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INFORMATION SUBMITTED IN ACCORDANCE WITH ECONOMIC AND SOCIAL
COUNCIL RESOLUTION 1159 (XLI) REGARDING CO-OPERATION WITH
REGIONAL INTERGOVERNMENTAL BODIES CONCERNED WITH HUMAN RIGHTS

Note by the Secretary-General

At its forty-first session, the Economic and Social Council adopted resolution 1159 (XLI) ^{1/} regarding co-operation with regional intergovernmental bodies concerned with human rights. Under the terms of this resolution, the Council, desiring to make use of all possible information and experience to advance the realization of human rights and fundamental freedoms for all without distinctions as to race, sex, colour or religion, inter alia, invited the Secretary-General to arrange for the exchange of information on matters relating to human rights between the Commission and the Council of Europe, the Inter-American Commission on Human Rights, the Organization of African Unity, the League of Arab States and other regional intergovernmental organizations particularly concerned with human rights.

The present note contains a communication received from the Inter-American Commission on Human Rights in response to the Secretary-General's request for information within the framework of the exchange provided for in the resolution.

^{1/} The resolution was adopted at the 1445th plenary meeting of the Council on 5 August 1966.

ORGANIZATION OF AMERICAN STATES

Inter-American Commission on Human Rights



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ANNUAL REPORT
OF THE
INTER-AMERICAN
COMMISSION ON HUMAN
RIGHTS

1980-1981

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

1981

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INTRODUCTION

The Inter-American Commission on Human Rights (IACHR) has the honor to submit its Report to the General Assembly, in compliance with the provisions of Article 52, f of the Charter of the Organization of American States.

This report contains five chapters and has been prepared in accordance with Resolution 331 (VIII-0/80) of the General Assembly and Article 59 of the new Regulations of the Commission.

Chapter I is a brief summary of the Commission's origin and juridical bases. It also contains the discussion of the development of the Commission as an organ of the inter-American system. Likewise, the chapter contains a brief account of the Commission's relationship with other organs of the inter-American system and regional and global institutions of a similar nature, during 1980 and 1981.

Chapter II refers to the activities undertaken by the Commission during the period covered by this Report. Along this line, emphasis is placed on the Commission's principal activities, as well as the subjects it dealt with and important measures adopted during the sessions held over the two years. In addition, it includes a summary version of the observation in loco carried out in Nicaragua, the participation by the Commission in the Tenth Regular Session of the General Assembly, and the resolutions adopted by this body concerning the work of the Commission in the field of human rights.

Chapter III is entitled "Observations the Commission considers to be appropriate on the communications it has received." This chapter contains several resolutions adopted by the IACHR regarding specific cases presented to it, which the Commission processed in accordance with its Regulations.

Chapter IV is entitled "Information provided by certain governments of the member states of the OAS on the progress made in achieving the objectives set forth in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights." This chapter contains the legislative measures on human rights enacted in five member states during the period covered in this Report. These countries are: Brazil, Ecuador, Honduras, Uruguay and Venezuela. It should be noted here that in order to undertake preparation of this report, the Commission addressed the government of the member states of the Organization at the appropriate time to request that they provide it with information on the progressive measures adopted and the texts of the legislation enacted and of the jurisprudence and administrative acts

issued during the period covered by this Report regarding the promotion and defense of those human rights recognize in the pertinent multilateral juridical instruments of the OAS.

Chapter V deals with the "General situation of human rights in the member states of the OAS and areas in which further steps are needed to give effect to the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights." It should be pointed out that in adopting the criteria contained in this chapter, the Commission feels that it complies with Resolution 510 of the Tenth General Assembly of the OAS, by considering in a general manner specific problems which have occurred during the period covered by this Report.

Finally, the Commission would like to note that this report covers those events which occurred between the adoption of its previous annual report presented to the Tenth General Assembly held in Washington during the month of November of 1980, and the beginning of the 54th regular session of the Commission, on October 8, 1981.

CHAPTER I
ORIGIN AND LEGAL BASES OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

ORIGIN AND LEGAL BASES OF THE IACHR

The Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, 1959), established in its resolution on human rights an Inter-American Commission on Human Rights charged with "furthering respect for such rights."

The Council approved the Statute of the Commission on May 26, 1960, and elected its seven members on June 29 of that year.

Subsequently, on February 27, 1967, in Buenos Aires, Argentina, the Protocol of Amendment to the OAS Charter was signed, which established in Article 112 an Inter-American Commission on Human Rights with the primary function of promoting the observance and protection of human rights and serving as an OAS consultative organ in that field. In addition, it raised the Commission's rank to that of a principal organ of the OAS (Art. 51), and provided that an Inter-American Convention on Human Rights was to determine the structure, competence and procedures of the Commission (Art. 112, last part). It also provided that during the period between the entry into force of the protocol and the entry into force of the convention, the IACHR established by the Fifth Meeting of Consultation "shall keep vigilance over the observance of human rights" (Art. 150).

On November 22, 1969, the American Convention of Human Rights was signed in San José, Costa Rica, and entered into force almost nine years later on July 18, 1979, when the eleventh instrument of ratification was deposited by member state Grenada. At the time of adoption of this report, the Convention was signed by 16 state parties: Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, and Venezuela.

At its Ninth Regular Session (La Paz, Bolivia, October 1979), the General Assembly approved the new Statute for the Commission. In consonance with Article 112 of the OAS Charter, which established it, Article 1 defines it as "an organ... created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter."

At its 49th session (April 1980), the Inter-American Commission on Human Rights also adopted new Regulations, consisting of four titles, divided into chapters and articles.

The Commission wishes to point out that a more detailed explanation of its origin and legal bases, and the text of the instruments governing it, can be found in the document "Handbook of Existing Rules Pertaining to Human Rights" (OEA/Ser.L/V/II.50, doc.6, July 1, 1980).

RELATIONS WITH OTHER AGENCIES OF THE SYSTEM AND WITH
REGIONAL AND WORLD AGENCIES OF THE SAME TYPE

In 1980/81, the Commission continued to maintain cooperative relations with the Inter-American Commission of Women, the Inter-American Children's Institute and the Inter-American Indian Institute. Each of these OAS specialized organs has competence in the human rights field according to its purposes and objectives. Through an exchange of documents and information, the Commission's relations with these agencies and with the United Nations Commission on Human Rights and the European Commission on Human Rights were intensified.

CHAPTER II

ACTIVITIES OF THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS

ACTIVITIES OF THE IACHR

Starting in October 1980, the Inter-American Commission on Human Rights held five sessions: the fiftieth, the fifty-first, the fifty-second, the fifty-third and the fifty fourth.

Those sessions were held at Commission headquarters, the General Secretariat of the Organization of American States, Washington, D.C.

As indicated in the summary given in this chapter on each of these sessions, the Commission reviewed and made decisions on a number of topics on the session agenda and took up other topics as required by specific circumstances.

The inaugural meeting of each of the five sessions was opened by the OAS Secretary General and by the President of the OAS Council, who placed on record the fruitful work carried out by the Commission and expressed their hopes that it would continue to be successful in its difficult and meritorious work.

At each session, the Chairman and the Executive Secretary of the Commission gave their reports.

Starting in October 1980, the Commission, as indicated in this chapter, carried out other activities connected with the promotion and observance of human rights.

A. 50th Session

This session of the Commission began on September 29, 1980, and ended on October 4 of that year. The following members attended: Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, First Vice Chairman; Francisco Bertrand Galindo, Second Vice Chairman; Carlos A. Dunshee de Abranches; Luis Demetrio Tinoco Castro; and César Sepúlveda.

At the session the Commission took up a number of important topics in the field of promotion and defense of human rights. Those topics included:

1. Adoption of the annual report, which was transmitted through the OAS Secretary General to the governments of the member countries for consideration at the Tenth Regular Session of the OAS General Assembly. In that document, the Commission reviewed the status of human rights in a number of countries and indicated specific measures to be taken to achieve political participation and the observance of economic, social and cultural rights in the hemisphere.

2. Consideration of the preparation and organization of an on site observation visit in Nicaragua to review the status of human rights in that country. The observation visit was conducted at the invitation of the Nicaraguan Government of National Reconstruction and took place October 6-11, 1980.

3. Review of the findings of the on-site observations visit in Colombia in April 1980, which culminated with the freeing of the hostages held in the Dominican Republic Embassy in Bogotá. In addition, the Commission took cognizance of the preliminary studies for the report on the status of human rights in that country; and the activities carried out by the Commission in connection with the observation of the oral court-martial in Colombia, on the basis of the agreement concluded between the Colombian Government and the Commission in April 1980.

4. Consideration of the status of human rights in Guatemala. The Commission regretted that the Government of that country decided to postpone setting a date for the on-site observation visit to Guatemala, it had invited in January 1980. Nonetheless, the Commission stated that it was confident that a specific date could be set for its visit, which it felt would help to achieve a more precise appraisal of the Guatemalan human rights situation.

5. Consideration of the status of human rights in Bolivia. The Commission deplored the fact that the Government of that country has not responded to the note sent to it on August 8, 1980, requesting various information on the observance of human rights, and it requested the Government's approval to conduct an on-site observation visit in accordance with the commission's regulations. The note was sent by the Commission pursuant to OAS Permanent Council, Resolution CP/RES. 308 (432/80).

6. Consideration of the status of human rights in other countries. A number of specific aspects in this field were reviewed in the United States, Cuba, Paraguay, and Chile.

7. Consideration and adoption of administrative and promotion of human rights measures. Hearings were held for persons and institutions that previously had requested them.

8. Consideration of the Commission's participation in the Inter-American Institute of Human Rights headquartered in Costa Rica; and in the Tenth Inter-American Congress on Philosophy, (October 1981 in Tallahassee), organized by the Inter-American Society of Philosophy and the University of Florida (U.S.).

B. On-site observation in Nicaragua

As stated in the previous paragraph, the Commission conducted an on-site observation visit October 6-11, 1980, in Nicaragua, in response to the invitation from the Government of National Reconstruction of that country.

The visit was announced by the Commission in a press release of September 15, 1980; and in a press release of October 11, of that year, it announced publicly the activities carried out in Nicaraguan territory.

In communication 074 of December 3, 1979, of the Ministry of Foreign Affairs, the Government of Nicaragua formalized its invitation for the Commission to visit that country. Consequently, at its 50th Session, the Commission made preparations for the visit, and designated a Special Commission for the on-site observation, composed of the following members: Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, and Francisco Bertrand Galindo, Vice Chairmen; Carlos A. Dunshee de Abranches; Luis Demetrio Tinoco Castro; and César Sepúlveda, assisted by professional and administrative staff of the Commission Secretariat.

During its stay in Nicaragua, the Commission interviewed members of the Government Board of National Reconstruction, the Council of State, and the Sandinista National Liberation Front, the National Commission on Promotion and Protection of Human Rights, the Supreme Court of Justice and the Special Courts; the Ministers of Foreign Affairs, of the Interior, and of Justice; and other civil and military officials, of both the national and departmental governments. The Nicaraguan Government provided the Commission with the necessary facilities for carrying out its task.

In addition, the Commission met with the President of the Nicaraguan Red Cross, the President of the Episcopal Conference of Nicaragua, leaders of the Permanent Commission on Human Rights, representatives of a number of political, religious, scientific, humanitarian, professional, business, and union organizations, and various press media. All of these persons and entities provided the Commission with important testimony on the human rights situation in Nicaragua.

The Commission also visited a number of detention centers, and heard testimony from many of the prisoners. These centers are the "Jorge Navarro" penitentiary, the former "Model" jail; the former "Héroes y Mártires de Nueva Guinea" jail of the "Zona Franca"; the centers of "Palo Alto", of the state security centers in El Chipot in the "Germán Pomares" military complex, in the city of Managua; the "Orlando Betancourt" jail and the "Carlos Amaya Talamante" command post in the Department of León; the "José L. Enriquez" jail previously known as "La Pólvora" and the "Ruth Rodríguez" women's jail in the city of Granada; the "Benjamin Zeledón" detention center of Cayotepe, which is now without prisoners, in the city of Masaya; and the "Juan José Quezada" detention center of Jinotepe in the Department of Carazo.

During its stay in Nicaragua, the Commission received complaints about alleged human rights violations to be handled pursuant to its Statute and Regulations. It also operated a permanent office in the Hotel Camino Real of Managua for receipt of complaints. The Government of National Reconstruction reiterated to the Commission its decision not to take any kind of reprisals against persons making complaints and persons and entities providing testimony and information or cooperating with the Commission.

Because it regards the matter as important and urgent, the Commission delivered to the Government of National Reconstruction on the day it completed its on-site observation a document containing recommendations for improving the status of human rights in the country.

C. 51st Session

This session was conducted by the Commission starting November 17, 1980, and ended on November 26. The following members participated: Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, First Vice Chairman; Francisco Bertrand Galindo, Second Vice Chairman; Carlos A. Dunshee de Abranches; Andrés Aguilar; and César Sepúlveda.

On accordance with its agenda, the Commission carried out a number of activities and reviewed several matters concerning the observance and protection of human rights. Those activities and subjects include the following:

1. It reviewed the status of human rights in Colombia, Nicaragua, Guatemala, and Bolivia, and formulated guidelines for preparing human rights reports in those countries.

2. It considered the prevailing situation in the human rights field in El Salvador, and in light of that situation, the possibility of conducting an on-site observation visit in that country. Within the context of that situation, it received in plenary session the Salvadoran Minister of Foreign Affairs, Lic. Fidel Chávez Mena.

3. It reviewed the human rights situation in other countries. In that connection, it took up particular aspects of the human rights question in the United States, Uruguay, Cuba, Chile, Haiti, Grenada and Jamaica.

4. It held interviews and hearings with persons and institutions requesting them. Among the hearings were those with Adolfo Pérez Esquivel, an Argentine who won the 1980 Nobel Peace Prize, and with leaders of the Latin American Association of Human Rights, headquartered in Quito, Ecuador.

D. Tenth Regular Session of the General Assembly of the Organization of American States

While the Commission was holding its 51st session, the Tenth Regular Session of the OAS General Assembly was held in Washington, D.C., at the General Secretariat headquarters.

At the Eleventh Regular Session of the General Assembly, the Commission was represented by its Chairman, Professor Tom J. Farer; its First and Second Vice Chairman, Drs. Marco Gerardo Monroy Cabra and Francisco Bertrand Galindo, respectively; by Professor Carlos A. Dunshee de Abranches; and by Drs. Andrés Aguilar and César Sepúlveda.

The following General Assembly topics were connected with the Commission:

- a) Election of three Commission members;
- b) Annual report and special reports of the Commission;
- c) Annual report of the Inter-American Court of Human Rights;
- d) Draft convention defining torture as an international crime;
- e) Follow-up on the human rights situation in Bolivia; and
- f) Amendments to specified articles of the Commission's statute.

The General Assembly elected three Commission members, and re-elected Drs. Andrés Aguilar, Luis Demetrio Tinoco Castro, and César Sepúlveda, who had completed their terms.

At its Eleventh Regular Session, The General Assembly adopted the following human rights resolutions, whose texts are given below:

AG/RES. 484 (X-0/80)
FOLLOW UP OF THE SITUATION OF HUMAN RIGHTS IN BOLIVIA

(Resolution adopted at sixth plenary session,
held on November 27, 1980)

WHEREAS:

The Permanent Council of this Organization adopted resolution CP/RES. 308 (432/80),

THE GENERAL ASSEMBLY,

RESOLVES:

1. To endorse resolution CP/RES. 308 (432/80) of July 25, 1980, whereby the Permanent Council of the Organization of American States resolved to deplore the military coup in Bolivia, which indefinitely suspended the process of democratic institutionalization that was culminating in that sister Republic.

2. To repeat the request to the Inter-American Commission on Human Rights that, in the shortest time possible, it prepare a report on the situation of human rights in Bolivia; to be considered by the competent organ of the regional system.

AG/RES. 508 (X-0/80)
AMENDMENTS TO ARTICLES 6 AND 8 OF THE STATUTE OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

(Resolution adopted at sixth session
held on November 27, 1980)

THE GENERAL ASSEMBLY,

CONSIDERING:

That through resolution AG/RES. 327 (VIII-0/78), adopted by the General Assembly in 1978, it resolved to hold its regular sessions preferably during the fourth quarter of each year, and decided to standardize the starting dates of the terms of office of the members of the organs, agencies, and entities of the Organization who must be elected by the Assembly;

That, further, the General Assembly, through resolution AG/RES. 447 (IX-0/79), instructed the Permanent Council to study the standards and procedures on incompatibilities that should be incorporated into Article 8 of the Statute of the Inter-American Commission on Human Rights, and

HAVING SEEN:

The informational document on "Background Material on the General Assembly's decision to standardize the Starting Dates of the Terms of Office of the Members of Various Organs of the OAS" (AG/CP/Sub.-T-50/80), which deals with the amendment to Article 6 of the Statute of the Commission; and

Resolution CP/RES. 320 (442/80) "Standards and Procedures on Incompatibility - Article 8 of the Statute of the Inter-American Commission on Human Rights" adopted by the Permanent Council on November 14, 1980 and included in document AG/doc.1269/80),

RESOLVES:

1. To amend Article 6 of the Statute of the Inter-American Commission on Human Rights to read as follows:

Article 6. The members of the Commission shall be elected for a term of four years and may be reelected only once. Their terms of office shall begin on January 1 of the year following the year in which they are elected.

2. To extend the terms of office of the members of the Inter-American Commission on Human Rights elected during this regular session, as well as the terms of the present members, that do not expire until May 21, 1981, to December 31 of the year in which they were due to end.

3. Likewise to amend Article 8 of the Statute of the Commission as follows:

Article 8

1. Membership of the Inter-American Commission on Human Rights is incompatible with the exercise of any functions that might affect the independence, or impartiality of a member, or the dignity or prestige of his post on the Commission.

2. The Commission shall consider any case that may arise regarding incompatibility in the light of the provisions of the first paragraph of this Article, and in accordance with the procedures provided for in its rules of procedures.

If on the basis of an affirmative vote of no fewer than five of its members, the Commission determines that a case of incompatibility exists, it shall submit the case, together with its antecedents, to the General Assembly, which shall rule thereon.

3. A declaration of incompatibility by the General Assembly shall be adopted by a majority of two-thirds of the member states of the Organization and shall occasion the immediate removal of the member of the Commission from his post, but it shall not invalidate any actions in which he may have participated.

AG/RES.509 (X-0/80)

DRAFT CONVENTION DEFINING TORTURE AS AN INTERNATIONAL CRIME

(Resolution adopted at its sixth plenary session,
held on November 27, 1980)

THE GENERAL ASSEMBLY,

HAVING SEEN resolution AG/RES. 368 (VIII-0/78) under which the Inter-American Juridical Committee was requested to draw up, in conjunction with the Inter-American Commission on Human Rights, a draft convention defining torture as an international crime; and,

CONSIDERING:

That the Inter-American Juridical Committee has prepared, in conjunction with the Inter-American Commission on Human Rights, a draft convention defining torture as an international crime;

That, accordingly, the provisions of resolution 368 of the eighth regular session of the General Assembly have been complied with; and

That the governments of the member states must have an opportunity to make their observations and comments on the draft prepared by the Inter-American Juridical Committee,

RESOLVES:

1. To express its appreciation to the Inter-American Juridical Committee and the Inter-American Commission on Human Rights for the work they have done in drawing up the draft convention defining torture as an international crime.

2. To forward the draft with its statement of reasons and explanations of votes, together with all antecedents on the draft, including the preliminary draft prepared by the Committee, to the governments of the member states for their consideration so that they may send before April 30, 1981, their observations and comments to the Permanent Council in order for the Council to amend the draft convention as appropriate and submit it to the next General Assembly.

AG/RES. 510 (X-0/80)

ANNUAL REPORT AND SPECIAL REPORTS OF THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS

(Resolution adopted at the sixth plenary session,
held on November 27, 1980)

THE GENERAL ASSEMBLY:

HAVING SEEN:

The annual report of the Inter-American Commission on Human Rights (CP/doc.1110/80), the Commission's special reports (AG/CP/doc.254 and 253/80) and the replies of the governments (AG/CP/doc.256 and 259/80 and AG/doc.1261/80); and

CONSIDERING:

That the protection and exercise of human rights is one of the lofty objectives of the Organization of American States, and their observance is a source of solidarity among the member states and a guarantee of respect for human life and the dignity of man;

That the principal goal of the Inter-American Commission on Human Rights (IACHR) is to promote the observance and defense of human rights in all member states;

That a democratic structure is essential to the establishment of a political society where human values can be fully realized;

*
That in its study of the status of human rights in the hemisphere, the Commission emphasized that the return to representative democracy already under way or completed in certain countries was a positive step;

That the annual report and the special reports of the Inter-American Commission on Human Rights states that the measures taken in certain countries that represent significant contributions to the observance of the rights set forth in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights (Pact of San José, Costa Rica) are a positive sign;

That, nevertheless, the reports also state that a situation persists that is characterized by serious and repeated violations of fundamental rights and freedoms and by the inadequacy or ineffectiveness of the guarantees and means of defense that the national laws of these countries provide;

That the Commission recommends that an immediate end be put to such serious violations of human rights as disappearances of persons, the use of torture, detention without due process, and arbitrary exile;

That Chapter VI of the report of the Inter-American Commission on Human Rights makes reference to economic, social and cultural rights and emphasizes the limitations on the exercise of human rights that are the result of the extreme poverty endured by many segments of the population; and

That, in order to reaffirm the importance of the IACHR, to contribute to the effectiveness of its work by preserving its technical independence, to enlist the maximum cooperation of all the governments, and to strengthen the solidarity of the member states, this General Assembly has adopted procedures for the examination of reports on human rights in the hemisphere, confident that they will help foster the effective promotion and defense of human rights,

RESOLVES:

1. To take note of the annual report, which includes consideration of the situation of human rights in Chile, El Salvador, Paraguay, and Uruguay and of the special reports on the situation of human rights in Argentina and Haiti.

To express its strongest support for the work done by the IACHR and to reaffirm the importance of its reports for the promotion and defense of human rights.

2. To take note of the observations, objections and comments by those governments and of the information on the measures that, on their own initiative, they have freely taken and will continue to take to guarantee human rights in their countries, and to emphasize the

importance of the adoption of additional measures, on their own free initiative, that pursue like objectives, particularly those that heed recommendations contained in the reports.

3. To urge the governments of the member states that have not yet done so to adopt and put into practice the necessary measures to preserve and safeguard the full exercise of human rights, especially in those cases that concern the status of individuals detained without due process, the disappearances of persons, the return of exiles and the lifting of states of emergency.

4. To recommend to the member states that, bearing in mind Chapter VI of the annual report of the Commission, they continue to adopt and apply measures and legislative provisions for preserving and maintaining the full exercise of human rights in accordance with the American Declaration of the Rights and Duties of Man.

5. To reiterate the need to avoid and, where appropriate, to put an immediate end to serious violations of fundamental human rights, especially the rights to life and to personal security and freedom, and to reaffirm that summary execution, torture and prolonged detention without due process are violations of human rights.

6. To recommend to the member states that have not yet done so that they reestablish or perfect the democratic system of government, in which the exercise of power derives from the legitimate and free expression of the will of the people, in accordance with the particular characteristics and circumstances of each country.

7. To share the Commission's concern in stressing the importance of economic, social and cultural rights in the context of human rights for the integral development of man.

8. To reaffirm that effective protection of human rights should also extend to social, economic and cultural rights, and, in that regard, to emphasize to the governments of the member states the responsibility of making every possible effort to participate fully in cooperation for hemispheric development since it is a fundamental means of helping alleviate extreme poverty in the Americas, especially that in the most needy countries and regions.

9. To note with satisfaction the decision of the governments of the member states that have invited the Commission to visit their respective countries and to urge the governments of the states that have still not accepted or that have not agreed on a date for that visit to do so as soon as possible.

10. To request the Commission to continue to monitor the situation of human rights in such member states as it deems appropriate, and to include its conclusions in its report to the eleventh regular session of

the General Assembly, pursuant to the provisions of Article 18 of the Statute of the Commission.

11. To invite the governments of the member states that have not already done so to consider the advisability of signing or ratifying the American Convention on Human Rights (Pact of San José, Costa Rica), which has been ratified or acceded to by Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Peru and Venezuela.

12. To emphasize the need to put an immediate end, in those countries in which it may occur, to any practice that leads to the disappearance of persons and also to urge that the necessary efforts be made to determine the status of persons whose disappearance has been reported.

13. To recommend to the governments, in connection with the preceding paragraph, that central records be established to account for all persons that have been detained, so that their relatives and other interested persons may promptly learn of any arrest that may have been made; to request that arrests be made only by competent and duly identified authorities, and that the arrested persons be kept in premises designed for that purpose.

14. To urge all the governments to continue to provide the Commission with the necessary cooperation to enable it to accomplish its tasks.

E. 52nd Session

This session of the Commission began February 26, 1981, and ended March 7. All members participated: Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, First Vice Chairman; Francisco Bertrand Galindo, Second Vice Chairman; Carlos A. Dunshee de Abranches; Andrés Aguilar; Luis Demetrio Tinoco Castro; and César Sepúlveda.

At this session, the Commission dealt with important subjects in the human rights field and took such steps as it deemed timely and appropriate. Those subjects and steps include the following:

1. It approved the preliminary reports on the status of human rights in Colombia and Nicaragua, which were drawn up on the basis of the on-site observation visits to those countries in April and October of 1980, respectively, and on the basis of other sources. Both documents were sent to the Governments of Colombia and Nicaragua for them to submit their comments to the Commission.

2. Under the agreement concluded with the Colombian Government, the Commission decided to observe the public phase of the military trials of M-19 members, and it was decided that the Chairman, accompanied by

Secretariat staff and other Commission members, would travel to Bogota in the following months for that purpose.

3. Resolutions relating to the Commission that were adopted by the OAS General Assembly at its Tenth Regular Session were reviewed. With regard to the resolution on follow-up of the human rights situation in Bolivia, the Commission decided to send another note to the Government of that country repeating the request for permission to conduct an on-site observation visit and asking for a reply by June 1981.

