WRITTEN OBSERVATIONS REGARDING THE REQUEST FOR AN ADVISORY OPINION FILED BY THE ARGENTINE STATE

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1. LEGAL PERSONALITY

The "*Asociación por los Derechos Civiles*" (Association for Civil Rights - ADC) is a non-profit organization, the purpose of which is to promote people's fundamental rights in those situations in which the same may be threatened, as well as the defense of the basic rights of all persons through the legal mechanisms provided for in the constitutional system, by means of actions within the administrative or the judicial scope (in accordance with to the copy of the Association's bylaws which are attached hereto as Annex C).

2. PURPOSE OF THIS PRESENTATION

Through its website, the Inter-American Court of Human Rights (hereinafter referred to as the IACHR or "the Court"), released the request for an advisory opinion submitted by the Argentine State on August 14, 2008. Said request refers to two issues regarding the Court composition in adversarial cases it has to adjudicate when said cases are originated by individual petitions filed before the Inter-American System of Protection of Human

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Rights (hereinafter referred to also as "IASPHR"). The first issue submitted for an opinion refers to the interpretation which has to be given to Article 55 of the American Convention on Human Rights (hereinafter referred to as ACHR or the "American Convention"), particularly as to the intervention of judges appointed *ad hoc* by the State Party to the case. The second issue relates to the intervention of full incumbent judges of the IACHR who are nationals of the State Party to the case.

The arguments state that both forms of intervention violate procedural rights of the person, groups of persons or organizations which litigate before the Court against the States, and further request a Court a decision so showing.

In response to the invitation made by the Court for the presentation of written observations regarding the request filed by the Argentine State, the following sections provide an analysis and observations regarding the arguments submitted by said State.

3. OBSERVATIONS TO THE ARGUMENTS PRESENTED BY THE ARGENTINE STATE

3.I. The problem derived from the intervention of *ad hoc* judges of the State Party in adversarial cases arising from an individual petition.

3.I.a) Argument submitted by the Argentine State

The first argument presented by the Argentine State refers to the meaning which has to be given to Article 55(3) of the American Convention. Particularly, the State notices that the "continuous and unaltered practice to date reveals that, historically, it has accepted that if none of the judges who compose the Court is a national of the defendant State in a case submitted to it, the State would have the right to appoint an *ad hoc* judge to act on an equal footing with the permanent judges..." The State further emphasizes that said practice has been applied in all circumstances, "that is, irrespective of whether an application arises from an individual petition timely filed by a person, a group of persons or a non-governmental organization (...) or from an inter-State petition."

Thus, considering that the Court normally invites the States to appoint *ad hoc* judges even in cases arising from an individual petition, the request made by the Argentine State

suggests the revision of that position and the clarification of the scope of the provision in issue, restricting the possibility of the States to appoint *ad hoc* judges only for those cases originated in complaints filed by other States.

In order to substantiate the grounds of its request, the Argentine State develops two arguments. On the one hand, it states that the solution claimed derives from the correct interpretation of Article 55 of the Convention. On the other hand, it argues that in adversarial cases not between States but between a State and a petitioner before the system, the intervention of an *ad hoc* judge appointed by the State Party to the case violates the principle of equality of arms. The main argument on which this position is based states that in case of appointing an *ad hoc* judge, only the State would have a judge specifically appointed for the case before the court, as neither the petitioners nor the Inter-American Commission have that privilege.

3.I. b) Decisions rendered by ad hoc judges in the history of the IACHR.

As a first approach to the matter, it is important to notice that the intervention of *ad hoc* judges in the history of the IACHR shows a tendency which, at least, does not confirm the prejudice fears that the Argentine State reasonably argues. This speaks specially well of those who have acted as *ad hoc* judges to date. In 46 adversarial cases heard by the IACHR until November, 2008 -of a total of 101-, *ad hoc* judges appointed by the defendant State participated (until the rendering of the judgment on the merits).[1] Of those 46 cases, only in two did the *ad hoc* judges issue a totally dissenting opinion with respect to the conviction imposed by the Court upon the State (in all the operative paragraphs which led to a conviction of the State which appointed them)[2], while in 11 of them, they

[1] In four occasions, the appointed *ad hoc* judges did not sign the judgment on the merits. Thus, in the case of "*Cesti v. Peru*", the *ad hoc* judges appointed by the State presented their resignations on grounds of incompatibility; in the case of "*Baena Ricardo et al v. Panama*", the IACHR decided that the *ad hoc* judge designated by the State did not qualify to exercise that position; in the case of "*Massacres of Ituango v. Colombia*", the appointed *ad hoc* judge could not participate in the deliberation for reasons of force majeure; and in the Case of "*Garcia Prieto et al v. El Salvador*" the appointed *ad hoc* judge resigned on grounds of force majeure.

[2] Case of the "*Serrano-Cruz Sisters v. El Salvador*", in the judgments on Preliminary Objections and on the Merits; dissenting opinion in all operative paragraphs which implied a conviction upon the State; and Case of "*Yatama v. Nicaragua*", in the judgment on Preliminary Objections, Merits, Reparations and Costs, dissenting opinion in all operative paragraphs which implied a conviction upon the State.

issued a partially dissenting opinion with respect to the majority vote (in favor of the State which appointed them).[3] Thus, in those 46 cases, a total amount of 84 decisions were issued against the interests of the State (including decisions on preliminary objections, on the merits, reparations, costs and interpretation judgments as to the scope of the ruling). In 80.9% of these decisions against the State Party to the case, the *ad hoc* members of the court issued a concurring opinion, in agreement with the majority (although in many cases through individual separate opinions).[4] In one case it was even observed that the *ad hoc* judge surprisingly issued a dissenting opinion with respect to the majority, not in favor but against the State which had appointed him.[5] On the other hand, it is worth mentioning that an important number of dissenting opinions between the *ad hoc* judges and the majority in decisions against the interests of the State Party were related to compensatory amounts imposed in the conviction.[6]

[3] Case of "*Neira Alegría et al v. Peru*", in the judgments on Preliminary Objections and Reparations and Costs; Case of "*Panel- Blanca v. Guatemala*", in the judgment on Preliminary Objections; Case of "*Cantoral Benavides v. Peru*", in the judgments on Preliminary Objections and on the Merits; Case of "*Castillo-Petruzzi v. Peru*", in the judgments on Preliminary Objections and on the Merits; Case of "*Durand and Ugarte v. Peru*", in the judgment on Preliminary Objections; Case of "*Mayagna (Sumo) Awas Tingni Community v. Nicaragua*", in the judgment on the Merits; Case of "*Myrna Mack Chang v. Guatemala*", in the judgments on the Merits, Reparations and Costs, in the operative paragraphs referring to compensatory amounts; Case of "*Maritza Urrutia v. Guatemala*", in the judgments on the Merits, Reparations and Costs, in the operative paragraphs referring to compensatory amounts; Case of "*Indigenous Community Yakye Axa v. Paraguay*", in the judgments on the Merits, Reparations and Costs; Case of "*Garcia-Asto and Ramírez-Rojas v. Peru*", in the judgments on Preliminary Objections, on the Merits, Reparations and Costs; and Case of "*Salvador Chiriboga v. Ecuador*", in the judgment on the Preliminary Objection and on the Merits.

