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Decided by: Chairman: Luis Adolfo Siles Salinas;
First Vice Chairman: Gilda Russomano;
Second Vice Chairman: Marco Tulio Bruni Celli;
Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Messrs. Oliver Jackman
Dated: 16 April 1986
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CONSIDERING:

1. The complaint presented to the Inter-American Commission on Human Rights on May 23, 1983, in English, of which the pertinent parts state the following:

In the June, 1982, issue of the Soberania magazine an article appeared accusing Mr. Macias of receiving money from the United States Central Intelligence Agency and thus implying that Mr. Macias was engaged in activities detrimental to the Government of Nicaragua.

Mr. Macias was born in Nicaragua and his family has lived there for many generations. He has been a public servant to the people of Nicaragua from 1979 to 1982, in coalition with the Sandinista Government and although not employed in that capacity at the time when the article appeared, still felt his career to be that of a public servant. Mr. Macias still feels his profession to be that of a public servant.

Mr. Macias has never had any covert, or otherwise, dealings with the United States Central Intelligence Agency, and so, to protect his career interest and to disassociate himself from a falsehood he initiated a suit for malicious defamation against the Soberania magazine. Trial was set for, and began on, June 18, 1982.

At the trial the editor of the Soberania magazine, Freddy Balzan, failed to appear even though he had been personally summoned (the magazine alleging that he was out of the country at an unstated location). The summons was then amended to evoke the presence in the court of the Advisory Board of the magazine, which consisted of three people, Javier Chamorro, Placido Erdozia and Uriel Molina; they also failed to appear in court.

Instead, the editor, Freddy Balzan, now appeared in court and answered the charges by saying that the author of the accusing article, one David Armstrong--a North American writer--had documentation proving the truthfulness of the article's contentions. However, such documentation was never produced, either by the editor or by David Armstrong. Moreover, subsequent events tend to detract from the validity of the editor's contentions.

There are only two alleged witnesses to the existence of such documentation: 1) the editor, Freddy

Balzan, and 2) the North American writer, David Armstrong.

Later in 1982, Mr. Macias' wife, Geraldine Macias, was in the United States on business related to her work and, having a natural concern for her husband, sought out and found the North American author by the name of David Armstrong. Mr. Armstrong said that he did not write the accusing article and had no knowledge whatsoever of Mr. Macias' activities, providing a written statement stating as much.

The credibility of the other witness, Freddy Balzan, is also suspect, because of his connection with the Sandinista Government, i.e., he works for the Ministry of the Interior. Such employment is suspect because denial of due process by the Sandinista Government amounts to an affirmation by that government of the accusations made in the magazine's article.

The trial was stopped at this point because the judge, Felix Trejos, had lost Mr. Macias' petition. Events, to be described, caused Mr. Macias to flee the country of Nicaragua, so information concerning the trial proceedings is now obtained from Mr. Macias' Nicaraguan lawyer, Mr. Salomon Calvo.

Information from Mr. Calvo indicates that the petition has been resubmitted and the trial is presently pending for the purpose of allowing the Sandinista Government the time needed to write and enact new defamation laws so that the court may follow the latest legislative decree. Mr. Macias' filed suit under the then current (and still current) laws of defamation in Nicaragua.

Mr. Macias left Nicaragua because he feared for his life. Events which caused such fears evolved over time, making a short historical sketch necessary.

Mr. Macias was first a member and then President of the Christian Democrat political party in Nicaragua from 1970 to 1982, thus supporting a position in opposition to the previous ruling party, the Somocistas.

When the Sandinista Government became the ruling political party in Nicaragua on July 20, 1979, Mr. Macias, as a member of the coalition government, served first as a Vice-Minister of Social Welfare and later as Vice-Minister of Labor.

Under the procedures for appointment to ministerial position in Nicaragua, each minister resigns his office in December of each year and is customarily reappointed to his office the following January. Mr. Macias was the only minister not reappointed to his office in January of 1982. Trying to ascertain the reason for non-reappointment, Mr. Macias could obtain no official information, but was unofficially (verbally) told that his failure to obtain reappointment was due to his friendly relationship with the United States Embassy. Mr. Macias visited the United States Embassy in a ministerial capacity or as a representative of his political party, but contends no involvement in any action or plan to bring harm to the Nicaraguan Government.

Since leaving government service and until the time he left Nicaragua, Mr. Macias worked, without salary, as a director of the national 4-H Club in Managua, Nicaragua, and it was during this period that he began to fear for his life.

During this period and in addition to the accusing article in the Soberania magazine, newspaper articles by government affiliated press, sought by innuendo to label Mr. Macias as an enemy of the State of Nicaragua. Television media subjected Mr. Macias to even other denunciations.

In this situation, given the history of violence and street gang justice in Nicaragua, and upon receiving a warning from a person working for the Security Police to the effect that Mr. Macias was considered to be a dangerous person who should be eliminated, Mr. Macias felt it was better to leave the country, than to die. He therefore sought and received refuge with the Venezuelan Embassy, through whose offices, and because his wife is a United States citizen, he came to the United States as a political exile.

Because such events forced him into exile, Mr. Macias was forced to abandon his trial proceedings against the Soberania magazine. Mr. Macias left Nicaragua under the protection of Luis Herrera, the President of Venezuela and so he was given permission to leave the country and told that there were no charges against him.

Such assurances have not allayed Mr. Macias' fears, so he is reluctant to return to Nicaragua to direct and press his defamation claim. Given his previous treatment and the fact that the editor of the Soberania magazine is intimately connected with the Sandinista Government, i.e. Mr. Balzan works for the Ministry of Interior, Mr. Macias feels that even though his trial on the defamation suit is still pending, he is without the capacity to exhaust domestic remedies further and must seek a higher authority to vindicate his honor

and reputation.

Mr. Macias has standing to bring this action before the Inter-American Commission on Human Rights because the Nicaraguan Government is a ratifier of the American Convention on Human Rights as of 25 September 1979.

1. Under Article 3 of the Convention, Mr. Macias has the right to recognition as a person before the law. As such, the countries which are members of the Convention have obliged themselves to respect the rights of persons within the jurisdiction of the member states. As the time in question, Mr. Macias was residing in and a citizen of the country of Nicaragua.

2. Under Article 44 of the Convention, Mr. Macias has the right to lodge a petition with the Inter-American Commission on Human Rights denouncing or complaining about violations of the Convention by a state party to the Convention.

3. Under Article 46 of the Convention, Mr. Macias feels that he is in compliance with the requirements thereof, because:

a. He has pursued and exhausted domestic remedies to the utmost of his capacity to do so; in fact, the very essence of his complaints is that avenues of domestic remedy were closed to him;

b. The trial he initiated is still officially in the status of pending, hence the six month filing period from final judgment has not run out;

c. This petition is not before any other international body;

d. His petition contains his name, nationality, profession, domicile and signature.

4. Under Article 47 of the Convention, Mr. Macias feels in compliance with the requirements thereof, because:

a. He has met the requirements of Article 46;

b. His petition does state facts that tend to establish a violation of rights guaranteed by the Convention, i.e. the right to a fair trial, the right to privacy, and the right to reply;

c. He feels that his contentions are grounded in probable fact by accompanying documentation and supports an ordered approach to redress of legitimate grievances;

d. His petition is unique to the facts that gave rise to deprivation of his rights and is not substantially the same as previously studied petitions submitted to the Commission because:

1. His deprivation of a position in the coalition government is an attack on the concept of plurality government, which is especially germane because of Mr. Macias' ministerial position and because of his position as President of the Christian Democrat political party;

2. He does not seek redress from violations of criminal law by the Sandinista Government, but from violations of the civil law of defamation, as he seeks to remove an impediment of falsehood from his honor, his career and his reputation.

Violations of Due Process Article 8 - Right to a Fair Trial

Under Article 8(1), Mr. Macias has the right to a hearing before an impartial tribunal for the determination of his rights and obligations of a civil nature, within a reasonable time, by a competent, independent, impartial tribunal. Mr. Macias feels that his rights to a fair trial has been violated because of:

1. The judicial loss of the petition, causing the interruption of the trial, which, if it does not speak to the independency of the tribunal, speaks loudly to the competency of the tribunal and provides circumstantial evidence of partiality;

2. The allowance into evidence of the unsubstantiated statements of the Editor of the Soberania magazine concerning the supposed documentation providing proof of the assertions made by the magazine against the Macias's, which, because unsubstantiated, amount to mere hearsay;

3. The holding up of the trial for ex post facto reasons. It is not contended that Mr. Macias suffered directly from the enactment of an ex post facto law because the new defamation law here in question has not appeared as yet, so no cause of action within the meaning of Article 9 of the Convention is presently contemplated. However, it is contended that postponement of Mr. Macias' trial for reasons of allowing the government time to write and enact new defamation laws amounts to denial of a fair trial and provides further circumstantial evidence of partiality. This is so because Mr. Macias sought relief under the law in effect when the act of defamation occurred and thus, any new law, even if more beneficial to his cause,

cannot be used to decide his case because the defaming party (the magazine) can only be held to the law in existence when the act of defamation occurred;

4. The unreasonable delay in obtaining a settlement of the claim. Trial was initiated on June 18, 1982 and has not been resolved as of this writing (May 12, 1983) almost eleven months (Also, see Article 46(2)(c);

5. The conditions of threat, innuendo and personal abuse, by the various government regulated and affiliated "communications media" which caused Mr. Macias to flee Nicaragua in fear for his life.

Article 11 - Right to Privacy

Mr. Macias feels that his right to privacy has been invaded upon because:

1. The method by which his trial was suspended amounted to an unlawful attack on his honor and reputation, caused denial of a fair trial as per the contentions made under Article 8 cause of action constituted an affirmation of the Soberania magazine's defamation and thus denied Mr. Macias an Article 14 right to reply. This unlawful attack on honor and reputation is protected against by Article 11(2).

2. The conditions, existing prior to and at the time of the magazine's article, of threat, innuendo and personal abuse were allowed and even abetted by the Sandinista Government, thus denying Mr. Macias the protection of the law against such interferences or attacks. Such denial is protected against by Article 11(3).

Article 14 - Right to Reply

Mr. Macias feels that because he has been denied the right to a fair trial as per his Article 8 contentions, and because he has been denied the protection of the law as per his Article 11 contentions, he has consequently been denied an effective right to reply. Article 14(1) allows to anyone injured by inaccurate or offensive statements the right to reply in the same communications outlet where such statements were made.

