

*ORGANIZATION OF AMERICAN STATES*

**INTER-AMERICAN COURT OF HUMAN RIGHTS**



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**ANNUAL REPORT  
OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS**

**1994**

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

**1995**

## THE ORGANIZATION OF AMERICAN STATES

The purposes of the Organization of American States (OAS) are to strengthen the peace and security of the Hemisphere; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states; to provide for common action on the part of those states in the event of aggression; to seek the solution of political, juridical, and economic problems that may arise among them; and to promote, by cooperative action, their economic, social, and cultural development.

To achieve these objectives, the OAS acts through the General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the three Councils (the Permanent Council, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science, and Culture); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the Specialized Conferences; and the Specialized Organizations.

The General Assembly holds regular sessions once a year and special sessions when circumstances warrant. The Meeting of Consultation is convened to consider urgent matters of common interest and to serve as Organ of Consultation in the application of the Inter American Treaty of Reciprocal Assistance (known as the Rio Treaty), which is the main instrument for joint action in the event of aggression. The Permanent Council takes cognizance of matters referred to it by the General Assembly or the Meeting of Consultation and carries out the decisions of both when their implementation has not been assigned to any other body; monitors the maintenance of friendly relations among the member states and the observance of the standards governing General Secretariat operations; and, in certain instances specified in the Charter of the Organization, acts provisionally as Organ of Consultation under the Rio Treaty. The other two Councils, each of which has a Permanent Executive Committee, organize inter American action in their areas and hold regular meetings once a year. The General Secretariat is the central, permanent organ of the OAS. The headquarters of both the Permanent Council and the General Secretariat is in Washington, D. C.

The Organization of American States is the oldest regional society of nations in the world, dating back to the First International Conference of American States, held in Washington, D. C., which on April 14, 1890, established the International Union of American Republics. When the United Nations was established, the OAS joined it as a regional organization. Its Charter was signed in Bogota in 1948 and entered into force on December 13, 1951. It was amended by the Protocol of Buenos Aires signed in 1967 and in force since February 27, 1970. It was later amended by the Protocol of Cartagena de Indias signed in 1985 and in force since November 16, 1988. Today the OAS has thirty-five member states.

**MEMBER STATES:** Antigua and Barbuda, Argentina, The Bahamas (*Commonwealth of*), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (*Commonwealth of*), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.

**PROTOCOL TO THE AMERICAN CONVENTION  
ON HUMAN RIGHTS TO ABOLISH  
THE 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:**

<b><u>SIGNATORY COUNTRIES</u></b>	<b><u>DATE OF SIGNATURE</u></b>	<b><u>DATE OF DEPOSIT OF INSTRUMENT OF RATIFI- CATION OR ADHRENCE</u></b>
Brazil	7/VI/94	
Costa Rica	28/X/91	
Ecuador	27/VIII/90	
Nicaragua	30/VIII/90	
Panama	26/XI/90	28/VIII/91
Uruguay	2/X/90	4/IV/94
Venezuela	25/IX/90	6/X/93

**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 instrument of ratification or accession

**DEPOSITORY:** OAS General Secretariat (Original instrument and ratifications)

**TEXT:** OAS Treaty Series, No. 69.

**UN REGISTRATION:**

<b><u>SIGNATORY COUNTRIES</u></b>	<b><u>DATE OF SIGNATURE</u></b>	<b><u>DATE OF DEPOSIT OF INSTRUMENT OF RATIFI- CATION OR ADHRENCE</u></b>
Argentina	17/XI/88	
Bolivia	17/XI/88	
Costa Rica	17/XI/88	
Dominican Rep.	17/XI/88	
Ecuador	17/XI/88	25/III/93
El Salvador	17/XI/88	
Guatemala	17/XI/88	
Haiti	17/XI/88	
Mexico	17/XI/88	
Nicaragua	17/XI/88	
Panama	17/XI/88	18/II/93
Peru	17/XI/88	
Suriname		10/VII/90
Uruguay	17/XI/88	
Venezuela	27/I/89	

<b><u>Signatory Countries</u></b>	<b><u>Date of Signature</u></b>	<b><u>Date of Deposit of Instrument of Ratification or Adherence</u></b>	<b><u>Date of Acceptance of the Jurisdiction of the Court</u></b>
Peru	27/VII/77	28/VII/78	21/I/81
Suriname		12/XI/87	12/XI/87
Trinidad and Tobago		29/V/91	29/V/91
United States	01/VI/77		
Uruguay	22/XI/69	19/IV/85	19/IV/85
Venezuela	22/XI/69	09/VIII/77	24/VI/81

## **APPENDIX XIV**

### **STATUS OF RATIFICATIONS AND ACCESSIONS**

#### **AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA"**

Signed at San José, Costa Rica, on November 22, 1969,  
at the Inter-American Specialized Conference on Human Rights

<b>ENTRY INTO FORCE:</b>	18 July 1978, in accordance with Article 74(2) of the Convention
<b>DEPOSITORY:</b>	OAS General Secretariat (Original instrument and ratifications)
<b>TEXT:</b>	OAS Treaty Series, No. 36
<b>UN REGISTRATION:</b>	27 August 1979, No. 17955

<b><u>Signatory Countries</u></b>	<b><u>Date of Signature</u></b>	<b><u>Date of Deposit of Instrument of Ratifi- cation or Adherence</u></b>	<b><u>Date of Acceptance of the Jurisdiction of the Court</u></b>
Argentina	02/II/84	05/IX/84	05/IX/84
Barbados	20/VI/78	27/XI/81	27/VII/93
Bolivia		19/VII/79	
Brazil		25/IX/92	
Chile	22/XI/69	21/VIII/90	21/VIII/90
Colombia	22/XI/69	31/VII/73	21/VI/85
Costa Rica	22/XI/69	08/IV/70	02/VII/80
Dominica		10/VI/93	
Dominican Rep.	07/IX/77	19/IV/78	
Ecuador	22/XI/69	28/XII/77	24/VII/84
El Salvador	22/XI/69	23/VI/78	
Grenada	14/VII/78	18/VII/78	
Guatemala	22/XI/69	25/V/78	09/III/87
Haiti		27/IX/77	
Honduras	22/XI/69	08/IX/77	09/IX/81
Jamaica	16/IX/77	07/VIII/78	
Mexico		24/III/81	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panama	22/XI/69	22/VI/78	9/V/90
Paraguay	22/XI/69	24/VIII/89	26/III/93

### **APPENDIX XIII**

May 25, 1994

Mr. Secretary:

At the request of the Inter-American Commission on Human Rights, I transmit ten copies of the application herewith being filed by the Commission with the Inter-American Court of Human Rights against the Republic of Argentina. The case relates to the events that began on March 17, 1992 when the Supreme Court of Justice of Argentina rejected the appeal by the victim, Guillermo José Maqueda, to reverse the refusal of the federal Court of Appeals of San Martín to grant his extraordinary appeal. Mr. Maqueda's appeal was directed against the judgment of that Federal Court sentencing him to ten years in prison. The Commission dealt with this case as Case N° 11.086.

Pursuant to Article 26 of the Rules of Procedure of the Court, I am enclosing the Commission's Report No. 17/94 dated February 9, 1994, to which Article 50 of the American Convention on Human Rights refers.

The Inter-American Commission has decided to appoint Professor Michael Reisman, President of the Inter-American Commission on Human Rights, to represent it as its Delegate. Dr. Reisman will be assisted by Dr. Edith Márquez-Rodríguez, Executive Secretary of the Commission, and Dr. Meredith Caplan, an attorney with the Secretariat.

I would appreciate your processing this application as provided in the American Convention. Notice of any orders or decisions adopted should be sent to the Commission at its legal domicile: 1889 F Street, Suite 820-I, N. W., Washington, D.C. 20006, United States of America. The petitioners in the instant case are as follows: the parents of Guillermo Maqueda, Dr. Ernesto Maqueda and Licia Maqueda; Human Rights Watch/Americas; and CEJIL, all domiciled, for the purpose of receiving notice, at 1522 K Street, N. W., Suite 900, Washington, D.C. 20005.

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

Please accept, Mr. Secretary, the assurances of my highest consideration.

(s) Domingo E. Acevedo  
Special Adviser  
In charge of the Executive Secretariat

Enclosures

## **APPENDIX XII**

January 14, 1994

Dear Mr. Secretary,

On behalf of the Inter-American Commission on Human Rights I am pleased to send you 10 copies of the complaint submitted by this Commission to the Inter-American Court of Human Rights against the State of Venezuela, concerning the events that began to occur on the 29th of October 1988, the date on which 14 fishermen residing in the township of "El Amparo," along the border with Colombia, were killed by military and police members of a special command known as "José Antonio Páez Specific Command" (CEJAP). These events, which occurred on the "La Colorada" canal, in the Arauca river area, Páez District, State of Apure, led to the submission of Case Nº 10.602.

Pursuant to the provisions of Article 26 of the Rules of Procedure of the Court I am attaching Report Nº 29/93 of the Commission, of October 12, 1993, to which Article 50 of the American Convention on Human Rights refers.

The Inter-American Commission has resolved to designate as Delegates, to act on its behalf, Dr. Oscar Luján Fappiano, and Dr. Michael Reisman, who shall be assisted by the undersigned Deputy Executive Secretary, and Dr. Milton Castillo, an attorney of the Secretariat.

Please process the included complaint for consideration in accordance with the provisions of the American Convention, maintaining this Commission informed about the measures and decisions adopted, at its official address: 1889 F Street, N.W., Suite 820-I, Washington, D.C. 20006, United States of America. It would be appropriate to point out that the following persons are the petitioners in this case: Mr. Walter Márquez, Urbanización Santa Rosa, Avenida Jesús Soto, Nº 70-D, La Concordia, San Cristóbal, Estado de Táchira, Venezuela; Ms. Ligia Bolívar (Provea); and Mr. José Miguel Vivanco (CEJIL), whose domicile for these purposes is at 1522 K Street, N.W., Suite 900, Washington, D.C. 20005.

I take this opportunity to renew the assurances of my highest esteem.

(s) David J. Padilla  
Deputy Executive Secretary

Dr. Manuel E. Ventura-Robles, Secretary  
Inter-American Court of Human Rights  
P.O.Box 6906-1000  
San Jose, Costa Rica

Attachments



## **APPENDIX XI**

January 6, 1994

Dear Mr. Secretary,

On behalf of the Inter-American Commission on Human Rights I am pleased to send you 10 copies of the complaint submitted by this Commission to the Inter-American Court of Human Rights against the Government of the Republic of Nicaragua, concerning the events that began to occur on the 23rd of July 1991, the date access to justice started to be denied by State agents in relationship to the death of Jean Paul Genie Lucayo in the city of Managua, Nicaragua, on the 28th of October 1990, which led to the submission of Case N° 10.792.

Pursuant to the provisions of Article 26 of the Rules of Procedure of the Court I am attaching Report N° 2/93 of the Commission, of March 10, 1993, to which Article 50 of the American Convention on Human Rights refers.

The Inter-American Commission has resolved to designate as Delegate, to act on its behalf, Dr. Michael Reisman, First Vice-President of the Commission, who shall be assisted by the undersigned Executive Secretary, and Dr. Milton Castillo, an attorney of the Secretariat. The Commission has likewise designated Dr. Robert K. Goldman as advisor.

Please process the included complaint for consideration in accordance with the provisions of the American Convention, maintaining this Commission informed about the measures and decisions adopted, at its official address: 1889 F Street, N.W., Suite 820-I, Washington, D.C. 20006, United States of America. It would likewise be appropriate to point out that Dr. Lino Hernández, Executive Secretary of the Human Rights Permanent Commission in Nicaragua, is the petitioner and representative of the next-of-kin of the victim, and that notifications must be made to him at his official address: De Montoya 2 C al Lago, P.O.Box 563, Managua, Nicaragua.

I take this opportunity to renew the assurances of my highest esteem.

(s) Edith Márquez-Rodríguez  
Executive Secretary

Dr. Manuel E. Ventura-Robles, Secretary  
Inter-American Court of Human Rights  
P.O.Box 6906-1000  
San Jose, Costa Rica

Attachments

Guatemala to the Inter-American Commission on Human Rights in order that the latter may submit its observations to the Court within the following 30 days. Likewise, to transmit to the Government of Guatemala any reports it receives from the Commission in order to have the Government's observations within a similar period.

5. To request the Government and the Commission to urge the beneficiaries of the measures referred to in points 1 and 2 of the Court's decision of June 22, 1994, to cooperate with the Government in order to enable the latter to more efficiently adopt the relevant security measures.

7. Upon expiration of the extended deadline and unless the Court receives credible information that the circumstances of extreme gravity and urgency continue to prevail, the measures ordered by the Court shall cease to be in effect.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this first day of December, 1994.

(s) Rafael Nieto-Navia  
President

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Máximo Pacheco-Gómez

(s) Hernán Salgado-Pesantes

(s) Manuel E. Ventura-Robles  
Secretary

tion of the Court on March 9, 1987, pursuant to Article 62 of the Convention;

2. Article 63(2) of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent in matters not yet submitted to its consideration;

3. Article 1(1) of the American Convention sets forth the obligation of the States Parties to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise to all persons subject to their jurisdiction;

4. The Court issued a decision dated June 22, 1994, regarding the provisional measures requested of Guatemala by the Inter-American Commission in the Colotenango Case;

5. The measures on behalf of the persons listed in the Court's decision of June 22, 1994 must be not only extended, because the conditions that gave rise to them continue to prevail, but also expanded to include Mrs. Francisca Sales Martín. The Commission and the Government were both in agreement on these points at the hearing.

**NOW, THEREFORE:**

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

based on Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Article 24 and 45 of the Rules of Procedure,

**DECIDES:**

1. To extend the provisional measures adopted pursuant to the decision of June 22, 1994 on the Colotenango Case for a term of six months from today, and to expand them to include Mrs. Francisca Sales Martín.

2. To require the Government of Guatemala to use all the means at its disposal to enforce the arrest warrants issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango.

3. To request the Government of Guatemala to inform the Court every 90 days regarding the measures it has adopted to comply with this order.

4. To request the Commission to inform the Court of any fact or circumstance that it deems important to the implementation of such measures.

5. To instruct the Secretariat of the Court to transmit the information it receives from the Government of

5. Pursuant to point 5 of the Court's decision, the Secretariat of the Court transmitted the information received from the Government to the Inter-American Commission and granted the latter until October 7, 1994 to present its observations. On October 6, 1994, the Commission submitted its observations and requested that the measures ordered be maintained and expanded to include protection of Mrs. Francisca Sales Martín, and that *"the civil defense patrols (currently the Voluntary Civil Defense Committees) be disarmed and demobilized and that that decision be made public in order to restore calm to the population."* The Commission also requested that the Government be required *"to use all legal means necessary for compliance and to report to that Honorable Court as soon as possible on the steps taken and their results."*

6. On November 28, 1994, a public hearing was held at the seat of the Court in San José, Costa Rica, to hear the arguments of the Commission and the Government of Guatemala in this matter.

There appeared before the Court

for the Inter-American Commission on Human Rights:

Leo Valladares-Lanza, Delegate  
Manuel Velasco-Clark, Attorney  
Milton Castillo, Attorney  
José Miguel Vivanco, Adviser  
Viviana Kristicevic, Adviser

for the Government of Guatemala:

Jorge Cabrera-Hurtarte, Agent  
Mario Marroquín Nájera, Adviser  
Julio Gándara-Valenzuela, Adviser

At the public hearing, the Government requested that the provisional measures adopted pursuant to the decision of June 22, 1994, be extended for whatever period the Court considers advisable, adding Mrs. Francisca Sales Martín to the list of persons under its protection; it also requested that the beneficiaries of the provisional measures be urged to cooperate with the Government to enable the latter to put the security measures into effect as efficiently as possible and that the Commission's contention that the Court address the matter of the Voluntary Civil Defense Committees be rejected.

At the public hearing, the Commission supported the Government's request to maintain the provisional measures adopted on June 22, 1994 and to expand them to include Mrs. Francisca Sales Martín. The Commission also asked the Government to enforce the arrest warrants issued against the 13 patrol members charged as suspects in this case, which involves the criminal events that occurred on August 3, 1993 in Colotenango and is currently before the Second Trial Court of Huehuetenango.

#### **WHEREAS:**

1. Guatemala ratified the American Convention on May 25, 1978, and accepted the compulsory jurisdic-

ard 23 and 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").

3. After consideration of the arguments and the evidence offered by the Commission, the Court, by virtue of the authority conferred on it by Article 24(4) of the Rules of Procedure, issued a decision dated June 22, 1994, the operative part of which reads as follows:

1. To require the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the personal integrity of PATRICIA ISPANEL MEDIMILLA, MARCOS GODINEZ PEREZ, NATIVIDAD GODINEZ PEREZ, MARIA SALES LOPEZ, RAMIRO GODINEZ PEREZ, JUAN GODINEZ PEREZ, MIGUEL GODINEZ DOMINGO, ALBERTO GODINEZ, MARIA GARCIA DOMINGO, GONZALO GODINEZ LOPEZ, ARTURO FEDERICO MENDEZ ORTIZ and ALFONSO MORALES JIMENEZ.

2. To request the Government of Guatemala to adopt all necessary measures to ensure that the aforementioned persons may continue to reside at or return to their homes in Colotenango, providing them the assurance that they shall not be persecuted or threatened by agents of the Government or by individuals.

3. To request the Government of Guatemala to guarantee to Attorney PATRICIA ISPANEL MEDIMILLA the right to exercise her profession without being subjected to undue pressures.

4. To request the Government of Guatemala to inform the Court no later than August 31, 1994, regarding the measures it has adopted to comply with this order.

5. To instruct the Secretariat of the Court to transmit the documents mentioned in the previous paragraph to the Inter-American Commission on Human Rights. The latter shall have until October 7, 1994 to submit its observations thereon.

6. To summon the Inter-American Commission on Human Rights and the Government of Guatemala to the public hearing on this case, to be held at the seat of the Court at 15:00 hours on November 28, 1994.

This decision was notified to the Commission and to the Government.

4. On August 31, 1994, the Government of Guatemala informed the Court in writing regarding the measures that were adopted, in compliance with operative point 4 of the above decision. The information included a report from the Presidential Committee to Coordinate the Executive's Policy on Human Rights and a document drawn up at the Office of the Governor of the Department of Huehuetenango. In the above mentioned report, the Government states the following:

We assure the President that his decision has been accorded its full weight and importance. As a result, the Government has reiterated the orders issued to the authorities, requiring them to: a) provide concrete and specific protection to the persons listed, allowing them to personally and freely specify the type of protection they require; b) proceed with the arrests ordered by the courts investigating the events relating to consolidated case No. 11.212; c) the Government Attorney's Office has likewise been requested to take all measures necessary to expedite and improve the effectiveness of the investigation in order to punish the actors already identified.

[...]

In compliance with Your Excellency's decision, the Government of Guatemala has tightened security measures in the area of Colotenango, in order to afford better protection to its inhabitants.

## ***APPENDIX X***

### **DECISION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF DECEMBER 1, 1994**

#### **PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF GUATEMALA**

#### **COLOTENANGO CASE**

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

Rafael Nieto-Navia, President  
Héctor Fix-Zamudio, Vice-President  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge  
Hernán Salgado-Pesantes, Judge;

a so present:

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

emits the following decision:

1. On June 20, 1994, the Inter-American Court of Human Rights (hereinafter "the Court") received from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") a request for provisional measures dated June 17, 1994, regarding the "Colotenango" Case (No. 11.212) against the Government of Guatemala (hereinafter "the Government" or "Guatemala"), which is currently before the Commission.

2. The request for provisional measures is based on Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 76 of the Regulations of the Commission,

**THE COURT**

Unanimously

**FINDS**

that it has jurisdiction to render this advisory opinion.

**AND IS OF THE OPINION**

by a unanimous vote,

1. That the promulgation of a law in manifest conflict with the obligations assumed by a State upon ratifying or acceding to the Convention is a violation of that treaty. Furthermore, if such violation affects the protected rights and freedoms of specific individuals, it gives rise to international responsibility for the State in question.
2. That the enforcement by agents or officials of a State of a law that manifestly violates the Convention gives rise to international responsibility for the State in question. If the enforcement of the law as such constitutes an international crime, it will also subject the agents or officials who execute that law to international responsibility.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this ninth day of December, 1994.

(s) Rafael Nieto-Navia  
President

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Máximo Pacheco-Gómez

(s) Hernán Salgado-Pesantes

(s) Manuel E. Ventura-Robles  
Secretary

IV

51. The second question posed by the Commission refers to the duties and responsibilities of the agents or officials of a State who enforce a law that violates the Convention.

52. International law may grant rights to individuals and, conversely, may also determine that certain acts or omissions on their part could make them criminally liable under that law. In some cases, that responsibility is enforceable by international tribunals. In that sense, international law has evolved from the classical doctrine, under which international law concerned itself exclusively with States.

53. Nevertheless, at the present time individual responsibility may only be invoked for violations that are defined in international instruments as crimes under international law, such as crimes against peace, war crimes, and crimes against humanity or genocide, which, of course, also affect specific human rights.

54. As far as the above mentioned international crimes are concerned, it is of no consequence that they are committed by enforcing a law of the State to which the agent or official belongs. The fact that the action complies with domestic law is no justification from the point of view of international law.

55. What has been said in the foregoing paragraphs is reflected in various international instruments. Thus, for example, in its Resolution No. 764 of 13 July 1992 regarding the conflict in the former Yugoslavia, the Security Council of the United Nations reaffirmed that "*persons who commit or order the commission of grave breaches of the Conventions [of Geneva, 1949] are individually responsible in respect of such breaches.*"

Thereafter, the Security Council adopted Resolution No. 808 of 22 February 1993 approving the establishment of the International Tribunal to Prosecute Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Article 7(4) of the Statute of the International Tribunal, approved by Security Council Resolution No. 827 of 25 May 1993, reads as follows: "*The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.*" This provision is similar to Article 8 of the Charter of the International Military Tribunal or Nuremberg Charter, attached to the London Agreement of 8 August 1945.

56. As far as concerns the human rights protected by the Convention, the jurisdiction of the organs established thereunder refer exclusively to the international responsibility of states and not to that of individuals. Any human rights violations committed by agents or officials of a State are, as the Court has already stated, the responsibility of that State (*Velásquez Rodríguez Case, Judgment of July 29, 1988*. Series C No. 4, para. 170; *Godínez Cruz Case, Judgment of January 20, 1989*. Series C No. 5, para. 179). If these violations were also to constitute international crimes, they would, in addition, give rise to individual responsibility. However, it is the Court's understanding that the Commission is not asking it to resolve the issues that arise from this proposition.

57. The Court finds that the enforcement of a law manifestly in violation of the Convention by agents or officials of a State results in international responsibility for that State. If the enforcement in question constitutes an international crime, it will also subject the agents or officials who execute it to international responsibility.

58. In view of the above,



promulgated. Non-self-executing laws simply empower the authorities to adopt measures pursuant to them. They do not of themselves constitute a violation of human rights.

42. In the case of self-executing laws, as defined above, the violation of human rights, whether individual or collective, occurs upon their promulgation. Hence, a norm that deprives a portion of the population of some of its rights—for example, because of race—automatically injures all the members of that race.

43. When dealing with norms that violate human rights only upon their application and to prevent such violations from occurring, the Convention provides for provisional measures (Art. 63(2) of the Convention, Art. 29 of the Regulations of the Commission.)

44. The reason why the Commission may not present to the Court cases involving non-self-executing laws which have not yet been applied is that, under Article 61(2) of the Convention, "*in order for the Court to hear a case, it is necessary that the procedures set forth in Article 48 and 50 shall have been completed*". For those procedures to be initiated, it is essential that the Commission receive a communication or petition alleging a concrete violation of the human rights of a specific individual.

45. This requirement that the matter concern specific individuals can be inferred from Article 46(1)(b), which provides that the petition or communication "*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*", and from Article 46(2)(b), which dispenses with the exhaustion of domestic remedies and waives the requirement of the stated period if "*the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them ...*"

46. The conclusions of the foregoing paragraphs were also arrived at by the European Court of Human Rights in the cases of *Klass et al.* (Judgment of 6 September 1978, Series A no. 28); *Marckx* (Judgment of 13 June 1979, Series A no. 31) and *Adolf* (Judgment of 26 March 1982, Series A no. 49) in interpreting the word "victim" as it is employed in Article 25 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms.

47. If the case were to come to the Court after the completion of the proceedings described in the relevant articles, the Court would have to weigh and decide whether the action attributed to the State constitutes a violation of the rights and freedoms protected under the Convention, regardless of whether or not such action is consistent with the State's domestic law. If the Court were to find the existence of such a violation, it would have to hold that the injured party be guaranteed the enjoyment of the rights or freedoms that have been violated and, if appropriate, that the consequences of such violation be redressed and compensation be paid.

48. The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions. There is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention. As has already been noted, the Commission has that power and, in exercising it, would fulfill its main function of promoting respect for and defense of human rights. The Court also could do so in the exercise of its advisory jurisdiction, pursuant to Article 64(2).

49. The Court finds that the promulgation of a law that manifestly violates the obligations assumed by a State upon ratifying or acceding to the Convention constitutes a violation of that treaty and, if such violation affects the guaranteed rights and liberties of specific individuals, gives rise to international responsibility for the State in question.