4. Consideration of the status of human rights in a number of countries, especially Bolivia, Cuba, El Salvador, and Guatemala; and a decision to continue with preparation of the reports on those countries.

5. A number of complaints of alleged violations of human rights in several OAS member countries were reviewed and appropriate measures were taken or resolutions on them were submitted to the Governments concerned. Complaints were received that the Coordinator of the Nicaraguan Permanent Commission on Human Rights had been detained in Managua and that six Argentine leaders of institutions defending human rights had been detained in Buenos Aires. The Commission immediately expressed its concern about those cases to the Governments of Nicaragua and Argentina, requesting information from them about the facts that gave rise to the complaints. It also placed on record its satisfaction at the subsequent release of the Coordinator of the Nicaraguan Permanent Commission on Human Rights, and the release of the six Argentine leaders.

6. Proposals made by a number of entities to promote human rights were taken up, and cooperation measures on them were adopted.

7. As on previous occasions, hearings were held for persons and institutions requesting them. After detailed evaluation of the applications from a number of candidates, the "Rómulo Gallegos" scholarship was awarded for studies connected with human rights.

8. The Commission considered a number of administrative matters, including its program-budget for 1982/83.

F. 53rd Session

This session was held by the Commission on June 22 - July 2, 1981, and was attended by the following members: Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, First Vice Chairman; Francisco Bertrand Galindo, Second Vice Chairman; Carlos A. Dunshee de Abranches; and César Sepúlveda.

At this session, the Commission considered and adopted measures on a number of human rights questions. Those measures and questions include the following:

1. It elected its new Governing Board pursuant to the applicable legal provisions. The following were reelected by acclamation: Tom J. Farer, as Chairman; Marco Gerardo Monroy Cabra, as First Vice Chairman; and Francisco Bertand Galindo, as Second Vice Chairman. A press release was issued June 22, 1981, on these elections.

2. The Commission took up and analyzed the comments of the Colombian and Nicaraguan Governments on its reports on the status of human rights in those countries. On the basis of those comments and the new information available, the final reports were approved. These documents were transmitted to the OAS Secretary General for distribution to the governments of the member countries and to the news media.

3. The preliminary reports on the human rights situation in Bolivia and Guatemala were approved. These reports were sent to the Governments of both countries for comments.

4. The Commission took up and reviewed the statements relating to the Commission by the Permanent Representative of Chile to the OAS.

5. It considered the status of human rights in other countries, and took up specific aspects of the situation in El Salvador, Jamaica, Chile, Haiti, Brazil, and Paraguay.

6. The Commission considered the request from the Government of Colombia to clarify the agreement concluded between that Government and the Commission in April 1980, based on the seizure of the Dominican Embassy in Bogota and the on site observation visit conducted. The agreement calls for observation by the Commission of the public phase of oral court-martials.

7. Specific guidelines were issued for the form of the Commission's 1980/81 annual report, to be submitted to the Eleventh Regular Session of the OAS General Assembly, to be held in St. Lucia in December 1981.

8. The Commission reviewed compliance with Resolution AG/RES. 314 (VII-0/77) of the OAS General Assembly, and decided to update the study previously made on that resolution. Under the resolution, the General Assembly recommended that the Commission prepare, for the OAS Permanent Council's examination and comment, a study on the systems and methods of investigation of violations of those rights, based on non-discriminatory principles that recognize the juridical equality of states and that set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man.

9. It considered other matters, including award of the "Romulo Gallegos" scholarship. It also reviewed other aspects and took the measures and resolutions it considered appropriate with regard to claims of alleged human rights violations in a number of OAS countries.

10. As on previous occasions, it held hearings for persons and institutions that made timely requests for them and dealt with a number of administrative topics.

G. Fifty-fourth session

This session was held by the Committee October 8 through 17, 1981 and all its members participated, Messrs. Tom J. Farer, Chairman; Marco Gerardo Monroy Cabra, First Vice Chairman; Francisco Bertrand Galindo, Second Vice Chairman; Carlos A. Dunshee de Abranches; Andrés Aguilar; and César Sepúlveda.

At this session the Commission analyzed and took measures on various topics concerning human rights, and for that purpose approved the corresponding program. Among those measures and topics the following may be mentioned in particular:

1. It approved the definitive Reports on the Situation Regarding Human Rights in Bolivia and in Guatemala, which were sent to the Secretary General of the OAS for their distribution to the governments of the member states and to the mass communication media.

2. It approved this Annual Report to be presented to the General Assembly of the OAS at its eleventh regular session, to be held in December 1981 in Saint Lucia.

3. It considered the situation regarding human rights in El Salvador and in other countries and for that purpose followed the corresponding regulatory procedures.

4. It received the President and Vice President of the Inter-American Court of Human Rights, Dr. Carlos Roberto Reina and Dr. Pedro Nikken, respectively, in a special audience. It conducted a broad exchange of views on matters in this field with those Judges, aimed at maintaining close and continuing cooperation between the two bodies for international protection of human rights established by the Pact of San José, Costa Rica.

5. It considered a communication from the Inter-American Court of Human Rights submitted to it in consultation in relation to the case called "Viviana Gallardo and others."

6. It considered the situation regarding human rights in other countries and, for that purpose, attended to individual cases concerning the situation regarding human rights.

7. It attended to and decided on various activities related to the promotion of human rights, as well as various matters of an administrative nature.

CHAPTER III

OBSERVATIONS BY THE COMMISSION ON
COMMUNICATIONS RECEIVED BY IT

OBSERVATIONS BY THE COMMISSION ON
COMMUNICATIONS RECEIVED BY IT

In the period covered by this report, the Commission held its 50th, 51st, 52nd, and 53rd sessions and opened a large number of specific cases on alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights.

The Commission submits to the OAS General Assembly for consideration its comments on those cases meeting the conditions required for publication under its present Statute and Regulations.

To that end, reproduction of the following resolutions has been ordered, in accordance with the dates on which they were approved by the Commission.

RESOLUTION 15/81
CASE 2488 (ARGENTINA)
March 6, 1981

BACKGROUND:

1. In a communication of May 1977, the Inter-American Commission on Human Rights received the following complaint:

MONICA BUSTOS was detained on April 11, 1976, in Misiones by the Personal Investigations Brigade and taken to the Regiment offices in Posadas, where she was tortured until she lost consciousness. According to the last report received, Miss Bustos was on the verge of death.

2. In a note of December 8, 1977, the Commission transmitted this denunciation to the Government of Argentina, requesting information on the case.

3. In a note of January 9, 1978, the Argentine Government replied to the Commission as follows:

F. Observations:

The Permanent Mission of the Argentine Republic to the Organization of American States informs the Inter-American Commission on Human Rights that the Argentine Government emphatically denies all responsibility in the reported deaths of the following persons, none of whom have arrest records: 129, BUSTOS, Mónica (Case 2488).

4. The Commission requested in a note of March 23, 1978, that the claimant submit this comments on the Government's reply.

5. In a communication of April 26, 1979, the claimant contested the Government's reply as follows:

Mónica Beatriz Bustos, 26 years of age, was detained on April 11, 1976, in the locality of CARUPA, city of Posadas, province of Misiones, by security forces, and taken to Alcaidia for a three-month period, during which time nothing was known of her whereabouts. Subsequently, information was obtained that she was tortured and beaten, and was held in the Villa Devoto Prison in July 1976. This information was obtained through correspondence received from the jail.

Neither at the time of her detention nor at present are the legal grounds for her arrest known, despite innumerable efforts to obtain information on the reason for her detention. These efforts include sending official communications to the Ministry of the Interior, the National Bureau of Penal Institutions, and a writ of habeas corpus to the Federal Capital Court with a request that she be released.

6. The Commission transmitted to the Argentine Government the complainant's observations in a note of May 30, 1979, and requested that it supply information on the case.

7. The claimant submitted to the Commission the following additional information:

On receiving notice of the visit of the Inter-American Commission on Human Rights, Mónica Bustos was interviewed by some six or seven persons, who proposed that she sign a document renouncing guerrilla warfare. She replied that she could not make any renunciation, since she had never taken part in guerilla warfare or in subversion.

If she signed the document, she was offered a transfer to section G-1 (of the three sections in the prison, this is the one in which prisoners are allowed to read newspapers, work, receive visitors, and obtain other benefits, including the use of perfume).

When she refused--because she said such a renunciation would have been a lie--she was transferred that same night around midnight from that section of the prison to section G-III, where prisoners are not permitted to read newspapers, work, or received visits, except for interrogation.

This information was submitted to the Argentine Government in a note of October 2, 1979.

8. In a note of January 17, 1980, the Argentine Government gave the following reply to the requests for information:

The person named has been detained and placed at the disposition of the Executive Department, in exercise of the authority conferred under Article 23 of the National Constitution in force since 1853, because it is considered necessary to consolidate domestic peace, according to Decree 337 of May 5, 1976.

Mónica Beatriz BUSTOS is lodged in an appropriate detention facility, and at no time has been subjected to torture or mistreatment. Such procedures are prohibited in the Argentine Republic, and the Government diligently sees to it that they do not incur.

There is no record that Mónica Beatriz BUSTOS has exercised the right to request permission to leave the country, a petition that would be duly evaluated if received.

Therefore, based on the legitimacy of her detention and the consequent falsity of the information in the denunciation, that denunciation should be rejected without further proceedings.

9. The claimant submitted his comments on the Government's reply in a communication of May 5, 1980, stating as follows:

1. Mónica Beatriz Bustos was detained on April 11, 1976, and not on May 5 of that year, which is the date the decree placing her at the disposition of the Executive Department was signed. During the interim period, she was illegally imprisoned in the Women's Jail of the Police Headquarters in the province of Misiones, in Posadas, the capital of that state. She was subjected there to savage torture that left her in a coma for three days. She was saved by the intervention of the Diocesan Bishop of Posadas, Monsignor Jorge Kemerer, who succeeded in locating her despite the denials of the authorities.

2. Bishop Jorge Kemerer, residing at 222 Félix Azara Street, 3300 Posadas, Misiones, Argentina, along with Professor Víctor Rene Nicoletti, the Vice Rector of the National University of Misiones, (then Dean of the School of Social Sciences), residing at 485 Colón Street, 3300 Posadas, Misiones, Argentina, who also intervened in the case because Mónica was a student in that institution, attest to the facts stated above.

3. The detention of Mónica Beatriz Bustos, while based on Article 23 of the National Constitution, is illegal because of its prolongation. In fact, the law and legal doctrine have repeatedly declared that an arrest that exceeds a reasonable time for the security of the country becomes a punishment and authority to impose punishment is expressly and emphatically denied to the President of the nation by Articles 29 and 95 of the Constitution.

4. Mónica Beatriz Bustos, has, in fact, not requested the right to choose to leave the country. But that should be in her favor. Since she is convinced of her innocence and wishes to be useful to her society and her country, and since she believes that Argentines should solve their own problems within their borders, she does not wish to live in exile.

5. There is no doubt that Mónica Beatriz Bustos has committed no act that justifies her detention for four years under inhumane and cruel conditions--as this Commission verified when it conducted its on-site visit to Argentina and the Villa Devoto Prison. If her detention had been justified, the Executive Department would have accused her through the Public Prosecutor in compliance with its legal obligation, and it has not done so.

10. In a note of July 18, 1980, the Commission transmitted the pertinent portions of the claimant's comments to the Argentine Government, requesting that all appropriate information should be remitted to it for consideration in thirty days, pursuant to its Regulations.

11. To date, the Argentine Government has not replied.

WHEREAS:

1. Miss MONICA BEATRIZ BUSTOS has been imprisoned since April 11, 1976, and has been placed at the disposition of the Executive Department, under Decree 332 of May 5, 1976;

2. During the first days of her detention, Miss Bustos was illegally subjected to torture, which seriously endangered her life and personal security, and the Argentine Government has not refuted the denounced events;

3. The Argentine Government initially denied to the Commission that Mónica Beatriz Bustos had been detained, as shown in its note of January 9, 1978, and two years later, in a communication of January 17, 1980, it recognized that she was detained;

4. To date, no specific charges have been made against Miss Bustos, and her detention has become arbitrary because the Government has exceeded reasonableness in its detention, since there are no duly justified grounds for its action;

5. The IACHR has expressed its views on a number of occasions about prolonged detentions without a specified term and without justified cause, which are an unreasonable application of measures restricting liberty during a constitutional state of emergency and actually constitute punishment.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To declare that the Argentine Government violated the rights to life, liberty and personal security (Art. I); the right of protection from arbitrary arrest (Art. XXV) and the right to due process of law (Art. XXVI) of the American Declaration of the Rights and Duties of Man.
2. To recommend to the Argentine Government: a) that it immediately release Miss Mónica Beatriz Bustos; b) that it order a complete and impartial investigation to determine the perpetrators of the reported illegal acts of torture; c) that it report to the Commission in ninety days on the measures taken to implement the above recommendations.
3. To communicate this resolution to the Government of Argentina and to the claimant.
4. To include this resolution in the Annual Report to the General Assembly of the Organization of American States, pursuant to Article 50(4) of the Commission's Regulations, if the Argentine Government does not implement these recommendations by the deadline indicated above.

RESOLUTION 16/81
CASE 3482 (ARGENTINA)
March 6, 1981

BACKGROUND:

1. In August 1978, the Inter-American Commission on Human Rights received the following denunciation:

Raúl Héctor Cano, an auto mechanic, born in San Juan, province of San Juan, on November 19, 1948, was detained at the disposition of the Executive Department. From March 27, 1976, under Decree 657/76, he was lodged in jail unit 9 of the La Plata province of Buenos Aires.

A stay was ordered by the federal judge of San Juan, Dr. Mario Alberio Gerarduzzi, on February 10, 1977, but the prisoner remained under arrest. The prisoner has asked to leave Argentina and, on April 11, 1978, applied to the Embassies of Sweden and Belgium for a visa. On January 19, 1978, the Correctional Service, New Unit, Province of Buenos Aires, issued certification that the prisoner had applied for permission to leave the country under law 21,650.

2. In its note of December 30, 1978, the Commission transmitted the pertinent portions of the denunciation to the Argentine Government, requesting that it supply any information it considered pertinent.

3. In a communication of August 9, 1979, the Argentine Government replied as follows to the Commission's request for information:

The indicated person was detained on 3/29/76 and tried for violation of security law 20,840. On 6/2/76 he was placed at the disposition of the Executive Department, in exercise of its constitutional authority, on the assumption that the accused's activities might be a threat to peace and public order.

On 2/1/77, a provisional stay was ordered in the trial to be heard by Federal Court of the Province of San Juan, and the stay was confirmed by the Federal Court of Appeals of Mendoza. A copy of the ruling is attached. It should be stressed that, under the provisions of the Code of Penal Procedure, applicable in federal jurisdictions, the accused remains under prosecution when a provisional stay is issued (Art. 435 of the Code of Penal Procedure). The accused requested exercise of his option to leave the country, under the provisions of law 21,650, of 10/11/78.

The request was denied by Decree 197/79 based on the provisions of law 21,659 and in exercise of the authorities set forth therein. Under the provisions of Article 13 of the above law, the application can be resubmitted six months after the decree denying it. However, no application has thus far been made.

4. In a communication of August 16, 1979, the Commission informed the claimant of the Government's reply and asked if he wished to comment on it.

5. In a communication of February 20, 1980, the Commission was informed by the claimant that Mr. Raúl Héctor Cano continues to be detained after four years, solely at the disposition of the Executive Department, and that on December 17, 1979, exercise of the right to choose to leave the country was again denied.

6. This case was included by way of illustration in the report on the status of human rights in Argentina (Doc. OEA/Ser.L/V/II.49) published by the Commission, because the evidence available to the Commission constitutes prima facie proof of the truth of the facts.

WHEREAS:

1. In light of the above-mentioned background, Mr. Raúl Héctor Cano was arbitrarily arrested and deprived of his liberty on March 27, 1976;

2. On June 2, 1976, Mr. Cano was placed at the disposition of the Executive Department;

3. The Federal Court of the Province of San José issued on February 1, 1977, a temporary stay, which was confirmed by the Federal Court of Appeals;

4. On two occasions, exercise of the right to choose to leave the country as established in the Constitution and regulated in law 21,650, was denied;

5. The IACHR has, on several occasions, expressed its views on prolonged detentions, without a specified term and without justified cause, which are an unreasonable application of measures restricting liberty during a constitutional state of emergency and actually constitute punishment.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To declare that the Argentine Government violated the right of protection from arbitrary arrest (Art. XXV) and the right to due process of law (Art. XXVI) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Government of Argentina: a) that it release Mr. Raúl Héctor Cano or grant him the right to choose to leave the country; and b) that it report to the Commission in ninety days on the measures taken to implement this recommendations.

3. To transmit this resolution to the Government of Argentina and to the claimant.

4. To include this resolution in the Annual Report to the General Assembly of the Organization of American States, pursuant to Article 50(4) of the Commission's Regulations, if the Argentine Government does not implement the recommendations by the above deadline.

RESOLUTION NO. 23/81
CASE 2141 (UNITED STATES)
March 6, 1981

SUMMARY OF THE CASE

1. On January 19, 1977, Christian S. White and Gary K. Potter, filed with the Inter-American Commission on Human Rights a petition against the United States of America and the Commonwealth of Massachusetts for the purposes established in the Statute and Regulations of the Commission. The petition is accompanied by a cover letter of the Catholics for Christian Political Action, signed by Gary Potter, President.

2. The pertinent parts of the petition are the following:

Name of the person whose human rights have been violated: "Baby Boy" (See Exhibit, p.11, line 7 from top, and Amplificatory Document, p.1)

Address: Boston City Hospital, Boston Massachusetts.

Description of the violation; Victim was killed by abortion process (hysterotomy), by Dr. Kenneth Edelin, M.D., in violation of the right to life granted by the American Declaration of the Rights and Duties of Man, as clarified by the definition and description of "right to life" contained in the American Convention on Human Rights (See Amplificatory Document, p.1).

Place and date of the violation: Boston City Hospital, Boston, Massachusetts, October 3, 1973, U.S. Supreme Court Building, Washington, D.C. January 22, 1973.

Local authority who took cognizance of the act and the date on which this occurred: District Attorney's Office, Boston, Massachusetts.

Judge or court which took cognizance of the act and the date on which this occurred: Superior Court of Boston, Massachusetts, Judge McGuire sitting, April 5-11, 1976.

Final decision of the authority (if any) that acted in the matter: The Supreme Judicial Court of Massachusetts, Boston, Massachusetts, acquitted Edelin on appeal, on December 17, 1976.

In the case of it not being possible to have recourse to a local authority, judge or court, explain the reasons for such impossibility: On a related point, no appeal to the Supreme Court of the United States is possible. (See Amplificatory Document, p.6).

List the names and addresses of witnesses to the act (if any) or enclose the corresponding documents: Exhibit A: Official copy of the decision of the Supreme Judicial Court of Massachusetts in the case of Commonwealth vs. Edelin; Exhibit B: "Working and Waiting," The Washington Post, Sunday, August 1, 1976.

The undersigned should indicate whether they wish their identity to be withheld: No withholding is necessary.

3. In the "Amplificatory Document" attached to the petition, the petitioners add, inter alia, the following information and arguments:

a) The victim in this case, a male child not yet come to the normal term of pregnancy, has from the beginning been identified by the Massachusetts authorities only as "Baby Boy", Exhibit A, p.11, line 7 of Case S-393 SJC, Commonwealth/of Massachusetts/vs. Kenneth Edelin.

b) This violation of the following rights granted by the American Declaration of the Rights and Duties of Man, Chapter 1, Article I ("... right to life...", Article II ("All persons are equal before

the law... without distinction as to race, sex, language, creed, or any other factor," here, age), Article VII ("All children have the right to special protection, care, and aid") and Article XI ("Every person has the right to the preservation of his health...") began on January 22, 1973, when the Supreme Court of the United States handed down its decisions in the cases of Roe vs. Wade, 410 U.S. 113* and Doe vs. Bolton, 410 U.S. 179.

c) The effect of the Wade and Bolton decisions, supra, in ending the legal protection of unborn children set the stage for the deprivation of "Baby Boy's right to life. These decisions in and of themselves constitute a violation of his right to life, and the United States of America therefore stands accused of a violation of Chapter 1, Article I of the American Declaration of the Rights and Duties of Man.

The United States Government, through its Supreme Court, is guilty of that violation.

d) At trial, the jury found Dr. Edelin guilty of manslaughter, necessarily finding as fact that the child was such as to fit within a "protectable exception" (over six months past conception and/or alive outside the womb) to the Supreme Court of the United States' rubric in the Wade and Bolton cases. On appeal, the Supreme Judicial Court of Massachusetts reversed, on these grounds:

1) Insufficient evidence of "recklessness" and "belief in" [or concern about] "the viability of the fetus" (paraphrased). Exhibit A, p.190, line 17 to p.19, line 6.

2) Insufficient evidence of life outside the womb. Exhibit A, p.22, line 5, to p.25, line 1.

3) Procedural error. Exhibit A, p.25, line 2 to p.29, line 7.

e) This decision came down on December 17, 1976, and, by preventing Dr. Edelin from being punished for his acts, put the State of Massachusetts in the posture of violating "Baby Boy's" right to life under the Declaration.

* "410 U.S. 113" means United States Reports, vol. 410, p.113. This explanation is offered for the benefit of persons unfamiliar with United States systems of legal reporting and case citation.

f) The Supreme Court of the United States has no jurisdiction in this matter, since the grounds for reversal given in the opinion of the Supreme Judicial Court's opinion is based on points of law that are purely state matters, and Edelin's rights were not violated by his being held harmless. Evidentiary sufficiency on the elements of a crime and matters of state court procedure may be addressed by the Supreme Court of the United States, or any other U.S. Federal Court, only where the state has not considered the matter.

4. Exhibit A, attached to the petition, is a xerox copy of the full text of the decision of the Massachusetts Supreme Judicial Court in the case of Commonwealth vs. Kenneth Edelin

5. On April 1, 1977, Mary Ann Kreitzer (4011 Franconia Rd. Alexandria, Va. 22310) wrote a letter to the Commission, on behalf of herself and six other persons, asking "to be considered as complainants in the communications brought before the Commission by Mssrs. Potter and White and Catholics for Christian Political Action concerning the Edelin case..."

6. Later, a similar request was made by Reverend Thomas Y. Welsh, Bishop of Arlington (200 North Glebe Rd. Arlington, Va.), Frederick C. Greenhalge Jr. (Box 1114, Los Gatos, Santa Clara County, California 95030) and Lawyers for Life, represented by Joseph P. Meissner (Room 203 3441 Lee Road, Shaker Heights, Ohio 44120).

7. By a letter of May 5, 1977, the petitioners submitted to the consideration of the Commission four questions on what reservations are acceptable to the American Convention on Human Rights.

8. The Commission, at its 41st Session (May, 1977) decided to name a rapporteur to prepare a note to the Government concerned, but at its 42nd Session, adopting a recommendation made by its Ad Hoc Committee, the Commission directed the Secretariat to forward to the Government of the state in question the pertinent parts of the petition and to request the usual information.

9. By a note of July 20, 1978, the Chairman of the Commission requested the Secretary of State of the United States to supply the information deemed appropriate, in accordance with articles 42 and 54 of its Regulations.

10. On January 26, 1979 the Commission received a letter from the petitioner stating:

The United States having failed to reply to your Commission's letter of inquiry of July 20, 1978, within the 180 days permitted by your Commission's regulations (article 51), the regulations now require you to regard the allegations of fact as proven (article 51).

11. On February 22, 1979, Ambassador Gale McGee, Permanent Representative of United States to the Organization of American States submitted to the Commission's "a memorandum prepared within the Department of State replying to the principal points raised by the complainants."

12. A preliminary question was raised in the United States response:

With respect to the exhaustion of legal remedies in the Edelin case, decisions of state supreme courts are appealable to the U.S. Supreme Court. However, no appeal was taken in this case and the time for appeal has now lapsed.

13. On the facts referred to by the petition, the memorandum states:

The specific case brought to the attention of the Commission is that of "Baby Boy", the name given to the fetus removed by Dr. Kenneth Edelin in performing an abortion in Boston on October 3, 1973. Dr. Edelin was indicted for manslaughter on the basis of that abortion and convicted after trial. The Supreme Judicial Court of Massachusetts reversed the conviction and directed the entry of a judgment of acquittal on December 17, 1976. The Court found that there was insufficient evidence to go to a jury on the overarching issue whether Dr. Edelin was guilty beyond a reasonable doubt of the "wanton" or "reckless" conduct resulting in a death required for a conviction, and that motions for a direct verdict of acquittal should have been granted.

14. The U.S. Government response, on the substantive questions raised by the complainant, is developed in a three part argument that the right-to-life provisions of the American Declaration on the Rights and Duties of Man was not violated, even in the hypothesis that the American Convention on Human Rights could be used as a means of interpretation in this case:

a) With regard to the right to life recognized by the Declaration, it is important to note that the conferees in Bogotá in 1948 rejected language which would have extended that right to the unborn. The draft placed before them had been prepared by the Inter-American Juridical Committee. Article 1 of that draft provided:

Toda persona tiene derecho a la vida, inclusive los que están por nacer así como también los incurables, dementes y débiles mentales. (Every person has the right to life, including those who are not yet born as well as the incurable, the insane, and the mentally retarded.) Novena Conferencia Internacional Americana, Actas y Documentos, vol V, at 449 (1948).

