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## BACKGROUND:

1. In a communication dated July 31, 1981, the Secretary of the Inter-American Court of Human Rights reported to the Commission that the Government of Costa Rica had presented a case to the Court under the terms of Article 62.3 of the American Convention on Human Rights, and remitted the resolution of that Court dated July 22, 1981, which, in addition to other matters, asked the Commission to give its points of view on the competence of the Court to proceed with the action of the Government of Costa Rica to have the Court decide whether or not Costa Rican authorities had violated any of the human rights protected in the Pact of San Jose in the case submitted to the Court in connection with the death of Viviana Gallardo and the injuries to her cellmates as a result of the actions of a member of the Civil Guard while they were detained in a jail of the same Guard.

2. In a note dated October 13, 1981, the Inter-American Commission on Human Rights notified the Court that no communication had been received in connection with the case of Viviana Gallardo and others, and confirmed that, in its opinion, no case may be brought to the attention of the Inter-American Court of Human Rights that fails to fulfill the procedures set out in Articles 48 to 50 of the Convention and, as a consequence, those procedures must be exhausted before the Court may take up the case.

3. In a communication dated November 16, 1981, the Inter-American Commission on Human Rights was informed of Resolution G1 01/81 of the Inter-American Court of Human Rights dated November 13, 1981, in which the Court decided unanimously to not hear the case initiated by the Government of Costa Rica to examine the case of Viviana Gallardo and Others.

The Commission was likewise notified of Resolution CD R1 4/81 adopted by the Court in which it decided to refer the matter to the Commission, in accordance with the collateral request made by the Government of Costa Rica to that effect, in the understanding that said referral implied no decision by the Court on the competence of the Commission.

4. On November 24, 1981, the Inter-American Court of Human Rights sent to the Commission the individual charges received in connection with the case of Viviana Gallardo and Others. It also attached to its note other documents submitted to the Court by Mrs. Vilma Camacho de Gallardo, the mother of

Viviana Gallardo, and a telegram sent by Fernando and Rose Mary de Salazar, the parents of one of the cellmates of Miss Gallardo.

5. In a note dated December 23, 1981, the Inter-American Commission on Human Rights transmitted to the Government of Costa Rica the pertinent parts of the individual communications mentioned in the preceding paragraph, and asked it to provide all the information it considered appropriate in connection with the events that gave rise to the appeal to the Court, as well as any other observations it might consider appropriate in connection with the aforementioned individual communications.

6. In that same note, the Commission indicated to the Government of Costa Rica that the request for information did not imply any decision as to the admissibility of the petition.

7. In note 820169 of February 15, 1983, the Government of Costa Rica replied to the Commission and attached to the same note a report on the events that gave rise to the appeal to the Inter-American Court of Human Rights on the basis of information procured by staff members of the Office of the Procurator General of the Republic, and remitted the original letter No. 034-81 of that same office.

8. It also attached a photocopy of the Inquiry Request presented by the Fourth Fiscal Agent of San Jose, in representation of the Public Ministry, a dependent organ of the Supreme Court of Justice, and pointed out that the legal case being prosecuted against the alleged perpetrator of the crimes of qualified homicide of Viviana Gallardo, aggravated assault of Alejandra Bonilla and simple assault of Magaly Salazar was being brought to trial and that March 2, 1982, had been set for the oral and public presentation of evidence to the First Superior Criminal Court of San Jose.

9. The Government of Costa Rica communicated the following: "In connection with the document signed by the mother of Viviana Gallardo, no specific comment is made because the context of the note makes it clear that the presumed events to which it refers are attributed to authorities or officials responsible for the investigation of the facts imputed to Miss Gallardo Camacho and others, which functions are not the responsibility of Executive Branch authorities but, by law, the duties of the Judicial Police, an agency within the sphere of the Supreme Court of Justice."

10. Meeting in its 55th Session held in March, 1982, the Inter-American Commission on Human Rights conducted a study of the documents submitted to it for consideration by the Government of Costa Rica and decided to write to that government once again to request its observations with respect to the individual communications dealt with in the note of December 23, 1981, mentioned above.

