ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COURT OF HUMAN RIGHTS

OAS/Ser.L/V/III.25
doc. 7
15 January , 1992
Original: Spanish

ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

1991

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

- 1992 -

Mventura R

TABLE OF CONTENTS

Page

Mesenia R

APPENDICES

Page

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"), 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, 1991, 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 (México), President

Sonia Picado-Sotela (Costa Rica), Vice-President

Thomas Buergenthal (United States of America)

Rafael Nieto-Navia (Colombia)

Policarpo Callejas-Bonilla (Honduras)

Julio A. Barberis (Argentina)

*Judge Orlando Tovar-Tamayo (Venezuela), Vice-President of the Court, passed away on November 21, 1991.

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 of the twenty-three States Parties to the Convention have now recognized the jurisdiction of the Court. They are Costa Rica, Perú, Venezuela, Honduras, Ecuador, Argentina, Uruguay, Colombia, Guatemala, Suriname, Panamá, 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 XIV.)

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. XXIII Regular Session

From January 9 to 17, 1991, the Court held its XXIII Regular Session at its seat in San José, Costa Rica. Present were: Héctor Fix-Zamudio (México), President; Orlando Tovar-Tamayo (Venezuela), Vice-President; Thomas Buergenthal (United States of America); Rafael Nieto-Navia (Colombia); Policarpo Callejas-Bonilla (Honduras); Sonia Picado-Sotela (Costa Rica) and Julio A. Barberis (Argentina). Also present was the Secretary of the Court, Manuel E. Ventura-Robles.

At this session, the Court adopted the Order of January 17, 1991, on the Provisional Measures requested by the Commission concerning Perú (Bustíos-Rojas case) (Appendix I) and discussed and approved the new Rules of Procedure of the Court (Appendix II).

In the Bustíos-Rojas case, the Court ruled as follows:

1. To take note of the measures adopted by the Government of Perú in compliance with the Order of August 8, 1990.

2. To require the Government of Perú, in addition to the measures already taken, to designate civilian liaison authorities in Lima, Ayacucho and Huanta, in order to receive urgent communications from the persons under its protection.

3. To return these proceedings to the Inter-American Commission on Human Rights and entrust that body with the verification of Perú's implementation of the measures adopted.

The Court also took up consideration of the cases of Aloeboetoe, et al., and of Gangaram-Panday against Suriname, and the case of Neira-Alegría, et al., against Perú. Antônio A. Cançado Trindade and Jorge E. Orihuela-Iberico, participated in those proceedings as judges **ad hoc** designated by Suriname and Perú, respectively.

B. Recognition of the Court's Jurisdiction by Nicaragua

On February 12, 1991, the Government of Nicaragua deposited with the General Secretariat of the OAS the declaration by which it recognizes the jurisdiction of the Court as binding, **ipso facto**, pursuant to Article 62(1) of the Convention. The declaration states that the acceptance is *for an indefinite period, of a general nature, on the condition of reciprocity, and includes a reservation which limits recognition of the Court's jurisdiction to cases based upon facts which arise or begin to arise subsequent to the deposit of the declaration.*

C. Velásquez-Rodríguez and Godínez-Cruz Cases. Execution of the Compensatory Damages Judgments of July 21, 1989

By notes of February 14 and April 8, 1991, the Government of Honduras reported that in carrying out the Compensatory Damages Judgments of July 21, 1989, in the Velásquez-Rodríguez and Godínez-Cruz cases, the Attorney General of the Republic and President of the Inter-Institutional Committee of Human Rights, Leonardo Matute-Murillo, opened on February 14, 1991, on behalf of the State of Honduras, together with the General Manager of the Central Bank of Honduras, a trust fund of 562,500 lempiras on behalf of the children of Manfredo Velásquez-Rodríguez and another trust fund in the amount of 487,500 lempiras on behalf of the daughter of Saúl Godínez-Cruz. Likewise, the Government reported that on October 17, 1990, Mrs. Emma Guzmán de Velásquez received compensatory damages in the amount of 187,500 lempiras, and on October 18, of that year, Mrs. Enmidida Escoto de Godínez also received her compensatory damages of 162,500 lempiras. (Appendices III and IV.)

These notes make no reference whatsoever to the execution of the rulings of August 17, 1990, which interpret the judgments on the merits of the above cases, and the Court has not been informed of any action in that regard during the period covered by this annual report.

D. Visit of the President and the Secretary to the OAS Headquarters in Washington, D. C.

From April 17-19, 1991, the President of the Court, Judge Héctor Fix-Zamudio and its Secretary, Manuel E. Ventura-Robles, visited the seat of the OAS in Washington, D. C., to present its Annual Report for 1990 to the Committee on Juridical and Political Matters of the Permanent Council of the Organization. In his presentation,

the President emphasized the need to provide the Court with sufficient funds to enable it to fulfill its obligation to protect human rights within the inter-American system.

Based upon the report presented to the Committee on Juridical and Political Matters, the Permanent Council adopted the following resolution:

1. To accept and transmit to the Inter-American Court of Human Rights the observations and recommendations that the Permanent Council of the Organization made regarding the Annual Report of the Inter-American Court of Human Rights.

2. To urge the member states of the Organization of American States who have not yet done so, to ratify or adhere 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, pursuant to Article 62, paragraph 2, of that Convention.

3. To again urge the member states of the Organization of American States to ratify or adhere to the other inter-American instruments relating to human rights.

4. To give the Court the financial and administrative support it needs to perform the high functions assigned to it in the American Convention on Human Rights and to fulfill the requirements of its Statute.

5. To express its recognition to the Inter-American Court of Human Rights for the work carried out in the time frame of this report and encourage it to continue to carry out its important role.

(Non-official translation made by the Secretariat of the Court)

The President appeared before the OAS Subcommittee of Administrative and Budgetary Matters where he justified the requested increase in the draft budget of the Court for the two-year period 1992-1993, citing the heavy workload occasioned by the Commission's submission of three new cases and its announcement that it would continue to submit cases to the Court on a regular basis.

E. Adherence to the Convention and Recognition of the Jurisdiction of the Court by Trinidad and Tobago

On May 28, 1991, the Government of the Republic of Trinidad and Tobago deposited with the General Secretariat of the OAS the instrument by which it adheres to the Convention and accepts the jurisdiction of the Court.

In its Declaration, the Government made the following reservations:

1. As regards article 4(5) of the Convention the Government of the Republic of Trinidad and Tobago makes a reservation in that under the laws of Trinidad and Tobago there is no prohibition against the carrying out of a sentence of death on a person over seventy (70) years of age.

2. As regards article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.

F. Arrival of the New Deputy Secretary

On May 5, 1991, the new Deputy Secretary, Ana María Reina-Daract, an Argentinian citizen, assumed her duties with the Court. Ms. Reina is a lawyer and served with the United Nations in Asunción, Paraguay, and Bangkok, Thailand. In Argentina, she taught and did research in international law.

G. XXI Regular Session of the OAS General Assembly

The Court was represented at the XXI Regular Session of the General Assembly of the OAS, held in Santiago, Chile, from June 3 to 8, 1992, by its President, Judge Héctor Fix-Zamudio; its Vice-President, Judge Orlando Tovar-Tamayo; and Judge Rafael Nieto-Navia, member of its Permanent Commission. Also present was the Secretary of the Court, Manuel E. Ventura-Robles.

The General Assembly adopted the following resolution regarding the Annual Report of the Court:

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 in accordance with Article 62.2 of that Convention.

4. To again urge the States Parties to the American Convention on Human Rights to ratify or accede to the other inter-American instruments in the area of human rights.

5. 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 and to comply with the purposes to that effect established in its Statute.

6. 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 functions.

— *Amendment of Article 8(1) of the Statute of the Court*

At this Session, the General Assembly approved the amendment of Article 8(1) of the Statute of the Court to take into account the change in the calendar for the Regular Session of the General Assembly. The amendment was approved as follows:

Article 8. Election: Preliminary Procedures

1. Six months prior to the holding of the regular session of the General Assembly of the OAS preceeding the expiration of the terms to which the judges of the Court were elected, the Secretary General of the OAS shall address a written request to each State Party to the Convention that it nominate its candidates within the next ninety days.

— *Election of New Judges*

At that Regular Session, the States Parties to the Convention elected as Judges of the Court Alejandro Montiel-Argüello (Nicaragua), Máximo Pacheco-Gómez (Chile), and Hernán Salgado-Pesantes (Ecuador). Héctor Fix-Zamudio, the current President of the Court, was elected for another term as judge. The first three replaced Judges Thomas Buergenthal (United States of America), Policarpo Callejas-Bonilla (Honduras), and Julio A. Barberis (Argentina), whose terms ended on December 31, 1991. The six-year term of the new judges begins on January 1, 1992.

— *Approval of the Court's Budget for the Two-Year Period 1992-1993*

The General Assembly also approved the Court's budget for the two-year period 1992-1993. Specifically, it authorized $198,700 for 1992 and $197,600 for 1993. These figures represent a 15 per cent increase for the two-

year period, without including the line-item for personnel. The Court had requested a larger increase because (1) of the number of cases pending; and (2) beginning on January 1, 1992, and pursuant to Article 54(3) of the Convention, it must hold its sessions with a different composition of regular and ad hoc judges, depending upon the cases before the Court.

The Court expresses its concern that the budget approved by the General Assembly is insufficient in that it provides for only four staff positions, and the limited funding will not allow the Court to meet as frequently as it should.

H. Request for Provisional Measures Concerning Guatemala

By communication of June 27, 1991, the Commission asked the Court, pursuant to Articles 63(2) of the Convention and 76 of the Regulations of the Commission, to adopt provisional measures for the personal safety and physical protection of 14 persons who, according to the Commission, "have either been threatened or have witnessed abuses committed by the civilian self-defense patrols" in the town of Chunimá, El Quiché county, Guatemala. These persons are members of the Council of Ethnic Communities "We Are All Equal" (CERJ), their family members and court functionaries who have investigated and acted in causes related to the assassination of members of human rights organizations in Chunimá. (Appendix V.)

On July 2, 1991, the Court received from the Commission further documentation which accompanied the request for provisional measures.

By the authority granted him pursuant to Article 23(4) of the Rules, the President issued an Order of July 15, 1991 (Appendix VI), in which he provided as follows:

> 1. To order the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the physical integrity of DIEGO PEREBAL- LEON, JOSE VELASQUEZ-MORALES, RAFAELA CAPIR-PEREZ, MANUEL SUY- PEREBAL, JOSE SUY-MORALES, AMILCAR MENDEZ-URIZAR, JUSTINA TZOC-CHINOL, MANUEL MEJIA-TOL, MIGUEL SUCUQUI-MEJIA, JUAN TUM-MEJIA, CLAUDIA QUIÑONES, PEDRO IXCAYA, ROBERTO LEMUS-GARZA and MARIA ANTONIETA TORRES-ARCE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.
>
> 2. To convene a session of the Inter-American Court of Human Rights from July 29 to 31, 1991, at its seat in San José, Costa Rica, in order to take up the Commission's request for provisional measures and this order.
>
> 3. To convoke the Government of Guatemala and the Inter-American Commission of Human Rights to appear, through their representatives, at a public hearing to be held on this matter at 3:00 p.m. on July 29, 1991, at the seat of the Court.

I. XI Special Session

The Court held its XI Special Session at its seat from July 29 through August 1, 1991, to consider the request for provisional measures requested by the Commission concerning Guatemala (Chunimá case).

During this session, the Court was composed of the following judges: Héctor Fix-Zamudio (México), President; Orlando Tovar-Tamayo (Venezuela), Vice-President; Thomas Buergenthal (United States of America); Rafael Nieto-Navia (Colombia); Policarpo Callejas-Bonilla (Honduras); Sonia Picado-Sotela (Costa Rica) and Julio A. Barberis (Argentina). Also present were the Secretary of the Court, Manuel E. Ventura-Robles, and the Deputy Secretary, Ana María Reina.

At a public hearing on July 30, 1991, the Court heard the Government of Guatemala, represented by His Excellency Manuel Villacorta-Mirón, Vice-Minister of Foreign Affairs of Guatemala, and the Commission, represented by its President, Dr. Patrick Robinson. On August 1, 1991, the Court adopted an order (Appendix VII) by which it decided as follows:

I. To confirm the Order of July 15, 1991, issued by the President of the Court and to extend its effect until December 3, 1991.

II. To order the Government of Guatemala to promptly specify to the President of the Court what measures have been taken to protect each of the persons listed in the President's Order.

III. To order the Inter-American Commission on Human Rights and the Government of Guatemala to keep the President of the Court duly informed regarding the implementation of this Order.

The Court heard the Chunimá case again at its XXIV Regular Session.

J. Meeting of the Permanent Commission

The Permanent Commission, made up of its President, Judge Héctor Fix-Zamudio; its Vice-President, Judge Orlando Tovar-Tamayo; and its past Presidents, Judges Thomas Buergenthal and Rafael Nieto-Navia, met at the seat of the Court on August 2 and 3, 1991, to consider procedural aspects of the cases Aloeboetoe et al., Gangaram-Panday and Neira-Alegría et al., and to hear the representatives in those cases. The Commission also took up administrative and budgetary matters. At the end of the meeting, the President entered several decisions in the cases pending.

K. XXIV Regular Session

The Court held its XXIV Regular Session at its seat in San José, Costa Rica, from December 2-14, 1991. Present were: Héctor Fix-Zamudio (México), President; Thomas Buergenthal (United States of America); Rafael Nieto-Navia (Colombia); Policarpo Callejas-Bonilla (Honduras); Sonia Picado-Sotela (Costa Rica) and Julio A. Barberis (Argentina). Also in attendance were the **ad hoc** judges Antônio A. Cançado Trindade designated by Suriname for the Aloeboetoe et al. and Gangaram- Panday cases, and Jorge E. Orihuela-Iberico, designated by Perú for the Neira-Alegría et al. case. Also present were the Secretary of the Court, Manuel E. Ventura-Robles, and the Deputy Secretary, Ana María Reina.

The Court elected Judge Héctor Fix-Zamudio as its President and Sonia Picado-Sotela as its Vice-President. Their term ends on June 30, 1993.

At this session, the Court considered the preliminary objections raised in the Aloeboetoe et al. and Gangaram-Panday cases against Suriname and the Neira- Alegría et al. case against Perú, and held public hearings in those cases on December 2 and 6. It also considered the request for an advisory opinion (OC-12) by the Government of Costa Rica.

On December 4, 1991, the Court entered judgment in the Aloeboetoe et al. case, in which it accepted the Government of Suriname's admission of responsibility for the charges, without deciding the procedure for fixing damages and costs. (Appendix VIII.)

Also on December 4, 1991, the Court ruled on preliminary objections raised by the Government of Suriname in the Gangaram-Panday case, deciding to overrule them and to continue hearing the case. The **ad hoc** Judge Antônio A. Cançado Trindade wrote an individual opinion. (Appendix IX.)

On December 11, 1991, the Court ruled on the preliminary objections in the Neira- Alegría et al. case. In that decision, by 4 votes to 1, the Court overruled the objections to the jurisdiction of the Commission and to the untimeliness of the complaint raised by the Government of Perú. The ad hoc judge, Jorge E. Orihuela- Iberico (Perú) voted against the judgment and wrote a dissenting opinion. (Appendix X.)

On February 28, 1991, the Government of the Republic of Costa Rica, pursuant to Article 64(2) of the Convention, requested the Court's advisory opinion regarding the compatibility of a bill pending before the Legislative Assembly, which would reform Articles 474 and 475 of the Code of Criminal Procedure and create a Superior Court of Criminal Cassation, with Article 8(2)(h) of the Convention. (Appendix XI.)

On December 6, 1991, the Court issued Advisory Opinion OC-12/91 requested by the Government of Costa Rica. The Court decided not to accept the request on the grounds that so doing might affect the contentious jurisdiction of the Court and thus prejudice the human rights of those who have petitions pending before the Commission. (Appendix XII.)

Moreover, the Court studied the information sent by the Government of Guatemala on the provisional measures ordered by the Court on August 1, 1991, in the Chunimá case, the legal effect of which expired on December 3, 1991, as provided for in that Order. That same day the President of the Court sent a communication to the Government of Guatemala on that matter. (Appendix XIII.)

During this session, the Court received the visit of a delegation of the European Court of Human Rights on December 12, 13 and 14. The delegation was composed of Judges Thor H. Vilhjalmsson (Iceland), Feyyaz Gölcüklü (Turkey), Rudolf Bernhardt (Germany), Raimo Oskari Pekkanen (Finland) and the Deputy Secretary, Herbert Petzold. They held four working sessions in which they analyzed topics related to international human rights law and exchanged information on the experiences of Europe and America in that area. The delegation of the European Court of Human Rights was received by the Second Vice-President of Costa Rica, who was acting President on December 12; the Supreme Court; the President of the Legislative Assembly and Costa Rican legislators; and the Inter-American Institute of Human Rights.

APPENDIX I

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JANUARY 17, 1991

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF PERU (BUSTIOS-ROJAS CASE)

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

WHEREAS:

1. By order of August 8, 1990, the Court granted Perú a period of 30 days in which to adopt all necessary measures to protect the right to life and the personal integrity of Eduardo Rojas-Arce, Margarita Patiño and the witnesses to the murder of Hugo Bustíos-Saavedra, in particular Artemio Pacheco- Aguado, Teodosio Gálvez-Porras, Aurelia Onofre-Anaya, Florinda Morote-Cartagena and Paulina Escalante; it also asked that State to inform the President of the Court in writing of the measures adopted in this regard.

   The Court furthermore required the Inter-American Commission on Human Rights to provide it with all the information at its disposal regarding Perú's compliance with that order.

   The President of the Court was, in turn, authorized to adopt, in consulation with the Permanent Commission, any additional provisional measures he might deem necessary to ensure the faithful observance of the Court's order. The Permanent Commission, acting as a special commission, was charged with verifying the implementation of the order.

2. On September 6, 1990, the Representative of Perú submitted to the Court a report on the measures adopted in compliance with the Court's order. This report was completed with a communication dated October 5, 1990.

3. The Inter-American Commission on Human Rights filed two notes with the Court, dated October 16 and December 11, 1990, transmitting communications from the claimants and the Commission's opinion regarding the measures adopted by Perú.

4. At the request of the President of the Court, on December 15, 1990, Perú presented its observations on the Commission's note of October 16 and informed the Court of other measures taken.

5. The Permanent Commission, acting as a special commission, analyzed the presentations of the parties and presented its report to the XXIII Regular Session of the Court.

CONSIDERING THAT:

1. According to the Permanent Commission's report, the measures taken by Perú do, under the circumstances, fulfill the aims sought by the Court's order of August 8, 1990.

2. In its report, the Permanent Commission nevertheless goes on to suggest that, just as the Government of Perú has set up special military liaison posts in Lima and Ayacucho to receive all urgent communications from persons under its protection, so, too, it would be advisable to designate civilian liaison authorities in Lima, Ayacucho and Huanta for that same purpose.

3. The measures adopted to date by the Government of Perú in order to comply with the order of August 8 refer primarily to the armed forces. Although this may prove effective, given the conditions of life in certain areas of that country, it is advisable to also offer the persons being protected the option of establishing immediate contact with civilian authorities and the possibility of doing so in Huanta itself.

4. In accordance with Article 63(2) of the Convention, the jurisdiction of the Court is limited to "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons...." In a case not yet submitted to the Court, once a State has adopted the provisional measures ordered and unless compelling circumstances dictate otherwise, the case must return to the Commission. The foregoing would not, however, prevent the Commission from at any time requesting the Court to apply Article 63(2) if the gravity and urgency of the situation warrant it.

5. The Government of Perú must continue to offer protection to the aforementioned persons. Nevertheless, since the case is still pending before the Inter-American Commission on Human Rights, it falls to the Commission to verify the protective measures taken.

NOW, THEREFORE:

The Inter-American Court of Human Rights,

pursuant to the powers conferred on it by Article 63(2) of the American Convention on Human Rights,

RESOLVES:

1. To take note of the measures adopted by the Government of Perú in compliance with the Order of August 8, 1990.

2. To require the Government of Perú, in addition to the measures already taken, to designate civilian liaison authorities in Lima, Ayacucho and Huanta, in order to receive urgent communications from the persons under its protection.

3. To return these proceedings to the Inter-American Commission on Human Rights and entrust that body with the verification of Perú's implementation of the measures adopted.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 17th day of January, 1991.

Héctor Fix-Zamudio
President

Orlando Tovar-Tamayo

Thomas Buergenthal

Rafael Nieto-Navia

Policarpo Callejas-Bonilla

Sonia Picado-Sotela

Julio A. Barberis

Manuel E. Ventura-Robles
Secretary

APPENDIX II

RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Adopted by the Court at its Twenty-Third Regular Session held January 9 - 18, 1991

Article 1 - Purpose

1. These Rules regulate the organization and establish the procedures of the Inter-American Court of Human Rights.
2. The Court may adopt such other Rules as are necessary to carry out its functions.
3. In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Court shall decide.

Article 2 - Definitions

For the purposes of these Rules:

a. the term "Court" means the Inter-American Court of Human Rights;

b. the term "Convention" means the American Convention on Human Rights (Pact of San José, Costa Rica);

c. the term "Statute" means the Statute of the Court approved by the General Assembly of the Organization of American States on October 31, 1979 (AG/RES. 448 [IX-O/79]), as amended;

d. the expresion "Permanent Commission" means the Permanent Commission of the Court;

e. the expression "titular judge" means any judge elected in pursuance of Articles 53 and 54 of the Convention;

f. the expression "**ad hoc** judge" means any judge appointed in pursuance of Article 55 of the Convention;

g. the expression "interim judge" means any judge appointed in pursuance of Articles 6(3) and 19(4) of the Statute;

h. the expression "Contracting States" means the States which have ratified or adhered to the Convention;

i. the expression "Member States" means the States which are Members of the Organization of American States;

j. the expression "parties to the case" means the parties in a case before the Court;

k. the term "Commission" means the Inter-American Commission on Human Rights;

l. the expression "Delegates of the Commission" means the persons designated by the Commission to represent it before the Court;

m. the term "Agent" means the person designated by a State to represent it before the Court;

n. the expression "original claimant" means the person, group of persons, or nongovermental entity that instituted the original petition with the Commission pursuant to Article 44 of the Convention;

o. the term "victim" means the person whose rights under the Convention are alleged to have been violated;

p. the expression "report of the Commission" means the report provided for in Article 50 of the Convention;

q. the acronym "OAS" means the Organization of American States;

r. the expression "General Assembly" means the General Assembly of the OAS;

s. the expression "Permanent Council" means the Permanent Council of the OAS;

t. the expression "Secretary General" means the Secretary General of the OAS;

u. the term "Secretary" means the Secretary of the Court;

v. the expression "Deputy Secretary" means the Deputy Secretary of the Court;

w. the term "Secretariat" means the Secretariat of the Court.

TITLE I
ORGANIZATION AND FUNCTIONING OF THE COURT

Chapter I
The Presidency

Article 3 - Election of the President and Vice-President

1. The President and Vice-President are elected by the Court for a period of two years. Their terms begin on July 1 of the corresponding year. The election shall be held during the regular session nearest to that date.

2. The election referred to in this Article shall be by secret ballot of the titular judges present. The judge who wins four or more votes shall be deemed elected. If no candidate receives the required number of votes, a ballot shall take place between the two judges who have received the most votes. In the case of a tie vote, the judge having precedence in accordance with Article 13 of the Statute shall be deemed elected.

Article 4 - Functions of the President

1. The functions of the President are

   a. to represent the Court;

   b. to preside over the meetings of the Court and to submit for its consideration the topics of the agenda;

   c. to direct and promote the work of the Court;

   d. to rule on points of order that may arise during the meetings of the Court. If any judge so requests, the point of order shall be decided by a majority vote;

   e. to present, at the beginning of each regular or special session, a report to the Court on the activities he has carried out as President during the recess between sessions;

   f. to exercise such other functions as are conferred upon him by the Statute or these Rules, or entrusted to him by the Court.

2. In specific cases, the President may delegate the representation to which paragraph 1(a) of this Article refers to the Vice-President or any of the judges or, if necessary, to the Secretary or Deputy Secretary.

3. If the President is a national of one of the parties to a case before the Court or in special situations in which he considers it appropriate, he shall relinquish the Presidency for that particular case. The same rule shall apply to the Vice-President or to any judge called upon to exercise the Presidency.

Article 5 - Functions of the Vice-President

1. The Vice-President shall replace the President in the latter's temporary absence and shall assume the Presidency when the absence is permanent. In the latter case, the Court shall elect a Vice-President to serve out that term. The same procedure shall be followed if the absence of the Vice-President is permanent.
2. In the absence of the President and the Vice-President, their functions shall be assumed by the other judges in the order of precedence established in Article 13 of the Statute.

Article 6 - Commissions

1. The Permanent Commission is composed of the President, the Vice-President and a third judge appointed by the President. The President may appoint a fourth judge for specific cases or on a permanent basis. The Permanent Commission assists the President in the exercise of his functions.
2. The Court may appoint other commissions for specific matters. In urgent cases, they may be appointed by the President if the Court is not in session.
3. In performing their functions, the commissions shall be governed, wherever relevant, by the provisions of these Rules.

Chapter II
The Secretariat

Article 7 - Election of the Secretary

1. The Court shall elect its Secretary. The Secretary must possess the legal qualifications required for the position, a good command of the working languages of the Court and the experience necessary to carry out his functions.
2. The Secretary shall be elected for a period of five years and may be reelected. He may be freely removed at any time if the Court so decides by the vote of no less than four judges. The vote shall be by secret ballot.
3. The Secretary shall be elected in the manner provided for in Article 3(2) of these Rules.

Article 8 - Deputy Secretary

1. The Deputy Secretary shall be appointed, at the proposal of the Secretary of the Court, in the manner provided for in the Statute. He shall assist the Secretary in the performance of his functions and substitute for him in his temporary absences.
2. If the Secretary and Deputy Secretary are both unable to perform their functions, the President may appoint an Acting Secretary.

Article 9 - Oath

1. The Secretary and Deputy Secretary shall take an oath before the President.
2. The staff of the Secretariat, including any persons carrying out interim or temporary functions, shall, upon assuming their functions, take an oath before the President undertaking to respect the confidential nature of any facts that may come to their attention in performing such functions. If the President is not present at the seat of the Court, the Secretary shall administer the oath.
3. All oaths shall be recorded in a document that shall be signed by the person being sworn and the person administering the oath.

Article 10 - Functions of the Secretary

The functions of the Secretary are

a. to notify the judgments, advisory opinions, decisions and other rulings of the Court;

b. to announce the hearings of the Court;

c. to record the minutes of the meetings of the Court;

d. to attend all meetings of the Court held at the seat or away from it;

e. to deal with the correspondence of the Court;

f. to direct the administration of the Court, pursuant to the instructions of the President;

g. to prepare the draft programs, regulations and budgets of the Court;

h. to plan, direct and coordinate the work of the staff of the Court;

i. to carry out the tasks assigned to him by the Court or the President;

j. to perform any other duties provided for by the Statute or these Rules.

Chapter III
Functioning of the Court

Article 11 - Regular Sessions

The Court shall meet in two regular sessions each year, one in each semester, on the dates decided upon by the Court at the immediately preceding session. The President may change these dates in exceptional circumstances.