The Conference, however, adopted a simple statement of the right to life, without reference to the unborn, and linked it to the liberty and security of the person. Thus it would appear incorrect to read the Declaration as incorporating the notion that the right to life exists from the moment of conception. The conferees faced this question and chose not to adopt language which would clearly have stated that principle.

b) While the American Convention on Human Rights clearly was intended to complement the Declaration, these two documents exist on different legal planes and must be analyzed separately. The Declaration, adopted as a resolution at the Ninth International Conference of American States in Bogotá in 1948, provides a statement of basic human rights. It was adopted by unanimous vote, the United States participating. When the Commission was created in 1959, the Declaration gave form to its charge to protect the observance of human rights in the Americas. The Convention, however, is a treaty which has only recently entered into force among 13 states, not including the United States. It defines in detail the human rights which its parties undertake to observe. The specificity of those rights, in comparison with the ones enumerated in the Declaration, suggests the need for their being undertaken by treaty. While the vagueness of the rights described in the Declaration may leave substantial room for interpretation by the Commission, that interpretation must be consistent with the intentions of those who adopted the Declaration. In particular cases, the Convention may or may not provide accurate guidelines for defining the terms of the Declaration.

c) Although the scope of the right to life recognized by the Convention is not directly in issue here, the complainants' analysis of that point warrants some comment. Paragraph 1 of Article 4 of the Convention describes the right to life in the following terms:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

At the second plenary session of the San José conference, the U.S. and Brazilian delegations placed the following statement on the record:

The United States and Brazil interpret the language of paragraph 1 of Article 4 as preserving to State Parties discretion with respect to the content of legislation in the light of their own social development, experience and similar factors. (Conferencia Especializada Interamericana sobre Derechos Humanos, Acta de la segunda sesión plenaria, OEA/Ser.K/XVI/1.2, at 6).

When dealing with the issue of abortion, there are two aspects of the Convention's elaboration of the right to life which stand out. First, the phrase "in general". It was recognized in the drafting sessions in San José that this phrase left open the possibility that states parties to a future Convention could include in their domestic legislation "the most diverse cases of abortion." (Conferencia Especializada Interamericana sobre Derechos Humanos, OEA/Ser.K/XVI/1.2, at 159.) Second, the last sentence focuses on arbitrary deprivations of life, in evaluating whether the performance of an abortion violates the standard of Article 4, one must thus consider the circumstances under which it was performed. Was it an "arbitrary" act? An abortion which was performed without substantial cause based upon the law could be inconsistent with Article 4.

15. The State Department memorandum responded also the petitioners' allegations related to the opinion of U.S. Supreme Court and the Supreme Judicial Court of Massachusetts on abortion:

Complainants allege that the decisions of the U.S. Supreme Court in Wade and Bolton (Attachments A and B) imported "absolute arbitrariness" into the decision whether an abortion shall be performed in a particular case. In fact, what the Supreme Court did in these cases was to establish Constitutional guidelines for state law regulating abortions. These guidelines were not developed in an arbitrary fashion.

The issue before the Court in Roe v. Wade was whether a state criminal abortion statute that excepted from criminality only a life-saving procedure on behalf of the mother was Constitutional.* The Court found that it limited the exercise of a "fundamental right"--the right to privacy**--in a manner inconsistent with the compelling state interests" which could justify regulation of that right. It is a basic tenet of U.S. Constitutional law that States may limit the exercise of fundamental rights only when they can show a compelling state interest in doing so, and legislative enactments toward that end must be narrowly drawn to express only the

* The object of scrutiny in Doe v. Bolton was a more sophisticated modern statute regulating the performance of abortions. The opinion applies the principles developed in Wade and thus does not warrant further discussion here.

** It should be noted that the right to privacy is an extension of the right to personal liberty guaranteed by the Fourteenth Amendment to the U.S. Constitution. Article I of the American Declaration on the Rights and Duties of Man joins the rights of life and liberty as basic rights.

legitimate state interests at stake. The Court identified two interests which could form the basis for legitimate state regulation of abortions during certain stages of pregnancy--the mother's health (as distinguished from her life) for the stage subsequent to approximately the end of the first trimester and the potential life of the fetus for the stage subsequent to viability. For the first trimester, the Court has left the abortion decision and its effectuation to the medical judgment of the pregnant woman's attending physician, 410 U.S. 113, 164.

Complainants allege that, by this decision, the U.S. Supreme Court has sanctioned the arbitrary killing of human fetuses during the first six months of development. In fact the Court expressly rejected the contention "that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses." The Court declared that the right to privacy was not absolute and that its exercise could be limited by valid state regulations drafted in conformity with the guidelines described above. Each state statute must be weighed against the basic Constitutional criteria established by the Court.

In Commonwealth v. Edelin, the abortion was performed in the interim between the announcement of the Wade decision, which rendered inoperative the Massachusetts criminal abortion statute, and the enactment of new state legislation on abortions. From January 1973 until August 1974, there were no legal restrictions on the performance of abortions per se in Massachusetts, and Dr. Edelin was prosecuted under a manslaughter statute. He was acquitted; the record amply demonstrates the difficulty of bringing the facts of a legal abortion within the terms of a manslaughter statute. It does not establish, however, that the abortion was performed "arbitrarily." Complainants note that the Edelin opinion does not explain the factors which went into the decision to perform the abortion; the court makes only passing reference to the pregnant girl's and her mother's "having requested an abortion." Had the case been tried under the 1974 Massachusetts legislation on abortions (Attachment C), this aspect would have been fully explored. However, it was not a central issue under the theory of manslaughter advanced by the Commonwealth. Thus, the record is silent as to the pregnant girl's motivation or medical need in seeking an abortion, and the Edelin case cannot legitimately be seen as sanctioning a "mother's desire to kill (unborn children) for improper reasons or no reason at all." Complainant's Amplificatory (sic) Document, at 3. It seems worth noting, however, that, at the time of the abortion, Dr. Edelin estimated the gestational period as twenty to twenty-two weeks--under the time generally believed required to produce a viable fetus--and he did not believe the fetus was viable. The Court found nothing to impeach his good faith judgment in this regard.

16. Attached to the U.S. response are copies of the full texts of the opinions in Roe v. Wade and Doe v. Bolton, and Sections 12K - 12Y Chapters 112 of the Annotated Laws of Massachusetts.

17. On June 12, 1979, the petitioners' reply to the U.S. Government response stated in summary that:

a) The State Department memorandum [implies] near-confession its guilt in this case.

b) The U.S. Government has made no reply to the allegations of Messrs. Potter and White as to the large numbers of abortions and the high proportion of unjustified abortions performed merely for the sake of convenience, and has not denied that U.S. Supreme Court has forbidden protection of the lives of the unborn for the first 24 weeks of prenatal existence.

c) The Government is incorrect in sustaining that, in the Edelin case the internal legal remedies have not been exhausted because the appellate jurisdiction of the U.S. Supreme Court is strictly limited, both as to appeals of right and as to the writ of certiorari.

d) The history of the development of the American Declaration demonstrates that the U.S. argument is incorrect, because the change in working was made simply and solely for purposes of simplification and not in order to alter the content of the document.

e) The Wade and Bolton opinions, as the U.S. Government admits, rendered the Massachusetts criminal abortion statute inoperative and had the same effect, generally, on other State abortion statutes. This destroyed the legal protection of the lives of the unborn.

f) The term "in general" cannot be viewed as applying only to the prenatal period, by reason of the logical structure and wording of the statement of the right to life, and the other life-affecting aspects, of the Declaration and the Convention. These aspects of these two documents, such as limitations upon executions for capital crimes, must be "read into" the phrase "in general".

g) History clearly demonstrates that numerous human rights violations have been based upon orderly processes for creating law, as in the Wade and Bolton cases.

18. In their reply to the response of the U.S. Government, the petitioners make frequent reference to the Annex to Amplificatory Document, filed by Messrs. Potter and White on June 8, 1978. This document is the result, in the opinion of the petitioners, of research based on the Records of the Ninth International Conference of American States and other related publications done to prove that the term "life" in article 1

of the Declaration of Bogotá of 1948 on human rights and duties was, in fact, defined by the drafters and promulgators of that Declaration so as to protect the individual's right to life "from the moment of conception."

19. On July 27, 1979, Messrs. Thomas Y. Yank, Henry Y. Hyde, Charles F. Dougherty and Daniel E. Lungren, Members of the U.S. Congress, House of Representatives, requested that the Commission inform them with regard to case 2141:

Assuming that plenary Commission handling of this complaint is impending, we would like to know whether, if the United States loses, it would be subject to trade and diplomatic sanctions similar to those imposed upon Cuba by the O.A.S. following, and partially on account of, the human rights violations of the Castro regime?

Can the Commission suggest to the undersigned Members of Congress how legislation might be shaped in order to eliminate any doubts as to U.S. compliance with IACHR standards in this regard?

We naturally sympathize with the Commission's aims and purposes, and send these questions in a spirit of cooperation and with the intent of furthering the work of the Commission.

20. Considering the case ready for decision, the Commission, in its 50^o Session (September-October 1980), appointed Professor Carlos A. Dunshee de Abranches as rapporteur to prepare the appropriate draft report, in accordance with article 24 of its present Statute and article 49 of its previous Regulations.

WHEREAS:

1. The basic facts described in the petition as alleged violations of articles I, II, VII and IX of the American Declaration occurred on January 22, 1973 (date of the decisions of cases Roe v. Wade and Doe v. Bolton by U.S. Supreme Court), October 3, 1973 (date of abortion of Baby Boy performed at the Boston City Hospital) and December 17, 1976 (date of final decision of the Supreme Judicial Court of Massachusetts that acquitted Dr. Edelin, the performer of the abortion.) The defendant, the U.S. Government is not a state party to the American Convention on Human Rights. The petition was been filed on January 19, 1977, before the Convention entered into force on July 18, 1978.

2. Consequently, the procedure applicable to this case is that established in articles 53 to 57 of Regulations of the Commission, approved in 1960 as amended, in accordance with article 24 of the present Statute and article 49 of the new Regulations.

3. Communications that denounce the violation of the human rights set forth in Article 53 must be addressed to the Commission within six

months following the date on which, as the case may be, the final domestic decision has been handed down..." (article 55 of the 1960 Regulations). However, the 1980 Regulations, maintaining the same rule, clarifies that the initial term of the six months shall be the date on which the party has been notified of the final ruling in cases in which the remedies under domestic law have been exhausted (article 35.1 applicable to States that are not Parties to the Convention as provided in article 49).

4. The petitioners were not parties in the case Commonwealth of Massachusetts vs. Kenneth Edelin, in which the final ruling by the Supreme Judicial Court of Massachusetts was delivered on December 17, 1976 (Exhibit A attached to the petition.) So they have not been notified of this said opinion, but in this case the point is irrelevant because the petition was filed with the Commission on January 19, 1977, only 32 days after the final ruling of State Court.

5. The Commission shall verify, as a condition precedent to exercising its jurisdiction, whether the internal legal procedures and remedies have been duly applied and exhausted (article 9 bis d of the Statute and article 54 of the Regulations both of 1980 as amended.)

6. The defendant sustains that decisions of state courts are appealable to the U.S. Supreme Court decision, but that no appeal was taken in this case. Conversely, the complainants replied that the jurisdiction of the U.S. Supreme Court to review state court decisions by appeal or by writ of certiorari is limited to specific situations, none of which are applicable in this case. (See the reasoning transcribed in N. 3, g, of this Report.)

7. The facts of the case are not in controversy. The text of the decision of the Supreme Judicial Court of Massachusetts, produced by petitioners, was accepted as authentic. Only the merits are under scrutiny. The consideration of those facts and the terms of such decision and the analysis of rules and precedents of U.S. Supreme Court, applicable to this case, indicate that there was no internal remedy to be exhausted by the petitioners before applying to the international jurisdiction.

8. The factual bases for this conclusion are the following:

a) On October 3, 1973, the defendant Dr. Kenneth Edelin, Chief Resident in obstetrics and gynecology at Boston City Hospital, performed an abortion by hysterotomy on a seventeen year old, unmarried woman, she and her mother having requested an abortion and consented to the operation. For his conduct in connection with the operation, Dr. Edelin was indicted for manslaughter, and convicted after trial. He appeals from the judgment of conviction and from the trial judge's refusal of a new trial.

b) In Massachusetts, for many years a criminal abortion statute (G. L. c. 272, S 19) had had the effect in the Commonwealth of punishing as a crime the performance of any abortion except when carried out by a physician "in good faith and in an honest belief that it (was) necessary for the preservation of the life or health of a woman."

c) On January 22, 1973, the Supreme Court of the United States decided the cases of Roe v. Wade, 410 U.S. 113, and Doe v. Bolton, 410 U.S. 179. These decisions not only "rendered inoperative" the Massachusetts criminal abortion statute, as the State Court had occasion to say in Doe v. Doe, (365 Mass. 556, 560 (1974), but introduced a new regime affording constitutional protections as follows (quoting from Wade, 410 U.S. at 164-165):

"a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

"b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

"c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

d) All six Justices of Supreme Judicial Court of Massachusetts who heard the appeal, holding that there was error in the proceedings at trial, vote to reverse the conviction. Five Justices also vote to direct the entry of a judgment of acquittal; the Chief Justice, dissenting in part in a separate opinion, would order a new trial. The five Justices are agreed that there was insufficient evidence to go to a jury on the overarching issue whether Dr. Edelin was guilty beyond a reasonable doubt of the "wanton" or "reckless" conduct resulting in a death required for a conviction herein, and that motions for a directed verdict of acquittal should have been granted accordingly. "The judgment is reversed and the verdict set aside. Judgment of acquittal is to be entered. So ordered."

e) The highest Court, in the conclusion of its opinion, states: This opinion does not seek an answer to the question when abortions are morally justifiable and when not. That question is wholly beyond our province. Rather we have dealt with a question of guilt or innocence under a particular state of facts. We are conscious that the significance of our decision as precedent is still further reduced by the fact that the case arose in an interregnum between the

Supreme Court's abortion decisions of 1973 and the adoption of legislation intended to conform to those decision--a kind of internal circumstance not likely to be repeated. (See Exhibit A pages 1, 2, 3 and 29.)

9. The jurisdiction of the Supreme Court to review decisions of the state courts is based upon 28 U.S.C, S 1257, which reads as follows:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under, the United States." (United States Code-1976 Edition - U.S. Government Printing Office.)

10. There is no ground in this case for applying the sanction established in article 51 of the 1960 Regulation as amended: -the presumption of truth of the alleged facts. The petitioners affirmation is correct in noting that the State Department response was received in the Commission 32 days after the expiry of the time limit of 180 days, but this rule is flexible. That term may be extended in cases in which the Commission deems justifiable (article 51.2.) The nature, complexity and importance of the many legal, moral and scientific issues disputed in this case justify the reasonable delay in the Government's response.

11. Furthermore, there is no reason to declare as presumed the truth of facts described in the petition if both parties in this case agree, as it is evident from the examination of the file, that such facts are not in controversy. However, it is opportune to clarify that in this case there is no logical or legal relation between the presumption of the truth of the facts, described by the petitioners and the request involving legal issues, as set forth in the petition of January 22, 1979 (see n. 12 of this report.)

12. The last preliminary question to be resolved is the admissibility of the request made to this Commission by four honorable Members of the Congress of the United States of an advisory opinion related to the consequences of an eventual decision of the Commission adverse to the United States.

13. Since its creation, the Commission has competence to serve the Organization of American States as an advisory body in respect of human rights (Statute 1960 article 9 c). This function has been confirmed by article 112 of the Charter of the OAS (as amended by the Protocolo of Buenos Aires, 1967), ratified by the United States of America on April 23, 1968. The new Statute of the Commission, approved by the General Assembly in October, 1979, provides that the Commission shall have power with respect to the member states of the Organization "to respond to inquiries made by any member state through the General Secretariat of the Organization on matters related to human rights in that state and, within its possibilities, to provide those states with the advisory services they request." (article 18 c).

14. This article shows clearly that inquiries by members of the congress or any other power or authority of a Member State, to be considered by the Commission, must be officially forwarded through the international representative of such State in the Organization. Without prejudging the substance of the opinion requested, the Commission shall comply, at any time, with the duty to respond such an inquiry if it is properly submitted to this advisory body.

15. The international obligation of the United States of America, as a member of the Organization of American States (OAS), under the jurisdiction of the Inter-American Commission on Human Rights (IACHR) is governed by the Charter of OAS (Bogotá, 1948) as amended by the Protocol of Buenos Aires on February 27, 1967, ratified by United States on April 23, 1968.

16. As a consequence of articles 3 j, 16, 51 e, 112 and 150 of this Treaty, the provisions of other instruments and resolutions of the OAS on human rights, acquired binding force. Those instruments and resolutions approved with the vote of U.S. Government, are the following:

- American Declaration of the Rights and Duties of Man (Bogotá, 1948)
- Statute and Regulations of the IACHR 1960, as amended by resolution XXIII of the Second Special Inter-American Conference (Rio de Janeiro, 1965)
- Statute and Regulations of IACHR of 1979-1980.

17. Both Statutes provide that, for the purpose of such instruments, the IACHR is the organ of the OAS entrusted with the competence to promote the observance and respect of human rights. For the purpose of the Statutes, human rights are understood to be the rights set forth in

the American Declaration in relation to States not parties to the American Convention on Human Rights (San José, 1969). (Articles 1 and 2 of 1960 Statute and article 1 of 1979 Statute).

18. The first violation denounced in the petition concerns article I of the American Declaration of Rights and Duties of Man: "Every human being has the right to life...". The petitioners admitted that the Declaration does not respond "when life begins," "when a pregnancy product becomes a human being" or other such questions. However, they try to answer these fundamental questions with two different arguments:

a) The travaux préparatoires, the discussion of the draft Declaration during the IX International Conference of American States at Bogotá in 1948 and the final vote, demonstrate that the intention of the Conference was to protect the right to life "from the moment of conception."

b) The American Convention on Human Rights, promulgated to advance the Declaration's high purposes and to be read as a corollary document, gives a definition of the right to life in article 4.1: "This right shall be protected by law from the moment of conception."

A brief legislative history of the Declaration does not support the petitioner's argument, as may be concluded from the following information and documents:

a) Pursuant to Resolution XL of the Inter-American Conference on Problems of War and Peace (Mexico, 1945), the Inter-American Juridical Committee of Río de Janeiro, formulated a preliminary draft of an International Declaration of the Rights and Duties of Man to be considered by the Ninth International Conference of American States (Bogotá, 1948). This preliminary draft was used by the Conference as a basis of discussion in conjunction with the draft of a similar Declaration prepared by the United Nations in December, 1947.

b) Article I - Right to Life - of the draft submitted by the Juridical Committee reads: "Every person has the right to life. This right extends to the right to life from the moment of conception; to the right to life of incurables, imbeciles and the insane. Capital punishment may only be applied in cases in which it has been prescribed by pre-existing law for crimes of exceptional gravity." (Novena Conferencia Internacional Americana - Actas y Documentos Vol. V Pág. 449).

c) A Working Group was organized to consider the observations and amendments introduced by the Delegates and to prepare an acceptable document. As a result of its work, the Group submitted to the Sixth Committee a new draft entitled American Declaration of the Fundamental Rights and Duties of Man, article I of which reads: "Every human being has the right to life, liberty, security and integrity of this person."

d) This completely new article I and some substantial changes introduced by the Working Group in other articles has been explained, in its Report of the Working Group to the Committee, as a compromise to resolve the problems raised by the Delegations of Argentina, Brazil, Cuba, United States of America, Mexico, Peru, Uruguay and Venezuela, mainly as consequence of the conflict existing between the laws of those States and the draft of the Juridical Committee. (Actas y Documentos Vol. 5 pages 474-484, 495-504, 513-514.

e) In connection with the right to life, the definition given in the Juridical Committee's draft was incompatible with the laws governing the death penalty and abortion in the majority of the American States. In effect, the acceptance of this absolute concept--the right to life from the moment of conception--would imply the obligation to derogate the articles of the Penal Codes in force in 1948 in many countries because such articles excluded the penal sanction for the crime of abortion if performed in one or more of the following cases: A-when necessary to save the life of the mother; B-to interrupt the pregnancy of the victim of a rape; C-to protect the honor of an honest woman; D-to prevent the transmission to the fetus of a hereditary or contagious disease; E-for economic reasons (angustia económica).

f) ; In 1948, the American States that permitted abortion in one of such cases and, consequently, would be affected by the adoption of article I of the Juridical Committee, were: Argentina - article 86 n.1°, 2 (cases A and B); Brasil - article n.I, II (A and B); Costa Rica - article 199 (A); Cuba - article 443 (A, B and D); Ecuador - article 423 n.1, 2 (A and B); Mexico (Distrito y Territorios Federales) - articles 333e 334 (A and B); Nicaragua - article 399 (frustrated attempt) (C); Paraguay - article 352 (A); Peru - article 163 (A-to save the life or health of the mother); Uruguay - article 328 n. 1-5 (A, B, C. and F - the abortion must be performed in the three first months from conception); Venezuela - article 435 (A); United States of America - see the State laws and precedents (*); Puerto Rico S S 266, 267 (A) (Códigos Penales Iberoamericanos - Luis Jiménez de Asua - Editorial Andrés Bello - Caracas, 1946 - volúmenes I y II).

(*) Daniel Callahan - Abortion: Law, Choice and Morality. William A. Nolen - The Baby in the Bottle - Cowarn, McCann & Geoghengan, Inc. - New York, 1978; 410 U.S. 113 provides a list of the articles of State's Penal Codes and similar statutes on abortion in existence in a majority of states in 1973 (pages 118-119).

g) On April 22, 1948, the new article I of the Declaration prepared by the Working Group was approved by the Sixth Committee with a slight change in the wording of the Spanish text (there was no official English text at that stage) (Actas y Documentos) vol.V pages 510-516 and 578). Finally, the definitive text of the Declaration in Spanish, English, Portuguese and French was approved by the 7th plenary Session of the Conference on April 30, 1948, and the Final Act was signed May 2nd. The only difference in the final text is the elimination of the word "integrity" (Actas y Documentos vol. VI pages 297-298; vol.I pages 231, 234, 236, 260, 261).

h) Consequently, the defendant is correct in challenging the petitioners' assumption that article 1 of the Declaration has incorporated the notion that the right of life exists from the moment of conception. Indeed, the conference faced this question but chose not to adopt language which would clearly have stated that principle.

20. The second argument of the petitioners, related to the possible use of the Convention as an element for the interpretation of the Declaration, requires also a study of the motives that prevailed at the San José Diplomatic Conference with the adoption of the definition of the right to life.

21. The Fifth Meeting of Consultation of Ministers of Foreign Affairs of the OAS, held at Santiago, Chile in 1959, entrusted the Inter-American Council of Jurists with the preparation of a draft of the Convention on Human Rights contemplated, by the American States since the Mexico Conference in 1945.

22. The draft, concluded by the Commission in about two weeks, developed the American Declaration of Bogotá, but has been influenced also by other sources, including the work in course at the United Nations. It consists of 88 articles, begin with a definition of the right to life (article 2), which reintroduced the concept that "This right shall be protected by law from the moment of conception." (Inter-American Yearbook, 1968 - Organization of American States, Washington, 1973 - pages 67, 237.)

23. The Second Special Conference of Inter-American States (Río de Janeiro, 1965) considered the draft of the Council with two other drafts presented by the Governments of Chile and Uruguay, respectively, and asked the Council of the OAS, in cooperation with the IACHR, to prepare the draft of the Convention to be submitted to the diplomatic conference to be called for this purpose.

24. The Council of the OAS, considering the Opinion enacted by the IACHR on the draft convention prepared by the Council of Jurists, give a mandate to Convention to be submitted as working document to the San José conference (Yearbook, 1968, pages 73-93.)

25. To accommodate the views that insisted on the concept "from the moment of conception," with the objection raised, since the Bogotá Conference, based on the legislation of American States that permitted abortion, inter alia, to save the mother's life, and in case of rape, the IACHR, redrafting article 2 (Right to life), decided, by majority vote, to introduce the words "in general." This compromise was the origin of the new text of article 2 "1. Every person has the right to have his life respected. This right shall be protected by law, in general, from the moment of conception." (Yearbook, 1968, page 321.)

26. The rapporteur of the Opinion proposed, at this second opportunity for discussion of the definition of the right of life, to delete the entire final phrase "...in general, from the moment of conception." He repeated the reasoning of his dissenting opinion in the Commission; based on the abortion laws in force in the majority of the American States, with an addition: "to avoid any possibility of conflict with article 6, paragraph 1, of the United Nations Covenant on Civil and Political Rights, which states this right in a general way only." (Yearbook, 1968 - page 97).

27. However, the majority of the Commission believed that, for reasons of principle, it was fundamental to state the provision on the protection of the right to life in the form recommended to the Council of the OAS in its Opinion (Part One). It was accordingly decided to keep the text of paragraph 1 without change. (Yearbook, 1968, page 97).

28. In the Diplomatic Conference that approved the American Convention, the Delegations of Brazil and the Dominican Republic introduced separate amendments to delete the final phrase of paragraph 1 of article 3 (Right to life) "in general, from the moment of conception". The United States delegation supported the Brazilian position. (Conferencia Especializada Interamericana sobre Derechos Humanos - ACTAS Y DOCUMENTOS - Washington 1978 (reprinted) - pages 57, 121 y 160.)

29. Conversely, the Delegation of Ecuador supported the deletion of the words "and in general". Finally, by majority vote, the Conference adopted the text of the draft submitted by the IACHR and approved by the Council of the OAS, which became the present text of article 4, paragraph 1, of the American Convention (ACTAS Y DOCUMENTOS - pages 160 and 481.)

30. In the light of this history, it is clear that the petitioners' interpretation of the definition given by the American Convention on the right of life is incorrect. The addition of the phrase "in general, from the moment of conception" does not mean that the drafters of the Convention intended to modify the concept of the right to life that prevailed in Bogotá, when they approved the American Declaration. The legal implications of the clause "in general, from the moment of conception" are substantially different from the shorter clause "from the moment of conception" as appears repeatedly in the petitioners' briefs.

31. However, accepting gratia argumentandi, that the American Convention had established the absolute concept of the right to life from the moment of conception - it would be impossible to impose upon the United States Government or that of any other State Member of the OAS, by means of "interpretation," an international obligation based upon a treaty that such State has not duly accepted or ratified.

