorge E. Orihuela-Iberico casts the dissenting vote.

Judge Thomas Buergenthal issued the Declaration that is appended to the instant order.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this third day of July, 1992.

(s) Héctor Fix-Zamudio
President

(s) Thomas Buergenthal

(s) Rafael Nieto-Navia

(s) Julio A. Barberis

(s) Asdrúbal Aguiar-Aranguren

(s) Jorge E. Orihuela-Iberico

(s) Manuel E. Ventura-Robles
Secretary

DECLARATION BY JUDGE THOMAS BUERGENTHAL

Although I agree fully with the decision of the Court, I feel compelled to make this declaration because I consider the requests by Peru for revision and interpretation of the judgment of December 11, 1991 an abuse of the judicial process.

A government that adheres to a human rights treaty and accepts the jurisdiction of a court established to ensure its interpretation and application, as Peru did in ratifying the Convention and accepting the jurisdiction of this Court, has the right to resort to every legitimate judicial remedy and procedure to defend itself against charges that it has violated the treaty. What it may not do is interpose manifestly ill-founded and trivial motions whose sole purpose can only be to disrupt and delay the orderly and timely completion of the proceedings. Such tactics violate the object and purpose of the human rights machinery established by the Convention. They can also not be reconciled with the intention of the States Parties to the Convention, reaffirmed in paragraph one of its Preamble, "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."

(s) Thomas Buergenthal

(s) Manuel E. Ventura-Robles
Secretary

OPINION AND VOTE of ad hoc Judge Jorge E. Orihuela-Iberico

on the Motion for Revision and Request for interpretation filed by the Illustrious Government of Peru with regard to the Judgment of December 11, 1991, which dismissed the Preliminary Objection by majority vote

Both the motion for revision and the request for interpretation filed by the Government (hereinafter "the Government") against the Judgment of December 11, 1991 on the Preliminary Objections are directly and exclusively addressed to the majority opinion of the members of that Court and not to my dissenting vote, which also formed part of that judgment.

Despite the foregoing and in connection with the request for interpretation, two issues deserve my express opinion, since they are related to the abovementioned dissent.

Consequently:

1. With regard to the motion for revision, which the Government withdrew before the start of the public hearing convened to hear the arguments of the Government and the observations of the Inter-American Commission on Human Rights (hereinafter "the Commission"). I believe I respect the right of the parties to formulate questions before the competent organ, as well as to refrain from so doing.

However, I also wish to express my conviction with regard to the majority opinion in the aforementioned decision, insofar as it advances an opinion that is dangerous to the balance of justice that the Court should impart when it indicates that the Court reserves the right to decide on the costs derived from these acts of presentation and withdrawal, something that can only be properly done *a posteriori* and then only in the event that the Government should be found responsible for the violations of the American Convention on Human Rights (hereinafter "the Convention") that the Commission charges it with in its complaint. Any anticipation of court costs in a judicial decision, even if only expressed as a possibility, carries with it the intention to restrain or curtail the legitimate, free exercise of the right of defense by the parties and, in this case, by the Government. Such a right must be guaranteed at both the substantive and procedural levels, since the whole purpose of these proceedings is to verify whether or not the State Party complied with the contractual obligations it entered into as a member of the Inter-American System of Human Rights and not to approach the case with a preconceived notion, which is already apparent, that suggest an intention by the majority to transform this case into an international criminal case.

2. As for the request for interpretation, I am convinced that it provides an opportunity for those judges who signed the Judgment in question with the majority to throw light on certain aspects of that decision that are not directly linked to the dismissal of the Preliminary Objections interposed by the Government. I regret, therefore, that the only persons able to interpret its meaning and effects should have preferred to reject that oportunity.

Nevertheless, I feel I must comment on two aspects of the Interpretation requested by the Government.

2.1 The Government has requested the Court to interpret whether the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have the authority to amend and extend the time-limits set by the States Parties in Article 51(1) of the American Convention on Human Rights.

This matter was addressed in my vote with regard to the Judgment whose interpretation has been requested. I take this opportunity to ratify it in its entirety, because I believe thas the States Parties agreed to fix limits on the jurisdiction of the organs created by that very international instrument. Consequently, I reaffirm my vote to the effect that neither the Commission nor the Court can confer upon themselves authority beyond the terms fixed in the Treaty. They would distort their object and purpose if they were to attempt to breach the terms of the Convention in order to pursue an action lacking any legal basis.

2.2 As regards the presence of judges in public hearing followed by their absence from the deliberation and rendering of decisions.

It is my opinion that any judge who is absent at the time of rendering a judgment does not have the power to interpret that judgment.

The request of the Government relates to the situation of Judge Sonia Picado-Sotela. But she does not take part in these proceedings, since she is absent from the seat of the Court; there would be no point in making a statement in that regard since the occurrence was never verified.

Nevertheless, I do wish to express my opinion in connection with the participation of Judge Asdrúbal Aguiar-Aranguren, which gives rise to a pratice that contradicts the precedent established by the Court itself, as reflected in its case law (Judgment of August 17, 1990 on the Interpretation of the Compensatory Damages Judgment, "**Velásquez Rodríguez**" Case).

NOW, THEREFORE, I AM OF THE OPINION

I. That the Court must decide the Motion for Revision and Request for Interpretation as indicated in the above preambular paragraphs and, additionally, in various Orders, in view of the fact that neither the Government nor the Commission requested the accumulation thereof, nor did the Court on its own initiative so rule.

II. That the Court has incurred in unnecessary pronouncements as regards costs for the reasons shown above with regard to the Motion for Revision, which should simply have been dismissed or its withdrawal accepted.

III. That the Court should have exercised its interpretative authority in response to the legitimate questions posed by the Ilustrious Government of Peru, in order to thus resolve any doubts as to the scope of the Judgment of the Court which dismissed the Preliminary Objections on issues related to the merits of the case.

IV. The Declaration by Judge Buergenthal deserves a separate commentary. It has no legal bearing whatsoever on the motions addressed in the precedings Judgment adopted by majority vote, since it refers to a highly personal appreciation of the procedural actions of one of the parties to the process, in

this case the Illustrious Government of Peru, in connection with the presentation of its motions for revision and interpretation. Judge Buergenthal, before removing himself from this case, offers subjective judgments that constitute an assessment which has no place in a serious, technical legal pronouncement and give the impression, rather, of being the pleadings of one of the parties to a case.

I do not quote them in detail because a simple reading of them convinces me that they should be rejected outright as unacceptable and an attack against the absolute freedom of the parties to present all manner of pleas and motions in support of their positions.

That right has not been denied to the Inter-American Commission on Human Rights, something that would not be acceptable to the undersigned.

San José, July third, nineteen hundred ninety-two.

(s) Jorge Eduardo Orihuela-Iberico

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VI

GANGARAM PANDAY CASE

INTER-AMERICAN COURT OF HUMAN RIGHTS

ORDER OF JULY 7, 1992

HAVING SEEN:

1. At the General Assembly of the OAS held in Santiago de Chile in June, 1991, the States Parties elected Alejandro Montiel-Argüello, Máximo Pacheco-Gómez and Hernán Salgado-Pesantes as judges to replace Judges Thomas Buergenthal, Policarpo Callejas and Julio A. Barberis, whose terms were due to expire on December 31, 1991.

2. At the General Asembly of the OAS held in Nassau, Bahamas, in May, 1992, the States Parties elected Judge Asdrúbal Aguiar-Aranguren to replace Judge Orlando Tovar-Tamayo, who had died on November 21, 1991.

WHEREAS:

The Inter-American Court of Human Rights, as composed at the time when it was first seized of the case of Gangaram Panday, has jurisdiction to decide on the application of Article 54(3) of the Convention.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

Unanimously

That this case continue to be heard by the Court as composed after January 1, 1992.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Thomas Buergenthal

(s) Rafael Nieto-Navia

(s) Julio A. Barberis

(s) Asdrúbal Aguiar-Aranguren

(s) Antônio A. Cançado Trindade

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VII

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
JULY 7, 1992

ALOEBOETOE *ET AL.* CASE

HAVING SEEN:

1. The motion presented by the Government of Suriname in its submissions of May 25, 1992, and at the public hearing at the seat of the Court on July 7, 1992, to disqualify the witnesses and expert witnesses Richard Price, Federico Allodi, Stanley Rensch and Sally Price, based upon the arguments that "the Commission is precluded by procedural norms from presenting testimonial evidence regarding the claim for compensation because it did not present in its first MEMORIAL any TESTIMONIAL EVIDENCE whatsoever in support of its claim for compensation, as it is obligated to do according to the practice of international tribunals," and that Richard Price and Stanley Rensch are not qualified to evaluate the amount of the moral damages.

2. The submissions of the Commission at the public hearing held on the same date in that Messieurs Price and Rensch are qualified to enlighten the Court regarding the compensation that should be paid in this case.

WHEREAS:

1. Neither the Convention, the Statute, nor the Rules of the Court specify the grounds for the challenge or disqualification of witnesses and, according to article 34.1 of the Rules applicable to the case, the Court may decide whether hearing a witness "seem[s] likely to assist it in the carrying out of its functions" [Cfr. *Velásquez Rodríguez Case, Judgment of July 29, 1988*. Series C. No. 4, para. 143; *Godínez Cruz Case, Judgment of January 20, 1989*. Series C. No. 5, para. 149].

2. The facts before the Court, rather than the means used to establish them, assist it in determining the damages in this case.

3. "The Court's procedure has its own peculiarities which are due to its nature as an international tribunal. Therefore, all the elements of domestic procedures are not automatically applicable. Generally valid in international proceedings, this principle is even more cogent in those concerning the protection of human rights. The international protection of human rights should not be confused with criminal justice." (*Velásquez Rodríguez Case, supra*, paras. 132 to 134; *Godínez Cruz Case, supra*, paras. 138 to 140.)

4. The practice of the Court in hearing evidence has been very liberal (*Velásquez Rodríguez Case*, supra, para. 138; *Godínez Cruz Case, supra*, para. 144) because its jurisdiction refers to the fundamental rights of human beings and the finding of state responsibility for those violations would be especially serious. (*Velásquez Rodríguez Case, supra*, para. 129; *Godínez Cruz Case, supra*, para. 135)

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

unanimously

1. Within the terms of article 37 of the Rules, overrules the motion to challenge or disqualify the above witnesses and reserves the right to evaluate their testimony.

2. Within the terms of article 35 of the Rules of the Court, according to which witnesses should be presented by the party who offers their testimony, summons the following witnesses and experts proposed by the Inter-American Commission of Human Rights and the Government of Suriname:

Richard Price
Stanley Rensch
Ramón de Freitas

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Thomas Buergenthal

(s) Rafael Nieto-Navia

(s) Julio A. Barberis

(s) Asdrúbal Aguiar-Aranguren

(s) Antônio A. Cançado Trindade

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VIII

November 16, 1992

Mr. President:

As Presidents of the Inter-American Court and Commission on Human Rights, we have the honor of addressing Your Excellency in response to your communications of September, 1992, by which you inform us that the Permanent Council of the Organization of American States (OAS), at its Meeting of March 4, 1992, decided to extend until November 15 the time limit originally fixed for the Commission and the Court to submit their observations concerning the practical difficulties they may have encountered under their statutes and regulations in applying the provisions of the American Convention on Human Rights.

In response to the request of the Permanent Council and the request made previously by the Committee on Political and Legal Affairs of the Organization of American States, both organs submit the following observations:

First, it should be noted that on January 29, 1992, the Committee on Political and Legal Affairs asked both organs for the above information. The Court responded to that request by communication of June 22 which contained the opinions of the Court and the Commission, which had met on May 22, 1992, in Nassau, Bahamas, to consider that matter.

The Commission and the Court have carefully studied that request and, because of the short time period granted them for a reply, have reached the following preliminary conclusions:

I

Although most modern constitutions and international instruments have established specific procedures for their formal amendment, practice shows that those procedures are utilized only in exceptional circumstances, and the adaptation and updating of those instruments has been achieved primarily by means of interpretation by the organs charged with their application.

His Excellency
Luis Guardia Mora
President of the Permanent Council
Organization of American States
Washington, D.C.

In fact, the international political organs who apply the instruments that govern them, introduce adjustments and modifications by interpreting their provisions. A quick examination of the practice of the principal organs of the United Nations, including the General Assembly and the Security Council, leads to the conclusion that they have made important amplifications, adaptations and modifications of the Charter of the United Nations which they are obligated to carry out, and therefore, to interpret.

That interpretation has been carried out, in general, in accordance with the spirit of the respective texts and without contravening them. An example is the important work of the Inter-American Court of Human Rights, based upon Article 64 of the Convention, which grants it a broad and flexible advisory function that has facilitated the application and the interpretation of the provisions of the Convention.

In exercising its jurisdictional attributes, the Inter-American Court has also established principles which allow it to clarify ambiguous provisions or to handle cases which the Convention has not contemplated. In that sense, one can mention its decisions regarding the guidelines on the weighing of evidence in the contentious cases it has decided and for which neither the Convention nor its Rules have made any provision.

The States Parties to the American Convention have also participated in these interpretative activities insofar as they have expressed their points of view on the application of the Convention in regard to the reports prepared by the Inter-American Commission and the handling of advisory opinions requested of the Inter-American Court.

II

Pursuant to Article 76 of the American Convention on Human Rights, the States Parties as well as the Commission and the Inter-American Court, are authorized to submit their proposals for the amendment of the Convention to the General Assembly of the OAS, through the Secretary General. This procedure has not been used in practice, however, and it must be considered an extraordinary procedure because, as stated, the appropriate, permanent means of updating and developing the Convention are not formal amendments, but rather the application and interpretation of the norms of the Convention by the organs of the OAS.

In that regard, one might invoke the view of the International Court of Justice in its Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, paragragh 53 (1971), in the sense that the provisions of human rights treaties and, specifically, Article 22 of the United Nations Covenant on Civil and Political Rights are not static, but rather by definition should by considered evolutionary and dynamic, and the States Parties have accepted them as such. In that same paragraph, the International Court added that: "An international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation."

These considerations are fully aplicable to the provisions of the American Convention, because the Inter-American Court of Human Rights has the function of establishing in its jurisprudence the evolving content of the norms of the international human rights treaties applicable on the American Continent.

Therefore, in the opinion of the Inter-American Commission and Court, any proposal for the formal amendment of the Convention must be carefully considered.

III

On the other hand, both organs believe a more flexible procedure than that established in Article 76 is that provided in Article 77 for the proposal of additional protocols for the purpose of progressively including other rights and freedoms not provided for in the American Convention on Human Rights, as in the "Protocol of San Salvador" in the area of economic, social and cultural rights and in the Protocol to the American Convention on Human Rights concerning the Abolition of the Death Penalty.

This is the method that has been followed insofar as the Additional Protocol to the United Nations Covenant on Civil and Political Rights, as well as in the case of various additional protocols to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols of amendment to the Charter of the Organization of American States, that is, the Protocol of Buenos Aires of 1967 and that of Cartagena in 1985.

IV

In the case of the articles of the American Convention, 76 (formal amendments) and 77 (additional protocols, the Inter-American Commission and Court of Human Rights believe the respective proposals cannot be presented within such a strict time limit as that fixed by the Permanent Council of the OAS. Thus, in response to its request, the time limit of which elapses on November 15, they report that the Commission has already discussed the matter at its most recent period of sessions, and the Court will include the matter on the agenda of its XXVII Regular Period of Sessions which will begin on January 25, 1993.