Dar zig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, p. 24; Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 167 and I.C.J. Pleadings, Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Case of the PLO Mission) (1988) 12, at 31-2, para. 47). These rules have also been codified in Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties.

36. There can be no doubt that, as already stated, the obligation to adopt all necessary measures to give effect to the rights and freedoms guaranteed by the Convention includes the commitment not to adopt those that would result in the violation of those very rights and freedoms.

37. As the Court has previously stated:

A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention (*Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26).

38. With regard to a State which passes a law in conflict with the Convention, the Court has already held that

[w]ithin the terms of the attributes granted by Articles 41 and 42 of the Convention, the Commission is competent to find any norm of the internal law of a State Party to be in violation of the obligations the latter has assumed upon ratifying or adhering to it ... (*Certain Attributes of the Inter-American Commission on Human Rights, supra* 37, operative/resolatory paragraph 1).

39. As a result of the foregoing, the Commission may recommend to a State the derogation or amendment of a conflicting norm that has come to its attention by any means whatsoever, whether or not that norm has been applied to a concrete case. That determination and recommendation may be addressed by the Commission directly to the State (Art. 41(b)) or be included in the reports referred to in Articles 49 and 50 of the Convention.

40. The same problem would be handled differently by the Court. In the exercise of its advisory jurisdiction and pursuant to Article 64(2), the Court may refer to the possible violation of the Convention or of other treaties concerning the protection of human rights by a domestic law, or simply to the compatibility of such instruments. When its contentious jurisdiction is involved, however, the analysis has to be conducted in a different manner.

41. It should be noted, first, that a law that enters into force does not necessarily affect the legal sphere of specific individuals. The law may require subsequent normative measures, compliance with additional conditions, or, quite simply, implementation by State authorities before it can affect that sphere. It may also be, however, that the individuals subject to the jurisdiction of the norm in question are affected from the moment it enters into force. Throughout this opinion, the Court will refer to the latter as "self-executing norms", for lack of a better term.

42. If a law is non-self-executing and has not yet been applied to a concrete case, the Commission may not appear before the Court to present a case against the State merely on the grounds that the law has been pro-

28). Furthermore, the Court has already stated that the mere fact that there exists a dispute between the Commission and a Government regarding the meaning — and, now, the application — of a given provision of the Convention “does not justify the Court to decline to exercise its advisory jurisdiction...” (*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. 39). Consequently, if the Commission is of the opinion that the amendment to the Constitution of Peru could constitute a manifest violation of the obligations of that State under the Convention, it may avail itself of that circumstance to request an advisory opinion of a general nature. What the Commission may not do is seek to have a contentious case before it decided by the Court through its advisory jurisdiction, since that jurisdiction, by its very nature, does not provide the State with the opportunities to defend itself that are granted under the contentious jurisdiction.

29). In view of the above, the Court believes that, on this occasion, it must limit its response to the questions posed in the request for advisory opinion, without addressing the interpretation of Article 4, paragraphs 2 (*in fine*) and 3 of the Convention which are cited in the cover note and in the considerations that gave rise to the request. The Court also should not concern itself with the interpretation of Article 140 of the New Constitution of Peru mentioned by the Commission and cited as the reason for its advisory opinion request. In the oral arguments before the Court, the Commission itself only referred to these provisions tangentially and restricted its comments to developing or defending the two specific questions posed in its advisory opinion request.

30). Having disposed of the foregoing, the Court will now analyze the advisory opinion request.

### III

31). The first question posed by the Commission refers to the legal effects of a law that manifestly violates the obligations the State assumed upon ratifying the Convention. In responding to this question, the Court will apply the word “law” in its material, not formal, sense.

32). The question implicitly refers to the interpretation of Articles 1 and 2 of the Convention, which set forth the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction, and to adopt, if necessary, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

33). It follows that if a State has undertaken to adopt the measures mentioned above, there is even more reason for it to refrain from adopting measures that conflict with the object and purpose of the Convention. The latter would be true of the “laws” to which the question posed by the Commission refer.

34). The question refers only to the legal effects of the law under international law. It is not appropriate for the Court to rule on its domestic legal effect within the State concerned. That determination is within the exclusive jurisdiction of the national courts and should be decided in accordance with their laws.

35). International obligations and the responsibilities arising from the breach thereof are another matter. Pursuant to international law, all obligations imposed by it must be fulfilled in good faith; domestic law may not be invoked to justify nonfulfillment. These rules may be deemed to be general principles of law and have been applied by the Permanent Court of International Justice and the International Court of Justice even in cases involving constitutional provisions (*Greco-Bulgarian “Communities”*, Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, p.32; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the*

enjoyed by that domestic provision within the legal code of the state in question.

23. The interpretative work that the Court must carry out in exercising its advisory jurisdiction seeks to not only throw light on the meaning, object and purpose of the international norms on human rights but, above all, to provide advice and assistance to the Member States and organs of the OAS in order to enable them to fully and effectively comply with their international obligations in that regard. Indeed, the interpretations should contribute to the strengthening of the system for the protection of human rights. As the Court stated in its first opinion,

[t]he advisory jurisdiction of the Court is closely related to the purposes of the Convention. This jurisdiction is intended to assist the American States in fulfilling their international human rights obligations and to assist the different organs of the inter-American system to carry out the functions assigned to them in this field. It is obvious that any request for an advisory opinion which has another purpose would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court. (*"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. 25.)

24. In the instant case, although the considerations giving rise to the interpretation requested by the Commission regarding Article 4, paragraphs 2 (*in fine*) and 3, of the American Convention relate to the amendment of the Constitution of Peru, which expanded the number of cases for which the death penalty can be applied, it is evident that the Commission is not here requesting a statement as to the compatibility of that provision of Peru's domestic law with the above mentioned provision of the Convention. On the contrary, the questions posed by the Commission make no reference to that provision. They are general in nature and concern the obligations and responsibilities of the States or individuals who promulgate or enforce a law manifestly in violation of the Convention. Consequently, the Court's response would apply not only to Article 4 but also to all other provisions that proclaim rights and freedoms.

25. The Court considers that the Commission has standing to present the instant request for an advisory opinion based on Article 64(1) of the Convention, since it neither seeks nor requests an express statement regarding the compatibility of a domestic law of a State with the provisions of the American Convention. Rather, in the exercise of the mandate which the Convention itself entrusts to the Commission in its Article 41, the Commission may, in addition to other functions and powers, "*make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions....*" Under those circumstances, the advisory jurisdiction of the Court can and should constitute a valuable support to enable the Commission "*to carry out the functions*" assigned to it.

26. With regard to the issue raised by the Government of Costa Rica in its observations regarding the "draft" nature of the text of the Peruvian Constitution, cited as the basis for the advisory opinion request, the conclusions set forth by the Court up to this point render it unnecessary to examine this contention.

27. Accordingly, the requirement contained in Articles 51(1) and 51(2) of the Rules of Procedure that the advisory opinion request shall identify the considerations giving rise to the request should be interpreted as indicating that advisory opinion requests dealing with academic issues that do not meet the objectives of the advisory function of the Court as it has been defined, should be ruled inadmissible. This does not mean that disguised contentious cases may be submitted as requests for advisory opinions, nor that the Court must analyze and rule on the considerations giving rise to the request; instead, it must weigh whether the issue raised relates to the aims of the Convention, as in the instant request.

51(1) and 51(2) of the Rules of Procedure, which stipulate that requests for an advisory opinion shall state with precision the specific questions on which the opinion of the Court is sought, identify the considerations giving rise to the request and provide the name and address of the Delegate.

13. The governments of Peru and Costa Rica, in their respective observations and before addressing the merits of the Commission's advisory opinion request, touch on aspects relating to its admissibility. The Government of Peru warns of "*the IACHR's [Inter-American Commission's] apparent intention of seeking to obtain from the Honorable Court an indirect opinion on a domestic Peruvian law through a request for an advisory opinion filed by an organ of the regional system (the IACHR) which does not have the power to make this type of consultation, since it is prevented from so doing by paragraph 2, Article 64 of the Convention.*" Costa Rica, for its part, considers that in view of the fact that "*at the time that the IACHR filed the request, the new Constitution of Peru had not yet entered into effect ... the Constitution in question must be deemed to be a 'Draft Constitution.'*" That Government then goes on to transcribe part of an Opinion rendered by the Court, according to which "*pursuant to the powers conferred on it by Article 64(2) [of the American Convention], the Court may render advisory opinions regarding the compatibility of 'draft legislation' with the Convention.*" (I/A Court H.R., *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion C/C-12/91 of December 6, 1991. Series A No. 12, para. 22.)

14. The Court notes that the Governments of Peru and Costa Rica both characterize the advisory opinion request presented by the Commission as one governed by Article 64(2) of the American Convention, that is, as an analysis of the compatibility of the domestic laws of Member States with the aforementioned international instrument. The Commission, however, bases its request on Article 64(1), under which it is authorized, within its sphere of competence, to request the interpretation of the Convention or of other treaties concerning the protection of human rights in the American states.

20. Before considering whether it is appropriate to address the merits of the issues raised by the Commission, the Court must determine the nature of the advisory opinion request presented to it and the standing of that organ of the inter-American system to submit the request.

21. The Court considers, first, that Article 64(1) of the American Convention grants it full authority to interpret the Convention and other human rights treaties that are binding on the American states, and that 64(2) empowers it to analyze the compatibility of the domestic laws of the States with such instruments; however, the purpose of its advisory jurisdiction cannot be diverted to aims other than the protection of the rights and freedoms guaranteed by the Convention.

22. Under the first hypothesis mentioned above, that is, the one regarding Article 64(1) of the Convention, the advisory jurisdiction of the Court may be invoked by either a member state of the OAS or by the organs listed in Chapter VIII of the Charter of the OAS, as amended by the 1985 Protocol of Cartagena de Indias — among them, the Commission — but only within their spheres of competence. Under the second hypothesis, on the other hand, a cursory reading of the Convention indicates that the Court may only be consulted by the member states of the OAS and then only as regards their own domestic laws. In exercising its advisory jurisdiction, the Court is not empowered to interpret or define the scope of the validity of the domestic laws of the States Parties, but only to address their compatibility with the Convention or other treaties concerning the protection of human rights in the American states. Even then, it can only do so at the express request of one of those States, as provided by Article 64(2) of the American Convention. In the event of a supposed violation of the international obligations assumed by the States Parties resulting from a possible conflict between the provisions of their domestic law and those contained in the Convention, the former will be evaluated by the Court in contentious cases as simple facts or expressions of intent which can only be addressed as they relate to the conventions or treaties concerned, regardless of the importance or hierarchy

[T]he new Constitution of Peru had not yet entered into effect... As a result, the Constitution in question must be deemed to be a "Draft Constitution." ... [T]he request presented by the IACHR regarding the compatibility of the Draft Constitution of Peru with the aforementioned articles of the American Convention on Human Rights is perfectly admissible.

[W]ithout undermining the questions posed by the IACHR to the Court, the substantive problem here is identical to that already decided by the Court in its Advisory Opinion OC-3/83 of September 8, 1983. Consequently, the Court's responses on that occasion are still valid and applicable to the facts which led to the instant advisory opinion request ...

14. The Government of Brazil, for its part, submitted the following observations:

[...]

Com relação à primeira questão formulada pela Comissão, embora a mesma tenha sido feita em tese, é de se precisar que com a mera edição da Constituição de 1993, não houve por parte do Peru violação das obrigações contraídas em razão de ter ratificado a Convenção em causa... Primeiramente, a simples edição de lei em contrário não seria violadora de obrigações internacionais, pois seria necessário, para que tal violação se estabelecesse, a concretização de suas disposições. Em segundo lugar, o âmago do problema resolve-se pela teoria que cada Estado siga em matéria de hierarquia de leis...

A resposta à segunda questão formulada pela Comissão varia segundo o prisma em que se coloca o interlocutor. Constitucionalmente falando, os agentes e funcionários do Estado estão adstritos à Constituição, não podendo buscar supedâneo mesmo em convenções internacionais em que o Estado seja parte, para descumprila. Examinando-se a problemática sob a ótica internacional, a visão seria inversa... Contudo, o caso concreto posto pela Constituição peruana vigente não se enquadra perfeitamente... Quem e como responderia no Peru, se esse país, sem denunciar a Convenção Americana sobre Direitos Humanos, viesse a condenar e executar alguém em virtude de terrorismo? Os constituintes que estabeleceram o artigo 140 da Constituição vigente (lembre-se que a mesma acabou por ser aprovada em referendo popular), os juízes que pronunciaram a sentença ou quem efetivamente a executou?

15. By note of January 21, 1994, the Government of Peru requested the Court to consider a new petition because "the IACHR has amended its written request in the oral arguments it presented at the Public Hearing." The Government requested:

That the written request presented by the IACHR be deemed inadmissible insofar as it refers directly or indirectly to the domestic laws of Peru (Art. 140 of the 1993 Constitution), pursuant to Article 64(2) of the American Convention on Human Rights, as well as similar norms set forth in the relevant Statutes and Rules of Procedure... (underlined in the original)

## II

16. This request for an advisory opinion has been submitted to the Court by the Commission pursuant to the powers conferred upon it under Article 64(1) of the Convention.
17. The request presented by the Commission complies with the formal requirements enunciated in Articles

2 of Article 64 of the Convention, which is the provision applicable to the instant case. ... [I]t is evident that the IACHR seeks to obtain indirectly what it is prevented from achieving directly by the aforementioned provision of the Convention.

[...]

**b. Formal requirements of a request for advisory opinion**

As for the requirement to identify the provisions to be interpreted, ... the IACHR's intention is to have the Honorable Court render an opinion on a presumed incompatibility or contradiction between that provision of the Convention [Article 4, paragraphs 2 (*in fine*) and 3] and the domestic laws of Peru. The IACHR, we repeat, lacks the authority to resort to the Inter-American Court of Human Rights for this purpose.

As for the considerations which gave rise to the request, ... the issue ... concerns the apparent incompatibility between the obligations imposed by the Convention and the scope of domestic laws. As has been clearly explained, this is a situation in which the IACHR has no functional legitimacy or standing.

[...]

**c. Substantive issues of the IACHR request**

[W]hen the IACHR declares that a domestic law of Peru is in violation of the Convention, it is anticipating judgment, prejudging and assuming functions which have not been conferred upon it.

The request for an advisory opinion was submitted to the Honorable Court on November 9, 1993, as evidenced by the date of receipt. In other words, it was filed when the official results of the national referendum on the new Peruvian Constitution — which does, indeed, contain a new provision regarding capital punishment — were as yet not known. Hence, it was not known with any degree of certainty whether or not the Constitution would be approved; but the IACHR nevertheless went ahead with a request for an advisory opinion regarding a provision contained in a new body of law that had no effect whatsoever.

The entire text of the IACHR's request is drafted as though the last part of Article 140 of the new Constitution of Peru did not exist. That portion clearly states that the promulgation of any new norms relating to the death penalty would be subject to their adoption "**in accordance with the laws and treaties to which Peru is a party.**" There can be no doubt that this constitutional provision could under no circumstances exclude the American Convention on Human Rights ... (underlined in the original)

and in this regard requested the Court to

[...]

refuse to render the opinion sought, in line with the precedent established in its own Advisory Opinions; or, alternatively, that the request be held inadmissible because of the lack of standing of the IACHR, because of defects in the manner of its presentation or, if applicable, inadmissible on the merits, insofar as the request of the IACHR seeks the interpretation of a domestic norm of Peruvian law, for which it has no standing.

[...]

13. In its written observations, the Government of Costa Rica submitted that:

[...]

Sergio Tapia, Advisor

For the Center for Justice and International Law (CEJIL):

José Miguel Vivanco

Also present as observers:

For the Government of Argentina:

Bernardo Juan Ochoa, Counselor of the Embassy of the Republic of Argentina to the Government of Costa Rica

For the Government of Brazil:

Izacyl Guimaraes Ferreira, Head of the Cultural Section of the Embassy of Brazil to the Government of Costa Rica.

The Latin American Network of Catholic Lawyers (RLAC) did not appear at the public hearing.

## I

12. By note of December 29, 1993, the Government of Peru presented its observations on the advisory opinion request. Its legal analysis of the request was based on three factors:

[.]

a. **Standing of the party to request an advisory opinion from the Court.**

The IACHR, as a **specialized organ of the Organization**, invokes the procedure set forth in paragraph 1 of Article 64; however, it encroaches on an area that is reserved exclusively to States whose domestic laws are involved, something contemplated in another provision (paragraph 2 of that same Article 64) ... [whose *ratio legis*] is to spell out in a manner that leaves no room for doubt that only States — whose domestic laws are at issue — are empowered to resort to the Court's advisory jurisdiction when there is a perceived incompatibility between one of their domestic norms and the Convention.

[P]rocedural logic has been distorted in the IACHR's request. That organ of the Inter-American system makes express reference to a domestic Peruvian situation and seeks to indirectly question a national law, namely, the new norm contained in Article 140 of the new Constitution of Peru...

To admit the advisory opinion request under these conditions would be to set an unfortunate precedent, in the sense that it would encourage disproportionate interference in the domestic legislative mechanisms of the Member States of the Organization of American States by an organ that is a part of that system ... Consequently, the IACHR's request is inadmissible because that body does not have the standing to address the Honorable Court, in view of the fact that the matter at issue is the exclusive concern of the States, as provided in paragraph



and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

3. According to the Commission, the advisory opinion request relates to its sphere of competence, as stipulated under Articles 33, 41 and 64(1) of the Convention.

4. The Commission appointed Professor W. Michael Reisman to serve as its Delegate.

5. In a note dated November 11, 1993, acting pursuant to Article 54(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), the Secretariat of the Court requested written observations and relevant documents on the issues involved in the instant proceedings from the Member States of the Organization of American States (hereinafter "the OAS") and, through the Secretary General, from the organs listed in Chapter VIII of the Charter of the OAS.

6. The President of the Court (hereinafter "the President") directed that the written observations and other relevant documents be filed with the Secretariat before December 31, 1993.

7. Observations were received from the governments of Peru, Costa Rica and Brazil.

8. The following non-governmental organizations, acting as amici curiae, also submitted their views on the request: the Center for Justice and International Law (CEJIL — Centro por la Justicia y el Derecho Internacional) jointly with Americas Watch, and the Andean Commission of Jurists (Comisión Andina de Juristas). In addition, Professors Antônio Augusto Cançado Trindade, of the University of Brasilia and the Rio-Franco Institute, Brazil, and Beatriz M. Ramacciotti, of the Pontifical Catholic University of Peru, presented amici curiae briefs expressing their opinions.

9. Acting upon instructions of the President and by notes dated January 3, 1994, the Secretariat summoned the Member States and OAS organs to a public hearing, which was held at 9:30 hours on January 21, 1994.

10. The President authorized the following international, non-governmental organizations to participate in the hearing: Americas Watch; the Center for Justice and International Law (CEJIL); the Andean Commission of Jurists and the Latin American Network of Catholic Lawyers (RLAC — Red Latinoamericana de Abogados Católicos). By note of January 19, 1994, the Andean Commission of Jurists reported that, for reasons beyond its control, its representative would be unable to appear at the public hearing.

11. The following persons came before this public hearing:

For the Inter-American Commission on Human Rights:

W. Michael Reisman, Delegate  
Domingo E. Acevedo, Delegate  
Janet Koven-Levitt, Advisor

For the Government of Peru:

Beatriz Ramacciotti, Agent  
Juan Garland Combe, Advisor

## THE COURT

composed as above,

renders the following Advisory Opinion:

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), by note of November 8, 1993 and pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court") a request for an advisory opinion couched in the following terms:

1. Insofar as the international obligations of a State Party to the American Convention on Human Rights are concerned, what are the legal effects of a law promulgated by such State that manifestly violates the obligations it assumed upon ratifying the Convention?

2. What are the duties and responsibilities of the agents or officials of a State Party to the Convention which promulgates a law whose enforcement by them would constitute a manifest violation of the Convention?

2. In the request for the advisory opinion, although not in the questions themselves, the Commission indicates that the interpretation sought relates to Article 4, paragraphs 2 (*in fine*) and 3 of the Convention, and that the following consideration gave rise to it:

...[T]he inclusion of a provision in Article 140 of the new Constitution of Peru which, in violation of Article 4, paragraphs 2 and 3, of the American Convention, extends the application of the death penalty to crimes which were not subject to such a penalty under the Political Constitution that entered into force in 1979... Under the Political Constitution of 1979, the death penalty in Peru was applicable exclusively to the crime of treason against the state in time of external war.

In the arguments advanced by the Commission, reference is made to the following provisions of Peruvian law:

Article 235 of the Political Constitution of 1979:

There shall be no death penalty, except for treason against the state in time of external war.

Article 140 of the new Peruvian Constitution:

The death penalty shall only be imposed for the crime of treason against the state in time of war, and for the crime of terrorism, in accordance with the laws and treaties to which Peru is a party.

And to the following Article of the Convention:

Article 4 American Convention

[...]

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes

***APPENDIX IX***

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**ADVISORY OPINION OC-14/94  
OF DECEMBER 9, 1994**

**INTERNATIONAL RESPONSIBILITY FOR THE PROMULGATION  
AND ENFORCEMENT OF LAWS IN VIOLATION OF THE CONVENTION  
(Arts. 1 and 2 of the American Convention on Human Rights)**

**REQUESTED BY THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

Present:

Rafael Nieto-Navia, President  
Héctor Fix-Zamudio, Vice-President  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge  
Hernán Salgado-Pesantes, Judge;

also present:

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

In regards to the alleged threats, the Government of Colombia must express that while on the basis of the good faith principle it must presume such allegations to be true, to date no criteria has been submitted which would make it possible to relate such threats to the proceedings currently being conducted before the Honorable Court, let alone to establish responsibility against the Colombian State, an affirmation that we respectfully but strongly reject. Instead, it is appropriate to stress that the alleged witnesses have constantly appeared as not being truthful in their statements, and that on the basis of their contradictory versions it is not possible to determine who may possibly be responsible, let alone the liability of the Colombian State, which makes it possible to conclude that, in regards to some of the witnesses, the alleged threats would be groundless by virtue of these proceedings.

Notwithstanding, this shall be later submitted to deliberations, and, as is logical, the Government of Colombia respectfully observes the decisions made by the Honorable Court; but in order for the protection requested to be effective, immediate collaboration is required, by the persons mentioned, with the Colombian authorities responsible for providing such protection.

In regards to the statement of Mr. Norberto Báez-Báez, again the Government of Colombia does not have objections to submit, since, as I had the opportunity to state at the public hearing, it is the party with the greatest amount of interest in finding the truth about such events. In the same sense it would be convenient that a deposition be taken from Diego Hernán Velandia-Pastrana, a witness mentioned by the Honorable Commission, who expressed fears arising from threats before the Colombian authorities. Provided his disposition to depose is appropriate, the occasion on which Arias-Alturo and Báez-Báez would make their statements could also be taken advantage of to hear Diego Hernán Velandia-Pastrana.

May I renew to His Excellency the assurances of my highest esteem.

(s) Jaime Bernal Cuéllar  
Special Agent

## **APPENDIX VIII**

Santafé de Bogotá, December 8, 1994

H. E. Héctor Fix-Zamudio  
President  
Inter-American Court of Human Rights

Dear Mr. President,

I am honored to transmit to Your Excellency an answer to the notes of December 7th and 8th signed by Secretary Manuel Ventura-Robles.

With respect to the first one, where notification is made concerning the provisional measures requested by the Commission, I have transmitted it to the competent authorities so they can provide the pertinent security measures.

I must, nevertheless, clarify to Your Excellency that the Government of Colombia has always been willing to collaborate with all persons who justifiedly request protection or a security watch, as in the case of María Nodelia Parra, who is currently enjoying security protection that was requested some time ago. She expressed before the Honorable Court that she refused to be included in the program of protection to victims and witnesses of the Nation's Office of the Attorney General, which is not consistent with the representations of the Honorable Commission.

To the best of my knowledge, the persons cited have not recently applied for protection to the Colombian authorities nor have they reported to such authorities any type of harassment or threat, which is indispensable in order for the security bodies to be able to adopt the adequate measures.

It is also necessary to recall that persons like Elida González-Vergel directly expressed to the Honorable Court that they had not been the victims of threats; also, that Javier Páez, a former M-19 militant who benefitted from amnesty, is currently a member of the Administrative Security Department (DAS) and, to the best of my knowledge, he has not made any report to this body concerning the alleged threats.

For its part, the Nation's Office of the Attorney General decided, with respect to Gonzalo Arias-Alturo, to intensify the security measures since his latest statement. In the same manner the Vice-Minister of Foreign Affairs, Dr. Camilo Reyez-Rodríguez, informed me on December 9 (*sic*) of this year, that he had requested the Nation's Office of the Attorney General to adopt the pertinent measures to protect the persons mentioned by the Honorable Court.

**DECIDES:**

1. To transmit the request of the Commission to the Government of Colombia so that it may without delay adopt all necessary measures to protect the right to life and the physical integrity of GONZALO ARIAS ALTURO, JAVIER PAEZ, GUILLERMO GUERRERO ZAMBRANO, ELIDA GONZALEZ VERGEL and MARIA NODELIA PARRA.
2. To request the Government of Colombia to inform the Court regarding the measures it has adopted in compliance with this decision and to keep those measures in force for as long as the circumstances giving rise to them continue to prevail.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this seventh day of December, 1994.