32. The question of what reservation to article I of the Convention should be admissible, as suggested by President Jimmy Carter in his Letter of Transmittal to the Senate on February 23, 1978, has no direct link with the objective of the petition. This is not the appropriate place or opportunity for the consideration of this matter.

33. The other rights which the petitioners contend were violated --Articles II, VII and XI of the American Declaration--have no direct relation to the facts set forth in the petition, including the decision of the U.S. Supreme Court and the Supreme Judicial Court of Massachusetts which were challenged in this case.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. The decision of the U.S. Supreme Court and the Supreme Judicial Court of Massachusetts and other facts stated in the petition do not constitute a violation of articles I, II, VII and XI of the American Declaration of Rights and Duties of Man.

2. This decision must be transmitted to the petitioners and the U.S. Government.

3. To include this resolution in the Commission's Annual Report.

Chairman Tom J. Farer, Second Vice Chairman Francisco Bertrand Galindo, and Doctors Carlos A. Dunshee de Abranches, Andrés Aguilar, and César Sepúlveda concurred in approving this resolution. Dr. Aguilar presented a concurring explanation of his vote. Doctors Marco Gerard Monroy Cabra and Luis Demetrio Tinoco Castro presented separate, dissenting, explanation of their votes. Those explanations of votes are included as appendices to this resolution.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION N° 23/81
CASE 2141 (UNITED STATES)

CONCURRING DECISION OF DR. ANDRES AGUILAR M.

1. I concur with the decision of the majority of the members of the Inter-American Commission on Human Rights in this case, because, from a legal point of view I find no reasons which would allow the Commission to hold that the facts alleged by the petitioners constitute a violation, by the United States of America, of the rights set forth in Article I, II, VI and XI of the American Declaration on the Rights and Duties of Man.

2. The Inter-American Commission on Human Rights, irrespective of the individual or collective opinions of its members on specific questions, must determine, in each case, whether or not acts, imputed to the Member States of the Organization of American States, constitute a violation of one or more of the rights set forth in the American Convention on Human Rights, if a State Party to this international instrument is involved, or if the case concerns a State which is not a party to said Convention, of the rights set forth in the American Declaration of the Rights and Duties of Man. What must be determined in the one case, as in the other, is whether the charges presented against a Member State of the Organization constitute a violation of the international obligations which that State has contracted in the field of human rights and in the region.

3. Consequently, the Commission must examine with the greatest care the meaning and the scope of the norms applicable to each case, bearing in mind among other things the travaux preparatoires of the pertinent international documents to assure a correct interpretation.

4. The United States of America is not a party to the American Convention on Human Rights, the Pact of San José, so that the primary task of the Commission is to determine whether or not in this case any of the rights set forth in the American Declaration of the Rights and Duties of Man had been violated.

5. In my view, the opinion of the majority, comes to the correct conclusion, that none of the rights set forth in said Declaration had been violated. In effect, it is clear from the travaux preparatoires that Article I of the Declaration, which is the fundamental legal provision in this case, sidesteps the very controversial question of determining at what moment human life begins.

The legislative history of this article permits one to conclude that the draft which was finally approved is a compromise formula, which even if it obviously protects life from the moment of birth, leaves to each State the power to determine, in its domestic law, whether life begins and warrants protection from the moment of conception or at any other point in time prior to birth.

6. This being the case, the Inter-American Commission on Human Rights, which is an international regional body for the promotion and protection of human rights, with a precise legal mandate--could not,--without transgressing the limits of that mandate, issue a value judgment on the domestic law of the United States of America or of any other State in this matter.

7. The decision of the majority does not begin, and could not begin, to judge whether abortion is reprehensible from a religious, ethical or scientific point of view, and it correctly limits itself to deciding that the United States of America has not assumed the international obligation to protect the right to life from conception or from some other moment prior to birth and that, consequently, it could not be correctly affirmed that it had violated the right to life set forth in Article I of the American Declaration of the Rights and Duties of Man.

8. For the reasons expressed, I dissent on this point, from the opinion of my distinguished colleagues Dr. Luis Demetrio Tinoco and Dr. Marco Gerardo Monroy Cabra. On the other hand, I completely share their judgment, based in the opinions of well-known men of science, that human life begins at the very moment of conception and ought to warrant complete protection from that moment, both in domestic law as well as international law.

INTER-AMERICAN COMMISSION OF HUMAN RIGHTS
RESOLUTION N° 23/81
CASE 2141 (UNITED STATES)

DISSENT OF DR. MARCO GERARDO MONROY CABRA

I dissent from the majority opinion of the Inter-American Commission on Human Rights in Case 2141 for the following reasons:

1. Article I of the American Declaration of the Rights and Duties of Man reads: "Every human being has the right to life, liberty, and the security of his person." Since the text is not explicit, I think that the interpretation most in accord with the genuine protection of the right to life is that this protection begins at conception rather than at birth.

2. The historical argument, upon which the majority opinion of the Commission is based, is unclear. Indeed, a review of the report and the minutes of the Working Group of the Sixth Committee shows that no conclusion was reached to permit the unequivocal inference that the intention of the drafters of the Declaration was to protect the right to life from the time of birth--much less to allow abortion, since this topic was not approached.

3. In its resolution, the Commission states that Article 1 of the Inter-American Juridical Committee draft was incompatible with the laws of some of the American States, which in certain cases permitted abortion, and this is true. This incompatibility, however, does not lead to the conclusion that the IX International Conference of American States in Bogotá intended to take the position that life should be protected only from birth and not from conception, since this conclusion is not evident from the Minutes of the Sixth Committee. The Commission's position implies that a conflict between domestic and international law is possible, which in each case would be resolved according to the principles of international doctrine, international jurisprudence, and the constitutional laws of each State. Needless to say, the now-prevalent concept is the monist position held by Kelsen, that in case of conflict international law takes precedence over domestic law, a principle adopted as a general rule in Articles 27 and 46 of the Vienna Convention on the Law of Treaties. This would imply that if the Declaration ran counter to the laws of some American States, international law would prevail.

4. In its opinion, the Commission argues that the sentence "This right extends to the right to life from the moment of conception" was eliminated from the Inter-American Juridical Committee draft and such is the case. However, one cannot thereby conclude that life should not be protected from conception, inasmuch as the statement "to the right to life of incurables, imbeciles, and the insane" was also eliminated, and no one could reasonably say that the life of incurables, imbeciles, or the insane should not be protected.

5. Since Article 1 does not define when life begins, one can resort to medical science which has concluded that life has its beginning in the union of two series of chromosomes. Most scientists agree that the fetus is a human being and is genetically complete.

6. If international agreements are to be faithfully and literally interpreted, in keeping with the meaning that should be attributed to the terms of a treaty and read in context, taking into account the objective and purpose of that treaty, there is no doubt that the protection of the right to life should begin at the moment of conception. Since Article 1 is general, the protection should begin when life begins, and we have already seen that life begins at the time fertilization is completed in the union of two series of chromosomes.

7. Even Roman law recognized that rights could be granted to an infant who had been conceived although was not yet born, provided that enjoyment of these rights be subject to the actual fact of birth which constituted the beginning of the existence of the person (*infans conceptus pro nato habetur, quoties de commodis eius agitur*). This principle, which protects the life of the unborn, is set forth in many civil codes (e.g. Articles 91 and 93 of the Colombian Civil Code.)

8. The intentional and illegal interruption of the physiological process of pregnancy, resulting in the destruction of the embryo or death of the fetus, is unquestionably an offense against life and, consequently, a violation of Article 1 of the American Declaration of the Rights and Duties of Man. The maternal womb in which the flame of life is lighted is sacred and may not be profane to extinguish what God has created in his image and in his likeness. It has been said repeatedly, that, from the biological standpoint, human life exists from the moment that the ovum is fertilized by the sperm and, more specifically, from the time the egg travels to the uterus. The scientific process is the following: when in a fertile state, the sex cells (ova and spermatozooids) undergo a special process of chromosome division called meiosis, in which the 46 chromosomes of each cell are reduced to 23, in such a way as to distinguish the sperm and the ovum, with each containing only one half the number of chromosomes present in the nucleus of the majority of human cells. After a process of search and rejection on the part of these fertile cells, comes what is known as activation, which occurs when a sperm cell succeeds in penetrating the interior of the ovum. This produces fertilization, the process whereby two sex cells (ovum and sperm) unite to form the first cell of an individual. This first stage, called activation, is followed by another, when the genetic messages carried by the sperm and those already possessed by the egg are attracted to each other and unite. Added together, the 23 chromosomes of the mother and the 23 of the father total the 46 chromosomes of the zygote cell.

This union of male and female elements produces the zygote, which is simply the fertilized egg. We now have fertilization in the true sense of the word. It can then be said that conception has taken place and that a human being exists, since through the union that has occurred, we have a human cell containing its intrinsic 46 chromosomes. This new being, which scientists call a zygote, differs from the father and the mother, in that it has only one half of him and one half of her. What we have is a fertilized egg, representing a life--a life that contains the genes to make way for the appearance of new cells that will form the different parts of the human body. Thus fertilized, the egg begins its journey toward the uterus, which it will reach in a few days, and the embryo will then continue developing in stages. These stages have now been distinguished from each other by scientists, who are able to tell us the precise age of any of them.

Jerome Lejeune, professor of fundamental genetics of the University of Paris, member of the Academy of Sciences of that city and of the Royal Society of Medicine of London, was asked whether the first cell, from the moment of conception, might be considered already a human being with its own personality, independent of the mother. His reply was "Of course. It has been demonstrated that all the genetic features of the individual are found in that first cell, which will develop progressively, and if all these features were not there at the outset, the individual would never develop."

9. Life is the primary right of every individual. It is the fundamental right and the condition for the existence of all other rights. If human existence is not recognized, there is no subject upon which to predicate the other rights. It is a right that antecedes other rights and exists by the mere fact of being, with no need for the state to recognize it as such. It is not up to the state to decide whether that right shall be recognized in one case and not in another, since that would mean discrimination. The life of the unborn child, the infant, the young, the old, the mentally ill, the handicapped, and that of all human beings in general, must be recognized.

The foregoing means that if conception produces a human life, and this right is the primary and fundamental one, abortion is an attack on the right to life and, therefore, runs counter to Article 1 of the American Declaration of the Rights and Duties of Man.

CONCLUSIONS:

1. Article 1 of the American Declaration of the Rights and Duties of Man protects human life from conception.
2. The travaux preparatoires of the Declaration and the discussion of Article 1 in the Sixth Committee and in the Working Group do not lead to the conclusion that the drafters of the Declaration intended to restrict the protection of the right to life to the period following birth.
3. Abortion laws violate Article 1 of the aforementioned Declaration.
4. In terminating legal protection unborn children, the judicial decision of the United States constitutes a violation of Article 1 of the American Declaration of the Rights and Duties of Man.
5. It is not appropriate here to analyze Article 4 of the American Convention on Human Rights, since the United States has not ratified this treaty. The foregoing explains my reasons for dissenting from the majority opinion of the Commission.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION N° 23/81
CASE 2141 (UNITED STATES)

DISSENT OF DR. LUIS DEMETRIO TINOCO CASTRO

I dissent from the majority opinion and from the Resolution adopted in Case 2141, in its Operative Part and in paragraphs 19, 30, and 31 of the Preamble, for the reasons I shall go on to state, but not without first congratulating the Rapporteur for his praiseworthy effort of summarizing in the form in which they appear in the other paragraphs, the facts and the arguments of the Parties, and the background material, both from the American Declaration of the Rights and Duties of Man and from the American Convention on Human Rights or Pact of San José, Costa Rica, which allows me in this dissenting vote to omit the restrictive listing of the facts and of the arguments presented by the parties.

I depart from the opinion of the majority when it affirms, in paragraph 19 of the Preamble of the Resolution, that "a brief legislative history of the Declaration does not support the petitioners' argument" and that may be concluded from the report presented by the Working Group that studied the draft wording of Article I of the Declaration, as well as from the fact that in that Group the concept contained in the draft of the Inter-American Juridical Committee had been eliminated, where it said, after stating every person has the right to life, "This right extends to the right to life from the moment of conception; to the right to life of incurables, imbeciles, and the insane." (Verbatim report of the Rapporteur, paragraph 19.b.)

Study of the Minutes and Documents of the Working Group concerned, and of the Sixth Committee, which was responsible for consideration of these articles of the Draft Declaration, leads me to conclusions contrary to those established in the vote of the majority. In fact, I do not find, either in the Report of the Working Group (Document CB-310/CIN-31), signed by its Rapporteur Dr. Guy Pérez Cisneros, or in the Report of the Sixth Committee (Document CB-445/C.VI-36), presented by its Rapporteur Luis López de Mesa, as they appear on pages 472 to 478 and 510 to 516 of Volume V of Actas y Documentos of the Ninth International Conference of American States, published by the Ministry of Foreign Affairs of

Colombia, any specific explanation of the reasons that motivated the elimination of the supplementary phrase contained in the Draft Declaration of the International Rights and Duties of Man presented by the Inter-American Juridical Committee (Document CB-7), which recognized "the right to life for all persons, including (a) the unborn, as well as (a) "incurables, imbeciles, and the insane." For which reason I must deduce that the reason for that elimination was none other than that expressed by the Rapporteur, Mr. López de Mesa, in these terms: "Likewise, it was decided to draft them (the rights and duties) in their mere essence, without exemplary or restrictive listings, which carry with them the risk of useless diffusion and of the dangerous confusion of their limits." And the reason cannot be other, because there would not be another for explaining the elimination of the phrase that recognizes the right to life for "incurables, imbeciles, and the insane." Now: if the elimination of the phrase that concerns those persons has no other moral, logical, and legal justification than the purpose of the Sixth Committee--and later of the plenary session of the Conference--to avoid "exemplary or restrictive listings," for the same reason it is necessary to admit that it was the purpose of avoiding its "listing"--and no other--that led the Committee and the Conference also to eliminate the unnecessarily explanatory expression "the right to life from the moment of conception."

I cannot, therefore, share the view that the elimination of the concept that explicitly recognizes the right to life of unborn human beings, in accordance with the draft prepared by the Inter-American Juridical Committee, resulted from "a compromise to resolve the problems raised by the Delegations of Argentina, Brazil, Cuba, the United States of America, Mexico, Peru, Uruguay, and Venezuela, mainly as a consequence of the conflict existing between the laws of those states and the draft of the Juridical Committee," of which compromise or of which problems or objections I find no mention whatever in the minutes of the Working Group, of the Sixth Committee, or of the plenary session of the Conference that met in Bogotá. On the contrary, the fact that there does not appear in the volumes of Actas y Documentos any specific motion of a written draft by any delegation that expressly requests the elimination of the phrase of the Juridical Committee's draft that was prepared by the eminent jurists Dr. Francisco Campos, Dr. José Joaquín Caicedo Castilla, Dr. E. Arroyo Lameda, and Dr. Charles G. Fenwick, in my opinion indicates that the supplementary phrase was eliminated because it was considered unnecessary, and that the concept--not discussed or put in doubt by anyone--that every person has the right to life, including those yet unborn, as well as incurables, imbeciles, and the insane, was implicitly maintained.

That principle, recognized by the Inter-American Juridical Committee and not discussed at the Bogotá Conference, moreover, was not exclusively of the internationalists of the Inter-American world, but the predominant one on the matter in the broader circles of the United Nations, as is shown by considerandum III of the Declaration of the Rights of the Child proclaimed on November 20, 1959, by the XIV Session of the General Assembly of that Organization as Resolution 1386 (XIV), which says, in pertinent part: "Whereas: the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

The draft prepared by the Inter-American Juridical Committee, as well as the United Nations Declaration of the Rights of the Child (Resolution 1386/XIV), as we have seen, expressly recognized that the human being exists, and has rights, and needs protection, including legal protection, in the period preceding his birth.

The American Declaration of the Rights and Duties of Man, for its part, plainly and clearly states: "Every human being has the right to life."

Leaving aside the legal background that led to this simple wording of Article I of the Declaration, to decide this Case it is necessary first to answer the transcendental question of the nature of the unborn, the topic of most significant legal and moral consequences of stipulating whether what has been formed in the womb of a woman and is still therein is a "human being" with the right to life. Or whether it should be understood that the "right to life" that every human being has in accordance with the already living their own lives, outside the womb. In other words: at what moment in his long process of formation, development, decadence, and death is it considered that there exists a "human being" with the "right to life" and to the protection given him by the basic legal instruments of the new discipline of Human Rights? More specifically, as it affects the problem raised by Case 2141, to which I refer: when the woman's ovum is fertilized by action of the man, has a human being been constituted and does it have the right to life?

The question was put barely three years ago to the eminent Dean of the Teaching and Research Unit of the University of Paris, holder of the Chair of Fundamental Genetics, there, Professor Jerome Lejeune, a distinguished member of the Academy of Moral and Political Sciences of Paris, of the Royal Society of Medicine of London, and of the American Academy of Arts and Sciences of Boston, awarded the Gold medal for Scientific Research and the Jean Toy and Kennedy Prizes, and the Science Prize of the City of Paris. "Professor," he was asked, "may the first cell formed at the moment of conception be considered already to be a human being, with his own personality, independent of that of his mother?" "Of course," he replied, adding, "It has been shown that all the genetic qualities of the individual are already present in that first cell, that the embryo, seven days after fertilization...emits a chemical message that stops the menstruation of his mother...that at twenty days

after fertilization...his heart (as large as a grain of wheat) begins to beat...at two months...he already has human form completely: he has a head, he has arms, he has his fingers and toes...and even the lines on his hands drawn...and between the second and third months...the fingerprints are already indicated...and will not change to the end of his life...at three months he is already able to close his eyes, to clench his fists, and if at that moment his upper lip were caressed with a thread, he would make a face... A human being exists...there is no doubt about that." And the same Professor, in a magazine article, stated: "The fetus is a human being. Genetically he is complete. This is not an appearance; it is a fact."

The opinion of the vast majority of scientists, not to say all of them, is the same as that of Professor Lejeune. "The unborn child is a person whom no one knows. He is living being from the moment of conception," say Dr. Ingelman-Sundberg and Dr. Ceas Wirsén in their work "The Drama of Life before Birth," published in 1965. Dr. Bart Hefferman, in a book entitled "The Early Biography of Every Man," published in 1972, said that from the time of conception the child is a complex, dynamic individual, who grows rapidly, and that at the moment of fertilization a new and unique individual is created, who, although he receives half his chromosomes from each parent, is really distinct from each of them. Moreover, the scientists Treslar, Behu, and Cowan, in analyzing what they called the "gestational interval," in a work they published in 1967, stated in terms that leave no room for doubt that the beginning of a new life occurs at the moment in which the fertilization is completed by the fusion of two series of chromosomes. Taking up that criterion, the International Code of Medical Morality declared that the doctor should always bear in mind the importance of preserving human life from the time of conception; and the so-called Declaration of Geneva makes the physician promise to maintain the greatest respect for human life from the time of conception.

Those scientific principles and principles of professional ethics have also found implicit welcome, as was to be expected, in the legislation of the immense majority of the countries of the western world, in which, almost without exception, the rule is in force that a woman sentenced to death may not be executed if she is pregnant, a benefit that is not limited to women who have reached the state of "advanced pregnancy" but extends also to those at any other stage of the process of gestation of the child. Now such an exceptional provision, which is also found in the International Covenant on Civil and Political Rights approved by Resolution 2200 A (Article 6.5) of the United Nations General Assembly, can only be explained if one starts from the legal assumption that a human being is living in the womb of the woman who would have to be executed, and since this small and unseen human being had not been covered by the sentence, neither morally nor legally could it be made to suffer the death penalty that would fatally be derived from the execution of the mother. This is an evident recognition by the United Nations and by the law in force in many countries that a human being has existence, life, during the entire period of pregnancy of the women.

The reasons stated leave no doubt in my mind that the American Declaration of the Rights and Duties of Man refers to the complete period of human life--from conception to death--when it states that "every human being has the right to life"; that, for that valuable instrument of international law, life does not begin at birth--the final phase of the process of gestation--but at the moment of conception, which is the moment at which a new human being, distinct from the father and from the mother, is formed; and that, in recognizing the right of the unborn to life, the Declaration rejects the legitimacy of any act that authorizes or considers acceptable acts or practices that will lead to its death.

A new problem, of an International legal order, arises. Up to what point are the declarations, made by consensus or by majority vote, by the international organizations or their competent organs, binding on the states? I am not going to enter into the speculative terrain in which the debates revolve about the legal value of the Universal Declaration of Human Rights--a general expression of the thinking of mankind represented by the United Nations, according to some; and a simple expression of ideals without force of jus cogens according to others. I shall restrict myself to pointing out the singularity achieved in this respect by the American Declaration of the Rights and Duties of Man, when the Council of the Organization of American States approved, without a dissenting vote, at its meetings on May 25 and June 8, 1960, Article 2 of the Statute of the Inter-American Commission on Human Rights, which stated: "For the purpose of the present Statute, human rights are understood to be the rights set forth in the American Declaration of the Rights and Duties of Man." This singularity of the Declaration--implicitly endowed ever since then with the force of the instruments that are jus cogens among the states--has been strengthened with the approval that the General Assembly of the OAS has given during the last twenty years to the Commission's Annual Reports and reports on certain states, all of which concern the observance or nonobservance by the member states of the OAS of the rights set forth in the Declaration of Bogotá. There can be no doubt, in my opinion, that for those states the Declaration is much more than a simple expression of ideals for realization in a distant future; it is a code of conduct, agreed on by all, so that in the Americas the basic principle of the dignity of the human being and due respect for those rights that are essential to man and the attributes of the human individual may maintain full value and effectiveness. A code of conduct that is both "the principal guide of an evolving American Law" and the "initial system of protection considered by the American States as being suited to the present social and juridical conditions," to quote from the preamble to that same Declaration.

From the foregoing it is logical that it not be a valid reason, for me, that the existence, in the legislation of many American countries--in 1948--of legal standards that recognized the legality, in certain conditions, of induced abortion, should constitute an insurmountable obstacle for recognition to be given, in the Declaration, to the right of the human being to existence, to life, in the prenatal period. I consider

that the international community, or the American community, may, and on certain occasions should, revise the rules of international law in force at the moment, including the recent ones for the international protection of human rights, for the purpose of establishing new precepts that will correspond to the advances of science, to the teaching of experience, to the changing realities of social and international life, to the needs determined by the inevitable changes that the new epochs create in the course of the years, and the aspirations that arise as generation follows generation. The international community, the American community, could not refuse to accept innovations that have a logical and just basis, because doing so would imply stopping the progress of the law and repudiating the principle contained in the Declaration that the system of protection of the rights of man should be strengthened more and more in the international field as social and legal circumstances become more propitious.

On the basis of all that has been said, and analyzing the facts that serve as a basis of the complaint that originated this Case 2141, as explained in the Report of the Rapporteur, and the arguments presented by the complainants and the representatives of the Government of the United States, it is my opinion that in the case Commonwealth v. Dr. Kenneth Edelin (Case of Baby Boy) the Supreme Judicial Court of Massachusetts, in reversing the verdict of the jury that convicted the defendant and absolving him of all penalty because it considered that sufficient evidence had not been presented in the trial to show that he had acted "recklessly" or to demonstrate the possibility of life outside the womb of the unborn child identified only as Baby Boy, disregarded, disrespected, and violated Article I of the American Declaration of the Rights and Duties of Man, which recognized that "every human being has the right to life."

Therefore, I vote against the draft resolution that declares that the aforementioned decision of the Supreme Judicial Court of Massachusetts does not constitute a violation of that article; and I state for the record that I am not considering the complaint made against the United States Supreme Court in relation to its decisions in the cases Roe v. Wade (410 U.S. 113) and Doe v. Bolton (410 U.S. 179), because the passage of time since 1973 when those decisions were handed down prevents the Inter-American Commission on Human Rights from taking cognizance of them, despite the relationship or influence they may have had in the case Baby Boy (Commonwealth v. Dr. Kenneth Edelin).

I request that this dissenting explanation of vote be placed as indicated in Article 18 of the Regulations of the Commission, and that it be given any other usual processing.

RESOLUTION 26/81
CASE 7739 (BOLIVIA)
June 25, 1981

BACKGROUND:

1. In a communication of January 23, 1981, the death of several persons was denounced to the Inter-American Commission on Human Rights, in the following terms:

According to the reports received, in the evening of January 15, 1981, a combined group of paramilitary forces and regular soldiers, acting under instructions of the Ministry of the Interior, raided a house in the city of La Paz, in which a meeting was being held of leaders of the Revolutionary Leftist Movement (MIR), a nationalist radical party, which had gained six congressional seats in the 1979 elections.

Some 15 persons were attending the meeting, including representatives of the Bolivian Workers Union. According to the reports, the soldiers surrounded the house and, although no resistance was offered, nine persons were killed. Some of the victims were claimed to have been tortured before their death. Later, at a press conference, the Minister of the Interior reported that nine guerillas and a policeman had been killed in an armed confrontation.

The following persons are believed to have died:

ARTEMIO CAMARGO: Leader of the Federated Union of Mine Workers (FSTMB), who worked in the Siglo XX mine.

JOSE REYES CARVAJAL: A forty-one-year-old former policeman who had been elected deputy for the City of La Paz by the Popular Democratic Union in the 1980 elections.

JOSE LUIS SUAREZ GUZMAN: University professor.

ARIEL MENACHO: Approximately 50 years old, an MIR organizer in Pando.

KOREE BALDIVIESO: About 35 years old, an MIR organizer in Oruro.

RICARDO NAVARRO MOGRO: A university professor, about 30 years of age.

GONZALO BARON: Student leader.

RAMIRO VELASCO AVILES: About 35 years old.

2. In a note of February 19, 1981, the Commission transmitted to the Government of Bolivia the pertinent portions of the denunciation, requesting that it furnish pertinent information on it and any evidence to determine whether all remedies of domestic law were exhausted in this case.