Therefore, the Court and the Commission propose the creation of a working group composed of members of both institutions who, with the assistance of other experts, will analyze the concrete proposals of Member States for the amendment of the Convention, continue to consider the possibility and convenience of amending that instrument, and study how to perfect the application of the Convention within its framework. For that purpose, each of the institutions shall name its respective members of the working group and will, together, determine the appropriate dates for meeting, taking into account budgetary considerations and the dates of their normal periods of sessions.

We take advantage of this opportunity to reiterate to Your Excellency the assurances of our highest and most distinguished consideration.

(s) Héctor Fix-Zamudio
President
Inter-American Court
of Human Rights

(s) Marco Tulio Bruni-Celli
President
Inter-American Commission
of Human Rights

APPENDIX IX

RESOLUTION OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS DECEMBER 14, 1992

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING PERU

CHIPOCO CASE

HAVING SEEN

1. The communication of November 23, 1992, received in its entirety in the Secretariat of the Court on the following day, by which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submits to the Inter-American Court of Human Rights (hereinafter "the Court"), pursuant to Articles 63.2 of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") and 24 of the Rules of Procedure of the Court (hereinafter "the Rules"), a request for provisional measures in Case 11.083 which is before the Commission and in regard to Mr. Carlos Chipoco.

2. The Commission's communication which asks the Court to require the Government of Peru (hereinafter "the Government") to take the following provisional measures:

> 1. That it establish as soon as possible the veracity of the allegations contained in Part I of this request.
>
> 2. If those allegations are found to be.true, that it carry out an exhaustive investigation, specify the acts on which the charge of justification of terrorism is based, and disclose the evidence against Mr. Chipoco, prior to taking any penal actions against him.
>
> 3. That, at all stages of the judicial proceedings, it guarantee Mr. Carlos Chipoco the full exercise of his human rights and, in particular, the right to due process and personal security, should he be deprived of his personal liberty, and taking into account the danger to which he would be exposed wherever he might be held.
>
> 4. That it guarantee the right to recur to the American system for the protection of human rights.

3. The Commission's petition is based upon the following allegations:

a. The Inter-American Commission received information according to which the Government has filed criminal charges against Mr. Carlos Chipoco before the 43rd Special Prosecutor

of Lima for having carried out alleged "activities in support of subversion in the United States." Cause No. 136-92 of the 43rd Criminal Court of Lima was opened as a "criminal proceeding against a group of Peruvians who reside abroad or who have traveled abroad, for allegedly committing the crime of justification of terrorism against the state."

b. This cause was filed on the basis of a report of the National Intelligence Service (Servicio Nacional de Inteligencia) which mentions the names of several persons and institutions allegedly involved in "activities in support of subversion in the United States," among them Mr. Carlos Chipoco. They are charged with "maintaining contacts with human rights organizations, with false information, in which they denigrate the Armed Forces and the Police and other State institutions related to the struggle against subversion. . ." This report was adopted by the General Secretariat, the Office of Legal Affairs of the Ministry of Foreign Relations and by the Special Provincial Prosecutor of the 43rd Special Prosecutor's Office. The Court ordered the individual identification of those accused, among them Mr. Chipoco, for the purpose of amending the "indictment" in the criminal proceeding and, upon completing the identification, to be able to order their arrest.

4. According to the request, Mr. Chipoco is a human rights activist. In the course of his work, he has cooperated with the Inter-American Commission and has taken part in the *Neira Alegría et al.* and in the *Cayara* case, which is currently before the Court. The request adds that Mr. Chipoco has condemned the terrorist acts carried out by the Shining Path and MRTA in Peru and "has been critical of the acts of rebels as well as those of the Peruvian Government".

5. According to the Commission, the allegations are serious in that once Mr. Chipoco is fully identified his arrest could be ordered, and under the new anti-terrorist legislation, being found guilty of the crime of which he is accused could lead to his loss of Peruvian nationality and a prison sentence of more than twenty years. This is made more serious by the fact that the trial is secret and summary, conducted within strict time limits by the socalled "faceless judges," and may be held in the absence of the accused.

6. Mr. Chipoco is in the United States of America where he is an international consultant in human rights and, should he return to Peru, would run the risk of being held in the same place as the leaders and activists of the terrorist groups whose acts he has publicly condemned, which would constitute a grave threat to his right to life and integrity of the person which are recognized by the Convention. According to the Commission, the Government wants to punish, penalize and intimidate those who utilize international procedures and courts for the protection of human rights.

7. In the opinion of the Commission, the urgent need of the measures is to avoid the indictment being "returned without an exhaustive investigation and without having afforded the accused and its representatives an opportunity to prepare his defense, which would violate Article 8 (Right to a Fair Trial) of the American Convention. In the opinion of the Commission, this situation would also constitute a violation of Articles 5 (Right to Humane Treatment), 13 (Freedom of Thought and Expression), 1.1 (Obligation to Respect Rights) of the Convention and Articles 44 and the following (Competence) that allow recourse to the Commission and the Court by virtue of the procedure established therein.

8. The Commision's communication of November 30, 1992, which asks the Court to convoke a public hearing on the request for provisional measures and names the following persons to advise the delegates the Commission will designate according to Article 22 of the Rules: Professors Thomas Buergenthal and Hurst Hannum, Doctors Juan Méndez, José Miguel Vivanco and José Ugaz and Mr. Felipe Michelini.

9. By communication of December 2, 1992, received by the Secretariat of the Court on December 9, the Permanent Mission of the Peru to the Organization of American States informs the Commission that "the Prosecutor has not brought a penal action against Mr. Chipoco, but merely has requested the identification of a person known as Carlos Chipoco on the Voting Rolls" and that the Ministry of Foreign Relations will send "a copy of the charge prepared by the Prosecutor and of the Order opening the investigation, which do not mention Mr. Carlos Chipoco except for the purpose of identification."

WHEREAS

1. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the obligatory jurisdiction of the Court, pursuant to Article 62 of the Convention on January 1, 1981.

2. Article 63.2 of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent with respect to a case not yet submitted to it.

3. Article 24.4 of the Rules provides that

> If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court to have the requisite effect.

4. In matters before the Commission which, therefore, have not yet been submitted to the Court, the provisional measures the Court may order at the request of the Commission, pursuant to Articles 63.2 of the Convention and 24.4 of its Rules, as well as the urgent measures the President may take in consultation with the judges, should be considered exceptional in nature and not a normal exercise of the competency of the Court and its President.

5. Therefore, after opening a case and ascertaining the truth of the allegations, though in preliminary fashion, and additionally, after adopting the measures established in Article 29 of its Regulations, the Commission must present to the Court, and when it is not in session, to its President, clear evidence of the existence of a matter of extreme urgency as required by those documents, and of the need to adopt the necessary measures to avoid grave or irreparable harm to the persons to be protected.

6. Having carefully studied the Commission's request and the accompanying documents, and not the Government's report to the Commission that charges have not yet been filed against Mr. Carlos Chipoco, the President finds in the instant case that the conditions do not now exist which would require the Government to adopt urgent measures of a provisional nature, and that, in any case, whether the provisional measures request by the Commission are justified should be determined by the Court in plenary, after studying the situation.

7. Therefore, the President shall submit the Commission's request to the Court at its next regular period of sessions beginning on January 25, 1993, so the Court may adopt the pertinent decision.

THEREFORE

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

having considered Article 63.2 of the American Convention on Human Rights, in consultation with the judges of the Court, and in exercise of the authority conferred upon him by Article 24.4 of the Rules,

DECIDES

1. Based upon the foregoing considerations, it is not appropriate at this time to ask the Government of Peru to take urgent provisional measures.

2. To submit to the Court at its next regular period of sessions the request presented by the Inter-American Commission so it may adopt the appropriate measures pursuant to Article 63.2 of the Convention.

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX X

RESOLUTION OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF DECEMBER 14, 1992

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING PERU

PERUVIAN PRISON CASE

HAVING SEEN

1. The communication of November 25, 1992 and its annexes, by which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submits to the Inter-American Court of Human Rights (hereinafter "the Court"), pursuant to Articles 63.2 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure of the Court (hereinafter "the Rules"), a request for provisional measures in Cases 11.015 and 11.048 which are before the Commission regarding the grave situation of the Peruvian prisons of *Miguel Castro Castro* and *Santa Mónica* in Lima, *Cristo Rey* in Ica and *Yanamayo* in Puno.

2. The Commission's communication which asks the Court to require the Government of Peru (hereinafter "the Government") to take the following provisional measures:

> 1. That the Government of Peru authorize the Inter-American Commission on Human Rights to carry out an inspection of the prisons mentioned above.
>
> 2. That the Government of Peru authorize the Inter-American Commission on Human Rights to conduct private interviews with the persons deprived of their liberty in those prisons.
>
> 3. That the Government of Peru authorize relatives to provide clothing, food, the means of hygiene and medicine to the persons deprived of their liberty in those prisons.
>
> 4. That the Government of Peru authorize the provision of adequate medical attention by independent institutions who can report on the sanitary conditions of the prisoners.

3. The request of the Inter-American Commission on Human Rights is based upon Articles 5.2 and 48.1.d. of the American Convention which provide:

Article 5. Right to Humane Treatment

. . .

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 48

. . .

1.d. If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

4. The Commission's request is also founded upon the request made by its President on August 18, 1992, for precautionary measures pursuant to Article 29 of the Commission's Regulations, "in relation to those persons deprived of their liberty for allegedly committing terrorist acts." Moreover, the President of the Commission stated that if the necessary measures were not adopted within 10 days, "the request for provisional measures might be presented to the Inter-American Court of Human Rights." The precautionary measures requested by the Commission were the following:

> 1. That the Government of Peru authorize the Inter-American Commission on Human Rights to carry out an inspection of the Yanamayo Jail in the Department of Puno.
>
> 2. That the Government of Peru authorize the Inter-American Commission on Human Rights to interview the persons who are deprived of their liberty in that prison.
>
> 3. That the Government of Peru authorize the visits of family members and lawyers to that and other detention centers and that it permit the provision of clothing, medicine, shelter and the instruments of hygiene that would allow the prisoners to care for their vital needs.
>
> 4. That the Government of Peru provide the necessary medical attention to those who are sick and that they be transferred to places where they can receive the necessary medical care.
>
> 5. That the Government of Peru adopt measures to separate prisoners who are members of opposing armed groups in order to avoid violence that may place their life or integrity of their persons in danger.
>
> 6. That the Government of Peru send the Inter-American Commission on Human Rights the official list of persons who died or disappeared since the events of the prison "Miguel Castro Castro," of those who were wounded, and of the whereabouts of those transferred.

5. The facts the Commission considered in requiring the Government to adopt precautionary measures, and subsequently in asking the Court for provisional measures, are the following:

a. The existence of "credible evidence of a grave situation in the Peruvian prisons" *Miguel Castro Castro, Santa Mónica, Cristo Rey* and *Yanamayo*, which poses "an immediate danger to the right to integrity of the person of those accused and sentenced for terrorism because of the poor conditions in which they are imprisoned." The Commission has received information that in those prison there is "a high incidence of diseases," loss of weight, overcrowding, isolation, and psychological and emotional problems among male and female prisons. When the prisoners are transferred to those prisons, some

of which are in very cold zones, they are "mistreated, insulted, humiliated," although some of them are wounded and only have their "worn" summer clothing. Neither can the prisoners receive the visits of their relatives with the implications that conveys.

b. There is no independent institution which is empowered or is able to observe the conditions described, make recommendations to the Government, and make a public report on whether they are observed. The International Committee of the Red Cross is not currently authorized to inspect those prisons. All the above lends a grave and urgent nature to the situation described.

c. The Government's delay in granting the authorization requested by the Commission. According to the Commission, that may be because the Commission "is perceived as an institution that supports the Shining Path," as may be gathered from Document No. 3135-92-MP-FN, dated September 16, 1992, addressed from the Public Prosecutor to Dr. Oscar de la Puente Raygada, President of the Council of Ministers and Minister of Foreign Relations.

d. On October 20, 1992, in the *Cristo Rey* Prison in Ica, there were serious incidents which "left two prisoners dead and three wounded, and two policemen injured." This is one of the prisons the Commission had asked to visit.

e. The provisional measures requested by the President of the Commission were based on the measures he had requested of the Government on May 13, 1992, and which had not been adopted. To this date, the Government has not authorized the visit requested by the Commission nor has the pertinent information been received.

6. The communication of December 4, 1992, sent by the Secretariat of the Commission on that same date, contained a complaint which caused the Commission to express the following opinion: "As one may gather from reading the communication, a situation may be developing which could result in the violation of the rights of the women prisoners in the 'Santa Mónica' Prison of Chorrillos. If the new allegations are true, this would increase the seriousness and urgency of the situation being considered by the Members of the Court."

WHEREAS

1. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the obligatory jurisdiction of the Court, pursuant to Article 62 of the Convention on January 1, 1981.

2. Article 63.2 of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent with respect to a case not yet submitted to it.

3. Article 24.4 of the Rules provides that

> If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court to have the requisite effect.

4. It should be considered that, in matters before the Commission, and which, therefore, have not yet been submitted to the Court, the provisional measures the Court may order at the request of the

Commission, pursuant to Articles 63.2 of the Convention and 24.4 of the Rules, as well as the urgent measures the President may take in consultation with the judges, should be considered exceptional in nature and not a normal exercise of the competency of the Court and its President.

5. In the instant case, the request presented by the Commission and the accompanying documentation, and although the Commission asked the Government, pursuant to Article 29 of its Regulations, to take measures to avoid harm to the persons to be protected, some of those measures cannot properly be considered precautionary and provisional measures within the meaning of paragraph 2, Article 63 of the Convention, given that they refer to the Government's authorization for the Commission to carry out on-site visits to several Peruvian prisons, said situation being regulated by Articles 48.2 of the Convention and 44.2 of the Commission's Regulations, which require the prior consent of the Government, which has not yet been granted, and which cannot be remedied by measures ordered by the President.

6. Insofar as the Commission's request that the Government be asked to take the necessary provisional measures to stop the mistreatment and to provide medical assistance to the inmates of those prisons, the Commission does not provide any evidence regarding the truth of the allegations, which would probably depend on the observations the Commission might make in the visits it wants to carry out in those prisons, or other means of proof, which have not yet been submitted. Under those circumstances, the President considers that it is not appropriate to require the Government to take urgent provisional measures, but rather that the Court should determine in plenary, after studying the situation, whether the provisional measures requested by the Commission are justified.

7. Therefore, the President shall submit the Commission's request to the Court at its next regular period of sessions beginning on January 25, 1993, so the Court may adopt the pertinent decision.

THEREFORE

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

having considered Article 63.2 of the American Convention on Human Rights, in consultation with the judges of the Court, and in exercise of the authority conferred upon him by Article 24.4 of the Rules,

DECIDES:

1. Based upon the foregoing considerations, it is not appropriate at this time to ask the Government of Peru to take urgent provisional measures.

2. To submit to the Court at its next regular period of sessions the request presented by the Inter-American Commission so it may adopt the appropriate measures pursuant to Article 63.2 of the Convention.