Article 12 - Special Sessions

Special sessions may be convoked by the President on his own initiative or at the request of a majority of the judges.

Article 13 - Quorum

The quorum for the deliberations of the Court is five judges.

Article 14 - Hearings, Deliberations and Decisions

1. The hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances warrant it, the Court may decide to hold a hearing in private or at some other location. The Court shall decide who is permitted to attend such hearings. Even in these exceptional cases, however, minutes shall be kept in the manner prescribed in Article 42 of these Rules.

2. The Court shall deliberate in private and its deliberations shall remain secret. Only the judges shall take part in the deliberations, although the Secretary and Deputy Secretary or their substitutes may be present, as well as such other Secretariat staff as may be required. No other persons may be admitted except by special decision of the Court and after having taken an oath.

3. Any question which is to be voted upon shall be formulated in precise terms in one of the working languages. At the request of any of the judges, the text thereof shall be translated by the Secretariat into the other working languages and distributed prior to the vote.

4. The minutes of the deliberations of the Court shall be limited to a statement of the subject of the discussion and the decisions that were taken. Dissenting votes and declarations made for the record shall also be noted.

Article 15 - Decisions and Voting

1. The President shall present, point by point, the matters to be voted upon. Each judge shall vote either in the affirmative or the negative; abstentions shall not be permitted.
2. The votes shall be cast in inverse order to the order of precedence established in Article 13 of the Statute.
3. The decisions of the Court shall be made by a majority of the judges present.
4. In the event of a tie, the President shall have a second and casting vote.

Article 16 - Continuation in Office by the Judges

Judges whose terms have expired shall continue to exercise their functions in cases that they have begun to hear and that are still pending. However, in the event of death, resignation, inability to sit, withdrawal, or exemption from sitting, the judge in question shall be substituted by the judge who was selected to replace him, if applicable, or by the judge who has precedence among the new judges elected upon expiration of the term of the judge to be replaced.

Article 17 - Interim Judges

Interim judges, appointed in pursuance of Articles 6(3) and 19(4) of the Statute, shall have the same rights and functions as titular judges, except for the limitations expressly established.

*Article 18 - **Ad Hoc** Judges*

1. In a case arising under Articles 55(2) or 55(3) of the Convention and 10(2) or 10(3) of the Statute, the President, acting through the Secretariat, shall invite the States referred to in those provisions to appoint and **ad hoc** judge within thirty days following the Agent's receipt of the written invitation. The invitation may also be delivered to the Embassy of the State in question in Costa Rica or, if the State is not represented there, to its Delegation to the OAS in Washington, D. C., United States of America. The President shall also bring the relevant provisions to the attention of the States concerned.
2. When it appears that two or more States have a common interest, the President shall invite them to appoint a single **ad hoc** judge in accordance with Article 10 of the Statute. If no agreement has been communicated to the Court within the thirty-day period following receipt of the written invitation by the last of these States to receive it at the location stipulated in the preceding paragraph, each State shall have fifteen days in which to submit a candidate. Thereafter, and if several candidates have been presented, the President shall choose by lot one **ad hoc** judge, and shall communicate the result to the interested parties.
3. If the interested States fail to exercise their rights within the periods provided for in the preceding paragraphs, they shall be deemed to have waived such rights.
4. The Secretary shall communicate the appointment of the **ad hoc** judges to the parties to the case.
5. **Ad hoc** judges shall take an oath at the first meeting devoted to the consideration of the case for which they have been appointed.
6. **Ad hoc** judges shall receive honoraria for days worked, consistent with the budgetary policies of the Court.

Article 19 - Disqualification, Withdrawal or Exemption

1. Disqualifications, withdrawals or exemptions of the judges shall be governed by the provisions of Article 19 of the Statute.
2. Motions for disqualifications and withdrawal must be filed prior to the first hearing of the case. However, if the grounds therefor were not known at that time, such motions may be submitted to the Court at the first possible opportunity to enable it to rule on the matter immediately.
3. When, for whatever reason, a judge is not present at one of the hearing 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.

TITLE II
PROCEDURE

Chapter I
General Rules

Article 20 - Official Languages

1. The official languages of the Court are those of the OAS.
2. The working languages shall be those agreed upon by the Court every three years, taking into account the languages spoken by the judges. In a specific case, however, the language of one of the parties may also be adopted as a working language, provided it is one of the official languages.
3. The working languages shall be determined at the beginning of the proceedings in each case, unless they are the same as those already being employed by the Court.
4. The Court may authorize any person appearing before it to use his own language if he does not have sufficient knowledge of the working languages. In these circumstances, however, the Court shall make the necessary arrangements to ensure that an interpreter is present to translate that testimony into the working languages.
5. The Court shall, in all cases, determine the authentic text.

Article 21 - Representation of the States

1. The States parties to a case shall be represented by an Agent, who may be assisted by any person of his choice.
2. If a State replaces its Agent, it shall notify the Court of that fact. The substitution shall only take effect once the notification has been received at the seat of the Court.
3. A Deputy Agent may be designated. His actions shall have the same validity as those of the Agent.
4. When appointing its Agent, the State in question shall notify the address to which all relevant communications shall be deemed to have been officially transmitted.

Article 22 - Representation of the Commission

1. The Commission shall be represented by the Delegates whom it shall have designated for that purpose. The Delegates may be assisted by any person of their choice.

2. If the attorneys retained by the original claimant, by the alleged victim or by the next of kin of the victim are among the persons selected by the Delegates to assist them, pursuant to the preceding paragraph, this fact shall be brought to the attention of the Court.

Article 23 - Cooperation by the States

1. The States parties to a case have the obligation to cooperate in order to ensure that all notices, communications or summonses addressed to persons subject to their jurisdiction are duly executed. They shall also expedite compliance with summonses by persons who either reside in or need to pass through their territory.
2. The same rule shall apply to any proceedings that the Court decides to carry out or order in the territory of a State party to the case.
3. When the performance of any of the measures referred to in the preceding paragraphs requires the cooperation of any other State, the President shall request the government in question to provide the requisite assistance.

Article 24 - Interim Measures

1. At any stage of the proceeding involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.
2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.
3. Such request may be presented to the President, to any judge of the Court or to the Secretariat, by any means of communication. The recipient of the request shall immediately bring it to the attention of the President.
4. 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.
5. In its Annual Report to the General Assembly, the Court shall include a statement regarding the provisional measures ordered during the period covered by the report. If such measures have not been duly executed, the Court shall make whatever recommendations it deems appropriate.

Article 25 - Procedure by Default

1. When a party fails to appear in or to continue with a case, the Court shall, on its own motion, take whatever measures are necessary to complete consideration of the case.
2. When a party enters a case at a later stage of the proceedings, it shall take the proceedings at that stage.

Chapter II
Institution of the proceedings

Article 26 - Filing of the Application

For a case to be referred to the Court under Article 61(1) of the Convention, an application shall be filed with the Secretariat, in ten copies, indicating:

1. the appointment of the Agent or Delegates, pursuant to Articles 21 and 22 of these Rules;
2. when the case is referred by a State, it shall, if pertinent, present its objections to the opinion of the Commission;
3. when the case is referred by the Commission, it shall include, in addition, the report referred to in Article 50 of the Convention;

4. when the case is before the Commission, the following information shall also be provided:
   a. the parties to the case;
   b. the date of the report of the Commission to which Article 50 of the Convention refers;
5. the purpose of the application, a statement of the facts, the supporting evidence, the legal arguments and relevant conclusions.

Article 27 - Preliminary Review of the Application

When during a preliminary review of the application the President finds that the basic requirements have not been met, he shall request the applicant to correct any deficiencies within twenty days.

Article 28 - Communications of the Application

1. On receipt of the application, the Secretary shall give notice thereof and transmit copies to the following:
   a. the President and the judges of the Court;
   b. the respondent State;
   c. the Commission, when it is not also the applicant;
   d. the original claimant, if known;
   e. the victim or his next of kin, if applicable.
2. The Secretary shall inform the other Contracting States and the Secretary General of the filing of the application.
3. When giving the notice, the Secretary shall request that, within a period of two weeks, the respondent States designate their Agent and, if appropriate, the Commission appoint its Delegates, in accordance with Articles 21 and 22 of these Rules. Until the Delegates are duly appointed, the Commission shall be deemed to be properly represented by its President for all purposes in the case.

Chapter III
Examination of the cases

Article 29 - Written Proceedings

1. The respondent State shall always have the right to file a written answer to the application within three months following notification thereof.
2. The President shall consult the Agents and the Delegates on whether they consider other steps in the written proceedings to be necessary. If the response is in the affirmative, he shall fix the deadlines for the filing of the documents.
3. The documents to which this article refers shall be filed with the Secretariat in ten copies. The Secretary shall transmit them to the persons indicated in Article 28(1) of these Rules.

Article 30 - Joinder of Cases

1. The Court may, at any stage of the proceedings, direct the joinder of cases that are interrelated.
2. It may also order the joinder of the written or oral proceedings of several cases, including the examination of witnesses.

3. After consulting the Agents and the Delegates, the President may direct that the proceedings in two or more cases be conducted simultaneously, without prejudice to the decision of the Court regarding the joinder of the cases.

Article 31 - Preliminary Objections

1. Preliminary objections may be filed only within thirty days following notification of the application.
2. The document setting out the preliminary objections shall be filed with the Secretariat in ten copies and shall set out the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents, as well as any evidence which the party filing the objection may wish to produce.
3. The Secretary shall immediately transmit the preliminary objections to the persons indicated in Article 28(1) of these Rules.
4. The presentation of preliminary objections shall not cause the suspension of the proceedings on the merits, unless the Court expressly decides otherwise.
5. Any parties to the case wishing to submit briefs regarding the preliminary objections may do so within thirty days after receipt of the communication.
6. The Court may, if it deems it appropriate, convene a special hearing relating to the preliminary objections, after which it shall rule on the objections or order that they be joined to the merits.

Article 32 - Oral Proceedings

The President shall, after consulting the Agents and the Delegates, fix the date for the opening of the oral proceedings.

Article 33 - Conduct of the Hearings

The President shall direct the hearings. He shall prescribe the order in which the persons listed in Articles 21 and 22 of these Rules shall be heard.

Article 34 - Measures for Taking Evidence

1. The Court may, at the request of a party or on its own motion, obtain any evidence which it considers likely to clarify the facts of the case. In particular, it may decide to hear as a witness or expert witness, or in any other capacity, any person whose evidence, statements or opinion it deems useful.
2. The Court may, at any time during the proceedings, request the parties to provide any type of evidence available to them or any explanation or statement that, in its judgment, would be likely to clarify the facts of the case.
3. The Court may, at any time during the proceedings, designate any person, office, commission or authority of its choice to obtain information, express an opinion or make a report on any given point. These reports may not be published without the authorization of the Court.
4. The Court may, at any time during the proceedings, designate one or more of its members to conduct an inquiry, carry out an investigation on the spot or take evidence in some other manner.

Article 35 - Cost of Request Evidence

The party requesting the production of evidence shall defray the cost thereof.

Article 36 - Convocation of Witnesses, Experts Witnesses and Other Persons

1. Witnesses, expert witnesses, or other persons whom the Court decides to hear, shall be summoned by the Secretary.
2. The summons shall indicate:

a. the name, status and other particulars of the person summoned;

b. the name of the parties;

c. the object of the inquiry, expert opinion, or any other measure ordered by the Court or by the President;

d. the provisions made for the reimbursement of the expenses incurred by the person summoned.

Article 37 - Oath or Solemn Declaration by Witnesses and Expert Witnesses

1. After his identity has been established and before giving evidence, every witness shall take an oath or make a solemn declaration as follows:

   "I swear" -- or "I solemnly declare" --"upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth."

2. After his identity has been established and before carrying out his task, every expert witness shall take an oath or make a solemn declaration along the following lines:

   "I swear" -- or "I solemnly declare" --"that I will discharge my duty as an expert witness honorably and conscientiously."

3. This oath shall be taken or this declaration made before the Court or before the President or any of the judges who have been so delegated by the Court.

Article 38 - Disqualification of a Witness

1. The disqualification of a witness shall take place before he testifies, unless the grounds for the disqualification become known only thereafter.
2. If the Court considers it necessary, it may nevertheless hear, for purposes of information, a person who is not qualified to be heard as a witness.
3. The Court shall assess the value of the testimony and of the disqualification.

Article 39 - Objection to an Expert Witness

1. The grounds for disqualification applicable to judges under Article 19(1) of the Statute shall also apply to expert witnesses.
2. Objections shall be presented within fifteen days following notification of the appointment of the expert witness in question.
3. If the expert witness who has been challenged contests the grounds invoked against him, the Court shall decide, except that when the Court is not in session the President, in consultation with the Permanent Commission, may order the evidence to be presented. The Court shall be informed thereof and shall have the final decision on the value of the evidence.
4. When it becomes necessary to appoint a new expert witness, the Court shall decide. Nevertheless, if there is urgency in obtaining the evidence, the President, in consultation with the Permanent Commission, shall make the appointment and inform the Court accordingly. The Court shall have the final decision in assessing the value of the evidence.

Article 40 - Failure to Appear or False Evidence

1. When, without good reason, a witness or any other person who has been duly summoned fails to appear or refuses to give evidence, the State having jurisdiction over such witness or other person shall be informed accordingly. The same

provision shall apply when a witness or expert witness has, in the opinion of the Court, violated the oath or solemn declaration mentioned in Article 37 of these Rules.

2. States shall no institute proceedings nor take reprisals against any persons on account of their testimony before the Court. However, the Court may request the States to take the measures provided for in their domestic legislation against those who, in the opinion of the Court, have violated their oath.

Article 41 - Questions Put During the Hearings

1. The judges may ask any person appearing before the Court whatever questions they deem appropriate.
2. The witnesses, expert witnesses and any other persons referred to in Article 36 of these Rules may, subject to the control of the President, be examined by the Agents and the Delegates or, at their request, by the persons referred to in Articles 21 and 22 of these Rules.
3. The President is empowered to rule on the relevance of the questions posed and to excuse the person to whom the questions are addressed from replying, unless the Court shall decide otherwise.

Article 42 - Minutes of the Hearings

1. Minutes shall be made of each hearing and shall contain the following:
   a. the names of the judges present;
   b. the names of those persons referred to in Articles 21 and 22 of these Rules who are present at the hearing;
   c. the names and other relevant information concerning the witnesses, expert witnesses and other persons appearing at the hearing;
   d. the declarations expressly made for insertion in the minutes by the States parties or the Commission;
   e. the declarations of the witnesses, expert witnesses and other persons appearing at the hearing, as well as the questions put to them and their replies;
   f. the text of the questions put by the judges and the responses thereto;
   g. the text of any decisions rendered by the Court during the hearing.
2. The Agents and Delegates, as well as the witnesses, expert witnesses and other persons appearing at the hearing, shall receive a copy of their arguments, statements or testimony, to enable them, subject to the control of the Secretary, to correct any material errors appearing in the transcript of the hearing. The Secretary, in accordance with the instructions of the President, shall fix the time limits granted for this purpose.
3. The minutes shall be signed by the President and the Secretary, who shall attest to their accuracy.
4. Copies of the minutes shall be transmitted to the Agents and to the Delegates.

Article 43 - Discontinuance

1. When the party which has filed the case notifies the Court of its intention not to proceed with it, the Court, after having obtained the opinions of the other parties thereto and the persons referred to in Article 22(2) of these Rules, shall decide whether it is appropriate to approve the discontinuance and, accordingly, to strike the case off its list.
2. When the parties to a case inform the Court that there exists a friendly settlement, arrangement or other fact capable of providing a solution of the matter, the Court may strike the case off its list after having obtained the opinion of the persons referred to in Article 22(2) of these Rules.

3. Notwithstanding the existence of the conditions indicated in the two preceding paragraphs, the Court, mindful of its responsibility to protect human rights, may decide that it should proceed with the consideration of the case.

Article 44 - Application of Article 63(1) of the Convention

1. Article 63(1) of the Convention may be invoked at any stage of the proceedings, even when reference thereto was not made in the application.
2. The Court may invite the persons referred to in Article 22(2) of the Rules to sumbit briefs regarding the application of Article 63(1) of the Convention.

Article 45 - Decisions

1. The judgments and interlocutory decisions for discontinuance of a case shall be rendered by the Court.
2. All other decisions shall be rendered by the Court, if it is sitting, or by the President, if it is not, unless otherwise provided. The decisions of the President may be appealed to the Court.

Chapter IV
Judgments

Article 46 - Contents of the Judgment

1. A judgment shall contain:
    a. the names of the President, the judges who rendered it, and the Secretary and Deputy Secretary;
    b. the date on which it was delivered at a hearing;
    c. the identification of the parties;
    d. the names of the persons referred to in Articles 21 and 22 of these Rules;
    e. a description of the proceedings;
    f. the submissions of the States parties to the case and of the Commission;
    g. the facts of the case;
    h. the legal arguments;
    i. the operative provisions of the judgment;
    j. the allocation of compensation, if any, without prejudice to what is provided for in the article that follows;
    k. the decision, if any, in regard to costs;
    l. the names of the judges constituting the majority;
    m. a statement indicating which text is authentic.

2. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a dissenting or concurring opinion. These opinions shall be submitted within a time-limit to be fixed by the President, to enable the other judges to take cognizance thereof before the judgment is handed down.

Article 47 - Judgment Relating to Article 63(1) of the Convention

1. When the Court finds that there is a breach of the Convention, it shall in the same judgment decide on the application of Article 63(1) of the Convention if that question is ready for decision. If the question is not ready for decision, the Court shall reserve its decision thereon in whole or in part and shall determine the further proceedings.
2. For the purposes of ruling on the application of Article 63(1) of the Convention, the Court shall, as far as possible, be composed of the same judges who rendered the judgment on the merits of the case. However, in the event of death, resignation, disability, withdrawal or exemption, the judge concerned shall be replaced in the manner provided for in Article 16 of these Rules.
3. If the Court is informed that the injured party and the party adjudged to be responsible have reached an agreement that conforms to its judgment on the merits, it shall verify the fairness of the agreement and, pursuant to Article 43 of these Rules, decide accordingly.

Article 48 - Delivery and Communication of the Judgment

1. When the case is ready for a decision, the Court shall meet in private. A preliminary vote shall be taken and a date fixed for the deliberation and final vote.
2. After the final deliberation, the Court shall take a final vote, approve the wording of the judgment, and fix the date of the public hearing at which it shall be communicated to the parties.
3. Until the aforementioned communication, the texts, the legal arguments and the votes shall all remain secret.
4. The judgments shall be signed by all of the judges who participated in the voting and by the Secretary. A judgment signed by only a majority of the judges shall, however, be valid.
5. The dissenting or concurring opinions referred to in Article 46(2) of these Rules shall be signed by the judges who support them and by the Secretary.
6. The judgment shall conclude with an order, signed by the President and the Secretary and sealed by the latter, providing for the communication and execution of the judgment.
7. The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall send certified copies to the States parties to the case, to the Commission, to the President of the Permanent Council, to the Secretary General, to the persons referred to in Article 22(2) of these Rules, and to any interested persons who request them.
8. The Secretary shall transmit the judgment to all the Contracting States.

Article 49 - Publication of Judgments and Other Decisions

1. The Secretary shall be responsible for the publication of:
    a. the judgments and other decisions of the Court;
    b. documents relating to the proceedings, including the report of the Commission, but excluding any particulars bearing on attempts to reach a friendly settlement and any documents which the President considers irrele vant or inappropriate to publish;
    c. the record of the hearings;
    d. any other document whose publication the President considers useful.

2. The judgments shall be published in the working languages used in each case; all other documents shall be published in their original language.

3. Documents deposited with the Secretariat regarding cases already adjudicated shall be accessible to the public, unless otherwise decided by the Court.

Article 50 - Application for an Interpretation of a Judgment

1. Applications for an interpretation pursuant to Article 67 of the Convention shall be filed with the Secretariat in ten copies and shall state with precision the issues relating to the meaning or scope of the judgment on which the interpretation is requested.

2. The Secretary shall transmit the application for interpretation to the States parties to the case and to the Commission, as appropriate, and shall invite them to submit, in ten copies, any written comments they deem relevant within a time-limit laid down by the President.

3. When considering an application for interpretation, the Court shall be composed, whenever possible, of the same judges who adjudicated the case whose interpretation is being sought. However, in the event of death, resignation, disability, withdrawal or exemption, the judge affected shall be replaced in accordance with Article 16 of these Rules.

4. An application for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision by means of a judgment.

TITLE III
ADVISORY OPINIONS

Article 51 - Interpretation of the Convention

1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is sought.

2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or of the Delegates appointed under Articles 21 and 22 of these Rules.

3. If the advisory opinion is sought by an OAS organ other than the Commission, the request shall also specify, in addition to the information listed in the preceding paragraph, how it relates to its sphere of competence.

Article 52 - Interpretation of Other Treaties

1. If the interpretation requested refers to other treaties concerning the protection of human rights in the American states, as provided for in Article 64(1) of the Convention, the application shall indicate the name of, and parties to, the treaty, the specific questions on which the opinion of the Court is sought, and the considerations giving rise to the request.

2. When the request is submitted by one of the organs of the OAS, the application shall also indicate how the request relates to its spheres of competence.

Article 53 - Interpretation of Domestic Laws

1. Request for advisory opinions presented pursuant to Article 64(2) of the Convention shall indicate the following:

   a. The provisions of domestic law and of the Convention or of other treaties concerning the protection of human rights to which the request relates;

   b. the specific questions on which the opinion of the Court is sought;

c. the name and address of the applicant's Agent, appointed pursuant to Article 21 of these Rules.

2. Copies of the domestic laws referred to in the request shall accompany the application.

Article 54 - Procedure

1. On receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all the Member States, to the Commission, to the Secretary General and to the OAS organs whose spheres of competence relate to the subject of the request, if appropriate.
2. The President shall fix the time-limits for the filing of written comments by interested parties.
3. The President may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, he may do so after consulting with the Agent.
4. At the conclusion of the written proceedings, the Court shall decide whether there should be oral proceedings and shall fix the date for such a hearing, unless it Delegates the latter task to the President. In cases governed by Article 64(2) of the Convention, a prior consultation with the Agent is required.

Article 55 - Application by Analogy

The Court shall apply the provisions of Title II of these Rules to advisory proceedings, to the extent that it deems them to be compatible.

Article 56 - Adoption and Content of Advisory Opinions

1. The adoption of advisory opinions shall be governed by Article 48 of these Rules.
2. Advisory opinions shall contain the following:
    a. the names of the President, the judges who rendered the opinion, and the Secretary and Deputy Secretary;
    b. the date on which it was delivered at a public hearing, if applicable;
    c. the issues presented to the Court;
    d. a summary of the considerations giving rise to the request;
    e. a description of the proceedings;
    f. the legal arguments;
    g. the names of the judges constituting the majority;
    h. the opinion of the Court;
    i. a statement indicating which text is authentic.
3. Any judge who has taken part in the deliberations on the advisory opinion request is entitled to append to the opinion of the Court a concurring or dissenting opinion. These opinions shall be submitted within a time-limit to be fixed by the President, to enable the other judges to take cognizance thereof before the advisory opinion is rendered.
4. Advisory opinions may be delivered in public.

TITLE IV
FINAL AND TRANSITORY PROVISIONS

Article 57 - Abrogation and Modification of the Rules of Procedure

These Rules may be amended by the vote of an absolute majority of the titular judges of the Court. Upon entry into force, they shall abrogate the previous Rules of Procedure.

Article 58 - Entry into Force

These Rules, whose Spanish and English versions are equally authentic, shall enter into force on August 1, 1991. They shall only apply for cases brought before the Court after that date.

APPENDIX III

Embassy of Honduras
P. O. Box 2239
San José, Costa Rica

EH.CIDH.002-91
February 14, 1991

Mr. MANUEL VENTURA-ROBLES
Secretary
Inter-American Court of Human Rights
San José

Mr. Secretary:

Acting on instructions from my Government, I have the pleasure to transmit to you and to the Inter-American Court of Human Rights Communication No. 003-CIDH/91 of January 18, 1991, which was sent by attorney Leonardo Matute-Murillo, President of the Inter-Institutional Commission of Human Rights (CIDH) to Dr. Mario Carías-Zapata, Minister of Foreign Affairs of my country, in the matters of "GODINEZ-CRUZ" and "VELASQUEZ-RODRIGUEZ," as follows:

"INTER-INSTITUTIONAL COMMISSION OF HUMAN RIGHTS, Republic of Honduras, C. A. Communication No. 003-CIDH/91. Tegucigalpa, M.D.C. January 18, 1991. DR. MARIO CARIAS-ZAPATA. Minister of Foreign Affairs. Ministry of Foreign Affairs. Excellency: I have the honor to transmit to Your Excellency and, through you, to the appropriate channels for distribution to the Inter-American Court of Human Rights and the International and Non-Governmental Organizations involved in the promotion and defense of human rights, Communication No. 218-P-90 dated December 27, 1990, which the undersigned, acting in his capacity as Attorney General of the Republic and President of the Inter-Institutional Commission of Human Rights, sent to the President of the Republic and which reads as follows: 'I am pleased to inform Your Excellency that, at 12:30 p.m. today and acting on behalf of the Government of Honduras, I, together with the General Manager of the Central Bank of Honduras, Rigoberto Pineda, economist, opened a Trust in the amount of Lps. 562,500.00 in the name of the children of Manfredo Velásquez-Rodríguez, and a second Trust for L. 487,500.00 in the name of the daughter of Saúl Godínez-Cruz. Copies of both contracts are attached. As Your Excellency is aware, on October 17 of this year, Mrs. Enma Guzmán de Velásquez was paid the compensatory damages awarded to her in the amount of Lps. 187,500.00, and on October 18 of this year Mrs. Enmidida Escoto de Godínez likewise received her compensatory damages, which amounted to Lps. 162,500.00. In this way, Mr. President, the State of Honduras and the Government of the Republic have complied with the judgments of the Inter-American Court of Human Rights of July 21, 1989. The performance of such judgments shall be communicated to the Court and to other international organizations devoted to the defense of human rights through the

appropriate channels ... LEONARDO MATUTE-MURILLO, Attorney General of the Republic and President of the Inter-Institutional Commission of Human Rights.' To that same end, I am enclosing Trust Agreements Nos. 075-90 and 080-90 concluded by the Attorney General of the Republic and the Manager of the Central Bank of Honduras. I take this opportunity to renew the expressions of my highest consideration. Sincerely, (signed) ATTORNEY LEONARDO MATUTE-MURILLO. President of the Inter-Institutional Commission of Human Rights (C.I.D.H.). (Seal)."

I take this opportunity to renew the expressions of my highest consideration.

EDGARDO SEVILLA-IDIAQUEZ

Ambassador

Agent of the Government of Honduras

APPENDIX IV

Embassy of Honduras
P. O. Box 2239
San José, Costa Rica

EH.CIDH.003-91
April 8, 1991

Mr. Manuel Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José

Mr. Secretary:

I have the honor to transmit to you the copies of the Trust Agreements entered into between the Attorney General of the Republic of Honduras, Attorney LEONARDO MATUTE-MURILLO, and the Manager and Legal Representative of the Central Bank of Honduras, on behalf of the heirs of SAUL GODINEZ-CRUZ and ANGEL MANFREDO VELASQUEZ-RODRIGUEZ, in compliance with the provisions of the Judgment rendered by that Honorable Court on July 21, 1989, against the State of Honduras. Both documents are attachments to the note I sent you on February 14, 1991 (Number EH.CIDH.002-91), which, for reasons beyond my control, I was unable to enclose at that time.