3. When the Commission received no reply from the Bolivian Government, it repeated its request for information in a note of April 13, 1981, and announced possible application of Article 39 of its Regulations, on the presumption that the facts in the petition are true.

WHEREAS:

1. Articles 39 of the Commission's Regulations provides as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Articles 31 paragraph 5, the government has not provided the pertinent information, as long as other as other evidence does not lead to a different conclusion.

2. To date, the Bolivian Government has not responded to the Commission's requests in its notes of February 19 and April 13, 1981, for information on the death of Artemio Camargo, José Reyes Carvajal, José Luis Suárez Guzmán, Ariel Menacho, Koree Baldivieso, Ricardo Navarro Mogro, Gonzalo Baron, and Ramiro Velasco Aviles.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. In application of Article 39 of its Regulations, to presume to be true the events mentioned in the communication of January 23, 1981, concerning the death under irregular circumstances of Artemio Camargo, José Reyes Carvajal, José Luis Suárez Guzmán, Ariel Menacho, Koree Baldivieso, Ricardo Navarro Mogro, Gonzalo Baron, and Ramiro Velasco Aviles.

2. To draw to the attention of the Government of Bolivia that such acts are very serious violations of the right to life (Article IV); the right to personal security (Article V), and the right to liberty (Article VII) of the American Convention on Human Rights.

3. To recommend that the Government of Bolivia: a) order a complete and impartial investigation to determine the perpetrators of the events denounced; b) that it punish under Bolivian law the persons responsible for those events; c) that it report to the Commission in ninety days on the steps taken to implement the above recommendations.

4. To transmit this resolution to the Government of Bolivia in light of Article 44 of the Commission's Regulations for appropriate action.

5. At the expiration of the deadline set in paragraph 3 of this Resolution, the Commission will, pursuant to Article 45 of its Regulations, and taking into account the measures adopted by the Government, decide under the terms of that article whether to publish this resolution.

RESOLUTION 27/81
CASE 7458 (BOLIVIA)
June 25, 1981

BACKGROUND:

1. In a communication of July 23, 1980, the Inter-American Commission on Human Rights received a report on the detention and death on July 17, 1980, at the Bolivian Workers Union (COB) headquarters in La Paz, of Marcelo Quiroga Santa Cruz, a Socialist party candidate for the presidency of Bolivia, and a Congressman representing Cochabamba.

2. In a note of August 25, 1980, the Commission transmitted the pertinent portions of the denunciation to the Government of Bolivia, requesting that it furnish pertinent information on the report and any evidence to determine whether domestic legal remedies had been exhausted in this case.

3. According to press information received by the Commission on September 16, 1980, the Ministry of the Interior confirmed the death of Mr. Marcelo Quiroga Santa Cruz.

4. When the Commission received no reply from the Bolivian Government, it repeated in a note of December 16, 1980, its request for information and announced possible application of Article 39 of its Regulations regarding the presumption that the reported events were true.

5. The Commission has received reports from eye witnesses of the attack on the Bolivian Workers Union headquarters, confirming that Mr. Marcelo Quiroga Santa Cruz died under irregular circumstances at the hands of Government authorities and that his body was never turned over to his family.

WHEREAS:

1. Article 39 of the Commission's Regulations provides as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall

be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

2. Thus far the Bolivian Government has not replied to the Commission's requests for information in its notes of August 25 and December 16, 1980.

This failure to reply gives rise to the presumption stipulated in the above Article 39, which would be enough in itself to indicate the truth of the events imputed to the Government of Bolivia. In this case, the presumption is amply supported and supplemented by the declarations of the witnesses.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To take as true the event denounced in the communication of July 23, 1980, regarding the death of Marcelo Quiroga Santa Cruz.

2. To indicate to the Government of Bolivia that that action is a very serious violation of the right to life (Article IV); to the right of personal security (Article V); and to the right of liberty (Article VII) of the American Convention on Human Rights.

3. To recommend to the Government of Bolivia: a) that it order a complete and impartial investigation to identify the perpetrators of the denounced acts; b) that it punish under Bolivian law those responsible for those acts; c) that it report to the Commission in 90 days on the measures taken to implement the above recommendations.

4. To transmit this resolution to the Government of Bolivia in light of Article 44 of the Commission's Regulations, for appropriate action.

5. When the deadline set in paragraph 3 of this resolution has expired the Commission will, pursuant to Article 45 of its Regulations, and taking into account the measures adopted by the Government, decide under the terms of that article whether to publish this resolution.

RESOLUTION 28/81
CASE 7472 (BOLIVIA)
June 25, 1981

BACKGROUND:

1. In a communication of August 14, 1980, the Inter-American Commission on Human Rights received a report on the arbitrary detention and torture of Father Julio Tumuri Javier, a 70-year-old Bolivian priest and President of the Permanent Assembly on Human Rights.

2. In a note of August 15, 1980, the Commission transmitted to the Government of Bolivia the pertinent parts of the denunciation and requested relevant information on it, along with any evidence that would enable the IACHR to determine whether all remedies of domestic law had been exhausted in this case.

3. Later, the Commission was informed that Father Julio Tumuri Javier was confined in a specified geographic region of the country and was in a precarious state of health.

4. When the Commission received no reply from the Bolivian Government to its note of August 15, 1980, it reiterated its request for information in a communication of December 16, 1980, and announced the possible application of Article 39 of its Regulations concerning the presumption that the facts of the case were true.

5. In May 1981, the Commission received testimony from one of the witnesses of Father Tumuri's arrest. The report of these events was transmitted as additional information to the Bolivian Government in a note of May 19, 1981, and it was requested to submit its comments thereon. To date, the Government has not replied.

WHEREAS:

1. Article 39 of the Commission's Regulations establishes as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

2. To date, the Bolivian Government has not replied to the Commission's notes of August 15 and December 16, 1980, and May 19, 1981.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. In application of Article 39 of its Regulations, to presume to be true the events reported in the communication of August 15, 1980, regarding the arbitrary detention, illegal torture and confinement of Father Julio Tumuri.

2. To draw to the attention of the Government of Bolivia that such acts constitute serious violations of the right to personal security (Article V); to the right of personal liberty (Article VII); and to the right to freedom of movement and residence (Article XXII) of the American Convention on Human Rights.

3. To recommend that the Government of Bolivia: a) immediately release Father Julio Tumuri; b) order a complete, impartial investigation to determine responsibility for the acts reported and punish those responsible for such acts to the full extent of the law; and c) report to Commission within 90 days on the measures taken to implement the above recommendations.

4. To communicate this resolution to the Government of Bolivia in light of Article 44 of the Commission's Regulations, for appropriate action.

5. At the expiration of the deadline set in subparagraph 3 of this resolution, the Commission will, pursuant to Article 45 of its Regulations, and taking into account the measures taken by the Government, decide under the terms of that article whether to publish this resolution.

RESOLUTION 30/81
CASE 7378 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of June 19, 1980, the Inter-American Commission on Human received the following denunciation:

On December 20, 1979, Father Carlos Stetter, parish priest of the Ixcán region, was virtually abducted when he landed in the airport of the city of Huehuetenango in the small plane that regularly transported sick persons, as well as medicines and building materials.

A few hours before his expulsion, the authorities denied having any knowledge of his whereabouts, both to church leaders and to German diplomats, thus violating provisions of the constitution and bilateral agreements between the Federal Republic of Germany and our country.

According to a decision of the General Migration Department, dated December 12 (which he was not informed of until the day he was arbitrarily taken into custody and expelled from the country), he was taken by armed men dressed in civilian clothes to Valle Nuevo, on the Salvadoran border, without having been given the opportunity to gather his belongings or to communicate with his superiors and his ambassador.

Father Carlos Stetter was born in Jagst, Allwangen, Germany, on March 9, 1941, and was ordained a priest on July 10, 1966. He arrived in Guatemala in 1971 and later became a resident after complying with the formalities required by law.

In the first five years, he was a priest in the community of CANTEL, Department of Quezaltenango. His religious work included the following: he unified the work of the State Parochial Clinic, built the churches of Estancia and Xecam, built a medical clinic, helped to form cooperatives, provided assistance in the electrification of Xecam, supported the parochial school, and provided valuable assistance to sports programs.

In Quetzaltenango, he founded Radio Fraternidad and, since he was an amateur radio operator, he was one of the first to transmit abroad notice of the tragedy suffered by the Guatemalan people in the 1976 earthquake. Immediately after the earthquake, he helped set up Operation Fraternity, in which more than 1,000 persons worked, and traveled to Germany to raise funds for building more than 2,500 housing units in the communities of Santa Cruz Balanya, patzún patzicia, Tecpán and San Juan Comalapa.

Following the death of Father Guillermo Woods (a case that to date has not been explained), Father Stetter requested transfer to the Ixcán region, which has 12,600 inhabitants, because he felt it was one of the most neglected areas and because the people repeatedly asked for a priest to be sent there.

In Ixcán, he developed cooperatives and transported sick persons, medicines and building supplies in a small plane. He organized groups of catechists and "delegates of the word." Adopting a very broad approach to his ministry, he took the first steps to build a school at the request of the people of the area, and to found a radio station and a clinic. These works have remained unfinished because of his expulsion.

The Huehuetenango Diocese where Father Stetter worked has always been one of the most peaceful departments in the country, but it has not escaped the wave of repression afflicting the Guatemalan people, because in recent months the people have been shocked by the murder of union leader Mario Mujia Córdova, who worked in the past on projects in the Diocese and in the Ixcán region; and the brutal attack on Mrs. Leticia Chávez de Rodríguez, a national hospital worker in Huehuetenango and mother of a member of a Guatemalan religious order, who lost an arm in an attack and remains in critical condition; in addition, numerous denunciations have been made by campesinos throughout the Ixcán region, concerning the abduction of local leaders, cooperative leaders, catechists, and "delegates of the word." Moreover, lists of threatened persons have appeared.

The expulsion of father Stetter is one of a number of similar cases, such as the expulsion of Sister Raymunda Alonso Queralt and the murder of Father Hermógenes López, which have constituted direct attacks on the church in Guatemala.

There is also a list of over 20 foreign members of religious orders whose expulsion from Guatemala is sought. Some religious residing in Guatemala for 20 years have had their temporary visas renewed for only a six-month nonextendable period, with no justification given.

In this case, the vague accusation of "foreign undesirable" was made against Father Carlos Stetter without stating why, and he was accused vaguely of "having violated the laws of the country," without stipulating which laws.

He was later expelled from the country without any hearing, which is a violation of Article 53 of the constitution that provides: "No one may be sentenced without having been summoned, heard, tried and convicted in legal proceedings."

Father Stetter was detained without having committed any crime or offense, so that his captors are responsible for violating Article 45, which provides that "all citizens have the right to do anything not prohibited by law." Therefore, it is his captors and those who expelled him who violated the law, since they committed the crime of abduction (Article 201 of the Penal Code) and also the crime of abuse of authority (Article 418 of the Penal Code)."

2. In a note of June 25, 1980, the Commission transmitted the pertinent portions of this denunciation to the Guatemalan Government, and asked for information on it.

3. In notes of December 16, 1980, and April 20, 1981, the Commission again sent a communication to the Guatemalan Government, repeating its request for information.

WHEREAS:

1. To date, the Guatemalan Government has not replied to the Commission's requests for information;

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events reported in the communication of June 19, 1980, referring to the arbitrary detention and later expulsion from the country of Father Carlos Stetter.

2. To declare that the Government of Guatemala violated Articles 7 (right to personal liberty), 8 (right to a fair trial), 22 (right to freedom of movement and residence) and 25 (right to judicial protection), of the American Convention on Human Rights.

3. To recommend to the Government of Guatemala: a) that Father Carlos Stetter be permitted to return to the territory of Guatemala and to reside in that country if he so desires; b) that it investigate the acts reported and punish those responsible for them; and c) that it inform the Commission in 60 days on the measures taken to implement these recommendations.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 31/81
CASE 7379 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of November 19, 1979, the following denunciation was made to the Inter-American Commission on Human Rights:

On November 16, after being abducted and tortured, the journalist José León Castañeda, a founding member of the Communications Media Union "SIMCOS" and member of the Guatemalan Media Association "APG," was murdered. José León Castañeda had been the victim of several attempts against his physical security and had received a number of threats against his life, including those made by the Anticommunist Secret Army "ESA" and by two deputies of the

current legislature of the republic. Democratic and popular entities have interpreted the murder of José León Castañeda as an attack against freedom of expression, and they regard the crime as part of an intensification of the violence against members of the press.

According to information published in the media, José León Castañeda was abducted by two armed men driving a "Bronco" car (this type of car is one of the most commonly used by the government security forces). The information was reported by the father of the murdered journalist. After the kidnapping, José León was found lying in one of the city streets, and his death was reported as due to a heart attack. However, an autopsy was demanded, and it showed that the journalist had died because of the severity and kind of tortures inflicted on him: blows, pulmonary hemorrhage and asphyxia. SIMCOS noted that this is a new method of elimination used by the terrorist forces, instead of the coup de grace.

2. In a note of June 25, 1980, the Commission transmitted the pertinent portions of this denunciation to the Guatemalan Government, requesting information on the case.

3. In notes of December 16, 1980, and April 20, 1981, the Commission again asked the Guatemalan Government for information.

WHEREAS:

1. To date, the Guatemalan Government has not replied to the Commission's requests for information.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events reported in the communication of November 19, 1980, regarding the abduction, torture and murder of the journalist José León Castañeda.

2. To declare that the Government of Guatemala violated Articles 7 (right to personal liberty), 5 (right to personal security) and 4 (right to life) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events reported and, if warranted, punish those responsible, and to inform the Commission of its decision within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported event occurred.

RESOLUTION 32/81
CASE 7383 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of July 2, 1980, the following denunciation was made to the Inter-American Commission on Human Rights:

At 11:00 a.m. on July 1, approximately 80 armed men arrived at the Guatemalan Coca Cola Bottling Plant, including uniformed members of the Judiciary Police of the Model Platoon. They beat up a number of strikers and forced them to return to work. Two workers were abducted. Both belong to the union. The name of one of them is Marcelino Santos Chajón.

2. In a cable of July 3, 1980, the Commission transmitted the pertinent portions of this denunciation to the Guatemalan Government, requesting that it furnish information on the case.

3. In a note of April 20, 1981, the Commission again requested information on the case from the Guatemalan Government.

WHEREAS:

1. To date, the Government has not replied to the Commission's requests for information, dated July 3, 1980, and April 20, 1981.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference

shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events reported in the communication of July 2, 1980, concerning mistreatment of a number of strikers and the abduction of Marcelino Santos Chajón and another union worker at the Guatemalan Coca Cola Bottling Plant.

2. To declare that the Government of Guatemala violated Article 7 (right to personal liberty), 5 (right to human treatment), 8 (right to a fair trial), 15 (right of assembly), 16 (freedom of association) and 25 (right to judicial protection) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events reported and, if warranted, punish those responsible, and inform the Commission in 60 days of the measures taken to implement this recommendation.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 33/81
CASE 7403 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of June 26, 1980, the following denunciation was made to the Inter-American Commission on Human Rights:

On June 21, 1980, the offices of the National Workers Union (CNT) in Guatemala were attacked by non-uniformed police. From 25 to 30 persons were detained. Although the streets around the CNT offices had been closed by the police authorities, the Government claims it does not know the whereabouts of the detained persons.

The emergency meeting of the CNT leadership had been called to take up the case of the death of two labor leaders killed the week before. On Friday, June 20, EDGAR RENE ALDANA, secretary of an organizing committee of the Coca Cola Bottling Plant workers, was shot and killed as he was leaving work. This union leader was the sixth Coca Cola worker murdered. On Saturday, June 21, the body of OSCAR AMILCAR PACHUCA was found, mutilated by torture. He had been abducted on June 17 along with GUILLERMO HERNANDEZ when they were working in the INCESA STANDART CO. GUILLERMO HERNANDEZ has still not been found.

The following persons are among those from the CNT headquarters who have been detained or have disappeared: FLORENTINO GOMEZ, Coca Cola union leader; FLORENCIA XOCOP, SARA CABRERA FLORES, of Agricasa; IRMA PEREZ, of Agricasa; GONZALO VASQUEZ, ORLANDO GARCIA, of the "TURSA" Transport Workers Union; BERNARDO MARROQUIN, union leader of the Kern's food processing plant; ISMAEL VASQUEZ, Coca Cola union member; SONIA FURIO, HILDA CARLOTA PEREZ, of Agricasa; OSCAR SALAZAR, MANUEL SANCHEZ and MARIO SALQUERRE, members of the Free Press union.

Also denounced is the murder of the Spanish priest, Father MARIA GRAN SIERRA, and his catechist by the Army on June 6 in Chajul, Quiche.

2. In a note of July 8, 1980, the Commission transmitted the pertinent portions of this denunciation to the Government of Guatemala, requesting that it supply information on the case.

3. In a note of August 25, 1980, the Commission supplied to the Guatemalan Government, as additional information from the claimants, the names of the following persons also alleged to have been abducted from the CNT union on June 21, 1980.

Sonia Sara Alecio
Rafael Antonio Aguilar
Irma Barrios
Luis Rodolfo Bonilla
Mario Camos Valladares
Christina Yolanda Carrera
Crescencio Coronel Ordoñez
Bernabé de la Cruz
Alvaro Estrada
Selvín Arnoldo García
Erwin René Hernández
Mario Martínez
Señor Reyes Aldama
Jorge Luis Serrano

4. In a note of December 8, 1980, the Commission sent the Guatemalan Government additional information received from the claimants

in this case, containing a more complete list of the names of persons abducted from the CNT union on June 21, 1980, as follows:

Rafael Antonio Aguilar Pérez	(Member of the Electronics Systems Union)
Sonia Alecio	(Member of the U.S. Vicks Vapo-Rub Company Union)
Sara Cabrera Flores	(Secretary General of the AGRICASA Union)
Mario Campos Valladares	--
Christina Yolanda Cabrera	(Member of the Electronics Systems Union)
Agustín Chitay Chapetón	(Member of the INDUPLASTIC Union)
Crescencio Coronel Ordoñez	(Member of the National Tilesetters Union)
Alvaro Oswaldon Estrada	(Member of the CERMACO Union)
Orlando Antonio García Rodríguez	(Member of the TURSA Union)
Selvin Arnulfo García López	(Member of the CERMACO Union)
Florentino Gómez López	(Secretary of the EGSA Press Union)
Erwin René Hernández Paiz	(Member of the CERMACO Union)
Bernardo Marroquín Salazar	(Secretary General of the KERN'S Union)
Mario Martínez	(Member of the U.S. Foremost Dairy Company Union)
Hilda Carlota Pérez Méndez	(Member of the AGRICASA Union)
Irma Candelaria Pérez Osorio	(Member of the INDUPLASTIC Union)
Manuel René Polanco Salguero	(Secretary General of STEPL and journalist of Prensa Libre)
Tomás Roberto Poll	--
Pedro Ramos Micatu	--
Manuel Antonio Rodríguez Ramos	(Member of the KERN'S Union)
Oscar Armando Salazar	--
Héctor Manuel Sánchez González	(Member of the INDUPLASTIC Union)
Jorge Luis Serrano	(Member of the National Tilesetters Union)
Ismael Vásquez Ortiz	(Deputy Secretary of the EGSA Union)
Florencia Xocop Chávez	(AGRICASA Union leader)

5. In notes of December 16, 1980, and April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. To date, the Government has not replied to the Commission's requests for information.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events reported in the communications of June 26, 1980, and thereafter, concerning the attack against the offices of the National Workers Union (CNT) and the arbitrary arrest of 25 CNT members on June 21, 1980. Also to declare true the events connected with the violent deaths of Edgar René Aldana, Oscar Amilcar Pachuca and Father María Gran Sierra, by officials of the Guatemalan Government.

2. To declare that the Guatemalan Government violated Articles 7 (right to personal liberty), 8 (right to a fair trial), 15 (right of assembly), 25 (right to judicial protection), and 4 (right to life) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events denounced and, if warranted, punish those responsible, and to report to the Commission in 60 days on the measures taken to implement this recommendation.

4. To transmit this resolution to the Government of Guatemala and to the claimant.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 34/81
CASE 7464 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of August 11, 1980, the following denunciation was made to the Inter-American Commission on Human Rights:

Douglas Sequeira López, 23, a married Nicaraguan citizen and last-year medical student at the University of San Carlos, Guatemala, was detained by Treasury security officers in Valle Nuevo, on the border between El Salvador and Guatemala, on July 25, 1980, when he was returning in a TICA-BUS Company bus to Guatemala City to continue his studies.

Despite innumerable efforts, his whereabouts are thus far unknown. His arbitrary detention is denounced, and it is believed that his life is in danger.

2. In a note of August 12, 1980, the Commission transmitted the pertinent portions of this denunciation to the Guatemalan Government, requesting information on the case.

3. In notes of December 16, 1980, and April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. The Government has thus far not replied to the Commission's requests for information.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events reported in the communication of August 11, 1980, concerning the arbitrary arrest and later disappearance of the student Douglas Sequeira López.

2. To declare that the Government of Guatemala violated Articles 7 (right to personal liberty), 8 (right to a fair trial), 22 (right to freedom of movement and residence) and 25 (right to judicial protection) of the American Convention on Human Rights.

3. To recommend to the Guatemalan Government that it investigate the events reported and, if warranted, punish those responsible, and report its decision on this case to the Commission within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 35/81
CASE 7490 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of September 10, 1980, the following denunciation was made to the Inter-American Commission of Human Rights:

On August 24, government security forces (detectives and army personnel), under the direction of Alfonso Ortiz, the Deputy Chief of the National Police Detectives Division, took 17 union leaders into custody.

The leaders were meeting at the "Emaús Medio Monte" farm, Palin District, Escuintla Department, owned by the Diocese of Escuintla. The license numbers of two of the vehicles used in the operation are P-78165 and P-78077. The numbers of the other license plates were not recorded because of the surprise elements of the operation.

As in the detention of the 27 union leaders of the National Workers Confederation (CNT), at that same headquarters, the Government denies having knowledge of the action and denies that the workers are being held, against all concrete evidence to the contrary.

2. In a note of September 17, 1980, the Commission transmitted the pertinent portion of this denunciation to the Government of Guatemala, asking for information on the case.

3. In a note of October 21, 1980, the Commission transmitted to the Guatemalan Government the following additional information received from the claimants:

Among the persons detained at the "Emaús Medio Monte" farm were the following: Gustavo Adolfo Bejarano, Juan Guerra, Guillermo Turcios, Augusto Yach Ciriaco, Edgar de la Cruz, Iliana de la Cruz, and the farm manager.

After their arrest by security forces, under orders of Alfonso Ortiz, the second in command of the National Police Investigations, these persons were taken to the garages of the National Police Investigations Division in area 6 of the city, where they were tortured under the direction of the new Chief of Investigations, Pedro Arredondo.

4. In a note of December 8, 1980, the Commission furnished the Government, as additional information, a more complete list received from the claimants, with the names, professions or occupations, of the persons abducted from the Emaús Medio Monte farm on August 24, 1980, as follows:

José Luis Pena	(Manager of the Emaús farm)
Gustavo Adolfo Bejarano factory)	(Worker in the Cidasa
Rafael Enrique Girón Mérida	"
Jordan Gilberto Salazar Uriza	"
Augusto Yach Ciriaco	"
Gerónimo Alberto Moreno Palencia	"
Alfonso Obdulio Molina Mérida	"
Ilian de la Cruz	(Union Orientation School of the University of San Carlos)
Edgar de la Cruz	"
Julio César Pérez Gálvez	"
Víctor Herrera	"
Rosarion Leal	"
Nery Robledo Espinoza	"
Adalberto Juarez	(Kern's Food Processing plant)

José Rufz

Juan Guerra Castro

INCASA

Guillermo Turcio García

"

5. In a note of April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. To date, the Guatemalan Government has not replied to the Commission's requests for information.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events denounced in the communication of September 10, 1980, concerning the arbitrary arrest and later torture of a group of union leaders, meeting in the "Emaús Medio Monte" farm owned by the Diocese of Escuintla, on August 24, 1980.

2. To declare that the Government of Guatemala violated Articles 5 (right to personal security), 7 (right to personal liberty), 8 (right to a fair trial), 15 (right of assembly), and 25 (right to judicial protection) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events denounced and, if appropriate, punish those responsible, and to communicate its decision to the Commission within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 36/81
CASE 7581 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of November 6, 1980, the following denunciation was made to the Inter-American Commission on Human Rights:

In March 1980, Mr. Nehemías Cúmez, Chief of the Department of Low-Cost Housing, of the town of Comalapa, was abducted on the way to his house when an automobile blocking the road forced his Land Rover to a stop. When he got out of his Land Rover, four men armed with shotguns and submachine guns made him get into their automobile. Since that time no news has been received of his whereabouts, although his Land Rover turned up in the town of Sunpango, 40 kilometers away.

In July, two related abductions occurred in Comalapa. On July 24, some soldiers stationed on the outskirts of Comalapa stopped a bus traveling from Comalapa to the capital, and abducted Adolfo Cúmez, the 18-year-old nephew of Nehemías. When he tried to intercede, Anastasio Sotz, 24, the Secretary of Low-Cost Housing, who had replaced Nehemías Cúmez as President of that agency, was also taken away.

In August, René Gomez Ovalle, 30, the son of a well-known merchant in Comalapa, was detained in Chimaltenango.

In August, three kilometers from Comalapa, on the road to the capital, a ravine some 120 feet deep was discovered, which has been used regularly to dump the bodies of abducted persons. Some 30 bodies were taken from there. Campesinos have reported that there were many more but the Government did not want to remove all of them. For a year, according to some witnesses, vehicles arrived at the place at night, turned off their lights and then disappeared. Eyewitnesses have reported that there are still many bodies at that place and that the Government has been duly informed of this.