(s) Héctor Fix-Zamudio  
President *ad hoc*

(s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello

(s) Máximo Pacheco-Gómez

(s) Hernán Salgado-Pesantes

(s) Manuel E. Ventura-Robles  
Secretary

who testified about the radio conversation between the patrol that detained them and Morrison Base, enquiring about what they should do with Isidro and María del Carmen;

3. Mr. Guillermo Guerrero Zambrano, who, after the disappearance of Isidro and María del Carmen, participated in all the efforts carried out in the area which led to the gathering of direct evidence incriminating their captors;

4. Mrs. Elida González Vergel, the last person to see Isidro and María del Carmen alive, who testified that she saw them in the custody of the army patrol;

5. Mrs. María Nodelia Parra, the common-law wife of Isidro Caballero and the person who initiated all the efforts to find him alive and to demonstrate the responsibility of those who participated in his detention and subsequent disappearance.

3. In support of its request, the Commission affirms that:

As the Court has been informed, the above mentioned persons have been under constant threats and there is fear for their lives and their physical integrity because they received warnings of reprisals if they were ever to testify before the Inter-American Court of Human Rights against members of the Colombian Army, as indeed they have.

### **CONSIDERING THAT:**

1. 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 shall adopt such provisional measures as it deems pertinent in matters it has under consideration.* Article 24 of the Rules of Procedure of the Court, for its part, provides that such measures may be ordered by the Court either on its own motion or at the request of a party at any stage of the proceeding.

2. Article 1(1) of the American Convention proclaims the obligation of 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.

3. In the present circumstances and in view of the fact that the request comes from the Commission, the Court accords credibility to these statements and finds that they endow the situation *prima facie* with the characteristics of extreme gravity and urgency that justify adoption by the Court of whatever provisional measures it deems necessary to avoid irreparable damage to the persons on whose behalf they have been requested.

### **NOW, THEREFORE:**

### **THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

Based on Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Article 24 of its Rules of Procedure,

## **APPENDIX VII**

### **INTER-AMERICAN COURT OF HUMAN RIGHTS**

#### **PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF COLOMBIA**

#### **CABALLERO DELGADO AND SANTANA CASE**

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

Héctor Fix-Zamudio, President *ad hoc*  
Rafael Nieto-Navia, Judge  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge  
Hernán Salgado-Pesantes, Judge;

also present:

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

emits the following decision:

#### **WHEREAS:**

1. On December 6, 1994, the Inter-American Court of Human Rights (hereinafter "the Court") received from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") a request for provisional measures dated December 4, 1994, regarding the Caballero Delgado and Santana Case against the Government of Colombia, currently before the Court.

2. The Commission requests that the Court require the Government of Colombia to adopt precautionary measures to protect the lives and physical integrity of the following witnesses:

1. Former soldier Gonzalo Arias Alturo, detained in the Jail of Bucaramanga, who directly accused certain officers of the Colombian Army of participating in the events;
2. Mr. Javier Páez, also captured by the Army the day after Isidro and María del Carmen were detained,



## **APPENDIX VI**

Washington, D.C. December 4, 1994

To the President of the Court:

On behalf of the Inter-American Commission on Human Rights, I have the honor to formally confirm the request for provisional measures to protect the witnesses who participated in the evidentiary hearing held from November 28 to 30, 1994, in the matter of the case against the Government of Colombia involving the detention and disappearance of Isidro Caballero and María del Carmen Santana. As the Court has reason to know, some of the witnesses who presented evidence regarding the responsibility of agents of the State of Colombia in the events reported in the petition are in serious danger.

Specifically, the Commission hereby requests precautionary measures to protect the lives and physical integrity of the following witnesses:

1. Former soldier Gonzalo Arias Alturo, detained in the Jail of Bucaramanga, who directly accused certain officers of the Colombian Army of participating in the events;
2. Mr. Javier Páez, also captured by the Army the day after Isidro and María del Carmen were detained, who testified about the radio conversation between the patrol that detained them and Morrison Base, enquiring about what they should do with Isidro and María del Carmen;
3. Mr. Guillermo Guerrero Zambrano, who, after the disappearance of Isidro and María del Carmen, participated in all the efforts carried out in the area which led to the gathering of direct evidence incriminating their captors;
4. Mrs. Elida González Vergel, the last person to see Isidro and María del Carmen alive, who testified that she saw them in the custody of the army patrol;
5. Mrs. María Nodelia Parra, the common-law wife of Isidro Caballero and the person who initiated all the efforts to find him alive and to demonstrate the responsibility of those who participated in his detention and subsequent disappearance.

As the Court has been informed, the above mentioned persons have been under constant threats and there is fear for their lives and their physical integrity because they received warnings of reprisals if they were ever to testify before the Inter-American Court of Human Rights against members of the Colombian Army, as indeed they have.

Please accept, Mr. President, the expressions of my highest consideration.

(s) Leo Valladares-Lanza  
Delegate of the Inter-American Commission  
on Human Rights

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this twenty-second day of June, 1994.

(s) Rafael Nieto-Navia  
President

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Máximo Pacheco-Gómez

(s) Hernán Salgado-Pesantes

(s) Manuel E. Ventura-Robles  
Secretary

3. Article 1(1) of the American Convention sets forth the obligation of the States to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise to all persons subject to their jurisdiction;
4. Guatemala is therefore under the obligation to adopt all necessary measures to protect the life and integrity of those persons whose rights might be threatened;
5. As the Commission has stated in its request for provisional measures, "the threats and violations reported" display *prima facie* characteristics of extreme gravity and urgency. The Court is therefore justified in adopting whatever provisional measures it deems pertinent, in order to prevent the irreparable damage to those persons on whose behalf the request has been submitted;
6. Some of the measures requested by the Commission are not aimed at "avoid[ing] irreparable damage to persons"; at least, the Court has no evidence to show that they are.

**NOW, THEREFORE:**

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

based on Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Articles 24 and 45 of the Rules of Procedure,

**DI CIDES:**

1. To require the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the personal integrity of PATRICIA ISPANEL MEDIMILLA, MARCOS GODINEZ PEREZ, NATIVIDAD GODINEZ PEREZ, MARIA SALES LOPEZ, RAMIRO GODINEZ PEREZ, JUAN GODINEZ PEREZ, MIGUEL GODINEZ DOMINGO, ALBERTO GODINEZ, MARIA GARCIA DOMINGO, GONZALO GODINEZ LOPEZ, ARTURO FEDERICO MENDEZ ORTIZ and ALFONSO MORALES JIMENEZ.
2. To request the Government of Guatemala to adopt all necessary measures to ensure that the aforementioned persons may continue to reside at or return to their homes in Colotenango, providing them the assurances that they shall not be persecuted or threatened by agents of the Government or by individuals.
3. To request the Government of Guatemala to guarantee to Attorney PATRICIA ISPANEL MEDIMILLA the right to exercise her profession without being subjected to undue pressures.
4. To request the Government of Guatemala to inform the Court no later than August 31, 1994, regarding the measures it has adopted to comply with this order.
5. To instruct the Secretariat of the Court to transmit the documents mentioned in the previous paragraph to the Inter-American Commission on Human Rights. The latter shall have until October 7, 1994 to submit its observations thereon.
6. To summon the Inter-American Commission on Human Rights and the Government of Guatemala to the public hearing on this case, to be held at the seat of the Court at 15:00 hours on November 28, 1994.

complaint is intended to intimidate those groups which are active in furthering the trial of those responsible for the Colotenango attacks. The denouncers point out that the complaint is without merit, since Article 387 of the Criminal Code defines that offense as a crime of violence and the activities of the organizations in question are strictly peaceful.

19. On May 20, 1994, the two patrolmen who had been detained as suspects in the events of Colotenango were released on parole by court order, on their own recognizance.

4. In its request, the Commission describes the action:

20. The Commission received the original petition which gave rise to this case on November 4, 1993 and transmitted it to the Government in accordance with the standard procedures provided in the Convention.

Prior to that, on September 9, 1993, the Commission had visited Colotenango and some of the neighboring villages and interviewed the victims, eyewitnesses, civil patrols and other individuals regarding the events that had occurred in August of that year.

The denunciation that was transmitted to the Government sought provisional measures on behalf, particularly, of Messrs. MARCOS GODINEZ PEREZ, NATIVIDAD GODINEZ PEREZ, RAMIRO GODINEZ PEREZ, JUAN GODINEZ PEREZ, MIGUEL GODINEZ DOMINGO, ALBERTO GODINEZ, MARIA GARCIA DOMINGO, and GONZALO GODINEZ LOPEZ, who had testified at the proceedings and had subsequently been subjected to persecution and threats. The private prosecutors in the case, MARIA SALES LOPEZ and ALFONSO MORALES, had also been subjected to the same abuses.

21. In its reply of April 26 to the Commission regarding the denunciation, the Government described the progress made in the judicial proceedings against the accused. The Government pointed out that only three of the defendants with arrest warrants had been detained and that one of the three had been released for lack of evidence.

22. MARIANO GOMEZ RAMOS and MARIO LOPEZ GABRIEL, of the village of Xemal, disappeared on February 4, 1993, after making some purchases in the neighboring village of La Barranca. Acting on a denunciation and petition regarding this matter, the Commission on March 24, 1994 decided to request provisional measures on behalf of the victims. At the time of their disappearance, shots had been heard coming from the aforementioned civil patrols of Xemal. According to denunciations received, these patrols are terrorizing the local population by inspections, curfews and restrictions on their freedom of movement. The request for provisional measures was delivered by the Commission to the Government of Guatemala by note of March 30 this year, urging the latter to inform the Commission before April 15, 1994 regarding the measures taken and their result. To date, the Commission has received no response to its request.

**WHEREAS:**

1. Guatemala ratified the American Convention on May 25, 1978, and accepted the compulsory jurisdiction of the Court on March 9, 1987, pursuant to Article 62 of the Convention;
2. Article 63(2) of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent in matters not yet submitted to its consideration;

The above mentioned witnesses, Méndez Ortiz and Morales Jiménez, were accused of responsibility for the death of the Chief of the civil patrols of the town of Xemal, Colotenango, on September 15, 1993, despite the fact that there is evidence that on that day the two were in an area far removed from the murder scene.

8. Other witnesses have also received threats, among them MIGUEL MORALES MENDOZA and JULIA GABRIEL SIMON, who survived gunshot wounds at the Colotenango demonstration.

9. Lic. PATRICIA ISPANEL MEDIMILLA, an attorney with the Pastoral Social Office of the Diocese of Huehuetenango who has thoroughly documented the case and provides advice to the victims, has on at least three occasions been followed by a suspicious-looking vehicle.

10. On May 11, 1994, a hearing was held at the Huehuetenango Court in the case against the two La Barranca patrols members who had been detained, Messrs. Juan Pérez Godínez and Juan Díaz García. On that day, the Army brought two truckloads of patrolmen from La Barranca. They demonstrated both inside and outside the courtroom in an effort to intimidate the persons participating in the hearing.

11. Eyewitnesses report that most of the patrolmen against whom arrest warrants were outstanding participated in this demonstration, which had been organized by the Army. Neither the representative of the Justice Department, Lic. Cecilia de Cansinos, nor the members of the National Police who were present were willing to arrest them, although they were repeatedly urged to do so.

12. The public prosecutor, Lic. de Cansinos, spent the whole of the following day in the military base of Huehuetenango.

13. Two other witnesses to the Colotenango events, MARIA GARCIA DOMINGO and ALBERTO GODINEZ, have been formally charged with the death of a child. The trial began three days later, on May 14, 1994. Alberto Godínez gave testimony proving his innocence and was released.

14. The private prosecutor in this case, Lic. Rudio Lecsán Mérida Herrera, also serves as such in the case against the two other witnesses ARTURO FEDERICO ORTIZ and ALFONSO MORALES JIMENEZ and is counsel for the defense of the civil patrolmen detained as a result of the events of Colotenango.

15. That same week, on May 16, 1994, RAMIRO GODINEZ PEREZ, another of the witnesses of Colotenango whose parents had been murdered by civil patrols on September 23 (see paragraph 5), was severely beaten. As a result of the beating, Ramiro Godínez suffered serious injuries. The attack was committed by civil patrols and Mr. Godínez had to be hospitalized in Huehuetenango. The victim has not filed charges for fear of further reprisals by the civil patrols, who can count upon the unconditional support of the authorities at the military base of Huehuetenango.

16. Witness NATIVIDAD GODINEZ PEREZ, the sister of Ramiro Godínez, has been forced to leave the community because of the threats she has received.

17. As a result of these attacks, other witnesses who had intended to testify are now refusing to come forward for fear of reprisals.

18. Legal proceedings against the civil associations which support the demonstrators and their grievances were initiated on May 16 before the Second Trial Court of Huehuetenango, charging those groups with sedition. It is a criminal complaint brought against the Committee of Peasant Unit (Comité de Unidad Campesina "CUC"), the National Coordinator of Guatemalan Widows (Coordinadora Nacional de Viudas de Guatemala "CONAVIGUA") and the Mayan Defense Office, all of which are charged with "sedition". It is assumed that the

3. The Commission bases its request for provisional measures on the following:

2. The witnesses to a violent attack carried out on August 3, 1993 by civil patrols against unarmed persons who were participating in a demonstration for human rights in the city of Colotenango, Department of Huehuetenango, are in grave, imminent danger. The parents of two of the witnesses to the case have been murdered, while other witnesses have been seriously injured and subjected to accusations and arbitrary detention; others still have received death threats. At least one of the witnesses has been forced to abandon his home and move to another region of Guatemala. Legal actions have been instituted against the civil associations that support them, in order to intimidate those groups. All of these abuses appear to be aimed at silencing the persons who, in the course of the public demonstration of August 3, 1993, witnessed the murder of human rights advocate JUAN CHANAY PABLO and the attacks which injured MIGUEL MORALES MENDOZA and JULIA GABRIEL SIMON.

The denunciations indicate that the danger faced by these witnesses and their relatives is posed by members of the armed civil patrols which go under the name of Voluntary Civil Defense Committees. These are armed groups which act under the control and responsibility of the Army of Guatemala.

3. The public demonstration of August 3, 1993 in the municipal capital of Colotenango brought together a large number of peasants from various neighboring villages. They had gathered to express their refusal to take part in the civil defense patrols and to protest the abuses committed by these units. The patrols have been repeatedly accused of responsibility for violations in previous years. In 1993, the patrols were formally charged with responsibility for a large number of violations, including the death of peasants Juan Domingo Sánchez, Pascuala Sánchez Domingo and Santa Domingo Sánchez. The State, however, did not conduct a thorough investigation, nor did it make any arrests as a result of those charges.

4. From the information received by the Commission from the Government, it appears that in the actions filed pursuant to the attack on the Colotenango demonstrators, court orders were issued on September 9, 1993 for the arrest of 15 civil patrol members. Nevertheless, nine months later only two of the accused have been detained, according to the claimants, while the rest remain at large. The denouncers indicate that officers of the National Police have declared that they do not dare to go into Colotenango to detain the remaining thirteen patrol members because they are afraid of them. The Army, which is responsible for controlling the patrols, has for its part issued statements attempting to justify its failure to support the enforcement of the arrest warrants.

5. This breakdown of the authority of the State has made it possible for the patrol members to continue to live in their communities and threaten the witnesses to the events of Colotenango. The failure to enforce the court's warrants of arrest seems to have served as an incentive to increase the repression and harassment of the witnesses, because it is perceived as a symbol of the immunity enjoyed by the patrol members, of the lack of interest of the authorities and of the impotence of the courts.

6. On September 26, 1993, Andrés Godínez Díaz and María Pérez Sánchez were murdered in their home in the village of Xemal. These two individuals had earlier been threatened by the patrols. The victims were the parents of witnesses RAMIRO, MARCOS and NATIVIDAD GODINEZ PEREZ. The threats they had received had been reported to the judicial authorities and to the Office of the Attorney for Human Rights, without success.

7. On April 22, 1994, two more witnesses —ARTURO FEDERICO MENDEZ ORTIZ and ALFONSO MORALES JIMENEZ— were detained when they appeared before the court to make a statement, having been accused of homicide. According to their defenders and the organizations presenting these denunciations, this was a false accusation aimed at intimidating them. The information available to the Commission indicates that these persons have not been released.

PATRICIA ISPANEL MEDIMILLA  
MARCOS GODINEZ PEREZ  
NATIVIDAD GODINEZ PEREZ  
MARIA SALES LOPEZ  
RAMIRO GODINEZ PEREZ  
JUAN GODINEZ PEREZ  
MIGUEL GODINEZ DOMINGO  
ALBERTO GODINEZ  
MARIA GARCIA DOMINGO  
GONZALO GODINEZ LOPEZ  
ARTURO FEDERICO MENDEZ ORTIZ  
ALFONSO MORALES JIMENEZ

II. To request the Government of Guatemala to adopt all necessary effective measures to ensure that the above mentioned persons may continue to reside at or return to their homes in Colotenango, safe in the knowledge that they will not be persecuted or threatened by the civil patrols or Voluntary Civil Defense Committees, or by military units or other agents of the State. Furthermore, that it take the necessary measures to guarantee to Attorney Patricia Ispanel Medimilla the right to freely exercise her profession.

III. To request the Government of Guatemala to enforce the arrest warrants issued against the remaining patrolmen charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts committed on August 3, 1993 in Colotenango.

IV. To request the Court to convene a public hearing as early as possible, to enable the Commission to describe in detail the vulnerability of the witnesses and family members of the victims, as well as the human rights defense attorneys in Colotenango, Huehuetenango. This hearing will also provide the Government of Guatemala with the opportunity to inform the Court regarding the concrete measures it has taken to solve the crimes charged, to punish those responsible and to prevent the recurrence of these threats and attacks against the witnesses, the family members of the victims and the human rights defense attorneys in the case.

V. To request the authorities of the Guatemalan Government to issue a public statement to be broadcast by the principal media outlets of the country, recognizing, first, the legitimacy of civil organizations such as CONAVIGUA, CUC and CONDEG (National Coordinator of Displaced Persons of Guatemala), whose members have suffered, and continue to suffer, persecution because of their opposition to the abuses committed by state organizations such as the so-called Defense Patrols. The statement should furthermore emphasize that participation in the Voluntary Civil Defense Committees (Comités Voluntarios de Defensa Civil "PACs") or similar groups is strictly voluntary; consequently, nobody can be forced to take part in them. That those rights and guarantees are enshrined in the American Convention on Human Rights, as well as in the Constitution of the Republic of Guatemala, whose Article 34 reads as follows:

The right of freedom of association is hereby recognized.

No person shall be compelled to join or form part of self-defense or other types of groups or associations.

VI. To request the Government of Guatemala to report to the Commission and to the Inter-American Court of Human Rights on the measures adopted pursuant to the provisional measures to be ordered by that Court.

## **APPENDIX V**

### **INTER-AMERICAN COURT OF HUMAN RIGHTS**

#### **PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF GUATEMALA**

#### **COLOTENANGO CASE**

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

Rafael Nieto-Navia, President  
Héctor Fix-Zamudio, Vice-President  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge  
Hernán Salgado-Pesantes, Judge;

also present:

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

issues the following order:

1. On June 20, 1994, the Inter-American Court of Human Rights (hereinafter "the Court") received from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), a request for provisional measures dated June 17, regarding the "Colotenango" Case (Nº 11.212) against the Government of Guatemala (hereinafter "the Government" or "Guatemala"), which is currently before the Commission.

2. The request is based on Articles 63 (2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 76 of the Regulations of the Commission, and 23 and 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and urges the Court to require the Government to take the following provisional measures:

I. First, that the Honorable Court request the Government of Guatemala to adopt effective security measures to protect the life of the witnesses, relatives and attorneys named in this request and, in particular, of the following persons:



III. To request the Government of Guatemala to enforce the arrest warrants issued against the remaining patrolmen charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts committed on August 3, 1993 in Colotenango.

IV. To request the Court to convene a public hearing as early as possible, to enable the Commission to describe in detail the vulnerability of the witnesses and family members of the victims, as well as the human rights defense attorneys in Colotenango, Huehuetenango. This hearing will also provide the Government of Guatemala with the opportunity to inform the Court regarding the concrete measures it has taken to solve the crimes charged, to punish those responsible and to prevent the recurrence of these threats and attacks against the witnesses, the family members of the victims and the human rights defense attorneys in the case.

V. To request the authorities of the Guatemalan Government to issue a public statement to be broadcast by the principal media outlets of the country, recognizing, first, the legitimacy of civil organizations such as CONAVIGUA, CUC and CONDEG (National Coordinator of Displaced Persons of Guatemala), whose members have suffered, and continue to suffer, persecution because of their opposition to the abuses committed by state organizations such as the so-called Defense Patrols. The statement should furthermore emphasize that participation in the Voluntary Civil Defense Committees (Comités Voluntarios de Defensa Civil "IACs") or similar groups is strictly voluntary; consequently, nobody can be forced to take part in them. That those rights and guarantees are enshrined in the American Convention on Human Rights, as well as in the Constitution of the Republic of Guatemala, whose Article 34 reads as follows:

The right of freedom of association is hereby recognized.

No person shall be compelled to join or form part of self-defense or other types of groups or associations.

VI. To request the Government of Guatemala to report to the Commission and to the Inter-American Court of Human Rights on the measures adopted pursuant to the provisional measures to be ordered by that Court.

June 17, 1994

Court were successful. It is thanks to those measures that the attacks against defenders of human rights in that area ceased and the perpetrators were duly processed and convicted. As for the provisional measures requested by the Court in the "Bustíos Rojas (Perú)" case, here again the measures adopted made it possible to resume the investigations and no further threats were made against the complainants or the witnesses.

30. The Government of Guatemala has ratified the American Convention on Human Rights and accepted the jurisdiction of the Court;

31. There exist no effective domestic remedies to be exhausted with respect to the provisional measures that should be adopted to protect the life and physical integrity of the persons listed. This is evident from the continued attacks and threats that have been reported and the inability of the authorities to enforce the majority of the arrest warrants issued against the civil patrolmen in this case.

32. The threats and violations reported, which impair the human rights and social peace of a whole region in Guatemala, still continue and increase daily, creating a situation of extreme gravity and urgency. That situation makes it necessary for the Court to adopt provisional measures in order to prevent further, irreparable damage to the life, liberty and physical integrity of a large number of inhabitants of the area and to require that State to establish the necessary guarantees, in accordance with the American Convention on Human Rights;

NCW, THEREFORE, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

To request the Inter-American Court of Human Rights to adopt the following provisional measures in the instant case, in accordance with Article 63 of the American Convention:

I. First, that the Honorable Court request the Government of Guatemala to adopt effective security measures to protect the life of the witnesses, relatives and attorneys named in this request and, in particular, of the following persons:

PATRICIA ISPANEL MEDIMILLA  
MARCOS GODINEZ PEREZ  
NATIVIDAD GODINEZ PEREZ  
MARIA SALES LOPEZ  
RAMIRO GODINEZ PEREZ  
JUAN GODINEZ PEREZ  
MIGUEL GODINEZ DOMINGO  
ALBERTO GODINEZ  
MARIA GARCIA DOMINGO  
GONZALO GODINEZ LOPEZ  
ARTURO FEDERICO MENDEZ ORTIZ  
ALFONSO MORALES JIMENEZ

II. To request the Government of Guatemala to adopt all necessary effective measures to ensure that the above mentioned persons may continue to reside at or return to their homes in Colotenango, safe in the knowledge that they will not be persecuted or threatened by the civil patrols or Voluntary Civil Defense Committees, or by military units or other agents of the State. Furthermore, that it take the necessary measures to guarantee to Attorney Patricia Ispanel Medimilla the right to freely exercise her profession.

On a denunciation and petition regarding this matter, the Commission on March 24, 1994 decided to request provisional measures on behalf of the victims. At the time of their disappearance, shots had been heard coming from the aforementioned civil patrols of Xemal. According to denunciations received, these patrols are terrorizing the local population by inspections, curfews and restrictions on their freedom of movement. The request for provisional measures was delivered by the Commission to the Government of Guatemala by note of March 30 this year, urging the latter to inform the Commission before April 15, 1994 regarding the measures taken and their result. To date, the Commission has received no response to its request.

WHEREAS:

23. The record submitted constitutes a prima facie case of urgent and grave danger to the lives and physical integrity of the witnesses to the human rights violations, their relatives and next-of-kin, and their legal representative.

24. Keeping this danger in mind, the information available to the Commission indicates that the usual guarantees offered to the population in general are not sufficient to protect their lives and physical integrity, and especially not those of the following persons:

PATRICIA ISPANEL MEDIMILLA  
MARCOS GODINEZ PEREZ  
NATIVIDAD GODINEZ PEREZ  
MARIA SALES LOPEZ  
RAMIRO GODINEZ PEREZ  
JUAN GODINEZ PEREZ  
MIGUEL GODINEZ DOMINGO  
ALBERTO GODINEZ  
MARIA GARCIA DOMINGO  
GONZALO GODINEZ LOPEZ  
ARTURO FEDERICO MENDEZ ORTIZ  
ALFONSO MORALES JIMENEZ

25. It is the State's responsibility to guarantee the safety of all its citizens and that commitment must be redoubled in the case of those who, in their capacities as witnesses and human rights defense attorneys, are part of a judicial proceeding geared to bring justice in a case involving human rights violations.