[4] In 68 of a total of 84 decisions against the interests of the State Party, the *ad hoc* judges issued an opinion in agreement with the majority.

[5] That was the Case of "*Gangaram Panday v. Surinam*", where the State Party appointed Antônio A. Cançado Trindade as *ad hoc* judge, who, in the judgment on the merits, issued a concurring opinion in five of the six operative paragraphs of the decision which convicted the State. He issued a dissenting vote (along with judges Sonia Picado-Sotela and Asdrúbal Aguiar-Aranguren) regarding operative paragraph three of the judgment, in which the responsibility of the respondent government was dismissed for the violation of the right to life of Mr. Asok Gangaram-Panday. The *ad hoc* judge understood that if the responsibility of the respondent government was established for the illegal detention of Mr. Gangaram Panday, it was necessary to accept the consequences said ascertainment entailed regarding the protection of the victim´s right to life.

[6] The detail of the *ad hoc* judges opinions is specified on a case-by-case basis and by type of decision in the chart attached hereto as Annex I.

However, despite of the evidence shown on how a great majority of the *ad hoc* judges have so far played their role, there are important reasons for their intervention to cease in cases of non inter-State conflicts to be adjudicated by the Inter-American Court of Human Rights.

Said reasons are analyzed in the following sections. First, the arguments usually presented to justify the participation of *ad hoc* judges shall be contested. Then, the reasons which show that the Court practice should change so as not to allow the intervention of *ad hoc* judges in adversarial cases filed by individual petitioners before the IASPHR shall be presented.

3. I. c) The need for the international court to be representative does not justify the intervention of ad hoc judges in adversarial cases arising from an individual petition before the IASPHR.

A common interest at the moment of establishing any international court lies in the configuration of a structure or mechanisms which allow that all the States under its jurisdiction –the interests of which are compromised in its decisions- consider that international court to be legitimate and see its members as independent and unbiased when adjudicating justice. One of the means, rather the means by excellence through which it is attempted to achieve those goals, consists in assuring that the members of the court are diverse enough and representative of all the countries and regions over which it has jurisdiction.[7]

This is the solution shown in the structure and organization of the European Court of Human Rights. Said court consists of 46 judges, one by each of the States which have ratified the European Convention on Human Rights and Fundamental Freedoms.[8] This

[7] See Centre for International Courts and Tribunals (University College London), "Selecting International Judges: Principle, Process and Politics", Discussion Paper, available at http://www.ucl.ac.uk/laws/cict/docs/Selecting Int Judges.pdf (last visit, November 28, 2008), p. 37.

[8] Although in the European Court there must not necessarily be a judge national of each State, there must be one judge proposed by each of them. Thus, pursuant to Article 22(1) of the European Convention, "[t]he judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party."

way, although the judges shall sit on the Court in their individual capacity and not in representation of the States which propose them[9], as they are designated through the proposal of each State Party, the composition of the court as a whole guarantees legitimacy to each State Party through the representativeness of its members. On the other hand, even though the European Court is divided into five Chambers with jurisdiction to hear cases in an autonomous way, the mechanisms provided for in the Court Rules of Procedure guarantee that in all cases the composition of the Section[10] shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties.[11]

On the other hand, the Chamber of the European Court under which jurisdiction the proceedings are developed must be composed of a judge who is a national of the State Party concerned. When ruling over an issue, both the President of the Section and the judge elected to represent the State Party concerned, that is to say, the judge proposed by that State, must necessarily be members of the Chamber. Thus, should the judge of the European Court elected to represent the State Party concerned not be a member of the competent Section, he shall do so *ex officio* for the case.[12]

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[9] Article 21(2) of the European Convention on Human Rights and Fundamental Freedoms.

[10] Although the Convention makes no reference to Sections but to Chambers, Rule 25(1) of the Court's Rules of Procedure organizes each Chamber in a Section. The plenary Court must create at least four Sections, based on a proposal by the President of the Court and for three years. In order to create a new Section, the President must make a proposal to the plenary Court and it shall decide on the matter. Even though the Rules of Procedure do not set forth a fixed number of judges who must compose a Section, the Convention sets forth that each Chamber shall be composed of seven judges.

[11] Rule 25(2) of the European Court Rules of Procedure.

[12] Article 27(2) of the Convention sets forth that "[t]here shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge." Furthermore, Rule 24(2)(b) of the Rules of Court sets forth that "[t]he judge elected in respect of the Contracting Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an *ex officio* member of the Grand Chamber in accordance with Article 27 §§ 2 and 3 of the Convention."
On the other hand, in order to avoid the smallest fear of impartiality in the Court intervention –pursuant to Rule 13 of the Rules of Procedure- Judges of the Court may not preside in cases in which the Contracting Party of which they are nationals or in respect of which they were elected is a party.
Finally, with the same purpose, Article 27(3) of the Convention states that "[t]he Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned." The same consideration is included in Rule 24(2)(d) of the Court's Rules of Procedure.

Thus, in order for the States under the jurisdiction of the European Court to trust that the judgments shall be rendered in an unbiased manner, the solution was to include a judge designated by each one of the States (and the necessary inclusion of the judge proposed by the State Party in each particular case to be adjudicated).[13]

The settling of the IACHR has not followed that model. This Court is much more modest at budgetary level, it does not operate as a permanent Court and it is composed only of seven judges. Consequently, it is impossible for all the countries under its jurisdiction to have a national judge sitting thereat. In this context, it is reasonable to think that the appointment system of *ad hoc* judges attempts to function as a safeguard of the Court legitimacy, under the premise that the representativeness of the States Parties to a conflict must be guaranteed in every case in particular.

Therefore, the intervention of the *ad hoc* judge would seek to guarantee that the Court incorporates a necessary look for the thorough understanding of the constitutional practice of each State Party to a lawsuit, of its legal system in general and of the specific aspects relevant to the understanding of the factual substance of the case.

Consequently, it could be argued that a court totally composed of judges of different nationalities than that of the State Party to the adversarial case to be adjudicated would generate prejudice suspicions against said State. Pursuant to this rationale, preventing the designation of *ad hoc* judges in cases in which the Court is not composed of judges who are nationals of the State Party to the lawsuit, could lead to the objection against the

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However, Rule 24(5)(c) of those same Rules states that [n]o judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request may be a member of the panel when it examines that request."

[13] The possibility that the State Party concerned appoints an *ad hoc* judge is provided for only in those cases where the judge indicated by the State Party is not able to attend for any reason, in the event of any of the grounds for disqualification, or when there is not such a judge. In those circumstances, according to Rule 29(1)(a) of the Court's Rules of Procedure, the President of the Chamber shall invite that Party to indicate within thirty days whether it wishes to appoint to sit as judge either another elected judge or an *ad hoc* judge. The same Rule sets forth that an *ad hoc* judge shall have the qualifications required for any other judge of the Court. Should the Contracting Party appoint two persons who do not comply with those requirements, that would amount to a waiver.