1. Mr. Macias feels that he has been injured by such statements because:

a. He was forced to leave his home country.

b. Of the damage done to his career.

c. Of the damage done to his reputation and honor.

2. Mr. Macias feels that the statements made in the Soberania magazine were inaccurate, because such statements indicate on their face that he received money from the United States Central Intelligence Agency, when in fact he received no money from that source.

3. Mr. Macias attempted to use the pages of the Soberania magazine to reply to the accusations made therein, but was refused this right;* nor would the magazine retract its offensive and inaccurate statements, so Mr. Macias filed suit under the law of Nicaragua, i.e. Title II, Article 3 of the Statute on the Rights and Guarantees of Nicaraguans (Decree No. 52, published in DIARIO OFICIAL, No. 11, on 17 September 1979).

4. The Soberania magazine is disseminated to the public and is legally regulated by the Nicaraguan Government through the Provisional Law of the Communications Media, issued on 26 August, 1979, and Decree 511 and 512 issued on August 27, 1980.

5. Article 14(3) of the Convention purposes the protection of a citizen's honor and reputation and facilitates the implementation of such purpose by removing protection to communication media of special privilege and immunity; thus the Soberania magazine can claim no special protection from the consequences of statements made therein.

Mr. Macias' main purpose in filing this petition is to clear his name from the calumnious statements made against him by the Soberania magazine. Under normal expectations such an endeavour would be rather easily attained through the due process of local law, but as indicated in this petition and accompanying documentation, such due process has been denied to him.

2. The pertinent parts of the complaint were transmitted to the Government of Nicaragua on May 31, 1983 and the response of the government dated August 18, 1983, states the following:

The Court records of the first Criminal Court of Managua show that file No. 450 of 1982 involved a case brought by Mr. Edgard Macias Gomez against Freddy Balzan charging the latter with having slandered

him in writing and having caused him damages, these charges were filed on July 2, 1982.

The National Commission for Promotion and Protection of Human Rights appeared as an observer to this case, and Dr. Salomon Calvo Arrieta appeared as the person who presented the criminal charges against Freddy Balzan, having been granted Mr. Edgard Macias Gomez's power of attorney. Any attempt at conciliation of the parties was not attempted. Therefore this procedure has not been exhausted.

Lastly, the Government of Nicaragua vigorously rejects the notion that Mr. Freddy Balzan works for the Ministry of the Interior, and on the contrary, he is the founding director of the magazine Soberania which has national and international circulation and which is an independent news organ and the only body responsible for the news, ideas and opinions published in the magazine.

3. The observations of the complainant to the response of the government, dated February 17 1984, reads as follows:

The international rule of law that settlement of disputes in an international forum must be preceded by an exhaustion of domestic remedies is not an inflexible or rigid rule of law, [FN1] but contains many exceptions most all of which are essentially concerned with a denial of justice.

[FN1] "The requirement of exhaustion of domestic remedies is not a purely technical or rigid rule" (France v. Norway), Case of Certain Norwegian Loans, July 6, 1957, separate opinion by Judge Lauterpacht, I.C.J. Reports (1957) 39; Also see: Hackworth, Digest of International Law, Vol. 5, pp. 501, 511 (1943).

Such exceptions include, but are not limited to:

1. Justice in the local courts is wholly lacking;
2. The injury was caused by the arbitrary and unjust actions of the highest officials of the government, and there appears to be no adequate ground for believing that a sufficient remedy is afforded by judicial proceedings;
3. The local courts have been superseded by military or executive authorities;
4. The local courts have been menaced or controlled by hostile mobs.

These exceptions seem to us to be accepted consensual law, [FN2] as well as simple common sense.

[FN2] "However, failure to exhaust the 'local remedies' will not constitute a bar to a claim...when the...judicial tribunal is under the control of the executive organ whose acts are the subject matter of the complaint" (International Law, A Treaty by L. Oppenheim; H. Lauterpacht, editor, Vol. I, Peace, 8th ED (1967), p. 361; for cases on Point see Oppenheim, supra, p. 362, No. 1, 1; Switzerland v. U.S. (1959) I.C.J. Report 6; "A state is responsible if any injury to an alien results from a denial of justice. Denial of justice exists where there is a denial, unwarranted delay or obstruction of access to courts" (Article 9 of Harvard Research (1929) reported in 23 Am. J. Int'l L. Supp. (Special No.) (April 1929) 173); a denial of justice occurs when a person is treated by conduct that departs from generally accepted standards for the conduct of legal proceedings (American Law Institute, 2nd Restatement, Foreign Relations Law of the United States, (1965), Pt. IV, pp. 502-503); Article 3 of Revised draft on international responsibility of the State for injuries caused in its territory to the person or property of aliens, prepared by Special Rapporteur (Garcia Amador), International Law Commission DOC A/CN.4/34/Add. 1, Dec. 11, 1961; Article 19(2) of the 1961 Harvard Draft Convention on International Responsibility Draft No. 12, April 15, 1965, pp. 161-163; Sections 180 and 182 of American Institute, 2nd Restatement (1965), Part IV; for higher and lower officials' acts which cause injury, see Attorney Advisor Fraleigh, Office of the Legal Advisor, memorandum, No. 10, 1950, U.S. Department of State, file 123 Mackierman, Douglas.

A. THE RELEVANCE OF THESE EXCEPTIONS TO THE CASE OF EDGARD MACIAS:

First Exception

Justice in the local courts is wholly lacking

We contend that, if the facts alleged in Mr. Macias' petition concerning the events relating to a denial of a fair trial [FN3] are true, then he has effectively received a denial of justice at the hands of the First District Court of Nicaragua, in Managua; and such facts have not been refuted by the Nicaraguan Government's reply.

[FN3] See Petition page 7.

While the single fact of the First District Court's losing of Mr. Macias' complaint does not, in and of itself, suggest anything more than a non-malicious incompetency or at least a good natured mistake common to all jurisdictions at times, we feel that it must be viewed with more suspicion when the fact is integrated with the other acts of his court (presided over by Felix Trejos), and his government out of court.

When the losing of the petition is combined with the other fact alleged, as in

1. the court's indulgences in allowing into evidence the unsubstantiated hearsay statements of the Soberania Editor, Freddy Balzan, even after he had refused to answer a subpoena, and [FN4]

[FN4] See Exhibit E, David Armstrong letter denying authorship of the Soberania Magazine defaming story.

2. the holding up of the trial for ex post facto reasons, i.e., allowing the Government the right to stop an ongoing civil trial in order to write a different defamation law to be used by the courts.

We begin to see a pattern of behavior which expresses law not in any manner perceived by us as conforming in any way to just or even familiar norms of international law. [FN5]

[FN5] "International law grants the alien procedural rights in the State of residence as a primary protection against violation of his substantive rights. These procedural rights amount to freedom of access to the courts, the right to a fair non-discriminatory, unbiased hearing...within a reasonable time" (Roth, *The Minimum Standard of International Law Applied to Aliens* (1949) p. 185); "A denial of the right to participate in proceedings in a tribunal...to determine...civil rights...is wrongful" (Article 6, *Harvard Draft Conventions on International Responsibility of States from Injuries to Aliens*, Draft No. 12, April 15, 1961, pp. 86-87; "In determining the fairness of any hearing, it is relevant to consider whether it was held before an independent tribunal" and whether the person is denied "a full opportunity to know the substance and source of any evidence against him and to contest its validity" (Article 7), *Harvard Draft Convention on International Responsibility of States for Injuries to Aliens*, Draft No. 12, April 15, 1961, pp. 90-91.

This pattern of behavior is reinforced when we note the obvious reality that this disruption of the civil trial proceeding, which continues to this date (February 17, 1984), besides being an illegal prolongation of justice, has certainly had the effect of non-resolution of the defamation issue.

This non-resolution of the defamation issue is of no benefit to Mr. Macias who vigorously seeks to

disassociate himself from the defamatory falsehood. He has not received any money from the United States Central Intelligence Agency and thus knows that such a charge can not be proved. Since this accusation can not be proved, and since the Soberania Magazine is known by its rhetoric, and by common knowledge [FN6] to be a voice of the government, as well as being extensively regulated by promulgated law, [FN7] then it naturally follows that the accusation against Mr. Macias was put into the public view to perpetuate a lie against Mr. Macias (and his wife) that could only work to his discrediting. This point is given clear additional credence by the tape/deposition of Miguel Bolacos, who purports to be the agent of the Nicaraguan Government employed to discredit Mr. Macias. [FN8]

[FN6] Common knowledge: See: tape/deposition of Miguel Bolacos.

[FN7] See: Nicaraguan Provisional Law of the Communications Media issued on 26 August 1979; Decrees 511 and 512, issued on August 27, 1980; Decree 812, Article 3, issued 9 September 1981.

[FN8] See: Tape/deposition of Miguel Bolacos.

From the trial facts asserted, from the logical inferences drawn from these facts and from the evidence presented to support our conclusions and our asserted facts, we see a governmental pattern of behavior designed to discredit Mr. Macias which manifested itself at the trial level by the loss of the petition, the allowance into evidence of unsubstantiated hearsay, and the postponement of the trial and non-resolution of the issue, for ex post facto reasons. Any judge, on any court, knows, or should know that such procedural illegalities are a violation of all known civilized law, thus the mere fact of such occurrences proves governmental control over the judiciary. A judiciary, so controlled, could not give independent reasoned justice even if it wanted to. And there is evidence [FN9] which indicates that one of the judges presiding over Mr. Macias' case (Felix Trejos) totally capitulated justice in his court on other occasions. [FN10] Such evidence indicates a man devoid of principle and subservient to unelected power, whose mere presence at the trial as a judicial officer provides additional evidence that justice was wholly lacking in the civil trial of Edgard Macias.

[FN9] See: Tape/deposition of Miguel Bolacos.

[FN10] See: 1981-82 Annual Report of the Inter-American Commission on Human Rights, p. 120, paragraph 4.

Second Exception

The injury was caused by the arbitrary and unjust acts of the highest officials of the government, and there appears to be no adequate ground for believing that a sufficient remedy is afforded by judicial proceedings.

A. Arbitrary and unjust acts

We contend that the injury sustained by Mr. Macias [FN11] directly resulted from the acts of the higher government officials of Nicaragua because we have presented evidence which indicates that these injurious acts resulted from the plans and policies of higher government officials.