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX XI

December 21, 1992

Mr. Secretary:

By request of the Inter-American Commission on Human Rights I am sending you 10 copies of the petition that this Commission presents to the Inter-American Court of Human Rights against the Government of the Republic of Colombia for the acts that occurred on February 7, 1989 in the town of Guaduas, in the Municipality of San Alberto, Department of Cesar, Republic of Colombia. Isidro Caballero and María del Carmen Santana were illegally, arbitrarily and forcibly detained and subsequently disappeared, which led to the denouncement presented and carried out by this Commission, case number 10310.

I have enclosed, in conformity with that established by Article 26 of the Rules of Procedures of the Court, Report No. 31/92 of the Commission, September 25, 1992, which refers to Article 50 of the Convention. In addition to the annexes of the complaint is enclosed a copy of all the actions that took place before the Commission that led to report 31/92.

The Commission has decided to designate as its delegate in order to act in its representation Dr. Leo Valladares-Lanza, member of the Commission, who will be assisted by the undersigned Executive Secretary, and Dr. Manuel Velasco-Clark, counsel for the Secretariat.

The Commission has designated as its advisors, as stated in the text of the enclosed request, Drs. Gustavo Gallón-Giraldo, María Consuelo del Río, Jorge Gómez-Lizarazo, Juan E. Méndez and José Miguel Vivanco, who are also co-defendants in the present case and representatives of the victims.

I request that the present petition be conducted in accordance with that established in the Convention. The Commission should be notified of the judgments and decisions that will be adopted at its legal address: 1889 F. Street, Suite 820-I, N. W., Washington, D.C. 20006, United States of America.

(s) *Edith Márquez-Rodríguez*
Executive Secretary

Lic. Manuel E. Ventura-Robles, Secretary
Inter-American Court of Human Rights
San José, Costa Rica

ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

COMPLAINT FILED BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST THE STATE OF COLOMBIA CASE OF ISIDRO CABALLERO DELGADO AND MARIA DEL CARMEN SANTANA (*)

DELEGATE:

DR. LEO VALLADARES-LANZA (MEMBER REPORTEUR)

ASSISTANTS:

DR. EDITH MARQUEZ-RODRIGUEZ (EXECUTIVE SECRETARY)
DR. MANUEL VELASCO-CLARK (ATTORNEY IN CHARGE OF THE CASES AGAINST COLOMBIA)

ADVISORS:

DR. GUSTAVO GALLON-GIRALDO
DR. MARIA CONSUELO DEL RIO
DR. JORGE GOMEZ-LIZARAZO
DR. JOSE MIGUEL VIVANCO
DR. JUAN E. MENDEZ

December 21, 1992
Washington, D. C.
1889 F. Street, N. W.
20006

(*) This is a literal transcription of the original text submitted by the Commission.

SUBMISSION TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF COLOMBIA
CASE OF ISIDRO CABALLERO DELGADO AND MARIA DEL CARMEN SANTANA

To the Honorable President of the Inter-American Court of Human Rights:

Convened for its eighty-second session, the Inter-American Commission on Human Rights (hereinafter the Commission) is hereby submitting to you and, through your good offices, to the Inter-American Court of Human Rights (hereinafter the Court), **en banc**, the case that the Commission is transmitting under Article 51 of the American Convention on Human Rights (hereinafter the Convention) against the State of Colombia, for events that have occurred since February 7, 1989, when ISIDRO CABALLERO and MARIA DEL CARMEN SANTANA were arbitrarily and forcibly detained and disappeared in the village of Guaduas, in the jurisdiction of San Alberto in the Department of Cesar, Republic of Colombia. This case is submitted in accordance with the provisions of articles 50 and 51 of the Convention and is being processed in accordance with the guidelines stipulated in Title II, Chapter II, Article 26 et seq of the Rules of Procedure of the Court; its language and definitions conform to the legal terminology contained in Article 2 of those Rules of Procedure. Under Article 26.3 and Article 26.4.b of the Rules of Procedure of the Court, attached hereto as part of this submission is a copy of report 31/92, dated September 25, 1992, required under Article 50 of the Convention.

I. PURPOSE OF THE CASE

The Commission is petitioning the Court:

1. To find that by the actions of its agents in the unlawful arrest and enforced disappearance of Isidro Caballero Delgado and María del Carmen Santana and for its failure to investigate, bring to trial, punish those responsible and pay compensation for damages caused, the Government of Colombia has violated the following provisions of the Convention: Article 4 on the right to life; Article 5 on the right to humane treatment; Article 7 on the right to personal liberty; Article 8 on the right to a fair trial, and Article 25 on the right to judicial protection, all required under Article 1.1 of the Convention, which stipulates the obligation to respect and guarantee those rights. To find that the Government of Colombia has violated Article 2 of the Convention by not adopting the domestic legal measures to give effect to those rights and to avoid the commission of new acts of grave impunity.

2. Based on the maxim of the law **pacta sunt servanda**, to find that the Government of Colombia has violated Article 51.2 of the Convention in relation to Article 29(b) thereof, by not carrying out the recommendations made by the Commission.

3. To require of the Colombian Government that it institute the investigation necessary to identify the responsible parties and impose punishment, thereby avoiding the consummation of acts of serious impunity that strike at the very foundation of the legal system.

4. To require the Colombian Government, in keeping with the Court's judgment in the Velásquez Rodríguez case, to inform the relatives of the victims of the latters' whereabouts.

5. To find that the Colombian Government must remedy the acts committed by government agents, as described in this case, and pay fair compensation to the victims' next-of-kin in accordance with the provisions of Article 63.1 of the Convention.

6. To require the Colombian Government to pay the costs of these proceedings.

II. AN ACCOUNT OF THE FACTS

1. Isidro Caballero Delgado was born in Piedecuesta, Department of Santander, on April 4, 1957, the son of Manuel Caballero (deceased) and Natividad Delgado. He lived with María Nodelia Parra Rodríguez, by whom he had one son, Iván Andrés, two months old at the time of Isidro's detention-disappearance.

2. Isidro had studied education at the Piedecuesta Normal School and had been a teacher since April 29, 1975, the date on which he received his appointment to a teaching position in the community of Vélez (Santander), by virtue of Santander Departmental Government Decree No. 1426. In 1978 he was elected to a leadership position in the Santander Teachers' Union, a position he held until 1984. That year he was appointed a teacher at the Mercedes Abrego Academy, and thereafter engaged in union activities.

3. Isidro Caballero was a member of the Santander Teachers' Union (SES), an affiliate of the Colombian Teachers' Federation (FECODE). He was also in the Santander Labor Union (USITRAS) and an activist in the Movimiento 19 de Abril (M-19), a guerrilla group that was on the verge of a peace agreement with the government and that several months later would be reassimilated into civilian life and eventually become the M-19 Democratic Alliance.

4. In February 1985, Isidro Caballero Delgado was arrested and charged with the crime of unlawful possession of arms. In a ruling handed down by the Commander of the Fifth Army Brigade on February 25, 1985, Isidro Caballero Delgado was sentenced to 36 months in prison. On November 26 of that year he was paroled. Under resolution No. 19 of March 6, 1987, the Ministry of Justice granted him a pardon.

5. From the time he was released, Isidro Caballero resumed union activities and in that capacity organized the work stoppage that was scheduled for northeastern Colombia in June 1987. The purpose of the work stoppage was to put an end to the militarization of the area, to have civil rights observed and property claims acknowledged. The leaders of this work stoppage were later either murdered or disappeared.

6. From the time he organized the work stoppage in question and because of his activities in the teachers' union, Isidro Caballero Delgado became the target of threats, persecution and harassment. The trade-union organizations filed various complaints to that effect.

7. On September 28, 1988, Bucaramanga was the site of the Regional Dialogue and Peace Forum, organized by the Regional Dialogue Committee of which Isidro Caballero was a leader. The text of the notice of convocation was as follows:

> . . . It is here and for that purpose that we are rallying together all men, women, youth, children, soldiers, the government, political forces, those in arms, representatives of religious movements -without distinction as to creed-, all of us who believe in life, who abhor contract killing, murder for hire. We are calling upon everyone to speak up and suggest alternatives in a forum for regional dialogue and peace. . .

8. On October 27, 1988, various trade-union and political organizations had scheduled a nationwide work stoppage that Isidro Caballero Delgado was promoting. Some days before the work stoppage was slated to occur, Isidro began to receive telephone threats and to notice strangers following him. For his own safety, he was forced to take some time off from his job at the Mercedes Abrego Academy.

9. In the face of these circumstances, the Santander Teachers' Union gave Isidro Caballero some extrascholastic assignments, one of which was to participate in the Regional Dialogue Committee, organizing meetings, fora and debates in various regions in an effort to find a political solution to the armed conflict.

10. A "Meeting for Coexistence and Normalization" had been scheduled for February 16, 1989, in the municipality of San Alberto (Department of Cesar, Colombia). Isidro Caballero Delgado and several other leaders of trade unions and political organizations went there to organize the event. Though the Commission has very little information about her, María del Carmen Santana was a member of the Movimiento 19 de Abril (M-19), one of the organizations involved in the event as part of its reincorporation into civilian life. She, too, had gone to San Alberto to work with the organizers who were enlisting community participation in the event.

11. To make certain that the peasant farm sector would be represented, on February 7 Isidro Caballero Delgado went to the village of Guaduas, accompanied by María del Carmen Santana. Javier Páez, a local who knew the area well, acted as their guide; after agreeing to pick them up in Guaduas, he took his leave.

12. Isidro Caballero Delgado and María del Carmen Santana entered the farm home of Rosa Delia Valderrama and her family to ask whether "godfather Andrés had left a mule for them"; when they were told no, they went on their way and a few meters from the house were seized by a military patrol that was in the vicinity.

13. That same day, Elida González, a farm woman who was travelling that same route to visit her mother who lived in Guaduas, was taken by the same Army Patrol and thereafter released. She saw Isidro Caballero dressed in a military camouflage suit; there was also a woman with them.

14. On February 7 as agreed, the guide Javier Páez came to the village of Guaduas to pick up Isidro Caballero and María del Carmen Santana. Instead, however, he was detained by the army, tortured and then released. From the questions he was asked and the radio communications of the military patrol that had detained him, he learned that Isidro Caballero Delgado and María del Carmen Santana had been seized. When he was released, he notified the unions and political organizations to which they belonged, which in turn notified the relatives.

15. The family of Isidro Caballero and several unions and human rights organizations began their search for the detainees at the military facilities, though the base commandants denied the arrest of Isidro and María del Carmen.

16. With the disappearance of Isidro and María del Carmen, legal actions were attempted but failed to establish the whereabouts of the disappeared; no punishment was imposed against those directly responsible for the disappearance, the accessories after the fact or those who acquiesced or tolerated the crime. Nor was any reparation obtained for the injury caused.

17. Overtures were also made with numerous administrative officials such as the Office of the Mayor of San Alberto, the Office of the Governor of Santander, the Attorney General of the Nation, and the chief of the OAS' diplomatic mission. These efforts nevertheless failed to locate the disappeared.

18. The Commission received and processed the case of the disappearance of Isidro Caballero and María del Carmen Santana and in its report 31/91 made several recommendations which the Government of Colombia did not act upon.

19. Since 1981, there has been a pattern of enforced disappearance in Colombia; in fact between 1981 and late 1991, some 1,588 disappearances were reported; of these, 137 occurred in 1989. A report prepared by the Office of the Attorney General of the Nation states that between January 1990 and April 1991, it received reports of 616 cases of disappearance.

20. The pattern of unrestrained violence and detention-enforced disappearance are parts of a larger pattern. Taken by themselves, they are not proof of the commission of any crime; still, they should be regarded as incriminating evidence. The pattern is described in published papers prepared by various nongovernmental human rights organizations such as Amnesty International and Americas Watch, among others, and those prepared by specialized international bodies such as the United Nations Working Group on Enforced and Involuntary Disappearances and the Commission itself. These, too, are being submitted as additional evidence of "precedents."

The international case with the Commission

Acting on a request for urgent action from a reliable source, on April 4, 1989, before receiving a formal communication from the petitioners, the Commission, **motu propio**, forwarded to the Government of Colombia, pursuant to Article 48 of the Convention and for the purposes of Article 26, paragraph 2 of its Regulations, the complaint concerning the detention-disappearance of Isidro and María del Carmen. It requested that extraordinary measures be taken to protect the life and personal safety of those two Colombian citizens. What follows is the cable sent by the then Executive Secretary of the Commission:

> OAS WASHINDC APRIL 4, 1989 NEA
> HIS EXCELLENCY DR. JULIO LONDOÑO PAREDES
> MINISTER OF FOREIGN AFFAIRS
> BOGOTA, COLOMBIA
>
> SG/IACHR/045. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS RECEIVED FOLLOWING COMPLAINT: "ISIDRO CABALLERO DELGADO, 33, TEACHER, WAS DETAINED IN GUADUAS IN THE MUNICIPALITY OF SAN ALBERTO, DEPARTMENT OF CESAR; HE WAS TAKEN BY ARMY UNITS TO THE EL LIBANO MILITARY GARRISON ON FEBRUARY 7, 1989: THERE ARE FEARS FOR HIS LIFE." WE WOULD ASK THAT YOUR EXCELLENCY KINDLY SUPPLY ANY INFORMATION THAT YOU DEEM PERTINENT AS SOON AS POSSIBLE. WE SHOULD ADD THAT UNDER ARTICLE 34 OF THE COMMISSION'S REGULATIONS, THIS REQUEST FOR INFORMATION DOES NOT CONSTITUTE A PREJUDGMENT WITH REGARD TO THE DECISION THE COMMISSION MAY FINALLY ADOPT ON THE ADMISSIBILITY OF THE PETITION. ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION.
>
> EDMUNDO VARGAS CARREÑO
> EXECUTIVE SECRETARY

Processing of Case 10319 with the Commission

The next day, April 5, 1989, the Commission received the formal petition from the petitioners, which it forwarded that very day, in accordance with the Commission's Regulations. The processing of the case concluded on September 25, 1992, with the definitive report 31/92 and the Commission's decision to refer the instant case to the Court. A copy of the case processed with the Commission is being made available to the Court, so that it can see every detail of how the case was processed with the IACHR, thereby obviating the need for any further elaboration of this particular matter in this submission.

It should be pointed out that at no time did the Colombian Government deny either the facts reported in the petition or its responsibility as a result of the conduct of its agents, who were the perpetrators of the deeds denounced. The agents in question, however, have never been identified or named because of the Government's failure to cooperate in the investigation.

Challenges raised by the Colombian Government in this instance

In its submissions, the Colombian Government's challenges were as follows:

As the case was being processed: the Government challenged the Commission's competence to take cognizance of and process the instant case, arguing that because the domestic remedies had not been exhausted, the Commission should have refrained from continuing to take cognizance thereof and to declare it "inadmissible" under Article 46 of the Convention; during the hearing held at its eighty-second session, the Government challenged the Commission's authority to recommend to a State Party to the Convention that it pay compensatory damages to the victims' next-of-kin, stating that Colombia could not comply with this recommendation because it did not regard the Commission's decisions as binding upon it.