Court decisions on the part of the convicted States Parties, as the judgments would derive from subjective interpretations of foreign judges who are not aware of the reality of the State being tried.[14] As this kind of reactions would weaken the system - the argument could continue- it is necessary to allow the designation of *ad hoc* judges so as to avoid those tendencies. Pursuant to these ideas, the possibility that a judge appointed by the State under the jurisdiction of the Court takes part in the case could provide greater legitimacy to the Court decisions and more stability to the operation of the system in general, thus contributing with more States submitting to the Court jurisdiction for adversarial cases.[15]

Fernando Vidal-Ramírez presented a defense of the *ad hoc* judges before the Inter-American Court following that approach. The author mentioned "arguments which justify the *ad hoc* judge institution as their integration to the Court is based on their individual capacity and without representing the State Party which has proposed them; furthermore, said integration is justified by the fact that not all the States Parties to the ASO have a judge in the Court, as it is the case of the European Court, where there is one judge for each State Party..."[16]

Now, it is true that these arguments lead to the need that the Court be legitimate and for its organization and structure seek the highest possible level of representativeness regarding not only the States but also the population groups with respect to which it renders decisions. However, they do not necessarily lead to the institution of the *ad hoc* judges. In a duly instituted court for human rights protection whose members are renown experts, unbiased and independent, there would be no reasons to deny the intervention of

[14] Considerations in this sense have been mentioned as possible arguments in favor of the intervention of *ad hoc* judges by Sergio García-Ramírez, "La Jurisdicción Interamericana sobre Derechos Humanos" [The Inter-American Jurisdiction on Human Rights], in *Estudios Jurídicos, Universidad Nacional Autónoma de México*, Mexico, 2000, p. 300.

[15] In this sense, Erik Voeten, "The Politics of International Judicial Appointments", 2008, available at SSRN: http://ssrn.com/abstract=1266427 (last visit: November 28, 2008) pp. 13/14.

[16] Fernando Vidal-Ramírez, "*La Judicatura ad hoc*" ["The *ad hoc* judges"], in (Inter-American Court of Human Rights). The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century. Seminar Memory, November, 1999, Volume I, San Jose, 2003, p. 593.

a judge specifically appointed by the government in office of the State Party for each case to be adjudicated.

Thus, the search to guarantee that the court is composed of *ad hoc* judges who contribute with a perspective oriented to the understanding of the reality of the country brought to trial does not take into account the already existing different mechanisms aimed to guarantee both the suitability of the judges and their independence to render neutral decisions. Therefore, if the States have agreed to submit to the jurisdiction of a human rights protection court created within the scope of the ASO, that is so because they consider that said court –its members- shall have the necessary knowledge on the applicable law and the capacity to make a reasonable reading of the facts being examined in each case it shall hear, regardless of the respondent government. Additionally, the provisions set forth in order to appoint only "jurists elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights"[17] gain relevance, as well as the guidelines which prevent the participation of those judges who could show incompatibilities on a case-by-case basis or who could be placed in any position which may create a reasonable fear of prejudice in the decision making process.[18]

If the judges of the IACHR have been designated according to a proceeding which purpose is to have a court composed of suitable, independent and unbiased persons, and if there are no specific reasons which lead to believe that each case shall be tried in a prejudiced way, then there are no reasons for each State Party to need the intervention – as a judge of the Court for the case- of a new person appointed by its authorities. Furthermore, a practice as the one herein rejected dramatically undermines the authority of the court that allows it. Is it by any chance possible to think that without the intervention of *ad hoc* judges the IACHR would no longer be an unbiased court? The absurdity of this hypothesis reflects the inappropriateness of the arguments which substantiate such a practice.

[17] Article 52(1) of the American Convention on Human Rights
[18] See Article 19 of the IACHR Rules of Procedure.

So, the formulation presented by Vidal-Ramírez in the sense that the designation of *ad hoc* judges is justified because not all the members of the ASO have a national in the court does not seem to hit the nail on the head. Certainly, the underlying concern regarding the decision of appointing *ad hoc* judges is justified and must be addressed, but the most appropriate answer is quite far from the State appointment of an *ad hoc* judge. The need to include the necessary perspective so that judges become acquainted with the specific realities of each country in the court's deliberations when rendering decisions that affect their interests is satisfied with the intervention of the expert witnesses[19] and the representatives designated by the parties - specifically the State agent.[20]

3.I.d) Rejection of the defense of intervention of ad hoc judges based on their "irrelevance"

Another argument presented in favor of maintaining the possibility that in cases arising from an individual petition the States may appoint *ad hoc* judges is based on the irrelevance of said judges. Pursuant to this approach, as the *ad hoc* judge has only one vote among the other judges, his/her intervention does not imply any advantages for the State Party.[21]

It is clear that the above mentioned rationale fails and must be rejected. First of all, this argument would lead to the absurd conclusion that the presence of every judge in every court is irrelevant, as their individual votes do not define the decision of the court he/she

[19] Their intervention during the debate is regulated in Articles 33(1) and 42(2) of the IACHR Rules of Procedure.

[20] This was already observed by Héctor Fernández-Ledesma, "*La independencia e imparcialidad de los miembros de la Comisión y de la Corte: paradojas y desafíos*" [The independence and impartiality of the members of the Commission and the Court: paradoxes and challenges], in (Juan E. Méndez and Francisco Cox, editors) *El futuro del Sistema Interamericano de Protección de los Derechos Humanos* [The future of the Inter-American System of Protection of Human Rights], IIDH, San José, 1998, p. 196.
Should the participation of these legal operators not be considered sufficient, the possibility that the States could appoint "*ad hoc* prosecutors" could be considered. These prosecutors could be part of the court in every session and deliberation but participating only with their voice, without voting. Through the formulation of non-binding opinions, the "*ad hoc* prosecutor" would guarantee every State that the Court judges take into account those specificities the court incumbent judges may not be familiar with in all of their dimensions, but without this unbalancing the necessary numbers for the institution of majorities within the body.

[21] Fernando Vidal-Ramírez, quoted in footnote 16, p. 594.

is a part of. The fact that the courts make their decisions by a majority of votes by no means can lead to affirm that the individual presence of each one of the judges is irrelevant for the rendering of judgments. Majorities are formed by the individual votes of each one of the judges. And not only their votes, but also their argumentative capacity to align with the opinions of the remaining judges according to their own solution is part of the art each judge develops in court.

On the other hand, the defense herein referred to can be perfectly overturned to reject the intervention of *ad hoc* judges: if their intervention in the Court is really irrelevant, why allow it if it can generate a grounded fear of impartiality and may attempt against the reputation of independence every court of justice must preserve?

3.I.e) Rejection of the defense of intervention of ad hoc judges based on the fact that their position is the same as the Court's full incumbent judges.

A new defense in favor of the participation of *ad hoc* judges in proceedings rising from an individual petition is based on the fact that the difficulties they have to detach themselves from the inclinations related to their national origin are also undergone by the Court's incumbent judges who happen to be nationals of the State Party to the case.