[FN11] See: Petition of Mr. Macias submitted to the Inter-American Commission on Human Rights, page 5.

1. Evidence presented

The role of the higher governmental officials of Nicaragua in the discrediting of Edgard Macias is well

delineated and supported by the following evidence:

a. The tape/deposition of Miguel Bolacos who defected from Nicaragua about six months ago and was the agent employed by the Nicaraguan Government to discredit Mr. Macias. Mr. Bolacos not only makes known the plans and methods by which Mr. Macias was to be discredited, but also provides the names and their position occupied in the chain-of-command down which these plans and methods found expression. [FN12]

[FN12] See: Tape/deposition of Miguel Bolacos.

b. The affidavit signed by Salomon Calvo, Mr. Macias' Nicaraguan lawyer (who we feel showed great courage by responding to our request for additional information). Among other things, Mr. Calvo mentions that in his opinion Mr. Macias' life was in great danger for accusing the Soberania Magazine of liable. He further states that he, himself, saw the order issued to arrest Mr. Macias, and he also makes mention of the campaign launched by the government to discredit Mr. Macias. [FN13]

[FN13] See: Exhibit D - The signed and notarized letter of Mr. Macias' Nicaraguan Lawyer, Salomon Calvo.

c. The La Prensa newspaper article censored by the government, wherein Mr. Macias tried to reply to the accusations made in the Soberania Magazine. [FN14]

[FN14] See: Exhibit L1.

d. The Directions of the Media and Communications, issued by the Minister of the Interior, dated June 15, 1982. [FN15]

[FN15] See: Exhibit L3.

e. The letter from the Editor of the La Prensa newspaper. [FN16]

[FN16] See: Exhibit L2.

f. The letter of David Armstrong to the Soberania magazine denying authorship of the defamatory article, when he was the author alleged in the hearsay testimony of Freddy Balzan. [FN17]

[FN17] See: Exhibit E - David Armstrong letter addressed to the Soberania Magazine.

g. The Diplomatic Protection extended to Edgard Macias by Venezuela which by international law standards is never given unless domestic remedies were considered exhausted and resulting injuries are

attributable to higher governmental officials. [FN18]

[FN18] Diplomatic Protection in fact granted by Venezuela. "The diplomatic protection of nationals who having suffered injury or loss in a foreign country and having exhausted domestic remedies as may be available, have sustained a denial of justice, (and such protection) does not constitute 'intervention' in the affairs of the State when the case arises" (Assistant Legal Advisor Whiteman to the United States Mission to the United Nations, file 220.1122/10-2854). It is automatically implied in the above standard that domestic remedies must in fact be exhausted before diplomatic protection is given. Mr. Macias left Nicaragua under the protection of Luis Herrera, the President (at the time) of Venezuela and has been granted the protection of the U.S. Government upon arrival in the U.S. "Diplomatic Protection is not normally given unless domestic remedies are exhausted" (Pan American Union Document, OEA/Ser.L/VI-1. CIJ-64. pp. 2-4). "The exhaustion of domestic remedies is generally considered a necessary condition precedent to a valid complaint that a claimant has been denied justice and to (have) recourse to diplomatic protection" (Spangler, Deputy Assistant Legal Advisor for International Claims, to Robert P. Patterson, Jr., letter, September 3, 1958, MS. Department of State (U.S.) file 490 D 1135/8-2558. Not only does the offer of Diplomatic Protection confer notice that the protecting state considers that the claimant has exhausted domestic remedies, but such protection also confers notice that the protecting state considers that the higher officials of the government against whom the claim is made have acted without justification (Borchard, Diplomatic Protection of Citizens Abroad, sections 77-79; also see: Article 7 of the 1929 Harvard Research, Draft Convention on Responsibility of States).

However, the majority opinion see no reason to distinguish between higher or subordinate officials (Hyde, International Law (2nd Rev. Ed.) p. 935; Oppenheim (6th Ed (1947, by Lauterpacht) p. 328; Nielsen, International Law Applied to Reclamation (1933) p.29; the 1961 Harvard Draft Convention (supra) Article 15; American Law Institute, 2nd, Foreign Relations Law in the U.S. (1965) Pt. IV, Sections 169, 170; the Goldschmied Claim, Franco-Italian Conciliation Commission, Jan. 17, 1953, International Law Report 211, 221; PL (U.S.) 182, 81st Cong., 1st sess.; G3 Stat 478). Also in the Convention on Diplomatic Asylum, signed in Caracas (March 28, 1954, OAS Official Record, OEA/SER. X/1. treaty series 34) we find: "It is not lawful to grant asylum to persons...save when the acts giving rise to the request for asylum...are clearly of a political nature" (Article 3); "it shall rest with the state granting asylum to determine the nature of the offense or the motives for the persecution" (Article 4); "Asylum may not be granted except in urgent cases" (Article 5). "Urgent cases are understood to be those...in which the individual is being sought...by the authorities themselves and is in danger of being deprived of...life or liberty because of political persecutions" (Article 6). "The official furnishing asylum shall take into account the information furnished to him by the territorial government" (Article 9); Also see UNGA Resolution 14 (1967) on Asylum to persons in Danger of Persecution; "Purpose of asylum, both territorial and diplomatic, is to safeguard the freedom, security and physical integrity of the individual" (P. 68, June 1981 Report on Nicaragua by the Inter-American Commission on Human Rights).

NOTE: The above items of evidence have already been presented to the Inter-American Commission on Human Rights; items (b), (c), (d), (e), (f), and (g) were presented with our petition on 31 May 1983. Item (a) was presented to the Commission when it was handed over to Mr. Jimenez during our January 10, 1984 meeting. We consider the item (a) piece of evidence to be only supplemental in nature because the acts of the higher government official in the discrediting of Mr. Macias, and the threat to his life can be readily deduced from the evidence submitted with our petition. We consider the item (a) piece of evidence to be confirmatory in nature and to flesh out what was already known. We therefore request that the item (a) piece of evidence not be used as a pretext to prolong the Commission's deliberations by the length of time necessary for the Nicaraguan Government to additionally respond to it.

2. Additional evidence available

Other items of evidence which indicate government involvement in the misuse of media, not submitted

with the petition, but available in the public domain at the time of submission or developed later by subsequent events, include:

- a. The Nicaraguan Provisional Law of the Communications Media, issued on 26 August 1979.
 - b. Nicaraguan Decrees 511 and 512, issued 9 September 1981.
 - c. Nicaraguan Decree 812, Article (3), issued 9 September 1981.
 - d. An Americas Watch Report on Human Rights in Nicaragua, May 1982 (see especially page 44).
 - e. An Americas Watch Report on Human Rights in Nicaragua, an updated assessment, November 1982 (see: especially pages 20-30).
 - f. Human Rights Working Papers, Nicaragua's Human Rights Record, The International League for Human Rights, March 1983 report (particularly chapter two, page 24).
3. Conclusions from the evidence

Thus, from the evidence it seems possible to conclude that the higher officials of the current Government of Nicaragua actively sought to injure Mr. Macias by a media campaign to discredit him, and closure to him of any means to reply including the legal forum of a court of law. Such activity is by definition arbitrary and unjust.

B. No adequate remedy afforded by judicial proceedings

When a man's personal and civic honor is insulted in a communication media known to be the voice of and controlled by the executive board of a de facto government, and he is given no outlet to reply, whether in the communications media or a court of law then there is simply no adequate remedy possible, because in order to obtain a remedy there must first be a trial on the merits.

As was indicated under the first exception to the domestic remedies rule Mr. Macias' civil trial was sabotaged and finally prematurely terminated by the acts of the First District Court of Managua. Also, as already indicated (see: page 4 of this brief), one of the Judges involved in this case, i.e., Felix Trejos, has a penchant for unprincipled acts which links him to the government's plans and methods to discredit Mr. Macias.

But even if this were not the case, a judge's position as a judge makes him, in the eyes of any citizen bringing litigation before the court, a government official [FN19] with a sacred (although in this case abused) duty to uphold the law. That the acts of this Court illegally resulted in the non-resolution of the defamation claim brought by Mr. Macias indicates that not only was a sufficient remedy not afforded by judicial proceedings, but also that the very access to law [FN20] needed for a remedy to be forthcoming has also been denied.

[FN19] "There is general recognition of responsibility...on the part of a nation for acts of judicial authorities and other representatives of government" (Nielsen, *International Law Applied to Reclamations* (1933), p. 29).

[FN20] "These procedural rights amount to freedom of access to court" (Roth, *Minimum Standards of International Law Applied to Aliens* (1949) p. 185). "Denial of access to (law) is clearly recognized as wrongful" (Articles 6, *Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens*, Draft No. 12, April 15, 1961. When the means of resorting to competent courts is not available there is a denial of justice (Inter-American Juridical Committee, 1961 Pan-American Union Document OEA/Ser.I/VI.1 CIJ-64. pp. 2-4). "An adverse determination that is manifestly unjust in a proceeding determining...his rights and liabilities of a civil nature, is a denial of procedural justice" (American Law Institute (Supra) section 182; for cases applying this principle see p. 729, *Whiteman Digest of International Law*, Vol. 8; Also, "A refugee (even) shall have free access to the courts of law on the territory of all contracting states" (Convention relating to Refugees Article 16 done at Geneva, 28 July 1951, which the Nicaraguan Government ratified, see p. 33, June 1981 Rep. Inter-American Commission on Human Rights).

The judicial loss of the petition; the allowance into evidence of rank hearsay; the postponement of the

trial for ex post facto reasons; and the unreasonable delay in obtaining a resolution of the defamation claim, all support the contention that access to law was denied and so remedy was thus unattainable. Further, having no access to the trial court automatically precludes any appeal right, if such rights exist. [FN21]

[FN21] See: page 23, June 1981 Report of the Inter-American Commission on Human Rights wherein is noted that the old "Somocist" courts were abolished by Chapter II, Articles 3, 4, 5 of the Fundamental Statute, and yet, due to the lack of legal authority of the present Government of Nicaragua because of non-compliance with Article 21(3) of the Universal Declaration of Human Rights and Article 1 International Covenant on Civil and Political Rights, entered into force March 23, 1976 U.N. 52 Doc. A/6316 (1967) and Article (1) International Covenant on Economic and Cultural Rights, p. 196 Basic Doc. World Order, the legality of any court established by such a government is questionable at least.