As to the first challenge, the Commission rejected the Colombian Government's assertions about "doubts concerning the admissibility of the case" and the Commission's unquestionable competence to take cognizance of it and process it, based on the following considerations:

a) the complaints allege violations to the human rights stipulated in the Convention -to which the Republic of Colombia is a party- in Article 4 on the right to life; Article 7 on the right to personal liberty, and Article 25 the right to effective judicial protection, as provided under Article 44 of that Convention;

b) the petition meets the formal requirements for admissibility stipulated in the Convention and in the Commission's Regulations.

c) in the instant case it is obvious that the petitioners have been unable to obtain effective protection from internal jurisdictional bodies, which despite the irrefutable evidence made available to them, cleared the responsible officers of all charges, handed down a verdict of not guilty and ordered that the judicial proceedings be filed on October 3, 1990; thus, regardless of whether the domestic remedies have been exhausted, they may not be invoked by the Colombian Government as grounds for the Commission to suspend its processing of this case, because the internal prosecution of this case was delayed and the trial conducted in the criminal courts is now over.

d) the petition involved is not pending settlement in any other international organization and is not a duplication of any previous petition already examined by the Commission.

Additional observations on the Government's allegations:

The Government of Colombia's argument is as follows: even though a trial acquitted certain members of the armed forces charged in the case of the disappearance of Isidro Caballero and María del Carmen Santana on February 7, 1989 and is now over, the domestic remedies have not yet been exhausted; that the internal mechanisms are fully under way; that the investigations have proceeded satisfactorily, and that while the authorities are clearly determined to clarify all the facts, at present the case is still in progress, and it is obvious that the internal mechanisms to prosecute and punish those responsible have not yet been exhausted.

The argument that the domestic remedies have not been exhausted is irrelevant, inasmuch as the Colombian Government does not deny but indeed admits to the unwarranted delay in the administration of justice in the internal prosecution of this case; it would even seem to justify the delay, asserting in its submission that there are "legal formalities that must be observed in conducting the investigations and trials. Hence, it is normal for a legal proceeding of any kind to take several months to settle; it often happens that one or several years may pass before it is concluded." The Colombian Government then makes the same point again where it states that: "In conclusion, because the officer of the court is obliged to observe the formalities and rules of procedure when instituting each stage in a proceeding, it is normal for a criminal case to take several months or years".

III. JUDICIAL, ADMINISTRATIVE AND EXTRAJUDICIAL MEASURES

1. Judicial measures

1.1. *Habeas corpus*

As soon as the family learned that Isidro Caballero had been detained by the Colombian army on February 7, it filed, in keeping with the law in effect at that time, an application for a writ of *habeas corpus* with the First Superior Court of Bucaramanga, dated February 10, 1989. It did so under the provision of the Constitution that states that no one may be denied one's freedom "except by a written order from a competent authority, done in accordance with the legal formalities and on the grounds previously established by law" (1886 Constitution, Article 23) and under the articles of the Colombian Code of Criminal Procedure (then Articles 454 and 466) which in law governed protection of personal freedom against arbitrary and abusive acts by agents of the State. According to those articles, when an individual was taken into custody without being advised of his/her constitutional or legal guarantees, his/her immediate release could be demanded; that right could be asserted by anyone in the presence of any criminal judge of the place in which the arrested person was located or, where no such criminal judge was present, before the criminal judge of the nearest municipality.

On February 10, 1989, at 10:30 a.m., María Nodelia Parra Rodríguez filed an application for a writ of *habeas corpus* on behalf of Isidro Caballero with the First Superior Court of Bucaramanga, Judge Myriam Pinzón Guevara presiding.

The judge of the First Superior Court had the application assigned to another court docket, thereby violating the provisions of Article 460 of the Code of Criminal Procedure, paragraph 2 of which states that "in no case shall an application be removed to another court", adding that "only the officer of

the court with whom the application was filed shall be privy to it." The judge of the Third Superior Court, on whose docket the application was entered, returned it to the judge of the First Superior Court, citing the above-noted provisions of the Code of Criminal Procedure.

At 3:20 p.m., the judge of the First Superior Court ordered that a sworn statement be taken from the petitioner to the effect that the request had not been made of any other judge; the statement, however, could not be taken because María Nodelia Parra Rodríguez had already left that day for the municipality of San Alberto. The judge also ordered that a communication be sent to the criminal police, to the Model Prison, to the Administrative Security Department (DAS) and to the Fifth Brigade to inquire whether Isidro Caballero Delgado was being held in any of those facilities.

At 3:30 p.m., the judge and her clerk went to the Fifth Brigade in the city of Bucaramanga, where they were met by Col. Carlos Arturo Pardo Santamaría. He immediately told them that Isidro was not being held there but that he would contact other Fifth Brigade facilities in other municipalities. After several hours of waiting, the judge received Communication No. 000886, wherein it was reported that Isidro Caballero Delgado was not being held in facilities of the Fifth Brigade, but that the Commander of Battalion Santander was making the necessary inquiries to determine whether troops from those units had arrested the individual in question and that the Court would be informed once the results were known.

On February 13, the judge of the First Superior Court of Bucaramanga informed the Bucaramanga regional prosecutor (Communication No. 050) that the application for the writ of *habeas corpus* had produced no result, since the replies to the communication sent to the criminal police, to the Model Prison, to the DAS and to the Fifth Brigade had all been the same, namely that Isidro Caballero was not being held in any of those facilities. The judge did this without waiting for the information offered by the Commander of Santander Battalion. The judge, therefore, declared that "there was no cause for the writ of *habeas corpus*".

1.2 Investigation in the ordinary criminal courts

On February 23, 1989, proceedings were instituted in the ordinary criminal courts through Resolution No. 105 of the Criminal Investigation Bureau, wherein the Second Criminal Examining Magistrate was designated to conduct and prosecute the investigation into the disappearance of Isidro Caballero Delgado.

On February 27, that judge ordered that the preliminary investigations begin and requested the files from the inquiries conducted by the Office of the San Alberto *Personera* [municipal officer].

On March 2, 1989, the Examining Magistrate went to San Alberto, requested the collaboration of María Nodelia Parra and her attorney, and took various statements. One was from Carmen Belén Aparicio de Rivera, who said that on February 7 an army patrol came to her home in the village of Guaduas and questioned her as to whether or not she knew Isidro Caballero, stating that he had spent the night in her home the night before, that they had found him dead along with a young woman and that he was carrying with him a grocery list with her name on it. The patrol searched her home. The deponent testified that the soldiers were from Santander Battalion, which she discovered because one was wearing a cap that read "Santander Battalion".

On March 17, 1989, the judge questioned Javier Páez, the guide for Isidro Caballero Delgado and María del Carmen Santana to the village of Guaduas and who had agreed to return to the village for

On April 3, 1990, Javier Páez was called upon to expand upon his testimony; he again identified Luis Gonzalo Pinzón Fontecha in a line-up.

On April 4, 1990, in a procedure ordered by the Second Public Order Judge, Javier Páez identified Gonzalo Arias Alturo -at the time in custody in the Santa Marta court gaol- as one of those in the military patrol who had participated in his arrest.

On April 5, 1990, 8 months after the proceedings began and more than 13 months after the petition to become a civilian party to the criminal proceedings was filed, María Nodelia Parra Rodríguez was named a party to the proceedings.

On April 8 of that year, the judge was authorized to go to Bogota to conduct a number of procedures, among them the identification of Captain Héctor Alirio Forero Quintero by the eyewitnesses to the arrest and disappearance of Isidro Caballero and María del Carmen Santana. That legal procedure never materialized, however, because the judge did not make an appearance.

Early in June of 1990, the Second Public Order Judge of Valledupar was threatened by the individual charged with these acts, Héctor Alirio Forero Quintero. Also threatened were witness Javier Páez, deponent María Nodelia Parra Rodríguez and her attorney Jorge Gómez Lizarazo. Via communication 846 of June 12, 1990, the judge reported these threats to the Cesar section of the Administrative Security Department (DAS). The threats against María Nodelia Parra and her attorney curbed their activity in the investigation.

The Public Order Judge ordered notification of the defense attorneys for the parties on June 10, 1990, and notification of the representative of the *Ministerio Público* on June 27. On September 11, 1990, the judge handed down a ruling acquitting Luis Gonzalo Pinzón Fontecha, Gonzalo Arias Alturo, Héctor Alirio Forero Quintero and Norberto Báez Báez, of the crimes of abduction. The court's decision was not appealed because of the threats being made against María Nodelia Parra and her attorney.

On October 3, 1990, the case was closed.

A note that the government sent to this Commission, dated April 30, 1992, reported that Preliminary Inquiry No. 2416 was in progress in the Barranquilla section of the Bureau of Public Order - now the regional prosecutors' offices - against Carlos Julio Pinzón Fontecha. The victim is Caballero Delgado and the plaintiff Carlos Mejía Escobar, National Director of Criminal Investigations. The case brought by the National Director of Criminal Investigations is based on the expanded testimony that Luis Gonzalo Pinzón Fontecha gave under questioning three years earlier, wherein he stated that his brother, Carlos Julio, had confessed to him his participation in the detention of Isidro Caballero and María del Carmen Santana

1.3. Military Criminal Investigation

At the request of the Commander of the Fifth Brigade, Military Criminal Examining Magistrate 26, attached to Santander Battalion based in Ocaña, instituted preliminary inquiries into the disappearance of Isidro Caballero Delgado and María del Carmen Santana on February 27, 1989. During these inquiries, testimony was taken from the officers posted at Morrinson Base, which is Santander Battalion' garrison in the area where these events occurred. Statements were also taken from Sergeant Second Class Ciro Alfonso Cárdenas Moreno and from all of the soldiers and noncommissioned officers in the squad who, at the time these events occurred, were posted at the El Líbano Camp in the municipality of San Alberto. Testimony was also taken from the teachers at the Combined Rural School in El Líbano and from the San Alberto Municipal Mayor.

One notes that in the conduct of these proceedings, instead of taking the statements made by the eyewitnesses into consideration and building his investigation upon them, Military Criminal Examining Magistrate 26 virtually discarded them, acting instead on the premise that the victims had incriminated themselves.

On June 6, 1989, the Military Court ordered that the preliminary inquiry be suspended, under Article 347 of the Code of Criminal Procedure, and that the case be filed based on the fact that in the statements supplied in the proceedings, no one claimed to know anything of the arrest of Isidro Caballero and María del Carmen Santana.

2. ADMINISTRATIVE MEASURES

2.1. Intervention of the Office of the Presidential Advisor

As a result of the steps that she took, on February 13, 1989, the San Alberto *Personera* sent copies of her inquiries to the Office of the Presidential Advisor for the Defense, Protection and Promotion of Human Rights, an office created under Decree 2111 of November 8, 1987. Article 2 of that Decree describes the functions of the "advisor" as follows: "**to coordinate all measures aimed at guaranteeing proper protection and defense of the fundamental human rights upheld in Title III of the Political Constitution (today Title II) and in the Universal Declaration of Human Rights**", and that all public agencies shall give the Office of the Presidential Advisor prompt collaboration and any reports that it may request" (Article 3). For "proper execution of its functions, it shall have at its disposal all necessary technical resources" (Art. 3). The Office of the Presidential Advisor referred all the national and international petitions, messages and protests sent in connection with this case to the Office of the Attorney-Delegate for the Military Forces.

2.2. The Role of the Bucaramanga Regional Prosecutor's Office

On February 16, 1989, the Bucaramanga Regional Prosecutor, Dr. Antonio Chaparro Vega, also received a copy of the inquiries conducted by the San Alberto Municipal *Personera* in the village of Guaduas. The regional prosecutor acknowledged receipt of the documentation and referred it to the Office of the Attorney-Delegate for the Military Forces and the Second Attorney-Delegate for the Criminal Police-Human Rights, with the following message:

> I should advise you that in the pertinent verbal inquiries made, this office was informed by the Fifth Brigade, in the person of Col. Carlos Pardo, that the citizen in question had not been detained by that Military Base.

2.3. Measures taken by the Second Attorney-Delegate for the Criminal Investigations Department-Human Rights

Dr. Bernardo Echeverry Ossa, Second Attorney-Delegate for the Criminal Investigations Department, also decided to leave everything in the hands of the Attorney-Delegate for the Military Forces and ordered that anything received in connection with this case be referred there.

commissioned attorney Fabio Vicente García Galindo to visit the criminal proceedings under way in the Second Criminal Examining Court of Valledupar (Cesar).

Dr. García Galindo made his visit on March 6, where he inspected the "preliminary inquiries filed under No. 082, p.163, Volume 1-A. Suspects: under investigation. Crimes: under investigation. Victim: Isidro Caballero Delgado. Starting date: February 27/89 . . ." There he found the statements that the San Alberto *Personera* had taken from the eyewitnesses on February 13.

The visiting attorney also reported (Deputy Attorney General Communication 869/89) that he suggested to the judge that other inquiries be conducted; that additional statements be taken from Caballero's wife (she had already made numerous statements), from the witnesses in the village (who had already testified), from María del Carmen Santana (sic) (who disappeared at the same time as Isidro Caballero Delgado disappeared), from the INDUPALMA trade unionists, from soldiers at Morrinson Base and with Santander Battalion (which had already denied any responsibility in the crime), and finally that the police and courts in neighboring municipalities be asked whether any corpses had been discovered that might be those of the victims.

2.7. Other overtures with the Office of the Attorney Delegate for the Military Forces

Two months after these events transpired and when all efforts by the human rights committees had failed, they decided to step up their overtures to the Office of the Attorney General of the Nation. As a result, on April 6, 1989, the Office of the Attorney-Delegate for the Military Forces instituted some preliminary investigations. For his part, on March 30, Jorge Gómez Lizarazo, attorney for María Nodelia Parra, requested a photographic identification of the military personnel posted at Morrinson Base, so that the eyewitnesses to the events might have an opportunity to identify the guilty parties. For the safety of the witnesses, the attorney suggested that the identification be done using the photographs attached to the service records of the officers and noncommissioned officers serving in Santander Battalion at the time the events occurred. This request was forwarded to the Office of the Attorney-Delegate for the Military Forces.

To that end, on April 6, 1989, the Attorney-Delegate for the Military Forces commissioned attorney Jaime Enrique Fajardo Fajardo to visit Army Command Department E-1, Officers and Noncommissioned Officers Sections, and request the names and photographs of the officers and noncommissioned officers who were attached to Santander Battalion in June 1988 or anytime thereafter.

That visit was made on April 10. Col. Edgar Gutiérrez Cortés ordered the Officers Section Chief (Col. Tito Alejo Del Río Rojas) and the Noncommissioned Officers Section Chief (Major José Vicente Urbina Sánchez) to comply with the request. They delivered the names of the officers and noncommissioned officers with Santander Battalion for the month of June-July '88, December '88 and January '89. As for the photographs, however, they replied that their response would be forthcoming.

On April 20, the Chief of the Army Personnel Department replied to the Attorney-Delegate, saying that because there were so many photographs, all attached to the service records, the legal inquiry should be conducted using those at the Personnel Department. Mrs. Parra Rodríguez and her attorney then sent several witnesses to Bogota, to identify the assailants there at the very headquarters of the Ministry of Defense. On May 16, 1989, a large number of photographs of military men in uniform were spread out on a table before the witnesses. Those photographs had already been matched against the members of Santander Battalion listed by the attorneys from the Office of the Attorney-Delegate for the Military Forces. The witnesses, however, did not identify anyone because

the photographs were very small and very old. During the course of this proceeding, something very unusual occurred, which was that the Attorney-Delegate for the Military Forces confused the witnesses with questions such as "How much money has the victim's wife offered you to make these statements?".