Thus, Vidal-Ramírez states that the presence of *ad hoc* judges in the court "does not affect the strictness with which the proceedings have to be conducted, as the same advantage could occur with an incumbent judge who is a national of the respondent government and who has been hearing the case."[22]

This argument is similar to the position of Argentina in the request for an advisory opinion herein analyzed as it identifies the same problem in the activity of *ad hoc* judges and the intervention of the Court's incumbent judges who are nationals of the concerned State Party. Although it may seem convincing, it must also be rejected. The IACHR incumbent judges are chosen by the ASO through a system in which all the States under the Court's jurisdiction participate. Though said system may and can be improved,[23] the

[22] Vidal-Ramírez, quoted in footnote 16, p. 594.
[23] See section 3.II.d) of this presentation.

fact of having gone through that appointment process places the incumbent judges in a very different position with respect to that of the *ad hoc* judges. *Ad hoc* judges are appointed at the exclusive request of the State Party before the IACHR to hear in only one case. Their position differs from that of the court judges who are nationals of the State Party. If the *ad hoc* judge performs in the country by which he/she has been appointed, whatever the means in which he/she develops his/her professional life, it is evident that the immediate conditions of his/her professional career may be subject to variations according to what he/she decides. His/her incentives for decision making in the court may somehow be related to the decision the State authorities which have appointed the *ad hoc* judge may prefer. It is true that this may also happen with the Court's incumbent judges[24], but certainly to a much smaller extent. They remain in their offices for a remarkably longer period (six years, renewable one time); their appointment and removal does not depend of one single and easily identifiable authority, and as we have already pointed out, they respond to the ASO instead of responding to a single State.

3.I.f) The intervention of ad hoc judges is not surrounded by organic guarantees which ensure their independence.

On the other hand, with respect to *ad hoc* judges, there is no organic guarantee which abates the fear of prejudice or dependence regarding the State which appointed them. On the contrary, although the honorability of those appointed as *ad hoc* judges is not at issue (which is confirmed by the statistics referred to in Annex A), and although any incompatibility for the performance as *ad hoc* judge can be observed by the IACHR (and the appointed person can be prevented from acting in that capacity), there are structural reasons which may lead to doubt on the capacity of the people so appointed to become detached from inclinations or tendencies which may affect their objectivity during the performance of the jurisdictional functions. *Ad hoc* judges are directly appointed by the government of the State Party to the case in which they act. Thus, although they do not often do so, the governments are in a position which allows them to appoint as *ad hoc* judges people who are to decide pursuant to the State will. At the same time, although it

[24] See section 3.II.c) of this presentation.

does not happen often, *ad hoc* judges can notice -when rendering judgments- which consequences their decisions may have for the State authorities which have appointed them. These conditions have lead *ad hoc* judges to be called "dependent judges."[25]

The matter has been well explained by Faúndez-Ledesma. In his words, "although the elected person is normally unquestionable, and although in fact *ad hoc* judges may decide against the interests of the party which has appointed them, the origin of such an *ad hoc* judge -directly designated by a concerned State- may challenge his evenness and independence regarding one of the parties to the lawsuit..."[26]

3.I.g) The intervention of ad hoc judges violates the principle of equality of arms.

Additionally to what has already been stated, which by itself tears down the arguments exposed in favor of *ad hoc* judges, the mere fact of the State having the possibility of appointing a judge without the other party (the victim) being able to do so affects the procedural balance between both parties. The participation of *ad hoc* judges as part of the IACHR appointed by the States Parties for the settlement of adversarial cases entails the violation of the rights of non-State parties, which do not have that same possibility.

Article 8 of the American Convention protects the right of every person to a fair trial. Consequently, that must be applied equally to everyone without discrimination. These provisions regulate what has been called due process of law, that is to say, guidelines which must be fulfilled so that every trial can be considered fair. Although these rules are oriented to set the conditions the States must comply with in their domestic systems of justice administration (and many of them are specifically applicable in cases heard by the criminal justice system), they may also result useful for enlightening the discussion analyzed herein.

In advisory opinion OC-16/99, the opinion of the IACHR was that for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively

[25] Erik Voeten, "The Politics of International Judicial Appointments", 2008, available in SSRN: http://ssrn.com/abstract=1266427 (last visit: November 28, 2008), p. 13.
[26] Faúndez-Ledesma, quoted in footnote 20, pp. 196/197.

and in full procedural equality with other defendants. It is important to recall that the judicial process is a means to ensure, insofar as possible, an equitable resolution of a difference."[27]

On the other hand, in its concurring opinion for advisory opinion OC-18/03, within the context of a discussion regarding labor rights for migrant workers, judge García-Ramírez stated that "[d]ue process, for the purpose that interests us in OC-18/2003, entails, on the one hand, the greatest equality – balance, "equality of weapons" – between the litigants."[28]

Even though these statements were made within a very different factual context than that of the *ad hoc* judges intervention in adversarial cases arising from individual petitions before the IACHR jurisdiction, they can be taken as a valuable reference so as to assess their compatibility with the principles of justice administration fixed by the Court's case law. Of course that if one of the parties can appoint an *ad hoc* judge to be part of the court in the same capacity as the Court's incumbent judges without the other party being able to do so, there are no equal procedural conditions between the parties to the lawsuit.[29] Within the Inter-American System of Protection of Human Rights, the principle of equality of arms is part of the concept of due process of law. Its application

[27] IACHR, Advisory Opinion OC-16/99, dated October 1, 1999, requested by the United Mexican States, "*El derecho a la información sobre la asistencia consular en el marco de las garantías del debido proceso legal*" [The right to information on consular assistance in the framework of the guarantees of due process of law], par. 117. The Court further stated that "[t]o accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. Absent those countervailing measures, widely recognized in various stages of the proceeding, one could hardly say that those who have the disadvantages enjoy a true opportunity for justice and the benefit of the due process of law equal to those who do not have those disadvantages." (quot., par. 119).

[28] IACHR, Advisory Opinion OC-18/03, dated September 17, 2003, requested by the United Mexican States. "*Condición jurídica y derechos de los migrantes indocumentados*" [Juridical condition and rights of undocumented migrants], concurring opinion of judge García-Ramírez, par. 38.

[29] In this sense, see Alberto Borea-Odría, "*Propuesta de Modificación a la legislación del Sistema Interamericano de Protección de los Derechos Humanos*" [Proposal of Amendment to the Legislation of the Inter-American System or Protection of Human Rights], in (Inter-American Court of Human Rights) The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century. Seminar Memory, November, 1999, Volume I, San José, 2003, p. 538.

must attain the proceedings which are carried out before the jurisdictional body of control of its compliance.

Thus, the fact that one of the parties to the case (the State) may designate an *ad hoc* judge without the other party (petitioner or Inter-American Commission) having that same right violates the principle of equality of arms. Consequently, Article 55(3) of the American Convention on Human Rights must be understood allowing the appointment of *ad hoc* judges in cases of conflicts between states, but not in cases arising from complaints submitted before the Inter-American System of Protection of Human Rights by individual petitioners.

3.I.h) The wording of Article 55 of the IACHR confirms the preceding conclusions.
The conclusions arrived at in the preceding sections are strengthened by the content of Article 55 of the American Convention on Human Rights, which reads as follows:

> "1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.
> "2. If one of the judges called upon to hear a case should be a national of one of the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.
> "3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an *ad hoc* judge.
> "4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.
> "5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide."