Nor can it be assumed that treatment at an appeals level would be any different than what has been noted at the trial level, because as we have shown [FN22] there was great involvement by the higher officials of the Government of Nicaragua in the discrediting of Mr. Macias, and the government's ability to control lower judicial officers gives little hope that there could be an expectation of justice at an appeals level.

[FN22] See: This brief page 3.

Third and Fourth Exceptions:

We feel that exceptions three and four, i.e., the local courts have been superceded by military or executive authority, and the local courts have been menaced or controlled by hostile mobs, can be combined in our case because:

Exception Three:

a. We have put forth allegations which on their face indicate that the judicial authority of the Government of Nicaragua, as represented by the First District Court of Managua and by Judge Felix Trejos, has been superceded by the executive authorities of the Government of Nicaragua; and such allegations have not been rebutted by the Nicaraguan government's reply.

b. We have supported such allegations by presented evidence indicating the governmental campaign to discredit Mr. Macias [FN23]; we have shown by two pieces of evidence (Miguel Bolacos' tape/deposition and Salomon Calvo's letter) and his own unrefuted acts, the complicity of Judge Felix Trejos in the discrediting of Mr. Macias, [FN24] a discrediting which could only benefit the government's point of view; also see the Commission's own report on Felix Trejos. [FN25]

[FN23] See: Tape/deposition of Miguel Bolacos; Salomon Calvo's letter; the grant of Diplomatic Asylum; Exhibit L1; Exhibit L2; Exhibit L3. (See evidence supporting 2nd exception to exhausting of domestic remedies, this brief, page 4); (and see, supporting additional evidence of government involvement in media discrediting in general, this brief, page 7).

[FN24] See: The alleged acts of Felix Trejos (see petition, page 2) not refuted; tape/deposition of Miguel Bolacos, the letter of Salomon Calvo, Exhibit D.

[FN25] P; 120, paragraph 4, 1981-82 Annual Report of the Inter-American Commission on Human Rights for Nicaragua; for prior proceedings on this case see June 1981 IACHR Report on Nicaragua page 120.

c. We therefore feel that we have shown the hegemony of the executive authorities over the judicial authorities in the present de facto Government of Nicaragua.

Exception Four:

a. We contend that the local courts were controlled by hostile mobs because:

1. The present Government of Nicaragua, because it has never held free elections, can be said to be without legal authority to govern, as is made clear by: Article 21(3) of the Universal Declaration of Human Rights incorporated into Nicaraguan law by Articles 6, 7 and 8 of Nicaragua's Fundamental Statute; [FN26] Article (1) of the International Covenant on Economic, Social, and Cultural Rights; [FN27] Article (1) of the International Covenant on Civil and Political Rights; [FN28] and by U.N. Security Council Resolution 253 (May 29, 1968, U.N. Doc. S/INF/23/REV. 1 (1969). Having no legal authority to govern, any agents employed by the de facto Government of Nicaragua to carry out its desires are by definition mobs;

[FN26] See: Page 24, June 1981 IACHR Report on Nicaragua.

[FN27] See: Page 33, June 1981 Report of the IACHR on Nicaragua.

[FN28] See: Page 33, June 1981 Report of the IACHR on Nicaragua.

2. And we have shown that it was the acts of these agents which created the environments hostile to Mr. Macias' efforts to disassociate himself from a lie in a court of law in the communications media. [FN29]

[FN29] See: Mention of the intimidation mobs around the home and office of Edgard Macias and his wife of Miguel Bolacos deposition; See: reference to arrest order seen by Mr. Salomon Calvo in Exhibit D; See: Exhibit L1, L2, L3 referring to government preventions of Mr. Macias' right to reply; See: footnote 17.5 concerning legal ramifications of Diplomatic Protection offered to Mr. Macias by the Government of Venezuela; See: for general background on violence and street gang justice in Nicaragua, footnote 25 of Mr. Macias' petition.

c. CONCLUSION

We feel that we have clearly shown that Mr. Macias has standing to present his petition to the Inter-American Commission on Human Rights, because, among other things, the evidence clearly indicates that he is in compliance with at least four of the universal recognized exceptions to the international legal rule of exhaustion of domestic remedies; and only a showing of one exception is required. We thus contend that this denial of access to law, by definition constitutes a denial of justice. [FN30] We therefore ask "How is Mr. Macias to obtain this fundamental legal human right?" (See: Brief on access to Inter-American Human Rights Court).

[FN30] "Nationals and companies of either party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice..." Treaty of Friendship Commerce and Navigation between the United States and Japan (April 21, 1959) Article IV, U.S. TIAS 2863, 4 UST 2063, 2067, 206 UNTS 143, 194. The above quotation is typical of numerous treaties concluded by the United States since World War II. Other similar treaties listed, but uncited, see p. 735 of Vol 8, Whiteman, Digest of International Law for citations:

U.S. and Republic of China

Nov. 5, 1946

| | |
|-----------------------------------|---------------|
| U.S. and Fed. Republic of Germany | Oct. 29, 1954 |
| U.S. and Greece | Aug. 3, 1951 |
| U.S. and Korea | Nov. 28, 1956 |
| U.S. and Ireland | Jan. 21, 1950 |
| U.S. and Israel | Aug. 23, 1951 |
| U.S. and Italy | Feb. 2, 1948 |
| U.S. and Netherland | Mar. 27, 1956 |
| U.S. and Nicaragua | Jan. 21, 1956 |
| U.S. and Pakistan | Nov. 12, 1959 |
| U.S. and Ethiopia | Sept. 7, 1951 |
| U.S. and Iran | Aug. 15, 1955 |
| U.S. and Muscat and Oman | Dec. 20, 1958 |
| U.S. and France | Nov. 25, 1959 |
| U.S. and Denmark | Oct. 1, 1951 |
| U.S. and Belgium | Feb. 21, 1961 |
| U.S. and Viet-Nam | April 3, 1961 |
| U.S. and Luxembourg | Feb. 23, 1962 |

While subsequent political matters have rendered some of these treaties moot, they do indicate non-regional and non-racial respect in the international community for a right to access to court. And they also indicate that such respect is not confined just to social and cultural exchange, but also to commercial exchange (see: Robert R. Wilson, "Access to Court" Provisions in U.S. Commercial Treaty, 47 Am J. Int'l L. (1953) 20, 40-48 wherein access to law is considered as valid international law).

4. The petitioner expressed his wish to present his case before the Inter-American Court of Human Rights in the following terms:

I. THE HUMAN RIGHTS INVOLVED, AS WE PERCEIVE THEM

Every person may resort to the courts to insure respect for his legal rights. [FN31] To deny access to the courts is to prevent the attainment of remedy without a trial on the merits [FN32] and effectively constitutes a violation of the Rights to Judicial Protection, guaranteed by Article 25 of the Inter-American Human Rights Convention.

[FN31] "Every person may resort to the courts to insure respect for his legal rights" (Article 18, American Declaration of the Rights and Duties of Man, Bogota, Colombia 1948); also "Everyone has the right to effective, simple, and prompt recourse to the competent national courts." (Draft Convention on Human Rights, 4th meeting of Inter-American Council of Jurists, 1959, Santiago, Chile, Pan American Union Doc. CIJ-43, p. 48).

[FN32] "Everyone has a right to an effective remedy...for acts violating the fundamental rights...granted him by...law" (Article 8, Universal Declaration of Human Rights, G.A. RES. 217 A (111) December 10, 1948): "to assure that any person whose rights or freedoms are violated shall have an effective remedy..." (Article 2(3)(a), G.A. RES. 2200 (XXI), December 16, 1968); failure to afford an alien of justice, is a denial of justice (American Law Institute, 2nd Restatement, Foreign Relations Law of the U.S. (1965), Pt. IV, pp. 502-503, comment (4) on Denial of Justice); also see: Tort Claims in International Law, page 812, Vol. 8, Whiteman, Digest of International Law. Dept. of State Publication 8290 (1967).

Since it is impossible for Mr. Macias to avail himself of this guaranteed right under the current de facto Government of Nicaragua (see Domestic Remedies Brief), we submit that the only judicial forum remaining open to him is the Inter-American Human Rights Court, because it is the only trial organ left

which is authorized by the Inter-American Human Rights Convention to enforce the application of the Convention for the purpose of seeking a remedy. [FN33]

[FN33] Inter-American Court of Human Rights, Advisory Opinion No. OC-2/82 of September 24, 1982, Part II, page 5, requested by the Inter-American Human Rights Commission; also see: "The Court is, first and foremost, an autonomous judicial institution with jurisdiction both to decide any contentious cases concerning the interpretation and application of the Convention as well as to ensure the victim of a violation the rights of freedoms guaranteed by the Convention the protection of those rights. (Convention, Arts. 62 and 63 and Statute of the Court, Art. 1). Because of the binding character of its decisions in contentious cases (Convention, Art. 68) the Court is the Convention organ having the broadest enforcement powers designed to ensure the effective application of the Convention" (page 7, paragraph 22, Inter-American Court of Human Rights, Advisory Opinion No. OC-1/82, September 24, 1982, requested by Peru).

In the case of Mr. Macias, we are not just seeking the results enunciated in Article 41 of the Convention which involves the Commission's report. [FN34] Instead we are seeking the right of Mr. Macias to have a fair trial, and to legally reply to the defamatory false allegation made against him, and these rights are guaranteed to Mr. Macias by Articles 8 and 14 of the Inter-American Human Rights Convention.

[FN34] VAC "If the Mixed Commission may be thought of as attempting to settle disputes in which law created or recognized by the treaty is involved, then the Arbitral tribunal may be thought of as determining the law" (Inter-American Yearbook of Human Rights, 1969-1970, pp. 417-418. The Upper Salesian Minority Treaty Arrangement, C(ii), Arbitral Tribunal).

II. ARGUMENT IN THE CONTEXT OF THE INTER-AMERICAN HUMAN RIGHTS CONVENTION

a) ARTICLE 3

The basic question presented is where does a person go to obtain access to law when she/he has been denied the due process of law within the meaning of Article 46(2) of the Convention? Keeping firmly in mind that it is access to law, not access to an administrative hearing that she/he is seeking, it can be noted that the Convention explicitly recognizes his/her judicial personality in Article 3, which states in full:

"Every person has a right to recognition as a person before the LAW."