I take this opportunity, Mr. Secretary, to renew the expressions of my highest consideration.

EDGARDO SEVILLA-IDIAQUEZ
Ambassador
Agent of the Government of Honduras

Encls. as indicated

No. 075-90

TRUST AGREEMENT

LEONARDO MATUTE-MURILLO, Attorney, in his capacity as ATTORNEY GENERAL OF THE REPUBLIC and, consequently, Legal Representative of the State of Honduras, position to which he was elected by Decree No. 3-90 issued by the National Congress on January 26, 1990 (hereinafter "the TRUSTOR"), and RIGOBERTO PINEDA-SANTOS, Economist, in his capacity as MANAGER and LEGAL REPRESENTATIVE of the CENTRAL BANK OF HONDURAS, position to which he was appointed through Resolution No. 216-5/86 of the Board of Directors of said institution on May 15, 1986, expressly authorized to sign this document by Resolution No. 734-11/90 of the Board of Directors of the aforementioned Bank (hereinafter "the TRUSTEE"); both parties being of age, married, Honduran citizens and residents of this city, we have agreed to enter into this Trust Agreement which shall be governed by the provisions of the following articles: FIRST: The TRUSTOR declares that, in compliance with the judgment rendered by the Inter-American Court of Human Rights on July 21, 1989, against the State of Honduras in the case relating to Mr. ANGEL MANFREDO VELASQUEZ-RODRIGUEZ, he does hereby set up a trust in the amount of FIVE HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED LEMPIRAS (L. 562,500.00) in favor of Mr. Velásquez' children, HECTOR RICARDO, NADIA WALESKA and HERLING LIZZETH VELASQUEZ-GUZMAN (hereinafter "the BENEFICIARIES"), who were born on October 21, 1972, February 12, 1977, and November 21, 1978, respectively. SECOND: The TRUSTOR goes on to state that, pursuant to the preceding article, he does hereby deliver to the TRUSTEE check No. 2064263, issued by the Treasury of the Republic. The TRUSTEE shall administer the funds placed in trust, in accordance with legal regulations in force and in strict compliance with the following conditions: a) He shall invest the trust funds under the best conditions possible as regards security, liquidity and yield, preferably in securities issued or guaranteed by the State; b) In order to cover the maintenance, education and other needs of the BENEFICIARIES, the TRUSTEE shall, through their mother and legal representative, Mrs. ENMA GUZMAN DE VELASQUEZ, pay out to them the monthly income produced by the investment of the funds within the first five days of each month, at the TRUSTEE's main office. In keeping with established regulations, the terms of this Trust Agreement may be revised every four (4) years through the written authorization of the TRUSTOR; c) The TRUSTEE shall submit an annual report on the administration of the trust to the TRUSTOR, detailing the investments made and their yield, as well as the sums paid out to the BENEFICIARIES; d) The BENEFICIARIES shall receive their monthly payments through their aforementioned legal representative and, upon reaching twenty-five (25) years of age, each of them shall receive his corresponding share of the assets in trust on that date. The trust shall be dissolved when the last BENEFICIARY shall receive his share, whereupon the ends for which the trust was set up shall have been accomplished; e) The TRUSTOR and the TRUSTEE both agree that the latter shall receive no remuneration whatsoever for administering the funds in trust. THIRD: The TRUSTOR states that, in order to fulfill his obligations, he shall supervise as he sees fit the proper investment of the sums that the BENEFICIARIES shall receive as income from the trust; to that end, he may at any moment ask the person administering such income to supply appropriate reports; if that person should refuse to produce these reports and it were established by other means that the income in question

has been improperly invested, the TRUSTOR shall, in accordance with the law, request the appointment of a special guardian for the BENEFICIARIES, with a view to protecting their interests. FOURTH: The TRUSTEE, on his part, declares that he accepts and assumes his responsibilities hereunder and that he does hereby receive the funds to be set up in trust.

In witness whereof we sign this Trust Agreement in the city of Tegucigalpa, Municipality of the Central District, in three copies of one and the same text, one for each of the contracting parties and the third for the beneficiaries thereto, on this twenty-seventh (27th) day of December, nineteen hundred ninety (1990).

LEONARDO MATUTE-MURILLO
Attorney General of the Republic

RIGOBERTO PINEDA-SANTOS
Manager
CENTRAL BANK OF HONDURAS

No. 080-90

TRUST AGREEMENT

LEONARDO MATUTE-MURILLO, Attorney, in his capacity as ATTORNEY GENERAL OF THE REPUBLIC and, consequently, Legal Representative of the State of Honduras, position to which he was elected by Decree No. 3-90 issued by the National Congress on January 26, 1990 (hereinafter "the TRUSTOR"), and RIGOBERTO PINEDA-SANTOS, Economist, in his capacity as MANAGER and LEGAL REPRESENTATIVE of the CENTRAL BANK OF HONDURAS, position to which he was appointed through Resolution No. 216-5/86 of the Board of Directors of said institution on May 15, 1986, expressly authorized to sign this document by Resolution No. 734-11/90 of the Board of Directors of the aforementioned Bank (hereinafter "the TRUSTEE"); both parties being of age, married, Honduran citizens and residents of this city, we have agreed to enter into this Trust Agreement which shall be governed by the provisions of the following articles: FIRST: The TRUSTOR declares that, in compliance with the judgment rendered by the Inter-American Court of Human Rights on July 21, 1989, against the State of Honduras in the case relating to Mr. SAUL GODINEZ-CRUZ, he does hereby set up a trust in the amount of FOUR HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED LEMPIRAS (L. 487,500.00) in favor of Mr. Godínez' daughter EMMA PATRICIA GODINEZ-ESCOTO (hereinafter "the BENEFICIARY"), who was born on May 2, 1982. SECOND: The TRUSTOR goes on to state that, pursuant to the preceding article, he does hereby deliver to the TRUSTEE check No. 2064263, issued by the Treasury of the Republic. The TRUSTEE shall administer the funds placed in trust, in accordance with legal regulations in force and in strict compliance with the following conditions: a) He shall invest the trust funds under the best conditions possible as regards security, liquidity and yield, preferably in securities issued or guaranteed by the State; b) In order to cover the maintenance, education and other needs of the BENEFICIARY, the TRUSTEE shall, through her mother and legal representative, Mrs. ENMIDIDA ESCOTO DE GODINEZ, pay out to her the monthly income produced by the investment of the funds within the first five day of each month, at the TRUSTEE's main office. In keeping with established regulations, the terms of this Trust Agreement may be revised every four (4) years through the written authorization of the TRUSTOR; c) The TRUSTEE shall submit an annual report on the administration of the trust to the TRUSTOR, detailing the investments made and their yield, as well as the sums paid out to the BENEFICIARY; d) The BENEFICIARY shall receive her monthly payments through her aforementioned legal representative and, upon reaching twenty-five (25) years of age, shall receive the funds that shall have accumulated in the trust to that date, whereupon the trust shall be dissolved, since the ends for which the trust was set up shall have been accomplished; e) the TRUSTOR and the TRUSTEE both agree that the latter shall receive no remuneration whatsoever for administering the funds in trust. THIRD: The trustor states that, in order to fulfill his obligations, he shall supervise as he sees fit the proper investment of the sums that the beneficiary shall receive as income from the trust; to that end, he may at any moment ask the person administering such income to supply appropriate reports; if that person should refuse to produce these reports and it were established by other means that the income in question has been improperly invested, the TRUSTOR shall, in accordance with the law, request the appointment of a special guardian for the BENEFICIARY, with a view to protecting her interests. FOURTH: The TRUSTEE, on his

part, declares that he accepts and assumes his responsibilities hereunder and that he does hereby receive the funds to be set up in trust.

In witness whereof we sign this Trust Agreement in the city of Tegucigalpa, Municipality of the Central District, in three copies of one and the same text, one copy for each of the contracting parties and the third for the beneficiary thereto, on this twenty-seventh (27th) day of December, nineteen hundred ninety (1990).

LEONARDO MATUTE-MURILLO
Attorney General of the Republic

RIGOBERTO PINEDA-SANTOS
Manager
CENTRAL BANK OF HONDURAS

APPENDIX V

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D. C. 20006 U. S. A.

June 27, 1991

Mr. Secretary:

I have the honor to transmit to the Inter-American Court of Human Rights, through your good offices, a request for provisional measures to protect the life and physical integrity of the persons identified in the resolution, all of whom are members of CERJ or GAM of the village of Chunimá, Guatemala, and have either been threatened or have witnessed abuses committed by the civilian self-defense patrols of that village.

As the attached text indicates, this request has been presented pursuant to the powers granted to the Commission under Articles 63(2) of the American Convention on Human Rights and 76 of the Regulations of the Commission. For use as appropriate, please find attached the background materials on this case submitted by the petitioner to the Commission.

I wish to inform you, furthermore, that the pertinent parts of the petition have been transmitted to the Government of Guatemala, in accordance with the Commission's standard practice. Such transmittal in no way constitutes a prejudgment as regards the admissibility of this case. I must likewise inform you that the petitioner has expressly authorized the disclosure of his identity.

Based on the foregoing, I hereby request the Secretary to kindly communicate the aforementioned resolution to the President of the Court for the purposes stated, and to report to the Commission as to the decision taken and the measures adopted in this regard.

I take this opportunity to renew the expressions of my highest consideration,

Edith Márquez-Rodríguez
Executive Secretary

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

REQUEST FOR PROVISIONAL MEASURES

CASE 10.674
GUATEMALA, June, 1991

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN:

1. The complaints received from Americas Watch and the Center for Justice and International Law (CEJIL) dated April 4, April 18 and May 2, 1991, after which the Commission opened case # 10.674, in accordance with the American Convention on Human Rights. The complainants allege the following:

a) That on October 6, 1990, Sebastián Velásquez-Mejía, a human rights activist associated with the Mutual Support Group (GAM) and the Council of Ethnic Communities "We Are All Equal" (CERJ), was abducted by five plainclothesmen driving a blue pickup truck known to belong to the army. The men abducted Sebastián Velásquez after the local civil patrol chief, Manuel Perebal-Ajtzalam III, showed them where the victim was waiting for a bus on the highway near his village of Chunimá in the department of El Quiché. Manuel Perebal-Ajtzalam III had previously threatened Sebastián Velásquez's life.

b) That on October 8, 1990, the body of Sebastián Velásquez was found in Guatemala City. The autopsy stated that the victim died of blows to the thorax and abdomen.

c) That on December 10, 1990, a second human rights activist from Chunimá, GAM member Diego Ic-Suy, was shot dead in the Guatemala City bus terminal by two masked gunmen. Ic-Suy had been under surveillance by the civil patrols commanded by Manuel Perebal-Ajtzalam III before his murder.

d) That on January 21, 1991, a district court judge in Santa Cruz del Quiché issued a warrant for the arrest of Chunimá patrol chief Manuel Perebal-Ajtzalam III for the abduction and murder of Sebastián Velásquez. The police failed to carry out the order.

e) That on February 17, 1991, Manuel Perebal-Ajtzalam III and another civil patrol leader from Chunimá, Manuel León-Lares, accompanied by four unidentified men, shot three more human rights activists from Chunimá, killing CERJ members Manuel Perebal-Morales and his father Juan Perebal-Xirúm, and leaving seriously injured his half brother, Diego Perebal-León, also a member of the CERJ. Manuel Perebal-Morales and Diego Perebal-León were witnesses to the abduction of Sebastián Velásquez. Their testimony before the district court judge in Santa Cruz del Quiché had prompted that court to order the arrest of Manuel Perebal-Ajtzalam III. In addition, Perebal-Ajtzalam III had threatened to kill the victims on several occasions before this incident.

f) That on February 18, 1991, the justice of the peace in Chichicastenango ordered the arrest of Manuel Perebal-Ajtzalam III and Manuel León-Lares for the murder of Manuel Perebal-Morales and Juan Perebal-Xirúm, as well as the serious wounding of Diego Perebal-León. The police failed to carry out this order as well.

g) That on March 12, 1991, an attorney for the government's Human Rights Ombudsman evacuated fifteen members of the family of Diego Perebal-León from Chunimá because the patrol chiefs, who remained at large, continued to threaten relatives of the victims and human rights activitists in the community.

2. The petitioners, pursuant to Article 63(2) of the American Convention, also urge the Commission to request the Court to adopt provisional measures to protect the lives and physical integrity of human rights monitors in Chunimá. The request for provisional measures is based on the following:

a) That human rights monitors of CERJ and GAM from the village of Chunimá are exposed to grave and continuous danger. In the last nine months five human rights monitors have been killed and one has been seriously wounded.

b) That as a result of this violence, 15 Chunimá residents, CERJ members and their relatives have fled to the CERJ office in Santa Cruz del Quiché, in early March 1991, to take refuge.

c) The source of the danger faced by human rights monitors in Chunimá has been the civil patrols, in particular Manuel Perebal-Ajtzalam III and Manuel León-Lares, for whom arrest warrants have been issued but not carried out.

(i) On April 17, 1991, the chief of police of Santa Cruz del Quiché visited the CERJ office to see if any of the family members who have taken refuge there — all of them relatives of Diego Perebal-León, who was shot and seriously injured in one of the incidents — would accompany them to Chunimá to help them identify the suspects. The family members declined out of fear.

(ii) Nonetheless, on April 26, 1991, the police decided to travel to Chunimá to execute the arrest warrants. Thirty policemen went on the mission, some National Police and some Treasury Police. They located the houses of the suspects, but did not find them at home. On their way out of the village, they were confronted by a very large group of armed patrollers, led by the chiefs Manuel Perebal-Ajtzalam III and Manuel León-Lares, and including patrollers from Chunimá and several other communities. The patrollers detained the police there for two hours, and only let them leave after extracting a promise from the police that they would never come to Chunimá again.

(iii) On June 13, 1991, the police again attempted to arrest the suspects in Chunimá. Although they encountered the suspects, they were unable to arrest them, apparently because the suspects alerted other members of the patrols, who joined with them in resisting the arrests.

d) Recent incidents against human rights monitors include the following:

(i) At about 8:30 p.m., on April 14, 1991, three unidentified men stabbed to death CERJ member Camilo Ajquí-Jimón outside his house in the village of Potrero Viejo, municipality of Zacualpa, in the department of El Quiché. According to the testimony of the victim's widow, the three men dragged him from his home, threatening to kill her as well if she did not stay in the house, and killed him just behind the house. The victim was nearly decapitated. According to information received by the Commission, CERJ members in the village had received threats from civil patrollers and military commissioners because of the CERJ's resistance to the civil patrols.

(ii) At 7:30 a.m., April 15, 1991, CERJ President Amílcar Méndez was threatened and assaulted in Guatemala City by four plainclothesmen with dark sunglasses. The men approached Mr. Méndez as he was leaving the restaurant Pollo Campero on the Calzada Roosevelt in Zone 11 of Guatemala City. One of them told Mr. Méndez he was going to die, and two tried to grab him. The intervention of passersby, however, caused the men to leave Mr. Méndez and flee the scene.

(iii) According to information received recently by the Commission, anonymous flyers have been distributed in Chunimá calling the CERJ a guerrilla front and naming residents of the village who belong to the organization.

(iv) Finally, on June 13, after the police had tried and failed for the second time to arrest civil patrol chiefs Perebal-Ajtzalam III and León-Lares, Manuel Perebal-Ajtzalam III and his brother, Tomás Perebal-Ajtzalam, attacked a member of the GAM in Chunimá, apparently as a reprisal. Perebal-Ajtzalam III and his brother raided the house of GAM member Tomás Velásquez-Ajtzalam and beat and kicked him savagely. Perebal-Ajtzalam III reportedly fired his rifle in the air to further intimidate his victim.

There is abundant evidence that human rights monitors in Chunimá are in grave danger.

3. A list of the names of those for whom provisional measures by the Court is requested is as follows:

-Diego Perebal-León, witness to the abduction of Sebastián Velásquez-Mejía, witness to the murder of his father Juan Perebal-Xirúm and brother Manuel Perebal- Morales, was hospitalized with severe injuries as a result of gunshot wounds inflicted on February 17, 1991. Mr. Perebal-León has been repeatedly threatened by the civil patrol chiefs of Chunimá and was among five CERJ members who fled the village from October 6 - November 16, 1990. Mr. Perebal-León, who is now paralyzed, and the surviving members of his family, have taken refuge in the CERJ office in Santa Cruz del Quiché since early March 1991.

-José Velásquez-Morales, cousin of Sebastián Velásquez-Mejía, a complainant in the criminal case against his killers, and the man who replaced Mr. Sebastián Velásquez as the CERJ delegate in Chunimá, has suffered repeated threats and harassment at the hands of the army and civil patrols and was among five CERJ members who fled Chunimá from October 6 - November 16, 1990.

-Rafaela Capir-Pérez, the common-law wife of Sebastián Velásquez-Mejía and the original complainant in the criminal case against his killers, Ms. Capir-Pérez and the couple's children fled to the GAM office in Guatemala City on October 6, 1990, and returned to Chunimá on November 16, 1990.

-Manuel Suy-Perebal, witness to the abduction of Sebastián Velásquez-Mejía, was among the five CERJ members who fled Chunimá from October 6 - November 16, 1990. He has been repeatedly threatened by the civil patrols.

-José Suy-Morales is one of the five CERJ members who fled Chunimá from October 6 - November 16, 1990. He has been repeatedly threatened by the civil patrols.

-Amílcar Méndez-Urizar, President of the CERJ, has been the victim of repeated death threats. Mr. Méndez is one of Guatemala's most prominent defenders of human rights.

-Justina Tzoc-Chinol, member of the board of directors of the CERJ.

-Manuel Mejía-Tol, member of the board of directors of the CERJ.

-Miguel Sucuqui-Mejía, member of the board of directors of the CERJ.

-Juan Tum-Mejía, caretaker at the CERJ office, son of CERJ member María Mejía, who was murdered on March 17, 1990, in Parraxtut, following death threats and harassment against her family for their membership in the CERJ.

-Claudia Quiñones, secretary of the CERJ.

-Pedro Ixcaya, CERJ member living in the CERJ office following the May 1, 1990, murder of his cousin, José María Ixcaya, who was the CERJ leader in La Fe, Sololá. Pedro Ixcaya has received repeated death threats from civil patrol chiefs.

-Roberto Lemus-Garza, judge at the Second Criminal Court in Santa Cruz del Quiché, who investigated murders of human rights monitors from Chunimá and issued an arrest warrant for Manuel Perebal-Ajtzalam III for the abduction and murder of CERJ leader Sebastián Velásquez-Mejía. Judge Lemus has also issued warrants for patrollers in other cases.

-María Antonieta Torres-Arce, justice of the peace in Sololá, who, on February 18, 1991, as acting justice of the peace in Chichicastenango, El Quiché, issued arrest warrants for Manuel Perebal-Ajtzalam III and Manuel León-Lares for the murder of Juan Perebal-Xirúm and Manuel Perebal-Morales and the severe wounding of Diego Perebal-León, all active members of CERJ.

CONSIDERING:

1. That the background information presented in this case sets forth a prima facie case of a serious and urgent risk to the lives and physical integrity of the human rights monitors, their families and witnesses.

2. That in the face of this risk the information available to the Commission reveals that the normal guarantees available to the population are not sufficient to guarantee the lives and personal integrity of the individuals listed.

3. That the work of a human rights monitor is indispensable for the observance of human rights in Guatemala.

4. That this work in Guatemala exposes the individual to serious and sometimes fatal risks, which warrant that certain precautionary measures be taken.

5. That Article 63(2) of the American Convention authorizes the Commission to seek provisional measures from the Court, if the case has not yet been presented to the Court, if there exists a situation of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons."

6. That the request for provisional measures does not prejudice the Commission's decision regarding the admissibility or the merits of the case.

7. That the Government of Guatemala has ratified the American Convention on Human Rights, and, pursuant to Article 62, has recognized the jurisdiction of the Court.

8. That there are no internal measures to exhaust regarding the precautionary measures to be taken regarding the life and physical integrity of persons listed, as is shown by the failure of the Guatemalan police to carry out the arrest of Perebal-Ajtzalam III and León-Lares, despite the issuance of the arrest warrants.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

To request the Inter-American Court of Human Rights to take the following provisional measures, pursuant to Article 63(2) of the American Convention, in this case:

1. To request that the Government of Guatemala adopt the necessary measures to protect the lives, physical integrity, and security of the witnesses, relatives, human rights activists, and judges named in this resolution. In this context, it is recommended that the Government of Guatemala inform the human rights organizations affected of the name and phone number of a civilian official in the government who will be responsible for providing them with protection should the need arise.

2. To request that the Government of Guatemala effectively ensure that human rights activists may return to their homes in Chunimá without fear of further persecution at the hands of civil patrols or the army.

3. To request that the Guatemalan authorities carry out the arrest warrants issued against the principal suspects, the aforementioned members of the civil patrol of Chunimá.

4. To request that the highest authorities of the Government of Guatemala make a public declaration to be published in the major media establishments in the country recognizing the legitimacy of the work of human rights monitors in Guatemala and acknowledging that their activities are protected not only by the American Convention on Human Rights, but also by the Constitution of the Republic of Guatemala.

5. To request the Court to hold a public hearing at the earliest opportunity so that the Commission may inform the Court in detail about the condition of defenselessness in which human rights monitors are working in the department of El Quiché, Guatemala. At the same time, the Guatemalan government will have the opportunity to inform the Court of the concrete measures adopted to clarify these crimes, punish the perpetrators, prevent future crimes of this nature, and ensure the security of human rights monitors and their relatives.

APPENDIX VI

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JULY 15, 1991

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS - (GUATEMALA)

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

HAVING SEEN:

1. The communication of the Inter-American Commission on Human Rights (hereinafter "the Commission") dated June 27, 1991, which was received at the Secretariat of the Court on the following day, whereby, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention") and 76 of the Regulations of the Commission, the Commission submits to the Inter-American Court of Human Rights (hereinafter "the Court") "a request for provisional measures to protect the life and physical integrity" of the persons stipulated in the resolution attached to said communication relating to case 10.674;

2. The remainder of the related documentation which was received at the Secretariat of the Court via Sky Net-Worldwide Courier Network on July 2, 1991;

3. The aforementioned resolution of the Commission requesting the Court to adopt the following provisional measures:

> 1. To request that the Government of Guatemala adopt the necessary measures to protect the lives, physical integrity, and security of the witnesses, relatives, human rights activists, and judges named in this resolution. In this context, it is recommended that the Government of Guatemala inform the human rights organizations affected of the name and phone number of a civilian official in the government who will be responsible for providing them with protection should the need arise.
>
> 2. To request that the Government of Guatemala effectively ensure that human rights activists may return to their homes in Chunimá without fear of further persecution at the hands of civil patrols or the army.
>
> 3. To request that the Guatemalan authorities carry out the arrest warrants issued against the principal suspects, the aforementioned members of the civil patrol of Chunimá.
>
> 4. To request that the highest authorities of the Government of Guatemala make a public declaration to be published in the major media establishments in the country recognizing the legitimacy of the work of human rights monitors in Guatemala and acknowledging that their activities are protected not only by the American Convention on Human Rights, but also by the Constitution of the Republic of Guatemala.
>
> 5. To request the Court to hold a public hearing at the earliest opportunity so that the Commission may inform the Court in detail about the condition of defenselessness in which human rights monitors are working in the department of El Quiché, Guatemala. At the same time, the Guatemalan government will have the opportunity to inform the Court of the concrete measures adopted to clarify these crimes, punish the perpe-

trators, prevent future crimes of this nature, and ensure the security of human rights monitors and their relatives.

4. The Commission's request follows upon a petition brought on April 4 and 18 and May 2, 1991, by Americas Watch and the Center for Justice and International Law (CEJIL), which led to the opening of case No. 10.674 by the Commission. That petition included a special request to the Court for the adoption of provisional measures.

A. The petition is based on the following facts:

a) That on October 6, 1990, Sebastián Velásquez-Mejía, a human rights activist associated with the Mutual Support Group (GAM) and the Council of Ethnic Communities "We Are All Equal" (CERJ), was abducted by five plainclothesmen driving a blue pickup truck known to belong to the army. The men abducted Sebastián Velásquez after the local civil patrol chief, Manuel Perebal-Ajtzalam III, showed them where the victim was waiting for a bus on the highway near his village of Chunimá in the department of El Quiché. Manuel Perebal-Ajtzalam III had previously threatened Sebastián Velásquez's life.

b) That on October 8, 1990, the body of Sebastián Velásquez was found in Guatemala City. The autopsy stated that the victim died of blows to the thorax and abdomen.

c) That on December 10, 1990, a second human rights activist from Chunimá, GAM member Diego Ic-Suy, was shot dead in the Guatemala City bus terminal by two masked gunmen. Ic-Suy had been under surveillance by the civil patrols commanded by Manuel Perebal-Ajtzalam III before his murder.

d) That on January 21, 1991, a district court judge in Santa Cruz del Quiché issued a warrant for the arrest of Chunimá patrol chief Manuel Perebal-Ajtzalam III for the abduction and murder of Sebastián Velásquez. The police failed to carry out the order.

e) That on February 17, 1991, Manuel Perebal-Ajtzalam III and another civil patrol leader from Chunimá, Manuel León-Lares, accompanied by four unidentified men, shot three more human rights activists from Chunimá, killing CERJ members Manuel Perebal-Morales and his father Juan Perebal-Xirúm, and leaving seriously injured his half brother, Diego Perebal-León, also a member of the CERJ. Manuel Perebal-Morales and Diego Perebal-León were witnesses to the abduction of Sebastián Velásquez. Their testimony before the district court judge in Santa Cruz del Quiché had prompted that court to order the arrest of Manuel Perebal-Ajtzalam III. In addition, Perebal-Ajtzalam III had threatened to kill the victims on several occasions before this incident.

f) That on February 18, 1991, the justice of the peace in Chichicastenango ordered the arrest of Manuel Perebal-Ajtzalam III and Manuel León-Lares for the murder of Manuel Perebal-Morales and Juan Perebal-Xirúm, as well as the serious wounding of Diego Perebal-León. The police failed to carry out this order as well.

g) That on March 12, 1991, an attorney for the government's Human Rights Ombudsman evacuated fifteen members of the family of Diego Perebal-León from Chunimá because the patrol chiefs, who remained at large, continued to threaten relatives of the victims and human rights activitists in the community.

2. The petitioners, pursuant to Article 63(2) of the American Convention, also urge the Commission to request the Court to adopt provisional measures to protect the lives and physical integrity of human rights monitors in Chunimá. The request for provisional measures is based on the following:

a) That human rights monitors of CERJ and GAM from the village of Chunimá are exposed to grave and continuous danger. In the last nine months five human rights monitors have been killed and one has been seriously wounded.

b) That as a result of this violence, 15 Chunimá residents, CERJ members and their relatives have fled to the CERJ office in Santa Cruz del Quiché, in early March 1991, to take refuge.

c) The source of the danger faced by human rights monitors in Chunimá has been the civil patrols, in particular Manuel Perebal-Ajtzalam III and Manuel León-Lares, for whom arrest warrants have been issued but not carried out.