26. As the Commission has thoroughly documented in its general reports, the persons who carry out these tasks in Guatemala face particularly dangerous risks, which justify the adoption of provisional measures.

27. Article 63 of the American Convention authorizes the Commission to request the adoption of provisional measures by the Court if the case has not yet been submitted to the latter for consideration.

28. The request for provisional measures does not constitute a prejudgment by the Commission as to the admissibility or merits of the case.

29. There are important precedents for this request insofar as the effectiveness of the measures is concerned. In the "Chunimá" case (Guatemala), the provisional measures ordered by that Honorable

Colotenango whose parents had been murdered by civil patrols on September 23 (see paragraph 5), was severely beaten. As a result of the beating, Ramiro Godínez suffered serious injuries. The attack was committed by civil patrols and Mr. Godínez had to be hospitalized in Huehuetenango. The victim has not filed charges for fear of further reprisals by the civil patrols, who can count upon the unconditional support of the authorities at the military base of Huehuetenango.

16. Witness NATIVIDAD GODINEZ PEREZ, the sister of Ramiro Godínez, has been forced to leave the community because of the threats she has received.

17. As a result of these attacks, other witnesses who had intended to testify are now refusing to come forward for fear of reprisals.

18. Legal proceedings against the civil associations which support the demonstrators and their grievances were initiated on May 16 before the Second Trial Court of Huehuetenango, charging those groups with sedition. It is a criminal complaint brought against the Committee of Peasant Unit (Comité de Unidad Campesina "CUC"), the National Coordinator of Guatemalan Widows (Coordinadora Nacional de Viudas de Guatemala "CONAVIGUA") and the Mayan Defense Office, all of which are charged with "sedition". It is assumed that the complaint is intended to intimidate those groups which are active in furthering the trial of those responsible for the Colotenango attacks. The denouncers point out that the complaint is without merit, since Article 387 of the Criminal Code defines that offense as a crime of violence and the activities of the organizations in question are strictly peaceful.

19. On May 20, 1994, the two patrolmen who had been detained as suspects in the events of Colotenango were released on parole by court order, on their own recognizance.

#### ACTIONS TAKEN BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

20. The Commission received the original petition which gave rise to this case on November 4, 1993 and transmitted it to the Government in accordance with the standard procedures provided in the Convention.

Prior to that, on September 9, 1993, the Commission had visited Colotenango and some of the neighboring villages and interviewed the victims, eyewitnesses, civil patrols and other individuals regarding the events that had occurred in August of that year.

The denunciation that was transmitted to the Government sought provisional measures on behalf, particularly, of Messrs. MARCOS GODINEZ PEREZ, NATIVIDAD GODINEZ PEREZ, RAMIRO GODINEZ PEREZ, JUAN GODINEZ PEREZ, MIGUEL GODINEZ DOMINGO, ALBERTO GODINEZ, MARIA GARCIA DOMINGO, and GONZALO GODINEZ LOPEZ, who had testified at the proceedings and had subsequently been subjected to persecution and threats. The private prosecutors in the case, MARIA SALES LOPEZ and ALFONSO MORALES, had also been subjected to the same abuses.

21. In its reply of April 26 to the Commission regarding the denunciation, the Government described the progress made in the judicial proceedings against the accused. The Government pointed out that only three of the defendants with arrest warrants had been detained and that one of the three had been released for lack of evidence.

22. MARIANO GOMEZ RAMOS and MARIO LOPEZ GABRIEL, of the village of Xemal, disappeared on February 4, 1993, after making some purchases in the neighboring village of La Barranca. Acting

5. This breakdown of the authority of the State has made it possible for the patrol members to continue to live in their communities and threaten the witnesses to the events of Colotenango. The failure to enforce the court's warrants of arrest seems to have served as an incentive to increase the repression and harassment of the witnesses, because it is perceived as a symbol of the immunity enjoyed by the patrol members, of the lack of interest of the authorities and of the impotence of the courts.

6. On September 26, 1993, Andrés Godínez Díaz and María Pérez Sánchez were murdered in their home in the village of Xemal. These two individuals had earlier been threatened by the patrols. The victims were the parents of witnesses RAMIRO, MARCOS and NATIVIDAD GODINEZ PEREZ. The threats they had received had been reported to the judicial authorities and to the Office of the Attorney for Human Rights, without success.

7. On April 22, 1994, two more witnesses —ARTURO FEDERICO MENDEZ ORTIZ and ALFONSO MORALES JIMENEZ— were detained when they appeared before the court to make a statement, having been accused of homicide. According to their defenders and the organizations presenting these denunciations, this was a false accusation aimed at intimidating them. The information available to the Commission indicates that these persons have not been released.

The above mentioned witnesses, Méndez Ortiz and Morales Jiménez, were accused of responsibility for the death of the Chief of the civil patrols of the town of Xemal, Colotenango, on September 15, 1993, despite the fact that there is evidence that on that day the two were in an area far removed from the murder scene.

8. Other witnesses have also received threats, among them MIGUEL MORALES MENDOZA and JULIA GABRIEL SIMON, who survived gunshot wounds at the Colotenango demonstration.

9. Lic. PATRICIA ISPANEL MEDÍMILLA, an attorney with the Pastoral Social Office of the Diocese of Huehuetenango who has thoroughly documented the case and provides advice to the victims, has on at least three occasions been followed by a suspicious-looking vehicle.

10. On May 11, 1994, a hearing was held at the Huehuetenango Court in the case against the two La Barranca patrols members who had been detained, Messrs. Juan Pérez Godínez and Juan Díaz García. On that day, the Army brought two truckloads of patrolmen from La Barranca. They demonstrated both inside and outside the courtroom in an effort to intimidate the persons participating in the hearing.

11. Eyewitnesses report that most of the patrolmen against whom arrest warrants were outstanding participated in this demonstration, which had been organized by the Army. Neither the representative of the Justice Department, Lic. Cecilia de Cansinos, nor the members of the National Police who were present were willing to arrest them, although they were repeatedly urged to do so.

12. The public prosecutor, Lic. de Cansinos, spent the whole of the following day in the military base of Huehuetenango.

13. Two other witnesses to the Colotenango events, MARIA GARCIA DOMINGO and ALBERTO GODINEZ, have been formally charged with the death of a child. The trial began three days later, on May 14, 1994. Alberto Godínez gave testimony proving his innocence and was released.

14. The private prosecutor in this case, Lic. Rudio Leosan Mérida Herrera, also serves as such in the case against the two other witnesses ARTURO FEDERICO ORTIZ and ALFONSO MORALES JIMENEZ and is counsel for the defense of the civil patrolmen detained as a result of the events of Colotenango.

15. That same week, on May 16, 1994, RAMIRO GODINEZ PEREZ, another of the witnesses of

**REQUEST FOR PROVISIONAL MEASURES**

Case 11.212 (Colotenango)  
Guatemala  
June 17, 1994

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

HAVING SEEN:

1. The denunciations presented on May 12 and May 25, 1994 by Human Rights Watch/Americas and the Center for Justice and International Law together with the Human Rights Office of the Archbishopric of Guatemala in the case known as "Colotenango", which has been before the Commission since November 4, 1993. These denunciations contain a special request for provisional measures under Article 63(2) of the American Convention, Article 76 of the Regulations of the Commission and Articles 23 and 24 of the Rules of Procedure of the Court, and are based on the facts and information provided below.

FACTS OF THE CASE:

2. The witnesses to a violent attack carried out on August 3, 1993 by civil patrols against unarmed persons who were participating in a demonstration for human rights in the city of Colotenango, Department of Huehuetenango, are in grave, imminent danger. The parents of two of the witnesses to the case have been murdered, while other witnesses have been seriously injured and subjected to accusations and arbitrary detention; others still have received death threats. At least one of the witnesses has been forced to abandon his home and move to another region of Guatemala. Legal actions have been instituted against the civil associations that support them, in order to intimidate those groups. All of these abuses appear to be aimed at silencing the persons who, in the course of the public demonstration of August 3, 1993, witnessed the murder of human rights advocate JUAN CHANAY PABLO and the attacks which injured MIGUEL MORALES MENDOZA and JULIA GABRIEL SIMON.

The denunciations indicate that the danger faced by these witnesses and their relatives is posed by members of the armed civil patrols which go under the name of Voluntary Civil Defense Committees. These are armed groups which act under the control and responsibility of the Army of Guatemala.

3. The public demonstration of August 3, 1993 in the municipal capital of Colotenango brought together a large number of peasants from various neighboring villages. They had gathered to express their refusal to take part in the civil defense patrols and to protest the abuses committed by these units. The patrols have been repeatedly accused of responsibility for violations in previous years. In 1993, the patrols were formally charged with responsibility for a large number of violations, including the death of peasants Juan Domingo Sánchez, Pascuala Sánchez Domingo and Santa Domingo Sánchez. The State, however, did not conduct a thorough investigation, nor did it make any arrests as a result of those charges.

4. From the information received by the Commission from the Government, it appears that in the actions filed pursuant to the attack on the Colotenango demonstrators, court orders were issued on September 9, 1993 for the arrest of 15 civil patrol members. Nevertheless, nine months later only two of the accused have been detained, according to the claimants, while the rest remain at large. The denouncers indicate that officers of the National Police have declared that they do not dare to go into Colotenango to detain the remaining thirteen patrol members because they are afraid of them. The Army, which is responsible for controlling the patrols, has for its part issued statements attempting to justify its failure to support the enforcement of the arrest warrants.

## **APPENDIX IV**

17th June 1994

Dear Mr. President,

On behalf of the Inter-American Commission on Human Rights and at the request of its President, Professor Michael Reisman, I have the honor of transmitting to Your Excellency a request for provisional measures in the "Colotenango" case (Nº 11.212), which is currently under consideration by this Commission, as per the provisions of Article 63.2 *in fine* of the American Convention on Human Rights, and Article 24 of the Rules of Procedure of that Court.

The decision to make such a request to that Honorable Court was adopted on June 17, 1994 pursuant to Article 76 of the Regulations of the Commission, by its President and First Vice-President Dr. Alvaro Tirado-Mejía, on the basis of the supporting arguments and principles indicated by the attached resolution.

In submitting the case to the Court, the Commission designated Dr. Leo Valladares-Lanza as Delegate of the Commission before that Honorable Court; the Executive Secretary Dr. Edith Márquez-Rodríguez, the Deputy Executive Secretary, Dr. David Padilla, and Specialist Dr. Osvaldo Kreimer as advisors; and Dr. José Miguel Vivanco, Dr. Anne Manuel and Dr. Carlos Aldana as assistants.

May I take this opportunity to renew to His Excellency the assurances of my highest esteem.

(s) Edith Márquez-Rodríguez  
Executive Secretary

His Excellency  
Dr. Rafael Nieto-Navia  
President  
Inter-American Court of Human Rights  
San Jose, Costa Rica

the Commission, which complied with the above mentioned order issued by the President.

**NOW, THEREFORE:**

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

taking into consideration Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Articles 24 and 45 of the Rules of Procedure of the Court,

**DECIDES:**

1. That in view of the compliance by the Government of the Republic of Argentina with the order of the President of November 19, 1993, it is no longer necessary to act on the request for provisional measures presented by the Inter-American Commission on Human Rights.
2. That the instant order be transmitted to the Government of the Republic of Argentina and to the Inter-American Commission on Human Rights.
3. That the matter be struck from the docket.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this nineteenth day of January, 1994.

(s) Sonia Picado-Sotela  
President

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Manuel E. Ventura-Robles  
Secretary



3. The President of the Court (hereinafter "the President"), exercising the authority conferred on her by Article 24(4) of the Rules of Procedure of the Court, issued an order dated November 19, 1992, the operative portion of which reads as follows:

1. To enjoin the Government of the Republic of Argentina to adopt without delay whatever measures are deemed necessary to protect the mental integrity of, and avoid irreparable damage to, minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention, in order to ensure that the provisional measures that the Court may adopt during its next regular session, to be held from January 10 to 21, 1994, will have the requisite effect.

2. To request the Government of Argentina to submit a report on the measures taken pursuant to this order to the President of the Court no later than December 20, 1993, to enable her to bring this information to the attention of the Court.

3. To instruct the Secretariat to promptly transmit to the Inter-American Commission on Human Rights the report to be received from the Government of the Republic of Argentina.

The order was notified to the Commission and to the Government of Argentina (hereinafter "the Government"), by courier service to the Ministry of Foreign Affairs as well as through its Embassy in San José, Costa Rica.

4. The Government, in turn, addressed a note to the President dated December 20, 1993, regarding the order transcribed. The note asserts that:

[t]his Embassy is pleased to inform you that the judicial authorities have already handed down a judgment on this matter, which is being sent to this mission by diplomatic pouch. Upon receipt of the judgment, it will be transmitted to the Court.

This notwithstanding, it is expected that the judgment will order the "lifting of the provisional custody of the minors...", "placing a substitute family in charge thereof," and "...attempting to bring about closer ties between the minors and their biological family."

It must be pointed out that the Office for Human Rights and Women of the Ministry of Foreign Affairs of Argentina has today informed this Embassy that the minors, Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, are currently living with their Tolosa uncle and aunt, members of their legitimate family.

5. In a letter dated January 14, 1994, the Commission informed the Court of the following:

... that the Secretariat of the Inter-American Commission on Human Rights has established contact with the petitioners in Case No. 10.959 regarding the Reggiardo-Tolosa minor children, which is currently before the Commission. The petitioners have stated that, in their opinion, the Government of Argentina has complied with the provisional measures requested by the Commission from the Inter-American Court.

**WHEREAS:**

The Court has taken note of the measures adopted by the Government in order to protect the mental integrity of minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, which measures have been confirmed by

### ***APPENDIX III***

#### **INTER-AMERICAN COURT OF HUMAN RIGHTS**

#### **PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF THE REPUBLIC OF ARGENTINA**

#### **REGGIARDO-TOLOSA CASE**

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

Sonia Picado-Sotela, President  
Héctor Fix-Zamudio, Judge  
Alejandro Montiel-Argüello, Judge  
Hernán Salgado-Pesantes, Judge  
Asdrúbal Aguiar-Aranguren, Judge;

as so present:

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

issues the following order:

1 On November 8, 1993, the Inter-American Commission on Human Rights (hereinafter "the Commission") sent the Inter-American Court of Human Rights (hereinafter "the Court") a resolution adopted the previous month with regard to Case No. 10.959 involving Argentina, in which it requested "provisional measures relating to the mental integrity of minors Gonzalo Xavier and Matías Angel..." whose true last names are Reggiardo-Tolosa. According to the Commission, the minors in question were born in April 1977 during the captivity of their mother and were immediately seized and later registered as the children of Samuel Miara, a former assistant police inspector of the Federal Police, and his wife, Beatriz Alicia Castillo. The minors are aware that the Miara couple are not their real parents and the Commission is therefore requesting the Court, in application of Article 63(2) of the American Convention on Human Rights, to "require the Government of Argentina to order the immediate transfer of the minor children to ensure that they be placed under temporary custody in a substitute location and be provided adequate psychological treatment until such time as the matter of their delivery to their legitimate family is settled."

2 The President of the Court, Judge Rafael Nieto-Navia, recused himself from hearing this request for provisional measures on the grounds that he is a "member and President of the Argentina-Chilean Arbitral Tribunal to delimit the boundary between Milestone 62 and Mount Fitz Roy." Consequently, the Presidency has been assumed by Judge Sonia Picado-Sotela, Vice-President of the Court.

**VIII**

Now, therefore,

**THE COURT,**

unanimously,

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

unanimously,

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

Done in Spanish and English, the Spanish text being authentic. Read at a public hearing at the seat of the Court in San José, Costa Rica, this 21st day of January, 1994.

(s) Sonia Picado-Sotela  
President

(s) Rafael Nieto-Navia

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Manuel E. Ventura-Robles  
Secretary

So ordered,

(s) Sonia Picado-Sotela  
President

(s) Manuel E. Ventura-Robles  
Secretary

ciples refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2).

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. (*Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, paras. 63-64; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, paras. 66-67; and, Fairén Garbí and Solís Corrales Case, Judgment of March 15, 1989. Series C No. 6, paras. 87-88.*)

66. The Court has also held that, in keeping with the object and purpose of the Convention and in accordance with an interpretation of Article 46(1)(a) of the Convention, the proper remedy in the case of the forced disappearance of persons would ordinarily be habeas corpus, since those cases require urgent action by the authorities. Consequently, "*habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty*" (*Velásquez Rodríguez Case, Judgment of July 29, 1988, supra 63, para. 65; Godínez Cruz Case, Judgment of January 20, 1989, supra 63, para. 68; and, Fairén Garbí and Solís Corrales Case, Judgment of March 15, 1989, supra 63, para. 90*).

67. In this case it has been proved that María Nodelia Parra-Rodríguez, the common-law wife of Isidro Caballero-Delgado, on February 10, 1989, filed a writ of habeas corpus with the First Superior Judge for the District of Bucaramanga in connection with the disappearance of the victim who, together with a "*young lady named CARMEN,*" had been unlawfully detained by military authorities. As the here relevant record shows, the Judge not only requested information on the matter from the State institutions where a person could be held in detention for various reasons -namely, the Model Prison of that city, the Police Force and the Administrative Security Department (DAS)- but also went personally to the Fifth Brigade, where the petitioner had asserted they were being held. In other words, the Judge, complying with the purposes of the habeas corpus writ, did everything in her power to find the alleged detainees. Since all of these authorities reported that the persons in question were not being held in their facilities and that there were no orders for their arrest or judgments against them, the Judge -on the very same day that the writ had been filed, that is, handling the matter with great speed- declared the proceeding to be unfounded because it had not been proved that Isidro Caballero had been deprived of his liberty.

68. The Court notes that the writ of habeas corpus was filed and decided only on behalf of Isidro Caballero-Delgado and did not cover María del Carmen Santana, despite the fact that in the statement of facts a "*young lady named CARMEN*" is mentioned. Since the Government did not refer to this matter in its preliminary objections, however, this Tribunal will not consider it.

69. Given that the proceedings before the Commission were initiated on April 5, 1989, with the presentation of the complaint regarding the forced disappearance of Isidro Caballero-Delgado and María del Carmen Santana, that is, after the filing of the writ of habeas corpus and the negative decision thereon, this Court considers that the petitioners fulfilled the requirements of Article 46(1)(a) of the Convention, for they exhausted the domestic remedy that is proper and effective in matters concerning the forced disappearance of persons. All of the remaining domestic proceedings go to the merits of the case, for they relate to the conduct followed by Colombia in complying with its obligation to protect the rights proclaimed in the Convention.

70. In view of the foregoing, it must be concluded that the third objection interposed by the Government is without merit.

57. The Government adds that the Colombian legal system provides for concrete, efficacious actions that could resolve the matter, among them: penal action, the purpose of which is to establish whether criminal law was violated by individuals or agents of the State; and, action under administrative law, directed against the State as a legal entity to ensure compliance with the law by means of compensation for damages resulting from actions attributed to its agents.

58. The Commission, for its part, holds that habeas corpus is an internationally recognized right. Consequently, it should not be different in each country, as the Government claims, for that would imply an evident breach of Article 2 of the Convention, which orders the States Parties to adopt legislative or other measures aimed at giving effect to the rights and freedoms proclaimed therein. As a result, despite the fact that habeas corpus is theoretically the ideal remedy to redress the violation, if it offers no assurance of effectiveness, as the Government contends, it would not be necessary to exhaust it, as provided in the exceptions listed in Article 46(2) of the Convention.

59. In addition, the Commission notes that the relatives of Isidro Caballero also had recourse to the ordinary and military criminal jurisdictions and to the Office of the Attorney General in seeking the investigation of the case and the application of penalties and disciplinary sanctions on those responsible for his disappearance. These actions did not produce any effective results. All of these measures carried out by the relatives of Isidro Caballero, as well as others of an extrajudicial nature, must not be seen as remedies that have to be exhausted before turning to the Commission. Nevertheless, they were attempted and illustrate their determination to exhaust all existing possibilities.

60. The Commission argues, furthermore, that according to the European Court of Human Rights

objections of inadmissibility that have not been specifically invoked in timely fashion by the Government should not be examined by the Court, since the time-limit for presentation by the Government has expired; in addition, the time to raise these objections is at the very start of proceedings before the Commission, that is, at the stage of initial examination of admissibility, unless it proves impossible to interpose them at the appropriate time for reasons that cannot be attributed to the Government (*Eur. Court H.R., Artico judgment of 13 May 1980, Series A No. 37, paras. 23 et seq.*)

and that "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, supra 26, para. 88; Fatrén Garbí and Solís Corrales Case, Preliminary Objections, supra 26, para. 87; and, Godínez Cruz Case, Preliminary Objections, supra 26, para. 90*).

61. Finally, the Commission affirms that, as Report N° 31/91 indicates, it is obvious that the petitioners have been unable to secure effective protection from the domestic judicial organs. Consequently, the Government cannot plead non-exhaustion of the remedies under Colombian law because the investigation of the facts denounced has not produced results, which the Government itself has admitted in its request for reconsideration dated January 16, 1992.

62. The Court believes that the fundamental issue that arises with respect to this preliminary objection is the definition of the domestic remedies that must be exhausted prior to lodging the petition with the Commission, pursuant to the provisions of Article 46(1) of the Convention.

63. The Court has already stated that:

Article 46(1)(a) of the Convention speaks of 'generally recognized principles of international law.' Those prin-

part compensation because the Commission's Report "*was not a binding decision, as would be the case of a judgment of the Inter-American Court, but was simply a recommendation,*" pointing to its domestic legal provisions.

51. It can be deduced from the foregoing that, in the Commission's judgment, the only way in which the Government would compensate those who, according to the Commission, were its victims would be through a judgment of the Inter-American Court, which would be enforceable on the domestic plane. Such an interpretation is in keeping with the object and purpose of the Convention, which is the protection of human rights, and the Court must accept it.

52. Nevertheless, the Court must point out that there is no reason why the Commission should not faithfully follow the procedural rules. As it has said before and repeats today, although it is true that the object and purpose of the Convention can never be sacrificed to procedure, the latter is, in the interests of legal certainty, binding on the Commission.

53. The Court is also of the opinion that the Commission's statements regarding the possible publication of the report should not be understood as an anticipated decision by the Commission, for that decision was always conditioned upon the Government's reaction to the recommendations.

54. Hence, it must be concluded that, as a result of the extension granted at the request and for the benefit of the Government through a petition for reconsideration, the 90 day period to which Article 51(1) of the Convention refers began to run on October 2, 1992, the date on which the decision of September 25, 1992, to adopt the report as final was transmitted to the Government. Since the application was filed by the Commission with the Court on December 24, 1992, it must be deemed to have been submitted in a timely fashion.

55. In view of the foregoing, the Court dismisses the second preliminary objection interposed by the Government.

## VII

56. In its third objection, Colombia invokes the non-exhaustion of domestic remedies by the alleged victims, relying principally on the following arguments: that from the moment of its first appearance before the Commission, Colombia has argued that domestic remedies -which are not limited to habeas corpus- have not been exhausted; that in cases involving the disappearance of citizens, the Court and the Commission have determined that the only remedy capable of "redressing the wrong" is habeas corpus and that none of the other domestic remedies is fully capable of redressing the possible damage caused by the State. That although the foregoing statement is accurate, it is based on a much broader interpretation of the meaning of habeas corpus than that provided for under Colombian law. Pursuant to that law, the measures taken are not really aimed at determining the whereabouts of the person who has been detained; rather, the habeas corpus remedy under Colombian law proceeds on the assumption that the place of detention and the authorities involved in the violation of the constitutional and legal rights of the detainee are known. In the absence of that information, there exist other appropriate procedural means of investigating the illegal deprivation of liberty and re-establishing the right violated and, where appropriate, of punishing those responsible and fixing the compensation due.

conditional on the failure to file a case with the Court and not the filing of a case that is conditional on the report not having been prepared or published. If, therefore, the Commission were to draft or publish the report mentioned in Article 51 after having filed the application with the Court, it could be said that the Commission was misapplying the provisions of the Convention. Such action could affect the juridical value of the report but would not affect the admissibility of the application because the wording of the Convention in no way conditions such filing on failure to publish the report required under Article 51. (*Velásquez Rodríguez Case, Preliminary Objections, supra 26, paras. 63 and 76; Fairén Garbí and Solís Corrales Case, Preliminary Objections, supra 26, paras. 63 and 75; and, Godínez Cruz Case, Preliminary Objections, supra 26, paras. 66 and 78.*)

49 In response to a request for advisory opinion submitted by the Governments of Argentina and Uruguay regarding the correct interpretation of Articles 50 and 51 of the Convention, the Court held that the procedure established in those articles involves three stages, as follows:

In the first, regulated by Article 50, when a friendly settlement has not been reached, the Commission may state the facts and its conclusions in a preliminary document addressed to the State concerned. This 'report' is transmitted in a confidential manner to the State so it may adopt the proposals and recommendations of the Commission and resolve the problem. The State is not authorized to publish it.

Based upon the presumption of the equality of the parties, a proper interpretation of Article 50 implies that neither may the Commission publish this preliminary report, which is sent, in the terminology of the Convention, only 'to the states concerned.'