This right of access to law cannot be deemed by any stretch of imagination, to be satisfied by an administrative hearing which proposes no greater remedy than the issuance of a report and the making of a recommendation. Nor are the judicial safeguards of legal procedures of evidential substantiation protected in a hearing as they are in a court of law.

Thus, an administrative hearing cannot be considered law, per se, but merely a path to law. Article 3 implicitly recognizes this fact by not limiting a person's recognition before the law of a member state, but before law in general.

b) ARTICLE 10

Article 10 reinforces the notion that law implies remedies by stating that every person has a right to be compensated in accordance with law, if final judgment is wrongly arrived at through a miscarriage of justice (like a denial of a fair trial, etc.).

c) ARTICLE 33

Under Article 33 of the Convention, both the Human Rights Court and the Human Rights Commission have equal competency in matters relating to the fulfillment of the commitments made by the states party to the Convention.

This is an unqualified declaration which imposes no hegemony of Court over Commission and vice versa, thus the fulfillment of the Convention's commitment is really the equal responsibility of both.

d) ARTICLE 8

The commitments undertaken do not confer rights upon member states, but upon individual human beings, [FN35] so if a person is denied a right of a fair trial in his own country, where is she/he to obtain such if not from the Human Rights Court?.

No trials take place before the Commission and can only take place before the Court, and the right of a fair trial is an explicit guarantee of the Convention (Article 8).

[FN35] "Special problems arise in the human rights area. Since it is the purpose of human rights treaties to guarantee the enjoyment of individual human beings of those rights and freedoms, rather than to establish reciprocal relations between states, the fear has been expressed that the exercise of the Court's advisory jurisdiction might weaken its contentious jurisdiction, or, worse still, that it might undermine the purpose of the latter, thus changing the system of protection provided for in the Convention to the detriment of the victim"... "the advisory jurisdiction of the Court is closely related to the purposes of the Convention. This jurisdiction is intended to assist the American States in fulfilling their international human rights obligations and to assist the different organs of the Inter-American system to carry out the functions assigned to them in this field. It is obvious that any request for an advisory opinion which has another purpose would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court." (Inter-American Court of Human Rights Advisory Opinions No. OC-1/82, September 24, 1982, page 8, paragraphs 24 and 25).

e) ARTICLES: 61(1), 61(2); 62(3)

Article 61(1) of the Convention states that "only the State Parties and the Commission shall have the right to submit a case to the Court." By such explicit wording the Convention excludes a private individual from submitting his/her petition directly to the Courts, thus the Commission becomes an obstacle, rather than a conduit for the individual seeking access to law.

Article 61(2) compounds this obstacle by requiring completion of the time consuming procedures set forth in Articles 48 to 50, before the Commission may even consider submitting the case to the Court.

Article 62(3) further increases the height of the obstacle by requiring recognition by a state party of the competency of the Court before the Court will accept jurisdiction.

1. The Illogicalness of Article 62(3)

Such obstacles placed before an individual victim of injustice excites wonder as to whether the Convention was written to protect human rights or human rights violators. (This is surely not within the spirit of concern for victims expressed in the opinion of the Inter-American Human Rights Court, see footnote 5).

It is this last obstacle 62(3) which can be most abused because it is inconsistent with the internal logic of the Convention. It seems illogical to the point of fantasy to think that a government which is intentionally violating human rights will voluntarily submit to the jurisdiction of a court that would try them for human rights violations; it would be like asking a criminal for his/her permission to accuse him/her of a crime.

[FN36]

[FN36] "The refusal of the defendant's government to permit a judicial examination of their conduct -- does not give them any absolution for the wrongs they have committed" (XXXI Bulletin, Dept. of State, No. 787, July 26, 1954, pp. 130-131, U.S. Comment on case of the treatment in Hungary of aircraft and crew of the United States of America (U.S. v. Hungarian People's Republic), order of July 12, 1954, I.C.J. (1954), p. 90; also see (U.S. v. U.S.S.R.) I.C.J. page 103; "There is a duty to arbitrate when a treaty (Convention) gives rise to a claim (Greece v. United Kingdom)". (Ambaialos' Case Arbitral Decision,

March 6, 1956, summary by Bishop and Lessitizzn, 50 Am. J. Int' L. (1956) 674-677). Such a duty to arbitrate has traditionally been imposed (because it arose in the context of State treaties) on States (See: Meron, Assistant Legal Advisor to the Israel Ministry of Foreign Affairs, XXXV Brit. YB. Int'l L. (1959) 83, 84-88), but in the Case of Mr. Macias this Human Right Convention imposed duty is consensual, imposed upon states to protect their own citizens. And surely this duty imposed by treaty on one State by another confers no rights to States that are greater than Convention rights confer consensually on individual citizens who are the only purpose behind the existence of their State. "Individual petition would alleviate the serious situation of stateless persons whose capacity to claim protection for violations of human rights would be all but eclipsed if their cases had to be presented by a state. Individual petitions would assist those whose own governments have violated their rights in situations where internal remedies are ineffective, and where appeal to another state would be personally dangerous and diplomatically complex." (Inter-American Yearbook of Human Rights 1986, Judicial considerations of the right to petition, p. 421).

We are not unaware of the fragile hopes and manipulations that comprise the legislative history of the Inter-American Human Rights Convention concerning the effective right of an individual to petition against violations of his/her human rights. (Inter-American Yearbook on Human Rights, 1969-1970, pp. 400-423), but we feel that the time of ambiguity in this matter is over; individual human rights are more important than the rights of government because they constitute the only real underlining stability in a world increasingly involved in global human exchange. Perhaps Justice Douglas of the U.S. Supreme Court says it best when he states: "...where wrongs to individuals are done by violations of specific guarantees, it is abdication for courts to close their doors... The individual is almost certain to be plowed under in spite of glowing opinions and resounding constitutional phrases." (Flast v. Cohen), 392 U.S. 83, 111 (1968).

2. The Necessity of Article 62(3)

In addition, such an obstacle introduces unnecessary and unneeded redundancy because it can be assumed that the signers and ratifiers of the Convention knew that it was individual human rights that they were protecting by their consensual ratification for the Convention, and such knowledge leads conclusively to the function of the Inter-American Human Rights Court, announced by that Court as an "autonomous institution whose purpose is the application and interpretation of the American Convention of Human Rights" (Advisory Opinion No. OC-2/82, September 24, 1982, paragraph 13), and the scope of the Court's competency is to deal with matters relating to the fulfillment of the commitment of the State parties to the Convention. (Article 33).

3. Article 62(3) Weakens the Whole Convention

If a State can withhold jurisdiction of the Court by not consenting to that jurisdiction when it is accused by one of its own citizens of violating his human rights, then the whole Convention becomes a rather tragic joke because it is exceedingly unlikely that governments of evil intent would willingly subject themselves to a judicial scrutiny of their malevolent acts. Such a condition means that the Convention represents no law at all, and thus victims of human rights violations are left to their own devices to correct the ill which seeks to destroy them.

The overall import of the Convention is to protect human rights (such import was the sole purpose of Resolution XXXI of the 9th International Conference of American States, Bogota, Colombia, March 30, 1948, which recommended the preparation of the draft status creating the Inter-American Court to guarantee the Rights of Man). It is difficult to see how human rights are protected by the placement of so many obstacles between the victim of human rights abuses and a Court whose very nature places it as a legal forum of last resort, where at least, the law abiding behavior of an individual can be vindicated.

III. DISCRETION OF THE COMMISSION

a. What would be considered an abuse of discretion:

While we have great respect for the work of the Inter-American Human Rights Convention and can only applaud its commitments to human rights notions whose pragmatic realities are not quite grasped by far too many, we feel that the Inter-American Human Rights Convention represents the only remaining consensual law operating in the Central American region pertaining to human rights.

And since Mr. Macias seeks of the Inter-American Human Rights Convention his guaranteed right to a fair trial, we feel that if the Commission does not exercise its discretionary authority to submit Mr. Macias' claim to the Inter-American Human Rights Court, then he will effectively and finally be denied a right to a fair trial by the only law still existing in the area.

We would be compelled to view such an act as an abuse of discretion, because:

1. An Administrative report standing alone would not constitute a settlement between us, and
2. The Commission accepted Mr. Macias' petition with the full knowledge that remedies were sought which were beyond the power of the Commission alone to confer.

b) Reasons which Preclude an Administrative Settlement:

Settlement would not be possible by this method because:

1. Denial of a guaranteed right

Evidence was presented which clearly indicates that Mr. Macias was denied a right to a fair trial by the Government of Nicaragua, and this evidence was never rebutted. Such a right is guaranteed to him by Article 8 of the Inter-American Human Rights Convention.

2. Lack of Acceptable Administrative Remedies

An investigatory report confers no remedies, only the Inter-American Human Rights Court confers the remedies which Mr. Macias seeks.

3. Lack of "Standards" Generating Opinions

An investigatory report attempts to confirm or deny the facts of a given situation, but it provides no reasoned opinions on the law applicable to these facts; thus standards to guide behavior to not arise in this area of human rights law. Without these standards, the Convention offers more protection to human rights violators than to the humans whose rights are violated.

4. Lack of Consensual Evidentiary Rules

An investigatory report neither states nor develops evidentiary rules, the compliance with which assures by international standards that the facts of a situation which form the basis of a reasoned opinion are as true as consensual law can make them, thus creating a more objective basis for international decision making.

5. The Inter-American Human Rights Court has its own Discretion to hear the case

An international tribunal has the right to make its own determination of whether domestic remedies have been exhausted, if there are no procedures available for determination by an authoritative tribunal of the responsive government. [FN37] We know of no procedures available in Nicaragua at the time this petition was filed which specifically addressed the question of whether domestic remedies have been exhausted, nor would we feel that such "self-policing" would have value in cases such as ours, where government motives are suspect.

[FN37] Section 210. Determination as to Exhaustion, American Law Institute, 2nd Restatement, Foreign Relations Law of the United States (1965), PT. IV Responsibility of States for Injuries to Aliens, p. 618.