(i) On April 17, 1991, the chief of police of Santa Cruz del Quiché visited the CERJ office to see if any of the family members who have taken refuge there-- all of them relatives of Diego Perebal-León, who was shot and seriously injured in one of the incidents -- would accompany them to Chunimá to help them identify the suspects. The family members declined out of fear.

(ii) Nonetheless, on April 26, 1991, the police decided to travel to Chunimá to execute the arrest warrants. Thirty policemen went on the mission, some National Police and some Treasury Police. They located the houses of the suspects, but did not find them at home. On their way out of the village, they were confronted by a very large group of armed patrollers, led by the chiefs Manuel Perebal-Ajtzalam III and Manuel León-Lares, and including patrollers from Chunimá and several other communities. The patrollers detained the police there for two hours, and only let them leave after extracting a promise from the police that they would never come to Chunimá again.

(iii) On June 13, 1991, the police again attempted to arrest the suspects in Chunimá. Although they encountered the suspects, they were unable to arrest them, apparently because the suspects alerted other members of the patrols, who joined with them in resisting the arrests.

d) Recent incidents against human rights monitors include the following:

(i) At about 8:30 p.m., on April 14, 1991, three unidentified men stabbed to death CERJ member Camilo Ajquí-Jimón outside his house in the village of Potrero Viejo, municipality of Zacualpa, in the department of El Quiché. According to the testimony of the victim's widow, the three men dragged him from his home, threatening to kill her as well if she did not stay in the house, and killed him just behind the house. The victim was nearly decapitated. According to information received by the Commission, CERJ members in the village had received threats from civil patrollers and military commissioners because of the CERJ's resistance to the civil patrols.

(ii) At 7:30 a.m., April 15, 1991, CERJ President Amílcar Méndez was threatened and assaulted in Guatemala City by four plainclothesmen with dark sunglasses. The men approached Mr. Méndez as he was leaving the restaurant Pollo Campero on the Calzada Roosevelt in Zone 11 of Guatemala City. One of them told Mr. Méndez he was going to die, and two tried to grab him. The intervention of passersby, however, caused the men to leave Mr. Méndez and flee the scene.

(iii) According to information received recently by the Commission, anonymous flyers have been distributed in Chunimá calling the CERJ a guerrilla front and naming residents of the village who belong to the organization.

(iv) Finally, on June 13, after the police had tried and failed for the second time to arrest civil patrol chiefs Perebal-Ajtzalam III and León-Lares, Manuel Perebal-Ajtzalam III and his brother, Tomás

Perebal-Ajtzalam, attacked a member of the GAM in Chunimá, apparently as a reprisal. Perebal-Ajtzalam III and his brother raided the house of GAM member Tomás Velásquez-Ajtzalam and beat and kicked him savagely. Perebal-Ajtzalam III reportedly fired his rifle in the air to further intimidate his victim.

. . .

B. A list of the names of those for whom provisional measures by the Court is requested is as follows:

-Diego Perebal-León, witness to the abduction of Sebastián Velásquez-Mejía, witness to the murder of his father Juan Perebal-Xirúm and brother Manuel Perebal-Morales, was hospitalized with severe injuries as a result of gunshot wounds inflicted on February 17, 1991. Mr. Perebal-León has been repeatedly threatened by the civil patrol chiefs of Chunimá and was among five CERJ members who fled the village from October 6 - November 16, 1990. Mr. Perebal-León, who is now paralyzed, and the surviving members of his family, have taken refuge in the CERJ office in Santa Cruz del Quiché since early March 1991.

-José Velásquez-Morales, cousin of Sebastián Velásquez-Mejía, a complainant in the criminal case against his killers, and the man who replaced Mr. Sebastián Velásquez as the CERJ delegate in Chunimá, has suffered repeated threats and harassment at the hands of the army and civil patrols and was among five CERJ members who fled Chunimá from October 6 - November 16, 1990.

-Rafaela Capir-Pérez, the common-law wife of Sebastián Velásquez-Mejía and the original complainant in the criminal case against his killers, Ms. Capir-Pérez and the couple's children fled to the GAM office in Guatemala City on October 6, 1990, and returned to Chunimá on November 16, 1990.

-Manuel Suy-Perebal, witness to the abduction of Sebastián Velásquez-Mejía, was among the five CERJ members who fled Chunimá from October 6 - November 16, 1990. He has been repeatedly threatened by the civil patrols.

-José Suy-Morales is one of the five CERJ members who fled Chunimá from October 6 - November 16, 1990. He has been repeatedly threatened by the civil patrols.

-Amílcar Méndez-Urizar, President of the CERJ, has been the victim of repeated death threats. Mr. Méndez is one of Guatemala's most prominent defenders of human rights.

-Justina Tzoc-Chinol, member of the board of directors of the CERJ.

-Manuel Mejía-Tol, member of the board of directors of the CERJ.

-Miguel Sucuqui-Mejía, member of the board of directors of the CERJ.

-Juan Tum-Mejía, caretaker at the CERJ office, son of CERJ member María Mejía, who was murdered on March 17, 1990, in Parraxtut, following death threats and harassment against her family for their membership in the CERJ.

-Claudia Quiñones, secretary of the CERJ.

-Pedro Ixcaya, CERJ member living in the CERJ office following the May 1, 1990, murder of his cousin, José María Ixcaya, who was the CERJ leader in La Fe, Sololá. Pedro Ixcaya has received repeated death threats from civil patrol chiefs.

-Roberto Lemus-Garza, judge at the Second Criminal Court in Santa Cruz del Quiché, who investigated murders of human rights monitors from Chunimá and issued an arrest warrant for Manuel Perebal-Ajtzalam III for the abduction and murder of CERJ leader Sebastián Velásquez-Mejía. Judge Lemus has also issued warrants for patrollers in other cases.

-María Antonieta Torres-Arce, justice of the peace in Sololá, who, on February 18, 1991, as acting justice of the peace in Chichicastenango, El Quiché, issued arrest warrants for Manuel Perebal-Ajtzalam III and Manuel León-Lares for the murder of Juan Perebal-Xirúm and Manuel Perebal-Morales and the severe wounding of Diego Perebal-León, all active members of CERJ.

WHEREAS:

1. Guatemala is a State Party to the American Convention, whose Article 1(1) spells out the obligation of all the States Parties to respect the rights and freedoms recognized in that treaty and to ensure their free and full exercise to all persons subject to their jurisdiction,

2. Guatemala ratified the American Convention on May 25, 1978, and accepted the compulsory jurisdiction of the Court on March 9, 1987, in accordance with Article 62 of the Convention,

3. 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 in cases that have not yet been submitted to it,

4. Article 23(4) of the Rules of Procedure of the Court 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 or with the judges, if possible, shall call upon the parties, whenever necessary, to act so as to permit any decision of the Court regarding the request for provisional measures to have its appropriate effect.

5. Guatemala is under the obligation to adopt whatever measures are necessary to preserve the life and physical integrity of those persons whose rights could be threatened,

NOW, THEREFORE:

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

Taking into account Article 63(2) of the American Convention on Human Rights and exercising the powers conferred upon him by Article 23(4) of the Rules, and after consultation with the judges of the Court,

RESOLVES:

1. To order the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the physical integrity of DIEGO PEREBAL- LEON, JOSE VELASQUEZ-MORALES, RAFAELA CAPIR-PEREZ, MANUEL SUY- PEREBAL, JOSE SUY-MORALES, AMILCAR MENDEZ-URIZAR, JUSTINA TZOC- CHINOL, MANUEL MEJIA-TOL, MIGUEL SUCUQUI-MEJIA, JUAN TUM-MEJIA, CLAUDIA QUIÑONES, PEDRO IXCAYA, ROBERTO LEMUS-GARZA and MARIA ANTONIETA

TORRES-ARCE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.

2. To convene a session of the Inter-American Court of Human Rights from July 29 to 31, 1991, at its seat in San José, Costa Rica, in order to take up the Commission's request for provisional measures and this order.

3. To convoke the Government of Guatemala and the Inter-American Commission of Human Rights to appear, through their representatives, at a public hearing to be held on this matter at 3:00 p.m. on July 29, 1991, at the seat of the Court.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX VII

INTER-AMERICAN COURT OF HUMAN RIGHTS

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH REGARD TO GUATEMALA

CHUNIMA CASE

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

Héctor Fix-Zamudio, President
Orlando Tovar-Tamayo, Vice-President
Thomas Buergenthal, Judge
Rafael Nieto-Navia, Judge
Policarpo Callejas-Bonilla, Judge
Sonia Picado-Sotela, Judge
Julio A. Barberis, Judge

also present,

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

issues the following order:

1. On June 28, 1991, the Inter-American Commission on Human Rights (hereinafter "the Commission") forwarded to the Inter-American Court of Human Rights (hereinafter "the Court") a resolution passed that same month on case 10.674 concerning Guatemala, in which it requested "provisional measures to protect the life and personal integrity" of 14 persons. According to the Commission, these persons are apparently members of the "Consejo de Comunidades Etnicas Runujel Junam" (CERJ), their relatives or judicial officials who have investigated and acted in cases related to the assassination of members of human rights organizations in Chunimá, Department of El Quiché, Republic of Guatemala. The Commission's resolution sets down facts reported by Americas Watch and by the Center for Justice and International Law (CEJIL) on April 4 and 18 and again on May 2, 1991, and expresses the opinion that "there is abundant evidence that the members of human rigths organiza-

tions in Chunimá are facing grave and irreparable danger." The Commission is likewise of the opinion that "the background materials submitted by the petitioners present **prima facie** a grave case of imminent and irreparable danger to the life and physical integrity of the members of human rights organizations and their relatives."

On July 2, 1991, the Court received from the Commission the documentation accompanying the request for provisional measures.

2. Exercising the powers conferred on him under Article 23(4) of the Rules of Procedure of the Court (hereinafter "the Rules"), the President of the Court (hereinafter "the President") issued an order dated July 15, 1991, whose operative part reads as follows:

> 1. To order the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the physical integrity of DIEGO PEREBAL-LEON, JOSE VELASQUEZ-MORALES, RAFAELA CAPIR-PEREZ, MANUEL SUY-PEREBAL, JOSE SUY-MORALES, AMILCAR MENDEZ-URIZAR, JUSTINA TZOC-CHINOL, MANUEL MEJIA-TOL, MIGUEL SUCUQUI-MEJIA, JUAN TUM- MEJIA, CLAUDIA QUIÑONES, PEDRO IXCAYA, ROBERTO LEMUS-GARZA and MARIA ANTONIETA TORRES-ARCE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.
>
> 2. To convene a session of the Inter-American Court of Human Rights from July 29 to 31, 1991, at its seat in San José, Costa Rica, in order to take up the Commission's request for provisional measures and this order.
>
> 3. To convoke the Government of Guatemala and the Inter-American Commission of Human Rights to appear, through their representatives, at a public hearing to be held on this matter at 3:00 p.m. on July 29, 1991, at the seat of the Court.

This order was transmitted to the Commission, and to the Government of Guatemala (hereinafter "the Government") through its Embassy in San José, Costa Rica.

3. The Government addressed a note to the President on July 24, 1991, regarding the order transcribed above. In that note, the Government declared that "for the last thirty years Guatemala has experienced armed internal conflict which has concentrated primarily on the highlands of the country, an area comprising several Departments. One of these is El Quiché, which has probably been the area most affected by the violence that the aforementioned armed conflict has generated." The note added that the community of Chunimá is located in the fighting zone "where the guerrillas conduct their war offensives and terrorist acts with greatest intensity."

Guatemala argued that a "fundamental objective" of its Government is to achieve peace throughout the nation and that it is "actively seeking a resolution of the armed internal conflict and the reincoporation into peaceful political life" of the irregular groups.

Guatemala declared that "in order to be able to give a full and accurate accounting to the Inter-American Court of Human Rights as part of the proceedings for provisional measures requested by the Inter-American Commission," it needs to conduct a thorough investigation, obtain reports, hear from the inhabitants and carry out related efforts, all of which will require time. Consequently, the Government asked the Court for a postponement of the July 29 hearing for a period of at least 30 days.

With regard to the Order of the President of July 15, 1991, the Guatemalan note states that "... in compliance with Your Excellency's order, the Government of Guatemala has intensified the security measures of the Chunimá area in order to provide its inhabitants with better protection."

This note was followed by another, dated two days later, in which Guatemala repeated its request for a postponement of the hearing and reported that "[a]s regards the emergency measures ordered by the President of the Court, the Government, aware of their nature and of the fact that such measures can be emitted without a hearing of the parties, finds them to be reasonable...." Guatemala added, furthermore, that it had "received with the greatest attention the order for provisional measures issued by the President of the Court and had adopted provisions in addition to those included in its general policy of respect for human rights in order to comply with it." The Government indicated that the authorities have again been ordered to "provide concrete, specific protection to the persons listed, in such a way that they themselves may freely specify the type of protection they desire" and to "proceed with the arrests ordered by the courts in the course of the investigation of the facts related to the consolidated case 10.674."

4. On July 29, 1991, at 9:30 hours, the Court met to decide on the notes submitted by Guatemala on July 24 and 26 requesting the postponement of the hearing convened for 15:00 hours that day.

The Court ordered the public hearing to be held on July 30, in order to hear the arguments of Guatemala and the Commission with regard to the postponement sought and to likewise learn what measures had been taken by that country in order to comply with the President's order of last July 15.

The public hearing was held at 15:00 hours on July 30, 1991, at the seat of the Court. There appeared before the Court:

for the Government of Guatemala:

Lic. Manuel Villacorta-Mirón, Vice-Minister of Foreign Affairs,
Licda. Miriam Cabrera-Passarelli, Ambassador of Guatemala to Costa Rica, and
Lic. Mario Marroquín-Nájera, General Director for Multilateral Affairs, Ministry of Foreign Affairs,
and

for the Inter-American Commission on Human Rights:

Dr. Patrick Robinson, President of the Commission,
Christina M. Cerna, Attorney and
Anne Manuel, Adviser.

At the hearing, the Agent for Guatemala renewed his request for a postponement and stated that Manuel Perebal-Ajtzalam III and Manuel León-Lares, according to the petitioners the chief protagonists of the violent actions that gave rise to the request for provisional measures, had been arrested and were at the disposal of the competent judicial authority. As for the measures ordered by the President, the Agent reiterated his Government's willingness to fully comply with them and added that he considered that "the measures to protect those persons pursuant to point 1" of the aforementioned order "must be continued."

The representative of the Commission, on his part, expressed dissatisfaction with the Government's actions. According to the Commission, the Government had not indicated what type of concrete measures had been specifically taken to protect each of the persons. As for the arrest of the alleged perpetrators, the Commission's representative stated that, in his opinion, the information provided needed to be verified.

*

5. In this case, the Court must decide on the provisional measures requested by the Commission and on the holding of a hearing, originally scheduled for July 29, which the Government has requested to be postponed for a period of no less than 30 days.

First of all, it is important to clearly establish a distinction between the provisional measures that the Court can adopt under Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention") and the emergency measures that Article 23(4) of the Rules empowers the President to order the parties in the interim, so as to permit any decision that the Court may eventually take to have the appropriate effect; in other words, so that the Court may not find itself facing a **fait accompli**.

6. The provisions in force set forth certain requirements that must be met for the Court to be able to adopt provisional measures at the request of the Commission. These include the following:

a) Article 29(2) of the Regulations of the Commission provides that "when it becomes necessary to avoid irreparable damage to persons, [it] may request that provisional measures be taken to avoid irreparable damage in cases where the denounced facts are true." It is thus not a question of fully determining the truth of the facts; rather, the Commission must have a reasonable basis for assuming them to be true.

In this case, the Commission has not fulfilled the above requirement, inasmuch as its request merely transcribes the facts reported by the petitioner.

The Government, on its part, in its note of last July 24 acknowledged the existence of an "internal armed conflict" over the last thirty years and the violent acts that are occurring in the area. Such a blanket acknowledgement does not imply acceptance that the facts denounced are true; however, it does lead to the presumption that a situation exists which could bring about irreparable damage to persons.

b) Article 63(2) of the Convention authorizes the Court to adopt provisional measures "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons." The wording used indicates that we are dealing here with an extraordinary instrument, one which becomes **necessary** in exceptional circumstances.

7. The request for provisional measures before us refers to a case "not yet submitted to the Court." This means that the Court lacks information regarding the facts and circumstances surrounding the case, which information must be at the disposal of the Commission. The latter must, consequently, transmit such information together with the corresponding petition, in order to provide the Court with the facts necessary to enable it to arrive at a decision.

* *

8. The Court finds that the order of the President of July 15, 1991, was properly adopted and that it has achieved its purpose of enabling the Court to study tha matter while avoiding irreparable actions.

According to statements made by the Government at the hearing of July 30, 1991, the two principal actors identified by the petitioners as being the persons responsible for the acts of violence occurring in Chunimá have been arrested in Guatemala. The Government subsequently transmitted to the Court facsimiles of the newspapers reporting that information.

The Court is of the opinion that the measures taken on behalf of the persons listed in the President's order must be extended, a position with which the Government concurred at the hearing. The Court also believes that the Government must specify what protection it is granting or offering each of these persons.

* *

NOW, THEREFORE:

The Inter-American Court of Human Rights,

RESOLVES:

I. To confirm the Order of July 15, 1991, issued by the President of the Court and to extend its effect until December 3, 1991.

II. To order the Government of Guatemala to promptly specify to the President of the Court what measures have been taken to protect each of the persons listed in the President's Order.

III. To order the Inter-American Commission on Human Rights and the Government of Guatemala to keep the President of the Court duly informed regarding the implementation of this Order.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 1st day of August, 1991.

Héctor Fix-Zamudio
President

Orlando Tovar-Tamayo

Thomas Buergenthal

Rafael Nieto-Navia

Policarpo Callejas-Bonilla

Sonia Picado-Sotela

Julio A. Barberis

Manuel E. Ventura-Robles
Secretary

APPENDIX VIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

ALOEBOETOE ET AL. CASE

JUDGMENT OF DECEMBER 4, 1991

In the case of Aloeboetoe 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
Sonia Picado-Sotela, Judge
Julio A. Barberis, Judge
Antônio A. Cançado Trindade, **ad hoc** judge;

also present,

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

delivers the following judgment pursuant to Articles 44(1) and 45 of the Rules of Procedure of the Court in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules") in the instant case submitted by the Inter-American Commission on Human Rights against the Republic of Suriname (hereinafter "the Government" or "Suriname").

I

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court") on August 27, 1990. It originated in a petition (N° 10.150) against Suriname, which the Secretariat of the Commission received on January 15, 1988.

2. In filing the application with the Court, the Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 50 of its Regulations, and requested that the Court determine whether the State in question had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Messrs. Daison Aloeboetoe, Dedemanu Aloeboetoe, Mikuwendje Aloeboetoe, John Amoida, Richenel Voola (alias Aside), Martin Indisie Banai and Beri Tiopo. The Commission also asked the Court "to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin." It appointed the following Delegates to represent it in this matter: Oliver H. Jackman, Member; Edith Márquez-Rodríguez, Executive Secretary; and David J. Padilla, Assistant Executive Secretary.

3. On September 17, 1990, the Secretariat of the Court transmitted the application and its attachments to the Government.

4. By fax of November 6, 1990, the Government of Suriname appointed Lic. Carlos Vargas-Pizarro, of San José, Costa Rica, as its Agent.

5. By Order of November 12, 1990, the President of the Court, in agreement with the Agent of Suriname and the Delegates of the Commission and in consultation with the Permanent Commission of the Court, set March 29, 1991, as the deadline for the Commission's submission of the memorial provided for in Article 29 of the Rules and June 28, 1991, as the deadline for submission by the Government of the counter-memorial provided for in that same article.

6. By note of November 12, 1990, the President asked the Government to appoint an **ad hoc** judge for this case. In a communication dated December 13, 1990, the Agent informed the Court that the Government had named Professor Antônio A. Cançado Trindade of Brasilia, Brazil, to that position.

7. By note of February 7, 1991, the Commission appointed Professor Claudio Grossman to serve as its legal adviser in this case.

8. The Commission submitted its memorial on April 1, 1991, and the Court received the counter-memorial of Suriname on June 28 of that same year. Together with the counter-memorial, the Government interposed its preliminary objections.

9. By Order of August 3, 1991, the President directed that a public hearing be convened on December 2, 1991, at 15:00 hours, at the seat of the Court, for the presentation of oral arguments on the preliminary objections. At the request of the Government, the Order also subpoenaed the following witnesses to testify on the preliminary objections: A. Freitas, Military Auditor of the Government of Suriname, and Darius Stanley, investigator of the Department of Investigations of the Military Police of Suriname. The Government subsequently waived the right to have these persons appear as witnesses. In a communication dated November 28, 1991, the Agent informed the Court that Messrs. Ramón de Freitas, Albert Vrede and Fred M. Reid would appear "as members of the delegation of Suriname" and identified them as Attorney General of the Republic of Suriname, pathologist and expert, and Third (Embassy) Secretary of the Ministry of Foreign Affairs of Suriname, respectively.

10. The public hearing was held at the seat of the Court on December 2, 1991.

There appeared before the Court

for the Government of Suriname:

Carlos Vargas-Pizarro, Agent
Ramón de Freitas
Albert Vrede
Fred M. Reid

for the Inter-American Commission on Human Rights:

Oliver H. Jackman, Delegate
David J. Padilla, Delegate.

Although the hearing was convened for the purpose of dealing with the preliminary objections, the Government used it to accept responsibility for the events giving rise to the instant case (**infra** 22).

II

11. The petition filed with the Commission on January 15, 1988, indicates that the events reported occurred in Atjoni (landing stage of the village of Pokigron, District of Sipaliwini) and in Tjongalangapassi, off kilometer 30 in the District of Brokopondo. In Atjoni, more than 20 male, unarmed maroons (**bushnegroes**) were beaten with rifle-butts by soldiers who had detained them under suspicion that they were members of the Jungle Commando. Some of them were seriously wounded with bayonets and knives. They were forced to lie face-down on the ground while the soldiers stepped on their backs and urinated on them.

12. According to the petition, these events occurred in the presence of some 50 persons. Both victims and witnesses came from Paramaribo. In order to return to their village, they had to pass through Atjoni. All of them denied that they belonged to the Jungle Commando. The Captain of the village of Gujaba made a point of telling Commander Leeflang of the Army that the persons in question were civilians from several different villages. Commander Leeflang ignored this information.

13. After the events at Atjoni, the soldiers allowed some of the maroons to continue on their way. However, seven of them, including a 15-year old boy, were blindfolded and dragged into a military vehicle and driven towards Paramaribo along the Tjongalangapassi road. Before leaving, a soldier declared that they would celebrate the end of the year with them. The names of the persons taken away in the military vehicle, their place of origin and birth dates (in some cases) are as follows: Daison Aloeboetoe, of Gujaba, born on June 7, 1960; Dedemanu Aloeboetoe, of Gujaba; Mikuwendje Aloeboetoe, of Gujaba, born on February 4, 1973; John Amoida, of Asindonhopo (resident of Gujaba); Richenel Voola, alias Aside, Ameikanbuka, of Grantatai (found alive); Martin Indisie Banai, of Gujaba, born on June 3, 1955; and Beri Tiopo, of Gujaba.

14. The petition goes on to state that the vehicle stopped on reaching kilometer 30 and that the soldiers ordered the victims to get out. Those who did not were forcibly dragged out. They were given a spade and ordered to begin digging a short distance away from the road. When one of the victims asked what they were digging for, one of the soldiers answered that they were going to plant sugar cane and another repeated that they would be celebrating the end of the year with them. Aside tried to escape. They shot at him and he fell to the ground,

wounded, but they did not go after him. A little later, shooting and screaming were heard. The other six maroons were killed.

15. On Saturday, January 2, 1988, men from Gujaba and Grantatai took the road to Paramaribo in order to demand information from the authorities about the seven victims. When they reached Paramaribo, nobody was able to tell them the whereabouts of the victims. While in Paramaribo, they met with Orna Albitrouw (Coordinator of the Interior at Volksmobilisatie) and with the Military Police of Fort Zeeland, where they tried to see Vaandrig Achong, the Head of S-2. On Monday, January 4, they returned to the Tjongalanga area. When they came to kilometer 30 at 7 p.m., they found Aside, who was seriously wounded and in critical condition, as well as the bodies of the other victims. Aside, who had a bullet embedded in the muscle above his right knee, stated that he was the only survivor of the massacre, the victims of which had already been partially devoured by vultures. Aside's wound was infested with maggots, and an "X" had been carved into his right shoulder blade. The group returned to Paramaribo. The representative of the International Red Cross obtained a permit to evacuate Mr. Aside after negotiating with the authorities for 24 hours. He was admitted to the Academic Hospital of Paramaribo on January 6, 1988. Despite the care provided, however, he died some days later. On January 8 and 9, the Military Police prevented Aside's relatives from visiting him in the hospital. It was not until January 6 that the next of kin of the other victims received permission to bury them.

16. The petition is signed by Stanley Rensch. He avers that he spoke twice with Aside about the events reported and that Aside's version of the events coincides with that provided by more than 15 persons, among them eyewitnesses and participants in the search.

17. On February 1, 1988, the Commission opened case N° 10.150 and processed it through May 15, 1990. On that date, invoking Article 50 of the Convention, it drew up Report N° 03/90 in which it resolved the following:

1. To admit the present case.

2. To declare that the parties have been unable to achieve a friendly settlement.

3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.

4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.

5. To recommend to the Government of Suriname that it take the following measures:

   a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;

   b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;

   c. Take necessary measures to avoid their reoccurrence;

   d. Pay a just compensation to the victims' next of kin.

6. To transmit this report to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this report is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47(6) of the Commission 's Regulations.

7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

18. On August 27, 1990, the Commission referred the instant case to the Court.

III

19. The Court has jurisdiction to hear the instant case. Suriname has been a State Party to the Convention since November 12, 1987, when it also recognized the contentious jurisdiction of the Court pursuant to Article 62 of the Convention.

IV

20. In its memorial, the Commission requested the following:

That the honorable Court find the State of Suriname responsible for the deaths of Messrs. Aloeboetoe, Daison; Aloeboetoe, Dedemanu; Aloeboetoe, Mikuwendje; Amoida, John; Voola, Richenel, alias Aside; Ameikanbuka (found alive); Banai, Martin Indisie, and Tiopo, Beri, while in detention, and hold that these deaths violate Articles 1(1) (2), 4(1), 5(1) (2), 7(1) (2) (3) and 25 of the American Convention on Human Rights.

That the Court find that Suriname must pay adequate reparation to the victims' next of kin and, consequently, order the following: payment of indemnization for indirect damages and loss of earnings; reparation for moral damages, including the payment of compensation and adoption of measures to restore the good name of the victims; and the investigation of the crime committed, with due punishment for those found to be guilty(...)

That the Court order Suriname to pay for the costs incurred by the Commission and the victims in the instant case.

21. The counter-memorial presented by Suriname requested the Court to declare that:

1. - Suriname cannot be held responsible for the disappearance and death of the persons named by the Commission.