As argued by the Argentine State, the provision is clear as it enables the designation of *ad hoc* judges only in cases of conflicts between States. It refers to the possibility of appointing *ad hoc* judges when none of the judges who compose the court is "a national

of the States Parties", and refers to the possibility that "each one of" them (the States Parties to the case) makes an appointment.

Thus, the scope of application of the provision which enables the appointment of *ad hoc* judges is restricted to cases of plurality of States Parties.[30] Only in cases of conflicts between different States (and not in cases between a State and one or more individual petitioners or non-governmental organizations) does the provision allow the appointment of *ad hoc* judges.

The above is strengthened when noticed that, as already pointed out long ago, the writing of Article 55 of the American Convention was inspired (and taken almost literally) from the Rules of Court of the International Court of Justice (hereinafter the "ICJ").[31] Differently from the Inter-American Court of Human Rights, only States may be parties in cases before the International Court of Justice.[32] Through the possibility of appointing an *ad hoc* judge, the aim of the Rules of Procedure is to allow both parties to the case to have one person of their nationality in the court. The purpose is also that all the States with interests involved in the settlement of a conflict are confident that the decision of the court shall be based on an objective analysis of the provisions and facts, and that both international law and the realities of the legal systems of every country involved are taken into account.

But in contrast with the ICJ, the IACHR has no jurisdiction to hear only conflicts between States; it especially decides as to the enforcement of human rights in the different countries over which it has jurisdiction. It does so in response to the complaints of violations of the rights protected by the Convention which are filed by individuals. So, unlike the International Court of Justice, which purpose is to hear conflicts between States in procedural equality, the main mission of the IACHR is to protect the human rights of the inhabitants of the States of the Inter-American region.[33] Throughout the

[30] In the same sense, see Héctor Fernández-Ledesma, quoted in footnote 20, p. 197.
[31] *Idem*, p. 194.
[32] Rules of Court of the International Court of Justice, Article 34(1).
[33] In this line, see Faúndez-Ledesma, quote *supra*, footnote 20, p. 196.

historical practice of this court, the cases submitted before it do not express conflicts between States in procedural equality, but the search by individuals to have the States tried in case they have violated their rights and, should that be the case, to obtain a proper reparation and the reformulation of their rules and injurious practices. In the words of Cardona-Llorens, victims who "are forced to be in a position of inequality with respect to the respondent Government" turn to the Inter-American Court of Human Rights."[34] In this manner, the provision of Article 55(3) can barely include the cases in which the victims seek the conviction of States which allegedly violated their rights among those in which an *ad hoc* judge can be appointed. That would only add a new inequality -this time procedural- to the already unequal relationship between States and victims.

3. II. The problem set by the intervention of incumbent judges of the Court who are nationals of the State Party to the lawsuit.

3.II.a) Argument submitted by the Argentine State

The American Convention does not set forth the duty of the judges of the Inter-American Court of Human Rights to decline jurisdiction in the cases where the State of which they are nationals is a party. On the contrary, Article 55(1) expressly states that those judges maintain their right to hear the case. However, as we have seen in 3.I.i) herein, the writing of Article 55 of the Convention suggests that the scope of application of its provisions is restricted to conflicts between States. Particularly, subparagraph one –under discussion here- makes reference to the judge who is a national "of any of the States Parties to the case submitted to the Court." The plural form again seems to refer to cases of conflicts between States.

That is why the request submitted by the Argentine State suggests that the Court should adopt the criterion whereby judges who are nationals of the State Party in complaints arising from an individual petition must be set aside.

[34] Jorge Cardona-Llorens, "*La función Contenciosa de la Corte Interamericana de Derechos Humanos*" [The Adversarial Function of the Inter-American Court of Human Rights], in (Inter-American Court of Human Rights), the Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century. Seminar Memory, Volume I, 2003, San José, p. 332.

On the other hand, despite the wording of Article 55 of the Convention, the substantive argument on which the Argentine State is based states that in cases arising from an individual petition against States, the intervention of a judge who is a national of the defendant State violates the principle of independent and unbiased judge (as judges can be influenced, directly or indirectly, in favor of those States).

3.II.b) *Decisions rendered by judges nationals of the States Parties to the case in the history of the IACHR.*

Practice and the sense of the opinions issued by judges who are nationals of the States Parties to cases arising from an individual petition allow us to notice two things. On the one hand, in several opportunities, judges in effect consider that they have to disqualify themselves. Thus, in 17 out of the 36 cases in which –until November, 2008- judges who were nationals of the respondent governments and who were part of the Court disqualified themselves. On the other hand, in the aggregate of cases in which the nationals of the State Party decided to take up a case instead of declining, the proportion of decisions against the State was very small. Thus, within the 17 cases in which the nationals of the State Party decided to participate in the deliberation and decision of the cases filed against the State of which they were nationals, only in two did they issue a dissenting vote with respect to the decision of the majority to convict the State.[35] The description of these decisions appears in the chart offered as Annex B.

3.II.c) Considerations regarding the request submitted by the Argentine State

The argument presented by the Argentine State is worth attention. Although the judges of the IACHR are not appointed by the States of which they are nationals but by the ASO General Meeting, and although they do not act in the name of the States,[36] it is true that they are proposed by said States, which recommend their designation. Additionally, although their permanence in their offices is not for life (nor permanent) but for terms of six years, renewable only one time,[37] there seems to be not enough organic guarantees to

[35] In other two cases, judges who were nationals of the State Party who had not disqualified themselves did not sign the judgment due to other reasons which prevented them from hearing the case.
[36] Article 52(1), American Convention on Human Rights.
[37] Article 54(1), American Convention on Human Rights.

ensure a total independence or impartiality of the judges when it comes to making decisions which may affect the States of which they are nationals, that not only decide as to their appointment and/or permanence in office but also shall be probably related with other decisions regarding the professional career of the judges once their terms in office at the IACHR are over.[38]

Now, it is also true that it is hard to set a general rule according to which the partiality of every judge in cases regarding the States Parties of which they are nationals is to be feared. There is no need to say –as that is obvious- that their professional careers do not have to depend on the decisions made by the State of which they are nationals. On the other hand, although the terms during which judges hold their offices are not very long, neither are they so short so that every time they have to render judgment regarding the State of which they are nationals they do so with respect to the government which has proposed them or which has to decide on the renewal of their term. Thus, the judge of the Court who is a national of the State Party to the case may not necessarily have been appointed by the government of said State in office during the proceedings and the deciding of the case. On the other hand, the government in office of the State Party during the processing of the case may neither necessarily be the one which allegedly caused a violation of the rights submitted to the Court's consideration. For all these reasons, it is hard to establish as a general rule that the judge of the Court who is a national of the respondent government is going to suffer some sort of awkwardness, inclination or undue precaution when deliberating and deciding with regard to those complaints.