[ . . . ]

A second stage is regulated by Article 51. If within the period of three months, the State to which the preliminary report was sent has not resolved the matter by responding to the proposal formulated therein, the Commission is empowered, within that period, to decide whether to submit the case to the Court by means of the respective application or to continue to examine the matter. This decision is not discretionary, but rather must be based upon the alternative that would be most favorable for the protection of the rights established in the Convention.

[ . . . ]

There may be a third stage after the final report. In fact, with the lapse of the time period the Commission has given the State to comply with the recommendations contained in the final report, and if they have not been accepted, the Commission shall decide whether to publish it, and this decision must also be based upon the alternative most favorable for the protection of human rights. [*Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, paras. 48, 50 and 54.*]

50. The supporting documents indicate that the Commission, by approving and subsequently processing Report N° 31/91, did not contemplate filing the case with the Court but merely publishing the report. That decision changed one year later, in Report N° 31/92. The reasons for that change are not as clear as would be hoped and the Commission's vaguely worded letter of February 28, 1992, does not help. In the time between the request for reconsideration and Report N° 31/92, the Commission conducted an on-site visit to Colombia, during which it held a hearing at which the Government indicated that it was impossible for it to

c. The letter of February 18, 1992, in which the Executive Secretary of the Commission informed the Government that she had decided to "*confirm the reports previously approved by [it], postponing the decision as to the publication thereof until the next session.*"

d. In reply to the letter dated the 24 of that same month, addressed to him by the Ambassador of Colombia to the OAS and requesting a clarification of the term "confirm the reports previously approved by the Commission," the President of the Commission, by letter dated February 28, 1992, declared that "*the IACHR will be making a final decision as to the publication of the reports during its 82nd Session.*"

e. Report N° 31/92 of September 25, 1992, pursuant to which it was decided to refer the case to the Court, makes no reference whatsoever to publication, thus re-establishing the period mentioned in Article 51(1).

f. The Commission's response to the Government's contentions, according to which:

The Government contends that the phrase [the Commission will be making a final decision as to the publication (of the report)] confused it because it led it to believe that the Commission had abandoned the option of referring the case to the Court and would be initiating the procedure to which the report under Article 51 of the Convention refers.

The Court also examined this situation in the Velásquez Case, as a result of the objection raised by Honduras bearing on the transmittal to the Court of the Velásquez Rodríguez, Godínez Cruz and Fairén Garbi and Solís Corrales Cases and the simultaneous publication of the reports thereon in the Commission's Annual Report for the year 1985-1986.

On that occasion, the Court decided that due to the fact that 'according to Article 51 of the Convention, it is the drafting of the report that is conditional on the failure to file a case with the Court and not the filing of a case that is conditional on the report not having been prepared or published,' the simultaneous implementation of both procedural actions could affect the juridical value of the published report but would not affect the admissibility of the application before the Court. This did not occur in the instant case; nevertheless, it is useful to underscore the Court's decision, for it found that even if the report were published this would not fatally impair the proceedings before the Court. Consequently, the reference to publication that appears in the President's note in no way implies that the Commission had conclusively and inevitably abandoned its right to bring the case to the Court, all the more so since the period had been suspended in response to the request for reconsideration.

g. The Commission's assertion that all the documents referred to three cases and not solely to the instant case.

48. As regards the implementation of Articles 50 and 51 of the Convention, in dealing with a similar issue in the cases against Honduras the Court has pointed out that

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 [and that] [ . . . ] [o]nce an application has been filed with the Court, the provisions of Article 51 regarding the Commission's drafting of a new report containing its opinion and recommendations cease to apply. Under the Convention, such a report is in order only after three months have elapsed since transmittal of the communication referred to in Article 50. According to Article 51 of the Convention, it is the drafting of the report that is



despite the fact that

[i]t is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities, [k]eeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved. (*Cayara Case, Preliminary Objections, supra 42, para. 42.*)

And later added:

The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism [because, to act otherwise,] would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights. (*ibid. para. 63.*)

45. The Government has interposed this second objection on the ground that the Commission accepted an "untimely" request for reconsideration of the report presented by the Government itself pursuant to an article that was inapplicable, because it refers to States that are not Parties to the Convention. Regardless of the fact that, as has already been stated, the request was not out of time under Article 51(1) of the Convention, the Court must here recall what it already held in a previous case with regard to the good faith that should govern these issues (*Netra Alegría et al. Case, supra 38, para. 35*) and add that when a party requests something, even if such a request is based on an inapplicable provision, that party cannot later challenge the basis for its request once it has been complied with.

46. In interposing the objection under discussion, Colombia refers to other considerations that are deserving of a different response. Referring to the letter dated February 28, 1992, sent by the President of the Commission, the Government affirms that the phrases "to postpone its final decision on [the] Reports," and "the decision regarding their adoption as final reports has been suspended," and "the Commission will be making a final decision as to the publication," "clearly indicate that the Commission has agreed to postpone the adoption of the report drawn up pursuant to Article 51." The Government adds that it has come to "the conclusion that the 'final reports' to which [the letter in question] refers are reports that have their normative basis in Article 51. This follows from the fact that the latter reports are the only ones that may be published, which is not true of the reports mandated by Article 50."

The Government adds that "if any of these reports to which the Articles [50 and 51] refer is to be characterized as 'final,' there is not the least doubt that the only 'final' report that the Commission is empowered to adopt is the report mentioned in Article 51."

47. On this issue, the record contains the following evidence:

a. Report Nº 31/91 of September 26, 1991, which resolves: "To include this report in the forthcoming Annual Report to the General Assembly of the Organization of American States should no reply be received within 90 days of this report."

b. The Minutes for February 6, 1992, in which the Commission decided: "To confirm its reports on cases 10.319, 10.454, and 10.581, making new recommendations to the Government and granting it a period within which to comply with them. If the Commission's recommendations are implemented, the report will not be published."

39. The Commission argues that the Government's assertion that the request for reconsideration was submitted after the expiration of the 90 day term beginning on the date of approval of Report N° 31/91, that is, on September 26, 1991, is incorrect. According to the Commission, that calculation is erroneous because the report was transmitted to the Government on October 17 of that year and that is the date from which the period starts to run. Furthermore, since the reconsideration request was presented on January 16, 1992, it was introduced one day prior to the expiration of the period at issue, based on the case law of the Court which has determined that the 90 days shall begin to run on the date of transmittal of the relevant recommendations to the Government in question.

40. In the Commission's judgment, Colombia's argument that the reconsideration was rejected in February 1992, is also not sound, since the decision made on that date resulted in the suspension of the adoption of Report N° 31/91 as final. Consequently, the stage governed by Article 50 of the Convention had been neither abandoned nor surpassed. The phrase about the report not having become ineffective means that it had not been revoked. In his clarification of February 28, 1992, the President of the Commission advised the Government that the suspension of the report was intended to provide Colombia with a new opportunity to comply with the recommendations contained therein.

41. The Commission also considers unacceptable the Government's argument that the February 1992 decision implied that the proceedings relating to the document contemplated in Article 51 of the Convention had already begun and that, therefore, the opportunity to refer the case to the Court had been lost. According to the Commission, that decision merely granted an extension to decide on the issue; that decision was made by the Commission during its session of September 1992.

42. This objection comprises several issues. First, the Court does not share the Government's position that the period established under Article 51(1) of the Convention is obligatory in character, for this Tribunal has held that it may be extended (*Netra Alegría et al. Case, Preliminary Objections, supra 38, paras. 32-34*).

The Court has determined that

Article 51(1) provides that the Commission must decide within the three months following the transmittal of its report whether to submit the case to the Court or to subsequently set forth its own opinion and conclusions, in either case when the matter has not been settled. While the period is running, however, a number of circumstances could develop that would interrupt it or even require the drafting of a new report or the resumption of the period from the beginning. In each case it will be necessary to conduct an analysis to determine whether or not the time limit expired and what circumstances, if any, could reasonably have interrupted the period. (*Cayara Case, Preliminary Objections, Judgment of February 3, 1993. Series C No. 14, para. 39.*)

43. In this context, the request for reconsideration presented by the Government on January 16, 1992, could interrupt the 90 day period granted by the Commission to Colombia to enable it to comply with the recommendations of Report N° 31/91. The controversy over whether that request was submitted before or after expiration of the 90 days can be explained by Article 51(1) of the Convention, which clearly provides that the period in question begins to run on the date of transmittal to the Government, for it is only then that the latter is apprised of the report and of the recommendations contained therein. Under those circumstances, the request for reconsideration was presented one day before the expiration of the term, which ended on January 17, 1992.

44. In accepting the preliminary objections interposed by Peru in the Cayara Case, the Court indicated that

of the applicable deadlines were of an obligatory character. According to the Government, it matters little whether such confusion arose from an erroneous interpretation or from negligence on the part of the Commission; the fact is that it has had a negative effect on the rights granted to Colombia under the Convention.

35. In this regard, the Government notes that on September 26, 1991, the Commission adopted its Report Nº 31/91, in which it set forth various recommendations to the Government, and decided to include it in its Annual Report to the General Assembly of the Organization of American States if it did not receive a response from Colombia within 90 days. The Government adds that by note of January 16, 1992, which in its opinion was presented after the aforementioned 90 day period had expired, it requested reconsideration of the case pursuant to Article 54 of the Commission's Regulations, a provision that only applies to States that are not Parties to the Convention. By letter dated February 28, 1992, the President of the Commission informed the Government that he had agreed to postpone the final decision on Report Nº 31/91 on the basis of the arguments presented by Colombia and its expressed willingness to cooperate, adding that his decision in no way implied that the report in question, approved in September 1991, had become ineffective. Rather, he had merely suspended the decision regarding its adoption as a final report, in order to give the Government a new opportunity to fully comply with the specific recommendations contained therein.

36. In the Government's opinion, the decision taken in February 1992, occasioned the rejection of the request for reconsideration of the report governed by Article 50 of the Convention, while the decision as to the report under Article 51 was postponed. It was not until September 25, 1992, that the Commission decided to reject the request for reconsideration and ratify its Report Nº 31/91, as also to refer the case to the Court. In addition, the Commission set September 25, 1992, as the final date of the report.

37. Given the above, the Government is of the opinion that the matter could no longer be submitted to the Court, by virtue of the fact that the 3 month period under Article 51 of the Convention expired on three different occasions, depending on whether one bases one's calculations on September 26, 1991, January 16, 1992, or February 28, 1992. Since the application was brought to the Court by the Commission on December 24, 1992, the submission took place long after any of the above mentioned periods (which are obligatory in character) had expired.

38. The Commission, for its part, maintains that the Government's assertion that the 3 month period governed by Article 51(1) of the Convention must be considered to be obligatory in character is incorrect because the Court, in its judgment of December 11, 1991, on preliminary objections in the *Neira Alegría et al.* Case, found that since that period may be extended it cannot be deemed to be obligatory. The Commission adds that the extension occurred because the Government requested the reconsideration of Report Nº 31/91 before the expiration of the period fixed in that report.

On the other hand, this petition cannot be dismissed by arguing that it was not applicable because a request for reconsideration can only be interposed by States that are not Parties to the Convention. In ruling on the preliminary objections in the *Velásquez Rodríguez Case*, the Court found that although the request for reconsideration is not contemplated in the Convention and Article 54 of the Commission's Regulations reserves that proceeding for States that are not Parties, it does conform to the spirit and aims of the Convention (*Velásquez Rodríguez Case, Preliminary Objections, supra 26, para. 69; Fairén Garbí and Solís Corrales Case, Preliminary Objections, supra 26, para. 69; and, Godínez Cruz Case, Preliminary Objections, supra 26, para. 72*). In addition, according to the *Neira Alegría et al.* Case, the basic principles of good faith that govern the international law of human rights dictate that one may not request something of another and then challenge the grantor's powers once the request has been complied with (*Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991. Series C No. 13, para. 35*).

29 Nevertheless, the Commission's omission did not cause irreparable harm to Colombia because, if it did not agree with the Commission's position, that State had the power to request the friendly settlement procedure pursuant to paragraph 1 of Article 45 of the Commission's Regulations, which provides that:

At the request of any of the parties, or on its own initiative, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights.

30 An essential part of any friendly settlement procedure is the participation and will of the parties involved. Even if one were to interpret the provisions of the Convention literally and to ignore the Regulations of the Commission, the latter can do no more than suggest to the parties that they enter into conversations aimed at reaching a friendly settlement. The Commission cannot decide the matter, however, since it lacks the power to do so. The Commission must promote the rapprochement but is not responsible for the results. If a agreement is reached, the Commission must make sure that human rights have been properly defended. If one of the parties is interested in a friendly settlement, it is free to propose it. In the case of the Government and keeping in mind the object and purpose of the treaty -that is, the defense of the human rights protected therein- such a proposal could not be interpreted as an admission of responsibility but, rather, as good faith compliance with the Convention's purposes.

The Court finds it unacceptable for the Government to argue as a preliminary objection that the Commission did not implement the peaceful settlement procedure, considering that it enjoyed that very same power under the provisions of the Commission's Regulations. One cannot demand of another an action that one could have taken under the very same conditions but chose not to.

31. For the above reasons, the Court rejects this preliminary objection.

## VI

32. The second preliminary objection interposed by the Government is based on the violation by the Commission, to the detriment of the Government, of the procedure established by Articles 50 and 51 of the Convention. Consequently, the Government seeks the Court's dismissal of the application on the ground that it was improperly submitted.

33. The Government alleges that the procedure spelled out in the above mentioned articles of the Convention consists of a series of steps, the first of which falls exclusively to the Commission and would be exhausted once the report has been processed. The second step pertains to the period of three months in which the matter is either settled or submitted to the Court. The third comprises the exclusive jurisdiction of the Court once the case has been referred to it in timely fashion within the above mentioned period; otherwise, it would be up to the Commission to take the measures provided in Article 51 of the Convention. These three, successive steps, allow for no interference; nor could they be omitted without damaging the right of defense of the States Parties.

34. The Government believes that the Commission joined together and confused the various measures and functions that it is charged with under Articles 50 and 51 of the Convention and, in so doing, prevented the parties from discovering with any precision whether a given procedural phase had been exhausted and which

objections filed by the Government of Honduras in the Velásquez Rodríguez Case, it has been firmly established that the friendly settlement procedure contemplated by the Convention must not be deemed to be a compulsory step for the Commission, but, rather, must be seen as an option that is open to the parties and to the Commission itself, depending on the conditions and characteristics of each individual case. In addition, the Commission claims that the above mentioned judgment confirmed the soundness of Article 45 of its Regulations in the sense that it does not contradict the Convention but, on the contrary, correctly implements Article 48(1)(f) thereof.

24. The Commission also points out that, in the Velásquez Rodríguez Case, the Court abstained from evaluating the conduct of the Government of Honduras in its dealings with the Commission and whether the claims of the parties had been presented with sufficient clarity and precision, because the fundamental issue was that the Commission was not under the obligation to always initiate the friendly settlement procedure.

25. The Court notes that the Commission and the Government each have a different interpretation of Articles 48(1)(f) of the Convention and 45 of the Commission's Regulations, as also of the scope of the criterion established by the Court in ruling on the preliminary objections interposed by the Government of Honduras in the Velásquez Rodríguez, Godínez Cruz, and Fairén Garbi and Solís Corrales Cases, as contained in its judgments of June 26, 1987, which are all similar in that respect.

26. In the three cases mentioned, the Court determined that:

Taken literally, the wording of Article 48(1)(f) of the Convention stating that 'the Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement' would seem to establish a compulsory procedure. Nevertheless, the Court believes that, if the phrase is interpreted within the context of the Convention, it is clear that the Commission should attempt such friendly settlement only when the circumstances of the controversy make that option suitable or necessary, at the Commission's sole discretion (*Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, para. 44; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, para. 49; and, Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, para. 47.*)

After transcribing Article 45(2) of the Regulations of the Commission, the Court stated:

The foregoing means that the Commission enjoys discretionary, but by no means arbitrary, powers to decide in each case whether the friendly settlement procedure would be a suitable or appropriate way of resolving the dispute while promoting respect for human rights. (*Velásquez Rodríguez Case, Preliminary Objections, para. 45; Fairén Garbi and Solís Corrales Case, Preliminary Objections, para. 50; and, Godínez Cruz Case, Preliminary Objections, para. 48.*)

27. The Court has held that the Commission has no arbitrary powers in this regard. The intention of the Convention is very clear as regards the conciliatory role that the Commission must perform before a case is either referred to the Court or published.

Only in exceptional cases and, of course, for substantive reasons may the Commission omit the friendly settlement procedure because the protection of the rights of the victims or of their next of kin is at stake. To state, as the Commission does, that this procedure was not attempted simply because of the "nature" of the case does not appear to be sufficiently well-founded.

28. The Court believes that the Commission should have carefully documented its rejection of the friendly settlement option, based on the behavior of the State accused of the violation.

**IV**

19. The Government interposed the following preliminary objections:
- a. failure of the Commission to initiate a friendly settlement procedure;
  - b. incorrect application of Articles 50 and 51 of the Convention; and,
  - c. non-exhaustion of domestic remedies.

**V**

20. The Court will now examine the first of these preliminary objections.

In support of this objection, the Government alleged both in its pleadings and at the relevant hearing that the Commission had infringed the provisions of Article 48(1)(f) of the Convention by not placing itself at the disposal of the parties to reach a friendly settlement of this matter, despite the fact that the Government had at no time denied the facts of the case. Consequently, it is arbitrary to assert, as the Commission's Report Nº 31/01 of September 26, 1991 does, that the facts of the case are "by their very nature" not subject to resolution through the friendly settlement procedure and that the parties themselves failed to request such a recourse in accordance with Article 45 of the Regulations of the Commission.

21. The Government argues that the above provision of the Convention does not empower the Commission to transfer to the parties its obligation -which belongs exclusively to the Commission- to place itself at their disposal with a view to reaching a friendly settlement, in order to later contend that by not requesting such a settlement the parties have forfeited the right to charge the Commission with violating the Convention. Furthermore, it is the Government's opinion that Article 45(1) of the Commission's Regulations does not accurately reflect the scope and content of Article 48(1)(f), for the simple reason that the States Parties should not be placed in the uncomfortable situation of having to request a friendly settlement, something that could be interpreted as a prior confession of their responsibility, with all the political and procedural risks that would entail.

22. The Government alleges that the Commission improperly attempts to apply to the instant case the opinion expressed by the Court in its judgment of June 26, 1987, on the preliminary objections in the Velásquez Rodríguez Case, pointing out that the circumstances that led to that decision are substantially different from those of the instant case; in the former, the Government of Honduras repeatedly denied that government or military authorities had ever participated in the forced disappearance of the victim and went so far as to deny that the disappearance had ever taken place. In the instant case, the Government has declared that

at no time did it deny the actual material fact of the forced disappearance of a person. In addition, the various judicial proceedings brought with a view to finding the victim and identifying the authors of that act indicate an acknowledgment of the fact that Colombian military authorities could have taken part in the violations of individual rights. The focus of the dispute between the Government of Colombia and the Commission has to do with the identity of the persons responsible for the violations and whether the national judicial authorities duly fulfilled their obligations to detain those persons or to impose the corresponding sanctions.

23. In both its written response to the preliminary objections and in the hearing on that subject, the Commission, in turn, basically affirmed that ever since the Court's judgment of June 26, 1987, on the preliminary

15. In a note from the Government to the Commission dated January 16, 1992, the latter was asked to *'reconsider these reports, pursuant to Article 54 of the Regulations of the Commission'* on the ground that *'activities had been carried out by the various government agencies in charge of criminal and disciplinary matters with a view to broadening their investigations and thus complying with the recommendations of that Honorable Commission.'* In a communication dated February 18, the Executive Secretary of the Commission informed the Government of the Commission's decision to *"confirm the reports previously approved by the Commission, postponing the decision as to the publication thereof until the next session."* In a communication dated February 24, the Government, in turn, asked for a clarification of the phrase *"confirm the reports previously approved by the Commission," to determine whether the reconsideration requested by Colombia in cases 10.319, 10.454, and 10.581 has been decided upon and, if so, to obtain the authentic text of the pertinent decision, if such a decision has been issued.* The President of the Commission replied to the Government's request on February 28, in the following terms:

[The Commission has agreed to postpone its final decision on Reports N<sup>os</sup>. 31, 32, and 33/91, which had been approved during its 80th Session, taking into account the arguments presented by the Government of Colombia and the assurances of its willingness to cooperate with the Inter-American Commission.

In no way, however, does that decision imply that the Reports already approved by the Commission during the month of September, 1991, are no longer in effect. Rather, the decision regarding their adoption as final reports has been suspended, precisely in order to provide the Government of Colombia with a new opportunity to effectively comply with the concrete recommendations contained therein.

Consequently, the IACHR will be making a final decision as to the publication of the reports during its 82nd Session. It shall base its decision both on the effective adoption of the recommendations contained therein and on the implementation of those presented to the Government during the on-site visit to be made by the Commission next May.

16. During its 82nd Session in September 1992, the Commission heard a report on the steps taken by the Special Commission during its on-site visit and received the representatives of the Government and the petitioners at a hearing. On September 25, 1992, the Commission approved Report N<sup>o</sup> 31/92 of September 25, 1992, the operative part of which reads as follows:

1. To reject the request for reconsideration presented by the Government of Colombia, ratify Report 31/91 of September 29, 1991, and refer this case to the Inter-American Court of Human Rights.

2. To transmit the instant report to the Government of the Republic of Colombia and to the petitioner, with the admonition that it may not be published and that the period stipulated in Article 51(1) of the American Convention on Human Rights starts to run on September 25, 1992, the date of final adoption of the report in question.

### III

18. The Court has jurisdiction to hear the instant case. Colombia has been a State Party to the Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on June 21, 1985.

resident of that region who served as their guide, was detained by the Army, tortured and later set free. From the interrogation he was subjected to and the radio communications of the military patrol that detained him, he learned of the detention of Isidro Caballero-Delgado and María del Carmen Santana. After his release, he notified the unions and political organizations to which they belonged. They, in turn, notified the relatives of the detained individuals.

13. The petition reports that Isidro Caballero's family and various union and human rights organizations began to search for the detainees at the military facilities. They were told that Isidro Caballero and María del Carmen Santana had not been detained. Legal and administrative actions were taken in an attempt to establish the whereabouts of the couple who had disappeared and to punish those directly responsible, all to no avail. No reparations were obtained for the damages caused.

14. Among the judicial actions taken, the petition mentions a writ of habeas corpus filed with the First Superior Court of Bucaramanga, an investigation in the ordinary criminal courts before the Second Criminal Examining Magistrate and a military criminal investigation before Military Criminal Examining Magistrate 26, attached to the Santander Battalion based in Ocaña. The following administrative measures were also taken: action by the Office of the Presidential Adviser for the Defense, Protection and Promotion of Human Rights; action by the Bucaramanga Regional Prosecutor's Office; proceedings and negotiations by the Second Assistant Prosecutor for the Judicial Human Rights Police and by the Assistant Prosecutor for the Military Forces; and, also negotiations with the Office of the Deputy Attorney General of the Nation and the Office of the Assistant Prosecutor for the Military Force. Extrajudicial measures included the remedy of public complaint and protest.

15. The Commission states that on April 4, 1989, "acting on a request for urgent action from a reliable source, [ . . . ] before receiving a formal communication from the petitioners, the Commission, *motu proprio*, forwarded to the Government the complaint [ . . . ] [and] requested that extraordinary measures be taken to protect the life and personal safety" of the victims. On April 5 of that same year, the Commission received the formal petition from the petitioners, which it processed under N° 10.319. On September 26, 1992, the Commission issued Report N° 31/91, the operative paragraphs of which read as follows:

1. That the Government of Colombia has failed to honor its obligation to respect and guarantee Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), and Article 25 (on judicial protection), in relation to Article 1(1), upheld in the American Convention on Human Rights, to which Colombia is a State Party, in respect of the kidnapping and subsequent disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

2. That Colombia must pay compensatory damages to the victims' next of kin.

3. To recommend to the Government of Colombia that it continue the investigations until those responsible have been identified and punished, thereby avoiding the consummation of acts of serious impunity that transgress the very bases of the legal system.

4. To request the Government of Colombia to guarantee the safety of the eyewitnesses to the events and give them the necessary protection, as they have risked their lives to provide their valuable and courageous cooperation in the efforts to ascertain the facts.

5. To include this report in the forthcoming Annual Report to the General Assembly of the Organization of American States should no reply be received within 90 days of this report.

6. To transmit this report to the Government of Colombia and to the petitioner, neither of which is authorized to publish it.



9 The public hearing was held at the seat of the Court on the date and at the time set. There appeared before the Court

for the Government of Colombia:

Jaime Bernal-Cuéllar, Agent

Weiner Ariza-Moreno, Alternate Agent

Francisco Javier Echeverri, Adviser;

for the Inter-American Commission on Human Rights:

Leo Valladares-Lanza, Delegate

Manuel Velasco-Clark, Assistant

Gustavo Gallón-Giraldo, Adviser

Juan E. Méndez, Adviser

José M. Vivanco, Adviser.

## II

10. According to the petition, Isidro Caballero-Delgado and María del Carmen Santana were detained on February 7, 1989, in the locality known as Guaduas, under the jurisdiction of the Municipality of San Alberto, Department of Cesar, Colombia, by a military patrol composed of units of the Colombian Army stationed at the military base of Líbano (jurisdiction of San Alberto), attached to the Fifth Brigade headquartered in Bucaramanga.