Since the present Government of Nicaragua is without legal authority, since it is unelected and thus in violation of Article 21(3) of the Universal Declaration of Human Rights, [FN38] it is arguable that even if such procedures were in effect, they would not be legal, and proving their existence is the burden of the government. [FN39]

[FN38] The Universal Declaration of Human Rights is incorporated into Nicaraguan Law by Articles 6, 7,

and 8 of the Fundamental Statute. Article 21(3) of the Universal Declaration of Human Rights states, "The will (expressed by genuine elections) of the people shall be the basis of the authority of government"; also see: "All people have the right of self-determination" (Article 1(1), International Covenant on Economic, Social and Cultural Rights, ratified by Nicaragua); "All people have the right of self-determination." (Article 1(1), International Covenant on Civil and Political Rights, also ratified by Nicaragua).

[FN39] "In order to contend successfully that international proceedings are inadmissible, the defendant state must prove the existence, in its system of internal law, of remedies where have not been used." *Ambatielos Case (Green v. United Kingdom)*, Judgment (Merits) May 18, 1953 I.C.J. Reports (1953) 10.

6. The Injury Caused is in Violation of an International Agreement, i.e., the Inter-American Human Rights Commission

When conduct causing injury to an alien is due to violation of international agreement, it is wrongful under international law. [FN40] The injury is the denial of a fair trial and the international agreement is the Inter-American Human Rights Convention, ratified by Nicaragua in September 1979.

[FN40] "Conduct which is wrongful under international law gives rise immediately to responsibility under international law." (Section 168, Comment (a), American Law Institute, 2nd Restatement, Foreign Relations Law of the United States (1965) pp. 510-511).

IV. THE APPLICABILITY OF INTERNATIONAL LAW PERTAINING TO ALIENS TO THE CONCEPT OF A CITIZEN ALIENATED BY HIS OWN GOVERNMENT

When a person is forced, or feels compelled by force to leave his own country, thus becoming a stateless refugee, the human rights, which remain associated with the Stateless Refugee [FN41] can only find protection from international instruments which purport to be consensual law or from States politically disposed to help. For a stateless person to employ the latter alternative is built to add to the political turmoil which caused the reasons for his/her statelessness. Whereas the invocation of protections guaranteed by international instruments seeks a real solution to a problem unsolvable by rhetoric or ideology, in the most apolitical manner possible and the most mutual forum available. Since a stateless person becomes by the very facts of his/her situation an alien from his/her own country and can claim no other country as home, then his/her becomes the most absolute of aliens, being alienated from all countries. To such an alien, all of the international law pertaining to aliens must of necessity apply; and the country from which the stateless person flees becomes by definition foreign to him/her.

[FN41] The Convention Relating to the Status of Stateless Persons (U.N.T.S. No. 5158, Vol. 360, p. 117) defines in Article (1) the term "stateless person" as "a person who is not considered as a national by any state under operation of its law." Mr. Macias, presently living in the United States on a tourist visa and feeling it to be unwise to return to Nicaragua even if he could, is without a nationality, because a tourist visa does not confer United States Nationality and the inability of Nicaraguan law to legally operate has effectively removed his old nationality (regardless of private sentiments) and substituted no other in its place. So we feel that Mr. Macias' position is truly that of a stateless person. But even if he were not in a position of being involuntarily separated from his nationality and instead simply denounced his nationality because of treatment he received at the commands of the Government of Nicaragua, he would still be entitle to the natural human rights and freedoms associated with all humans and applicable to nationals and aliens alike.(U.N. Doc. A/CN. 4/1/Rev. 1, February 10, 1949, pp. 46-47). This would be true notwithstanding Article 7 of the Convention on the Reduction of Statelessness, which is against the

renunciation of nationality, because he is in compliance with the exception of this rule, i.e., Article 14 of the Universal Declaration of Human Rights which allows exceptions for asylum due to persecutions. Thus, Mr. Macias, although stateless, still has a violation of internationally guaranteed human rights.

V. CONCLUSION

In conclusion it seems possible to say that we have presented cogent reasons to this Commission which support our contention that the case of Edgard Macias should be adjudicated by the Inter-American Human Rights Court. We fervently hope that these reasons find credibility in the Commission's judgment because a citizen denied internationally guaranteed rights in his own country is without hope of ever attaining such rights should an international organization deny the exercise of these rights in the only remaining forum where the rights can be secured by legal remedy. Such by definition is an abuse of discretion.

(Also, we feel that the techniques used by the Nicaraguan Government to discredit Mr. Macias which our presented proofs attest to, are in and of themselves antithetical to a civilized notion of human rights, and governments which employ such techniques have no claim to membership in that group of states who by their ratification of the Convention indicate their respect for human rights.) It seems reasonable that a government against whom such a charge is made be given every opportunity to categorically refute the charges so that its position in the World Community is clearly seen.

Settlement of this claim in an international legal forum safeguarded by customary international law provides the best means to obtain the truth of the matter. We are content to say that a reasoned opinion by the Inter-American Human Rights Court will constitute a settlement between us. If the Nicaraguan Government places any value on the social and economic respect accorded to those governments which abide by the law they have consented to, then it should also be so content.

5. The government's response dated October 11, 1984 to the applicant's observations:

The Government of Nicaragua wishes to make the following observations on this matter:

a. Mr. Macias travelled to the United States for the purpose of spreading propaganda against the Government of Nicaragua, saying falsely that he was being persecuted, and hoping that he would thus be warmly received by reactionary groups in the United States and the transnational news agencies. The reason for this, apparently, is that his resignation as Deputy Minister of Labor, which he had offered in December 1981, was accepted by the government, and that this caused him to feel an unwarranted psychological resentment against the Government of Nicaragua.

b. The libel action was brought against a private person, who is not employed by and who holds no post with the government, and who in addition, is a foreigner. We therefore wonder what the government has to do with a private case?

c. If the suit was not successful, it was because of the negligence of Mr. Macias and his attorney, Salomon Calvo Arrieta: the accusation concerned an alleged private crime, in which the initiative for bringing legal action lies with the parties, in which the state prosecutor does not participate and in which the State may not take the place of the parties. And if it were to be claimed that Mr. Macias was unable to pursue his accusations because he was forced to leave the country, we have already stated in paragraph a) that his trip was entirely voluntary, for propaganda purposes. Contrary to his claims, no one forced him to leave the country, and furthermore, he left behind a duly accredited legal representative to pursue the libel case. That representative undertook several actions before the court, and his power of attorney was at no time revoked. The only thing that need be said here is the legal aphorism: "no one may profit from his own stupidity", as Mr. Macias attempts to do. He, by his own negligence, failed to exhaust internal procedures, and has presented a distorted version of the case to this Honorable Commission.

d. Without wishing at any time to state or imply that the normal guarantees established in our

legislation for private crimes were not given, we wish to advise this Honorable Commission of the following facts that prevent it from taking jurisdiction in this case, in addition to the fact stated above that domestic remedies were not exhausted: We refer to the State of Emergency declared in Nicaragua in the months of March, April, May, June, July and thereafter, as duly reported to the Secretary General of the OAS by notes Nos. 046 of March 22, 1982; 066 of April 15, 1982; 087 of May 18, 1982, and 105 of June 15, 1982, among others. By those notes, the Government of Nicaragua informed the Secretary General, pursuant to Article 27 of the American Convention on Human Rights, that some of the guarantees in that Convention were suspended, and requested him to so inform the States Parties. The suspension mentioned in the notes covers the period during which the accusation was filed by Mr. Macias and the libel suit heard. Among the suspended guarantees were those contained in Articles 8, 10, 14 and 25 of the Convention, which the applicant indicates were violated by the Government of Nicaragua.

Since the American Convention on Human Rights permits the suspension of those guarantees in exceptional cases, such as the situation in Nicaragua during the period to which we have referred, how could this Honorable Commission then be competent to request a State to honor those same guarantees, when, as we have stated, they were suspended in accordance with the provisions of the legal instrument that created the Commission and gave it its powers? If the Commission requires a State to comply strictly with those guarantees, when it has suspended them in accordance with the Convention, and if the Commission takes up petitions to that effect, from individuals, it is questioning the suspension, wrongly interpreting the Convention, arrogating to itself a competence that it has not been given, and interfering in the internal affairs of that State.

For the reasons set forth in the present note and in communication No. 160 of August 8, 1983, we ask the Commission to rule that Mr. Macias' petition is not receivable.

6. The observations of the complainant to the government response dated December 9, 1984.

Paragraph (a) of the Nicaraguan government's observations

We find nothing in paragraph (a), which concerns itself with fact, but instead this statement by the Nicaraguan government appears to add to the reckless defamation of Mr. Macias by the government by making further unsupported assertions libelous to his character. His objective in coming to the United States was not for the purpose of "making propaganda" against the Nicaraguan Government, nor has Mr. Macias "falsely expressed" the acts of persecution by that government against him.

He came to the United States because the Government of Nicaragua slandered his name in the media, commissioned an agent in their employ to launch a discrediting campaign against him and his wife, would not let him reply to the lies being said against him either in a court of law or in the media, placed armed mobs around his home and the place of business of his wife, and issued an unsupported arrest order against him.

Mr. Macias has supported these contentions by many lines of proof and is quite willing to present these proofs to the highest court in the region, the Inter-American Human Rights Court, as he has already done so before the Commission.

Perhaps what is most indicated by paragraph (a) is the modus operandi of the current powers which dictate to the de facto government of Nicaragua. What we see occurring in this paragraph is a rather childish attempt to deflect fact by mindless rhetoric and unsupported innuendo, the exact pattern originally employed by the government to silence Mr. Macias and those like him who have openly criticized the Ideologues' quest for power.

How does one comfort such a scheme except by presentation of the evidence, which we have done. And how does one comment upon such an observation by the government that would pretend to responsibility, except to say to that government: Don't try to blur reality by saying that facts are propaganda, and don't insult intelligence by claiming insight into psychological reasons behind Mr. Macias' quest for law.

Instead, address the proofs, for there is where the issue lies and will continue to lie until disproved. Perhaps it is fortunate that this new defamation of Mr. Macias by the Nicaraguan Government comes in the written form of their October 11 observation. Because now the Commission can judge for itself whether they, or any other citizen seeking serious inquiry of the law should be answered by blatant, unsupported defamation.

Paragraph (b) of the Nicaraguan Government's observations:

We assume that in paragraph (b) of their observation the Nicaraguan Government is referring to their contentions that the editor of the Soberania magazine, Freddy Balzan, does not work for the government, and that the magazine's defamation of Mr. Macias results solely from a personality conflict presumed to exist between Freddy Balzan and Mr. Macias.