2. - In view of the fact that it has not been proved that the violation attributed to Suriname was committed, Suriname should not have to pay compensation of any type whatsoever for the death and disappearance of the persons listed in the Commission's report.

3. - Suriname be exempted from the payment of costs in the instant case, since its responsibility for the executions attributed to it has not been demonstrated.

V

22. At the hearing, convened on December 2, 1991, for the purpose of dealing with the preliminary objections (**supra** 10), the Agent of Suriname declared that

> the Republic of Suriname, having reference to the first case being considered in the proceedings now before the Court, accepts responsibility for the consequences of the Pokigron case, better known as Aloeboetoe et al.

He later added:

> I simply wish to reiterate (that Suriname) accepts its responsibility in the instant case.

Following a request for clarification by the Commission's Delegate, Mr. Jackman, the Agent for Suriname subsequently explained:

> I believe my statement was clear: it accepts responsibility. Consequently, the Court has the right to close the case, file it, determine the compensation payable or do whatever is appropriate under the law.

23. In view of the fact that the Government of Suriname has acknowledged its responsibility, the Court holds that the dispute concerning the facts giving rise to the instant case has now been concluded. As a result, all that remains is for the Court to decide on reparations and court costs.

VI

Now, therefore,

THE COURT,

unanimously,

1. Notes the admission of responsibility proferred by the Republic of Suriname and finds that the dispute relating to the facts giving rise to the instant case has now been concluded.

unanimously,

2. Decides to retain the case on its docket in order to fix reparations and costs.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this fourth day of December, 1991.

Héctor Fix-Zamudio
President

Thomas Buergenthal — Rafael Nieto-Navia

Sonia Picado-Sotela — Julio A. Barberis

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Read at the public hearing held at the seat of the Court in San José, Costa Rica, on December 6, 1991.

So ordered.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX IX

INTER-AMERICAN COURT OF HUMAN RIGHTS

GANGARAM PANDAY CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF DECEMBER 4, 1991

In the Gangaram-Panday case,
the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Thomas Buergenthal, Judge
Rafael Nieto-Navia, Judge
Sonia Picado-Sotela, Judge
Julio A. Barberis, Judge
Antônio A. Cançado Trindade, **ad hoc** judge;

also present,

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

delivers the following judgment pursuant to Article 27(4) of the Rules of Procedure of the Court in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules"), on the preliminary objections interposed by the Republic of Suriname (hereinafter "the Government" or "Suriname").

I

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court") on August 27, 1990. It originated in

a petition (N° 10.274) against Suriname, which the Secretariat of the Commission received on December 17, 1988.

2. In filing the application with the Court, the Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 50 of its Regulations, and requested that the Court determine whether the State in question had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Mr. Choeramoenipersad Gangaram-Panday, also known as Asok Gangaram-Panday. The Commission also asked the Court "to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin." It appointed the following Delegates to represent it in this matter: Oliver H. Jackman, Member; Edith Márquez- Rodríguez, Executive Secretary; and David J. Padilla, Assistant Executive Secretary.

3. On September 17, 1990, the Secretariat of the Court transmitted the application and its attachments to the Government.

4. By fax of November 6, 1990, the Government of Suriname appointed Lic. Carlos Vargas-Pizarro, of San José, Costa Rica, as its Agent.

5. By Order of November 12, 1990, the President of the Court, in agreement with the Agent of Suriname and the Delegates of the Commission and in consultation with the Permanent Commission of the Court, set March 29, 1991, as the deadline for the Commission's submission of the memorial provided for in Article 29 of the Rules and June 28, 1991, as the deadline for submission by the Government of the counter-memorial provided for in that same article.

6. By note of November 12, 1990, the President asked the Government to appoint an **ad hoc** judge for this case. In a communication dated December 13, 1990, the Agent informed the Court that the Government had named Professor Antônio A. Cançado Trindade of Brasilia, Brazil, to that position.

7. By note of February 7, 1991, the Commission appointed Professor Claudio Grossman to serve as its legal adviser in this case.

8. In a communication dated June 28, 1991, the Agent filed preliminary objections pursuant to Article 27 of the Rules. The President of the Court set July 31, 1991, as the deadline for the Commission's submission of a written statement on the preliminary objections.

9. By Order of August 3, 1991, the President directed that a public hearing be convened on December 2, 1991, at 15:00 hours, at the seat of the Court, for the presentation of oral arguments on the preliminary objections. At the request of the Government, the Order also subpoenaed the following witnesses to testify on the preliminary objections: A. Freitas, Military Auditor of the Government of Suriname, and Dr. A. Vrede, pathologist of the Anatomical Laboratory of the Paramaribo Hospital. The Government subsequently waived the right to have these persons appear as witnesses. In a communication dated November 28, 1991, the Agent informed the Court that Messrs. Ramón de Freitas, Albert Vrede and Fred M. Reid would appear "as members of the delegation of Suriname" and identified them as Attorney General of the Republic of Suriname, pathologist and expert, and Third (Embassy) Secretary of the Ministry of Foreign Affairs of Suriname, respectively.

10. The public hearing was held at the seat of the Court on December 2, 1991.

There appeared before the Court

for the Government of Suriname:

Carlos Vargas-Pizarro, Agent
Ramón de Freitas
Albert Vrede
Fred M. Reid

for the Inter-American Commission on Human Rights:

Oliver H. Jackman, Delegate
David J. Padilla, Delegate.

II

11. The petition filed with the Commission on December 17, 1988, refers to the detention and subsequent death of Mr. Asok Gangaram-Panday in Suriname. The petition was filed by the victim's brother, Mr. Leo Gangaram-Panday.

12. According to the petitioner, Mr. Asok Gangaram-Panday was detained by the Military Police when he arrived at Zanderij Airport in Paramaribo. The Military Police at Fort Zeeland, where he was detained, subsequently reported that he had hanged himself.

13. On December 21, 1988, the Commission requested the Government to provide information regarding the circumstances surrounding the death of the alleged victim. On May 2, 1989, the Government reported on the steps taken to investigate the manner of his detention and added that, according to the autopsy, Asok Gangaram-Panday had indeed committed suicide.

14. Pursuant to Article 50 of the Convention, on May 15, 1990, the Commission drew up Report N° 04/90 in which it resolved:

1. To admit the present case.

2. To declare that the parties have been unable to achieve a friendly settlement.

3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.

4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.

5. To recommend to the Government of Suriname that it take the following measures:

   a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;

   b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;

c. Take the necessary measures to avoid their reoccurrence;

d. Pay a just compensation to the victims' next of kin.

6. To transmit this report to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this report is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47(6) of the Commission's Regulations.

7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

15. On August 27, 1990, the Commission referred the instant case to the Court.

III

16. The Court has jurisdiction to hear the instant case. Suriname has been a State Party to the Convention since November 12, 1987, when it also recognized the contentious jurisdiction of the Court, pursuant to Article 62 of the Convention.

IV

17. In its communication of June 28, 1991, the Government refers to some questions of form without, however, characterizing them as preliminary objections. At the hearing, the Agent expressly stated that they did not qualify as such. Nevertheless, since these "questions of form" could in one way or another affect the admissibility of the instant case and since the communication expressly requests that the Court deal with them, it will address these questions below. The issues raised concern the lack of a signature on the memorial submitted to the Court, the representation of the Commission in this contentious case, and the presence of the victim's representative on the Commission's delegation.

18. The Court has stated earlier that "failure to observe certain formalities is not necessarily relevant when dealing on the international plane. What is essential is that the conditions necessary for the preservation of the procedural rights of the parties not be diminished or unbalanced and that the objectives of the different procedures be met." (**Velásquez Rodríguez Case, Preliminary Objections,** Judgment of June 26, 1987. Series C No. 1, para. 33; **Fairén Garbi and Solís Corrales, Preliminary Objections,** Judgment of June 26, 1987. Series C No. 2, para. 38; **Godínez Cruz Case, Preliminary Objections,** Judgment of June 26, 1987. Series C No. 3, para. 36.)

19. The Government argued, first, that "memorials initiating international proceedings in the area of human rights ... must comply with the formal requirement of being duly signed by the party filing the application." This requirement was not met by the Commission.

20. The Commission maintained that the fact that the memorial had been sent by fax, under a cover sheet indicating that to be the form of transmittal, did not leave the Court or any third parties in doubt as to the authenticity of the document in question.

21. Article 25(2) of the Rules provides that:

> If the Commission intends to bring a case before the Court in accordance with the provisions of Article 61 of the Convention, it shall file with the Secretary, together with its report, in twenty copies, its duly signed

application which shall indicate the object of the application, the human rights involved, and the names of its delegates.

22. Article 30(3) of the Rules states that:

A Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions.

23. The instant case was referred to the Court by means of an application filed by the Commission on August 27, 1990. It was duly signed by the Executive Secretary of the Commission. According to the Rules, the memorial is not the document that brings the case before the Court but is, rather, the first procedural act that initiates the written part of the proceedings before the Court.

24. The relevant procedural norms applicable to this case do not establish, either as a formality or as a requirement for presentation, that the memorial must be signed. It goes without saying that all documents presented to the Court should bear a signature and that the Commission should have made sure that this was so in the instant case; however, the omission does not constitute non-compliance of a requirement, since the Rules do not require it. Here, moreover, it has been established that the memorial was sent by the Commission, leaving no doubt as to its authenticity.

25. The Government's second contention, based on Articles 2(1) and 3(1) of the Statute of the Commission, Article 71(4) of the Regulations of the Commission and Article 21 of the Rules of the Court, was that the Commission had failed to comply with the aforementioned provisions by naming as Delegates the Executive Secretary and Assistant Executive Secretary who, while members of the staff of the Commission, are not members of the Commission as such.

26. The Commission responded that "the delegates of the Commission were duly elected by the Commission itself at the appropriate time, and this fact was communicated to the Government." The Commission argued that, in order to enjoy a degree of flexibility in its actions, it had appointed a team comprising various Delegates, including one of its members, the Executive Secretary and the Assistant Executive Secretary, and that a similar procedure had been followed in other cases decided by the Court.

27. Article 21 of the Rules provides that

[t]he Commission shall be represented by the delegates whom it designates. These delegates may, if they so wish, have the assistance of any person of their choice.

Therefore, the Court holds that the Commission fulfilled the requirements spelled out therein.

The same argument is applicable to the appointment of the victim's lawyer as a member of the Commission's delegation.

V

28. The Government presented the following preliminary objections:

a. "Abuse of the Rights conferred by the Convention" on the Commission;

b. non-exhaustion of domestic remedies; and

c. non-compliance of the provisions contained in Articles 47 to 51 of the Convention.

29. In the first preliminary objection, the Government is of the opinion that the Commission incurred an "abuse of the rights" by (1) appropiating for itself the right to find a State responsible for violations of human rights; (2)

breaking the "confidentiality rule;" (3) the manner it determined the evidence before the Court; and (4) "a result of the abuses committed and lack of proof" because the Commission incurred an "abuse of right of petition" in filing the case with the Court.

30. Without deciding whether or not there exists a preliminary objection such as the one that the Government describes as an "abuse of right," the Court will now examine the Government's contentions.

31. With regard to the first point raised, the Court considers that Article 50 of the Convention is clear when it provides that "[i]f a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions." When the Commission does what this provision provides, as it did in drawing up its Report N° 04/90 of May 15, 1990, it is fulfilling its obligations under the Convention.

32. Secondly, the Government deemed that the Commission had broken the confidentiality rule established in Articles 46(3) of the Rules of Procedures of the Court and 74 of the Regulations of the Commission by having "made public certain facts relating to the case and, furthermore, by having issued prior value judgments in a case still under consideration ... seeking, **Mala Fide**, a double sanction not contemplated by the Convention." The Government appears to be referring to the information on this case that was included in the Commission's Annual Report for 1990-1991. The Commission denied having applied a double sanction, arguing that in the relevant part of its Annual Report to the General Assembly, it merely made a reference to the case and that the reports described in Articles 50 and 51 of the Convention were not published.

33. The Court notes that the aforementioned Annual Report of the Commission refers to the case but does not reproduce the report drawn up under Article 50 and that the case had already been filed with the Court when the Annual Report was published. Consequently, it cannot be contended that there existed a violation by the Commission of Article 74 of its Regulations, let alone a violation of Article 46(3) of the Rules of the Court, which refers to a very different situation.

34. The Government alleged "abuse of rights by the manner it determined the evidence before the Court," and averred that "although the Commission did not expressly say so, in the instant case it resorted to an irregular presumption of certain facts under Article 42 of its Regulations, despite the fact that a different conclusion would be reached on the basis of the evidence provided by Suriname to the Commission." The Commission, on its part, asserted that its conclusions are based on the investigation carried out and on the evidence obtained, and that the presumption provided for in Article 42 of its Regulations, according to which "[t]he facts reported in the petition ... shall be presumed to be true ... if ... the government has not provided the pertinent information ...," was not applied.

35. The Court found no evidence in the record showing that the Commission had resorted to the presumption referred to in Article 42 of its Regulations.

36. Both in the written proceedings and at the hearing, the Government failed to substantiate its claim that the Commission committed an "abuse of the right of petition" by filing an application with the Court. Consequently, basing itself on the provisions of Article 27(2) of its Rules, under which "[t]he preliminary objection shall set out the facts and the law on which the objection is based ...," the Court will not deal with this objection.

37. The Court will now examine the objection of non-exhaustion of domestic remedies to which Article 46(1)(a) of the Convention refers. That article provides that:

VI

42. The Court will address the written and oral requests of the parties regarding costs relating to this stage of the proceedings when it deals with the merits of the instant case.

Now, therefore,

THE COURT,

unanimously,

1. Rejects the preliminary objections interposed by the Government of Suriname.

unanimously,

2. Decides to proceed with the consideration of the instant case.

unanimously,

3. Postpones its decision on the costs until such time as it renders judgment on the merits.

Judge Cançado Trindade informed the Court of the contents of his individual opinion, which will be attached to this judgment.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this fourth day of December, 1991.

Héctor Fix-Zamudio
President

Thomas Buergenthal — Rafael Nieto-Navia

Sonia Picado-Sotela — Julio A. Barberis

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Read at the public hearing held at the seat of the Court in San José, Costa Rica, on December 6, 1991.

So ordered.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

Individual Opinion (Voto razonado) of Judge A. A. Cançado Trindade

1. I concur with the Court's decision to reject the preliminary objections raised by the respondent Government, to proceed with the consideration of the present case, and to postpone its decision on the costs until such time as it renders judgement on the merits. Yet I am bound to append this Individual Opinion in order to explain, and to expand on, the reasons why I fully agree with the Court's dismissal of one of the preliminary objections in particular, namely, that of non-exhaustion of local remedies, and the approach I take on the question on non-exhaustion in relation to the issue of the internal structure of the international jurisdictional body (that is, of the attribution of competences to the Inter-American Commission and Court of Human Rights).

2. I wish to consider the particular issue of the objection of non-exhaustion of local remedies raised before the Court, in two circumstances: when, as in the present case, it has not been raised first before the Commission, and when it has duly been raised earlier before the Commission. In the first instance, it can hardly be doubted that the respondent Government is estopped from relying on the objection of non-exhaustion before the Court as it had not been raised first before the Commission[1]. The Court, it may be recalled, has deemed the objection of non-exhaustion waivable, even tacitly, and the question of compliance or not with the admissibility requirements before the Commission (Articles 46-47) one which related to the interpretation or application of the American Convention and as such falling **ratione materiæ** within the scope of the Court's jurisdiction. However, as it was a requirement of admissibility of an application before the Commission, it held, **In the Matter of Viviana Gallardo et al.** (1981, §§ 26-27), that it was for the Commission in the first place to pass on the matter, and only thereafter could the Court accept or reject the Commission's views; as in that case the issue had not been dealt with by the Commission, the Court found that it could not at that stage pronounce on the waiver by the Government of the requirement of prior exhaustion of local remedies.

3. It is, in fact, a requirement of common sense, of the proper administration of justice and of juridical stability, and one which ensues from the general economy itself of the American Convention, that an objection to admissibility on the ground of non-exhaustion of local remedies is to be raised only **in limine litis**, to the extent that the circumstances of the case so permit. If that objection, which benefits primarily the respondent State, is not raised by this latter at the appropriate time, that is, in the proceedings on admissibility before the Commission, there comes into operation a presumption of waiver - albeit tacit - of that objection by the respondent Government. There is nothing to prevent a respondent Government from waiving - expressly or tacitly - the benefit of the local remedies rule, which purports to privilege its own national legal order. It follows that if such a waiver had taken place, as in the present case, in the course of proceedings before the Commission, it could hardly be conceived that the respondent Government would be entitled to withdraw the waiver at will, in subsequent proceedings before the Court. Such unwarranted "extended" opportunity claimed by the respondent Government - in fact, a double opportunity - to avail itself of an objection which exists primarily in its favour seems to militate against the foundations of the system of international protection of human rights; there seems to be here room, on the contrary, for at a time tipping the balance equitably in favour of the alleged victims and strengthening the proper administration of justice and the Convention's mechanism of protection.

4. The second instance, that is, the reconsideration by the Court of the exhaustion rule previously raised before the Commission, requires further reflection. The point was dwelt upon by the Court in the three Honduran cases (Preliminary Objections, 1987), where the Court did not uphold the Commission's argument that the Court was prevented from reviewing all aspects pertaining to procedural rules of admissibility of applications. The Court

---

[1] Cf. to this effect the established case-law of the European Court of Human Rights (judgements, **inter alia**, in the cases **Artico**, 1980, **Corigliano**, 1982, **De Jong, Baljet and Van der Brink**, 1984, **Bozano**, 1986, **Bricmont**, 1989, **Ciulla**, 1989, **Granger**, 1990).

regarded the matter at issue as falling within its (contentious) jurisdiction as it related to the interpretation or application of the Convention; it then decided on its own evaluation to join the question of non-exhaustion to the merits, given the close interplay between the issue of local remedies and the very violation of human rights (cases **Velásquez Rodríguez**, §§ 28, 84 and 94-96, **Godínez Cruz**, §§ 31, 86 and 96-98, **Fairén Garbi and Solís Corrales**, §§ 33, 83 and 93-95). In those cases, the way seems to have been paved for the Court so to decide by the fact that the Commission itself somehow argued that the issue of exhaustion of local remedies was inseparably linked to the merits and to be decided jointly with the latter (cases **Velásquez Rodríguez**, § 83, **Godínez Cruz**, § 85, **Fairén Garbi and Solís Corrales**, § 82).(2)

5. The Court justified that, in the exercise of its contentious jurisdiction, it was competent to decide on all matters relating to the interpretation or application of the American Convention, and those matters comprised the determination of whether there had been a violation of guaranteed rights and the adoption of appropriate measures as well as the interpretation of procedural rules and the verification of compliance with them. In exercising those powers, the Court regarded itself as not bound or restricted by previous decisions of the Commission; the Court added that it did not act as a court of review or appeal of the Commission's admissibility decisions, but those powers derived from its character as the sole judicial organ in mattters concerning the Convention and they further assured States Parties which accepted the Court's jurisdiction that the Convention provisions would be strictly observed (cases **Velásquez Rodríguez**, § 29, **Godínez Cruz**, § 32, **Fairén Garbi and Solís Corrales**, § 34). Such zealous assertion by the Court of its powers also in relation to aspects pertaining to the preliminary objection to admissibility on the basis of non-exhaustion of local remedies, unlike what it would seem to assume, may not always necessarily ensure or lead to a greater protection of guaranteed human rights.

6. In fact, some cogent reasons appear to militate in favour of taking, on this particular point, a distinct position, more consonant with, and conducive to, the fulfilment of the ultimate object and purpose of the American Convention, in so far as the handling of this procedural issue is concerned. First, under the American Convention, the two supervisory organs, the Commission and the Court, have defined powers, the former being entrusted with competence to decide on the admissibility of applications (Articles 46-47), the latter with jurisdiction (in contentious cases) to determine whether there had been a violation of the Convention (Article 62(1) and (3)). The preliminary (procedural) question of admissibility is one and indivisible: just as decisions of inadmissibility of applications by the Commission are regarded as final and without appeal, the dismissal by the Commission of an objection of non-exhaustion of local remedies should likewise be regarded as final and not susceptible of being retaken by the respondent Government in subsequent proceedings before the Court. (This naturally presupposes that admissibility decisions are based upon a thorough examination of the facts of the cases by the Commission). This position would assist in diminishing the factual inequality of status between the alleged victims and the respondent Governments in proceedings before the Court, and would seem to satisfy the requirements of pure logic (given the unity and indivisibility of jurisdiction) and of the general plan of the Convention (whereby a case could only be referred to the Court after first having been examined by the Commission). The local remedies rule, as a preliminary objection to the admissibility of applications, was never meant to be resorted to twice in a case, that is, to be raised or pursued to the advantage of the respondent Government twice, in proceedings before the Commission and later before the Court.

---

(2) This outlook is reminiscent of the jurisprudence of the European Court of Human Rights (inaugurated in the **De Wilde, Ooms and Versyp** judgement, 1971) to the effect that the Court had jurisdiction to take cognisance of all questions of fact and of law pertaining to the matter of non-exhaustion of local remedies in so far as that objection had first been raised before the Commission. This thesis, however, has not passed without some dissent within the European Court itself, not only in that leading case, but also in the more recent cases in which it has been upheld by the Court (**Brozicek**, 1989, **Cardot**, 1991, **Oberschlick**, 1991).

7. Secondly, to proceed otherwise would amount to shifting the emphasis from the overriding concern to secure an effective protection to victims of alleged human rights violations to the more circumscribed concern with the proper internal structure of the international jurisdictional body. It should not pass unnoticed that the local remedies rule is not concerned with the internal structure of an international jurisdictional body, but its purpose is of a different nature: as a preliminary objection, to be raised in limine litis, it is meant to afford the State an opportunity at that stage to remedy the alleged wrong before the complaint can be dealt with in its merits by the international organ concerned. Thus, it is not, after all, a matter of "restricting" the powers of the Court on the point at issue, but rather of strengthening the system of protection as a whole, in a way which is beneficial to the alleged victims, in pursuance of the accomplishment of the object and purpose of human rights treaties.

8. Thirdly, in further support of this view, to assume a review jurisdiction of the Court in such questions of admissibility as the local remedies rule would appear to attempt against the equality of arms and to create a disparity between the parties. Even if the applicant had won his case before the Commission, he would be surrounded by uncertainties as to the outcome of the case, and could after a prolonged litigation be denied a judgement on the merits by the Court. Why was a respondent Government to be allowed to challenge before the Court the dismissal by the Commission of an objection of non-exhaustion if the alleged victim was not allowed to challenge before the Court the upholding by the Commision of an objection of non-exhaustion? This appears to amount to a considerable unfairness, to the detriment of the alleged victim.

9. Fourthly, there would further be a case for avoiding a repetitious and time-consuming work by the Court, not only in the procedure on the merits, but also in the handling of the evidence: it would indeed be very unwise to extend such repetition regularly also to questions of admissibility, without any tangible or real effect on the protection of human rights. Rules which are procedural in nature, such as the local remedies rule in the particular context of human rights protection, enshrined in the human rights treaty at issue for the purpose of sifting complaints, could hardly be placed on the same footing as the norms on the very rights guaranteed, the ensurance of the observance of which is properly to attract the attention of the Court. If the Court was taken to be empowered to review the Commission's decisions on admissibility, if both organs were to pronounce on the objection of non-exhaustion, this might regrettably pave the way for possibly diverging or conflicting decisions by the two organs on the point at issue;[3] such an outcome would seem hardly conducive to strengthening the international mechanism of human rights protection concerned.

10. In the present case, the Court rightly holds that the respondent Government is clearly estopped from relying at this stage upon the objection of non-exhaustion in view of its tacit waiver of that objection, as it failed to raise it in the proceedings on the admissibility of the application before the Commission. Taking the point further, it may be argued that even if a respondent Government had raised that objection at the preliminary stage of admissibility and the Commission had rejected it, the objection could no longer be pursued or relied upon by the Government before the Court; that decision by the Commission is to be regarded as final, in so far as the local remedies rule is concerned. This would prevent the Court from even hearing that objection, once it had not been raised before the Commission, as in the present case, or, having been raised, had been rejected by the Commission: the plea simply could not be relied upon before the Court. Such ground alone would suffice therefore to reject that objection, in the two circumstances contemplated herein. This approach, properly applied, would furthermore strongly discourage the Court to consider joining to the merits the issue of exhaustion, which would

---

[3] This is more than a theoretical possibility, it has already happened: in a recent case (**Cardot**, 1991) under the European Convention on Human Rights, the respondent Government's objection of non-exhaustion had earlier been rejected by the Commission, but was later retaken by the Court, which retained and upheld it and found itself unable to take cognisance of the merits of the case due to the applicant's alleged failure to exhaust local remedies.

invariably prejudice the alleged victims, or have no concrete effect on the protection of their rights, for the reasons above referred to. The dismissal by the Commission of a preliminary objection of non-exhaustion is as such an indivisible one, covering the conditions of application of the local remedies rule under the Convention, that is, the incidence of the rule as well as the exceptions to it. This seems in keeping with the rationale of the rule in the context of the international protection of human rights.

11. The specificity or special character of human rights treaties and instruments, the nature and gravity of certain human rights violations and the imperatives of protection of the human person stress the need to avoid unfair consequences and to secure to this end a necessarily distinct (more flexible and equitable) application of the local remedies rule in the particular context of the international protection of human rights. This has accounted for, in the present domain of protection, the application of the principles of good faith and estoppel in the safeguard of due process and of the rights of the alleged victims, the distribution of the burden of proof as to exhaustion of local remedies between the alleged victim and the respondent Government with a heavier burden upon the latter,[4] the clarifications and greater precision as to the wide scope of exceptions to the local remedies rule.[5] This comes to acknowledge that generally recognized principles of international law, referred to in the formulation of the local remedies rule in human rights treaties and instruments, necessarily undergo some degree of adaptation or adjustment when enshrined in those treaties and instruments, given the specificity of these latter and the special character of their ultimate object and purpose.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

---

(4) IACHR, three Honduran cases, Preliminary Objections, 1987 - **Velásquez Rodríguez**, § 88, **Godínez Cruz**, § 90, **Fairén Garbi and Solís Corrales**, § 87; and Merits - **Velásquez Rodríguez**, 1988, §§ 56-60 and 73, **Godínez Cruz**, 1989, §§ 62-63 and 76, **Fairén Garbi and Solís Corrales**, 1989, §§ 83-84; and eleventh Advisory Opinion, on **Exceptions to the Exhaustion of Domestic Remedies**, 1990, §§ 40-41.

(5) IACHR, eleventh Advisory Opinion, on **Exceptions to the Exhaustion of Domestic Remedies**, 1990, §§ 14-40.

APPENDIX X

INTER-AMERICAN COURT OF HUMAN RIGHTS

NEIRA ALEGRIA ET AL. CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF DECEMBER 11, 1991

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
Jorge E. Orihuela-Iberico, **ad hoc** Judge;

also present,

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

delivers the following judgment pursuant to Article 27(4) of the Rules of Procedure of the Court (hereinafter "the Rules") in force for matters submitted to it prior to July 31, 1991, on the preliminary objections interposed by the Government of Perú (hereinafter "the Government" or "Perú").