11. According to the petition, the detention took place because of Mr. Isidro Caballero's active involvement as a leader of the Santander Teachers' Union for a period of 11 years. Prior to that, and for the same reasons, he had been held in the Model Prison of Bucaramanga, charged with belonging to the Movimiento 19 de Abril, but was released in 1986; since that time, however, he was constantly harassed and threatened. María del Carmen Santana, about whom the Commission had *"very little information, was a member of the Movimiento 19 de Abril (M-19)"* and worked with Isidro Caballero in enlisting community participation for the "Meeting for Coexistence and Normalization" which was to be held on February 16, 1989, in the Municipality of San Alberto. This activity had been planned by the "Regional Dialogue Committee" and involved *"organizing meetings, fora and debates in various regions in an effort to find a political solution to the armed conflict."*

12. The petition states that on February 7, 1989, Elida González, a peasant woman who was passing the spot where the victims were captured, was detained by the same Army patrol and later released. She saw Isidro Caballero, wearing a camouflage military uniform, and a woman who was with them. Javier Páez, a

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission") on December 24, 1992. It originated in a "request for urgent action" sent to the Commission on April 4, 1989 and in a petition (Nº 10.319) against Colombia received at the Secretariat of the Commission on April 5, 1989.
2. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 26 *et seq.* of the Rules of Procedure. The Commission submitted this case in order that the Court decide whether the Government in question had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in connection with Article 1(c) of the Convention, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana. In addition, the Commission considered that the Government had also violated Article 2 of the Convention by not adopting the domestic legal measures to give effect to those rights "*based on the maxim of the law pacta sunt servanda*," as also Article 51(2) of that treaty in conjunction with Article 29(b), by not carrying out the recommendations made by the Commission. The Commission requested the Court to require the Government to "*institute the investigation necessary to identify the responsible parties and impose punishment [ . . . ], inform the relatives of the victims of the latter's whereabouts [ . . . ] remedy the acts committed by government agents and pay fair compensation to the victims' next of kin [ . . . ] [and] pay the costs of these proceedings.*" The Commission appointed its member Leo Valladares-Lanza to represent it as its delegate, and Edith Márquez-Rodríguez, Executive Secretary, and Manuel Velasco-Clark, the Secretariat's attorney, to serve as assistants. It also named the following persons to act as legal counsel in the instant case: Gustavo Gallón-Giraldo, María Consuelo del Río, Jorge Gómez-Lizarazo, Juan E. Méndez, and José Miguel Vivanco.
3. The application and its attachments were transmitted to the Government by the Secretariat of the Court on January 15, 1993, after they had been duly examined by the President of the Court (hereinafter "the President").
4. By letter of January 28, 1993, the Government of Colombia notified the appointment of attorney Jaime Bernal-Cuéllar as its Agent, and attorney Weiner Ariza-Moreno as Alternate Agent.
5. By Order of February 5, 1993, and at the request of the Government, the President granted the latter an extension of 45 days to the time limit set in Article 29(1) of the Rules of Procedure for filing an answer to the application. The answer to the application was delivered on June 2, 1993. Likewise, on February 16, 1993, an extension of 15 days was granted for the presentation of preliminary objections.
6. Pursuant to Article 31 of the Rules of Procedure, the Government filed preliminary objections on March 2, 1993. The Commission responded to the objections on April 6, 1993.
7. By Order of June 3, 1993, the President convened a public hearing at the seat of the Court for Thursday, July 15, 1993, at 15:00 hours, for the presentation of oral arguments on the preliminary objections interposed by the Government.
8. On July 12, 1993, Judge Rafael Nieto-Navia was elected President of the Court. Since the new President is a national of Colombia, by Order of July 13, 1993, he relinquished the Presidency for the instant case to Judge Sonia Picado-Sotela, the Vice-President.

**APPENDIX II**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CABALLERO DELGADO AND SANTANA CASE**

**PRELIMINARY OBJECTIONS**

**JUDGMENT OF JANUARY 21, 1994**

In the case of Caballero Delgado and Santana,

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

Sonia Picado-Sotela, President  
Rafael Nieto-Navia, Judge  
Héctor Fix-Zamudio, Judge  
Alejandro Montiel-Argüello, Judge  
Hernán Salgado-Pesantes, Judge  
Asdrúbal Aguiar-Aranguren, Judge;

also present:

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

in application of Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), delivers the following judgment on the preliminary objections interposed by the Government of the Republic of Colombia (hereinafter "the Government" or "Colombia").

**DISSENTING OPINION OF JUDGES PICADO-SOTELA,  
AGUIAR-ARANGUREN AND CANÇADO TRINDADE**

1 We, the undersigned judges, dissent from the majority opinion with respect to operative point 3 of the judgment, in which the Court dismisses the responsibility of the respondent State for the violation of the right to life of Mr. Asok Gangaram Panday.

2 It is our opinion that from the very moment that the Court established the responsibility of the respondent State for the illegal detention of Mr. Gangaram Panday, albeit by inference, it became necessary for it to accept the consequences of such a finding insofar as the protection of the victim's right to life is concerned. This conclusion follows, in particular, because the respondent State admitted in its own countermemorial that Asok Gangaram Panday's detention "*(intensified) his depression and contempt for life,*" something that cannot be separated from the cause of death. In any event, the reason why the Court was unable to go into greater depth in its argumentation as to whether or not the detention reported was illegal or arbitrary was that it did not have before it the legislative texts it had expressly requested of the respondent State.

3 The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (negative obligation). It also demands of the States that they take all appropriate measures to protect and preserve it (positive obligation).

4 The international protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions. Due diligence imposes on the States the obligation to prevent, within reason, those situations which — as in the case now before us — could lead, sometimes even by omission, to the denial of the inviolability of the right to life.

5 Based on the foregoing, we, the undersigned Judges, consider that in the instant case the responsibility of the respondent State should have been determined on the basis of Articles 7(2) and 4(1) of the Convention read together with Article 1(1) thereof.

(s) Sonia Picado-Sotela

(s) Asdrúbal Aguiar-Aranguren

(s) Antônio A. Cançado Trindade

(s) Manuel E. Ventura-Robles  
Secretary

the file thereafter.

unanimously,

6. Decides that there shall be no award of costs.

Done in Spanish and in English, the Spanish text being authentic, in San José, Costa Rica, this twenty-first day of January, 1994.

(s) Rafael Nieto-Navia  
President

(s) Sonia Picado-Sotela

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Antônio A. Cançado Trindade

(s) Manuel E. Ventura-Robles  
Secretary

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Judge Máximo Pacheco-Gómez, who was present at the hearings on the merits, excused himself from participating in the Session during which this judgment was drawn up and signed.

So ordered,

(s) Rafael Nieto-Navia  
President

(s) Manuel E. Ventura-Robles  
Secretary

71 Also based on the fact that Suriname's responsibility has been inferred, the Court considers that it must dismiss the request for an award of costs.

**XI**

Now, therefore

**THE COURT**

unanimously,

1. Declares that Suriname has violated its obligations to respect and to ensure the right to personal liberty set forth in Article 7(2) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of Asok Gangaram Panday.

unanimously,

2. Dismisses the request of the Commission that the State of Suriname be found responsible for the violation of Articles 5(1), 5(2), 25(1) and 25(2) of the Convention, to the detriment of Mr. Asok Gangaram Panday.

by four votes to three,

3. Dismisses the request of the Commission that the State of Suriname be found responsible for the violation of Article 4(1) of the Convention, to the detriment of Mr. Asok Gangaram Panday.

Judges Sonia Picado-Sotela, Asdrúbal Aguiar-Aranguren and Antônio A. Cançado Trindade dissenting.

unanimously,

4. Sets the amount that the State of Suriname must pay to the persons indicated in paragraph 70 of this judgment, and as stipulated therein, at US\$10,000 (ten thousand dollars of the United States of America) or the equivalent amount in Dutch florins, payable within six months of the date of this judgment.

unanimously,

5. Decides that the Court shall supervise the payment of the indemnification ordered and shall only close

at the Commission's 74th Session, it is expressly recognized that

Suriname has taken significant steps to establish the rule of law and democratic institutions and has assumed international obligations in the Inter-American community by ratifying the treaties referred to above, all of which indicate a desire to respect and promote human rights. (Underlined by the Court)

b. That Mrs. Dropatie Sewcharan, the victim's widow, filed a complaint regarding the events referred to in this record with the Attorney General of the Court of Justice in Paramaribo, on November 11, 1988.

c. That in his deposition before the Court the victim's brother, Leo Gangaram Panday, replied as follows to the question, "*Have you experienced lack of cooperation by the authorities of Suriname in your efforts to obtain justice?*": "*I left everything in the hands of my lawyer.*" And, later, when questioned whether, "*It has been possible to obtain decisions on this case in Suriname,*" he answered vaguely that, "*I heard nothing further on the matter.*"

d. That in the note signed by the Minister of Justice and Police of Suriname which was sent to the Commission on May 2, 1989, in response to the request made by the latter in its note of February 6, 1989, it is stated that:

[T]he Prosecutor General ordered an autopsy to be carried out;" "the Prosecutor General [ . . . ] investigated the circumstances and reasons for the detention;" "[t]hat in addition to the foregoing, the Department of Technical and Criminal Investigations and the Department of Identifications drew up a report;" and "[t]hat the Attorney General had considered it important to look into the possibility that the Military Police Officer [ . . . ] might be guilty of unlawful deprivation of liberty or illegal detention.

66. The Commission's assertion, contained in the preambular paragraphs of its report on the instant case, that the Government, "*enacted an amnesty Decree freeing all the guilty parties of their criminal responsibility,*" is not supported in the record by anything other than the statement of the complainant.

67. In view of the above, this Court concludes that there is no proof of the violation of Articles 2 and 25 of the Convention charged in the instant case. And it so finds.

## X

68. Since the Court has concluded, by inference, that Asok Gangaram Panday was illegally detained by members of the Military Police of Suriname, this violation of the Convention must be ascribed to that State.

69. Consequently, the provisions of Article 63(1) of the Convention are here applicable. The Court notes that in the instant case, since the victim is deceased, it is impossible to ensure him the enjoyment of his right or to make full reparation for the consequences of the measure that constituted the breach thereof. Hence, in accordance with the provision cited, the payment of fair compensation is in order.

70. Since Suriname's responsibility has been inferred, the Court decides to set a nominal amount as compensation, one half to be paid to the widow and the other half to the victim's children, if any. If there are no children, their portion shall be added to the widow's half.

from it that other factors that occurred prior to his detention also affected the victim's state of mind.

62. Nevertheless, it could be argued that the fact that the Court, by inference, considers that the victim's detention was illegal, should also lead it to conclude that there was a violation of the right to life by Suriname on the grounds that, had Suriname not detained that person, he probably would not have lost his life. However, the Court believes that on the matter of the international responsibility of States for violations of the Convention

[w]hat is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention. (*Velásquez Rodríguez Case, supra 49, para. 173; Godínez Cruz Case, supra 49, para. 183.*)

The circumstances surrounding this case make it impossible to establish the responsibility of the State in the terms described above because, among other things, the Court is fixing responsibility for illegal detention by inference but not because it has been proved that the detention was indeed illegal or arbitrary or that the detainee was tortured. And the Court so finds.

## IX

63. Finally, the Commission also charged an alleged violation of Articles 2 and 25 of the Convention, in the following terms:

The case of Mr. Gangaram Panday shows that in Suriname the exercise of the rights and freedoms mentioned in the Convention is not guaranteed when the violations are committed by military personnel.

[ . . . ]

The violations of human rights committed by the military authorities of Suriname against which the population is absolutely defenseless, as in the case of Mr. Gangaram Panday — represent a clear violation of the obligation to provide judicial protection [ . . . ]

64. The Court notes that, in principle, the confirmation of a single case of violation of human rights by the authorities of a State is not in itself sufficient ground to presume or infer the existence in that State of widespread, large-scale practices to the detriment of the rights of other citizens.

65. In addition, after completing the evaluation of the various proofs called for and furnished by the parties, the record of the instant case reflects the following:

a. That in the First and Second Reports on the Human Rights Situation in Suriname for the years 1983 and 1985, the Commission states that it has confirmed that, "*a number of fundamental human rights established in the American Declaration of the Rights and Duties of Man continue to be violated by the Government of Suriname;*" however, in the Commission's Annual Report for 1987-1988, approved



a. The Court finds that it has been proved that Mr. Asok Gangaram Panday died while imprisoned in the custody of members of the Military Police of Suriname (cf. the report of the Military Police Corps of Suriname, signed by Achong J. G., Ensign of the Military Police, on November 17, 1988; the report of proceedings drawn up by R. S. Wolfram, Police Inspector of the Technical Service of Investigations and Inspections of Paramaribo, dated November 8, 1988; the autopsy report and death certificate of Mr. Choeramoenipersad (Asok) Gangaram Panday, both signed by Dr. M. A. Vrede, pathologist, on November 11 and 14, 1988, respectively).

b. It has also been proved that the victim died by mechanical asphyxia as a result of hanging (cf. the autopsy report signed by Dr. M. A. Vrede; the opinion of Dr. Richard J. Baltaro, anatomical pathologist, dated February 4, 1990, issued at the request of Professor Claudio Grossman, adviser to the Commission; the forensic report of the Department of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica issued in November, 1992; the expert forensic testimony prepared by the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela; the photographs of the victim's hanging body).

58. As for the etiology of the death of Asok Gangaram Panday in support of a probable hypothesis of homicide, as suggested by the text of the Commission's memorial which states that, "*on March 20, [1990], Professor Grossman sent to the Commission a copy of Dr. Vrede's certificate dated November 14, 1988, in which he indicates that Asok Gangaram Panday died as a result of asphyxia caused by violence,*" (underlined by the Court). "the records show no evidence in this regard.

59. The death certificate for purposes of cremation includes the statement of the forensic doctor that "*the victim died a violent death*" and also indicates that the certificate was issued on the basis of a model or standard form used by the Anatomical Pathology Laboratory of the Academic Hospital of Paramaribo and that another copy, attached to the record, states the contrary, that is, "*it is not a case of violent death.*" Since it has already been determined that the cause of death of Asok Gangaram Panday was asphyxia resulting from hanging it follows that his death could hardly be certified as non-violent, that is, brought on by natural causes.

60. Suicide is the most probable hypothesis contained in the record, and has been endorsed by the Department of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica and by the expert forensic testimony of the Technical Corps of the Judicial Police of Venezuela. The latter's testimony reads as follows:

On the basis of the total lack of physical violence, the position of the body when it was found, the characteristics of the noose and its position relative to the washbasin, the apparent lack of lesions in the larynx or trachea, except for "hemorrhage in the neck muscles" and the presence of congestion and pulmonary edema, we conclude that the cause of death was: "MECHANICAL ASPHYXIA BY HANGING, SECONDARY TO VASOVAGAL SYNDROME OR ACUTE CEREBRAL CIRCULATORY INSUFFICIENCY RESULTING FROM COMPRESSION OF THE JUGULAR VEINS AND/OR CAROTID ARTERIES. THE EVIDENCE PRODUCED FOR THIS EXAMINATION: PHOTOGRAPHIC MATERIAL AND AUTOPSY REPORT, FAVOR SUICIDE AS THE REASON." (Capitals in the original.)

61. The Court considers that although it is true that the record contains sufficient elements to support the finding that the death of Asok Gangaram Panday was caused by hanging, there is no convincing proof on the etiology of his death that would make it possible to attribute responsibility for that death to Suriname. The above conclusion is in no way modified by the fact that the agent of the Government admitted in his counter-memorial that the victim's mood had been affected by his expulsion from the Netherlands and that this psychological condition had been intensified by his detention. In effect, to deduce from such a statement any type of admission of responsibility by the Government is to strain logic. It is, however, possible to conclude

translation from the Dutch) cadaverous lividities.

[And, as for the lesions,] the ecchymosis in the pubis and scrotum, with a small internal hemorrhage in the subcutaneous fatty tissue and congestion of internal structures in the genitals, points to the mechanical effect of a traumatism that produced that simple contusion.

Diagnosis:

[ . . . ]

2 - Simple contusion in the scrotum

3 - Simple contusion in the prepubic tissue.

b. In a follow-up note dated February 22, 1993, the above mentioned Department of Forensic Medicine added that *"the contusion described in the genital and pubic area of Mr. Ganday (sic) entails a vital act, which means that it was produced while he was alive and was traumatic in origin."*

c. The Report of the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela places on record that

[With respect to the photographic material] [t]he disposition of the cadaverous lividities is very evident [ . . . ] No bruises, ecchymosis or other evidence of traumatism can be observed, but the phenomenon known as lividities [ . . . ] difficult to define due to the quality of the photographic material and the distance from which the photograph was taken. In any event, it appears to be a small flayed area in the scapular region, probably caused by the weight of the body upon hitting the wall when he jumped to hang himself.

There is no physical evidence [ . . . ] [that he had been tortured] in the photographs taken of the cadaver.

d. The follow-up report of the aforementioned General Division of Forensic Medicine regarding the observations made by Dr. M. A. Vrede during the public hearing states that:

The greater part of the comments and contradictions in the information supplied by the videotape [during the public hearing], because the tape is of low technical quality and was taken long after the death took place, [ . . . ] was the reason that we abstained from making any comments, as it is risky to issue opinions based on this material.

56. Having examined all of the above elements, the Court considers that no conclusive or convincing indications result from the evaluation thereof that would enable it to establish the truth of the charge that Mr. Asok Gangaram Panday was subjected to torture during his detention by the Military Police of Suriname. Accordingly, the Court cannot conclude, as the Commission requests, that in the instant case there exists a presumption that Article 5(2) of the Convention protecting the right to humane treatment was violated. And the Court so finds.

## VIII

57. As regards the death of Mr. Asok Gangaram Panday while in detention and confinement in the *"shelter for deportees located in [the] complex of the Zanderij Brigade,"* the Court is of the following opinion:

but was not confirmed before the Court, asserts that "*[u]nfortunately, the bad quality of the tape makes it difficult to arrive at a precise diagnosis.*" This is corroborated by the forensic reports ordered by the Court to furnish better proof, which state that, "*In view of the bad quality of the recording of the cassette, [ . . . ] all of the takes were rejected because they were technically unreliable for an analysis of the case*" (Report of the Department of Forensic Medicine of the Bureau of Judicial Investigation of Costa Rica); and that, "*[t]he videotape is of poor technical quality, with added putrefactive phenomena, which makes it impossible to give a reliable assessment. We therefore abstain from any comments.*" (Report of the General Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela.)

c. In the report of proceedings drawn up on November 15, 1988, R. S. Wolfram, Police Inspector detailed to the Technical Service of Investigations and Inspections of Paramaribo, declares that "*as far as could be observed, no signs of external violence were found on the body*" of the victim.

d. In the letter dated November 18, 1988, from the Minister of Foreign Affairs of the Kingdom of the Netherlands to the Lower Chamber of the States General at The Hague, which was submitted as proof by the Commission, it is stated that "*[t]he post mortem (sic) examination was carried out by a physician in good standing. According to reports, the body did not exhibit any signs of physical violence.*"

53. Despite the foregoing, the Court cannot fail to consider the fact that, during the public hearing, the Commission introduced a new issue for consideration that had not been contained in either its application or its memorial: the alleged existence of injuries to the testicles of the victim, as described in the testimony given by the petitioner, Leo Gangaram Panday, and in the forensic autopsy report on the victim signed on November 11, 1988, by Dr. M. A. Vrede, pathologist. In that report, after certifying that the body showed no other peculiarities or signs of extravasation, Dr. Vrede placed on record the fact that the scrotum exhibited "*extravasation on the left and right; more pronounced on the left side.*"

54. In his personal testimony to the Court, Dr. M. A. Vrede, called as a witness by the Government and having reference to the public viewing of the contents of the videotape of the victim's body, stated the following, among other things:

There was damage to the skin but not to the testicles.

This hemorrhage [in the pubic area] could have been occasioned by violent blows [ . . . ] brute force, or by a blow to the area where the testicles and pubic parts are. The hemorrhaging in this area was very superficial [ . . . ] It was a fresh hemorrhage that occurred shortly before death. This hemorrhage must have presented itself shortly before death. It was a fresh hemorrhage.

55. The forensic reports ordered by the Court from the Department of Forensic Medicine of the Bureau of Judicial Investigations (OIJ) of Costa Rica and the Technical Corps of the Judicial Police of Venezuela to furnish better proof, which contain a technical evaluation of all the evidence, record observations of interpretative value regarding the alleged torture to which, according to the Commission, the victim was subjected, as well as the alleged injuries to his scrotum, all of which the Court has taken into consideration.

a. The report of the OIJ of Costa Rica states the following:

The autopsy examination [ . . . ] described scrotal ecchymosis and hemorrhagic infiltration in the prepubic fatty tissue, as well as congestion of the vessels of the seminal cord [and] [m]entioned post-mortem (sic) eruptions of the skin which we interpret to be (based on our own

48 In the instant case, it is impossible for the Court to determine whether or not the detention of Asok Gangaram Panday was for "*the reasons and under the conditions established beforehand*" by the Constitution of that State or by laws promulgated pursuant thereto, or whether that Constitution or those laws were compatible with the standards of reasonableness, foreseeability and proportionality which must characterize any arrest or legal detention for it not to be deemed arbitrary. Indeed, the record contains no convincing arguments in favor of one thesis over the other, except for the statements of the parties, as follows:

- a. The Commission's assertion that "*it has been irrefutably proved that his detention was illegal, since it lasted longer than the six hours authorized under Surinamese law [ . . . ]*"
- b. The Government agent's assertion that "*the authorities of Suriname acted pursuant to the provisions contained in Articles 52 clause 2) and 48 and 56 of the Code of Criminal Procedure[ . . . ]*"

49 The Court has maintained that "*in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation*" (***Velasquez Rodriguez Case, Judgment of July 29, 1988. Series C No. 4, para. 135; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 141.***) In the exercise of its judicial functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions as regards the facts of the case, particularly when the respondent State has assumed an uncooperative stance in its dealings with the Court.

50. The record shows that, by order of the President dated July 10, 1992, the Government was required to provide the official texts of the Constitution and of the substantive and criminal procedure laws governing cases of detention in its territory on the date on which Asok Gangaram Panday was detained. The Government did not produce the texts in question for the record, nor did it give any explanation for the omission.

51. In view of the foregoing, the Court infers from the position taken by the Government that Mr. Asok Gangaram Panday was illegally detained by members of the Military Police of Suriname when he arrived from Holland at Zanderij Airport. It is, therefore, not necessary for the Court to express an opinion with regard to the reported arbitrariness of that measure or the fact that he was not brought promptly before a competent judicial authority.

## VII

52. As for the torture to which Mr. Asok Gangaram Panday was allegedly subjected during the time he was kept in detention by the Military Police authorities, the Court finds as follows:

- a. The videotape supplied by the Commission in support of its allegations and which depicts the preparation of the body of Asok Gangaram Panday was taken on November 15, 1988, that is, one week after the victim's death, according to an uncontested statement made by witness Dr. M. A. Vrede during the public hearing. Witness Leo Gangaram Panday, the petitioner, contradicted himself with regard to the date of taping.
- b. The report of forensic pathologist Richard J. Baltaro, which was presented by the Commission,

Inspector of the Technical Service of Investigations and Inspections of Paramaribo, signed on November 15, 1988).

c. That the victim remained in detention, without being brought before a tribunal, from the night of Saturday, November 5, until the early hours of Tuesday, November 8, 1988, when his lifeless body was discovered (cf. the complaint of Leo Gangaram Panday; the charge brought before the Attorney General of the Court of Justice by Drobotie Sewcharan, the victim's widow, signed in Suriname on November 11, 1988; the statement of the Government agent in his counter-memorial; the report of the Military Police Corps of Suriname signed by Achong J. G., Ensign of the Military Police Corps).

44. The Court notes, by way of introduction, that the records do not contain sufficient evidence to enable verification of certain statements contained in the Commission's memorial, according to which the victim and his family were not informed of the reasons for his detention, in flagrant violation of the provision contained in Article 7(4) of the Convention. Rather, the record shows that the victim himself, when he was detained at the airport, said to his relatives: *"I've got problems;"* that in the early hours of the day following the above mentioned detention, the victim's brother, Leo Gangaram Panday, was informed by the Military Police that the reason for the detention was the fact that Asok Gangaram Panday had been expelled from Holland and, furthermore, that the latter had told the guard at the shelter *"that he had been expelled from Holland, even though he had of his own free will reported to the Immigration Police."*

45. The Court must now determine whether the detention of Asok Gangaram Panday by members of the Military Police of Suriname constitutes the alleged illegal or arbitrary acts or a violation of the victim's right to be brought promptly before a judge or other officer authorized by law to exercise judicial functions, and whether it is appropriate to charge Suriname with such acts and, if so, to declare its international responsibility under Articles 7(2), 7(3) and 7(5) of the Convention.

46. Article 7 of the Convention reads as follows:

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

[ . . . ]

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power [ . . . ]

47. This provision contains specific guarantees against illegal or arbitrary detentions or arrests, as described in clauses 2 and 3, respectively. Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.