The Office of the Attorney-Delegate for the Military Forces ordered another photographic identification and to that end requested, by an order dated October 8, 1991, the technical-scientific advisory assistance of the Special Investigations Unit attached to the Office of the Attorney General of the Nation. This assistance was as follows: to take the photographs of various officers and noncommissioned officers at the Army Command's Officers and Noncommissioned Officers Sections (E1) and at the General Archives of the Ministry of Defense and to supply the biographical data on these military men. The Special Investigations Unit completed this assignment on October 30, 1991.

On January 15, 1992, the Office of the Attorney-Delegate for the Military Forces requested the cooperation of the Deputy National Director of Criminal Investigations so that, in combination with staff of that agency, he might submit various pieces of evidence. The Deputy Director for Criminal Investigations, in conjunction with the Technical Corps of the Criminal Investigations Department, went to the community of San Martín, Department of Cesar, to take testimony from Carmen Belén Aparicio de Rivero, who confirmed the statements she had in the presence of the Second Criminal Examining Magistrate and the fact that Luis Gonzalo Pinzón Fontecha had been a member of the military patrol that detained Isidro Caballero Delgado and María del Carmen Santana. She added that she had to leave the region because military men told her that they "didn't want to see her around there."

That same day, the officials in question went to the village of Guaduas in the district of El Líbano, municipality of San Alberto, specifically to the "El Danubio" farm to take the testimony of Rosa Delia Valderrama. She, too, confirmed the statement she had made in the presence of the Examining Magistrate and to the San Alberto *Personera*. This witness was shown a number of photographs and asked whether she recognized any of the members of the patrol that seized Isidro Caballero and María del Carmen Santana. Almost three years after the event took place, the witness answered that no, she did not.

The Office of the Deputy Director also conducted a legal inspection of the scene of the events and did a topographical map of the "El Danubio" farm where the events transpired.

The Office of the Deputy Director of Criminal Investigation requested that the Technical Corps of the Criminal Investigations Department, Bucaramanga Division, cooperate in investigating the disappearance of Isidro Caballero Delgado and María del Carmen Santana. To that end, they contacted Gonzalo Arias Alturo, who was living on Street 38 No. 6-71, in the Lagos II Subdivision of Bucaramanga, in the Department of Santander. In the report of May 4, 1992, the Chief of the Investigations Section of the Technical Corps of the Criminal Investigations Department stated the following in reference to what Arias Alturo had said: "Those who killed those two guerrillas, Isidro Caballero and his companion, were then-Army Captain Héctor Alirio Forero Quintero, Army Corporal Plácido Chacón Hernández, Luis Gonzalo Pinzón Fontecha and himself, who formed a special group that operated in that area under the Fifth Brigade." When asked about the whereabouts of his companions, Arias Alturo said that "Captain Quintero was perhaps in Bogotá, that he had recently seen Corporal Plácido in Bucaramanga, and that Luis Gonzalo Pinzón Fontecha had been killed in Aguachica in late February and was buried here in Bucaramanga"; when the Santander Funeral Parlor at Street 45 No. 13-47 was contacted, it confirmed that on February 29, a burial service was conducted for one Luis Gonzalo Pinzón Fontecha, who had been killed in Aguachica (Cesar). This fact was later corroborated by Mrs. Rosario Fontecha, mother of the deceased, who lives at Street 48 No. 11-52. When

Mr. Gonzalo Arias Alturo was asked about where the bodies of Isidro and María del Carmen were buried, he stated that "they were killed the day they were in Guaduas; then other military untied them and they were buried in a common grave some 1200 meters from the house of Rosa Delia Valderrama, on the right before the creek, where some cacao was growing at the time." However, he refused to provide any further information in that regard because "he was afraid of incriminating himself and others, to the point that fifteen (15) days ago, he could no longer be reached."

This report, signed by Ricardo Vargas López, Chief of the Investigations Division of the Technical Corps of the Criminal Investigations Department, provides information that corroborates the fact that military units participated in these events; attached to the report was a copy of Gonzalo Pinzón Fontecha's death certificate.

At the investigator's recommendation, Gonzalo Arias Alturo was to be followed and observed; however, the report signed by Ricardo Vargas López states that this plan was suspended due to "the shortage of personnel and the unit's many duties". In his report of September 28, 1992, the investigator points out that the new institutional changes and the structure of the Office of the Attorney General of the Nation are such that he can no longer pursue the investigation.

In addition to these preliminary inquiries conducted by the Office of the Attorney-Delegate for the Military Forces was the service record for Captain Héctor Alirio Forero Quintero, which contained decisions 164 of April 26, 1990, and 394 of September 25 of that same year, requesting that he be discharged as a result of the disappearance of Ernesto Archila Martínez and Héctor Gómez Herrera in events that occurred in San Vicente de Chucurí on February 10 and 11, 1988. The preliminary investigations also turned up this captain's medical record which stated that on April 24, 1989, he was admitted to the Central Military Hospital, Psychiatric Service; the patient's own observations about why he was admitted to the hospital were as follows: "When I came to the hospital I knew that I was being hospitalized as part of a plan to avoid court prosecution, as my state of health was such that I did not need hospitalization." The psychiatric analysis stated the following: "First delusional breakdown with symptoms of paranoia, in a premorbid personality with a paranoidal nucleus."

3. Extrajudicial measures

3.1. The remedy of complaint and public protest

On February 9, 1989, certain members of the INDUPALMA Union went to the village of Guaduas to inquire for Isidro Caballero Delgado, when the latter did not return to San Alberto. They were told by the locals that Isidro had been taken away by army personnel. They immediately notified the Santander Teachers' Union, which in turn notified María Nodelia Parra and the family.

On February 10, 1989, the Executive Committee of the Santander Teachers' Union sent a letter to the Governor of Santander requesting that he intervene to secure the release of Isidro Caballero and María del Carmen Santana. That same day, after filing the application for a writ of habeas corpus, María Nodelia Parra and two brothers of Isidro Caballero Delgado went to San Alberto to speak with union members and to find out what had happened. They immediately went to the Santander Battalion Encampment, located in the district of El Líbano. A Sergeant Cárdenas spoke with them and denied the arrest. He went on to say that perhaps members of the counterguerrilla movement had taken them. Later María Nodelia Parra went to Santander Battalion's Morrinson Base, where a Lieutenant Ríos told her that the two were not being held at that base.

On February 12, 1989, an INDUPALMA Workers' Assembly was held; it agreed to provide economic assistance to defray the cost of the legal actions to secure the release of Isidro Caballero Delgado who was working with that union on the regional forum scheduled for February 16 of that year.

On February 13, 1989, together with her attorney, María Nodelia Parra spoke with the Mayor of San Alberto to enlist his cooperation in efforts to secure the release of Isidro Caballero Delgado; the Mayor put her in contact with the Guaduas *Personera*, who conducted the first inquiries into this case.

On February 16, 1989, taking advantage of the presence of the Attorney-Delegate for Human Rights, Bernardo Echeverri Ossa, he was asked to intervene; in response, he sent the Attorney-Delegate for the Military Forces to Santander Battalion's Morrinson Base to inquire about the fate of the teacher and his companion. Accompanying the Attorney-Delegate were members of the Santander Teachers' Union. They were met by Col. Diego Hernán Velandia Pastrana, who denied that the two individuals had been arrested.

On February 18, María Nodelia Parra met with House Representative Rafael Serrano Prada, who knew Isidro Caballero Delgado since the two had been members of the Commission for the Regional Dialogue for Peace; the representative promised to do everything possible to secure his release. That same day, the Santander Teachers' Union met with the Governor of the Department of Santander to ask that he intervene in the investigation into the disappearance of Isidro Caballero Delgado.

On February 19, 1989, Herminda Caballero de Ballesteros, sister of Isidro Caballero Delgado, went to the Bucaramanga Regional Prosecutor's Office to enquire about the complaint she filed on February 13, 1989, in connection with her brother's disappearance. The official informed her that the inquiries had been referred to the Bogota Office of the Attorney-Delegate for Human Rights.

On February 20, the trade unions decided to send communications to the Attorney General of the Nation, to the Regional Prosecutor and the Minister of Government, requesting the immediate release of Isidro Caballero Delgado.

On February 20, the Colombian Teachers' Federation (FECODE) met with the Attorney General at the time, Horacio Serpa Uribe, to request an investigation into the disappearance of a number of teachers who were members of that organization.

On February 23 of that year, the teachers of Santander had a 24-hour work stoppage to pressure the Government into releasing Isidro Caballero Delgado.

Upset by the way in which the criminal proceedings were being conducted, the teachers' union and the union movement in general decided to organize a national protest work stoppage. On Sunday, February 26, 1989, Colombian newspapers published a notice paid for by the Colombian Teachers' Federation (FECODE) and the Amalgamated Federation of Labour (Central Unitaria de Trabajadores) calling for a national protest work stoppage on Thursday, March 2. The notice also asked that letters and telegrams be sent to the President of the Republic urging him to reveal the whereabouts of Isidro Caballero, since witnesses had stated, under oath, that the Army had arrested him and that the Constitution in force at the time provided, as does the present Constitution, that the President of the Republic is the "supreme administrative authority and commander-in-chief of the armies of the Republic"; as such he has the power to appoint and remove, at any time, his collaborators (1886 National Constitution, Art. 120, and Law 48 of 1968, Art. 8).

The demand was also premised on the principle that when such serious charges are leveled about a Chief-of-State's Administration, said Chief-of-State has all the means necessary to suspend, dismiss, or investigate any member of the Armed Forces. There are precedents, as when the Commander of the CATAM Military Base was discharged for negligence in the theft of a small aircraft (April 14, 1988) or when the Commander of the Marine Infantry was discharged for negligence in patrolling the ECOPETROL oil pipeline terminal at Coveñas (June 22, 1989).

On March 31, María Nodelia Parra spoke with the Attorney General of the Nation and with the Deputy Attorney General, Omar Henry Velasco, who assured her that they would monitor the investigation into the disappearance of Isidro Caballero Delgado closely.

Amnesty International processed an urgent action calling for the release of Isidro Caballero Delgado and María del Carmen Santana, as a result of which countless communications were sent to the President of the Republic, the Minister of Government and the Minister of Defense.

The Ambassador of the German Federal Republic interceded with the Ministry of Foreign Affairs of Colombia to request information about the disappearance of these persons.

IV. CONCLUSIONS DRAWN FROM THE MEASURES TAKEN

The Colombian Government has repeatedly told this Commission that "the domestic mechanisms are fully under way." The Commission's finding, however, was that these mechanisms have been fully exhausted, for the following reasons:

In the instant case, inasmuch as it concerns a disappearance, the proper remedy is an application for a writ of *habeas corpus*. This was the finding of the Inter-American Court of Human Rights in the Velásquez Rodríguez Case, paragraph 64 and 65, where it stated the following:

> . . .adequate domestic remedies are 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. . .
>
> . . .of the remedies cited by the Government, *habeas corpus* would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty.

In the instant case, the application for a writ of *habeas corpus* was filed with the First Superior Court of Bucaramanga, by María Nodelia Parra Rodríguez, on February 10, 1989, as noted earlier. The Court sent official communications to the Criminal Investigations Department, to the Bucaramanga Model Prison, to the Santander Section of the Administrative Security Department (DAS), and to the Army's Fifth Brigade. All replied that Isidro Caballero Delgado was not being held in any of those facilities, which is why the First Superior Court of Bucaramanga declared that the petition of *habeas corpus* was inadmissible. Though the remedy did not produce any result, it was nonetheless exhausted.

In the report on its visit to Colombia, between September 25 and November 2, 1988, the United Nations Working Group on Enforced or Involuntary Disappearances states the following in respect of *habeas corpus*:

> . . .Added to these limitations or gaps in the rules, the lack of experience in invoking *habeas corpus* with a view to moving against the very root of a detention which is presumed to be arbitrary would seem to make this crucial guarantee for the freedom of the individual very weak in Colombia. There is also a factor which the Working Group ascertained in interviews with relatives and human rights activists, namely, the fear of reprisals. Indeed, if a person invokes *habeas corpus*, he or she is obliged to indicate possible places of detention which are obviously the responsibility of one authority or another. There is a fear of both *de facto* reprisals as well as legal reprisals (for instance, a criminal charge of libel).
> . . . in any event, the weakness of the institution seriously affects the working of the institutional and legal apparatus when an enforced disappearance occurs.

Therefore, the Commission is of the view that the *habeas corpus* remedy was ineffective and that it was, in any event, exhausted. Another factor that the Commission believes must be taken into account are the obstacles to the investigations, given that the domestic remedies could not be exercised to the full extent of the law:

1. María Nodelia Parra was repeatedly threatened for pushing for the proceedings and for being a civilian party to the criminal proceedings.

2. The attorney for the civilian party was threatened and coerced into not being active in the criminal proceedings, with the result that no appeal against the acquittal handed down by the Public Order Judge was ever filed.

3. The witnesses had to leave the vicinity because of the threats made against them.

4. The Second Public Order Judge who conducted the criminal investigation was threatened by Captain Héctor Forero Quintero, one of the suspects in the criminal investigations conducted into these events.

5. The Chief of the Bucaramanga Criminal Investigation Unit was forced to abandon the investigation citing "the shortage of personnel and the Unit's many duties" and the fact that he "was never notified of any decision in that regard."

Under Article 46.2.b of the Convention, exhaustion of the remedies under domestic law is not required when the party alleging violation of his right has been denied access to those remedies or has been prevented from exhausting them. In this regard, the Court held the following:

> . . .if there is proof of the existence of a practice or policy ordered or tolerated by the Government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. . . resort to those remedies becomes a senseless formality. The exceptions of Article 46(2) would be fully applicable in those situations and would discharge the obligation to exhaust internal remedies since they cannot fulfill their objective in that case. (Velásquez Rodríguez, supra 23, para. 68, and Fairén Garbi and Solís Corrales, judgment of March 15, 1989, series C, Nos. 3 and 6, para. 93).

The foregoing notwithstanding, María Nodelia Parra and her attorney were very active in trying to secure the release of Isidro Caballero and María del Carmen Santana whom they knew had been taken by the army in the municipality of San Alberto, Department of Cesar. Their activities resulted in a criminal proceeding, which ended when the Valledupar Second Public Order Judge handed down a

verdict of acquittal; preliminary inquiries instituted by Military Criminal Examining Magistrate 26 were likewise filed, as were some preliminary investigations by the Office of the Attorney-Delegate for the Military Forces which did not result in any criminal or disciplinary sanctions.

Had the Commission accepted the contention that the remedies are fully under way, the exception to exhaustion of remedies under domestic law provided for in Article 46.2.c of the Convention would be obvious. That provision states as follows: "There has been unwarranted delay in rendering a final judgment under the aforementioned remedies." This is something that the Government does not deny. Instead it even admits it and tries to justify it by stating that there "are legal formalities that must be observed in conducting investigations and trials . . . Hence, it is normal for a legal proceeding of any kind to take several months to settle; it often happens that one or several years may pass before it is concluded. . . In conclusion, because the officer of the court is obliged to observe the formalities and rules of procedure when instituting each stage in a proceeding, it is normal for a criminal case to take several months or years." Nonetheless, in the instant case there is no justification for the delays that have occurred in these proceedings:

1. The order instituting proceedings was not issued until August 1, even though one of the individuals who participated in the criminal act had been identified as early as March 17, 1989; under the Code of Criminal Procedure, as of that date the corresponding proceedings were to have commenced.