I

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court") on October 10, 1990. It originated a in petition (N° 10.078) against Perú.

2. In filing the application with the Court, the Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 50 of its Regulations, and requested that the Court determine whether the State in question had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, to the detriment of Messrs. Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar. The Commission also asked the Court to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin." The Commission named the following as its Delegates: Edith Márquez-Rodríguez, Executive Secretary; David J. Padilla, Assistant Executive Secretary; and Osvaldo N. Kreimer, Specialist of the Executive Secretariat.

3. On October 22, 1990, the Secretariat of the Court transmitted the Commission's application and the material annexed thereto to the Government.

4. On November 8, 1990, the Government appointed Minister Counselor Eduardo Barandiarán as its Agent. Subsequently, on January 2, 1991, it named a new Agent, Dr. Sergio Tapia-Tapia.

5. By Order of November 12, 1990, the President of the Court (hereinafter "the President"), in agreement with the Agent of Perú and the Delegates of the Commission and in consultation with the Permanent Commission of the Court (hereinafter "the Permanent Commission"), set March 29, 1991, as the deadline for the Commission's submission of the memorial provided for in Article 29 of the Rules and June 28, 1991, as the deadline for submission by the Government of the counter-memorial provided for in the same article.

6. On December 10, 1990, Perú appointed Dr. Jorge E. Orihuela-Iberico as **ad hoc** judge.

7. The Commission submitted its memorial on March 28, 1991, and the Court received Perú's counter-memorial on June 27, 1991.

8. On June 26, 1991, the Agent for Perú interposed preliminary objections alleging "lack of jurisdiction of the Commission" and "expiration of the time-limit for filing of the petition." The President fixed July 31, 1991, as the deadline for the submission by the Commission, in writing, of its observations and conclusions on the preliminary objections. This communication was received at the Secretariat of the Court on July 31, 1991.

9. After consultation with the Permanent Commission, the President directed that a public hearing be convened for December 6, 1991, at 15:00 hours, at the seat of the Court, for the presentation of oral arguments on the preliminary objections.

10. On August 3, 1991, the President, at the request of the Government, ordered the Commission to transmit to the Court the relevant portion of the summary minutes of its Meeting 1057, held on May 14, 1990, at which the Commission resolved to declare as concluded the examination of the case and adopted Report N° 43/90. The Commission was also requested to provide the pertinent parts of the summary minutes of its 78th Session, at which it decided to submit the case to the Court, and to specify the date of the relevant meeting.

On October 18, 1991, the Secretariat of the Commission replied that "the Commission was consulted about this order at its 80th regular session and resolved that this Commission's summary minutes are of a confidential and reserved nature. Nevertheless, the Commission places itself at the disposal of that Honorable Court and will provide it with such specific information as the Court deems necessary to order."

11. By note of November 14, 1991, the Government asked the Court to formally reiterate its request to the Commission to "duly present the relevant parts of the minutes ... with the admonition that, in the event of noncompliance with the Court's order, the allegations of the Government of Perú shall be presumed to be true." The President acceded to this request in a note dated December 3, 1991. In it, he explained to the Commission

that he had requested the transmittal of the relevant portions of two of the summary minutes to which Article 22 of the Commision's Regulations refers because they spelled out the decisions the Commission had adopted; these decisions, in his opinion, could not be considered to be confidential. He also added that the failure to transmit the documents requested "could have procedural consequences."

12. The public hearing was held at the seat of the Court on December 6, 1991.

There appeared before the Court

for the Government of Perú:

Sergio Tapia-Tapia, Agent
Eduardo Barandiarán, Minister Counselor

for the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, Delegate
David J. Padilla, Delegate
Carlos Chipoco, Adviser
José Miguel Vivanco, Adviser
Silvio Campana, Adviser.

13. At this hearing, the Commission supplied the dates that had been requested by the President in his notes of August 3 and December 3, 1991 (**supra** 10 and 11). Mr. Fappiano stated: "... I formally declare that the decision was adopted on October 5th and that the relevant portion of the minutes reads as follows: 'to confirm the decision to submit the case to the Court because the deadline has expired and the declarations of the Government of Perú are not satisfactory.'" He also stated: "Mr. President, the Commission's report was delivered on May 14, 1990, as recorded in the minutes for that day and for the following day, May 15. The relevant portion of the minutes repeats what is contained in the concluding part of the report itself: to submit the case to the consideration, to the jurisdiction of the Court, unless the Government of Perú resolves the matter within the three months indicated in the previous paragraph. All this we acknowledge."

II

14. According to the petition filed with the Commission, on June 18, 1986, Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar were being held in detention at the San Juan Bautista penal establishment, also known as "El Frontón", having been charged with the commission of alleged terrorist acts. On that date, a mutiny occurred in the prison. In order to quell the uprising, the Government, by Supreme Decree Number 006-86-JUS, placed the prison under the control of the Joint Staff of the Armed Forces. The penitentiary thus became a restricted military zone. Since that time, that is, the date on which the Armed Forces took action to put down the mutiny, the persons listed above have dissappeared; their next of kin have never seen or heard from them again.

15. The June 18, 1986, record drawn up by the authorities of the National Penitenciary 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.

16. On September 8, 1987, the Commission admitted the petition, acknowledged receipt thereof and requested pertinent information from the Government, including information bearing on the question of whether domestic remedies had been exhausted. When the Peruvian Government failed to reply, the Commission repeated its request for information four times (January 11 and June 7, 1988, February 23 and June 9, 1989), in accordance with the procedure provided for in Article 42 of its Regulations.

On June 26, 1989, the Peruvian Government sent the Commission a general reply that referred to several cases pending before that body. The Government did not, however, specifically address the matter of exhaustion of domestic remedies in the instant case.

17. On September 25, 1989, the Commission conducted a hearing which was attended by representatives of the petitioners and of the Government. The former provided details about the events that took place in El Frontón on June 18 and 19, 1986, and particularly about the way in which the uprising was suppressed. The representatives of the Government, however, refrained from making any observations.

18. On September 29, 1989, the Government sent the Commission a communication. It reads in part as follows:

> As for [case] 10.078, [which], as is public knowledge, is currently being dealt with by the Special Military Tribunal of Perú in accordance with the laws in force, it must be pointed out that the State's domestic jurisdiction has not been exhausted. Consequently, it would be advisable for the IACHR to await the final outcome of [this case] before making a definitive decision.

19. The Commission examined the instant case during its 77th Regular Session and approved Resolution N° 43/90 of June 7, 1990, the operative part of which reads as follows:

1. To declare that the complaint of the present case is admissible.

2. To declare that a friendly solution to the present case is inappropriate.

3. To declare that the government of Peru has not fulfilled its obligations with respect to human rights and the guarantee imposed by articles 1 and 2 of the Convention.

4. To declare that the government of Peru has violated the right to life recognized in article 4, the right to personal liberty enshrined in article 7, the judicial guarantees of article 8, and the right of judicial protection found in article 25, all from the American Convention of Human Rights, as a consequence of the acts which occurred in the San Juan Bautista Prison, in Lima, on June 18, 1986, that led to the disappearance of Víctor Neira Alegría, Edgar Zenteno Escobar, and William Zenteno Escobar.

5. To formulate the following recommendations for the government of Peru (Convention article 50.3 and article 47 of the Inter-American Commission on Human Rights' Regulations):

   a. Peru must fulfill articles 1 and 2 of the Convention adopting an effective recourse that guarantees the fundamental rights in the cases of forced or involuntary disappearance of individuals;

   b. Conduct a thorough, impartial investigation into the facts object of the complaint, so that those responsible may be identified, brought to justice and receive the punishment prescribed for such heinous acts, and determine the situation of the individuals whose dissappearance has been denounced;

   c. Adopt the necessary measures to prevent similar acts from occurring in the future;

d. Make necessary reparations for the violations of rights previously indicated and pay just indemnity to the victims' families.

6. To transmit the present report to the Government of Peru so that the latter may make any observations it deems appropriate within ninety days from the date it is sent. Pursuant to Art. 47.6 of the Commission's Regulations, the parties are not authorized to publish the present report.

7. To submit the present case to the Inter-American Court of Human Rights unless the Government of Peru solves the matter within the 3 months alloted in the previous paragraph.

20. The Commission transmitted the resolution to the Government on June 11, 1990, and informed it that the time-limit specified therein commenced on the aforementioned date.

21. By a note dated August 14, 1990, the Government requested of the Commission,

> because of the few days that have elapsed since the new Adminstration of Perú assumed power and pursuant to Article 34, paragraph 6, of the Regulations of the IACHR ..., a 30-day extension to enable it to fully comply with the Commission's recommendations.

In a note dated August 20, 1990, the Commission granted the requested 30-day extension, to commence on September 11, 1990.

22. By note of September 24, 1990, the Government informed the Commission that, in its judgment, the exhaustion of domestic remedies in the instant case had occurred on January 14, 1987. On that date, the judgment of the Court of Constitutional Guarantees denying the petitioners' claim was published in the official gazette "El Peruano." Perú therefore asserted that when the petition was filed with the Commission, more than six months had elapsed since the exhaustion of domestic remedies, which is the time-limit fixed in Article 46 of the Convention for lodging petitions or communications with the Commission. The aforementioned note states the following:

> . . .
>
> Consequently, the Government of Perú is of the opinion that the Commission, motu propio, should have declared the petition inadmissible, pursuant to Article 47 paragraph a. of the Convention on Human Rights, which provides that the Commission shall act accordingly when:
>
> 'any of the requirements indicated in Article 46 has not been met.'

23. The Commission analyzed the Government's note during its 78th Session and agreed to confirm its decision to submit the case to the Court.

III

24. The Court has jurisdiction to hear the instant case. Perú has been a State Party to the Convention since July 28, 1978. It accepted the contentious jurisdiction of the Court, to which Article 62 of the Convention refers, on January 1, 1981.

IV

25. The Court will now examine the preliminary objections interposed by the Government.

26. In its first objection, the Government contends that, pursuant to Article 46, paragraph 1(b) of the American Convention, one of the requirements for admissibility of a petition by the Commission is that it be lodged within

a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment of the domestic courts. If this requirement were not met, the Commission would lack jurisdiction to pursue the case.

27. In the instant case, the petition was filed with the Inter-American Commission on September 1, 1987, according to the Peruvian Government, and on August 31 of that year, according to the Commission's memorial. This one-day discrepancy in the assertions of each of the parties is legally irrelevant to the resolution of the instant case. The Court does not deem it necessary, therefore, to address this issue.

28. The Government contends in its preliminary objections and reiterated at the hearing of December 6, 1991, that the domestic remedies interposed by the petitioners were exhausted when they received notice of the judgment of the Court of Constitutional Guarantees through its publication in the official gazette, that is, on January 14, 1987. The Government adds that under Article 46 of Law N° 23385, which governs the activities of that tribunal, a judgment rendered by it has the effect of exhausting domestic remedies.

The foregoing assertion by the Peruvian Government is not consistent with its prior statement to the Commission, contained in its note of September 29, 1989 (**supra** 18).

29. It follows from the above that on September 29, 1989, Perú contended that domestic remedies had not been exhausted, but that a year later, on September 24, 1990, it asserted the contrary to the Commission, as it now does to the Court. International practice indicates that when a party in a case adopts a position that is either beneficial to it or detrimental to the other party, the principle of estoppel prevents it from subsequently assuming the contrary position. Here the rule of **non concedit venire contra factum proprium** applies.

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. Here neither of these assertions would be relevant. What is important, however, is that as far as concerns the exhaustion of domestic remedies the Government has made two contradictory statements about its domestic law. Regardless of the veracity of either of these statements, that contradiction affects the procedural situation of the other party.

30. This contradiction has a direct bearing on the inadmissibility of petitions lodged after the "period of six months from the date on which the party alleging violation of his rights was notified of the final judgment" (Art. 46(1)(b) of the Convention) with regard to the exhaustion of domestic remedies.

In fact, since that period depends on the exhaustion of domestic remedies, it is form the Government to demonstrate to the Commission that the period has indeed expired. Here, again, the Court's earlier decision regarding the waiver of non-exhaustion of domestic remedies is relevant:

> Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized (see **Viviana Gallardo et al.** Judgment of November 13, 1981, No. G 101/81. Series A, para. 26). Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.

(**Velásquez Rodríguez Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 1, para. 88; **Fairén Garbi and Solís Corrales Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 2, para. 87; **Godínez Cruz Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 3, para. 90.)

31. For the above reasons, Perú cannot validly interpose in these proceedings the objection of lack of jurisdiction based on Article 46, paragraph (1)(b) of the Convention.

32. The Government has interposed another preliminary objection based on the fact that the Commission submitted the case to the Court after the expiration of the term specified in Article 51, paragraph (1), of the American Convention. Under that provision, the Commission has a period of three months from the date of the transmittal of the report to the Government concerned in which to submit a case. After that period, the Commission no longer has the power to do so.

In the instant case, Report 43/90 was transmitted to Perú on June 11, 1990. The case was referred to the Court on October 10 of that same year. Perú contends that since the three-month period which commenced on June 11 had elapsed, the Commission no longer had the right to submit the case.

33. There exists no disagreement between the parties as to the dates mentioned above. Since Report 43/90 was transmitted to the Government of Perú on June 11, 1990, the Commission should have submitted the matter to the Court within the period of three months following that date.

On August 14, 1990, before that period had expired, Perú requested a 30-day extension from the Commission (**supra** 21). By note of August 20, 1990, the latter granted the requested extension as of September 11, 1990.

34. It follows that the original period of three months was extended by the Commission at the request of Perú. In accordance with elementary principles of good faith that govern all international relations, Perú cannot invoke the expiration of a time-limit that was extended at its own behest. Therefore, the Commission's submission of the case cannot be deemed to have been untimely; on the contrary, the matter was submitted within the period granted to the Government at its own request. (*See* **Velásquez Rodríguez Case, Preliminary Objections, supra** 30, para. 72; **Fairén Garbi and Solís Corrales, Preliminary Objections, supra** 30, para. 72; **Godínez Cruz Case, Preliminary Objections, supra** 30, para. 75.)

35. Perú cannot now also assert, as it did at the hearing, that the Commission lacked jurisdiction to grant the extension of the three-month period which the Government itself had requested, since principles of good faith dictate that one may not request something of another and then challenge the grantor's powers once the request has been complied with.

V

Now, therefore,

THE COURT,

by four votes to one,

rejects the objections interposed by the Government of Perú.

Jorge E. Orihuela-Iberico, **ad hoc** judge, dissenting.

Done in Spanish and English, the Spanish text being authentic. Read at the public hearing held at the seat of the Court in San José, Costa Rica, on December 11, 1991.

Héctor Fix-Zamudio
President

Thomas Buergenthal

Rafael Nieto-Navia

Julio A. Barberis

Jorge E. Orihuela-Iberico

Manuel E. Ventura-Robles
Secretary

So ordered.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

Although Judge Sonia Picado-Sotela took part in the public hearing held on December 6, 1991, her signature does not appear on this judgment because she was absent from the seat of the Court when it was signed.

Dissenting Opinion of Judge ad hoc Dr. Jorge E. Orihuela-Iberico

on the Preliminary Objection of Lack of Jurisdiction of the Commission

In the Case of Neira Alegría et al.

I. Facts

A) The petition or complaint

1. Prior to presentation of the complaint to the Commission:

1.1. Petition for habeas corpus processed in three stages before the Judiciary, starting on July 16, 1986, and concluding on August 25, 1986.

1.2. Appeal before the Court of Constitutional Guarantees processed between September 22, 1986, and December 5, 1986.

Notified in the Offical Gazette "El Peruano" on January 14, 1987.

2. Point 1 above shows that the petitioner fulfilled the requirement stipulated in Article 46(1)(a) of the Convention.

3. The main case file contains repeated statements regarding the exhaustion of domestic remedies by the petitioners:

3.1. On page 246 they state "whereupon domestic remedies were exhausted after the decision of the Court of Constitutional Guarantees;" and

3.2. On page 208 "whereupon domestic remedies were exhausted."

B) The presentation of the petition or complaint to the Commission.

Submitted in a document dated Washington, August 31, 1987, and received by the Commission on September 1, 1987, as shown on page 252 of the main case file. Acknowledged to be true in point one of the Index of Attachments compiled by the Commission together with the submission to the Court of October 16, 1990, which appears on page 254 of that same case file.

II. Normative Provisions

1. Convention

PREAMBLE

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters.

Article 29. Restriction Regarding Interpretation

No provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein ...

Section 3. Competence

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:
   a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
   b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment ...

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

a. any of the requirements indicated in Article 46 has not been met;

. . .

c. the statements of the petitioners or of the state indicate that the petition or communication is manifestly groundless or obviously out of order ...

2. Statute of the Commission

IV. FUNCTIONS AND POWERS

Article 19

With respect to the States Parties to the American Convention on Human Rights, the Commission shall discharge its duties in conformity with the powers granted under the Convention and in the present Statute, and shall have the following powers in addition to those designated in Article 18:

a. to act on petitions and other communications, pursuant to the provisions of Article 44 to 51 of the Convention;

. . .

3. Regulations of the Commission

Article 14. Functions of the Secretariat

. . .

2. The Secretariat shall receive petitions addressed to the Commission and, when appropriate, shall request the necessary information from the governments concerned and, in general, it shall make the necessary arrangements to initiate any proceedings to which such petitions may give rise.

. . .

Title II
PROCEDURES

CHAPTER I
GENERAL PROVISIONS

Article 30. Initial Processing

1. The Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission and that fulfill all the requirements set forth in the Statute and in these Regulations.

2. If a petition or communication does not meet the requirements called for in these Regulations, the Secretariat of the Commission may request the petitioner or his representative to complete it.

3. If the Secretariat has any doubt as to the admissibility of a petition, it shall submit it for consideration to the Commission or to the Chairman during recesses of the Commission.

CHAPTER II

PETITIONS AND COMMUNICATIONS REGARDING STATES PARTIES TO THE AMERICAN CONVENTION ON HUMAN RIGHTS

Article 31. Condition for Considering the Petition

The Commission shall take into account petitions regarding alleged violations by a state party of human rights defined in the American Convention on Human Rights, only when they fulfill the requirements set forth in that Convention, in the Statute and in these Regulations.

. . .

Article 33. Omission of Requirements

Without prejudice to the provisions of Article 26, if the Commission considers that the petition is inadmissible or incomplete, it shall notify the petitioner, whom it shall ask to complete the requirements omitted in the petition.

. . .

Article 38. Deadline for the Presentation of Petitions

1. The Commission shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted.

. . .

III. Case Law

1. 34. ... The Court must, likewise, verify whether the essential procedural guidelines of the protection system set forth in the Convention have been followed. Within these general criteria, the Court shall examine the procedural issues submitted to it, in order to determine whether the procedures followed in the instant case contain flaws that would demand refusal **in limine** to examine the merits of the case. (**Velásquez Rodríguez Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 1, para. 34; **Fairén Garbi and Solís Corrales Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 2, para. 39; **Godínez Cruz Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 3, para. 37.)

2. 37. Article 46(1) of the Convention lists the prerequisites for the admission of a petition [by the Commission] .... (**Velásquez Rodríguez Case, supra** 1, para. 37; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 42; **Godínez Cruz Case, supra** 1, para. 40.)

3. 39. There is nothing in this procedure that requires an express declaration of admissibility, either at the Secretariat stage or later, when the Commission itself is involved. In requesting information from a government and processing a petition, the admissibility thereof is accepted in principle, provided that the Commission, upon being apprised of the action taken by the Secretariat and deciding to pursue the case (Arts. 34(3), 35 and 36 of the Regulations of the Commission), does not expressly declare it to be inadmissible (Art. 48(1)(c) of the Convention). (**Velásquez Rodríguez Case, supra** 1, para. 39; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 44; **Godínez Cruz Case, supra** 1, para. 42.)

4. 45. ... the Commission enjoys discretionary, but by no means arbitrary, powers to decide in each case .... (**Velásquez Rodríguez Case, supra** 1, para. 45; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 50; **Godínez Cruz Case, supra** 1, para. 48.)

5. 29. ... In exercising these powers, the Court is not bound by what the Commission may have previously decided; rather, its authority to render judgment is in no way restricted. The Court does not act as a court of review, of appeal or other similar court in its dealings with the Commission. Its power to examine and review all actions and decisions of the Commission derives from its character as sole judicial organ in matters concerning the Convention. This not only affords greater protection to the human rights guaranteed by the Convention, but it also assures the States Parties that have accepted the jurisdiction of the Court that the provisions of the Convention will be strictly observed. (**Velásquez Rodríguez Case, supra** 1, para. 29; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 34; **Godínez Cruz Case, supra** 1, para. 32.)

IV. Conclusions and Vote:

1. That the petitioner complied with the exhaustion of domestic remedies requirement by presenting a writ of habeas corpus, the final decision on which was communicated to him on January 14, 1987.

2. That the period of six months referred to in Article 46(1)(b) of the Convention expired on July 14, 1987.

3. That the Commission received the petition on September 1, 1987, to wit, more than a month after the expiration of the six-month period.

4. That, according to the Convention and the Statute of the Commission, this six-month period is not of a procedural nature since it is contained in the part of the Convention relating to II "Means of Protection" Chapter VII "Inter-American Commission on Human Rights" Section 3 "Competence." Consequently, I reiterate that this period has been established in order to determine the jurisdiction of the Commission, an aspect that, according to the Preamble of the Convention, constitutes the essential purpose of the treaty and cannot be modified by the organs entrusted with its implementation, that is to say, by the Commission and the Court.

5. The Commission did not observe and, in fact, failed to comply with the Convention, its Statute and its Regulations, none of which grant it arbitrary or discretionary powers in the area of jurisdiction, as can be seen from the applicable normative provisions transcribed above.

6. That in view of the fact that the Commission admitted the petition or complaint outside of the period established by the Convention, a situation that no declaration of the parties can validate since it is a matter of nonobservance of an express norm of the Convention, there is no basis for the Court to attach the importance it does to the note of the Government of Perú dated September 29, 1989, appearing on page 194 of the main case file, in its judgment on the preliminary objections in the instant case, which was adopted by majority vote.

7. That this irregularity is alleged by the Government of Perú on September 24, 1990, in a report appearing on pages 168 to 172 of the main case file before the Commission, as follows:

   1. The first observation that the Government of Perú must make with regard to the resolution in questions relates to point 1 of same, which states:

   'To admit the petition bringing the instant case.'

It should be pointed out here that, according to the text of that resolution, the complaint bears the date August 1, 1987 (even so, there is room for doubt as to whether the text of the resolution contains a material error, since information provided would indicate that the complaint was not brought until September 1.)

The Commission admitted the petition on the assumption that domestic remedies had been exhausted. As a matter of fact, on December 5, 1986, the Court of Constitutional Guarantees decided on appeal the petition of habeas corpus that had been initially submitted to the Trial Judge for Lima on July 16, 1986. The decision of the Court of Constitutional Guarantees was published in the Official Gazette "El Peruano" on January 14, 1987, thus concluding the exhaustion of domestic remedies.

When the petition was lodged, assuming it was on August 1, 1987, more than six months had elapsed since the exhaustion of domestic remedies, that being the period fixed in paragraph (b) of Article 46 of the Inter-American Convention on Human Rights governing the jurisdiction of the Commission. Consequently, the Government of Perú considers that the Commission, motu propio, should have declared the petition inadmissible pursuant to Article 47, paragraph (a), of the Convention on Human Rights, which provides that the Commission shall proceed thus when:

'Any of the requirements indicated in Article 46 has not been met.'

NOW THEREFORE:

I vote that the Court hold:

First. The preliminary objection of lack of jurisdiction on the part of the Commission interposed by the Government of Perú to be well-founded, given that the petition or complaint was admitted after the expiration of the period established in Article 46(1)(b) of the Convention; and

Second. That the Neira-Alegría et al. case be dismissed.

Dissenting Opinion of Judge ad hoc Dr. Jorge E. Orihuela-Iberico

on the Preliminary Objection of Expiration of the Time Limit for Submission of the Commission's Application

In the Case of Neira Alegría et al.

I. Facts

1. The Commission approved Report 43/90 during its 77th Session, at its Meeting N° 1057 of May 14, 1990.

2. By note of June 11, 1990, the Commission transmitted the Report to the Government of Perú, indicating that the time-limits set out in the Report would begin to run on the date of that communication.

3. By note of August 14, 1990, the Government of Perú requested the Commission to extend that period for 30 days in order to enable it to fully comply with the Commission's recommendations and in view of the fact that it had ordered the immediate preparation of a report on all actions taken in this case. The Government based its request on Article 34(6) of the Regulations of the Commission.

4. On August 20, 1990, the Commission advised the Government that it had granted the extension request for a period of 30 additional days, beginning on September 11, 1990.

In making this decision, the Commission:

> ... took special note of the following:
>
> a) The grant of an extension of 30 days would in no way impair the international protection of human rights; rather, it might open the possibility of a 'settlement in this case,' as contemplated in Article 51(1) of the Convention;
>
> b) The extension was for a reasonable length of time and had been requested within the time-limit specified in the Convention and in Report 43/90;

c) The request was reasonable and was based on weighty circumstances that warranted consideration, such as the short time that the new Administration had been in power and the promise of an immediate report on all actions taken in this case.

5. On September 24, 1990, in response to the Commission's Report 43/90, the Government transmitted to the Commission a report with three attachments.

In the aforementioned report, the Government of Perú requested that the Commission set aside Report 43/90, due to the lack of jurisdiction of the Commission. (This fact has already been evaluated and is addressed in point IV. 7 of the preceding vote, which finds the objection of lack of jurisdiction of the Commission to be well-founded.)

6. At Meeting 1085 of October 5, 1990, held during its 78th Session, the Commission "decided to reconfirm its original decision to submit the case to the obligatory jurisdiction of the Court" (page 21 of the Preliminary Objections file) because it considered the Government's reply to be unsatisfactory.

7. On October 10, 1990, the Commission submitted Case 10.078 to the Court.

II. Normative Provisions

1. The Convention

Chapter VII

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Section 4. Procedure

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

. . .

2. Statute of the Commission

IV. FUNCTIONS AND POWERS

Article 19

With respect to the States Parties to the American Convention on Human Rights, the Commission shall discharge its duties in conformity with the powers granted under the Convention and in the present Statute, and shall have the following powers in addition to those designated in Article 18:

a. to act on petitions and other communications, pursuant to the provisions of Articles 44 to 51 of the Convention;

...

3. Regulations of the Commission

CHAPTER II
PETITIONS AND COMMUNICATIONS REGARDING STATES
PARTIES TO THE AMERICAN CONVENTION ON HUMAN RIGHTS

Article 34. Initial Processing

6. The government of the State in question may, with justifiable cause, request a 30 day extension, but in no case shall extensions be granted for more than 180 days after the date on which the first communication is sent to the government of the State concerned.

Article 47. Proposals and Recommendations

2. If, within a period of three months from the date of the transmittal of the report of the Commission to the States concerned, the matter has not been settled or submitted by the Commission, or by the State concerned, to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

Article 50. Referral of the Case to the Court

1. If a State Party to the Convention has accepted the Court's jurisdiction in accordance with Article 62 of the Convention, the Commission may refer the case to the Court, subsequent to transmittal of the report referred to in Article 46 of these Regulations to the government of the State in question.