On October 4, Juan Muz, 40, a friend of Nehemías Cúmez, was abducted from his home by four persons, as witnessed by his wife, his 17-year-old son and several neighbors. His body was found two days later 30 kilometers away, showing signs of torture. On the following day, some 15 soldiers patrolled the market to quell any demonstration that might have taken place during the burial.

On October 10, 1980, Antonio Muz, 35 years of age, and Roque Salazar, 30, employees of the Reconstruction Board, were abducted from a bus traveling from the capital to Comalapa by persons armed with Guatemalan Army submachine guns who were dressed in civilian clothes but wore Army boots. The body of Salazar was found on October 15, with the teeth pulled out and the tongue cut out, among other mutilations.

On October 15, two other persons were abducted from a Chimaltenango office: another employee of the Reconstruction Board, Ernesto Apén, 28, and Maximiliano Otzoy, a legal aide, both residents of Comalapa.

In November, several other murders occurred. A 17-year-old youth, Paquixic, was murdered in a nearby village in front of his family. A few days after, Julio Tuyuc, 25, was abducted on the public road in Comalapa by armed persons who made him get into their car. His body was found the following day.

Three Comalapa residents, including Lic. Miguel Corruichiche, were murdered in the capital when their car stopped at a red light. All of these persons were connected, as was Nehemías Cúmez, with the Comalapa Reconstruction Board.

The Government is held responsible for these acts.

2. In a note of December 16, 1980, the Commission transmitted the pertinent portion of this denunciation to the Guatemalan Government, requesting information on these cases.

3. In a note of April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. To date, the Government has not replied to the Commission's requests for information.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parties have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the

Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the acts denounced in the communication of November 6, 1980, concerning the arbitrary arrests of the following persons from the village of Comalapa:

Nehemías Cúmez and his nephew Adolfo Cúmez, Anastasio Sotz, René Gómez Ovalle, Antonio Muz, Ernesto Apén and Maximiliano Otzoy; the arbitrary arrest and later torture and murder of Juan Muz and Roque Salazar; the arbitrary arrest and later murder of Julio Tuyuc; and the murder of Lic. Miguel Curruchiche.

2. To declare that the Government of Guatemala 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) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the acts denounced and, if warranted, punish those responsible; and that it communicate its decision to the Commission within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimant.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statutes and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 37/81
CASE 7585 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of November 17, 1980, the following denunciation was made to the Inter-American Commission on Human Rights:

We are transmitting herein our eyewitness testimony of the murder of our parents and the persecution against us, their children.

The murder was committed with brazen impunity by the Government "security" forces headed by General Romero Lucas García.

On April 15, 1980, our parents were returning from downtown about 10:15 at night, accompanied by our small brother. Our brother opened the wire-mesh gate protecting the vehicle our parents were driving. At that instant, a brown Toyota, with license plate P-31209, appeared. A man whose clothing indicated he was from the east of the country got out of the Toyota and went toward our parents' car, firing several shots.

The first shots struck our father in the head and cheeks. The man emptied his gun into the bodies of our parents alternately, firing at short range into their chests, necks and faces. Our father tried to get out of the car and called out to our mother: "Now, Andres," but he could do nothing because he was unarmed.

Our father died almost instantly. Our mother opened her eyes and tried to say something, but the mortal wounds in her chest, neck and face prevented her. The 45-caliber bullets fired at point-blank range caused such profuse bleeding that the bodies had to be "repaired" before being laid out in the coffins.

! The brother who opened the gate escaped, but he was threatened by the murderers who brandished their guns at him and said: "Don't say anything..."

Minutes later, two cars with armed men parked some 150 meters from our house.

At that time, we were in a state of shock from the impact of such a brutal and inhuman attack against our parents.

Only later when we recovered a little, were we able to call the volunteer fire department, who came 30 minutes later without sirens or emergency lights.

Fifteen minutes later, a National Police tank, which people call "Swat," arrived. The police cynically laughed at how the bodies of our parents were lying. One of the brothers asked them to go away, and the police responded with threats. They left only when a number of persons intervened.

Our mother was a worker in the garment industry. When she married, she quit work to take care of our home. Our father was General Secretary of the Guatemalan Union of Bricklayers and Related Crafts, a member of the Executive Committee of the Autonomous Union Federation of Guatemala (FASGUA), a member of the Board of Directors of the Guatemalan Union Unity Committee (CNUS), and a representative of the Guatemalan Construction Workers to the Latin American Federation of Building, Carpentry and Construction (FLEMACON) to the Union Unity Committee of Central America and Panama (CUSCA), to the Latin American Permanent Congress of Workers (CPUSTAL), and to the World Union Federation (FSM).

He was engaged in union activities for over 20 years and, in 1977 and 1978, had been warned by the heads of the Verapaz Departments and a plantation owner named Champán that he would be shot if he entered the region. Other threats were made against the FASGUA Executive Committee by the Ministers of the Government and of Labor.

The Federation headquarters in Escuintla had been machine-gunned.

At 8:00 that night, our parents, along with one of our small brothers, left the downtown area. As they did so, they saw a man on the corner who, when he saw them, got into a Toyota with other individuals and followed them for several blocks but lost them. On leaving the district, they also noticed a Toyota and a Volkswagen with armed men in them. The Toyota was not visible when they returned, neither was the radio patrol car that guarded the Chief of the National Police Radio, Patrol Section who lives in the same district.

After the murder, a number of persons picked up shells and said they were the 45-caliber bullets used by the Army. The other shells were "confiscated" by the police, who remained silent about the caliber of them. An official press release was published on the events by the El Gráfico newspaper, on April 17, which maintained that there was no explanation of the events, no witness to the murders, and that the caliber of the weapon used was unknown. The caliber was not mentioned in the autopsy report, either.

Not satisfied with having taken the lives of our parents, they began to persecute our family. This began to be seen in the dissecting room where we were waiting for the autopsy finding. We went with some friends of the family to a cafeteria to pass the time while waiting. At that time, two policemen (vigilantes), who were driving a motorcycle, stopped for several minutes and watched us intently.

The FASGUA headquarters, where the bodies of our parents were laid out, was heavily guarded. There were a number of telephone calls asking for the sons of the victims, but when they answered the phone, nobody was on the line. They asked for the son who had seen the murders.

The firemen refused to give any information on the event "on orders from up" according to several media people who requested information from anybody outside the family. During the funeral, we were harassed by heavy police surveillance, including elements of the anti-riot platoon.

Telephone service, providing us with communication to the outside world, was cut off. A number of persons connected with the central government stressed to us that the only way to guarantee our lives was to leave the country, because of the "scandal" that had resulted from the murder of our parents and because of the consequent actions that we might take.

Because our stay in the country became unbearable as a result of the anxiety produced by the many threats received, we found it necessary to go to the Embassy of Venezuela, requesting diplomatic protection to guarantee our safe departure. The Venezuelan officials agreed to protect us.

2. In a note of December 19, 1980, the Commission transmitted the pertinent portions of this denunciation to the Government of Guatemala, requesting information on the case.

3. In a note of April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. To date, the Government has not replied to the Commission's requests for information.

2. Article 39 of the Commission's regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events denounced in the communication of November 17, 1980, concerning the murder of Rodolfo Ramírez and his wife Andrea Rodríguez de Ramírez and the intimidation and threats made against their children.

2. To declare that the Government of Guatemala violated Article 4 (right to life) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events denounced and, if warranted, punish those responsible, and that it inform the Commission of its decision on the case within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note: Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 38/81
CASE 4425 (GUATEMALA)
June 25, 1981

BACKGROUND:

1. In a communication of June 6, 1979, the following denunciation was made to the Inter-American Commission on Human Rights:

The Coca Cola Bottling Plant located in Guatemala City has had a history of anti-union violence, but an extreme escalation of repression in recent months, including the murder of union leaders, has drawn the attention of international human rights agencies. Union sources cite the violence as a coordinated effort by the plant management and its U.S. owner, John Clinton Trotter, to destroy the union organization.

Cronology of the escalation of violence at the Bottling Plant from October 1978 to April 1979

On October 16, 1978, Israel Márquez, Secretary General of the union, was machine gunned as he drove back to his house. The attack, which he miraculously survived, completely destroyed the windows of his automobile. The report on this attack in "El Imparcial" cites union sources stating that a dispute had taken place in the bottling plant earlier that day between union leaders and the management. According to the Union Federation (CNT), "the workers were warned about what might happen to them." According to union sources, a series of meetings were held in the Hotel Dorado Americano after the attack on Márquez. On at least one occasion, at the end of November, John Trotter and a group of plant managers met with Colonel Germán Chupina, who is described in a union statement as "one of the main agents of repression in Guatemala". A number of workers present at that meeting reported to the union that a decision had been made by the bottling plant management and the Chief of Police that the union would be destroyed within six months.

In November 1978, the bottling plant management advertised in the local press for staff assistants and security guards.

The advertisements stated that applicants must have experience in security organizations and in personal defense. As a result, three lieutenants and a number of armed guards now patrol the plant, prominently displaying their weapons. The three Army lieutenants are Juan Francisco Rodas (who has worked at the Río Hondo military bases), Edgar Gudiel Castro and Julio García. According to the "Nuevo Diario" of January 25, 1979, these three military men are now holding posts as heads of personnel, warehouse operations and security.

On December 12, 1978, Pedro Quevedo, the union Financial Secretary, was murdered. He was shot while seated in a company truck on a delivery route. Newspaper reports, such as the one published in "El Imparcial," of December 13, 1978, state that he received eight wounds in the throat and four, in the face. Quevedo had been jailed on three occasions for union activities. In his speech at the annual meeting of the Coca Cola Bottling Plant, Márquez said that, eight days before the murder, he was present at a meeting when John Trotter threatened to have Quevedo killed. Eight members of the military police arrived at the plant early in the morning of December 1. Quevedo was murdered about 12:30 in the afternoon. Although two military police officers usually patrolled the plant at night, the presence of military personnel there in the morning was extremely rare. After hearing the news of the murder, workers in the plant confronted the police and said, "It is because you came to the plant this morning. You knew that Quevedo was going to be murdered." The police replied that they had come to the bottling plant because of rumors of robbery attempt. In addition, Márquez stressed that several hours before the murder, "all the plant managers appeared to be extraordinarily nervous."

According to union statements, "a campaign of terror began" after the murder of Quevedo. A death list of the Anticommunist Secret Army (one of the rightist death squadrons) included the names of the entire union Executive Committee and Advisory Council. Threatening notes were also sent to workers in their homes. The only source of the correct addresses of these workers was the bottling plant office. In addition, the workers were forced to sign blank petitions against the union.

An anonymous worker reported in January 22, 1979, edition of "Noticias de Guatemala" a number of the attempts to destroy the union. He stated that, since the founding of the union, Trotter had tried to destroy the organization. When this press interview took place, most of the bottling plant workers were still in the union. A union spokesman said that, in the last 15 days, 6 of the 10 union leaders had resigned because of the increased repression and the consequent pleas of their families. They were immediately replaced. He described the difficult situation in where better jobs and salaries were offered to workers if they denounced the union, while, if they refused, they were threatened with being fired or murdered. He identified at least one specific death threat by Lieutenant Rodas.

On January 15, 1979, a number of vehicles with foreign license plates (the type of vehicles used in murders committed by rightist organizations) patrolled the plant grounds. On January 16, the same vehicles returned with two buses of the Police Model Platoon. According to union sources, the police entered the plant to take Márquez into custody. When Márquez arrived at the plant, on the

morning of January 16, a group of policemen tried to apprehend him, but he eluded them and ran away. His escape was aided by a friend who was driving after him, and picked him up in a small truck. While the two continued their flight, the police fired several times at the small truck.

On January 19, 1979, advertisements appeared in the local papers denouncing the workers' leader, Israel Márquez, as a poor union leader and a false representative of the workers' interests. The announcement allegedly was published by a Víctor Godínez.

Márquez said that a number of announcements had been published to denigrate him, and that they were all paid for by the company. The announcements were published by the same advertising agency hired to promote Coca Cola drinks. From Márquez' standpoint, the purpose of the company attacks was to defame him, to the point that, when he was finally murdered, there would be no public outcry. Interviews published in the "Noticias de Guatemala" on January 22, 1979, supported the assessment that the faith of union members in Márquez never failed and that all of the announcements were fraudulent.

On January 22, the union published in a number of newspapers a full-page open letter citing the paid advertisement of January 19 as a fraud. In addition, Víctor Godínez sent a sworn statement to the newspapers saying that he had never published the advertisements nor had he authorized his name to be used in any of those publications. In his open letter, he also gave details on the history of repression against the union.

On January 24, 1979, an innocent man, who had been mistakenly identified as Israel Márquez, was murdered when he left the house of that union leader. His wife was seriously wounded in the machine gun attack. Manuel Antonio Moscoso Zaldaña, 27, and his wife were married the previous month. Márquez told the ICCR that, on the day of the murder, a group of eight policemen who had been patrolling the plant since the day of Quevedo's murder were reinforced by 20 men armed with machine guns. As occurred on the day of the previous murders, this detachment arrived at the plant several hours before the crime was committed.

On January 30, 1979, Israel Márquez, his wife and 10-month-old child took refuge in the Venezuelan Embassy. The family remained in the Embassy for about a month before traveling to Costa Rica.

On March 13, 1979, Sonia Olivia, a union leader of the AGRICASA plant, was taken prisoner and interrogated for 12 hours by the "Judicial Police" or the detectives squadron. According to Yolanda de Aguilar, the CNT Union Federation lawyer, Sonia Olivia was informed by the police that they were going to kill Manuel López Balán, the new Secretary General of the Coca Cola union.

On March 19, 1979, "Noticias de Guatemala" reported that Lieutenant Juan Rodas had continued warning workers to quit the union.

On March 30, 1979, an attempt was made to abduct Yolanda de Aguilar, the CNT lawyer. When she succeeded in escaping from her abductors and entered an establishment full of people, she was warned, "you are safe now, but you know we are going to get you sooner or later."

On April 5, 1979, Manuel López Balán, 28, who had replaced Israel Márquez as Secretary General of the union, was murdered. Like Quevedo, he was murdered while running his delivery route. They struck him down with an iron pipe and then cut his throat from ear to ear. According to the "Nuevo Diario" (April 6, 1979), when another worker came to Balán's aid, one of the murderers hit him with a club and said "I don't want to kill you... he's the one I want," indicating Balán. As in the case of the Quevedo murder, the two murderers were reported to have followed the company truck on motorcycles. There were 17 wounds on Balán's body.

Israel Márquez said that Manuel Balán had been run down by a man on a motorcycle shortly after assuming the post of Secretary General of the union. He fractured a leg in the accident. Because of the nature of his wound, Balán was absent from work for a month. He was murdered the second day after he returned to work. Like Márquez, Balán had received numerous threats of death in the last few months. In January 1979, Balán was told at a meeting in the office of the manager, Alfonso Riego, that: "If he wanted to save his life, there was still time to quit the union."

On April 7, 1979, the father of Manuel López Balán was arrested by 20 uniformed policemen, according to reports in the Guatemalan newspapers.

On April 18, two of the three CNT Union Federation lawyers were abducted in an airport in Guatemala City. According to reports published in the newspaper "La Nación," on April 19, they were not arrested by members or agents of the regular police.

Two weeks after the murder of Balán, Marlon Mendizabal, 22, assumed the post of Secretary General of the Bottle Workers Union. He immediately received threats and warnings from the plant management. According to union sources, he was shown a list of names and addresses of his closest family members and was then made the following proposition: "Don't be a fool, resign your post. Don't you realize that we have the names of all your loved ones.

. . . Remember that torture is extremely painful... You know the various kinds of torture... There is this method, and that one, etc....." This oral harassment was followed by his arrest by the police on April 30, 1979.

2. In a note of June 18, 1979, the Commission transmitted to the Government of Guatemala the pertinent portions of the denunciation, requesting information on the case.

3. Later, on May 7, 1980, the following additional information was received from the claimants:

On April 14, 1980, at 10:00 a.m., representatives of the Guatemalan Bottling Plant Workers Union presented to the workers' court a request to discuss a new union contract, since the previous one had expired on February 2, 1980. The labor judge issued a ruling at that time under the labor law, prohibiting the dismissal of union members.

At 3:00 p.m. on that same day, 28 union members and three union leaders were fired.

On April 16, the three union leaders were reinstated.

The others have not been reinstated. All of them were threatened with death by Lieutenant Juan Francisco Rodas, an armed service officer on special duty acting as the company's head of personnel, if they did not accept their dismissal.

On May 1 of this year, four union members were abducted: Arnulfo García, René Reyes, Ricardo García, and Manuel de Jesús Gómez. The bodies of Arnulfo García, showing signs of torture, and of René Reyes were found on May 2 and 3, respectively. The other two have disappeared.

4. This additional information was transmitted by the Commission to the Guatemalan Government in a note of May 8, 1980, and information on these cases was requested from the Government.

5. In notes of December 16, 1980, and April 20, 1981, the Commission again requested information from the Guatemalan Government.

WHEREAS:

1. To date, the Guatemalan Government has not replied to repeated requests from the Commission for information on this case.

2. Article 39 of the Commission's Regulations provides as follows:

Article 39

1. The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Based on Article 39 of its Regulations, to presume to be true the events denounced in the communications of June 6, 1979, and May 7, 1980, concerning the threats, intimidations, attacks, acts of violence, and illegal dismissals to which leaders and members of the Coca Cola Bottling Plant union were subjected, specifically: the machine-gunning and attempted murder on October 16, 1978, of the then Secretary General of the union, Israel Márquez, and his later attempted abduction on January 16, 1979; the murders of Pedro Quevedo, Secretary of Finance, on December 12, 1978, and Manuel Antonio Moscoso Zaldaña, on January 16, 1979; the attempted abduction of Yolanda Aguilar, CNT lawyer, on March 30, 1979; the murder of the new Secretary General of the union, Manuel López Balán, on April 5, 1979, followed by the arbitrary arrest of his father on April 7, 1979; the threats and later arbitrary arrest and imprisonment of Marlon Mendizabal, who replaced Mr. Balán as Secretary General; and the abduction on May 1, 1980, of four union members--Ricardo García, Manuel de Jesús Gómez, Arnulfo García and René Reyes, followed by the subsequent murder of the latter two.

2. To declare that the Government of Guatemala violated Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 15 (right of assembly), 16 (freedom of association) and 25 (right to judicial protection) of the American Convention on Human Rights.

3. To recommend that the Guatemalan Government investigate the events denounced and, if warranted, punish those responsible; and that it communicate its decision to the Commission within 60 days.

4. To transmit this resolution to the Government of Guatemala and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f), of the Statute and Article 59 (g) of the Regulations of the Commission.

Note:

Dr. Francisco Bertrand Galindo declined to hear and decide on this case because he was living in Guatemala when the reported events occurred.

RESOLUTION 39/81
CASE 2299 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of May 9, 1977, the following denunciation was received: Mr. Angel Cuadra Landrove was imprisoned in April 1967 charged with being an "enemy and propagandist against the government of the people." He was sentenced to 15 years in prison. For eight years he was tortured and subjected to mistreatment in a number of political jails in Cuba, and spent two years more in prisoners work camps. He was released on December 17, 1976. After completing his sentence, he was again imprisoned on March 24, 1977, without having committed any crime.

2. In a note of December 6, 1977, the Commission transmitted the pertinent parts of the denunciation to the Cuban Government.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To Date, the Government of Cuba has not yet replied to the Commission's request dated December 6, 1977.

2. Article 39(1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. In application of Article 39(1) of its Regulations, to presume to be true the events reported in the communication of May 9, 1977, concerning the detention of Mr. Angel Cuadra Landrove.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I of the American Declaration of the Rights and Duties of Man) and the right to a fair trial (Art. XVIII).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18 (f) of the Statute and Article 59 (g) of the Regulations of the Commission.

RESOLUTION 40/81
CASE 3347 (CUBA)
June 25, 1981

BACKGROUND:

In a communication of June 26, 1978, the following denunciation was made: "Political prisoner, Mr. Tomás Fernández Travieso, was sentenced to 30 years in prison on April 18, 1961, for having committed crimes against the powers of the State."

During his long 17-year stay in prison, Tomás Fernández Travieso developed his early literary ambitions, writing short stories, poems and one drama, most of which remain unpublished. "Prometeo," which contains a noble message of love and forgiveness, was staged for the first and only time on March 20-21, 1976, by the Miami-Dade Community College drama group in Miami. The performance was presented as a College activity, not as a primarily political act.

Several months after the performance of "Prometeo," its author, Tomás Fernández Travieso, who was on the way to obtaining his release under the "Plan Progresivo," after serving over half his 30-year sentence, was again transferred to a maximum security prison, Combinado del Este, in Havana, with a new charge against him, this time that his drama had been staged, an act for which he was not, nor is, responsible. Despite the fact that he was not tried, because in this case it was not necessary to sentence him again for the same offense, Tomás Fernández Travieso has remained in the prison since that time, under the worst conditions.

2. In a note of January 8, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Cuban Government has not yet replied to the Commission's request dated January 8, 1979.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of June 26, 1978, concerning the detention of Tomás Fernández Travieso.

2. To declare that the Government of Cuba violated the right to a fair trial (Art XVIII of the American Declaration of the Rights and Duties of Man), the right of protection from arbitrary arrest (Art. XXV), and the right to due process of law (Art. XXVI).

3. To transmit this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18, subparagraph (g), of the Commission's Regulations.

RESOLUTION 41/81
CASE 3496 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of December 12, 1978, the following denunciation was received:

"The prisoner, Ernesto Arraigotia, was arrested in 1977, for having set fire to the old auditorium theater. The prisoner had been a porter in the theater. He was accused of sabotage, and was imprisoned in the infamous "Security" jails, where he was interrogated, beaten and tortured.

In the beginning, he maintained his innocence, but, after a period of brutal treatment, they say he confessed his guilt. However, his confession did not convince anyone. It was the result of cruel mistreatment, a way of stopping the terrible punishment, and it did not convince his torturers.

He was then taken to the punishment cells in the Combinado del Este. There his mistreatment continued, and many of his companions believed he had died, either having been beaten to death or shot.

Ernesto Arraigotia is in danger of death. We believe him to be innocent. He is locked up in the punishment cells under bad conditions."

2. In a note of December 20, 1978, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on it.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Cuban Government has not replied to the Commission's request dated December 20, 1978.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of December 12, 1978, concerning the detention of Mr. Ernesto Arraigotia.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I of the American Declaration of the Rights and Duties of Man).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 42/81
CASE 3992 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of March 15, 1979, the following denunciation was made:

"Your valuable aid is requested to make possible the departure from Cuba of the widow Clara Abrahante Boite. She is the mother of fellow countryman Pedro Luis Boitel, who died in the Cuban jails some time ago. Mrs. Abrahante has repeatedly applied for permission to leave the island, but without result."

2. In a note of April 4, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

3. The Government of Cuba has thus far thus not replied.

WHEREAS:

1. To date, the Government of Cuba has not replied to the Commission's request dated April 4, 1979.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of March 15, 1979, concerning the detention of Mrs. Clara Abrahante.

2. To declare that the Cuban Government violated the right to life, liberty and personal security (Art. I) and the right to residence and

movement (Art. VIII of the American Declaration of the Rights and Duties of Man).*

3. To communicate this decision to the Government of Cuba and the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 43/81
CASE 3956 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of October 30, 1978, the following denunciation was received: "Prisoner Eleno Oviedo was taken into custody on February 20, 1963. He was not tried until September 1970, and was sentenced to 30 years of hard labor."

2. In a note of March 22, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Government of Cuba has not yet replied to the Commission's request dated March 22, 1979.

2. Article 39 (1) of the Commission's Regulations establishes as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

* This resolution was approved by the Commission with respect to the right to residence and movement, with one member, Professor Carlos Alberto Dunshee de Abranches, voting against it.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume the events denounced in the communication of October 30, 1978, concerning the detention of Eleno Oviedo, to be true.

2. To declare that the Government of Cuba violated the right to a fair trial (Art. XVIII of the American Declaration of the Rights and Duties of Man).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 44/81
CASE 3884 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of November 15, 1978, the following denuncia-tion was made: that the following self-styled "unbreakable" (plantados) prisoners had disappeared from the Combinado del Este jail since early April 1978: Alberto Fibía González, Ernesto Díaz Rodríguez, Enrique Vásquez Rosales, Silvino Rodríguez Barrientos, Miguel Alvarez Cardentey and Rembreto Zamora Chirino. They were subjected to lengthy, harassing and torturous interrogations in security police jails.

2. In a note of March 17, 1979, the Commission transmitted the pertinent parts of the denunciation to the Cuban Government, requesting information on the case.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Cuban Government has not replied to the Commis-sion's request dated March 17, 1979.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of November 15, 1979, concerning the detention of Alberto Fibía González and others.
2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. 1).
3. To communicate this decision to the Government of Cuba and to the claimants.
4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 45/81
CASE 4402 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of May 29, 1979, the following denunciation was received:

1. Last June, 114 political prisoners were transferred from the Combinado del Este prison in Havana to the maximum security prison of Boni Oriente.
2. Most of the prisoners transferred are "unbreakable" (plantados) prisoners.
3. The reasons for the transfer are unknown, but it is suspected that they were transferred to separate them from their companions because the authorities intend to delay their release or not to release them at all.

4. They were transferred under inhumane conditions, like animals, crowded into "dog kennels" (jaulas perreras) for more than 20 hours, with little medical care and scant food until they reached the prison.

5. Details of the transfer are given in a letter received on August 16, which was smuggled out of the Boniato prison.

6. News received by the families of some of the transferred prisoners indicate that a group of them are on a hunger strike.

2. In a note of December 18, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government and requested information on the case.