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. (*Velásquez Rodríguez Case, Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 29; Fairén Garbi Case, Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para 34; and, Godínez Cruz Case, Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para 32.*)

## V

4. In order for it to be able to adjudicate this case, the Court believes that the following facts relating to "the detention and subsequent death of Choeramoenipersad (also known as Asok) Gangaram Panday in Suriname" are in dispute and, accordingly, need to be reviewed and decided upon:

- a. The alleged illegal and arbitrary detention of the victim by the Military Police of Suriname upon his arrival from Holland at the Zanderij Airport on Saturday, November 5, 1988, where he was reportedly held in solitary confinement in a special area reserved for deportees.
- b. The alleged torture of the victim during his detention
- c. The death of the victim, allegedly by hanging, while in detention and under the custody of the Surinamese Military Police.

## VI

4. As regards the detention of Asok Gangaram Panday, based on evidence which has not been disputed by the parties, the Court considers that the following facts have been proved:

- a. That the victim arrived at Zanderij Airport, in Suriname, on Saturday, November 5, 1988, having embarked in Holland (cf. verbal note of the Permanent Mission of the Republic of Suriname to the Organization of American States, issued in Washington, D.C., on May 2, 1989; the written complaint by Leo Gangaram Panday; the testimony of Messrs. Leo Gangaram Panday and Dropati Gangaram Panday at the public hearing; the victim's airline ticket; the annotation and stamp placed in the victim's passport by the authorities of the Kingdom of the Netherlands; the report of the Military Police Corps of Suriname signed by Achong J.C., Ensign of the Military Police, on November 17, 1988).
- b. That, upon his arrival at the airport, the victim was detained by members of the Military Police, on the grounds that the reasons for his expulsion from Holland warranted further investigation, and that he was then placed in a cell within a shelter for deportees located in the Military Brigade at Zanderij (cf. the complaint of Leo Gangaram Panday; the statement of the Government agent in his counter-memorial; the report of the Military Police Corps of Suriname signed by Achong J. G., Ensign of the Military Police Corps; the report of proceedings drawn up by R. S. Wolfram, Police

since November 12, 1987, the date on which it also recognized the contentious jurisdiction of the Court, as set out in Article 62 of the Convention.

#### IV

39. During the proceedings, the Commission asserted the following:

[ . . . ] Because of its judicial nature, the Court has the power to reach its own conclusions as to the legality of the proceedings and as to the verification and scope of the facts determined by the Commission (see Article 62(3)). In cases in which the Court concludes that the proceedings before the Commission were in violation of the Convention and/or that the facts have not been duly established, there is no doubt that the Court can order the submission of relevant proof.

The Commission respectfully submits to the Court that the facts of the instant case were properly verified and that, consequently, it is inappropriate to initiate a probative stage.

In support of its position, the Commission makes reference to the case law of the European Court of Human Rights in the case of *Stocké v. The Federal Republic of Germany*, in which that Court made the following determination:

The Court recalls that under the (European) Convention system, the establishment and verification of the facts is primarily a matter for the (European) Commission (Articles § 28 1 and 31). Accordingly, it is only in exceptional circumstances that the Court will use its powers in this area. **(Eur. Court H.R., *Stocké judgment* of 19 March 1991, Series A no. 199, par. 53)**

In presenting its evidence, the Commission declared:

Without detriment to the Commission's request to the Court that the latter find that the facts were verified in the proceedings before the Commission, evidence is hereby offered in the unlikely event that the Court decide that exceptional circumstances exist which require it to act as a 'factfinder.'

40. The Agent of Suriname, for his part, stated that:

[ . . . ]

[I]t is evident that, pursuant to the provisions governing its jurisdiction contained in Articles 62(3) and 63 of the Convention, the Court has the power to consider, revise and reevaluate all of the facts of a case, independently of whether or not the Commission has previously determined that the facts have been established.

41. The Court notes that the Commission and the Court perform different, albeit complementary, functions when they deal with matters related to the observance of the Convention by the States Parties. Insofar as its own function is concerned, the Court considers that what has already been stated in its case law is applicable to the instant case, namely that

the Court exercises full jurisdiction over all issues relevant to a case [ . . . ] [and] [i]n exercising these powers,

31. In a written communication received at the Secretariat on November 4, 1992, the Commission requested that, in application of Article 41(2) of the new Rules of Procedure of the Court which came into force on August 1, 1991, the Commission be allowed to reserve its right to examine any witness or expert witness that the Court might call pursuant to the proof ordered by the President in the previous paragraph. After consulting with the Permanent Commission, an order of the President dated March 15, 1993, dismissed the Commission's petition on the grounds that the expert testimony had been ordered by the Court to furnish better proof and that it bore on facts that had already been considered and were known to the parties. The Commission also requested that the Court's experts be provided the oral testimony given by Dr. M. A. Vrede at the public hearing, regarding the presence of blood in the victim's scrotum. The President issued the relevant order.

32. On November 25, 1992, the Secretariat of the Supreme Court of Justice of Costa Rica submitted a forensic medical report containing the expert opinion of its Department of Forensic Medicine. This report was issued in response to the request referred to in Paragraph 30 *supra*.

33. On February 4, 1993, the Court ordered the text of the proceedings to date to be transmitted to the parties and granted the latter 30 days in which to present their observations. The Commission submitted its observations on March 1, 1993. The Government did not present any observations.

The Court also requested the Government to provide it with the official texts of the Constitution of Suriname and of the substantive and criminal procedure laws governing arrests that were in effect on November 7, 1988, duly translated into Spanish. The Court gave the Government until March 19, 1993, to submit these documents; the Government failed to do so.

34. By note of February 9, 1993, the Head of the Department of Forensic Medicine of the Supreme Court of Justice of Costa Rica was provided with the transcript of the relevant parts of the public hearing on the merits of the case, with the request that he verify whether the statements contained therein affected the conclusions reached in his opinion of November, 1992 (*supra* 32) and, if so, in what manner. On February 27, 1993, the head of that department submitted the information requested, which was transmitted to the parties to enable them to present their observations. Only the Commission did so.

35. On November 30, 1993, the Court received the forensic report issued by the Division of Forensic Medicine of the Technical Corps of the Judicial Police of Venezuela.

36. On December 9, 1993, the Court provided the relevant parts of the public hearing concerning the testimony of Dr. M. A. Vrede to the Division which had supplied the expert forensic testimony in Venezuela, with the request that it verify whether the statements contained therein affected the initial conclusions of their report and, if so, in what manner. The follow-up report was submitted to the Court with a letter dated January 5, 1994, by the Director General of the Technical Corps of the Judicial Police of Venezuela. The parties were duly informed of its contents.

37. The following organizations submitted *amici curiae* briefs: the International Human Rights Law Institute of DePaul University College of Law, the Netherlands Institute of Human Rights (SIM), and the International Human Rights Law Group.

### III

38. The Court has jurisdiction to hear the instant case. Suriname has been a State Party to the Convention



Fred M. Reid, Representative of the Ministry of Foreign Affairs of  
Suriname

Jorge Ross Araya, Attorney-Adviser

Joaquín Tacsan Chen, Attorney-Adviser

b. for the Inter-American Commission on Human Rights:

Oliver H. Jackman, Delegate

David J. Padilla, Delegate

Claudio Grossman, Adviser

c. witnesses presented by the Commission:

Leo Gangaram Panday

Dropati Gangaram Panday

Stanley Rensch, Director of the Human Rights Bureau, Moiwana 86

d. witnesses presented by the Government:

Ramón A. de Freitas, Representative of the Attorney's Office of the Republic of Suriname

M. A. Vrede, Anatomical Pathologist and Expert Witness.

The Government chose not to present Dr. Juan Gerardo Ugalde-Lobo as an expert witness. Dr. Richard J. Bataro, the expert witness offered by the Commission, did not appear before these hearings.

29. During the hearing, the Court asked the Government to provide statistics on suicide among the population professing the Hindu religion in Suriname, indicating the percentages for males and females. This information was not supplied by the Government.

30. After hearing the witnesses and expert witnesses and the pleadings of the parties on the merits of the case, the President, by order of July 10, 1992, requested the following additional proof for further clarification of the facts:

1. To request technical opinions on the criminal and psychiatric aspects of the case, together with translations, which are to be obtained by Judge Asdrúbal Aguiar-Aranguren from experts on the subject in Venezuela.

2. Through the Secretariat of the Court, to obtain an expert opinion of the medical reports contained in the records, including the videotape and slides, from the Division of Forensic Medicine of the Bureau of Judicial Investigations of Costa Rica.

21 By order of August 3, 1991, and with the purpose of establishing the proceedings on the merits, the President gave the parties until September 11, 1991, to produce and submit additional evidence to the Court. He also set October 15, 1991, as the deadline for presentation of observations on the evidence presented. Both the Commission and the Government submitted their respective statements on September 11, 1991.

22 The Government presented its observations on the Commission's statement on October 15, 1991. The latter's observations on the Government's statement were submitted on October 18, 1991.

23 By order of the President dated January 18, 1992, the parties were summoned to the public hearings scheduled to begin on June 24, 1992, in order to hear the pleadings of the parties regarding the Government's objections to witnesses Richard J. Baltaro and Stanley Rensch (contained in its communications of September 11 and October 15, 1991, respectively) and to decide thereon; to hear their testimony in the event that the Court should deem it relevant, as well as the statements of Ramón A. de Freitas, M. A. Vrede and Juan Gerardo Ugalde Lobo; and to hear the pleadings of the parties on the merits of the instant case.

24 In a communication dated January 31, 1992, the Commission requested that the Court include in its list of witnesses the names of Leo and Dropati Gangaram Panday, the brother and widow of Asok Gangaram Panday, who had not been located before because of difficulties in establishing their whereabouts. By note of February 14, 1992, the Government objected to this request and asked that it be denied.

25 On February 7, 1992, the Commission asked the Court to postpone the hearings on the merits of the case. By note of February 14, 1992, the Government consented to the postponement of the hearings.

26 By order of March 24, 1992, the President amended his order of January 18, 1992, as follows:

1. To summon the parties to the public hearings which will be held at the seat of the Court as of 10:00 hours on July 8, 1992, in order to:

a. Hear the pleadings of the Government of the Republic of Suriname and the observations of the Inter-American Commission on Human Rights regarding the objection to witnesses in this case and decide thereon.

b. Hear, if appropriate, the statements of Richard J. Baltaro, Stanley Rensch, Ramón A. de Freitas, M. A. Vrede, Juan Gerardo Ugalde Lobo, Leo Gangaram Panday and Dropati Gangaram Panday, all pursuant to Article 35 of the Rules of Procedure of the Court, under which the witnesses shall be presented by the party offering their testimony.

c. Hear the pleadings of the parties on the merits of the instant case.

27 By order of July 7, 1992, the Court unanimously ordered *"[t]hat this case continue to be heard by the Court as newly composed after January 1, 1992."*

28 The Government having waived the objections it had interposed, public hearings were held on July 8 and 9, 1992, to receive the testimony of the witnesses and expert witnesses called by the parties and to hear the pleadings on the merits of the case.

There appeared before the Court

a. for the Government of Suriname:

Carlos Vargas Pizarro, Agent

18 On April 1, 1991, the Commission submitted its memorial in the case, together with the relevant evidence. In it, the Commission requested that the Court

accept the evidence presented to the Commission and find that the facts have been duly verified in accordance with the applicable legal standards and criteria [ . . . ] [and if it should be deemed] that such evidence is insufficient, that the Court reserve the right of the Commission to produce additional proof; [that] it hold the State of Suriname responsible for the death of Mr. Asok Gangaram Panday while he was in detention and find that his death constitutes a violation of Articles 1(1) (2), 4, 5, 7 and 25 of the American Convention on Human Rights.

The Commission also asked the Court to find that Suriname

must make adequate reparation to the next of kin of Mr. Asok Gangaram Panday and that, consequently, it order: the payment of compensation for indirect damages and loss of earnings, reparations for moral damages (including the payment of an indemnity and the adoption of measures to restore the good name of the victim), and the investigation of the crime committed, providing for the punishment of those found to be responsible [ . . . ] [that it order Suriname to pay the costs incurred in the handling of this case, including the reasonable fees of the victim's lawyer.

19. The Government presented its counter-memorial and evidence on the case on June 28, 1991. In that document, it requested the Court to declare that:

- a) Suriname cannot be held responsible for the death of Asok Gangaram Panday.
- b) In view of the fact that it has not been proved that the violation attributed to Suriname was committed, Suriname should not be obliged to pay any type of compensation.
- c) Suriname be allowed to reserve its right to produce additional proof in support of its position if the Court should so decide.
- d) The petitioner be ordered to pay the costs of this case.

20. On that same date, the agent interposed preliminary objections pursuant to Article 27 of the Rules of Procedure. In a judgment rendered on December 4, 1991, the Court unanimously decided the preliminary objections as follows:

1. Rejects the preliminary objections interposed by the Government of Suriname.  
[ . . . ]
2. Decides to proceed with the consideration of the instant case.  
[ . . . ]
3. Postpones its decision on the costs until such time as it renders judgment on the merits. (***Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991. Series C No. 12, Operative Part.***)

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. Conduct an investigation of the facts reported in order to prosecute and punish the persons responsible.
  - c. Take the necessary measures to prevent the occurrence of similar acts in the future.
  - d. Pay a just compensation to the injured parties.
6. To transmit this report to the Government of Suriname in order to obtain, within 90 days of the date of transmittal, information from the Government regarding the measures taken to implement the recommendations contained herein. As provided in Article 47(6) of the Commission's Regulations, the Government may not publish this report.
7. To submit this case to the Inter-American Court of Human Rights if the Government of Suriname fails to implement all of the recommendations contained in point 5 above.

## II

15. The case before the Court was brought by the Commission on August 27, 1990. In a communication, dated September 17, 1990, the Secretariat of the Court (hereinafter "the Secretariat") transmitted to the Government a copy of the application and its attachments, as provided in Article 26(3) of its Rules of Procedure.
16. On November 6, 1990, the Government appointed Licenciado Carlos Vargas Pizarro to serve as its agent.
17. By order of November 12, 1990, the President of the Court (hereinafter "the President"), by mutual agreement with the agent of Suriname 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 of Procedure and June 28, 1991, as the deadline for submission by the Government of its counter-memorial.
18. By note of November 12, 1990, the President requested 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 Brasília, Brazil, to that position.
19. By note of February 7, 1991, the Commission appointed Professor Claudio Grossman to be its legal adviser in the instant case. In a note dated December 23, 1993, the Commission subsequently placed on record the fact that, in addition to his role as adviser, Professor Grossman was also acting as counsel for the original petitioner. If the Court considered this designation problematical, the Commission would request a public hearing to present its arguments thereon. After obtaining the views of the Court, the President responded in a note dated January 11, 1994, that the public hearing requested "*will not take place. It is possible that this matter may be taken up by the Tribunal when it addresses the merits of the case.*"

has] sent a copy of the findings of the third autopsy, signed by the Pathologist [and that there are no] copies of the other two, although the press referred to them.

8. In a communication dated February 4, 1990 which accompanies the petition, anatomical pathologist Dr. Richard Baltaro, Ph.D., M.D., gave Professor Grossman his professional evaluation of the videotape that the latter had sent him, and which had been filmed while the body of Asok Gangaram Panday was being washed. Although he found the quality of the videotape to be unsatisfactory, Dr. Baltaro was of the opinion that

[t]he type of death is not natural. The cause of death was asphyxia resulting from hanging. Based on the evidence presented to me, I am inclined to conclude that the person died by hanging. As to the manner of death, however, it cannot be established whether it was accidental, a suicide, or homicide. Given the evidence provided to me, if I had to sign the death certificate, I would ascribe the death to 'unknown causes' but would prefer to investigate the case further.

Professor Grossman transmitted Dr. Baltaro's report to the Commission on March 21, 1990. He also enclosed a copy of the death certificate signed by Dr. M. A. Vrede, anatomical pathologist of the Anatomical Hospital of Paramaribo, certifying that Asok Gangaram Panday died "*a violent death.*"

9. On March 23, 1990, the Commission sent the relevant portion of Professor Grossman's letter to the Government, together with the aforementioned reports of Drs. Baltaro and Vrede, and granted it 30 days in which to present any significant information it might have on this case.

10. On May 11, 1990, the Government transmitted to the Commission the same copy of the death certificate that had been signed by Dr. M. A. Vrede and reads as follows: "*[t]he victim died a violent death, and at the time of death was not suffering from any type of infectious disease,*" as well as an autopsy report issued by the same pathologist, Dr. Vrede, indicating that, "*[i]t is assumed that the cause of death was asphyxia resulting from hanging.*"

11. On that same date, the Commission received Professor Grossman at a hearing, where he explained that it had proved impossible to arrive at a friendly settlement and requested that the Commission refer the instant case to the Court.

12. 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 instant 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 in Articles 1 and 2 of that same instrument.
4. To declare that the Government of Suriname violated the human rights of the subject of this case, as provided in Articles 1, 2, 4(01) (*sic*), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1) and 25(2) of the American Convention on Human Rights.

f. According to the petition, the Attorney General personally informed the petitioner's lawyer that it was a case of suicide; the family never received a written report; and the petitioner's lawyer advised him that, *"he should not insist on pursuing this case with the Surinamese authorities because it [was] dangerous."*

4. By note of December 21, 1988, the Commission requested the Government to provide information regarding the circumstances surrounding the death of Mr. Asok Gangaram Panday and granted it 90 days in which to do so. Among other things, the Commission asked for copies of all the findings of the various autopsies and for the *post mortem* and pathological reports on the case. Later, on February 6, 1989, the Commission transmitted the full text of the petition to the Government.

5. On May 3, 1989, the Commission received a reply to its communications of December 21, 1988, and February 6, 1989, in the form of a note from the Government dated May 2, 1989. In it, the Minister of Justice and Police stated that, on November 5, 1988, Asok Gangaram Panday had indeed, *"been taken by the Military Police to a building for displaced persons (sic) at the Zanderij Airport."* The letter went on to say:

a. That after Attorney Gangaram Panday, the victim's brother, had reported what had happened, the Attorney General *"ordered an autopsy, and the Judge-Advocate, together with Attorney Gangaram Panday, were able to visit the morgue and witness the autopsy."*

b. That, according to the Government's note of May 2, 1989, *"an autopsy report was drawn up, in which the anatomical pathologist came to the conclusion that it was a case of suicide. That conclusion was transmitted to the deceased's brother, Attorney Gangaram Panday."* The note also stated that a copy of the autopsy report had not been requested and that

the Department of Technical and Criminal Investigations and the Department of Identifications prepared a report exploring the possibility that ASOK GANGARAM PANDAY might have hanged himself with his belt, a fact confirmed by the officer in charge of the investigation. (Capital letters in the original)

Finally, the note indicated that the Attorney General

consider[ed] it important to look into the possibility that the Military Police officer who arrested ASOK GANGARAM PANDAY might be guilty of unlawful deprivation of liberty or illegal detention and [that he] had ordered the Judge-Advocate to summon the Military Police officer to appear before the Military Court. (Capital letters in the original)

6. According to the application filed by the Commission with the Court, the petitioner's representative before the Commission, Professor Claudio Grossman, requested a hearing with the Commission on September 14, 1989. The hearing was held that same month, during the Commission's 76th Regular Session. In the course of the hearing, Prof. Grossman reiterated the nature of the petition and requested a friendly settlement. Although Professor Grossman met with the Minister of Foreign Affairs of Suriname in November, 1989, in the presence of Dr. David Padilla, no friendly settlement could be reached in this case.

7. In a letter dated January 29, 1990, which is transcribed in the Commission's Report No. 04/90 of May 14, 1990, attached to the petition, the petitioner reported that certain members of the Military Police of his acquaintance had asserted that

Asok was tortured in Fort Zeeland, not at Zanderij, [but] they are afraid to testify, and he also knows certain people in the morgue who contend that Asok died before the date stated in the official report [ . . . ] [that he

I

1. The instant case was brought to the Inter-American Court of Human Rights (hereinafter "the Court") by the Commission on August 27, 1990. It originated in Petition No. 10.274 against Suriname which was submitted to the Commission on December 17, 1988.

2. In filing the application, 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, charging Suriname with the violation of the following articles of the Convention, committed against Mr. Choramoenipersad Gangaram Panday (also known as Asok Gangaram Panday): Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4(1) (Right to Life), 5(1) and (2) (Right to Humane Treatment), 7(1), (2) and (3) (Right to Personal Liberty) and 25(1) and (2) (Right to Judicial Protection). The Commission asked the Court "to decide 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. 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 deceased's brother, Mr. Leo Gangaram Panday, and is summarized below by the Court:

a. Mr. Asok Gangaram Panday was detained by the Military Police when he arrived at Zanderij Airport on Saturday, November 5, 1988, at 20:00 hours. Mr. Leo Gangaram Panday stated that he saw, "the Military Police leading him to a room. His wife, Dropati, was with me and also saw him in police custody."

b. On Sunday, November 6, Leo Gangaram Panday made repeated calls to the Military Police at the airport. At 16:30 hours, the commanding officer told him that his brother "was going to be transferred that night to Fort Zeeland, [because he was under arrest for] having been expelled from Holland." After repeated, fruitless calls, the Military Police at Fort Zeeland informed the petitioner on Tuesday, the eighth, that his brother had hanged himself.

c. Leo Gangaram Panday and his lawyer, Geeta Gangaram Panday, went to see Attorney General Reeder, who knew nothing of the case. They all then proceeded to the morgue, along with Mr. Freitas, the Military Judge Advocate. At the morgue, they found the body of Asok Gangaram Panday, which was, "naked except for his underwear. The body presented hematomas on the chest and stomach and an orifice in the back. One of the eyes was black and blue and there was a cut on one lip. The hematomas were large [ . . . ] [The body] had a short belt around its neck."

d. The petition went on to say that

[t]he first autopsy report found that he had committed suicide. The report of the second autopsy stated that he had died as a result of asphyxia, but that it was impossible to ascribe responsibility for the death. The third autopsy concluded that the death had been caused by violence.

e. The petitioner took a videotape of the body in the morgue before it was cremated. He asserts that when the underwear was removed from the body they saw, "that his testicles had been crushed."

## **APPENDIX I**

### **INTER-AMERICAN COURT OF HUMAN RIGHTS**

#### **GANGARAM PANDAY CASE**

#### **JUDGMENT OF JANUARY 21, 1994**

In the case of Gangaram Panday,

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

Rafael Nieto-Navia, President  
Sonia Picado-Sotela, Vice-President  
Héctor Fix-Zamudio, Judge  
Alejandro Montiel-Argüello, Judge  
Hernán Salgado-Pesantes, Judge  
Asdrúbal Aguiar-Aranguren, Judge  
Antônio A. Cançado Trindade, *ad hoc* Judge;

also present:

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

Pursuant to Article 44(1) of the Rules of Procedure of the Court in force until July 31, 1991 (hereinafter "the Rules of Procedure"), which govern this case, enters the following judgment in the case brought by the Inter-American Commission on Human Rights (hereinafter "the Commission") against the State of Suriname (hereinafter "the Government" or "Suriname").



Judge Rafael Nieto-Navia (President), Judge Héctor Fix-Zamudio, member of the Permanent Commission, and Manuel E. Ventura-Robles, Secretary. Representing the Inter-American Commission were members Michael Feisman, Alvaro Tirado, John Donaldson, Claudio Grossman and Edith Márquez-Rodríguez, Executive Secretary. The purpose of the meeting was to discuss matters of mutual interest with a view to improving the operations of the inter-American system for the protection of human Rights. Among the specific issues considered were the implications of Advisory Opinion OC-13/93 on the handling of individual cases; matters relating to the provisional measures that the Commission submits for consideration by the Court and the contentious cases currently before the Court.

#### **I Canadian Government Grant to the Court**

On January 11, 1994, the Government of Canada donated the sum of CND \$30,000 (thirty thousand Canadian dollars) to the Inter-American Court of Human Rights to carry out the project entitled "Preparation of Preliminary Studies and a Draft Plan for the Construction of the Court's New Building."

The resources donated enabled the Court to complete the above project and carry out the preliminary studies and draft plans for the construction of a new building to be erected next to the premises presently occupied by the Court. Space in the current facilities has become too restricted to enable the institution to perform its functions satisfactorily.

#### **J European Union Grant to the Court**

On July 7, 1994, the European Union (EU) approved the sum of ECU 130,000 (one hundred thirty thousand ECUs) for a project entitled "Support to the Inter-American Court of Human Rights", to be carried out at the seat of the Court. The aim of the project is to strengthen the inter-American system for the protection of Human Rights by providing support to the Court, its only judicial organ, through the development of an appropriate system for dissemination of its case law, the provision of a modern information and electronic communications system, and the strengthening of the Library of the Court.

This nine-month project has enabled the Court to bring the publication of its Series A (Advisory Opinions) and C (Judgments in Contentious Cases) up to date. Three Series D publications (Principal Procedural Documents Relating to Contentious Cases) were also completed, as was a book commemorating the 15th anniversary of the installation of the Court in San José, Costa Rica, the 25th anniversary of the signing of the American Convention, and the 35th anniversary of the establishment of the Inter-American Commission. In addition, there are plans to equip the Library with modern technology systems capable of systematizing, processing and providing rapid access to its existing bibliographical holdings. The Court's periodic publications were also renewed for five years.