[38] Additionally, Article 15(1) of the IACHR´s Rules of Procedure sets forth that from the moment of their election and throughout their term of office, judges shall enjoy "the immunities extended to diplomatic agents under international law" and the "diplomatic privileges necessary for the performance of their duties." On the other hand, Article 15(2) of the Rules of Procedure states that "[a]t no time shall the judges of the Court be held liable for any decisions or opinions issued in the exercise of their functions." Also, subparagraph 3 of Article 15 sets forth that "The Court itself and its staff shall enjoy the privileges and immunities provided for in the Agreement on Privileges and Immunities of the Organization of American States, of May 15, 1949, *mutatis mutandis*, taking into account the importance and independence of the Court." And subparagraph 4 clarifies that all these provisions "shall apply to the States Parties to the Convention. They shall also apply to such other member states of the OAS as expressly accept them, either in general or for specific cases."
However, these rules do not seem to be suitable enough either so as to prevent the judge deliberations from being influenced by his/her forecast regarding his professional future in the country of which he is a national.

Furthermore, the disqualification and declination mechanisms provided for in Article 19 of the Court's Rules of Procedure[39] allow to ensure the declination or disqualification of those judges who in effect are under circumstances which may generate them awkwardness, inclinations or precautions as to their decisions or which may lead to a reasonable fear of partiality on the part of the petitioners.

3.II.d) The concern of the Argentine State regarding the preservation of the judges impartiality emphasizes the need to study and improve the appointment proceedings of the IACHR judges.

In view of the above, admitting that judges who are nationals of the State Party are not impartial as a general rule –which, as seen in 3.II.b) above, the practice of the Court is far from confirming- may strongly undermine the institutional authority of the court.

The way to guarantee that judges –whatever their nationality- shall be unbiased and independent when it comes to deliberating and adjudicating cases of complaints against States Parties which have promoted their appointment is through an adequate designation system.[40] In order to avoid reactions – either of the State, of individuals, of groups or

[39] Article 19 of the IACHR Rules of Procedure states the following:
"1. Judges may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity.
"2. If a judge is disqualified from hearing a case or for some other appropriate reason considers that he should not take part in a specific matter, he shall advise the President of his disqualification. Should the latter disagree, the Court shall decide.
"3. If the President considers that a judge has cause for disqualification or for some other pertinent reason should not take part in a given matter, he shall advise him to that effect. Should the judge in question disagree, the Court shall decide.
"4. When one or more judges are disqualified pursuant to this article, the President may request the States Parties to the Convention, in a meeting of the OAS Permanent Council, to appoint interim judges to replace them."

[40] As already pointed out, the judges of the IACHR take up their office after being proposed by the countries of which they are nationals (although the States have the power to propose candidates who are not nationals of their States, in general they do not use it) and after obtaining the absolute majority of the votes of the States Parties to the American Convention. The election takes place at the ASO General Meeting and it is secret. The characteristics of this selection process long ago arose suspicions among organizations of the civil society, lawyers and academic researchers who act in the American continent.
It is paramount that the proceedings carried out by the States Parties to the Convention are more transparent and open to public participation and debate. The decision to appoint judges within the ASO context should also be more transparent. At present, the session during which this decision is made is secret. It is not

non-governmental organizations- against the court lies on the implementation of designation processes which are open, transparent, participative and proper enough in order to allow the appointment of independent and suitable persons. Otherwise, the States may become skeptical as to the court neutrality, and that would affect its legitimacy and could lead to an undesirable involution of the IASPHR efficacy.

On the other hand, only through transparent appointment processes which include the participation of the citizenship and which prioritize the selection of experts of renown background, will the inhabitants of the countries of the region have reasons to trust that the IACHR members constitute a neutral and representative court suitable for protecting their rights.[41] The proceedings which is necessary to revise and optimize include both internal proceedings of the States oriented to submit candidates before the ASO General Meeting and the process to be carried out within the scope of the General Meeting itself, aimed to the judges appointment.[42]

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possible to identify why certain candidates are elected, neither which States elect which candidates. Under these circumstances, the grounds for the decision and their public release would help to make the process more transparent and to abandon the idea that the designation of the Court's judges is nothing but part of a broader exchange of votes among diplomats. On the other hand, many insist on the need for a more active participation on the part of civil society, both in the candidates selection process and in the election of judges within the ASO. Additionally, the mild representativeness of the different compositions of the Court has been noticed. The only diversity criterion taken into account at the time of electing judges is geographic, and relevant issues such as gender, the fact of belonging to vulnerable social groups or the specific technical knowledge they have on certain areas have not been considered - at least not sufficiently.

[41] In this sense, see CEJIL, "*Aportes para el proceso de selección de miembros de la Comisión y la Corte Interamericana de Derechos Humanos*" [Contributions for the selection process of the members of the Commission and the Inter-American Court of Human Rights], 2005, available at www.cejil.org.

[42] In this sense, ASO General Meeting decisions AG/RES. 2120 (XXXV-O/05), on "*Presentación de los candidatos y candidatas para integrar la Comisión Interamericana de Derechos Humanos y la Corte Interamericana de Derechos Humanos*" [Presentation of the candidates to compose the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights] (approved in the fourth plenary session, held on June 7, 2005) and AG/RES. 2166 (XXXVI-O/06), on "*Presentación pública de los candidatos y candidatas para integrar la Comisión Interamericana de Derechos Humanos y la Corte Interamericana de Derechos Humanos*" [Public presentation of the candidates to compose the Inter-American Commission of Human Rigths and the Inter-American Court of Human Rights] (approved in the fourth plenary session, held on June 6, 2006) have been promising (and they have allowed certain improvements in terms of transparency and participation of civil society in the proceedings for the appointment of judges carried out in the context of the ASO in the last years). Anyway, the candidates selection process and the designation of judges can still be improved in different aspects, mainly -but not only- regarding the proceedings for the selection of candidates which are developed internally within the States and the way the election takes place for the designation of the judges at the ASO General Meeting.

A very valuable reference for the study of possible participation systems and public scrutiny for the appointment of the Court judges has been the process which preceded the election of the Special Rapporteur for Freedom of Expression, in which a series of recommendations by experts and organizations of civil society of the region were followed, the purpose of which was to make the election more participative, democratic and technically strict.[43]

Judges elected through an adequate selection processes for the constitution of a representative, renown and legitimated regional court by means of public proceedings can not be seen as mere nationals of one State or another; through the legitimacy of origin based on the way they are selected and the through the legitimacy of their performance based on the public and substantiated rationale of their decisions, they rise as the guardians of human rights of all the region.