3. To date, the Government of Cuba has not replied.

WHEREAS:

1. To date, the Government of Cuba has not replied to the Commission's request dated December 18, 1979.

2. Article 39 (1) of the Commission Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of May 29, 1979, concerning the arbitrary detention of 114 prisoners.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I of the American Declaration of the Rights and Duties of Man), the right to the preservation of health and to well-being (Article XI), the right to a fair trial (Article XVIII), the right of protection from arbitrary arrest (Article XXV), and the right to due process of law (Article XXVI).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 46/81
CASE 4429 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of May 29, 1979, a denunciation was received by the IACHR concening Eduardo Capote Rodríguez and over 169 political prisoners in the "Combinado del Este" jail in Cuba, as follows: "In all countries, among all peoples, in every corner of the globe where civilization has illuminated the mind of man, the existence of that prestigious organization known as the International Red Cross is known. Its humanitarian goals, its accomplishments, its enormous moral and material contribution to the helpless of this world, without regard to race, creed, ideology or any other circumstance are similarly known. We political prisoners who have been rated as "unbreakable" plantados in the Havana Prison are in the painful necessity of appealing to the representatives of the International Red Cross, and we certify the authenticity of this letter with our signatures.

It is not having to appeal to you that causes us pain. The pain we feel is due to the impossibility of our jailers supplying our needs.

What we will never be able to understand is that a government that claims to be consolidated should inform us through the Director of the Prison, as happened a few days ago, that our meager rations have been substantially reduced; that the old promises of providing prostheses to prisoners who require them, will not be met; and that we who need them are responsible for paying the cost of any type of prosthesis, through our families.

We ask: Is it our families and not the government who are responsible for our being exposed to every kind of physical misery, for more than 15 years, in the Communist dungeons? Are they, our loved ones, most of them ruined by the imbalance between their modest incomes and the exorbitant prices of consumer goods--even staple goods--responsible for our having lost our teeth and our eyesight, because of inadequate nutrition, the absolute lack for years of any type of dental care, and our incarceration in dark cells?

There is even the recent experience of "Boniato" (a provincial jail in the East), where a numerous group of political prisoners were locked up nude for eight years in small slave dungeons (ergastulas), totally walled in and incommunicado, without the least minimum of medical care,

and with a miserable diet, because of the mere fact of maintaining their dignity and their position as "unbreakable" (plantados). That bitter experience cost valuable lives, snuffed out by malnutrition. There was also the death of a companion who was killed by machine-gun fire, with more than 20 bullet wounds, plus a brutal beating. "Boniato" is only one example. It is perhaps the harshest and best known of prisons in recent years, when the image of the forced labor camps on the Isla de Pinos is being erased in the sands of time like a horrible nightmare.

But the authorities of our country apparently regard themselves as innocent and not responsible for all our physical miseries. Never mind how much they have to pretend that: "The end justifies the means." They allocate only enough funds to provide prisoners with a barely few crumbs, and to dress up a hospital showcase for impressing foreign delegates, and occasionally, although it appears absurd, to try to deceive and encourage themselves.

For these reasons, and knowing of the availability and objectives of the International Red Cross, we request the assistance of your prestigious organization to provide prostheses for those of our comrades who need them."

2. The IACHR has in its possession a complete list, with signatures, of the persons who allegedly have suffered inhumane treatment.

3. In a note of June 22, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

4. The Cuban Government has thus far not replied.

WHEREAS:

1. To date, the Government of Cuba has not replied to the Commission's request dated June 22, 1979.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of May 29, 1979, concerning the arbitrary detention of the 170 political prisoners locked up in the "Combinado del Este" jail.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I, American Declaration of the Rights and Duties of Man) and the right to the preservation of health and to well-being (Art. XI).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 47/81
CASE 4677 (CUBA)
JUNE 25, 1981

BACKGROUND:

1. In a communication of August 12, 1979, the following denunciation was received:

"In January 1959, all members of the Cuban air corps (pilots, copilots, mechanics and workers) were made political prisoners:

Alemanya Pelaez, Jorge
Alonso Guillot, Ramón
Brito García, Juan
Iglesias Ramirez, Manuel
Lam Rodriguez, Roberto
Piefra Bustarviejo, Antonio
Pinera Machin, Augustín
Bacallao, Pedro
Bermudez Esquivel, Mario
Beravides Ballesteros, Eulalio
Burias Acosta, Luis
Chapi Yaniz, Francisco
Estevez de Arcos, Guillermo
Perez Valdes, Roberto
Rodriguez de Castro, Ricardo

Rodríguez, Edelso
Samoano, Gustavo C.
Arguelles, Ramón
Campbell, Francisco B.
Lazo de Cuba, Carlos
Antunez, Telesforo R.
Becerra, Rafael
Bergueiro, Armando
Capote Oropesa, Alfredo
Delgado Hernández, Sandalino
Cerdena Valdes, Benigno
Concepción, Julio
Cordoba Aguilar, Julio

In March 1959, they were tried before a revolutionary court composed of Commandant Felix Pena Díaz, President; and Commandant Antonio Michel Yabor and Deputy Judge Advocate Alberto Parua Toll, members. All of the evidence was submitted at the trial, and the court acquitted all of the imprisoned persons, ordering their immediate release, but they were not released.

Fidel Castro, in violation of all the evidence and the laws in force, ordered all of the prisoners in prison.

By express order of Commandant Fidel Castro, a rigged second trial was held, whose verdict had already been drawn up by Castro himself, and all of the accused were sentenced to 30 years in prison. Twenty years have now passed, and all of these innocent political prisoners remain in prison, except for Eulalio Beruvides Ballesteros, the only one who was released.

The commandant of the Rebelde Army, Felix Pena Diaz, who presided over the court that acquitted the prisoners, was overwhelmed with grief by the injustice imposed by Castro and his regime on the prisoners, and committed suicide.

Because of the time spent in inadequate prisons, with cruel, inhuman and degrading treatment, the health of many of the prisoners has been broken, and they are not receiving either adequate medical care or food."

2. In a note of December 18, 1979, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting that it supply information on the case.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Cuban Government has not replied to the Commission's request dated December 18, 1979.

2. Article 39 (1) of the Regulations of the Commission provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of December 22, 1979, concerning the cruel, inhuman and degrading treatment to which the persons concerned were subjected as of the date of the denunciation.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I of the American Declaration of the Rights and Duties of Man), and the right to the preservation of health and to well-being (Art. XI).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 48/81
CASE 7486 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of March 26, 1980, it was reported that 15 United States citizens were detained by the Government of Cuba and sentenced to numerous (2-24) years of prison. Most of them were not afforded due process of law. The detained persons are as follows:

Melvin Lee Bailey, Robert Bennet, Walter Lewis Clark, William Dawson, John Fekete, Agustin Householder, Lance Fyfe, Jon Gaynor, Douglas Miklas, Lewis Douglas Moore, William Nelson, Michael Seitler, Mark Schierbaum, Dale Stanhope, Thomas White.

The prisoners were detained under various charges. Some were detained for alleged possession of marijuana in Cuban jurisdictional waters; others were accused of being CIA agents; and others were detained for having illegally entered the country.

It is reported, in addition, that they were tortured psychologically and physically.

The Americans were incarcerated in the Combinado del Este prison up to October 1980, when they were released.

2. In a note of September 9, 1980, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

3. The Government of Cuba has thus far not replied.

WHEREAS:

1. To date, the Government of Cuba has not replied to the Commission's request dated September 9, 1980.

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of March 26, 1980, concerning the detention of 15 United States prisoners.

2. To declare that the Government of Cuba violated the right of protection from arbitrary arrest (Art. XXV of the American Declaration of the Rights and Duties of Man) and the right to due process of law (Art. XXVI).

3. To take note of the fact that the prisoners were released.

4. To communicate this decision to the Government of Cuba and to the claimants.

5. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

RESOLUTION 49/81
CASE 7455 (CUBA)
June 25, 1981

BACKGROUND:

1. In a communication of June 24, 1980, the following denunciation was received: "Eduardo Prieto Blanco and Alberto Prieto Blanco were taken from their homes, told that they were cleared to leave by Mariel and were taken away. The truth is they were detained and incarcerated, and their present whereabouts is unknown.

Both were protected by the rights of diplomatic immunity, because they were among the almost 11,000 persons taking refuge in the Embassy of Peru. They returned to their home, with documents issued by the regime, in the hope of leaving the country.

It is feared that they have been killed, as happened a few hours earlier to the unfortunate youth José Novoa, who, like Eduardo and Alberto, had taken refuge in the Embassy of Peru, and was murdered by the regime of Fidel Castro Ruz."

2. In a note of August 7, 1980, the Commission transmitted the pertinent portions of the denunciation to the Cuban Government, requesting information on the case.

3. The Cuban Government has thus far not replied.

WHEREAS:

1. To date, the Cuban Government has not replied to the Commission's request dated August 7, 1980;

2. Article 39 (1) of the Commission's Regulations provides as follows:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. Pursuant to Article 39 (1) of its Regulations, to presume to be true the events denounced in the communication of June 24, 1980, concerning the detention of Eduardo Prieto Blanco and Alberto Prieto Blanco.

2. To declare that the Government of Cuba violated the right to life, liberty and personal security (Art. I of the American Declaration of the Rights and Duties of Man) and the right of protection from arbitrary arrest (Art. XXV).

3. To communicate this decision to the Government of Cuba and to the claimants.

4. To include this resolution in the Commission's Annual Report to the General Assembly of the Organization of American States, pursuant to Article 18(f) of the Statute and Article 59(g) of the Regulations of the Commission.

CHAPTER IV

INFORMATION PROVIDED BY CERTAIN GOVERNMENTS OF THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES ON THE PROGRESS MADE IN ACHIEVING THE OBJECTIVES SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN AND IN THE AMERICAN CONVENTION ON HUMAN RIGHTS

INFORMATION PROVIDED BY CERTAIN GOVERNMENTS OF THE MEMBER STATES OF THE OAS TO THE IACHR ON THE LEGISLATIVE MEASURES ADOPTED BETWEEN 1980 AND 1981 IN FULFILLMENT OF THE OBJECTIVES SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN AND THE AMERICAN CONVENTION ON HUMAN RIGHTS

In order to give compliance to the provisions of Article 59 (e) of the Regulations of the Commission, which provide that the annual report of the IACHR to the General Assembly should include a statement on progress made in fulfillment of the objectives set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, the Commission requested the pertinent information from the governments of the Member States of the OAS.

The legislative measures that according to the criteria of the responding governments constitute progress in the field of human rights are the following:

A. BRAZIL

Decree No. 85.043, of August 14, 1980, which provides for the inclusion, in a special supplementary framework, of civil servants that were returning to their functions, in accordance with Law 6.683 of August 28, 1979;

Law No. 6.895, of December 17, 1980, which modifies articles 184 and 186 of the Penal Code, strengthening the protection of Resolution No. 120, of August 27, 1980, of the Brazilian Lawyer's Guild, which establishes a Human Rights Commission.

B. ECUADOR

Law which modifies the Code of Penal Procedure, of April 29, 1981;

Measures which provide for the implementation of a National Literacy Program and an Intensive Literacy Plan;

Measures that create the National Literacy Council

C. HONDURAS

New Political Constitution in process of approval by the National Constituent Assembly;

Law on Elections and Political Organizations contained in Decree No.53, of April 20, 1981;

Decree No. 51, of March 31, 1981, enacted by the National Constituent Assembly by virtue of which Honduras recognizes as binding the jurisdiction of the Inter-American Court on Human Rights.

D. URUGUAY

New Code of Criminal Procedure which entered into force on January 1, 1981;

Law on Professional Associations;

E. VENEZUELA

Law Approving ILO Convention No. 102 concerning the Minimum Standards of Social Security;

Law Approving ILO Convention No. 130 concerning Medical care and sickness benefits;

Law Approving ILO Convention No. 128 concerning invalidity, old age, and survivors' benefits;

Law Approving ILO Convention No. 95 concerning the protection of wages;

Law Approving ILO Convention No. 118 concerning of treatment of nationals and non-nationals in social security;

Law Approving ILO Convention No. 121 concerning benefits in the case of employment injury;

Law Approving ILO Convention No. 100 concerning Equal Remuneration for Men and Women, Workers for Work of Equal Value;

Law for the Protection of Minors;

Organic Law on Education;

Law partially amending the Law on the Penitentiary System;

Legislative Agreement by virtue of which Venezuela recognizes as binding the jurisdiction of the Inter-American Court on Human Rights.

CHAPTER V

GENERAL SITUATION OF HUMAN RIGHTS IN THE MEMBER STATES OF THE OAS AND AREAS IN WHICH FURTHER STEPS ARE NEEDED TO GIVE EFFECT TO THE HUMAN RIGHTS SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN AND THE AMERICAN CONVENTION ON HUMAN RIGHTS

GENERAL SITUATION OF HUMAN RIGHTS IN THE MEMBER STATES OF THE OAS AND AREAS IN WHICH FURTHER STEPS ARE NEEDED TO GIVE EFFECT TO THE HUMAN RIGHTS SET FORTH IN THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN AND THE AMERICAN CONVENTION ON HUMAN RIGHTS

INTRODUCTION

In its Tenth Regular Session, the General Assembly of the OAS adopted Resolution 510 (X-0/80) concerning the Annual Report and Special Reports of the IACHR which, inter-alia, urged those governments of the member states that have not yet done so to adopt and put into practice the necessary measures to preserve and safeguard the full exercise of human rights, especially in those cases that concern the status of individuals detained without due process, the disappearance of persons, the return of exiles and the lifting of state of emergency (resolutive paragraph 3); it also recommended to the member states that, bearing in mind Chapter VI of the Annual Report of the Commission, they continue to adopt and apply measures and legislative provisions for preserving and maintaining the full exercise of human rights in accordance with the American Declaration of the Rights and Duties of Man (resolutive paragraph 4); likewise it reiterated the need to avoid and, where appropriate, to put an immediate end to serious violations of fundamental human rights, especially the rights to life and to personal security and freedom, and also reaffirmed that summary execution, torture, and prolonged detention without due process are violations of human rights (resolutive paragraph 5); and it recommended to those member states that have not yet done so that they reestablish or perfect the democratic system of government, in which the exercise of power derives from the legitimate and free expression of the will of the people, in accordance with the particular characteristics and circumstances of each country (resolutive paragraph 6).

In light of these recommendations, the Commission has carefully observed the situation of human rights in all the member states of the Organization, and it regrets to inform the General Assembly that, as a general rule, its recommendations have not been taken into consideration by many governments of the member states of the OAS.

It is true that some states have experienced progress in the observance of the human rights recognized in the American Declaration of the Rights and Duties of Man by considerably diminishing the violations that characterize the conduct of the governments of those states in the field of human rights or, as in the case of other states, by having enacted measures for a rapid re-establishment of a democratic regime. Likewise, as has been noted in the previous chapter, some governments have adopted legislative measures which, according to their criteria, tend to protect human rights more effectively. It is also important to note that during the period covered by this report, México acceded to the American Convention on Human Rights, and Peru, Venezuela and Honduras recognized as binding the jurisdiction of the Inter-American Court of Human Rights. Nevertheless, the situation has not improved, in most of the States which have been subjects of previous special reports by the Commission, and in some cases it has deteriorated due to the generalized and even institutionalized governmental repression.

It is the opinion of the Commission that during the period covered by this report, the principal manifestations of violations of human rights have been summary execution; the lack of clarification of the situation of those persons that have disappeared after detention; the continuation or enactment of states of emergency which grant broad powers to chiefs of state for an unlimited or prolonged period of time and which inhibit the judicial power from fulfilling its natural functions; detention without due process, usually accompanied by torture; expulsion of political dissidents from their national territory without due process; the limitation of the exercise of freedom of expression and information; the denial of political rights; and the attempts made against institutions working in the field of human rights.

Each one of these situations shall be analyzed separately, attempting in each case to point out some representative examples that may illustrate the situation described by the Commission.

At the same time that the Commission deals with these violations of human rights, it also wishes to reiterate an opinion expressed in its previous annual report, that effective protection of human rights should also extend to economic, social and cultural rights; this position is also taken in the above mentioned Resolution 510 of the General Assembly.

Finally, in this section the Commission would like to call to the attention of the General Assembly new areas in which measures could be taken to give greater effect to human rights. Among these, the Commission shall address certain problems concerning refugees and the incorporation into society of sectors or persons that are presently marginalized, such as those who are physically or mentally handicapped.

SUMMARY EXECUTIONS

During the period covered by this report, the most serious violation of human rights concerning the right to life, took the form of summary execution. Such executions occur primarily, although not exclusively, in El Salvador and Guatemala.

In the context of the climate of generalized violence prevalent in these two countries, there occurs, in alarming numbers, what the Commission calls illegal or extrajudicial executions.

In most cases such executions were directly committed by security forces which act with impunity outside the law, as well as by paramilitary groups which operate with the acquiescence or tacit consent of the governments.

As a general rule, such consent has indicated that governmental authorities do not carry out adequate and effective investigations to determine those responsible for these crimes.

The Commission has repeatedly emphasized the obligation of governments to maintain public order to protect the life and the security of its inhabitants. With such objectives in mind, the Commission has expressed that

governments must prevent and suppress energetically all incidents of violence, regardless of where they may originate, even if it is necessary to suspend temporarily the exercise of certain human rights.

However, unnecessary as it may seem to reiterate, the right to life may never be suspended. Governments may not use, under any circumstances illegal or summary execution to restore public order. This type of measure is proscribed by the constitutions, of the states and the international instruments that protect the fundamental rights of persons.

As the Commission has said, states cannot employ state terrorism to combat subversive terrorism. The rule of law must be the guide which orients the conduct of those in power. An independent judiciary, with sufficient resources and power to punish abuses by the authorities and by private individuals, should be one of the fundamental elements to restore the lost value of the right to life.

The Commission has also considered cases of deaths occurring on a smaller scale, in other countries such as Bolivia and Uruguay, under irregular circumstances, such as at the moment of detention, or when the detained persons were in jail. These cases are of concern to the Commission not only because they involve death or summary execution, but also because of the lack of investigation and punishment of those responsible.

As was pointed out in the General Assembly of the Organization last year, the governments cannot remain passive in the face of these events. Their duty and obligation when these events occur requires the use of all means at their disposal to investigate the occurrences and to impose the weight of the law on those responsible for the crimes.

Likewise in this field, the governments should not use paramilitary groups which operate outside the Constitution and the law, and should instruct and train the regular security forces so that they may adequately contribute to the elimination of these pernicious groups.

The phenomenon of illegal execution is further aggravated by the deplorable circumstances surrounding the deaths. In many instances, the bodies found show signs of brutal torture. Frequently the bodies are found naked, without any identification, sometimes burned, women usually raped and, the bodies bearing signs of having been subjected to prolonged torture that clearly was the direct cause of death.

The Commission urges member states to put an immediate end to this serious practice of illegal executions carried out by security forces or para-military groups which operate with the consent of the government. To that end, in addition to the preventive measures that may be opportune, including those that may lead to an end to violence by peaceful and democratic procedures, it is necessary that thorough investigations are carried out by an independent judicial branch which has sufficient powers and that subsequently those responsible for these illegal executions be punished.

DISAPPEARANCES AFTER DETENTION

In several annual reports, the Commission has stated its position on this serious violation of human rights. It has pointed out that there are many cases, in different countries, in which the government systematically denies the detention of persons, even though there is convincing evidence provided by the claimants to prove their charges that such persons have been arrested by the police or military authorities, and that, in some cases they are or have been kept in specific places of detention.

In its previous reports, the Commission has expressed that this procedure is cruel and inhuman and that experience has shown that "disappearance" not only constitutes an arbitrary deprivation of freedom but also a serious danger to the physical integrity, the security and the life itself, of the victim. Likewise, it affects relatives and friends and creates serious mental disorders for children who have witnessed the detention. It has been the opinion of the Commission that the status of "disappeared" seems to be a comfortable expedient to avoid application of the legal provisions established for the defense of personal freedom, physical security, dignity and human life itself. In practice, this procedure nullifies the legal standards established in recent years in some countries to avoid illegal application of the use of physical and psychological duress against persons detained.

For its part, the General Assembly of the Organization at its Tenth Regular Session, in Resolution 510, concerning the annual report and special reports of the IACHR, referred to this matter in paragraphs 12 and 13 in the following manner:

12. To emphasize the need to put an immediate end, in those countries in which it may occur, to any practice that leads to the disappearance of persons and also to urge that the necessary efforts be made to determine the status of persons whose disappearance has been reported.

13. To recommend to the government, in connection with the preceding paragraph, that central records be established to account for all persons that have been detained, so that their relatives and other interested persons may promptly learn of any arrest that may have been made; to request that the arrests be made only by competent and duly identified authorities, and that the arrested persons be kept in premises designed for that purpose.

Judging by the denunciations received, during the period 1980-1981, the use of this inhumane practice has apparently diminished, notwithstanding the cases the Commission has set forth and analyzed extensively in its special report on Guatemala.

The Commission feels, together with other organizations working in the field of human rights, that it has contributed in a considerable way to reducing the proportions of this cruel and illegal procedure. Nevertheless, it should be pointed out that the problem of disappearances after detention has not been overcome or completely solved until a clarification and a full report on the whereabouts and situation of the persons whose disappearance has been denounced. In this sense, the Commission would like to reiterate the

recommendation made in previous reports to the Argentine and Chilean Governments, insofar as during this period there has been no information clarifying the numerous denunciations earlier presented to the Commission.

Finally, in relation to this subject, the IACHR would like to insist that the structures which have permitted disappearances to occur still persist, as can be shown by detentions carried out by elements of the security forces with the acquiescence or consent of the government followed by a period in which the authorities, especially the police, deny detention, including as in some cases that have been brought to the attention of the Commission, in the responses that the authorities give to the judges responsible for deciding writs of habeas corpus.

For example, in Argentina, Angel Antonio Romano was detained in San Francisco Solano, Province of Buenos Aires, on March 27, 1981, at five o'clock in the morning, by agents dressed in civilian clothes, who showed their police credentials. Romano's whereabouts were unknown for eight days, during which time the military police and civilian authorities denied his detention. On April 3, the Chief of Police of the Province of Buenos Aires, in the face of public denunciations, acknowledged the detention. There have been other similar cases in Argentina.

Likewise, in Honduras, on September 12, 1981, Marco Virgilio Carías and Rogelio Martínez, were detained in Ciudad del Paraíso and their detention was subsequently denied for 10 days, after having been tortured, they were abandoned in a isolated area.

This conduct deserves special attention from the member states, since avoiding with impunity the application of the legal norms concerning detention may mean the transformation of these abusive tactics of subordinate individuals into a generalized practice. Likewise, this lack of an immediate acknowledgement of detention may lead to the disappearance of a person or to the practice of other abuses which endanger the life or physical integrity of the person detained. This is why the Commission feels the need to reiterate the statement contained in paragraph 13 of the Resolution of the General Assembly previously mentioned.

STATES OF EMERGENCY

Political and social conflict have led some American States to adopt measures such as the declaration of "state of siege", "state of emergency", "state of internal war", "state of disturbance of the peace or internal security", the application of martial law or the adoption of "prompt security measures".

The Commission recognizes that the defense of public order and the security of the state fully justify the attribution of extraordinary powers to certain organs of the central government to be exercised with the objective of preserving democratic institutions or the integrity and sovereignty of the state during the period that the emergency lasts.

However, in practice in many instances these states of emergency have been enacted without the circumstance warranting it, as a simple means of increasing the margin of discretion of the exercise of public power. This contradiction becomes evident when the public authorities themselves state, on the one hand, that there is a climate of social peace in the country and, on the other, establish these exceptional measures, which may only be justified in the face of real threats to the public order or the security of the state. Even more serious is the enactment of these states of emergency for indefinite or prolonged periods of time, above all when they grant the Chief of State a broad concentration of power, including the inhibition of the judiciary concerning the measures enacted by the executive, which may lead, in certain cases to the denial itself of the existence of the rule of law.

At the time of the approval of this report, several American States had decreed these measures of exception, although in different degrees and granting the Chiefs of State powers which vary from country to country. In Argentina, the stage of seige has been in force for several years, since it was declared before the military takeover of 1976, during the government of María Estela Martínez de Perón, by virtue of decree 1368 of March 6, 1974. The Military Government, has continued to extend it. The state of seige finds its basis in Article 23 of the Constitution which authorizes the suspension of Constitutional guarantees, including the right of the President of the Republic to arrest persons connected with those causes which motivated the declaration of the state of seige, or to transfer them from one place to another in the country, if they do not wish to leave Argentine territory.

When the Bolivian government came to power on July 17, 1980, even though it did not declare a state of siege, the entire territory was militarized, bringing into force some military legislation. Such legislation has limited considerably public liberties. The state of siege which is in force today in Colombia was actually proclaimed in 1948, and has only been suspended on some occasions. In this way, it has become an almost permanent system, while the government argues that it is necessary to confront political violence. Its enactment finds its basis in article 121 of the Constitution of 1886, which does not authorize the suspension or derogation of constitutional and legal provisions, although in practice, its systematic application has given rise to a regime of exception, which by the length of time that it has been in force, has affected the full exercise of human rights.

Since coming to power in September 1973, the Chilean regime has enforced successive states of emergency. On March 11, 1981, together with the promulgation of a new constitution, the country was declared in a "state of danger of disturbance of the internal peace" for six months, which was extended for another six on September 11, 1981. The powers accorded by this state of exception are very broad, in conformity with temporary provision number 24 of the Constitution. In effect, this provision (which shall be in force until 1989) authorizes the President of the Republic to adopt any of the following measures: "a) to detain persons up to 5 days in their own homes or in places that are not jails. If terrorist acts with serious consequences occur, this period may be extended an additional 15 days; b) to restrict the right of assembly and freedom of information; the latter with respect to the establishment, publication, or circulation of new publications; c) to forbid entry or to expel from the national territory those persons who advocate

doctrines prohibited by the Constitution, those that are known or have the reputation of being activists committed to such doctrines and those that carry out acts contrary to the interests of Chile or who constitute a danger or threat to the internal peace; and (d) to determine the compulsory location of certain persons in an urban locality in the national territory up to 3 months. These provisions add that these powers of the President of the Republic "shall not be appealable, except for reconsideration before the authority that applied the measure", that is, the judiciary is prevented from intervening in areas that may permanently or indefinitely affect fundamental rights of a person, such as the right to live in his own country.