11. In a communication dated May 6, 1982, the Government of Costa Rica presented its observations about the communications submitted by Fernando and Rose Mary Salazar.

12. On July 1, 1982, the Commission once again requested the Government of Costa Rica to reply to the allegations presented by Mrs. Vilma de Gallardo and expressed its desire to be informed of the results of the criminal proceedings involving the person of Corporal Jose Manuel Bolacos Quesada for the crimes of qualified homicide and aggravated assault. It also informed the Government of Costa Rica that the requests for information did not necessarily imply any decision by the Commission regarding the admissibility of the matter.

13. In a note dated August 24, 1982, the Government of Costa Rica replied to the request of the Commission in which it attached two certifications, duly authenticated, of the verdicts handed down in the case against Jose Manuel Bolacos for the crimes of qualified homicide, aggravated assault and simple assault of Viviana Gallardo, Alejandra Bonilla and Magalo Salazar Nasser. It also reported that the 18-

year prison sentence imposed on Mr. Bolacos was currently being served at the Regional Social Adaptation Center of Perez Zeledon.

14. The Government of Costa Rica also reported in the note mentioned in the preceding paragraph the request it made to the Director of Judicial Investigations to conduct an investigation into the possible torture of Viviana Gallardo during the first days of her detention, that it had followed up on the findings of this investigation and that there had been no injury of that type. Finally, the government presented its observations in connection with other aspects of the individual communications that had been transmitted to it by the Inter-American Commission on Human Rights.

15. The Commission considered it opportune to address Mrs. Vilma Camacho de Gallardo, mother of the victim, for the purpose of securing her observations to the reply provided by the Government of Costa Rica. To that end, a note dated September 13, 1982, requested such information from Mrs. Gallardo.

16. In a letter received by the Commission on November 29, 1982, Mrs. Gallardo replied to the Commission and made her observations to the government's reply known, but did not present any new facts that would alter the information furnished by the Government of Costa Rica.

#### WHEREAS:

1. Article 48, paragraph 1, clause c) of the American Convention on Human Rights relating to the procedure established for the processing of individual communications notes that the Commission may declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

2. Article 32, clauses b) and c) of the Regulations of the Commission state that it is necessary in advance to decide on other questions related to the admissibility of the petition or its manifest inadmissibility based on the record or submission of the parties and whether grounds for the petition exist or subsist, and if not, to order the file closed.

3. From the evidence subsequently received by the Commission, in particular, the replies submitted to it for consideration by the Government of Costa Rica; the study of letter No. 034-81 from the Office of the Procurator General of the Nation; the formal inquiry request presented by the fiscal agent of San Jose; the sentences handed down in the case against Jose Manuel Bolacos for the crimes of qualified homicide, aggravated assault and simple assault of Viviana Gallardo, Alejandra Bonilla Leiva and Magaly Salazar Nasser; and the investigation conducted by the Director of Judicial Investigations, it is clear that the Government of Costa Rica has acted in conformity with current legal provisions and punished with full force of law the person responsible for the acts charged.

4. In view of the foregoing, the petition advanced is manifestly out of order since the grounds that led to its introduction no longer subsist, as required by Article 48, paragraph 1, clause c) of the Pact of San Jose and Articles 32 b) and c) of the Regulations of the Inter-American Commission on Human Rights.

5. The institutional system for the protection of human rights established in the Convention for the processing of petitions or communications, within the limits set for it, and to which the states parties have voluntarily agreed to abide, operates, except in cases specifically provided for in the Convention itself, in lieu of the domestic legal system, in accordance with generally recognized principles of international law.

#### RESOLVES:

1. To declare inadmissible the petition made in the present matter, under the terms of Article 48, paragraph 1, clause c), of the American Convention on Human Rights.
2. To communicate this resolution to the Government of Costa Rica and to the Inter-American Court of Human Rights.
3. To close the file on this matter, as provided for in Article 32 (c) of the Regulations of the Inter-American Commission on Human Rights.
4. To include this resolution in its Annual Report to the General Assembly in accordance with the terms of Article 59.(g) of the Regulations of the Commission.

Note: Dr. Luis Demetrio Tinoco, a member of the Commission disqualified himself from this case