2. The petition to be made a civilian party to the criminal proceedings was filed on March 18, 1989, the date on which those proceedings should have been instituted; however, it was not admitted until April 5, 1990, eight months after the order instituting proceedings was given, and despite the Code of Criminal Procedure in effect at the time, Article 43 of which allows a maximum of three days to decide the question of admissibility of the petition, in this case three days after the investigation was launched.

3. In expanded testimony given on October 17, 1989, Luis Gonzalo Pinzón Fontecha stated that his brother, Carlos Julio Pinzón Fontecha, had confessed to him his participation in the events; three years later an investigation against Carlos Julio Pinzón Fontecha was instituted pursuant to an action brought by the Director of Criminal Investigations in Barranquilla.

4. On April 6, 1989, preliminary proceedings were instituted in the Office of the Attorney-Delegate for the Military Forces; those proceedings are still classified as preliminary and therefore no one has been punished for the disappearance of Isidro Caballero and María del Carmen Santana.

5. Since May 17, the date on which the Office of the Attorney-Delegate for the Military Forces conducted the photographic identification that relied on very old photographs, the attorney for María Nodelia Parra has been requesting an identification with more recent photographs; via this Commission, the Colombian Section of the Andean Commission of Jurists, the petitioner in the instant case, has made the same request to the Government. However, it was not until January 15, 1992, almost three years after the events in question occurred, that this photographic identification was conducted.

Summing up, the remedies under domestic law have not only been exhausted, but a number of the exceptions contemplated in Article 46.2 of the Convention obtain. They demonstrate impunity and the failure to comply with the Convention.

V. LEGAL GROUNDS

1. The enforced disappearance of persons: a crime against humanity

In the guidelines submitted to the member states of the Organization of American States for preparation of an Inter-American Convention against the Forced Disappearance of Persons, the Commission states that disappearance:

> . . .can be defined as the detention of an individual by agents of the State or with its acquiescence, without a warrant from a competent authority, and wherein the detention is denied and there is no information as to the fate or whereabouts of the detainee. . .
>
> . . .in a case of enforced disappearance, the victim's confinement must be denied by the authorities. . . This is a conscious and deliberate denial of a detention that has occurred but denied in order to avoid responsibility for the arrest itself and for the physical well-being and life of the detainee.

In resolution AG/RES.666 (XIII-0/83), the General Assembly of the Organization of American States declared that ". . .The practice of the forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity." It has also stated that disappearance is "cruel and inhuman, mocks the rule of law, and undermines those norms which guarantee protection against arbitrary detention and the right to personal security and safety" (AG/RES. 742).

In its judgement of July 29, 1988 in the Velásquez Rodríguez Case, the Court found the following:

> The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, moreover, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention. (paragraph 158).

The jurisprudence of the Court has found that enforced disappearance involves transgression of a number of the rights recognized in domestic law and in the Convention, which the States are obliged to respect and guarantee. The practice of enforced disappearance, the Court maintains, often involves secret execution without benefit of trial, followed by concealment of the body to guarantee impunity. This, the Court has held, is a flagrant violation of the right to life recognized in Article 4 of the Convention.

The Court has also held that the prolonged and involuntary isolation that enforced disappearance involves constitutes cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to have his inherent dignity as a human being respected, and is a violation of Article 5 of the Convention. To deny an individual his or her freedom arbitrarily is not only a violation of the right to personal liberty but also of those rights upheld in paragraphs 1 to 6 of Article 7 of the Convention. Isidro Caballero Delgado and María del Carmen Santana were not allowed to exercise any of the rights recognized there.

In the instant case, Santander Battalion aggravated the crime of arbitrary and unlawful deprivation of liberty by denying that Isidro Caballero and María del Carmen Santana were in its power, even though it had unlawfully detained them, as the statements made by the witnesses show, especially the witness who overheard the Battalion commander requesting orders, via radio, as to what they should do with their victims. The "arbitrary arrest" made by the army thus became an "enforced disappearance."

"Crimes against humanity" are offenses that affect not only an individual or a group but all mankind, inasmuch as they deny the possibility of civilized coexistence among men. It is for that reason that several international conventions have sought to punish such crimes with the utmost severity:

- By making them not subject to any statute of limitation (meaning that the passage of time will never exempt the criminal from prosecution).

- By making them subject to universal jurisdiction (meaning that such crimes can be heard by a competent court anywhere in the world).

- By punishing not only the direct authors, but also the instigators, accomplices and accessories after the fact.

According to the United Nations Working Group on Enforced or Involuntary Disappearances:

> . . . enforced or involuntary disappearances constitute the most comprehensive denial of human rights in our times, bringing boundless agony to their victims, ruinous consequences to the families, both socially and psychologically, and moral havoc to the societies in which they occur. It is indeed a gruesome form of human rights violation that warrants the continued attention of the international community. (Document E/CN-4/1985/15).

In its Special Report on Enforced or Involuntary Disappearances in Colombia, the United Nations Working Group stated that it was a common practice there.

2. The responsibility of the Colombian State

2.1 For its failure to respect rights

The violations of rights recognized in the Convention thus far mentioned are attributable to the Colombian State and it is therefore internationally responsible for the violation of these rights.

From Article 1.1 emanate two obligations incumbent upon a state party, namely, that of respecting the rights and liberties recognized in the Convention and that of guaranteeing full and free exercise of those rights to persons under its jurisdiction.

Colombia has failed in its obligations to respect the rights and liberties upheld in the Convention. The disappearances of Isidro Caballero Delgado and María del Carmen Santana and the violations of the rights recognized in the Convention were committed by the Colombian army, by a public organ, by people whose *modus operandi* is to abuse the power that the State has invested in them. The enforced disappearances and the violations were committed with the aid and acquiescence of the public powers. From the foregoing it follows that Colombia is directly responsible for these violations.

The Court stated the following in this regard:

> . . .any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. (Judgment of July 29, 1988, Velásquez Rodríguez, paragraph 172).

2.2. For not guaranteeing rights

Article 1.1 obliges the States parties to guarantee the free and full exercise of the rights recognized in the Convention. In the Velásquez Rodríguez Case, the Court interpreted this provision as the duty of the State to investigate violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation (see paragraphs 166 and 174).

Colombia has failed to honor this obligation. The First Superior Court of Bucaramanga found that there was "no cause" for the writ of *habeas corpus*. The preliminary investigations that Military Criminal Examining Magistrate 26 conducted were filed; the proceedings conducted in the Second Public Order Judge ended with a verdict of acquittal; the preliminary investigations conducted by the Office of the Attorney-Delegate for the Military Forces have had no results. No one has been punished for the disappearance of Isidro Caballero and María del Carmen Santana. Lastly, no effort has been made to compensate the relatives of the disappeared. Quite the contrary, in a hearing at the Commission's eighty-second session, on September 25, 1992, the Colombian Government stated that one reason it could not comply with the recommendation in Report 31/91 that fair compensation be paid was that so far as the Government was concerned that recommendation was not binding upon it, as a judgment by the Court would be; instead, the Commission's was a simple recommendation which Colombian officials were unable to execute without violating domestic laws. The failure to prosecute and punish crimes and to pay fair compensation for damages caused constitutes a flagrant violation of the obligation to guarantee free and full exercise of the rights recognized in the Convention.

When it addressed this obligation in the advisory opinion of August 10, 1990 (OC-11/90, paragraph 34), the Court stated the following:

> . . .taking all necessary measures to remove any obstacles obstructing an individual's full exercise of the rights that the Convention recognizes. Hence, a State's tolerance of circumstances or conditions that prevent individuals from availing themselves of the proper internal remedies for protecting their rights is a violation of Article 1.1 of the Convention. . .

As examined in the section on exhaustion of the remedies under domestic law, the exercise of such remedies has been obstructed by a number of circumstances: threats against witnesses and judges; delays in legal proceedings; the State's failure to cooperate with examining magistrates, who have been forced to abandon lines of inquiry important for the investigations. The Colombian State has done nothing to prevent these obstacles and has thereby tolerated the circumstances that have obstructed proper exercise of domestic remedies.

As a consequence, the violations are attributable to the Colombian State inasmuch as they are acts of public authorities or carried out by persons who abused their position of authority, and inasmuch as it failed to identify the authors of the violations, failed to compensate the victims' next-of-kin and was not duly diligent in preventing the violations.

2.3. For not adopting domestic measures and failing to comply with the Commission's recommendations:

Under Article 2 of the Convention, the States Parties undertake to adopt such legislative or other measures as may be necessary to give effect to the rights and freedoms recognized in the Convention. Article 51.2 provides that the States are obligated to comply with the recommendations that the Commission makes to the governments in its reports.

The Colombian Government did not take any measure to protect the rights of Isidro Caballero and María del Carmen Santana, and despite assiduous efforts by relatives of the victims, the guilty parties have not been punished. Therefore, although there are guarantees under Colombian law, the necessary measures to enforce those guarantees have not been taken.

Further, the Colombian Government failed to act upon the recommendations contained in report 31/91 of the Commission, which the Government did not consider binding. By disregarding them, it has thus far failed to compensate the relatives of Isidro Caballero and María del Carmen Santana and to protect the witnesses who cooperated with the Commission to shed light on the facts in this case.

3. Jurisprudence of the Colombian courts on the subject of unlawful arrests

When it examined the constitutionality of the controversial Decree 180/88 (called the "Anti-Terrorism Statute"), Article 40 of which authorized members of the Armed Forces, the Police and the DAS, in urgent cases, "to arrest, without a warrant, persons suspected of participating in terrorist activities", the Colombian Supreme Court found the article unconstitutional, reasoning as follows:

> . . .the jurisprudence of that Court has been very clear in finding that the "written order from a competent authority" that the Constitution requires for the purposes provided in Article 23, refers to the warrant that is one's guarantee in the event that an attempt is made to curtail one's personal and physical liberty and breach the inviolability of one's domicile." (Supreme Court Ruling No. 21, March 3, 1988, File 1776 (265-E).

The provisions of the Code of Criminal Procedure

For its part, the Code of Criminal Procedure in force at the time Isidro Caballero and María del Carmen Santana disappeared, provided the following:

> *Anyone arrested shall be immediately advised of the following: 1) the reasons for the arrest and the official who ordered it; 2) one's right to meet with an attorney; 3) one's right to indicate whom to notify of one's arrest. The authority responsible for the arrest shall immediately report same to the individuals specified by the arrested party. (Article 403).*

The provisions of the Penal Code

For its part, the Penal Code makes it a crime to unlawfully deprive one of one's freedom (Article 272). The punishment for any official who commits said crime shall be one to five years' imprisonment and dismissal.

Moreover, in response to an inquiry from a group of jurists, the Attorney General of the Nation specified that under Colombian law "military units are not indicated as centers for confinement of private citizens; they can only be used to confine military personnel, under the provisions of Decree

250/58 or the Code of Military Criminal Justice, or under Article 427 of the Code of Criminal Procedure". (letter dated July 28, 1988, addressed to the "Collective Attorneys' Corporation).

4. Violated provisions of international law in force under Colombian law

Apart from the Constitution and other domestic laws, international laws that are also laws of the Republic were also violated, among them those contained in the **International Covenant on Civil and Political Rights** (signed by the State of Colombia on December 21, 1966, adopted through Law 74 of 1968, and ratified with the UN on October 29, 1969) and the **American Convention on Human Rights** (signed by Colombia on November 22, 1969, adopted through Law 16 of 1972 and ratified with the OAS on May 18, 1973) which stipulate: that no one shall be arrested or detained arbitrarily (Covenant, 9.1; Convention, 7.3); that no one shall be arrested except on grounds established by law and in accordance with the procedures established therein (Covenant, 9.1; Convention, 7.2); that anyone who is arrested shall be advised, at the time of arrest, of the reasons for the arrest and promptly informed of any charges against him (Covenant 9.2; Convention, 7.4); that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power (Covenant 9.3; Convention 7.5); that anyone deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that it may decide without delay on the lawfulness of the detention and order the individual's release if the detention is not lawful (Covenant, 9.4; Convention 7.6), and that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation (Covenant, 9.5).

Articles 26 and 27 of the Vienna Convention on the Law of Treaties have also been violated. Article 26 requires that States perform international treaties in good faith, while Article 27 prohibits States from invoking their internal laws as justification for failing to perform international treaties. The Government of Colombia contends that it cannot pay compensation to the victims' families because it does not have the internal mechanisms to allow it to pay such compensation. It has further stated that in Colombia it is "<u>normal for a criminal case to take several months or years. . .</u>"

VI. PROOF

The Commission is exhibiting evidentiary material that points to and proves the Colombian Government's responsibility for the facts in the instant case and, accordingly, will enter into evidence and substantiate the following proofs in these legal proceedings:

(a) <u>Documentary</u>: consisting of the documents listed under section 1.1. and those listed under section 2.1., which the Court will kindly request from the Government of the Republic of Colombia so that they may be made available to the judges and members of the Court and to the parties for purposes of study, discussion and allegations:

Offered by the Commission

1.1. Testimony

1.1.1. Statement by <u>Andelfo Pérez Gelvez</u> in the presence of the Second Criminal Examining Magistrate, March 10, 1989.

1.1.2. Statement by Guillermo Guerrero Zambrano, in the presence of the Second Criminal Examining Magistrate, March 9, 1989.

1.1.3. Statement by Rosa Delia Valderrama, in the presence of the Municipal *Personera* of San Alberto, February 13, 1989, as well as those she made before the Valledupar Second Public Order Judge, March 18, 1989, and before the Deputy Director for Criminal Investigations, January 22, 1992.

1.1.4. Statement by Sobeida Quintero, given in the presence of the San Alberto Municipal *Personera* on February 13, 1989.

1.1.5. Statement by Carmen Belén Aparicio de Rivero, given in the presence of the Second Examining Magistrate, March 2,1989, and the statement made in the presence of the Deputy Director for Criminal Investigations on January 22, 1991.

1.1.6. Statement by Javier Páez in the presence of the Valledupar Second Criminal Examining Magistrate, March 17, 1989, the statement made in the Office of the Attorney-Delegate for the Military Forces, May 26, 1989, the statement made in the presence of the Second Criminal Examining Magistrate, June 12, 1989, the line-up identification by the witness that same day, the statement made in the presence of the Second Public Order Judge, April 3, 1990, and the line-up identification on April 4, 1990.

1.1.7. Statement by Elida González Vergel, in the presence of the Second Criminal Examining Magistrate of the Valledupar Circuit, March 21, 1989.

1.1.8. Statement made under questioning by Luis Gonzalo Pinzón Fontecha, in the presence of the Second Public Order Judge, October 17, 1989.

1.1.9. Complaint filed by María Nodelia Parra with the Second Criminal Examining Magistrate of the Valledupar Circuit, March 2, 1989, and the testimony she gave before that magistrate on July 27, 1989.

1.1.10. Statement by attorney Jorge Gómez Lizarazo in the Office of the Deputy Prosecutor, wherein he requests that the witnesses identify the officers and noncommissioned officers in Santander Battalion attached to Morrinson Base.

1.2. Communications

1.2.1. Communication 846 from the Second Public Order Magistrate to the Chief of Intelligence of the Administrative Security Department (DAS), Valledupar Section, which recounts the threats received from Captain Héctor Alirio Forero Quintero.

1.2.2. Letter addressed to Dr. Víctor Enrique Navarro Jiménez, National Deputy Director of Criminal Investigations, from the Chief of Investigations of the Technical Corps of the Criminal Investigations Department, Bucaramanga section, Ricardo Vargas López, dated May 4, 1992, wherein he reports the findings of the investigations into the disappearance of Isidro and María del Carmen.