Besides the fact the Machiavellian rhetoric and strident tones of the magazine clearly mimic the police and morals of the ruling FSLN political party, we have presented four pieces of proof indicating the government's connection to the magazine:

1. Mr. Macias' own testimony;
2. The tape/deposition of Miguel Bolacos, the agent employed to discredit Mr. Macias;
3. The affidavit of Mr. Macias' attorney Solomon Calvo;
4. The letter from La Prensa indicating the government's censorship of Mr. Macias' attempt to reply to the defaming article in the Soberania magazine.

These proofs have not been refuted or even addressed. The Nicaraguan Government made the same reply in the first letter to the Commission.

So that the government would know exactly what it had to do with this case we exhaustively informed them of their involvement in the defamation of Mr. Macias in our Exhaustion of Domestic Remedies Brief, submitted to this Commission on February 17, 1984, wherein among other proofs showing government involvement (including the granting of Political Asylum by the Venezuelan Government and the international law overtones of that act) the four above mentioned proofs were particularly noted.

And so again we are subjected to this delaying tactic which we view as an ill disguised attempt to shift the burden of responsibility from the First Directorate where it belongs to the expendable shoulders of Freddy Balzan. Such are the rewards of loyalty to this power elite.

Paragraph (c) of the Nicaraguan Government's observations

In this paragraph the Government of Nicaragua contends that Mr. Macias' cause of action against the Soberania and his lawyer, Solomon Calvo.

As to how Mr. Calvo's negligence prevented this cause of action from prospering is nowhere mentioned and we are simply left with another example of an inane attempt by that government to substitute accusation for fact.

Mr. Macias' negligence is attributed to his voluntarily leaving the country. Again, the facts of the case are not refuted or addressed, as if by magic they would disappear if no one would talk about them, or more correctly, if attention to them could be diverted.

Again we addressed this very point in our Exhaustion of Domestic Remedies Brief which the government appears incapable of answering on the merits. We add nothing new to what was stated in the brief, but simply reiterate what was exhaustively detailed therein:

1. Did Mr. Macias voluntarily place mobs around his own house or the business residence of his wife? (A fact, provable or disprovable).
2. Did Mr. Macias voluntarily place himself on an arrest order list? (A fact, provable or disprovable).

3. Did Mr. Macias voluntarily lose (which turned out to be actually stolen by government agents) his own petition brought before Judge Felix Trejos of the First District Court of Managua? (a fact, provable or disprovable).

4. Did Mr. Macias voluntarily postpone his own trial for the ex post facto reason of allowing the government to rewrite the defamation laws of Nicaragua? (A fact, provable or disprovable).

5. Did Mr. Macias voluntarily prevent himself from responding in the media against the defamations being made against him? (A fact, provable or disprovable).

6. And is it not true that consensual customary international law supports the proposition that when a foreign government grants Diplomatic Asylum to a citizen of another state, that citizen has exhausted domestic remedies to the utmost of his ability to do so; and that the acts against such a citizen are being done by the highest officials of that citizen's government?. And is it not also true that the Venezuelan Government granted to Mr. Macias Diplomatic Asylum in the Venezuelan Embassy? (Another fact, provable or disprovable).

The facts which caused Mr. Macias to flee his ancestral homeland were not the result of negligent errors on his part, which it is alleged he now seeks to use for his own benefit.

They are real occurrences, which came about because Mr. Macias made a good faith attempt to solve a political problem in a lawful manner. Such an attempt, after the terrible bloodshed, which has disrupted Nicaragua for so long, was no less than a surviving pragmatic effort to substitute law for violence.

That the attempt was not with such unmitigated deceit and intolerance speaks volumes to the other nations of the Western Hemisphere who may yet, to their dismay, see their own genuine leanings towards democracy stolen from them in the moment of their greatest vulnerability, as is indeed the case in Nicaragua.

Paragraph (d) of the Nicaraguan Government's observations

The gist of this paragraph seems to be that the Nicaraguan Government wishes to suggest that it can escape responsibility for its actions by claiming exemption from Convention requirements by invocation of Article 27(1) of the Inter-American Human Rights Convention due to the State of Emergency. We note in passing that during the entire year and a half that this case has been in litigation, this is the first time that the Nicaraguan Government has raised this point, and they do not now raise it in a manner which definitely states that the rights of citizens granted by the Convention were specifically suspended in the case of Edgard Macias.

They merely raise the issue so as to give themselves a way out should it be conclusively shown that the human rights guarantees established by their legislation (which incorporated into their Fundamental Statute the Inter-American Human Rights Convention) were not given to Edgard Macias, and we believe that such has been conclusively shown by the proofs we have already submitted to this Commission.

Hence, an attempt to invoke Article 27(1) now merely proves that they cannot and will not deal with this matter on the merits, and therefore amounts to an admission of guilt.

Further, we would specifically and formally request of this Commission the alleged correspondence between itself and the Nicaraguan Government relating to this suspension of human rights guarantees due to the State of Emergency, so that we may know the specificity of their contents and the exact nature of the exigencies which the government claims existed when the armed guards were placed around his home and her place of business, and when the unsupportable arrest order was issued against him; and the relationship of such exigencies to such behavior by a government.

But let us examine the contention of the Nicaraguan Government as relates to Article 27(1) of the Convention. Article 27(2) of the Convention provides the exceptions to allowing a State to claim a State of Emergency when suspending human rights.

We note that the right to a Juridical personality is one of the exceptions to Article 27(1) which can never be violated for any reason. We assume that the right to a Juridical personality means the same thing to the Commission as it does to us, i.e. the right of a person to recognition before the law, which is clearly

expressed in Article 27(2) which states: "The foregoing provision (Article 27(1) does not authorize any suspension of the ... Judicial guarantees essential for the protection of such rights."

And it will be recalled that the very essence of Mr. Macias' complaint is that access to law has been denied to him by the acts of the Government of Nicaragua, a point repeatedly proved by the evidence we have submitted and the interpretations of customary international law which are cited in our briefs submitted to this Commission on that very point, which again has not been addressed on the merits by the Government of Nicaragua.

We also note that Article 9 of the Convention, i.e., freedom from ex post facto laws is another exception which can never be violated for any reason. And as already pointed out in our original petition and our briefs: a person suffers from ex post facto laws when a civil trial on defamation is postponed for the reason of allowing the government to rewrite the laws of defamation, whether or not such new laws ever appear.

We also note that Article 23, the right to participate in government, is another exception which can never be violated for any reason. The whole reason for the attacks against Mr. Macias by the Government of Nicaragua was to prevent Mr. Macias from participating in the Government of Nicaragua because of his criticisms of that government's quest for unelected power.

We ask you, does a government defame a citizen and his wife in the media they control, do they employ agents to discredit a citizen, do they close off access to courts or media, do they place mobs around a citizen's home and the place of business of his wife, do they issue unsupportable arrest orders, do they do all these things for any other reason than to silence this citizen and if they achieve that silence, have they not prevented that citizen's participation in government?

We also note that Article 20 of the Convention, the right to a nationality is another exception which can never be violated for any reasons. As we have pointed out in our response to paragraph (a) of the Nicaraguan Government's observation, as well as in our original petition, our domestic remedies brief, and our access to the Inter-American Human Rights Court brief, Mr. Macias did not voluntarily leave his home in Nicaragua. He was forced out by the despotic acts of the current de facto Government of Nicaragua, a common pattern observed when revolutionary democracies are usurped by left or right-wing dictators.

Thus, it is clearly evident that Mr. Macias' right to his nationality has effectively been taken from him, leaving him in the current status of a stateless person at the mercy of international instruments and organizations, such as they are.

We also note that Article 12, Freedom of Conscience and Religion is another exception which can never be violated for any reason. Mr. Macias was the President of the Christian Democratic Party in Nicaragua, and as such as the principal spokesperson for a large segment of the Nicaraguan political spectrum who profess, among other things, a belief in the Christian Religion. Thus, an attempt to silence Mr. Macias is also an attempt to silence the Christian principles which make up his own beliefs, as well as the beliefs of the large numbers of people who elected him their spokesperson.

The atrocities committed by the FSLN against people holding religious beliefs in Nicaragua is well known to this Commission (which if unacknowledged can be well delineated should a need to do so arise) and support our contention that the attack on Mr. Macias, besides being personally damaging to him, amounts to a attack on the Christian beliefs held by him and so many others.

We also note that Article 4 a Right to Life is another exception which cannot be violated for any reason. We ask you to consider what is intended when an arrest order without foundation is issued against a citizen. Do these acts by the Nicaraguan Government which our presented proofs attest to, constitute anything less than a threat to the life of Edgard and Geraldine Macias?

And last but certainly not least, we note that Article 18, the Right to a Name is a right which cannot be violated for any reason. If a name has any other meaning than simply a collection of letters bestowed upon a person, that other meaning is the reputation attached to the person who bears the name. We have presented clear and convincing proof that the current Government of Nicaragua sought with malice aforethought to defame the good name of Mr. Macias and his wife Geraldine for the purpose of silencing his opposition to their quest for power, unmindful of the proletariat they claim to represent, (unmindful

because they have not even consulted such proletariat before issuing decrees which so seriously affect them. Nor can the current elections be deemed a genuine consultation since most of the opposition, like Mr. Macias, are in forced exile).

Thus we have shown that whether or not the Government of Nicaragua seeks of this Commission dismissal of Mr. Macias' complaint by claiming a right to violate human rights as per Article 27 (1) of the Convention, there are at least seven exceptions which clearly apply to the case of Edgard Macias listed in Article 27 (2) alone. These exceptions are not to be violated for any reason even in a State of Siege let alone a mere declaration of a self-styled emergency. This being the case, we implore this Commission to consider the motivations behind such a request from the government which knew well that these exceptions existed and were applicable to the case of Edgard Macias.

7. The response of the Government of Nicaragua to the applicant's observations, dated June 3, 1985, reiterating that it finds the Commission not competent to hear this case on the grounds set forth in its notes of August 8, 1983 and October 11, 1984.

8. The following observations of the Government of Nicaragua on Resolution No. 29/86, was transmitted to it:

First, it should be pointed out that the open attacks against the legitimacy and representation of the Government of Nicaragua on pages 12, 18, 19, 28 and 33, among others, in addition to constituting improper language the Commission should never have accepted, clearly demonstrate the political interests that have prompted the filing of this suit and its insertion into more extensive spheres with a view to discrediting the Government.