4. CONCLUSIONS

According to the arguments presented in the sections hereinabove, the *Asociación por los Derechos Civiles* observes the following:

a) An adequate interpretation of Article 55 of the American Convention on Human Rights does not admit the intervention of *ad hoc* judges in adversarial cases arising from an individual petition before the Inter-American System of Protection of Human Rights. In those cases, their intervention violates the principle of equality of arms –a key element of the guarantees which constitute the concept of due process of law- and the principle of judicial independence.

b) Even though the request for the existence of a self-disqualification obligation by the judges who are nationals of the State Party to adversarial cases arising from an individual petition is based on valuable reasons, there seems to be no legal

[43] See the proposal submitted by different members of civil society for the election of the Rapporteur for the Freedom of Expression; document dated August 11, 2006.
Another suggestion made by the system watchers seeks that, when nominating judges, the States propose persons who are not their nationals. This, that at present is a right the States almost do not exercise, could be contemplated as something more than a power. This practice could be interpreted as a way of generating more independence for the judges so that they can act based on their own qualifications rather than representing the State of which they are nationals. Regarding this matter, see Faúndez-Ledesma, quoted in footnote 28, p. 189.

arguments which substantiate a general rule which establishes their necessary setting aside.

c) The concern shown in the second request submitted by the Argentine State must be addressed and taken into account in order to urge new amendments to the processes of both candidates selection and judges designation for the Inter-American Court of Human Rights (the former at State domestic level, and the latter during the proceedings developed within the ASO) so that they become more participative, transparent and adequate for the appointment of persons with a renown background, who are suitable and independent.

[Signed by]
Alejandro CARRIÓ
PRESIDENT
Asociación por los Derechos Civiles

Annex A

Opinions of the *ad hoc* judges in the cases in which they participated

	Case	*Ad Hoc* Judge Opinion
1	**Velásquez-Rodríguez *v.* Honduras**	
	Preliminary Objections	Concurring opinion, dismissing the objections.
	Merits	Concurring opinion, convicting the State.
	Reparations and Costs	Concurring opinion
	Interpretation of Judgment of Compensatory Damages	Concurring opinion
2	**Fairén Garbi and Solís Corrales *v.* Honduras**	
	Preliminary Objections	Concurring opinion, dismissing the objections.
	Merits, Reparations and Costs	Concurring opinion, convicting the State.
3	**Godínez-Cruz *v.* Honduras**	
	Preliminary Objections	Concurring opinion, dismissing the objections.
	Merits	Concurring opinion, convicting the State.
	Reparations and costs	Concurring opinion
	Interpretation of Judgment of Reparations and Costs	Concurring opinion
4	**Aloeboetoe *et al v.* Surinam**	
	Merits	Concurring opinion, convicting the State.
	Reparations and costs	Concurring opinion
5	**Gangaram Panday *v.* Surinam**	
	Preliminary Objections	Concurring opinion, dismissing the objections and attaching of concurring opinion.
	Merits, Reparations and Costs	Concurring opinion in five out of six operative paragraphs of the decision, and dissenting opinion with respect to one. In those five paragraphs, the IACHR convicted the State and in the only paragraph where it did not convict it, the *ad hoc* judge issued a dissenting opinion, as he understood that there had been international liability of the State.
6	**Neira Alegría *et al v.* Peru**	
	Preliminary Objections	Dissenting opinion, in favor of the admission of the objections and the filing of the case.
	Merits	Did not attend the deliberations of the IACHR regarding this judgment, and consequently, did not sign.
	Reparations and costs	Concurring opinion in five out of eight operative paragraphs of the judgment, and dissenting opinion in the paragraph regarding the compensatory amount set in favor of the victims next of kin, for considering it too high.
7	**Cayara *v.* Peru**	

	Preliminary Objections	Concurring opinion in favor of the State. Case filed.
8	**Caballero-Delgado and Santana *v.* Colombia**	
	Reparations and costs	Concurring opinion.
9	**"Panel Blanca" *v.* Guatemala**	
	Preliminary Objections	Dissenting opinion, in favor of admitting the objections. Case filed.
	Merits	Concurring opinion, convicting the State.
	Reparations and costs	Concurring opinion.
10	**Garrido and Baigorria *v.* Argentina**	
	Merits	Concurring opinion, convicting the State (which had acknowledged international liability).
	Reparations and costs	Concurring opinion.
11	**Blake *v.* Guatemala**	
	Preliminary Objections	Concurring opinion –attaching concurring vote- in all the paragraphs, dismissing all the objections except for one.
	Merits	Concurring opinion, convicting the State.
	Reparations and Costs	Concurring opinion.
	Interpretation of Judgment of Reparations and Costs	Concurring opinion.
12	**Cantoral-Benavides *v.* Peru**	
	Preliminary Objections	Dissenting opinion, in favor of the admission of the objections and the filing of the case.
	Merits	Of the fourteen operative paragraphs of the judgment, dissenting opinion in two of them, understanding that the State had not violated Articles 8(5) and 9 of the ACHR. In the remaining paragraphs –which convict the State-, concurring opinion.
	Reparations and Costs	Concurring opinion.
13	**Castillo-Petruzzi *v.* Peru**	
	Preliminary Objections	The Court dismissed nine out of ten of the filed objections. The *ad hoc* judge issued a dissenting opinion in those nine paragraphs and a concurring opinion in the remaining paragraph, as he understood that all the objections had to be sustained and the case filed.
	Merits, Reparations and Costs	Partially dissenting opinion (in four out of sixteen operative paragraphs of the judgment), understanding that the state had not violated any of the Articles that the Court understood as violated.
	Compliance with Judgment	Did not participate.
14	**Durand and Ugarte *v.* Peru**	
	Preliminary Objections	The Court dismissed the seven objections filed. The *ad hoc* judge issued a dissenting opinion only regarding one of them (lack of exhaustion of remedies), as he understood it had to be sustained.
	Merits	Concurring opinion –by means of his concurring vote- convicting the State.
	Reparations and Costs	Did not participate.
15	**Trujillo-Oroza *v.* Bolivia**	
	Merits	Concurring opinion, convicting the State, which had acknowledged international liability.
	Reparations and Costs	Concurring opinion, through his own vote.
16	**Mayagna (Sumo) Awas Tingni Community *v.* Nicaragua**	

	Preliminary Objections	Concurring opinion, dismissing the filed objection. Did so through his own vote.
	Merits, Reparations and Costs	Dissenting vote in four of the nine operative paragraphs which convicted the State. The judge understood that Articles 21 and 25 of the American Convention had not been violated; therefore, the compensation fixed by the Court did not correspond.
17	**Las Palmeras *v.* Colombia**	
	Preliminary Objections	Concurring opinion, dismissing three of the four filed objections.
	Merits	Partially dissenting opinion in favor of the State, understanding that it had not violated Articles 8 and 25 of the ACHR.
	Reparations and Costs	Concurring opinion.
18	**19 Merchants *v.* Colombia**	
	Preliminary objection	Concurring opinion, dismissing the filed objection.
	Merits, Reparations and Costs	Concurring opinion, convicting the State.
19	**Cantos *v.* Argentina**	
	Preliminary objection	Concurring opinion; it was decided to dismiss the first objection and to partially dismiss the second objection.
	Merits, Reparations and Costs	Concurring opinion convicting the State. Attached his concurring opinion.
20	**"Cinco pensionistas" [Five pensioners] *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion convicting the State.
21	**Bulacio *v.* Argentina**	
	Merits, Reparations and Costs	Concurring opinion convicting the State. The State had acknowledged liability and came to an agreement of friendly settlement. The *ad hoc* judge attached his concurring opinion.
22	**Myrna Mack-Chang *v.* Guatemala**	
	Merits, Reparations and Costs	Partially dissenting opinion in favor of the State, objecting the compensatory amounts for considering them too high.
23	**Maritza Urrutia *v.* Guatemala**	
	Merits, Reparations and Costs	Partially dissenting opinion in favor of the State, objecting the compensatory amounts for considering them too high.
24	**Plan de Sanchez Massacre *v.* Guatemala**	
	Merits	Concurring opinion convicting the State.
	Reparations and Costs	Concurring opinion.
25	**Herrera-Ulloa *v.* Costa Rica**	
	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion convicting the State.
26	**Gómez-Paquiyauri Brothers *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion convicting the State. Attached concurring opinion.
27	**Ricardo Canese *v.* Paraguay**	
	Merits, Reparations and Costs	Concurring opinion convicting the State. Attached concurring opinion.
28	**"Instituto de Reeducación del Menor" [Minors Reeducation Institute] *v.* Paraguay**	
	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion, dismissing the filed objections and convicting the State.
29	**Tibi *v.* Ecuador**	