1.2.3. Communication No. SN-CTPJ 236-92, dated June 3, 1992, from the Office of the National Deputy Director of the Technical Corps of the Criminal Investigations Department, signed by Dr. Víctor Enrique Navarro and addressed to the Attorney-Delegate for the Military Forces, reporting the progress made in the investigation.

1.2.4. Report No. 01/FGN-UNPJ, dated September 28, 1992, addressed to the Director of the Technical Investigations Unit under the Office of the Attorney General of the Nation, reporting developments in the investigation being conducted by Ricardo Vargas López, a specialized criminal investigator, into the disappearance of Isidro Caballero and María del Carmen Santana.

1.2.5. Communication No. FCN-DIDNCT 167-92, dated September 29, 1992, from the National Director of the Technical Investigation Unit to the Attorney-Delegate for the Military Forces, wherein he reports on the progress made in the investigations into the disappearance of Isidro Caballero and María del Carmen Santana.

1.3 Service records

1.3.1. An excerpt from the service record of Army Captain (r) Héctor Alirio Forero Quintero, with a clinical history of his hospitalization, issued by the Central Military Hospital, attached.

1.3.2. Excerpts from the service record of Corporal Second Class (r) Norberto Báez Báez.

1.4 Press clippings

1.4.1. Press clipping from the *Vanguardia Liberal*, dated June 9, 1987, wherein Isidro Caballero is shown as a member of the Steering Committee of the Northeastern Work Stoppage; also shown is Cristian Roa, who also disappeared in the same manner.

1.4.2. Press clipping from the *Vanguardia Liberal*, dated September 24, 1988, wherein Isidro Caballero is shown as the organizer of the peace week, an event underway in Bucaramanga at that time.

1.4.3. Press clipping from the *Vanguardia Liberal*, dated September 29, 1988, showing highlights of peace week in Santander, which Isidro Caballero Delgado helped to organize.

1.4.4. Press clipping from the *Vanguardia Liberal*, dated February 15, 1989, wherein the Santander Teachers' Union reports that Isidro Caballero was arrested by military on February 7, in the village of Guaduas; it also denounces the disappearance of other teachers in that union.

1.4.5. Press clipping from the *Vanguardia Liberal*, dated February 23, 1989, reporting on the work stoppage conducted by the Santander teachers to protest the disappearance of their colleague Isidro Caballero Delgado.

1.4.6. Press clipping from the *Vanguardia Liberal*, dated March 1, 1989, reporting that the Barrancabermeja Teachers had agreed to the work stoppage proposed by the Colombian Teachers' Federation (FECODE) to pressure the Government into

releasing Isidro Caballero Delgado, a teacher, alive; the report states that he was arrested by the army on February 7, 1989, in the municipality of San Alberto, Department of Cesar; the report also denounces the attempts made against various teachers in Santander.

1.4.7. Press clipping from the *Vanguardia Liberal*, dated March 10, 1989, containing an interview with María Nodelia Parra, wherein she blames the army for the disappearance of Isidro Caballero Delgado.

1.4.8. Press clipping from the *Vanguardia Liberal*, dated March 10, 1989, reporting that the Santander Teachers' Union had taken over the residence of the Archbishop of Bucaramanga to draw the authorities' attention to the criminal attacks against teachers in that union and specifically mentioning the disappearance of Isidro Caballero Delgado.

1.4.9. Press clipping from the *Vanguardia Liberal*, dated March 22, 1989, reporting that Captain Héctor Emilio Forero Quintero, Corporal Second Class Norberto Báez Báez and enlisted men Luis Gonzalo Pinzón Fontecha and Gonzalo Arias were taken after having robbed a number of motels and gasoline stations in the municipalities of Bucaramanga (Santander) and El Copey (Cesar); these persons were considered suspects in the disappearance of Isidro Caballero and María del Carmen Santana.

1.4.10 Press clipping from the *Vanguardia Liberal*, dated March 28, 1990, denouncing the fact that three cases of disappearances had gone completely unpunished, one of them the case of Isidro Caballero Delgado.

1.4.11. Press clipping from the *Vanguardia Liberal*, dated May 15, 1990, reporting the disappearance of a number of teachers in Santander, among them Isidro Caballero Delgado.

1.5. Plans and maps

1.5.1. Sketch of the "El Danubio" property in the Village of Guaduas, district of El Líbano, municipality of San Alberto, Department of Cesar, the scene of the events.

1.5.2 A map of the municipality of San Alberto, Department of Cesar, prepared by the Agustín Codazzi Geographic Institute.

1.6. Reports

1.6.1. Report on human rights. Office of the Attorney General of the Nation. Journal No. 11. Bogota, September 1991.

1.6.2. Report of the United Nations Working Group on Enforced and Involuntary Disappearances on its visit to Colombia.

Documents that the Colombian Government must supply

The Commission is petitioning the Court to require that the Colombian Government supply the following documents:

2.1. Case files

2.1.1. File from the proceedings conducted by the Second Public Order Judge of the Valledupar Circuit, in connection with the abduction of Isidro Caballero and María del Carmen Santana, against Captain Héctor Alirio Forero Quintero, Sgt. Second Class Norberto Báez Báez, Luis Gonzalo Pinzón Fontecha and Gonzalo Arias Alturo.

2.1.2 File from the preliminary inquiries conducted by Military Criminal Examining Magistrate 26, into the disappearance of Isidro Caballero and María del Carmen Santana.

2.1.3 Case file from the preliminary inquiries conducted by the Office of the Attorney-Delegate for the Military Forces into the detention and subsequent disappearance of Isidro Caballero and María del Carmen Santana.

2.1.4. File from the proceeding conducted by the First Magistrate of the Valledupar Circuit, for the crimes of aggravated theft, abuse of trust and illegal possession of weapons, against Captain Héctor Alirio Forero Quintero, Corporal Second Class Norberto Báez Báez, Luis Gonzalo Pinzón Fontecha and Gonzalo Arias Alturo, for events that occurred on March 18 and 19, 1989, in the municipalities of Bucaramanga, Department of Santander, and Ciénaga, Department of Magdalena.

2.1.5. Case file taken from the oral proceedings of the Court Martial, October 25, 1990, conducted by the Fifth Brigade against Captain Héctor Forero Quintero, for the crimes of abuse of trust, aggravated theft and illegal possession of arms.

2.1.6. Case file for the oral proceedings in the Court Martial of October 18, 1992, conducted by the Fifth Brigade against Norberto Báez Báez, for the crimes of theft, manufacture, possession, and trafficking in arms, munitions and explosives.

2.1.7. A copy of the case file in the disciplinary proceedings conducted against Captain Héctor Alirio Forero Quintero by the Office of the Attorney-Delegate for the Military Forces, for the disappearance of Ernesto Archila Martínez and Héctor Gómez, events that occurred on February 10 and 11, 1988.

2.1.8. A copy of the inquiries conducted by the First Superior Court of Bucaramanga on the application for a writ of *habeas corpus*.

2.2. Decisions

2.2.1. A copy of Decision No. 104 of April 26, 1990, and Decision No. 394 of September 25, 1990, whereby the military prosecutor sentenced Captain Héctor Alirio Forero Quintero to dismissal from the service.

2.2.2. Copy of Fifth Brigade Decision No. 0016, of March 4, 1992, whereby Norberto Báez Báez was permanently severed from service.

2.3. Service records

2.3.1. A copy of the service record of Captain Héctor Alirio Forero Quintero.

2.3.2. A copy of the service record of Corporal Second Class Norberto Báez Báez.

2.3.3. A copy of the service record of noncommissioned officer Plácido Chacón Hernández.

2.3.4. A copy of the service record of enlisted man Luis Gonzalo Pinzón Fontecha.

2.3.5. A copy of the service record of enlisted man Gonzalo Arias Alturo.

(b) Testimony: consisting of statements by eyewitnesses whose names appear in those case files and all of whom will be cited, so that to the extent possible, they too may appear before the Court to confirm and expand upon their statements; and statements by persons who have knowledge of other circumstances that have a bearing upon the facts:

1. Offered by the Commission

1.1. Luis Alberto Gil, President of the Santander Teachers' Union, a resident of Bucaramanga, Department of Santander, to describe for the Court Isidro Caballero's activities and the persecution to which members of the Santander Teachers' Union are subjected.

1.2. Dr. Rafael Serrano Prada, a representative to the House and member of the Santander Regional Dialogue Commission, to describe for the Court the measures he took in the case of Isidro Caballero and the activities carried out in connection with the national dialogue.

1.3. Professor Juan Fernández Carrasquilla, a litigating attorney in Colombia and an expert in criminal procedures and *habeas corpus*, to describe for the Court the workings of these mechanisms in Colombia.

1.4. Jorge Castellanos Pulido, Director of the Education and Popular Culture Foundation and a member of the Northeastern Public Steering Committee in Bucaramanga, to describe for the Court the human rights situation in the Magdalena Medio area at the time these events occurred and Isidro Caballero's role in the work stoppage in the northeastern sector of Colombia.

1.5. Herminda Caballero de Ballesteros, sister of Isidro Caballero Delgado, who lived in the municipal seat of the municipality of Piedecuesta, Department of Santander, to describe for the Court the measures she took to locate Isidro Caballero.

1.6. Dr. David Zafra Calderón, Secretary General of the Colombian Teachers' Federation (FECODE), to describe for the Court the persecution of educators in Colombia and the violence targeted against them.

1.7. Dr. Javier Jerez, who at the time of the events was chairman of the Permanent Committee on Human Rights in Santander, to describe for the Court Isidro Caballero's role in the national dialogue.

1.8. María Nodelia Parra María, common-law wife of Isidro Caballero, who resides in Bucaramanga, Department of Santander, to describe for the Court the threats against Isidro Caballero, the efforts made subsequent to his disappearance and their results.

1.9. Rosa Delia Valderrama, who lives on the "El Danubio" farm in the village of Guaduas, municipality of San Alberto, Department of El Cesar, to describe for the Court the circumstances surrounding the detention of Isidro Caballero and María del Carmen Santana.

1.10. Sobeida Quintero, who lives in the municipality of Curumaní, Department of Cesar, to describe for the Court the circumstances surrounding the detention of Isidro Caballero and María del Carmen Santana.

1.11. Elida González Vergel, who lives in the municipality of Ocaña, Department of Norte de Santander, to describe for the Court the circumstances surrounding the detention of Isidro Caballero and María del Carmen Santana.

1.12. Javier Páez, who can be located in the Congress of the Republic, in Santafé de Bogota, to tell the Court what he knows concerning the circumstances surrounding the detention of Isidro Caballero and María del Carmen Santana.

1.13. Guillermo Guerrero Zambrano, who resides in San Alberto and is a member of the Indupalma union, to describe for the Court Isidro Caballero's activities in the San Alberto area and the measures taken to locate his whereabouts.

1.14. Professor Nigel Rodley, Dean of the Law School of the University of Essex, former Legal Director of Amnesty International, to describe for the Court the phenomenon of enforced or involuntary disappearance in Colombia.

2. Witnesses who should be summoned by the Colombian Government: Because they are or have been civil servants, the Government of the Republic of Colombia is in a position to establish the present whereabouts of the following witnesses and ensure their appearance before the Court:

2.1. Dr. Víctor Enrique Navarro, an official with the Office of the Attorney General of the Nation, to inform the Court the facts he ascertained in conducting the investigation into the disappearance of Isidro Caballero and María del Carmen Santana.

2.2. Ricardo Vargas López, an official of the Office of the Attorney General of the Nation, in the city of Bucaramanga, Department of Santander, to describe for the Court the investigation he conducted into the disappearance of Isidro Caballero.

2.3. Dr. Elizabeth Monsalve Camacho, who was serving as Municipal *Personera* for San Alberto, Department of Cesar, at the time of the events, to describe for the Court the measures she took in the case of the disappearance of Isidro Caballero and María del Carmen Santana.

2.4. Dr. José Manuel Jaimes Quintero, who was serving as Second Criminal Examining Magistrate of the Valledupar Circuit at the time of these events, to describe for the Court the criminal proceedings conducted in the case of the disappearance of Isidro Caballero and María del Carmen Santana.

2.5. Dr. Blas Almanza Martínez, who was serving as Second Public Order Judge of Valledupar at the time of these events, to inform the Court of the facts he learned, both judicially and extrajudicially, concerning the disappearance of Isidro Caballero and María del Carmen Santana.

2.6. Lt. Col.(r) Diego Hernán Velandia Pastrana, Commander of Infantry Battalion No. 15 Santander at the time of these events, to describe for the Court the military operations he ordered in the San Alberto area at the time of the disappearance of Isidro Caballero and María del Carmen Santana, the circumstances surrounding the detention of these two citizens and the precise location of the victims at the present time.

2.7. Captain (r) Héctor Alirio Forero Quintero, Company Commander in Caldas Battalion, headquartered in Bucaramanga, Department of Santander, to describe for the Court the circumstances under which he was transferred to San Alberto, the operations he conducted on orders in that area, the circumstances surrounding the detention of Isidro Caballero, the precise location of the victims at the present time and his relationship to Norberto Báez Báez, Plácido Chacón, Gonzalo Arias and Gonzalo Pinzón.

2.8. Corporal Second Class (r) Norberto Báez Báez, noncommissioned officer with Caldas Battalion, headquartered in Bucaramanga at the time of these events, to describe for the Court his activities in the San Alberto area, the circumstances of the detention of Isidro Caballero and María del Carmen Santana and their precise location at the present time.

2.9. Noncommissioned Officer Plácido Chacón Hernández (no further information available) to describe for the Court the circumstances of the detention of Isidro Caballero and María del Carmen Santana and their location at the present time.

2.10. Gonzalo Arias Alturo, a resident of Bucaramanga, Department of Santander, at Calle 38 No. 60-71, Barrio Lagos II, to describe for the Court the circumstances of the detention of Isidro and María del Carmen and their precise location at the present time.

(d) Expert testimony: In the event that the Government of Colombia indicates the precise location where Isidro Caballero and María del Carmen Santana are buried, it is requested that an exhumation, by technical experts the Commission will supply, be conducted for purposes of verifying the identity of the victims.

VII. FINDINGS IN THE CASE

In the proceedings conducted by the Commission, the following facts have been substantiated and establish the Colombian Government's responsibility:

a) Isidro Caballero and María del Carmen Santana, accompanied by Javier Páez, traveled to the village of Guaduas in the municipality of San Alberto to help plan the "Meeting for Coexistence and Normalization" that was to be held a few days later in that place. Their

guide, Javier Páez, left them upon their arrival in Guaduas, promising to return for them. Upon his return he, too, was taken by the Army;

b) Isidro and María del Carmen were intercepted and detained by an Army Battalion dressed in camouflage suits;

c) Isidro and María del Carmen were taken away by the Army, to some unknown destination;

d) While in army custody, Isidro Caballero was dressed in the same camouflage suits worn by the soldiers;

e) Isidro and María del Carmen were taken to some unknown place, near a creek; while they were being held there by the army, Mr. Javier Páez was also detained when he returned to pick up Isidro and María del Carmen and learned of their presence when he overheard the soldiers mention that they had also detained Isidro and María del Carmen;

f) In spite of all of these confirmations, the army refused to tell the truth, denying that army personnel had detained Isidro Caballero and María del Carmen; it failed in its obligation to hand them over to the judicial authorities, which the regiment chief acknowledged was the army's duty;

g) The Army was the first and only source to reveal that Isidro Caballero and María del Carmen had been found dead along one of the roads in the area; this information was told to the witness Carmen Belén Aparicio who, on the day of these individuals were detained and disappeared, was visited at home by a Santander Battalion patrol to establish a link between her and Isidro and María del Carmen, saying that Isidro had said that he was on his way to buy some provisions for her.

h) That some time later, Gonzalo Arias Alturo acknowledged his role and that of certain other soldiers in the commission of these acts.