III. Case Law

1. 59. ... the case is ripe for submission to the Court pursuant to the terms of Article 51 of the Convention, provided that all other requirements for the Court to exercise its contentious jurisdiction have been met. (**Velásquez Rodríguez Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 1, para. 59; **Fairén Garbi and Solís Corrales Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 2, para. 59; **Godínez Cruz Case, Preliminary Objections,** Judgment of June 26, 1987. Series C No. 3, para. 62.)
2. 62. Article 51 of the Convention, in turn, reads:

   1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

   2. Where appropriate, the Commission shall make pertinent recom-mendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

   3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

The Court need not analyze here the nature of the time limit set by Article 51(1), nor the consequences that would result under different assumptions were such a period to expire without the case being brought before the Court. The Court will simply emphasize that because this period starts to run on the date of the transmittal to the parties of the report referred to in Article 50, this offers the Government one last opportunity to resolve the case before the Commission and before the matter can be submitted to a judicial decision. (**Velásquez Rodríguez Case, supra** 1, para. 62; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 62; **Godínez Cruz Case, supra** 1, para. 65.)

3. 63. Article 51(1) also considers the possibility of the Commission preparing a new report containing its opinion, conclusions and recommendations, which may be published as stipulated in Article 51(3). This provision poses many problems of interpretation, such as, for example, defining the significance of this report and how it resembles or differs from the Article 50 report. Nevertheless, these matters are not crucial to the resolution of the procedural issues now before the Court. In this case, however, it should be borne in mind that the preparation of the Article 51 report is conditional upon the matter not having been submitted to the Court within the three-month period set by Article 51(1). Thus, if the application has been filed with the Court, the Commission has no authority to draw up the report referred to in Article 51. (**Velásquez Rodríguez Case, supra** 1, para. 63; **Fairén Garbi and Solís Corrales Case, supra** 1, para. 63; **Godínez Cruz Case, supra** 1, para. 66.)

IV. Conclusions and Vote:

1. The Commission had the opportunity to submit case 10.078 to the Court until September 11, 1990.

2. Since the request for an extension presented by the Government of Perú is not contemplated in the normative provisions in force, it was not only inadmissible but also relied erroneously on Article 34(6) of the Regulations of the Commission, a provision that governs a different stage of the proceedings and is not here applicable. The Commission should have denied the request and pointed out that the period of three months still had 20 days to run before its expiration. And furthermore, it lacked authority to grant an extension of this term fixed in a treaty.

3. In extending a period fixed by the Convention, the Commission not only exceeded the bounds of its jurisdiction, but also, by so doing, placed itself in a position that made it legally impossible to submit the case to the Court. It did not, however, lose its power to sanction Perú through the publication of its report.

4. The authority to extend or prolong the 90-day period is not granted to the Commission in any article of the Convention, nor does the latter contemplate the States requesting such an extension.

5. Accordingly, it has been demonstrated that in handling this petition the Commission exceeded the powers granted it by the Convention, its Statute and its Regulations.

NOW THEREFORE:

I vote that the Court hold:

First. The preliminary objection of expiration of the application interposed by the Government of Perú to be well-founded, given that the Commission submitted Case 10.078 to the Court after the expiration of the period established in Article 51(1) of the Convention; and

Second. That the Neira-Alegría et al. case be dismissed.

In signing this vote, I call on the Honorable Inter-American Court of Human Rights to exhort the Inter-American Commission on Human Rights to comply with the American Convention on Human Rights, its Statute and its

Regulations, to ensure an adequate protection of human rights without undermining the health of the institutions of the inter-American system.

San José, December 11, 1991

Jorge Eduardo ORIHUELA-IBERICO
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

APPENDIX XI

The Minister of Foreign Affairs

No. 199-91-DAJ

San José, February 22, 1991

Dr. Héctor Fix-Zamudio

PRESIDENT
INTER-AMERICAN COURT OF
HUMAN RIGHTS

Dear Sir:

The Minister of Foreign Affairs and Worship of the Republic of Costa Rica greets the Honorable Inter-American Court of Human Rights respectfully requests, pursuant to Article 64(2) of the American Convention on Human Rights, the following:

The Republic of Costa Rica has found it necessary to improve the current system of criminal procedure; to offer greater guarantees in the criminal courts; and to comply with the provisions of Article 8, paragraph (2)(h), of the American Convention on Human Rights, signed in San José, Costa Rica, on November 22, 1969, which reads as follows:

> **"RIGHT TO A FAIR TRIAL"** Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: h) **THE RIGHT TO APPEAL THE JUDGMENT TO A HIGHER COURT.**

A draft bill to amend Articles 474 and 475 of the Code of Criminal Procedure and to create a Supreme Court of Criminal Appeal (Cassation) is currently before the Legislative Assembly of our country. The bill is designed to regulate the appellate review of lower court decisions in criminal proceedings.

The bill in question reads as follows:

AMENDMENT TO ARTICLES 474-475 OF THE CODE OF CRIMINAL PROCEDURE AND ESTABLISHMENT OF THE COURT OF CRIMINAL APPEAL

ARTICLE 474. - A defendant may file an appeal against:

1- A conviction for a criminal offense.

2- An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

3- A ruling disallowing credit for time served.

4- An order that imposes a security measure (medida de seguridad) when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

ARTICLE 475. - A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge,* provided that the damages he has sustained are equal to or greater than the amount for which an appeal would be admitted in a civil proceeding, as provided by law.

ARTICLE 4°. - The Superior Court of Criminal Appeal is hereby established. It shall have its seat in the city of San José and shall be composed of such sections as the Plenary Court [of the Supreme Court] considers necessary for the exercise of its functions. Each section shall consist of three Superior Court Judges.

The members of the aforementioned Court shall have the same qualifications as are required for a Justice of the Supreme Court and shall receive a salary greater than that of Superior Criminal Court Judges, pursuant to the scale fixed for this purpose in the national budget. In addition to the provisions of this law, the regulations governing the organization and operation of Superior Criminal Courts shall also apply to the Court of Criminal Appeal.

This Court shall hear all appeals seeking the annulment, review or revision of judgments instituted with respect to matters before a Criminal Court Judge which involve the rulings to which Articles 472, 473, 474, 475 and 476 of the Code of Criminal Procedure refer, when such remedies are admissible pursuant to the aforementioned Code.

At the present time, the penal norms in force do not adequately regulate all the situations that might arise in this area. The remedies now available to the defendant are those provided for in Articles 474-475 of the current Code of Criminal Procedure. These provisions read as follows:

---

* *Translator's Note*: In Costa Rica, the Criminal Court Judge hears cases involving criminal offenses subject to a sentence of less than 3 years (called delitos de citación directa); when the applicable sentence is greater than 3 years, the case is heard by the Trial Court (instrucción formal).

"REMEDIES OF THE DEFENDANT" (CODE OF CRIMINAL PROCEDURE CURRENTLY IN FORCE)

ARTICLE 474. - A defendant may file an appeal against:

1. The sentence of a Trial Court that imposes two or more years of prison, a fine [equal to] one hundred eighty days, or three years of disability, or when restitution or compensation in excess of five thousand colones is

levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

2. The sentence of a Criminal Court Judge imposing more than six months of prison, a fine [equal to] one hundred eighty days, or a year of disability, or when restitution or compensation in excess of two thousand five hundred colones is levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

3. An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

4. Specific rulings disallowing credit for time served.

5. An order that imposes a security measure (medida de seguridad) for two or more years when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

REMEDY OF THE PLAINTIFF

ARTICLE 475. - A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained exceed the sum of ten thousand colones in the first case and three thousand colones in the second.

In determining the damages sustained, account shall be taken of the amounts specified in the claim and in the judgment. However, if the former appears to have been patently exaggerated in order to render the appeal admissible, it may be dismissed by the Chamber for Criminal Appeal [of the Supreme Court] without a review of the merits of the case.

Taking the above circumstances into account and considering the provisions of Article 64(2) of the American Convention on Human Rights, the Government of Costa Rica submits that this request for an advisory opinion is in order and admissible. As the Honorable Court declared in Section II of its Advisory Opinion OC-4/84 of January 19, 1984, requested by the Government of Costa Rica,

Paragraph 19. "It should also be kept in mind that the advisory jurisdiction of the Court was established by Article 64 to enable it 'to perform a service for all of the members of the inter-American system and is designed to assist them in fulfilling their international human rights obligations.' (I/A Court H.R., '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. 39.) Moreover, as the Court noted elsewhere, its advisory jurisdiction 'is designed to assist states and organs to comply with and to apply human rights treaties without subjecting them to the formalism and the sanctions associated with the contentious judicial process.' (I/A Court H.R., 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. 43.)"

Paragraph 28. "... [T]he Court concludes that a restrictive reading of Article 64(2), which would permit states to request advisory opinions under that provision only in relation to laws already in force, would unduly limit the advisory function of the Court."

Paragraph 30. "In deciding whether to admit or reject advisory opinion requests relating to legislative proposals as distinguished from laws in force, the Court must carefully scrutinize the request to determine, inter alia, whether its purpose is to assist the requesting state to better comply with its international human rights obligations."

In compliance with the requirements of Article 51 of the Rules of Procedure of the Inter-American Court of Human Rights (approved by the Court at its Third Session, held from July 30 to August 9, 1980), I am enclosing the following:

A) Ten copies of the current text of Articles 474 and 475 of the Code of Criminal Procedure and of Articles 474 and 475 - Establishment of the Court of Criminal Appeal of the draft amendment.

Also attached is Decision (Voto) No. 282-90 of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, adopted at seventeen hundred hours on May 13, 1990, which decreed the automatic annulment of any domestic law in conflict with the provisions of Article 8(2), subparagraph (h), of the American Convention on Human Rights.

- Opinion of the Supreme Court of Justice of Costa Rica, Art. XXXII (Regular Meeting of the Plenary Court on June 18, 1990).

- Report on the study of the draft bill undertaken by the Department of Technical Services of the Legislative Assembly (July 14, 1990).

- Note requesting the Inter-American Court of Human Rights to render an advisory opinion, presented by Deputy Lic. Daniel Aguilar-González, Chairman of the Permanent Committee on Legal Matters of the Legislative Assembly.

B) Specific issues on which the Court's opinion is sought:

1. Whether the establishment of a Court of Criminal Appeal and the proposed amendments fulfill the requirments set out in Article 8(2)(h) concerning the "right to appeal the judgment to a higher court"?

2. Considering that Article 8(2)(h) of the Inter-American Convention of Human Rights refers only to the term "criminal offense" (delitos), what rule should be applied with regard to lesser violations of the criminal law (contravenciones)?

C) Name and address of the agent of the Applicant State.

Dr. Bernd H. Niehaus Q.

MINISTER OF FOREIGN AFFAIRS AND WORSHIP

Ministry of Foreign Affairs and Worship

Republic of Costa Rica

I take this opportunity to reiterate to the Honorable Court of Human Rights the expressions of my highest consideration.

Hernán R. Castro H.

ACTING MINISTER OF FOREIGN AFFAIRS AND WORSHIP

TO THE HONORABLE

INTER-AMERICAN

COURT OF HUMAN RIGHTS

"REMEDIES OF THE DEFENDANT"
(CODE OF CRIMINAL PROCEDURE CURRENTLY IN FORCE)

ARTICLE 474.- A defendant may file an appeal against:

1. The sentence of a Trial Court that imposes two or more years of prison, a fine [equal to] one hundred eighty days, or three years of disability, or when restitution or compensation in excess of five thousand colones is levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

2. The sentence of a Criminal Court Judge imposing more than six months of prison, a fine [equal to] one hundred eighty days, or a year of disability, or when restitution or compensation in excess of two thousand five hundred colones is levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

3. An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

4. Specific rulings disallowing credit for time served.

5. An order that imposes a security measure (medida de seguridad) for two or more years when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

REMEDY OF THE PLAINTIFF

ARTICLE 475- A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained exceed the sum of ten thousand colones in the first case and three thousand colones in the second.

In determining the damages sustained, account shall be taken of the amounts specified in the claim and in the judgment. However, if the former appears to have been patently exaggerated in order to render the appeal admissible, it may be dismissed by the Chamber for Criminal Appeal [of the Supreme Court] without a review of the merits of the case.

AMENDMENT TO ARTICLES 474-475 OF THE CODE OF CRIMINAL PROCEDURE AND ESTABLISHMENT OF THE COURT OF CRIMINAL APPEAL

ARTICLE 474.- A defendant may file an appeal against:

1- A conviction for a criminal offense.

2- An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

3- A ruling disallowing credit for time served.

4- An order that imposes a security measure (medida de seguridad) when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

ARTICLE 475.- A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained are equal to or greater than the amount for which an appeal would be admitted in a civil proceeding, as provided by law.

ARTICLE 4°.- The Superior Court of Criminal Appeal is hereby established. It shall have its seat in the city of San José and shall be composed of such sections as the Plenary Court [of the Supreme Court] considers necessary for the exercise of its functions. Each section shall consist of three Superior Court Judges.

The members of the aforementioned Court shall have the same qualifications as are required for a Justice of the Supreme Court and shall receive a salary greater than that of Superior Criminal Court Judges, pursuant to the scale fixed for this purpose in the national budget. In addition to the provisions of this law, the regulations governing the organization and operation of Superior Criminal Courts shall also apply to the Court of Criminal Appeal.

This Court shall hear all appeals seeking the annulment, review or revision of judgments instituted with respect to matters before a Criminal Court Judge which involve the rulings to which Articles 472, 473, 474, 475 and 476 of the Code of Criminal Procedure refer, when such remedies are admissible pursuant to the aforementioned Code.

THE JUDICIARY
REPUBLIC OF COSTA RICA
(OFFICIAL USE ONLY)

N° 282-90

CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF JUSTICE, San José, at seventeen hundred hours on the thirteenth day of March, nineteen hundred ninety.

Having seen the petition for habeas corpus introduced by Mr. José Rafael Cordero- Croceri on behalf of Messrs. Vicente Chavarría-Alanías, Matilde Guido-Hernández, Julio Dinarte-García, Guillermo Dinarte-García, Walter Ordóñez-Sandino, Vidal García-Medina, Flor Briceño-González and Gilberth Billy Argüijo against the Criminal Court of Puntarenas,

WHEREAS:

I. The petition was introduced on the grounds that the claimants had been illegally deprived of their personal liberty. Such deprivation occurred when their right to appeal the judgment to a higher court in the manner provided for in Article 8(2), subparagraph (h), of the American Convention on Human Rights was not recognized.

II. In submitting the report required by law, Licda. Patricia Solano-Castro, Criminal Court Judge of Puntarenas, indicated that her Chambers are processing Case Nº 562-89 against the petitioners for obstruction of a public service (entorpecimiento de servicios). The judgment was handed down at sixteen hundred hours and thirty minutes on the twenty-sixth of January of this year. Each of the defendants was sentenced to six months of prison, with the exception of José Luis Herrera-Centeno, who was declared in contempt because he did not appear at the hearing. Of the defendants sentenced, only Matilde Guido-Hernández and Gilberth Billy Argüijo A. must still serve time in prison, since the remainder were granted the benefit of a conditional sentence for a probationary period of three years.

III. The terms of procedures are all in conformity with the law.

Justice Piza-Escalante writes:

CONSIDERING:

I. That although Article 73, paragraph (d), of the Law of Constitutional Jurisdiction permits interested parties to bring an action for unconstitutionality against legal provisions that conflict with an international treaty, and considering that in so doing they would violate the superior normative rank of the latter pursuant to Article 7 of the Constitution (Constitución Política), nevertheless if the provisions of the treaty in question are self-executing, that is, they do not require implementation through domestic legislation, any laws that contravene such provisions shall be simply annulled by virtue of the higher rank enjoyed by the treaty. Thus, the antinomy between law and treaty following the amendment of Articles 10, 48, 105 and 128 of the Constitution (Law #7128 of August 18, 1989, in force as of September 1) and, especially, the Law of Constitutional Jurisdiction (#7135 of October 11, 1989, in force since its publication on the 19th) is resolved, primarily and insofar as

possible, by the automatic annulment of the former when it contravenes the latter. This shall not mean that it can not also be resolved by declaring the law to be unconstitutional.

II. It is all a matter of procedure and opportunity. If the problem is presented through a petition of habeas corpus or amparo, the Chamber can declare and resolve it without having to grant the petitioner the opportunity of alleging unconstitutionality contemplated in Articles 28 and 48 of the law. But it also can and should take measures to monitor constitutionality when it takes cognizance of actions for unconsitutionality or, alternatively, receives legal or legislative inquiries as to constitutionality, as established by this law.

III. As for the specific purpose of the petition under review, the Chamber is of the opinion that the rule invoked — Article 8(2), subparagraph (h), of the American Convention on Human Rights (Pact of San José, Costa Rica, approved by Law #4534 of February 23 and ratified on April 8, 1970) — is perfectly clear and unconditional, in that it recognizes that the right to appeal a judgment (read conviction) to a higher court is a fundamental right of all human beings charged with a criminal offense (delito) in a criminal case.

IV. The above right is, as has been stated, unconditional, for the Convention does not subordinate it either to implementation through domestic law or to any other suspensive or complementary condition. Furthermore, it is also unconditional with respect to domestic law when the latter provides the institutional and procedural organization (organ and procedures) necessary to exercise that right of appeal, or, put another way, when the domestic law does not lack the institutional and procedural means required for the enjoyment of that right. If such means were lacking, the appeal could obviously not proceed, in which case the State's international obligation to respect and guarantee the right under Article 1(1) of the Convention would oblige it to establish them pursuant to Article 2.

V. In the specific case under review, this Chamber is of the opinion that it has before it a situation that warrants the immediate application of the treaty. Costa Rica has both the organ and the procedure needed to appeal the judgments in question, for Article 474, paragraphs (1) and (2), of its Code of Criminal Procedure generally admits an appeal by a defendant against a conviction, although it does restrict that right to cases before a Trial Court where the sentence for two or more years of prison or other forms of detention (juicio común), or cases before a Criminal Court Judge with sentences of more than six months or other forms of detention (citación directa). As a result, it denies such appeal for lesser sentences. Consequently, in order to fulfill the requirement of Article 8(2)(h) of the American Convention, it would suffice to disregard the restrictions imposed and to understand that the right of appeal mentioned therein is legally granted to a defendant sentenced to any term under a judgment handed down in a criminal case for a criminal offense (delito).

VI. In view of the fact that the order of imprisonment issued against the persons on whose behalf the petition has been presented continues to be in force and that some of those persons are already in prison serving the time imposed by the judgment (even though that judgment is not constitutionally sound because the right to appeal has been denied), the habeas corpus must be declared to be in order and the petitioners released until such time as the case is resolved through a nonappealable judgment, after the accused shall have been granted full legal opportunities to appeal the judgment, observing the appropriate procedures and requirements. In the present case and for obvious reasons, an exception must be made to the provisions of paragraph (2) **in fine** of Article 471 of the Code of Criminal Procedure. The foregoing may be acted upon on receipt of the personal notification of this judgment.

NOW, THEREFORE:

In accordance with Article 8(2), subparagraph (h), of the American Convention on Human Rights, the petition is declared to be in order and the immediate release of the petitioners hereby decreed until such time as their case is resolved by a nonappealable judgment and after they shall have been granted the opportunity to appeal the judgment. The period granted shall begin upon receipt of the personal notification of this judicial decision. In the present case, the provisions contained in paragraph (2) in fine of Article 471 of the Code of Criminal Procedure shall not apply. Pursuant to Articles 26 and 51 of the Law of Constitutional Jurisdiction, the State is ordered to pay the damages caused and the costs of this petition, which shall be settled upon execution of the judgment before the Jurisdiction for Suits under Administrative Law (Jurisdicción Contencioso Administrativa).

So ordered.

Alejandro Rodríguez V.
President

Rodolfo E. Piza-Escalante

Jorge Baudrit G.

Jorge E. Castro B.

Juan Luis Arias

Luis Fernando Solano C.

Luis Paulino Mora M.

Juan Carlos Castro-Loría
Acting Secretary

xfq.-

LEGISLATIVE ASSEMBLY

SAN JOSÉ, COSTA RICA

874/ST/89
July 14, 1989

To the Deputies
Members of the Permanent Committee on
Legal Matters
BY HAND

Gentlemen:

In compliance with the provisions of the Internal Rules of Order, Management and Discipline of the Legislative Assembly, I am pleased to transmit herewith a report on the draft bill entitled: "AMENDMENT TO ARTICLES 106, 152, 209, 212, 384, CLAUSES 1 AND 4, OF THE CODE OF CRIMINAL PROCEDURE; ADDITION OF CLAUSE 3, ARTICLE 401, OF THAT CODE; ESTABLISHMENT OF THE SUPERIOR COURT OF CRIMINAL APPEAL; AND AMENDMENT TO ARTICLES 4 AND 6, DEROGATION OF ARTICLES 7 AND 22 OF THE PRESS LAW No. 7 OF MAY 15, 1908, AND ITS AMENDMENTS," Record No. 10.759.

The study of this draft bill and the preparation of the report were entrusted to Miss Ana Fiorella Carvajal-Carvajal, Assistant to this Department.

I take this opportunity to express to you the considerations of my highest esteem and my willingness to provide you any clarifications or further information on the subject you might require.

Lic. Henry Rodríguez-Gonzalo
DIRECTOR
Department of Technical Services

Encl.
aiz.

LEGISLATIVE ASSEMBLY

San José, Costa Rica

REPORT */

DRAFT BILL: "AMENDMENT TO ARTICLES 106, 152, 209, 212, 384, CLAUSES 1 AND 4, OF THE CODE OF CRIMINAL PROCEDURE; ADDITION OF CLAUSE 3, ARTICLE 401, OF THAT CODE; ESTABLISHMENT OF THE SUPERIOR COURT OF CRIMINAL APPEAL; AND AMENDMENT TO ARTICLES 4 AND 6, DEROGATION OF ARTICLES 7 AND 22 OF THE PRESS LAW, No. 7 OF MAY 15, 1908, AND ITS AMEND

Record No. 10.759

SUMMARY OF THE DRAFT BILL:

The draft bill considers a series of amendments in the area of criminal procedure. These can be classified under five basic groupings:

1. Increase in the scale of damages for some crimes against property; this is intended to bring criminal classifications in line with social and economic reality. It will also result in the removal of all crimes involving lesser economic damages from the purview of superior criminal courts, which may then turn their attention to more serious cases (amendments to Articles 209, 212, 216 and 384, clauses 1) and 9), of the Criminal Code considered under Article 1 of the draft bill).

2. Establishment of a remedy of appeal (recurso de Casación) for all convictions in criminal proceedings. To this end, the bill proposes the creation of a Superior Court of Criminal Appeal (Cassation) which will share with the Third Chamber of the Supreme Court of Justice the task of hearing motions to vacate and appeals for review of criminal proceedings (amendments to Articles 474 and 475 of the Code of Criminal Procedure, considered in Article 3 of the draft bill, and creation of the Court, considered in Article 4).

3. Amendments related to criminal offenses involving sentences of less than 3 years (delitos de citación directa). On the one hand, they enable the drafting of the sentence to be deferred for a maximum period of 3 working days after closing of the debate or deliberations and, on the other, they increase the number of cases in which an investigation is required for such offenses (amendments to Articles 421 and 401 of the Code of Criminal Procedure, considered in Articles 3 and 5, respectively, of the draft bill).

4. Modification of the system governing the civil and criminal liability of the media in criminal offenses committed through the press. Insofar as an editor's criminal liability is concerned, the editor is made responsible for omission of his duty to review every article to be published. Civil liability, on the other hand, ceases to be solidary and becomes subsidiary (amendments to Articles 106 and 152 of the Criminal Code, considered in Article 1 of the draft bill and 4 and 6, as well as the derogations of Articles 7 to 22 of the Press Law, contemplated in Article 6 of the draft bill).

*/ Ms. Ana Fiorella Carvajal, Assistant.

5. Modification of the system of civil liability of the State in the case of criminal offenses committed by its officials in the performance of their duties; here liability ceases to be subsidiary and becomes solidary (amendment to Article 106 of the Criminal Code, considered in Article 1 of the draft bill).

. . .

2. Establishment of an Appeals Procedure (Cassation)

In criminal proceedings, and specifically in matters relating to appeals against judicial decisions, the general principle is that such decisions can be appealed through the means and in the cases that have been expressly established (Article 447 of the Code of Criminal Procedure).

This means that the only appeals that can be filed against a decision are those that the law expressly spells out.

Thus it is that Articles 473 to 476 of the aforementioned Code spell out the cases in wich appeals can be filed, depending on who is filing such a motion -whether it be the Public Ministry (Ministerio Público), the defendant, the plaintiff or the defendant in a civil suit-.

They read as follows:

"Article 473: The Public Ministry may file an appeal against:

1. A judgment of dismissal confirmed by the Appellate Court or issued in the first instance by the Trial Court, if the alleged criminal offense carries a sentence in excess of three years of prison or disability or a fine [equal to] one hundred eighty days;

2. An acquittal by the Trial Court if it imposes a penalty exceeding the limits specified in the foregoing paragraph, or, if handed down by a Criminal Court Judge, if the penalty requested is greater than six months of prison or one year of disability, or a fine [equal to] sixty days;

3. A conviction pronounced by the Trial Court if the difference between the sentence handed down and the sentence requested is greater than three years of prison or disability or a fine [equal to] sixty days, or a conviction pronounced by a Criminal Court Judge if that difference is in excess of six months of prison or disability or a fine [equal to] twenty days;

4. The rulings indicated in the foregoing Article; and

5. A sentence decreeing compensation if the plaintiff could have appealed (475)."

"ARTICLE 474: A defendant may file an appeal against:

1. The sentence of a Trial Court that imposes two or more years of prison, a fine [equal to] one hundred eighty days, or three years of disability, or when restitution or compensation in excess of five thousand colones is levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

2. The sentence of a Criminal Court Judge imposing more than six months of prison, a fine [equal to] one hundred eighty days, or a year of disability, or when restitution or compensation in excess of two thousand five hundred colones is levied against him, or detention for two or more years is ordered as a security measure (medida de seguridad de internación).

3. An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

4. Specific rulings disallowing credit for time served.

5. An order that imposes a security measure (medida de seguridad) for two or more years when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

"ARTICLE 475: A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained exceed the sum of ten thousand colones in the first case and three thousand colones in the second.

In determining the damages sustained, account shall be taken of the amounts specified in the claim and in the judgment. However, if the former appears to have been patently exaggerated in order to render the appeal admissible, it may be dismissed by the Chamber for Criminal Appeal [of the Supreme Court] without a review of the merits of the case."

"ARTICLE 476: The defendant in a civil suit may file an appeal, in accordance with Article 451, whenever the accused is empowered to do so."

As for the Public Ministry, a reading of Article 473 indicates that it is not actively empowered to file an appeal against all judgments. Rather, it may only do so when the requirements specified in that provision are met. These requirements basically relate to the organ which is responsible for handing down the judgment (Superior Court or Criminal Court Judge), depending on the magnitude of the sentence imposed.