#### **II Audit of the Court's Accounts**

The outgoing President of the Court, Judge Rafael Nieto-Navia, ordered an external audit of the Court's accounts for the period from January 1 to December 31, 1994. The audit was conducted by Fernando Fumero & Asociados, S.C. and will be delivered in early January, 1995. The Secretariat of the Court was charged with transmitting the results of the audit to the General Secretariat.

- 5) Also orders the State of Suriname, as an act of reparation, to reopen the school located in Gujaba and staff it with teaching and administrative personnel so that it will function on a permanent basis as of 1994, and to make the medical dispensary already in place in that locality operational during that same year.
- 6) Decides that the Court shall supervise compliance with the reparations ordered before taking any steps to close the file on this case.
- 7) Decides that payment of costs shall not be ordered.

To date, the Court has received no official communication from the Government of Suriname regarding compliance with this judgment. Nevertheless, the Court has been informed by members of the Foundation established under the terms of the judgment that the Government of Suriname:

1. Deposited the sum of US\$3,853 in Dutch Florins as working capital for the Foundation's operations.
2. Deposited US\$134,990 as partial payment of the \$453,102 that it was ordered to pay in reparation to the injured parties.
3. That the balance of said reparations would be paid out in seven monthly installments.

The Court hereby requests the General Assembly to urge the Government of Suriname to report on the status of compliance with the judgment on reparations in the case of Aloeboetoe et al.

## **2. Case of Gangaram Panday v. Suriname**

By judgment of January 21, 1994, the Court decided the following in the case of Gangaram Panday:

4. Sets the amount that the State of Suriname must pay to the persons indicated in paragraph 70 of this judgment and as stipulated therein, at US\$10,000 (ten thousand dollars of the United States of America) or the equivalent amount in Dutch florins, payable within six months of the date of this judgment.
5. Decides that the Court shall supervise the payment of the indemnification ordered and shall only close the file thereafter.

To date, the Court has received no information whatsoever from the Government of Suriname regarding compliance with the above judgment. The Court, therefore, hereby requests the General Assembly to urge the State of Suriname to comply with the judgment of January 21, 1994, in the case of Gangaram Panday.

## **H. Meeting with the Inter-American Commission on Human Rights**

A meeting of the members of the Inter-American Court and Commission was held in the City of Miami, United States of America, on January 24 and 25, 1994. Present at the meeting in representation of the Court were

### **3. Maqueda Case**

On May 25, 1994, the Inter-American Commission submitted Case No. 11.086 for consideration by the Court. The case relates to the events that began on March 17, 1992, the date on which the Supreme Court of Justice of Argentina rejected the appeal filed by Guillermo José Maqueda to reverse the refusal of the Federal Court of Appeals of San Martín to grant his extraordinary appeal. Mr. Maqueda's appeal was directed against the judgment of that Federal Court, which sentenced him to ten years in prison on charges of being an accessory to aggravated criminal association and a secondary participant in the crimes of rebellion and usurpation, among others. (Appendix XIII).

The Commission appointed Professor Michael Reisman as its Delegate, while the Government of Argentina named Ambassador Orlando Enrique Sella to serve as its interim Agent.

### **C. The Status of Compliance with Two Judgments of the Court**

Article 65 of the Convention provides that:

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Fursuant to the above provision of the Convention, the Court reports the following in connection with the cases of Aloeboetoe et al. v. Suriname and Gangaram Panday v. Suriname:

#### **1. Case of Aloeboetoe et al. v. Suriname**

In its judgment of September 10, 1993, the Court decided the following with regard to reparations in the case of Aloeboetoe et al.:

- 1) Sets reparations at US\$453,102 (four hundreds fifty-three thousand one hundred two dollars), or the equivalent amount in Dutch Florins, to be paid by the State of Suriname before April 1, 1994, to the persons listed in paragraph 98 or their heirs, under the terms of paragraph 99.
- 2) Orders the creation of two trust funds and the establishment of a Foundation, as contemplated in paragraphs 100 to 108.
- 3) Determines that Suriname shall not restrict or tax the activities of the Foundation or the administration of the trust funds beyond current levels, nor shall it modify any conditions currently in force, except in ways that would be favorable to these entities, nor interfere in the decisions of the Foundation.
- 4) Orders the State of Suriname to make a one-time contribution to the Foundation for its operations, payable within 30 days of its establishment, in the amount of US\$ 4,000 (four thousand dollars), or its equivalent in local currency at the free market rate of exchange in force at the time of payment.

## **2. Approval of the Court's 1995 Budget**

The Assembly approved the Court's budget for 1995 and increased it by 15.86%.

## **3. Election of three new judges to the Court**

During this session of the General Assembly, the States Parties to the American Convention elected three new judges to the Court, to fill the vacancies left by Judges Rafael Nieto-Navia (Colombia), Sonia Picado-Sotela (Costa Rica) and Asdrúbal Aguiar-Aranguren (Venezuela). The new judges, elected for a term of six years beginning January 1, 1995, are, in order of precedence as stated in Article 13(2) of the Rules: Oliver H. Jackman (Barbados), Alirio Abreu-Burelli (Venezuela) and Antônio Cançado Trindade (Brazil).

## **4. Meeting with the Inter-American Commission on Human Rights**

On June 8, 1994, during the OAS General Assembly, a meeting was held in the City of Belém do Pará, Brazil, between Judges Rafael Nieto-Navia (President), Héctor Fix-Zamudio, member of the Permanent Commission, and the Secretary of the Court, Manuel E. Ventura-Robles, and the following members of the Inter-American Commission: Patrick Robinson, Michael Reisman, Leo Valladares-Lanza, Edith Márquez-Rodríguez, the Executive Secretary of the Commission, and David J. Padilla, the Assistant Executive Secretary. The purpose of the meeting was to coordinate the work undertaken by both organs, particularly as it relates to the submission and processing of contentious cases before the Court.

## **F. Presentation of New Cases to the Court's Jurisdiction**

### **1. Genie Lacayo Case**

On January 6, 1994, the Inter-American Commission submitted Case No. 10.792 for consideration by the Court. The case refers to events which began on July 23, 1991, when, according to the Commission, agents of the State engaged in obstruction of justice in the matter involving the death of Jean Paul Genie Lacayo, which occurred in the City of Managua, Nicaragua, on October 28, 1990. (Appendix XI).

The Commission appointed Professor Michael Reisman to serve as its Delegate, while the Government of Nicaragua named Dr. José Antonio Tijerino-Medrano to be its Agent.

### **2. El Amparo Case**

On January 16, 1994, the Inter-American Commission submitted Case No. 10.602 for consideration by the Court. The case refers to events which began on October 29, 1988, the date on which 14 fishermen of the village of El Amparo were killed and two others injured in the "Canal La Colorada", an area on the Arauca River, District of Páez, State of Apure, Republic of Venezuela, by soldiers and police belonging to a special commando unit known as the "Comando Específico José Antonio Páez" (Appendix XII).

The Commission appointed Drs. Claudio Grossman and Oscar Luján Fappiano as its Delegates, while the Government of Venezuela named Dr. Ildegar Pérez-Segnini to serve as its Agent.

3. To urge the OAS member states that have not yet done so to ratify or accede to the American Convention on Human Rights "Pact of San José", and to accept the compulsory jurisdiction of the Inter-American Court of Human Rights
4. To provide the Inter-American Court of Human Rights with the support it needs to perform the high functions assigned to it in the American Convention on Human Rights.
5. To express to the Inter-American Court of Human Rights its recognition of the work done in 15 years of operation, and to urge it to continue performing its important work.

## **E XXIV Regular Session of the General Assembly of the OAS**

At the XXIV Regular Session of the General Assembly of the OAS, held in Belém do Pará, Brazil, from June 6 to 10, 1994, the Court was represented by its President, Judge Rafael Nieto-Navia, and by Judge Héctor Fix-Zamudio, member of the Permanent Commission. Also present was the Court's Secretary, Manuel E. Ventura-Robles.

### **1. Annual Report of the Court for the Year 1993**

The General Assembly adopted the following resolution with regard to the Annual Report of the Court for 1993:

1. To welcome and transmit to the Inter-American Court of Human Rights the Permanent Council's observations and recommendations on the annual report.
2. To thank the Government of Costa Rica for facilitating the acquisition by the Inter-American Court of Human Rights of the building it has occupied since June 1980 in San José, Costa Rica.
3. To urge the OAS member states that have not yet done so to ratify or accede to the American Convention on Human Rights "Pact of San José", and to accept the compulsory jurisdiction of the Inter-American Court of Human Rights.
4. To provide the Inter-American Court of Human Rights with the support it needs to perform the high functions assigned to it in the American Convention on Human Rights.
5. To express to the Inter-American Court of Human Rights its recognition of the work done in 15 years of operation, and to urge it to continue performing its important work.
6. To entrust the General Secretariat with the task of organizing, through its offices in the member states, seminars for publicizing the work being done by the Court and the Inter-American Commission on Human Rights in defending and promoting human rights.
7. To thank and congratulate Dr. Rafael Nieto Navia, President of the Inter-American Court of Human Rights, on the occasion of his imminent retirement after 12 consecutive years of work, for his outstanding and brilliant performance in human rights advocacy in the Hemisphere.

## **8. Other Matters**

In addition to taking up administrative and budgetary matters, ceremonies were held, on November 22, 1994, in commemoration of the 15th anniversary of the installation of the Inter-American Court in San José, Costa Rica, the 25th anniversary of the signing of the American Convention, and the 35th anniversary of the Inter-American Commission. As part of the celebrations, a reception was held, attended by the President of the Republic of Costa Rica, Mr. José María Figueres, the Secretary General of the Organization of American States, Mr. César Gaviria, and high Government officials and representatives of the Diplomatic Corps and international organizations.

### **D. Presentation of the Annual Report of the Court to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS**

From March 3 to 10, 1994, Judges Rafael Nieto-Navia, President, and Héctor Fix-Zamudio, member of the Permanent Commission, visited the headquarters of the OAS in Washington, D.C in the company of the Secretary of the Court, Manuel E. Ventura-Robles. The purpose of the visit was to present the Court's Annual Report to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS.

The Committee on Juridical and Political Affairs submitted the following recommendations to the Permanent Council of the OAS:

1. To take note, welcome and transmit to the Inter-American Court of Human Rights the observations and recommendations contained in this document.
2. To thank the Government of Costa Rica for facilitating the acquisition by the Inter-American Court of Human Rights of the building it has occupied since June 1980 in San José, Costa Rica.
3. To urge the OAS member states that have not yet done so to ratify or accede to the American Convention on Human Rights "Pact of San José", and to accept the jurisdiction of the Inter-American Court of Human Rights.
4. To provide the Inter-American Court of Human Rights with the support it needs to perform the high functions assigned to it in the American Convention on Human Rights.
5. To express to the Inter-American Court of Human Rights its recognition of the work carried out during the period covered by this report and to urge it to continue performing its important functions.

Based on the report presented by the Committee on Juridical and Political Affairs, the Permanent Council later adopted the following resolution for presentation to the General Assembly:

1. To welcome and transmit to the Inter-American Court of Human Rights the Permanent Council's observations and recommendations on the annual report.
2. To thank the Government of Costa Rica for facilitating the acquisition by the Inter-American Court of Human Rights of the building it has occupied since June 1980 in San José, Costa Rica

At the public hearing held on November 28, 1994, the Court heard the arguments of the Inter-American Commission and the Government of Guatemala regarding the provisional measures ordered by the Court to protect the lives and physical integrity of several witnesses, their family members and an attorney, in the Colotenango Case (No. 11.212) currently before the Commission. Subsequently, on December 1, 1994, the Court decided:

1. To extend the provisional measures adopted pursuant to the decision of June 22, 1994 on the Colotenango Case for a term of six months from today, and to expand them to include Mrs. Francisca Sales Martín.
2. To require the Government of Guatemala to use all the means at its disposal to enforce the arrest warrants issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango.
3. To request the Government of Guatemala to inform the Court every 90 days regarding the measures it has adopted to comply with this order.
4. To request the Commission to inform the Court of any fact or circumstance that it deems important to the implementation of such measures.
5. To instruct the Secretariat of the Court to transmit the information it receives from the Government of Guatemala to the Inter-American Commission on Human Rights in order that the latter may submit its observations to the Court within the following 30 days. Likewise, to transmit to the Government of Guatemala any reports it receives from the Commission in order to have the Government's observations within a similar period.
6. To request the Government and the Commission to urge the beneficiaries of the measures referred to in points 1 and 2 of the Court's decision of June 22, 1994, to cooperate with the Government in order to enable the latter to more efficiently adopt the relevant security measures.
7. Upon expiration of the extended deadline and unless the Court receives credible information that the circumstances of extreme gravity and urgency continue to prevail, the measures ordered by the Court shall cease to be in effect. (Appendix X)

## **6. Resignation of the President of the Court and Election of the Vice-President**

In order to expedite arrangements for the next Session of the Court, and in view of the fact that his mandate was due to expire on December 31, 1994, the President of the Court, Judge Rafael Nieto-Navia (Colombia), submitted his resignation to that position on December 9, 1994.

In accordance with Article 5 of the Rules of Procedure, Judge Héctor Fix-Zamudio (Mexico) assumed the Presidency of the Court for the remainder of the term to which Judge Nieto-Navia had been appointed. That term will expire on June 30, 1995. The Court elected Judge Hernán Salgado-Pesantes (Ecuador) to serve as Vice-President for that same period. Judges Alejandro Montiel-Argüello (Nicaragua) and Máximo Pacheco-Cómez (Chile) were appointed members of the Permanent Commission (Art. 6 of the Rules of Procedure).

## **7. Reelection of the Secretary of the Court**

The Secretary of the Court, Manuel E. Ventura-Robles, was reelected by the Court for a new five-year term, that begins January 1, 1995 and runs until December 31, 1999.

Although he was summoned by diverse means, the *ad hoc* judge of Peru, Jorge E. Orihuela-Iberico, did not attend the meetings on the case for which he had been appointed by the Government of Peru.

## **2. Genie Lacayo Case Against Nicaragua**

A public hearing was held on November 18, 1994 to hear the preliminary objections interposed by the Government of Nicaragua in the Genie Lacayo Case. After the hearing, the Court began examination of these preliminary objections.

## **3. Caballero Delgado and Santana Case Against Colombia**

Public hearings were held from November 28 to 30, 1994, to hear testimony on the merits of the case of Caballero Delgado and Santana v. Colombia. 14 witnesses testified and on December 1 the parties presented their pleadings regarding the evidence furnished. Prior thereto, an expert appointed by the Court had deposed a witness in Colombia in the presence of the parties. The witness in question was unable to travel to Costa Rica for health reasons.

Before issuing a judgment on the merits, the Court must decide whether or not it shall receive additional testimony requested by the Commission and the Government.

At the request of the Inter-American Commission (Appendix VI) and pursuant to Article 63(2) of the American Convention, the Court, on December 7, 1994, emitted a decision in this case, requiring the Government of Colombia to adopt provisional measures to protect the life and physical integrity of several witnesses (Appendix VII). The Government responded to this decision by note of December 8, 1994, received at Secretariat on December 12, 1994 (Appendix VIII).

## **4. Advisory Opinion OC-14/94**

At a public hearing held on December 9, 1994, the Court issued Advisory Opinion OC-14/94 entitled "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)." The Court unanimously decided as follows:

1. That the promulgation of a law in manifest conflict with the obligations assumed by a State upon ratifying or acceding to the Convention is a violation of that treaty. Furthermore, if such violation affects the protected rights and freedoms of specific individuals, it gives rise to international responsibility for the State in question.

2. That the enforcement by agents or officials of a State of a law that manifestly violates the Convention gives rise to international responsibility for the State in question. If the enforcement of the law as such constitutes an international crime, it will also subject the agents or officials who execute that law to international responsibility. (Appendix IX)

## **5. Provisional Measures Involving Guatemala (Colotenango Case)**



to a post that is incompatible with her functions as Judge of the Court. The Judges therefore accepted her resignation and expressed their best wishes on her appointment.

## **2. Election of the New Vice-President of the Court**

Judge Héctor Fix-Zamudio (Mexico) was elected to be the new Vice-President of the Court, to complete the term to which Judge Picado had been elected.

## **3. Request for Provisional Measures Involving Guatemala (Colotenango Case)**

The Court considered a request for provisional measures involving Guatemala which had been presented by the Inter-American Commission on June 20, 1994. In this request, the Commission asked the Court to order the Government to protect the life and physical integrity of several witnesses and one attorney, pursuant to Articles 63(2) of the American Convention, Article 76 of the Regulations of the Commission, and Articles 23 and 24 of the Rules of Procedure of the Court (Case No. 11.212 before the Commission) (Appendix IV).

As a result of this request, the Court, on June 22, 1994, emitted a decision requiring the Government of Guatemala to adopt without delay all necessary measures to protect the life and physical integrity of the persons identified by the Commission and gave it until August 31, 1994 to inform the Court of the measures adopted to comply with the decision. The Court also asked the Inter-American Commission to present its observations on those measures by October 7, 1994. In addition, it summoned the Inter-American Commission and the Government of Guatemala to a public hearing on the case, to be held on November 28, 1994 (Appendix V).

## **4. Other Matters**

Finally, administrative and budgetary matters were taken up during this special session.

## **C. XXX Regular Session of the Court**

The Court held its XXX Regular Session from November 16 to December 11, 1994, at its seat. The following judges attended this session: Rafael Nieto-Navia, President (Colombia); Héctor Fix-Zamudio, Vice-President (Mexico); Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco-Gómez (Chile); Hernán Salgado-Pesantes (Ecuador). Also present were Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary.

### **1. Neira Alegria et al. Case Against Perú**

The judges examined this case and proceeded to decide and draft its judgment, leaving only the final signatures and public reading pending. This case will be taken up again during the XVI Special Session of the Court, to be held from January 19 to 27, 1995.

Government of Colombia and decided to proceed with its consideration of the case (Appendix II).

### **3. Provisional Measures Against Argentina**

In view of the compliance by the Government of the Republic of Argentina with the order of the President *ad hoc* of November 19, 1993, the Court decided that it was not necessary to act on the request for provisional measures presented by the Inter-American Commission in the case of Reggiardo-Tolosa and ordered the matter to be struck from the docket (Appendix III).

### **4. Advisory Opinion OC-14**

At this session, the Court began to review the request for Advisory Opinion OC-14 presented by the Inter-American Commission regarding the interpretation of paragraphs 2 (*in fine*) and 3 of Article 4 (Right to Life) of the American Convention. A public hearing was held on January 21, 1994, at which oral arguments were presented by the Inter-American Commission on Human Rights, the Government of Perú, Americas Watch and the Center for Justice and International Law (CEJIL).

### **5. Other Matters**

A formal ceremony took place at the seat of the Court on January 14, 1994, at which the Court received the President of the Republic of Costa Rica, Licenciado Rafael Angel Calderón-Fournier, high officials of the Government, the Diplomatic Corps and representatives of international organizations. The purpose of the ceremony was to express the Court's gratitude for a donation made by the Government of Costa Rica to enable the Tribunal to purchase the premises that it now occupies.

Lastly, the Court approved its 1993 Annual Report to the OAS General Assembly and dealt with various administrative matters.

## **B. XV Special Session of the Court**

The Court held its XV Special Session from June 19 to 22, 1994 and was composed as follows: Rafael Nieto-Narváez, President (Colombia); Héctor Fix-Zamudio, Vice-President (Mexico); Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco-Gómez (Chile) and Hernán Salgado-Pesantes (Ecuador). Also present were the Secretary and Deputy Secretary of the Court, Manuel E. Ventura-Robles and Ana María Reina.

### **1. Resignation of Judge Sonia Picado-Sotela**

At this session, the Court received and accepted the resignation of Licenciada Sonia Picado-Sotela (Costa Rica) from her position as Judge and Vice-President of the Court. Judge Picado was appointed by her Government

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 Commission. These ties have been strengthened by meetings between the members of the two bodies, held at the recommendation of the General Assembly. 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. From time to time, the Court holds working sessions with the European Court of Human Rights, which was established by the Council of Europe with functions similar to those of the Inter-American Court.

## **II. ACTIVITIES OF THE COURT**

### **A. XXIX Regular Session of the Court**

The Court held its XXIX Regular Session from January 10 to 21, 1994, at its seat in San José, Costa Rica. The Court was composed as follows: Rafael Nieto-Navia, President (Colombia); Sonia Picado-Sotela, Vice-President (Costa Rica); Héctor Fix-Zamudio (Mexico); Alejandro Montiel-Argüello (Nicaragua); Hernán S. Igado-Pesantes (Ecuador) and Asdrúbal Aguiar-Aranguren (Venezuela). Judge *ad hoc* Antônio A. Cançado Trindade also participated to the extent of his mandate (Gangaram Panday Case). Also present were the Secretary, Manuel E. Ventura-Robles, and Deputy-Secretary, Ana María Reina.

#### **1. Gangaram Panday Case**

During this session, on January 21, 1994, the Tribunal issued its judgment on the merits of the Gangaram Panday Case. The Court found Suriname liable for the violation of Article 7(2) of the Convention in connection with Article 1(1) of that treaty and fixed compensation at US\$10,000 (ten thousand dollars of the United States of America) or the equivalent amount in Dutch florins, payable within six months of the date of the judgment. The Court dismissed the Commission's request that it find the State of Suriname responsible for the violation of Articles 4(1), 5(1), 5(2), 25(1) and 25(2) of the Convention (Appendix I).

#### **2. Caballero Delgado and Santana Case**

On January 21, 1994, the Court also issued a judgment regarding preliminary objections in the case of Caballero Delgado and Santana. The Court rejected the preliminary objections interposed by the

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 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 of the Convention.) Moreover, *"[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."* (Article 68 of the Convention.)

The Court submits a report on its work to each regular session of the OAS General Assembly, and it *"shall specify, in particular, the cases in which a state has not complied with its judgments."* (Article 65 of the Convention.)

## **2. The Court's Advisory Jurisdiction**

Article 64 of the Convention 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.

The 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.

Like wise, the advisory jurisdiction of the Court 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 within their spheres of competence.

## **3. Recognition of the Jurisdiction of the Court**

Sixteen States Parties have now recognized the contentious jurisdiction of the Court. They are: Costa Rica, Peru, Venezuela, Honduras, Ecuador, Argentina, Uruguay, Colombia, Guatemala, Suriname, Panama, Chile, Nicaragua, Trinidad and Tobago, Paraguay and Bolivia.

A table showing the status of ratifications and accessions to the Convention may be found at the end of this report. (Appendix XIV)

## **E. Budget**

Article 72 of the Convention provides that *"the Court shall draw up its own budget and submit it for approval*

## **D. Jurisdictions of the Court**

The Convention gives the Court contentious and advisory functions. The first function 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, "*only 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 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.

case, any other State Party to the case may appoint a person to serve on the Court as an ad hoc judge. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an ad hoc judge. (Article 10(1), 10(2) and 10(3) of the Statute.)

States parties to a case are represented in the proceedings before the Court by the Agents they designate. (Article 21 of the Rules of Procedure.)

The judges are at the disposal of the Court and hold two regular sessions a year. They may also meet in special sessions when convoked by the President of the Court (hereinafter "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.)

The President and Vice-President are elected by the judges for a period of two years and 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 third 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 of Procedure.)

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

### **C. Composition of the Court**

As of December 9, 1994, the composition of the Court was as follows, in order of precedence:

Rafael Nieto-Navia (Colombia), President  
Héctor Fix-Zamudio (Mexico), Vice-President  
Alejandro Montiel-Argüello (Nicaragua)  
Máximo Pacheco-Gómez (Chile)  
Hernán Salgado-Pesantes (Ecuador)

---

The Judge Asdrúbal Aguiar-Aranguren (Venezuela), who was to complete his term on December 31, 1994, left the Court on February 2, 1994 after having accepted a position that is incompatible with that of the Court.

The Judge Sonia Picado-Sotela (Costa Rica), Vice-President of the Court, who was to complete her term on December 31, 1994, resigned her position as Judge on June 16, 1994 for having accepted a position that is incompatible with that of the Court.

On December 9, 1994, Judge Rafael Nieto-Navia (Colombia) resigned the Presidency of the Court, which was assumed by Judge Héctor Fix-Zamudio (Mexico). Also on this same date, Judge Hernán Salgado-Pesantes (Ecuador) was elected Vice-President. (See *infra* C.6).

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

## I. ORIGIN, STRUCTURE AND JURISDICTIONS OF THE COURT

### A. Creation of the Court

The Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") was brought into being by the entry into force of the American Convention on Human Rights "Pact of San José, Costa Rica" (hereinafter "the Convention" or "the American Convention"), which occurred on July 13, 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" or "the Inter-American 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 are elected by the States Parties to the Convention for a term of six years. The election is by secret ballot and by an absolute majority vote in the OAS General Assembly immediately prior to the expiration of the terms of the outgoing judges. Vacancies on the Court caused by death, permanent disability, resignation or dismissal, shall be filled, if possible, at the next session of the OAS General Assembly. (Article 6(1) and 6(2) of the Statute.) Judges whose terms have expired shall continue to serve with regard to cases that they have begun to hear and that are still pending. (Article 54(3) of the Convention.)

If necessary in order to preserve a quorum of the Court, one or more interim judges may be appointed by the States Parties to the Convention. (Article 6(3) of the Statute.)

If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case. If one of the judges called upon to hear a case is a national of one of the States Parties to the

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