To the foregoing, which establishes the Colombian Government's objective responsibility for acts committed by its agents, must be added the direct responsibility borne by the Colombian Government itself by virtue of acts committed by its administration, involving negligence, complicity, improvidence, abetment, obstruction of justice, noncompliance with standards of international law or violation thereof, all of which the Commission shall duly demonstrate to the Court in the course of these proceedings.

VIII. COURT COSTS AND ATTORNEYS' FEES

In due course the Court will establish the court costs and attorneys' fees that the Government of the Republic of Colombia must pay to defray the expenses incurred in prosecuting the instant case. The attorneys who represent the victims in the instant case have informed the Commission that they will waive any individual fees and will donate the corresponding sums to certain nonprofit humanitarian organizations which shall be identified in due course.

IX. APPOINTMENT OF DELEGATES

The Commission is designating to the Court, as the delegate to act on its behalf and as its representative in the instant case, Dr. Leo Valladares Lanza, a member of the Commission. He shall be assisted by Dr. Edith Márquez Rodríguez, Executive Secretary of the Commission, and by an attorney with the Commission, Dr. Manuel Velasco Clark. Other delegates or advisers may eventually be designated.

X. DESIGNATION OF ADVISERS

The Commission's legal representatives shall be assisted by the following advisers: Dr. Gustavo Gallón Giraldo, Dr. María Consuelo del Río, Dr. Jorge Gómez Lizarazo, Dr. Juan E. Méndez and Dr. José Miguel Vivanco, who were co-petitioners in the instant case and are representing the relatives of the victims.

Given the foregoing, the Commission is requesting the members of the Court to admit, notify and process this petition and, in due course, declare it admissible, finding that the Colombian Government, by the actions of its agents or its own acts, has violated, in the case of Isidro Caballero and María del Carmen Santana, its duties to respect and guarantee the following rights:

1. The right to personal liberty, recognized in Article 7 of the Convention, in relation to Article 1.1 thereof;

2. The right to humane treatment recognized in Article 5 of the Convention, in relation to Article 1.1 thereof;

3. The right to life recognized in Article 4 of the Convention, in relation to Article 1.1 thereof;

4. The right to a fair trial, recognized in Article 8 of the Convention, in relation to Article 1.1 thereof;

5. The right to a judicial protection, recognized in Article 25 of the Convention, in relation to Article 1.1 thereof;

6. The State's duty to adopt domestic legal provisions, as recognized in Article 2 of the Convention.

7. The obligation to comply with the Commission's recommendations in good faith, recognized in Article 51.2, in relation to Article 29.c of the Convention.

Finally, the Commission is petitioning the Court to declare that the Government of Colombia must pay fair compensation to the victims' next-of-kin, which compensation shall be fixed by the Court in the process of executing the judgment.

Washington, D.C., December 21, 1992

them on February 7, 1989. The witness stated that upon reaching the village at the appointed time, he was seized by army personnel, who asked him whether he knew Isidro Caballero; when the witness answered that he did, they accused him of being a guerrilla, tortured him, and then released him. During his captivity, he heard the military patrol contact Morrinson Base to request instructions as to what to do with the two guerrillas they had captured and to report that they had captured a third. Javier Páez knew one of his abductors, whom he identified as Luis Gonzalo Pinzón Fontecha.

Because of these statements and others he made to the Office of the Prosecutor, Javier Páez was threatened and had to leave the San Alberto vicinity.

On March 18, 1989, the examining judge took testimony from Elida González, who had been detained by the army the same day and in the same village as Isidro Caballero and María del Carmen Santana, as she was en route to her mother's home. The witness stated that Isidro Caballero Delgado, whom she identified in a photograph, was dressed in a military camouflage suit and had a young woman with him.

That same day, March 18, María Nodelia Parra, acting through her attorney, filed the petition seeking to become a civilian party to the legal proceedings.

On March 22, 1989, the newspaper *Vanguardia Liberal* carried an item titled "Marauding Soldiers Captured" which reported that Captain Héctor Forero Quintero, Corporal Second Class Norberto Báez Báez and enlisted men Gonzalo Pinzón Fontecha and Gonzalo Arias, with the Francisco José de Caldas Army Battalion, were captured in the municipality of El Copey, in the Department of Cesar, after they held up a number of motels and gasoline stations and stole several vehicles. They were brought before the First Public Order Judge of Valledupar.

In a line-up on June 12, 1989, Javier Páez identified Luis Gonzalo Pinzón Fontecha as one of the individuals in the patrol that had arrested him and that had taken Isidro Caballero Delgado the day before. This procedure was conducted by the Second Criminal Examining Magistrate at the Valledupar gaol where Pinzón Fontecha was being held on orders from the First Public Order Judge. Two days later, the Examining Judge referred the case for assignment to a Valledupar public order judge with the result that the Second Judge received the case.

Even though by March 17 there were already legal grounds to order that proceedings or an investigation be instituted as there were known suspects, it was not until August 1, 1989 that the Second Public Order Judge instituted proceedings and, with that, launched the corresponding investigation. Under questioning on August 3, 1989, Luis Gonzalo Pinzón Fontecha was linked to the case and on August 8 the judge issued the warrant to have Pinzón Fontecha arrested.

On August 22, 1989, via Communication No. 989, the First Public Order Judge informed the Second Judge that besides Luis Gonzalo Pinzón Fontecha, Captain Héctor Forero Quintero, Corporal Second Class Norberto Báez Báez and enlisted man Gonzalo Arias Altura were also captured. Under questioning they, too, were linked to the case; the Second Public Order Judge ordered that Héctor Forero Quintero and Gonzalo Arias Altura be held in custody, but not Norberto Báez Báez.

On January 31, 1990, the attorney for Captain Héctor Alirio Forero Quintero requested nullification of the arrest warrant, a request denied by the Second Public Order Judge. The attorney then appealed that decision with the First Public Order Judge, who nullified the arrest warrant in a ruling of May 8, 1990, and ordered the immediate release of Captain Héctor Forero Quintero.

APPENDIX XII

STATUS OF RATIFICATIONS AND ADHERENCES

AMERICAN CONVENTION ON HUMAN RIGHTS
"PACT OF SAN JOSE, COSTA RICA"

Signed at San José, Costa Rica, on November 22, 1969,
at the Inter-American Specialized Conference on Human Rights

ENTRY INTO FORCE: 18 July 1978, in accordance with Article 74.2 of the Convention.

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications).

TEXT: OAS Treaty Series, No. 36.

UN REGISTRATION: 27 August 1979, No. 17955.

Signatory Countries	Date of Signature	Date of Deposit of Instrument of Ratification or Adherence	Date of Acceptance of the Jurisdiction of the Court
Argentina	02/II/84	05/IX/84	05/IX/84
Barbados	20/VI/78	05/XI/81	
Bolivia		19/VII/79	
Brazil		25/IX/92	
Chile	22/XI/69	21/VIII/90	21/VIII/90
Colombia	22/XI/69	31/VII/73	21/VI/85
Costa Rica	22/XI/69	08/IV/70	02/VII/80
Dominican Rep.	07/IX/77	19/IV/78	
Ecuador	22/XI/69	28/XII/77	24/VII/84
El Salvador	22/XI/69	23/VI/78	
Grenada	14/VII/78	18/VII/78	
Guatemala	22/XI/69	25/V/78	09/III/87
Haiti		27/IX/77	
Honduras	22/XI/69	08/IX/77	09/IX/81
Jamaica	16/IX/77	07/VIII/78	
Mexico		24/XI/81	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panama	22/XI/69	22/VI/78	9/V/90
Paraguay	22/XI/69	24/VIII/89	*
Peru	27/VII/77	28/VII/78	21/I/81
Suriname		12/XI/87	12/XI/87
Trinidad y Tobago		29/V/91	29/V/91
United States	01/VI/77		
Uruguay	22/XI/69	19/IV/85	19/IV/85
Venezuela	22/XI/69	09/VIII/77	24/VI/81

* After the period covered by this report, on March 26, 1993, Paraguay ratified the competence of the Court.

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

Signed at San Salvador, El Salvador, on November 17, 1988,
at the Eighteenth Regular Session of the General Assembly

ENTRY INTO FORCE: When eleven States have deposited their respective instruments of ratification or accession.

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications).

TEXT: OAS Treaty Series, No. 69.

UN REGISTRATION:

Signatory Countries	Date of Signature	Date of Deposit of Instrument of Ratification or Adherence
Argentina	17/XI/88	
Bolivia	17/XI/88	
Costa Rica	17/XI/88	
Dominican Republic	17/XI/88	
Ecuador	17/XI/88	*
El Salvador	17/XI/88	
Guatemala	17/XI/88	
Haiti	17/XI/88	
Mexico	17/XI/88	
Nicaragua	17/XI/88	
Panama	17/XI/88	**
Paraguay	17/XI/88	
Peru	17/XI/88	
Suriname		10/VII/90
Uruguay	17/XI/88	
Venezuela	27/I/89	

* After the period covered by this report, on March 25, 1993, Ecuador deposited the Instrument of Ratification.

** After the period covered by this report, on February 18, 1993, Panama deposited the Instrument of Ratification.

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH DEATH PENALTY

Signed at Asunción, Paraguay, on June 9, 1990,
at the Twentieth Regular Session of the
General Assembly

ENTRY INTO FORCE: For the States which ratify or adhere to it, upon the deposit of the respective instrument of ratification or accession.

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications.)

TEXT: OAS, Treaty Series, No. 73

UN REGISTRATION:

Signatory Countries	Date of Signature	Date of Deposit of Instrument of Ratification or Adherence
Costa Rica	28/X/91	
Ecuador	27/VIII/90	
Nicaragua	30/VIII/90	
Panama	26/XI/90	28/VIII/91
Uruguay	02/X/90	
Venezuela	25/IX/90	

2.4. Action taken by the Attorney-Delegate for the Military Forces

At the request of the regional human rights committees, the Attorney-Delegate for the Military Forces, Dr. Manuel Salvador Betancur, traveled by helicopter to the region on February 17. For "reasons of security", as reported, he landed in the community of Aguachica and from there went overland to San Alberto; before doing so, however, he telephoned Col. Velandia, the Commander of Santander Battalion at Morrinson Base in the District of El Líbano, to announce that he would shortly be arriving at the base in search of Isidro Caballero; as the petitioners observed, he thereby gave the Commander advance notice, which allowed him sufficient time to either hide or transfer the prisoners.

During the conversation between the Attorney-Delegate and the Commander of Santander Battalion, according to teachers and members of human rights committees who were present, Col. Velandia said that he was a law-abiding citizen and that had he taken anyone into custody, he would have turned that individual over to the proper authorities. The Attorney-Delegate then conducted his "search" of the military base and left for Bogota. According to reports, he did not agree to the teachers' request that he go to the village of Guaduas to question the witnesses. He made no record of the visit, arguing that it had been very informal. He told the teachers that the colonel had promised to spare no effort in his search for Isidro.

2.5. The replies from the Commanders

Through Communication 001296-BR-5-CDO-928 dated February 27, 1989, General Vacca Perilla, Commander of the Fifth Brigade, denied having held Isidro and María del Carmen in custody and reported that in view of the charges, a decision had been made to launch an investigation through Military Criminal Examining Magistrate 26, seated in Ocaña.

According to reports, in his reply of March 4, 1989 (Communication 476-BR-5-COBISAN-789), Col. Velandia was even more emphatic in denying these facts. To prove his point that the disappeared were not at Morrinson Base, Col. Velandia made allusion to the visit made there by the Attorney-Delegate for the Military Forces; he denied that there were any orders for operations "either fragmentary or nonfragmentary, since the Camp's sole purpose was to conduct the daily checks and early morning reconnaissance missions on orders from the Base Commander, for which no operation orders are required as it is the battalion's sole function." He supplied the names of the 32 soldiers attached to the El Líbano Camp and also reported that other individuals -all of them farm managers had disappeared in San Alberto and that they were "taken at various farms by uniformed individuals claiming to be soldiers, carrying long and short weapons and who said, as they took the disappeared away, that they could be claimed the next day at Morrinson Base." To corroborate this, he attached a copy of a complaint to that effect filed at the Office of the Municipal Inspection by Sgt. Major José Serafín Orejuela Cañizales. He also informed the Attorney that as a result of the disappearances of Isidro and María del Carmen, "I have been the target of every conceivable type of threat and psychological coercion, through countless letters and telegrams written in English and in other languages"; he was no doubt referring to the letters from humanitarian organizations around the world, imploring that the life and personal integrity of the disappeared be respected.

2.6. Overtures with the Office of the Deputy Attorney General of the Nation

The human rights committees also made overtures to the Office of the Deputy Attorney General of the Nation. As a result, on March 1, 1989, the Deputy Attorney General, Dr. Omar Henry Velazco,

THE ORGANIZATION OF AMERICAN STATES

The purposes of the Organization of American States (OAS) are to strengthen the peace and security of the Hemisphere; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states; to provide for common action on the part of those states in the event of aggression; to seek the solution of political, juridical, and economic problems that may arise among them; and to promote, by cooperative action, their economic, social, and cultural development.

To achieve these objectives, the OAS acts through the General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the three Councils (the Permanent Council, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science, and Culture); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the Specialized Conferences; and the Specialized Organizations.

The General Assembly holds regular sessions once a year and special sessions when circumstances warrant. The Meeting of Consultation is convened to consider urgent matters of common interest and to serve as Organ of Consultation in the application of the Inter-American Treaty of Reciprocal Assistance (known as the Rio Treaty), which is the main instrument for joint action in the event of aggression. The Permanent Council takes cognizance of matters referred to it by the General Assembly or the Meeting of Consultation and carries out the decisions of both when their implementation has not been assigned to any other body; monitors the maintenance of friendly relations among the member states and the observance of the standards governing General Secretariat operations; and, in certain instances specified in the Charter of the Organization, acts provisionally as Organ of Consultation under the Rio Treaty. The other two Councils, each of which has a Permanent Executive Committee, organize inter-American action in their areas and hold regular meetings once a year. The General Secretariat is the central, permanent organ of the OAS. The headquarters of both the Permanent Council and the General Secretariat is in Washington, D.C.

The Organization of American States is the oldest regional society of nations in the world, dating back to the First International Conference of American States, held in Washington, D.C., which on April 14, 1890, established the International Union of American Republics. When the United Nations was established, the OAS joined it as a regional organization. Its Charter was signed in Bogota in 1948 and entered into force on December 13, 1951. It was amended by the Protocol of Buenos Aires signed in 1967 and in force since February 27, 1970. It was later amended by the Protocol of Cartagena de Indias signed in 1985 and in force since November 16, 1988. Today the OAS has thirty-three member states.

MEMBER STATES: Antigua and Barbuda, Argentina, The Bahamas (Commonwealth of), Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.