An examination of Article 474 shows that the situation here is similar when the person who wishes to appeal is the defendant; that is, he is not empowered to file an appeal against every conviction or judgment involving the imposition of a security measure (medida de seguridad) against him. He can only do so against such judgments as meet the conditions stipulated in that criminal provision. Again, reference is here made to the organ handing down the judgment and is closely tied to the sentence imposed.

As regards the plaintiff, Article 475 provides that he shall only be permitted to file appeals for judgments where his damages exceed the amounts established thereunder. Again, these amounts vary according to the organ handing down the judgment.

Article 476, on its part, provides that the defendant in a civil case may appeal under the same conditions as the plaintiff. Consequently, the restrictions imposed by the aforementioned Article 474 also apply to him.

From the above it can be seen that a considerable number of cases are excluded from the possibility of appeal, especially those involving criminal offenses that come before a Criminal Court Judge (delitos de citación directa), which are subject to sentences of less than three years.

Particulary in the case of the accused, there is obviously a need to guarantee the existence of that "second instance" (segunda instancia) in any and all criminal proceedings. It is through an appeal that one can verify whether the judgment handed down by a lower court is in conformity with the law and, specifically, with the procedural principles of Innocence, Inviolability of the Defense, and that most important of its manifestations: Due Process.

On the other hand, the American Convention on Human Rights in its Article 8, paragraph 2, establishes the minimum guarantees to which every person accused of a criminal offense has a right during the proceedings, and in subparagraph (h) specifically proclaims the right to appeal the judgment to a higher court.

Under Article 7 of our Constitution, all treaties and conventions that have been ratified by the Legislative Assembly have precedence over domestic law.

Consequently, and considering that Costa Rica ratified the Convention through its Law #4534 of February 23, 1970, the opening of "that second instance" to all criminal proceedings follows not only from the principle of justice, but also from the constitutional obligation to conform the provisions of the Code of Criminal Procedure to the dictates of the American Convention on Human Rights.

Thus it is that the draft bill proposes that the appeals process be made available to the accused in all cases where there has been a conviction for criminal offenses or the imposition of security measures, especially, regardless of which organ has the jurisdiction to hand down the decision or what sanction was imposed (amendment to Article 474 of the Code of Criminal Procedure).

As for the plaintiff, it provides that he may appeal the judgment when the amount of the damages sustained are equal to or greater than the amount for which an appeal would be admitted in a civil proceeding (amendment to Article 475 of the aforementioned Code).

The proposed text appears to be desirable, for a suit to claim compensation is precisely a civil action albeit immersed in a criminal proceeding. Consequently, the criteria that should govern whether a plaintiff may appeal a judgment should conform to the minimum amounts established for the admissibility of such appeals in a civil proceeding.

As for the defendant in a civil suit, an amendment to the abovementioned Article 474 would expand his ability to file an appeal in the same measure as the plaintiff's.

It must be noted that the draft bill preserves unchanged the wording of Article 473, which refers to the active legal standing of the Public Ministry. As a result, of all the actors taking part in the process, the Public Ministry is the only one whose ability to file an appeal will continue to be restricted.

Taking into account the legal nature of the Public Ministry — that of an impartial organ charged with prosecuting penal actions — it seems important that this opening of the appeals process should also benefit it, relieving it of the conditions specified above.

On this point, it should be pointed out that there is currently before this Assembly a draft bill (Record No. 10.534) which, in addition to the amendment of Articles 474 and 475 of the Code of Criminal Procedure, also calls for the amendment of the abovementioned Article 473 (treated later together with the establishment of the Superior Court of Criminal Appeal).

This last bill received a majority affirmative opinion on March 8, 1988, and a minority affirmative opinion on April 6, 1988. Nevertheless, the bill is not on the Agenda for the Plenary.

Based on the amendment proposed in that record (#10.534), it is here proposed that Article 473 of the Code of Criminal Procedure be amended to read as follows:

"Article 473: The Public Ministry may file an appeal against:

1. A judgment of dismissal confirmed by the Appellate Court;

2. An acquittal by the Trial Court or the Criminal Court Judge;

3. A sentence decreeing compensation if the plaintiff could have appealed."

It is evident that such an amendment would overload the docket of the Third Chamber for Appeals, which is the tribunal currently handling appeals seeking an annulment or review in criminal proceedings.

This is why the establishment of a Superior Court of Criminal Appeal has been proposed, with jurisdiction to hear all appeals relating to matters before a Criminal Court Judge, that is, when the sentences involved are of less than 3 years. The Third Chamber for Appeals would hear all appeals relating to matters brought before the Superior Court, that is, cases heard by a Trial Court (criminal offenses for which sentences are equal to or greater than three years).

It should be pointed out that the Executive Branch has presented to the Assembly a draft Organic Bill for the Judiciary (Record No. 10.753), which is being handled by the Permanent Committee on Government and

Administration. It would be advisable to review the norms contained in this draft bill, in order to determine whether they address the distribution of functions related to criminal matters between the Third Chamber and the Superior Court of Criminal Appeal. If not, it would be necessary to regulate those issues as appropriate.

On the other hand, amendments should also be made to Articles 478, 479 and 485 of the Code of Criminal Procedure in order to substitute the term "Chamber for Criminal Appeals" for the term "corresponding organ" since, if the amendments are approved, the organ in question could be either the Chamber mentioned or the Superior Court of Criminal Appeal.

. . .

SUPREME COURT OF JUSTICE
SAN JOSE, COSTA RICA

Regular Meeting of the Plenary Court
held on June 18, 1990

"ARTICLE XXXII

With the minimum amendments and suggestions that shall be indicated below, the Court hereby decides to approve the draft bill to amend Articles 106, 152, 209, 212, 216, 384, paragraphs (1) and (4), of the Penal Code; 421, 474 and 475 of the Code of Criminal Procedure, addition of paragraph (3) to Article 401 of that Code; establishment of the Superior Court of Criminal Appeal; amendment to Articles 4 and 6 and derogation of Articles 7 to 22 of the Press Law (Legislative Record Number 10759; draft published in "La Gaceta" No. 113 of June 14, 1989); as requested by Deputy Daniel Aguilar-González, President of the Committee on Legal Matters of the Legislative Assembly, by note received on the eighth day of this month.

The draft bill in question includes a series of ideas and other proposals that for the most part originated in the judiciary. The Court has decided to approve it with the minimum observations that shall be presented below, taking into account the importance of the bill for the justice system of our country. For the bill seeks to adapt our criminal procedure to the American Convention on Human Rights by giving all persons convicted of a crime the right to appeal. The amendments are likewise designed to accelerate criminal justice by redistributing lesser cases through a modification of the scale of damages in criminal suits and by seeking a new mechanism to prevent such amounts from becoming outdated.

. . .

This is a true copy."

San José, June 19, 1990.

Gerardo Aguilar-Artavia
Secretary General of the Court

malq.-

LEGISLATIVE ASSEMBLY

San José, Costa Rica

September 24, 1990

Dr. Bernd Niehaus Q.

Minister of Foreign Affairs and Worship

Ministry of Foreign Affairs and Worship

Excellency:

At its Meeting No. 58 of September 18, the Permanent Committee on Legal Matters approved a motion presented by Deputy Aguilar-González, as follows:

> "To request that the Minister of Foreign Affairs, Dr. Bernd Niehaus, if he sees fit, propose to the Executive Branch that Costa Rica request an advisory opinion of the Inter-American Court of Human Rights on whether the system for the appeal of criminal convictions proposed in this draft bill (Articles 474, 475 of the Code of Criminal Procedure and Article 4 of the proposed text) fulfills the requirements of the American Convention on Human Rights."
>
> I look forward to receiving your comments and remain

Sincerely,

Lic. Daniel Aguilar-González

Chairman

PERMANENT COMMITTEE ON LEGAL MATTERS

Encl.: Copy of record 10.759

cc: Record

ARTICLE 474.- A defendant may file an appeal against:

1- A conviction for a criminal offense.

2- An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.

3- A ruling disallowing credit for time served.

4- An order that imposes a security measure (medida de seguridad) when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

ARTICLE 475.- A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained are equal to or greater than the amount for which an appeal in cassation would be admitted in a civil proceeding, as provided by law.

ARTICLE 4°.- The Superior Court of Criminal Appeal is hereby established. It shall have its seat in the city of San José and shall be composed of such sections as the Plenary Court [of the Supreme Court] considers necessary for the exercise of its functions. Each section shall consist of three Superior Court Judges.

The members of the aforementioned Court shall have the same qualifications as are required for a Justice of the Supreme Court and shall receive a salary greater than that of Superior Criminal Court Judges, pursuant to the scale fixed for this purpose in the national budget. In addition to the provisions of this law, the regulations governing the organization and operation of Superior Criminal Courts shall also apply to the Court of Criminal Appeal.

This Court shall hear all appeals seeking the cassation, review or revision of judgments instituted with respect to matters before a Criminal Court Judge which involve the rulings to which Articles 472, 473, 474, 475 and 476 of the Code of Criminal Procedure refer, when such remedies are admissible pursuant to the aforementioned Code.

APPENDIX XII

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-12/91
OF DECEMBER 6, 1991

COMPATIBILITY OF DRAFT LEGISLATION WITH ARTICLE 8(2)(h) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

REQUESTED BY THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Present:

Héctor Fix-Zamudio, President
Thomas Buergenthal, Judge
Rafael Nieto-Navia, Judge
Policarpo Callejas-Bonilla, Judge
Sonia Picado-Sotela, Judge
Julio A. Barberis, Judge

Also present:

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

THE COURT

composed as above,

refers to the request for advisory opinion as follows:

1. By note of February 22, 1991, the Government of the Republic of Costa Rica (hereinafter "the Government") submitted to the Inter-American Court of Human Rights (hereinafter "the Court") a request for advisory opinion pursuant to Article 64(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), regarding the compatibility of draft legislation to amend two articles of the Code of Criminal Procedure and to establish a Court of Criminal Appeal, currently before the Legislative Assembly, with Article 8(2)(h) of the aforementioned Convention.

2. The instant advisory opinion request presents the following questions:

> 1. Whether the establishment of a Court of Criminal Appeal and the proposed amendments fulfill the requirements set out in Article 8(2)(h) concerning the "right to appeal the judgment to a higher court"?
>
> 2. Considering that Article 8(2)(h) of the Inter-American Convention of Human Rights refers only to the term "criminal offense" (delitos), what rule should be applied with regard to lesser violations of criminal law (contravenciones)?

The Government adds that its reason for seeking this advisory opinion is that it

> has found it necessary to improve the current system of criminal procedure; to offer greater guarantees in the criminal courts; and to comply with the provisions of Article 8, paragraph (2)(h), of the American Convention on Human Rights, signed in San Jose, Costa Rica, on November 22, 1969, which reads as follows:
>
> Article 8. Right to a Fair Trial
>
> . . .
>
> 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
>
> . . .
>
> h. the right to appeal the judgment to a higher court.

3. The Court has been asked to render an opinion about the compatibility of draft legislation with the Convention. The draft legislation reads as follows:

> ARTICLE 474.- A defendant may file an appeal against:
>
> 1- A conviction for a criminal offense.
>
> 2- An acquittal or dismissal that imposes a preventive security measure (medida curativa de seguridad) for an indefinite period of time.
>
> 3- A ruling disallowing credit for time served.
>
> 4- An order that imposes a security measure (medida de seguridad) when it is deemed that the sentence served has not resulted in the rehabilitation of the defendant.

ARTICLE 475.- A plaintiff may appeal a judgment rendered by a Trial Court or a Criminal Court Judge, provided that the damages he has sustained are equal to or greater than the amount for which an appeal would be admitted in a civil proceeding, as provided by law.

ARTICLE 4°.- The Superior Court of Criminal Appeal is hereby established. It shall have its seat in the city of San José and shall be composed of such sections as the Plenary Court [of the Supreme Court] considers necessary for the exercise of its functions. Each section shall consist of three Superior Court Judges.

The members of the aforementioned Court shall have the same qualifications as are required for a Justice of the Supreme Court and shall receive a salary greater than that of Superior Criminal Court Judges, pursuant to the scale fixed for this purpose in the national budget. In addition to the provisions of this law, the regulations governing the organization and operation of Superior Criminal Courts shall also apply to the Court of Criminal Appeal.

This Court shall hear all Appeal seeking the annulment, review or revision of judgments instituted with respect to matters before a Criminal Court Judge which involve the rulings to which Articles 472, 473, 474, 475 and 476 of the Code of Criminal Procedure refer, when such remedies are admissible pursuant to the aforementioned Code.

4. The Government appointed as its Agent His Excellency Bernd H. Niehaus, Minister of Foreign Affairs and Worship. Subsequently, by note of July 10, 1991, the Government named Alvaro Jiménez-Calderón, Legal Director of the Ministry of Foreign Affairs and Worship, to be its Agent in all matters arising from this advisory opinion request.

5. By notes dated April 9 and 12, 1991, the Secretariat of the Court, acting pursuant to Article 52 of the Rules of Procedure of the Court, requested written observations and other relevant documents on the issues involved in this proceeding from the Member States of the Organization of American States (hereinafter "the OAS") and, through the Secretary General of that organization, from the organs listed in Chapter VIII of the Charter of the OAS.

6. The President of the Court directed that the written observations and other relevant documents be filed with the Secretariat before July 15, 1991.

7. Observations were received from the governments of Belize, Costa Rica and Uruguay.

8. The Government of Uruguay considered that

... the Court may not render the advisory opinion requested by the Government of Costa Rica because it does not comply with the provisions of Article 64(2) of the Convention.

In its OP 6/86 [**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.] regarding an advisory opinion request presented by Uruguay, the Court has stated: 'That the word "laws" in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.'

According to the standards laid down by the Court in its most recent case law, only legal norms that have been approved by the legislative branch and promulgated by the executive branch qualify as proper subjects of an advisory opinion.

9. After reviewing the observations submitted by the Member States of the OAS, the Court issued an Order dated July 31, 1991, inviting the Government of Costa Rica to present its views thereon. The Court also requested the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to present all the information available to it regarding cases pending against Costa Rica in which a violation of Article 8(2)(h) of the Convention is alleged.

10. On October 1, 1991, responding to the aforementioned Order, the Government presented a communication declaring that:

> . . .
>
> After analyzing the objection of the Representative of Uruguay based on Advisory Opinion OC-6/86 [supra 8] of May 9, 1986, requested by the Government, this Ministry finds that the opinion in no way contradicts Advisory Opinion OC-4/84 [**Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica**, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4.], for it deals with a different topic. We not only found that no conflict exists, but also that it in no way limits the Court's jurisdiction to accept or reject an advisory opinion request.

With regard to the advisory opinion on "**The Word 'Laws'**" (supra 8), the Government added that

> [i]t is clear that that opinion deals specifically with the concept of laws as contained in Article 30 of the Convention, particularly since that article refers to restrictions that have been expressly authorized for legitimate ends or for reasons of general interest, without deviating from the purpose for which such restrictions were established (control through diversion of power) and that are provided for by laws and applied in accordance thereto.

11. In a communication dated September 30, 1991, the Commission informed the Court about the cases pending before it against Costa Rica for the alleged violation of Article 8(2)(h) of the American Convention. The Commission explained, among other things, that

> [s]tarting in 1984, the Commission began to receive petitions charging Costa Rica with violations of the right guaranteed by Article 8(2)(h): "the right to appeal the judgment to a higher court." They charged specifically that the Code of Criminal Procedure (C.C.P.) of Costa Rica did not provide for an "appeal for dismissal or reversal' in certain crimes, including those involving sentences of less than two years" imprisonment imposed by a "Trial Court" (Tribunal de Juicio) and sentences of less than six months' imprisonment imposed by a "Judge of a Criminal Court" (Juez Penal) (Art. 474, paras. 1 and 2 of the C.C.P.).
>
> The Commission opened a total of nine case files involving the same alleged violation of Article 8(2)(h) of the Convention. However, the Commission only rendered an opinion in the first of these cases .... Although it processed the remaining ones, the Commission did not make any findings in relation to them, pending compliance by Costa Rica with the Commission's recommendation that it conform its domestic legislation to the terms of the Convention, since such legislative amendments would have a general effect not limited to a single, concrete case, and would thus benefit all of the remaining petitioners.
>
> . . .

II

12. This request for an advisory opinion has been submitted to the Court pursuant to Article 64(2) of the Convention by the Government of Costa Rica, a Member State of the OAS. The request seeks an opinion regarding the compatibility of certain draft laws being considered by the Legislative Assembly of Costa Rica with Article 8(2)(h) of the Convention.

13. Article 64 of the Convention reads as follows:

Article 64

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.

III

14. Pursuant to Article 64(2) of the Convention, Costa Rica has the right to submit an advisory opinion request to the Court regarding the compatibility of its domestic laws with the American Convention. But as the Court has emphasized on various occasions, this fact alone does not make every such request admissible, nor does it compel the Court to answer the questions submitted to it, (**"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. 31). Whether the Court will hear the request depends upon the resolution of a number of issues that must now be addressed first.

15. In its observations on the instant advisory opinion request, the Government of Uruguay submits that the Court lacks the power to grant the request because a proposed law is not a "domestic law" within the meaning of Article 64(2) of the Convention as that concept has been interpreted by the Court in its Advisory Opinion **"The Word 'Laws,'"** where it ruled that

> the word 'laws' in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.

(**"The Word 'Laws,'" supra** 8, para. 38.)

The Government of Uruguay contends that only legal norms that have met these requirements qualify as "domestic laws" under Article 64(2) and, hence, as proper subjects of an advisory opinion.

16. Article 30 of the Convention, to which Advisory Opinion **"The Word 'Laws'"** refers, reads as follows:

Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

17. When the Court interpreted the word "laws" as it appears in Article 30, it made clear that it was not a question

> . . . of giving an answer that can be applied to each case where the Convention uses such terms as 'laws,' 'law,' 'legislative provisions,' 'provisions of the law,' 'legislative measures,' 'legal restrictions,' or 'domestic laws.' On each occasion that such expressions are used, their meaning must be specifically determined.

("**The Word 'Laws,'**" **supra** 8, para. 16.)

Article 30 of the Convention is a very special provision which proceeds on the assumption that certain restrictions to the enjoyment of rights and freedoms may only be applied in accordance with laws that are already enacted and in force.

18. That Advisory Opinion and the definition of the word "laws" the Court adopted on that occasion consequently refer only to Article 30 of the American Convention and, without more, cannot be applied to Article 64(2) of that Convention. It follows that the argument of Uruguay does not provide a sufficient basis for rejecting the instant request.

19. In its Advisory Opinion "**Proposed Amendments**" (**supra** 10), the Court had the opportunity to interpret **in extenso** Article 64(2) of the Convention, which is the article on which Costa Rica relies. There the Government submitted a request for an advisory opinion regarding the compatibility with the Convention of a draft amendment to the Constitution.

20. On that occasion the Court held that, since the purpose of its advisory jurisdiction is to "assist states and organs to comply with and to apply human rights treaties without subjecting them to the formalism and the sanctions associated with the contentious judicial process" (**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. 43, quoted in "**Proposed Amendments,**" **supra** 10, para. 19), "to decline to hear a government's request for an advisory opinion because it concerned 'proposed laws' and not laws duly promulgated and in force, ... might in some cases have the consequence of forcing a government ... to violate the Convention by the formal adoption and possibly even application of the legislative measure, which steps would then be deemed to permit the appeal to the Court." (**Ibid.**, para. 26.)

21. On that occasion, the Court stated, furthermore, that

> the 'ordinary meaning' of terms [of a treaty] cannot of itself become the sole rule, for it must always be considered within its context and, in particular, in the light of the object and purpose of the treaty. (**Ibid.**, para. 23.)

22. The foregoing considerations led the Court, on that occasion, to render the advisory opinion and to hold that, in certain circumstances and pursuant to the powers conferred on it by Article 64(2), the Court may render advisory opinions regarding the compatibility of "draft legislation" with the Convention.

IV

23. The Court will now examine the specific facts relating to this advisory opinion request. These facts are relevant inasmuch as the Court has determined "the inadmissibility of any request for an advisory opinion which is likely to undermine the Court's contentious jurisdiction or, in general, to weaken or alter the system established by the Convention, in a manner that would impair the rights of potential victims of human rights viola-

tions." ("Other Treaties," supra 14, para. 31. *See also* "Restrictions to the Death Penalty," supra 20, paras. 36-37.)

24. The Court asked the Inter-American Commission for information about pending cases charging Costa Rica with violations of Article 8(2)(h) of the American Convention (supra 9). According to the Commission, it has opened nine case files based on these allegations. In one of them, N° 9328, the Commission adopted Resolution N° 26/86 in 1986, which found Costa Rica to be in violation of Article 8(2)(h) of the Convention, recommended that Costa Rica adopt the appropriate legislative or other measures to remedy the situation, and decided to refer the case to the Court in the event that these measures were not taken within a period of six months. Thereafter, the Government of Costa Rica asked for and received two additional six-month extensions from the Commission to comply with this resolution. In September 1988, the Commission again reminded the Government of Resolution N° 26/86. The following month, the Government asked for another six-month extension on the ground that relevant draft legislation had been sent to the Costa Rican legislature for enactment. The Commission granted the Government an extension of 120 days. In September 1989, the Government appeared before the Commission, presented the text of the proposed legislation, and asked for yet another extension until the next session of the Commission, which was scheduled for May 1990. Pending the adoption of the draft legislation, the Commission suspended its consideration of the remaining cases.

25. During its May 1990 session, when Costa Rica had still not complied with Resolution N° 26/86, the Commission considered once more whether to send the case to the Court. It decided not to take this action after being informed by Costa Rica that its Supreme Court had recently held that "Article 8(2)(h) of the Convention was self-executing." The Commission transmitted the Government's contention to the claimant in Case 9328, but received no reply. The Commission addressed similar communications to the claimants in the other cases pending against Costa Rica, but made no findings in relation to them.

26. The repeated extensions requested by the Government and granted by the Commission have unreasonably delayed the disposition of these cases. In February 1991, five years after the Commission adopted Resolution 26/86, wherein it decided, **inter alia**, to refer the case in due course to the Court, Costa Rica sought an advisory opinion concerning draft legislation that, after all that time, still remains to be adopted.

27. Furthermore, as already noted, the Commission still has under consideration various petitions charging Costa Rica with violations of Article 8(2)(h) of the Convention. The Commission postponed for a long time the referral of one of these cases to the Court, while it suspended the processing of the remaining cases pending the fate of the draft legislation which was designed to introduce amendments that both the Commission and the Government consider capable of resolving the problem in the future.

V

28. The Court believes that a reply to the questions presented by Costa Rica, could produce, under the guise of an advisory opinion, a determination of contentious matters not yet referred to the Court, without providing the victims with the opportunity to participate in the proceedings. Such a result would distort the Convention system. Contentious proceedings provide, by definition, a venue where matters can be discussed and confronted in a much more direct way than in advisory proceedings. This is an opportunity which cannot be denied to individuals who do not participate in the latter proceedings. Whereas the interests of individuals in contentious proceedings are represented by the Commission, the latter may have different interests to uphold in advisory proceedings.

29. Although it appears that the draft legislation might correct, as far as concerns the future, the problems that gave rise to the petitions against Costa Rica now before the Commission, a ruling by the Court could in the long run interfere with cases that should be fully processed by the Commission in the manner provided for by the Convention. (In the Matter of Viviana Gallardo et al., No. G 101/81. Series A. Decision of November 13, 1981, para. 24.)

30. All of the above clearly indicates that here the Court faces one of those cases where it should invoke its power to refuse to render an advisory opinion, lest it risk undermining the contentious jurisdiction in a manner that might impair the human rights of the claimants in the cases pending before the Commission.

VI

31. For all these reasons,

THE COURT

unanimously,

decides that it will not render the advisory opinion requested by the Government of Costa Rica.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this sixth day of December, 1991.

Héctor Fix-Zamudio
President

Sonia Picado-Sotela

Thomas Buergenthal

Rafael Nieto-Navia

Policarpo Callejas-Bonilla

Julio A. Barberis

Manuel E. Ventura-Robles
Secretary

APPENDIX XIII

San José, December 3, 1991

Mr. Vice-Minister:

I have the honor to inform Your Excellency that we are in receipt of your communication of November 28 of this year, regarding the Order issued by the Inter-American Court of Human Rights on August 1, 1991, in connection with the "Provisional Measures Requested by the Inter-American Commission on Human Rights with regard to Guatemala - Chunimá Case," and its attachments. Copies of all these documents have been transmitted to the Commission.

The Court has noted with satisfaction the measures taken by the Guatemalan authorities to protect the life and physical integrity of Messrs. Diego Perebal-León, José Velásquez-Morales, Rafaela Capir-Pérez, Manuel Su- Perebal, José Suy-Morales, Justina Tzoc-Chinol, Manuel Mejía-Tol, Miguel Sucuqui-Mejía, Juan Tum-Mejía, Claudia Quiñónez and Pedro Ixcaya, who continue to receive protection at the offices of the Council of Ethnic Communities Runujel Junán (CERJ) in Santa Cruz of El Quiché.

The Court has also taken due note of the information you provide regarding Mr. Amílcar Méndez Urizar's decision to move to the United States of America, a decision also taken by former judge Roberto Lemus-Garza, and the new position assigned to Mrs. María Antonieta Torres-Arce, who is now a Justice of the Peace in the city of Antigua, Guatemala.

Lastly, the Court considers it a very positive development that the persons accused of several serious crimes in the Community of Chunimá have now been detained and are currently facing trial before a competent court.

In view of the above, the Court wishes to express, through me, its recognition to the Government of Guatemala for its diligence in complying with the Court's Order of August 1, 1991, the effects of which ended today with the expiration of the term established therein.

I take this opportunity to convey to Your Excellency the assurances of my highest consideration.

Héctor Fix-Zamudio
President

His Excellency Lic.
Manuel Villacorta-Mirón
Vice-Minister of Foreign Affairs
Guatemala, Guatemala

APPENDIX XIV

STATUS OF RATIFICATIONS AND ADHERENCES

AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA"

Concluded 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	27/XI/82	
Bolivia		19/VII/79	
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
Haití		27/IX/77	
Honduras	22/XI/69	08/IX/77	09/IX/81
Jamaica	16/IX/77	07/VIII/78	
México		3/IV/82	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panamá	22/XI/69	22/VI/78	3/V/90
Paraguay	22/XI/69	24/VIII/89	
Perú	27/VII/77	28/VII/78	21/I/81
Suriname	12/XI/87	12/XI/87	12/XI/87
Trinidad y Tobago		28/V/91	28/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

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	DEPOSIT OF RATIFICATION
Argentina	
Bolivia	
Costa Rica	
Dominican Republic	
Ecuador	
El Salvador	
Guatemala	
Haití	
México	
Nicaragua	
Panamá	
Paraguay	
Perú	
Suriname	10/VII/90
Uruguay	
1/ Venezuela	

All of the States on the above list signed the Protocol on November 17, 1988, with the exception of the ones pointed out by notes.

1/ Venezuela:

Signed on January 27, 1989, at the General Secretariat of the OAS.

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		DEPOSIT OF RATIFICATION
Costa Rica	05/IX/91	
Ecuador	27/VIII/90	
Nicaragua	30/VIII/90	
Panamá	26/XI/90	28/VIII/91
Uruguay	02/X/90	
Venezuela	25/IX/90	