	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion, dismissing the filed objections and convicting the State. Attached concurring opinion.
30	**Carpio Nicolle *et al* *v.* Guatemala**	
	Merits, Reparations and Costs	Concurring opinion admission of the State's acknowledgement of liability, and the conviction thereof.
31	**Serrano-Cruz Brothers *v.* El Salvador**	
	Preliminary Objections	Partially dissenting opinion in favor of the State in those operative paragraphs which dismissed the filed objections.
	Merits, Reparations and Costs	Dissenting opinion in all the operative paragraphs which implied a conviction of the State.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Concurring opinion + attachment of concurring opinion.
32	**Lori Berenson-Mejía *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion convicting the State.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Did not participate.
33	**"Masacre de Maripán" [Maripan Massacre] *v.* Colombia**	
	Preliminary Objections	Concurring opinion, admitting the partial dismissal of the State of one of the filed objections, and dismissing the other.
	Merits, Reparations and Costs	Concurring opinion + attachment of concurring opinion.
34	**Yakye Axa Indigenous Community *v.* Paraguay**	
	Merits, Reparations and Costs	Partially dissenting opinion in favor of the State. Attachment of partially dissenting and partially concurring opinions.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Did not participate.
35	**Fermín Ramírez *v.* Guatemala**	
	Merits, Reparations and Costs	Concurring opinion + attachment of concurring opinion.
36	**Yatama *v.* Nicaragua**	
	Preliminary Objections, Merits, Reparations and Costs	Dissenting opinion in all operative paragraphs.
37	**Acosta-Calderón *v.* Ecuador**	
	Merits, Reparations and Costs	Concurring opinion, convicting the State.
38	**Gutiérrez-Soler *v.* Colombia**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability, and the conviction thereof.
39	**Raxcacó-Reyes *v.* Guatemala**	
	Merits, Reparations and Costs	Concurring opinion, convicting the State.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Did not participate.
40	**García-Asto and Ramírez-Rojas *v.* Peru**	
	Preliminary Objection, Merits, Reparations and Costs	Partially dissenting opinion in favor of the State in only one of the two operative paragraphs. Concurring opinion for the remaining operative paragraphs, convicting the State.
41	**Massacre of Pueblo Bello *v.* Colombia**	

	Merits, Reparations and Costs	Concurring opinion, convicting the State.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Concurring opinion.
42	**Acevedo-Jaramillo *v.* Peru**	
	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion, dismissing the filed objections and convicting the State.
	Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs	Concurring opinion.
43	**La Cantuta *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability, and the conviction thereof.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Concurring opinion.
44	**Escué-Zapata *v.* Colombia**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability, and the conviction thereof.
	Interpretation of the Judgment on the Merits, Reparations and Costs	Concurring opinion + attachment of concurring opinion.
45	**Salvador Chiriboga *v.* Ecuador**	
	Preliminary Objection and Merits	Partially dissenting opinion in favor of the State in only one of the operative paragraphs.
46	**Castañeda-Gutman *v.* Mexico**	
	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion, dismissing the filed objections and convicting the State.

Annex B

Opinion of the judges who are nationals of the State Party in the cases they heard.

	Case	Opinion of the Judge who is a national of the State Party
1	**Caballero-Delgado and Santana *v.* Colombia**	
	Preliminary Objections	Concurring opinion, dismissing the objections.
	Merits	Concurring opinion in four of the seven operative paragraphs, considering that the State liability had not been proven. In the remaining three, in which the Court convicted the State, dissenting vote in favor of the State.
2	**El Amparo *v.* Venezuela**	
	Merits	Did not participate.
	Reparations and Costs	Concurring opinion.
	Interpretation of the Judgment of Reparations and Costs	Concurring opinion.
3	**Genie Lacayo *v.* Nicaragua**	
	Preliminary Objections	Concurring opinion, dismissing the objections.
	Merits, Reparations and Costs	Concurring opinion, convicting the State.
	Request for Revision of the Judgment on the Merits, Reparations and Costs	Concurring opinion against the State interests.
4	**Suárez-Rosero *v.* Ecuador**	
	Merits	Concurring opinion, convicting the State.
	Reparations and Costs	Concurring opinion
	Interpretation of the Judgment of Reparations and Costs	Concurring opinion
5	**Benavides-Cevallos *v.* Ecuador**	
	Merits, Reparations and Costs	Concurring opinion convicting the State which had acknowledged international liability.
6	**Caracazo *v.* Venezuela**	
	Merits	Did not participate.
	Reparations and Costs	Concurring opinion.
7	**"La Última tentación de Cristo" (Olmedo-Bustos *et al*) *v.* Chile**	
	Merits, Reparations and Costs	Concurring opinion convicting the State.
8	**Alfonso Martín del Campo-Dodd *v.* Mexico**	
	Preliminary Objections	Concurring opinion, admitting the first objection filed and ordering to file the case.
9	**Huilca Tecse *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acquiescence and the conviction thereof.
10	**Gómez-Palomino *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability and the conviction thereof.
12	**Ximenes-Lopes *v.* Brazil**	
	Preliminary Objection	Concurring opinion, dismissing the objection. Attached

		concurring opinion.
	Merits, Reparations and Costs	Concurring opinion convicting the State. Attached concurring opinion.
13	**Baldeón-Garcia *v.* Peru**	
	Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability and the conviction thereof.
14	**Montero-Aranguren *et al* (Retén de Catla) *v.* Venezuela**	
	Preliminary Objection, Merits, Reparations and Costs	Concurring opinion, admitting the State's acknowledgement of liability and the conviction thereof.
15	**Claude Reyes *et al* *v.* Chile**	
	Merits, Reparations and Costs	Partially dissenting opinion (in only one operative paragraph of the judgment) in favor of the State.
16	**Workers Dismissed from Congress (Aguado-Alfaro *et al*) *v.* Peru**	
	Preliminary Objections, Merits, Reparations and Costs	Concurring opinion, dismissing the objections and convicting the State.
	Request for Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs	Concurring opinion.
17	**Nogueira de Carvalho et al *v.* Brazil**	
	Preliminary Objections and Merits	Concurring opinion: dismissal of preliminary objections but it was considered that the violations claimed by the Court had not been proven, reason for which it was decided to file the case.