The Government of Nicaragua must also express its concern regarding the possible damage that might result from the fact that the conclusions the Commission has arrived at are, in some instances, founded on an analysis of certain rights that are suspendible rights in emergency situations such as those currently prevailing in Nicaragua. Such a situation could imply an unacceptable limitation on the exercise of the power of States in accordance with article 27 of the Convention.

The observations expressed above notwithstanding, the Government of Nicaragua wishes to set forth the following views:

Nicaragua regrets that the Commission has not taken the communications regarding this case into consideration, inasmuch as they amply demonstrated that no responsibility could be attributed to Nicaragua with respect to a distinctly particular situation. Nor was evidence taken into account that the complainant had not had recourse to domestic proceedings and that they had therefore not been exhausted.

The Commission notes as grounds for its resolution the assumption that the publication was made "in agreement and in collaboration with the Government of Nicaragua." In order to support this affirmation, it points out that the State of Emergency previously decreed in Nicaragua "determines that the publication of news, opinions or commentaries is not possible without the express approval of that Government." It is consequently concluded that "the publication...necessarily took place with the consent of the Government of Nicaragua."

The Government of Nicaragua wishes to establish clearly that the international magazine Soberania is not subject to limitations on its contents, inasmuch as it is not a national publication but rather an international publication linked with the Tribunal Anti-Imperialista de Nuestra America, whose editorial staff is made up of persons from various parts of the world.

Despite this not being the case, other points could be made against the Commission's statement: It is unacceptable from every standpoint to assume that the Government of Nicaragua can be responsible for, or be "in agreement" with, any unofficial publication circulating in the country. A conclusion of this kind could create a totally unacceptable precedent for the states parties to the Convention. According to this interpretation, the imposition of limitations on the right of freedom of expression would necessarily imply, in emergency situations, the agreement and concordance of governments that grant this right with

all opinions or publications appearing in the written or oral press.

It is easy to see that the Government of Nicaragua could never be "in agreement" with many of the reports, articles and opinions that appeared during that time in the newspaper La Prensa and other media that contained attacks against the Revolution or openly reiterated the positions of the United States Government. As in the case of any government in the world, its responsibility extends only to publications that have been expressly authorized to represent the official opinion of the Government, a situation that does not apply in the case of the international magazine Soberania.

The Commission itself has recognized that "no legal tie exists" that links it to my Government.

With reference to the restraint of Mr. Calvo Arrieta's freedom during the time indicated in the resolution, the Government of Nicaragua cannot accept that this has constituted a "means of harassment" aimed at preventing his carrying out his activities as representative of the claimant in his damages and slander suit. The contradiction should be pointed out between this affirmation and the accusation presented before the Commission in which not only is it not mentioned that the arrest took place for that purpose but it is openly stated that the "only reason for his arrest is his work as a correspondent in Nicaragua for the Costa Rican broadcasting station Radio Impacto." (Case 9484)

In referring to the filing of the damage and slander suit, the Commission uses the term "defendant" to designate Mr. Calvo Arrieta's activities (Page 476). On this point it should be clarified that, given the positions of the parties involved in the suit, the complainant was functioning as a "plaintiff" and not as a "defendant."

This distinction is of fundamental importance, since in private suits the party who initiates the action is the plaintiff, a circumstance that does not appear to have occurred in this case. A diligent attitude on the part of the plaintiff would have been directed to replacing the missing file immediately.

Furthermore, the Government of Nicaragua cannot accept the allegations that it consented to the creation of a hostile atmosphere with respect to Mr. Macias. The police authorities provided adequate protection at all times for the plaintiff and prevented any attack against the person and property of Mr. Macias. The Government of Nicaragua emphatically denies that it has encouraged or permitted the carrying out of such spontaneous acts alien to the Nicaraguan authorities.

In the case of Mrs. Macias, the Government of Nicaragua must vehemently declare that it has not been part of its policy to oppose the publication of public concern about topics as sensitive as the adoption of children or the education question, and that does not imply responsibility for, or "agreement" with, such publications.

The Government of Nicaragua also wishes to establish clearly that Nicaragua has not undertaken any criminal action against Mr. Macias or his wife. The doors are open to Mr. Macias to return to Nicaragua whenever he desires and, in accordance with his interests, to proceed with the damages and slander suit he has filed.

On the basis of the above considerations, the Government of Nicaragua requests review of the resolution under discussion. The Government of Nicaragua is abstaining from commenting on other aspects concerning the basis of the damages and slander suit, inasmuch as such matters are reserved for the various courts established under the law.

WHEREAS:

1. The denunciation against the Government of Nicaragua in reference to the situation of Mr. Edgar Macias Gomez meets the formal requirements for receivability set forth in Article 46.d of the American Convention on Human Rights.
2. Mr. Edgar Macias Gomez's moral integrity, a right recognized in Article 5.1 of the Pact of San Jose, was seriously affected when the June 1982 issue of the magazine Soberania reported, in agreement with and with the cooperation of the Government of Nicaragua, that he had received \$250,000 from the United States Central Intelligence Agency.

3. While no legal relationship exists between the magazine *Soberania* and the Government of Nicaragua, the actions of the government enabled the magazine to make the accusation, since the control that the government exercises over the press under the current state-of-emergency powers means that it is impossible to publish news, opinions or commentary that have not had the express approval of the government. Thus, publication of an accusatory article such as that which gave rise to Mr. Macias' denunciation must necessarily have been done with the consent of the Government of Nicaragua, particularly bearing in mind that the person involved had held high positions in that government, and that such a grave charge could not therefore go unnoticed.

4. The agreement between the Government of Nicaragua and the magazine *Soberania* is also clearly evidenced by the fact that the Communications Media Office of the Ministry of the Interior censored a news report about Mr. Macias' libel action that was to be published in the newspaper *La Prensa*, as stated in a communication dated June 15, 1982 from that Office to the newspaper.

5. As provided in Article 27.2 of the American Convention, the right to moral integrity may not be suspended under any circumstances.

6. Mr. Macias was unable to complete domestic remedies because he found himself in the situation contemplated in Article 46.2 (b) and (c), as a result of the following:

a. The libel suit filed by Mr. Macias against the editor of the magazine *Soberania*, Mr. Freddy Balzan, which was tried before the First District Criminal Court of Managua, was handled in an irregular fashion, to the point where the case file was lost. The Commission has not been advised of any measures that may have been taken to correct such irregular behavior by the judge sitting on the case, even though the response from the government dated August 18, 1983 indicates that an observer from the National Commission for the Protection and Promotion of Human Rights appeared at the trial.

b. The attorney for Mr. Macias, Salomon Calvo Arrieta, Esq., has also been subjected to acts of harassment by the Government of Nicaragua, which have in practice hindered him in his work as attorney in the libel suit, to the point where the government put him in jail from December 29, 1984 to February 14, 1985. That act gave rise to the filing of an individual case before this Commission.

7. It is a well-known fact that, coincidentally with the accusations published by the magazine *Soberania*, groups of individuals repeatedly harassed Mr. Macias while he was in Nicaragua. It is also known that the government used none of the many resources at its disposal to halt the groups, which indicates that the government gave its consent, whether express or tacit, to the creation of a hostile atmosphere that caused Mr. Macias to have well-founded fears for his own safety and the safety of his family.

8. That parallel to the acts against Mr. Macias, Nicaraguan television, which is controlled by the government, gave broad coverage to news reports that accused Mrs. Macias of being implicated in improper activities related to the adoption of children, highlighting an alleged contradiction between the Montessori method, used in a school of which she is the head, and the educational principles of the Government of Nicaragua. These facts contributed to a deepening sense of insecurity felt by Mr. Macias and his family.

9. The succession of acts over time leads to a well-founded view that Mr. Macias was the subject of coordinated action originating in the Government of Nicaragua and designed to cause him to feel insecure, and that one of the elements of these coordinated actions was the publication of the article in the magazine *Soberania*.

10. That Mr. Macias' decision to leave the country in order to protect his own safety and the safety of

his family was a reasonable decision in that context.

11. As stated in its Annual Report for 1975, the Inter-American Commission on Human Rights held that:

The duty of the states is to guarantee the safety of its inhabitants, and it can fail in its duty both by action and by omission. The state cannot disqualify itself on so fundamental a matter and should do everything possible to effectively protect these rights. (Page 29)

12. The Nicaraguan Government's response on the issue of Mr. Macias' departure from Nicaragua refers only to psychological questions that are impossible to prove in practice, but it does not consider the other acts that were denounced.

13. The Nicaraguan Government's position concerning the Commission's lack of competence in this case appears to imply that a proposal to use the friendly settlement procedure would not be appropriate.

14. The applicant's argument that the present case should be forwarded to the Inter-American Court of Human Rights is irrelevant, inasmuch as it refers to the need to overcome alleged defects in the American Convention on Human Rights--a matter totally beyond the powers of the Commission when it is considering a specific case.

15. Although Nicaragua is a State Party to the American Convention on Human Rights, it has not accepted the binding jurisdiction of the Court, and therefore the Commission may invite the Government of Nicaragua to accept its jurisdiction in this specific case.

16. Pursuant to the provisions of Article 50 of the American Convention on Human Rights, the Commission hereby makes such recommendations as it believes pertinent, and will transmit the present resolution to the Government of Nicaragua so that it may take those measures it considers advisable.

17. That the Nicaraguan Government's observations on Resolution No. 29/86 are limited to reiterating positions expressed during the processing of this case without adding new elements which would permit the Commission to reconsider its decision.

Wherefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that the Government of Nicaragua has violated Mr. Edgar Macias Gomez's right to humane treatment, upheld in Article 5 of the American Convention on Human Rights, by means of acts that first permitted a charge that Mr. Macias had received money from the Central Intelligence Agency of the Government of the United States, and then prevented him from defending himself through the Nicaraguan court system and in the media.

2. To declare that the coordinated acts originating in the Government of Nicaragua created a sense of insecurity that went beyond Mr. Macias himself to his family, for which reason he was compelled to leave his country; this has caused him many personal and family injuries that demand a remedy such as that provided for in Article 63 of the American Convention on Human Rights.

3. To recommend to the Government of Nicaragua that it accepts the jurisdiction of the Inter-American Court of Human Rights in relation to the present case.

4. To confirm Resolution No. 29/86, to include it in the Annual Report for the purposes of Article 63 g of the Commission's Regulations, and to communicate it to the complainant.