In Grenada, the Constitution has been suspended since the New Jewel Movement took power on March 31, 1979. While it has not formally declared a state of emergency, the lack of legal constraints due to the suspension of the Constitution has permitted the enactment of some laws, such as People's Law No. 8 which establishes a preventive detention tribunal that institutionalizes detentions without due process for those that the government considers are carrying out counter-revolutionary activities.

A state of siege has been maintained uninterruptedly in El Salvador. On September 8, 1981, the Government Junta also extended martial law, which ostensibly restricts constitutional guarantees but which the Government considers necessary to confront the extremist offensive.

In Haiti, under the presidency of both Francois Duvalier and Jean-Claude Duvalier, the legislative branch has adopted the practice of issuing at the end of its annual session, two decrees which confer full powers upon the Executive Power during the legislative recess and which suspend for an equal period of time the most important constitutional guarantees. In general, this parliamentary recess begins in the month of August and continues until April of the following year. During the period of recess, the Haitian people are deprived of their constitutional rights and the most fundamental human rights. This practice has continued in the last years and it has meant in practice the suspension of most of the guarantees recognized in the 1971 Constitution, which also recognizes in article 1971 the state of siege, although these institutions, as such have not been in fact the object of recent applications.

In Nicaragua, even though the law of national emergency enacted in August of 1979, a few days after the revolutionary victory, was permitted to expire in April of 1980, certain laws have been subsequently promulgated which increased considerably the discretion of the Executive power, which permit abuses to be committed against political dissidents. Along these lines, the law of Maintenance of Order and Public Security of 1980, which has been applied to those accused of counter-revolutionary activities, merits special consideration. Recently, on September 9, 1981, the Nicaraguan government announced the enactment for one year of the "State of Social and Economic Emergency" designed to strengthen public finances, to prevent the flight of capital and increase productivity. Although the Commission is not in a position to issue an opinion on such matters, which regulate in great measure issues that fall exclusively within domestic jurisdiction, it cannot fail to point out that the imprecision and excessive generalizations in the definition of prohibited conduct in the state of emergency decree could result in an overbroad and arbitrary application of the decree.

In Paraguay, the state of siege was enforced by Article 79 of the Constitution and considerably limits constitutional guarantees. Even though in the last few years the state of siege has been in force only in the Central Department of the Republic, which includes the capital of Asuncion, in practice, the situation is generalized to the rest of the country by permitting transfer to the capital of persons detained under the state of siege in other parts of the national territory.

The state of emergency also continues in force in Uruguay, by virtue of the National Security Law published by the National Congress on July 10, 1972. This law, which continues in force, suspends certain constitutional guarantees concerning persons accused of subversive activities, and stipulates trials by military instead of civilian tribunals. Consequently, Decree 393/973 of June 1, 1973, provided for the indefinite suspension of several constitutional guarantees in accordance with the extended exercise of the emergency power, in accordance with article 168, paragraph 17, of the Constitution of 1967. In addition, several institutional acts, published as of 1976, have institutionalized the state of emergency in Uruguay.

As the Commission has repeatedly pointed out, if there are special circumstances that justify it, it is evident that the provisions established for periods of normalcy cannot be applied without serious risks for the preservation of public order and security of the state; but, at the same time, the application of norms of exception cannot, nor should not, have as the consequence the repeated violations of fundamental rights, as is unfortunately occurring in some of the countries mentioned above.

The Commission is particularly concerned about two violations of human rights that have their origin in the power conferred by the state of emergency: detention without due process and the expulsion of nationals.

DETENTION WITHOUT DUE PROCESS

From a quantitative point of view, detentions without due process constituted the largest number of violations of human rights committed during the period covered by this report and concerning which the IACHR received the greatest number of communications. Many of these communications allege that the detention was followed by torture.

These violations of human rights were possible, in large measure, due to the states of emergency which permit excessive and arbitrary powers to detain without cause or due process those whom the authorities consider a threat to national security, even though they may be (as the Commission was able to determine from most of the communications received) lawyers working for the defense of human rights, trade unions leaders, intellectuals or political dissidents, none of whom used or advocated violence.

As has been pointed out, in some states arbitrary detentions were even carried out without the support of any juridical norm, by the simple decision or consent of a public authority in face of the action of the security forces or para-military groups linked to the these forces. This situation is, of course, much more serious.

During the period covered by this report, there are several countries in which detentions without due process occurred with greater frequency or in which such detentions have been carried over from previous years.

Even though during the last 12 months in Argentina, the number of detentions has been reduced based on the powers of the state of siege accorded to the President of the Republic, there continue to be about 700 people arrested without charge at the disposition of the Executive branch. All these persons have been detained for several years without due process, without trial and without the minimum guarantees inherent in due process. On the other hand, the Commission should emphasize that the system for periodic review of the cases of persons detained at the disposition of the Executive has permitted the release of many of the persons detained. According to information provided by the Argentine government, during 1980 and until the end of August of 1981, 742 detentions were terminated.

In Bolivia, as a result of the coup of July 1980, thousands of persons were detained, and although most were subsequently set free, arbitrary detentions have persisted. The writ of habeas corpus has not been effective.

According to the information and communications received by the Commission, hundreds of persons were detained or exiled, in Chile during 1980-1981, in the exercise of the exceptional powers that temporary provision 24 accords to the Chief of State during the first three months following the proclamation of the new Constitution. In the city of Santiago alone, 158 persons were detained and 16 were exiled to inhospitable places in the interior of the country.

By virtue of People's Law No. 8, the government of Grenada has detained a considerable number of persons without due process "for counter-revolutionary activities".

During the period covered by this report, dozens of persons have been arrested in Haiti, most of them intellectuals, journalists, or opposition politicians, without the procedures of due process.

In Nicaragua, in addition to the former somocistas that were condemned without the guarantees of due process, ("reos somocistas") as the Commission was able to verify in its Report on the situation of human rights in that country (OEA/Ser.L/V/II.45, doc. 16, rev. 1, of November 17, 1978) and independently of their responsibility, in application of the law for the Maintenance of Order and Public Security, several political dissidents in opposition to the present regime have been detained.

In Paraguay, although detentions have decreased in comparison to previous years, important political leaders of the opposition have been detained by virtue of the state of siege and, in addition, at least in three cases, the

Commission has been aware that persons who had served their sentence for common crimes, have been detained again without the right of due process, in accordance with the state of siege, setting a very serious precedent with respect to the power of the judiciary.

In Uruguay, even though arbitrary detentions have decreased, the Commission has continued to receive denunciations of detentions, based exclusively on the prompt security measures in force.

Without analyzing at this moment those detentions carried out by security organs or para-military groups, without any legal basis whatsoever but carried out with the consent of the governmental authorities, and whose serious nature has already been pointed out in another part of this report, the Commission would like to reiterate at this point its opinion that the deprivation of personal liberty for prolonged or indefinite periods of time without due process or formal charges, violates human rights and implies the application by the Executive Power of real penalties which violates the right to liberty, justice and due process.

Likewise, the Commission knows that these detentions practiced by the Executive Power and which are not subject to review by the judiciary, also implies the negation of the functions of the latter power, which constitutes an attempted violation of the separation of public powers which is one of the bases of any democratic society.

For the same considerations expressed the Commission urges the member states of the OAS that the detentions carried out under the state of emergency be for brief periods and always subject to review by the judiciary, in cases of abuses committed by the authorities who have ordered them.

EXPULSION OF NATIONALS

The right of every person to live in his own country, to leave and return when he deems convenient has not been the object of controversy until quite recently. In fact, such an elemental right is recognized in every international instrument that protects human rights.

Notwithstanding, in the last few years some states of the hemisphere have expelled nationals -something that was conceivable until very recently only as a penalty for a very serious crime and after due process- as a means of eliminating those political dissidents that the government considers a threat to its internal security.

These expulsions have been administratively decreed, without any type of due process, and generally for indefinite periods of time, which further increase the cruelty and irrationality of the measure, by making this punishment even more onerous than that which applies to the commission of a crime, which is usually a specific penalty in its temporal application. Likewise, on some occasions these expulsions have been carried out without the approval of the state to which those expelled have been transferred, which is a violation of international law.

Regrettably, without taking into account thousands of persons who were expelled earlier and who are barred from returning to their country, during the period covered by this report, there occurred several administrative expulsions of political dissidents in the American countries.

As a result of the coup of 1980, in Bolivia, several political leaders were either expelled or forced to leave the country, among whom the following should be noted: former president Lydia Gueiler, Juan Lechín and Simón Reyes, as well as several priests, especially of the Salesian Order and the Jesuits.

In Chile, by virtue of the power conferred on the Executive by the emergency legislation, several important dissident politicians were either expelled or return to their country prohibited by the Government of General Pinochet. Among these, the following should be noted former Minister of the Treasury and former Senator, Andrés Espinoza, former Minister of the Interior, Carlos Briones; former Minister of Mining, Orlando Cantuarias; former Senator, Alberto Jerez; and the former Minister of Justice and President of the Chilean Commission of Human Rights, Jaime Castillo.

In Guatemala, as was pointed out by former Vice-President Francisco Villagran Kramer, "Death or exile is the fate of those who struggle for social justice in Guatemala". Even though the majority of exiles from that country are persons who abandoned the country voluntarily to flee the terror, there are been several cases of forced expulsion. Among the most recent cases to be noted are Carlos Statter, parish priest of the Ixcan region, and the case of bishop Juan Gerardi, President of the Episcopal Conference of Guatemala, who upon returning from Rome November 22, 1980, was not permitted to re-enter the country.

In Haiti, numerous political leaders and journalists were expelled during 1980-1981. Among these, the following should be mentioned: Elsie Etheart, Jean-Robert Herard, Pierre Andre Clitondal, Richard Brisson, Gregoire Eugene, Michele Moltas, Saint Jean Jacques Honorat, Marcus Garcia, Nicole Magloire and Gregoire Eugene, the latter president of one of few political parties in existence in Haiti.

In Paraguay, Mr. Luis Alfonso Resck, one of the principal opposition political leaders to President Stroessner, was expelled from Paraguay an territory on June 27, 1981.

The Commission considers that all of these expulsions, that were not subject to control by the judiciary, constitute a serious violation of human rights and, when carried out without the consent of the state to which these persons were transferred, a serious violation of international law. Therefore, the Commission urges all states to put an end to this practice and to limit expulsion of nationals only to those cases that have been reviewed by the judiciary, as an alternative to the penalty of privation of freedom and always for a definite period of time.

LIMITATION TO FREEDOM OF THOUGHT AND INFORMATION

Another of the consequences originating from prolonged states of emergency has been the existence of a climate of fear and insecurity which has not been conducive to the effective exercise of freedom of thought and therefore, of information.

Whether it is due to the powers granted by these states of emergency, by the exceptional legislation that has been promulgated in its application, or to the precedent created by the abuses carried out by previous governments that had arbitrarily closed down some media or jailed journalists, the truth is that, in practice, in all those countries in which the state of emergency has been imposed the media has applied self censorship due to fear of being sanctioned or of journalists being detained.

Of course, the Commission considers that in these circumstances authentic freedom of expression cannot be exercised nor can citizens be adequately informed which simultaneously contributes to the violations of other human rights.

On the subject, there are, in fact, two rights that should be protected. On the one hand, clearly the freedom of thought requires the right to transmit by any means of social communication facts and ideas; but also, on the other hand, such freedom requires the right of every person to receive information without interference of any kind.

The interdependence of the peoples of America requires greater understanding among them, for its effectiveness and freedom of information, ideas, and news is indispensable. For achieving the objectives previously mentioned, the means of information should be free of all pressures or impositions, and those using them assume a great responsibility before public opinion and should, therefore, be faithful to the facts.

Freedom of expression is universal and contains within it the idea of the juridical right which pertains to persons, individual or collectively considered, to express, transmit and diffuse their thoughts; in a parallel and correlative way, freedom of information is also universal and embodies the collective rights of everyone to receive information without any interference or distortion.

On the other hand, the Commission recognizes that there are certain instances in which freedom of expression may be legally restricted and, consequently freedom of information as well. But these limitations should always be clearly and explicitly defined such as to avoid abuses of power on the part of the State.

The Commission is also aware of the on going debate in our Continent, as well as in the international community in general, regarding the definition and scope of freedom of thought and information standing without prejudice to the contribution that the Commission can make to this debate at the appropriate time, it cannot fail to point out here that during the period of this report several attempts have been made against the freedom of expression

(and, therefore, against the freedom of information) that under no circumstances may be justified.

Of course, as was already pointed out, in those regimes subject to states of exception, it is the climate of terror and insecurity that has made possible self-censorship. Other states have gone further by prohibiting or reiterating the prohibition of publishing new publications not officially authorized, as in Chile by virtue of temporary prohibition 24 of the new Constitution or in Haiti in accordance with the press decree of March 31, 1980, which, in addition, provides for previous censorship of all publications and a series of other formal limitations to freedom of the press.

In other states, during the period covered by this report, there have been also concrete acts or attempts against the freedom of thought and expression. Among these, the following should be emphasized: the indefinite closing by the Grenadan Government of the journal "The Torchlight" and the Church Bulletin "Grenadan Voice."

After the publication of the Commission's report on Nicaragua, that is within a period of approximately three months, the independent journal "La Prensa" of Nicaragua has been closed for period of two and three days on six different occasions: twice in July, once in August, twice in September and once at the beginning of October of 1981.

These events motivate the Commission to reaffirm that freedom of expression is an essential right of every means of social communication, so as to safeguard it from governmental abuse; the Commission would also like to reaffirm the right of every person to be fully informed without arbitrary interferences from the state or international structures that deliver distorted information.

POLITICAL RIGHTS

The American States have reaffirmed in the Charter of the Organization of American States that one of the guiding principles upon which their solidarity is based requires that the political organization of those States be based on the effective exercise of representative democracy. Other international instruments on human rights, such as the Pact of San José of Costa Rica, have recognized the right of every citizen to take part in the conduct of public affairs, to vote and to be elected in genuine periodic elections, which shall be by universal equal suffrage and by secret ballot that guarantees the free expression of the will of the voters.

At the same time, the General Assembly of the OAS at its Tenth Regular Session, reiterated to its Member States that have not yet done so to reestablish or perfect the democratic system of government, in which the exercise of power derives from the legitimate and free expression of the will of the people, in accordance with the particular characteristics and circumstances of each country.

For its part, the Commission has maintained that within the alternative forms of government that constitutional law recognizes, the framework of a democratic regime should be the fundamental structure for the full exercise of human rights.

In this context, governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties, and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socio-economic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.

As demonstrated by historical experience, the denial of political rights or the alteration of the popular will may lead to a situation of violence.

Unfortunately, during the period covered by this report several governments have not taken the necessary steps to reestablish or perfect the democratic representative system of government. This system implies the election of authorities resulting from elections in which citizens participate freely in a fully informed way and whose realization is carried out through procedures that guarantee that the results truly correspond to the expression of popular will.

On the other hand, the Commission is pleased to point out that in some States, although few, measures necessary for the holding of elections by the end of 1981 or during 1982, are being implemented which will permit the establishment of democratic regimes. The Commission trusts that in these countries a consensus will also be achieved in so far as the electoral mechanisms and procedures are concerned, as well as the purity of the elections themselves, otherwise the legitimacy of the governments that result shall inevitably be questioned.

Likewise, the Commission, has taken due note of the declaration of the authorities of non-democratic regimes of their intent to move gradually towards a political opening, to initiate a dialogue with the different political sectors of the country and to convoke elections within a reasonable period of time. Although the Commission considers these efforts positive and recognizes the good will of these authorities, the IACHR urges them to seek every way to create the circumstances which permit holding elections within the shortest possible time.

That which is unacceptable, in the eyes of the Commission, is the desire of some governments to maintain themselves in power indefinitely, to continue prohibiting the exercise of political rights and to repress arbitrarily and dissent.

The previous considerations, motivate the Commission to insist on its previous recommendations, in the sense that the Member States should respect the political parties, and that those countries that have not done so should reestablish or perfect the democratic system of government so the exercise of power derives from the legitimate and free expression of the popular will.

ATTEMPTS AGAINST HUMAN RIGHTS INSTITUTIONS

The Inter-American Commission on Human Rights considers of great importance the activity carried out in the American countries by those institutions working in the field of human rights. That is why it has been a consistent policy of the Commission to stimulate the creation of such institutions and to foster and to promote their work, which may lend a valuable service to the task of protecting and promoting human rights in the hemisphere.

It should be pointed out that at the present time there are several countries where these institutions have been established and are functioning. Likewise, it should also be noted that all of them have been able, in one way or another, to carry out their functions, even in those countries where there have been allegations of detentions, threats and harrassment against members or officials of these entities. However, during the period covered by this report, the Commission has considered a number of cases which must be pointed out and which represent unjustifiable obstacles to the fulfillment of the functions of these organizations.

In Argentina, a search of the office of the Center of Legal and Social Studies -CELS - was carried out on February 27, 1981, as well as of the domicile of its President. The offices of the Center were closed, documents were seized as well other belongings and six of its members were detained: Emilio Fermín Mignone, Augusto Conte MacDonell, José Federico Westerkamp, Boris Passik, Marcelo Parrilli and Mrs. Carmen Aguiar de Lapacó. The initial judicial process was begun by a Federal Judge and was later passed to another judge since objections were raised against the first one. The persons detained were kept "incomunicado" until March 4, 1981 and subsequently set free; at the same time, the judicial decision ordered that the proceedings be definitively suspended. This act, in the opinion of the Commission, was designed to intimidate.

In Bolivia, as the Commission points out in its special report on that country, several officials and members of the Permanent Assembly on Human Rights were detained, threatened, and expelled, among them its former President, Father Julio Tumiri, a man of advanced age, who at the present time has been banished.

In Chile, Dr. Jaime Castillo Velasco, President of the Chilean Commission on Human Rights was again expelled from the country on August 11, 1981.

In El Salvador, the offices of the Socorro Jurídico of the Archdiocese of San Salvador were searched on July 1980. The operation was carried out by combined forces of the Army and the National Police. The military operation ended with the theft and seizure of documents and files. The Salvadorean Government has not given a satisfactory explanation of these events. Likewise, in September of the same year, the offices of the Salvadorean Commission was bombed. The damage was considerable and the bodies of three unidentified youths were found in the main door of the office, bearing marks of having been subjected to brutal torture. The IACHR has not received any information indicating whether an investigation has been carried out.

In Nicaragua, the Chief of Police of Managua, accompanied by another person, broke open the door, entered and occupied the office of the Permanent Commission on Human Rights of Nicaragua (CPDH) on February 11, 1981, seizing their files and ordering the suspension of all activities until the authorities verified the legitimacy of its existence and activities. The Commission was informed by the Permanent Representative of Nicaragua to the OAS on the situation of the CPDH after the return of the office and its belongings. Notwithstanding the reply of the Government, that the CPDH could function and operate normally, the Inter-American Commission on Human Rights was informed that on February 19, 1981, José Esteban González, National Coordinator of the CPDH was detained. The Commission transmitted the communication to the Government which in turn invited the IACHR to observe the trial of Mr. González. On March 3, 1981, the Commission was informed that Mr. González had been acquitted and had been set free.

The Commission feels that it is its duty to recommend to all governments of the hemisphere that they adopt the necessary measures instructing governmental authorities, on the necessity of duly guaranteeing and respecting the activities of these entities.

ECONOMIC AND SOCIAL RIGHTS

In its previous annual report, the Commission emphasized the importance of economic, social and cultural rights for the integral development of the person.

In that report, the Commission stated, inter alia, that the essence of the legal obligation incurred by any government in this area is to strive to attain the economic and social aspirations of its people, by following an order that assigns priority to the basic needs of health, nutrition and education. The priority of the "rights of survival" and "basic needs" is a natural consequence of the right to personal security.

The Commission added that efforts to eliminate extreme poverty have been made under radically different political, economic and cultural systems.

In turn, those efforts have produced spectacular results as has been shown in those countries that have expanded public health care services at the lowest level of society, that have tackled the problem of mass illiteracy systematically, that have undertaken comprehensive agrarian reform programs or that have extended the benefits of social security to all sectors of the population.

To date, there is no political or economic system or individual development model that has demonstrated a clearly superior capability to promote economic and social rights; but whatever the system or model may be, it must assign priority to attaining those fundamental rights which permit the elimination of extreme poverty.

These considerations which were shared by the General Assembly, which reaffirmed in its resolute paragraph 8 of Resolution 510 (X-O-80) the

conviction of the IACHR that effective protection of human rights should also extend to economic, social and cultural rights, and, in that regard, emphasized to the governments of economically more developed Member States the responsibility to make every possible effort to participate fully in cooperation for hemispheric development, since it is a fundamental means of helping alleviate extreme poverty in the Americas, especially in the most needy countries and regions.

The Commission considers that the next General Assembly should reinforce this commitment by adopting specific measures for the effective fulfillment of the above-mentioned resolution.

NEW AREAS IN WHICH STEPS ARE NEEDED TO MAKE HUMAN RIGHTS MORE EFFECTIVE

In last year's annual report, the Commission observed the organic relationship existing between the violations of the rights to physical security on the one hand, and neglect of economic and social rights and suppression of political participation, on the other. Neglect of economic and social rights, especially when political participation has been suppressed, produces a social polarization which then leads to acts of terrorism by and against the government. Neglect of economic and social rights --the extreme poverty affecting vast parts of the population-- has been the fundamental cause of the terror prevailing in several countries of the hemisphere.

This epidemic of violence has also produced a secondary effect that is truly alarming in its magnitude. The phenomenon of the displacement of persons has converted 10% of the population of one country into refugees. In others, the lack of political participation has caused massive flight in boats and ships (boat people) of thousands of persons. Such massive migrations are a challenge for the nations of the Hemisphere, which are unprepared for the permanent integration of so many people into their countries.

The Organization of American States has an obligation to contribute to the solution of problems deriving from the displacement of persons and to support the observance of international legal principles which, such as non-refoulement and, a derivative therefrom, the prohibition of rejecting people in flight at the border, which have been recognized as fundamental by several international instruments and recently reiterated by the colloquium on asylum and international protection of refugees in Latin America, held in Mexico City from the 11 through 15 of May, 1981.

By virtue of the aforementioned, the Commission recommends to the General Assembly that it establish the necessary mechanisms so that the corresponding organs of the OAS, including the IACHR, define the juridical norms which are required for the assistance and protection of refugees.

Another area that requires the attention of the States is that related to physically or mentally handicapped persons. Due to this condition precisely, in many countries these persons have been marginalized from the rest of society, forming a sector whose rights no one defends, and whose needs receive scant attention on the part of the States.

Of course, States must establish priorities in the pursuit of a balanced development which tends to solve the most pressing social and economic problems; but this should not be an obstacle to the inclusion of legislative measures as part of the general programs of development of the countries that will affect in a positive way the marginalized situation in which most handicapped persons are found.

Many of these people, especially when they are of humble origins and of limited means, are the forgotten ones in the development plans and do not know the meaning of forming part of a community or society that attends duly to their welfare. In fact, they are also in many cases excluded from the legal system, since there are no State mechanisms that protect or listen to their anguish or problems.

These handicapped persons who do not generally form part of the active sector of the economy could be incorporated into the productive sphere within their limitations and capabilities. The IACHR would like in this year dedicated to the handicapped, to call attention to their problems and to request member states which have not yet done so, to adopt the legislative measures which will incorporate them fully in the benefits of society.

RECOMMENDATIONS

In view of the foregoing considerations, the Inter-American Commission on Human Rights, in addition to reiterating its previous recommendations, requests that the General Assembly of the Organization of American States, at its Eleventh Regular Session, adopt the following measures:

1. To urge those Member States in whose countries such events have occurred, to put an immediate end to the very serious practice of summary executions committed by security forces or paramilitary groups that act with the consent of the government. To that end, besides the preventive measures considered opportune, including those that bring an end to violence by means of peaceful and democratic procedures, it is necessary that investigations and subsequent punishment of those responsible for summary executions are carried out by an independent judiciary acting with sufficient powers.

2. To again urge States in which there have been disappearances of persons after detention, to undertake the necessary efforts to determine the whereabouts of such persons.

3. That, concerning disappeared persons, Member States are again asked to establish central registers of all persons detained, and that detentions be carried out only by duly authorized and identified persons, and that the detainees be held only in places designed for such purpose.

4. To recommend to those Member States that maintain extended states of emergency to limit such periods of exception to the time strictly necessary, and to terminate them as soon the circumstances permit, and that, during the state of emergency the judiciary be allowed to function so that it may check abuses by government authorities.

5. To urge Member States to limit the exercise of executive branch detentions carried out in accordance with the powers granted by the state of emergency to a brief period of time and always subject to judicial review.

6. To urge Member States to permit the return of exiles and to refrain from decreeing new expulsions of nationals in violation of domestic and international law.

7. To reaffirm that freedom of thought and expression should be enjoyed by all forms of social communication as a safeguard against governmental abuses, and also to reaffirm the right of every person to be fully informed without distortion of the truth.

8. To reiterate to Member States their obligations to respect the political rights of their citizens, including the right to form and participate in political parties, as well as, in those states that have not yet done so, to reestablish or perfect the democratic system of government so that the exercise of power derives from the legitimate and free expression of the will of the people.

9. To recommend to the governments of the Member States that the autonomous activities of national human rights entities be guaranteed, as well as the safety and liberty of the officials of those organizations.

10. To reaffirm that the effective protection of human rights also extends to economic, social and cultural rights, and that it is the duty of the governments of the Member States to cooperate as fully as possible in the task of hemispheric development, in order to alleviate extreme poverty, and to adopt specific measures which permit fulfillment of this objective.

11. To establish the necessary mechanisms so that the corresponding organs of the Organization, including the Inter-American Commission on Human Rights, may adopt adequate measures for the assistance and protection of refugees.

12. To urge Member States to adopt the necessary legal measures to extend the full benefits of society to all physically or mentally -
handicapped persons.

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