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File Number(s): Report No. 2/87; Case No. 7788  
Session: Sixty-Ninth Session (16 – 28 March 1987)  
Title/Style of Cause: Carlos Martinez Riguero v. Nicaragua  
Doc. Type: Resolution  
Decided by: President, Dr. Gilda M.C.M. Russomano;  
First Vice President, Dr. Marco Tulio Bruni Celli;  
Second Vice President, Mr. Oliver T. Jackman.  
Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Luis Adolfo Siles Salinas  
Dated: 27 March 1987  
Citation: Martinez Riguero v. Nicar., Case 7788, Inter-Am. C.H.R., Report No. 2/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987)

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## HAVING SEEN:

1. Resolution No. 20/86 approved by the Inter-American Commission on Human Rights on April 18, 1986, attached hereto as Appendix No. 1, which it resolved:

1. To declare that the Government of Nicaragua has violated the right to private property set forth in Article 21 of the American Convention on Human Rights by confiscating the dividends earned on shares owned by Mr. Carlos Martinez Riguero in the Empresa Cereales de Centroamerica S.A. (CERSA).
2. To declare that the Government of Nicaragua has violated the right to private property set forth in Article 21 of the American Convention on Human Rights by nationalizing the quarry located in the "Las Brisas" subdivision belonging to Mr. Carlos Martinez Riguero and by thus far failing to honor the pecuniary obligations arising out of that measure despite the lengthy period that has elapsed.
3. To recommend to the Government of Nicaragua that it take steps to reimburse, in accordance with the law, Mr. Carlos Martinez Riguero for the amounts owed to him as unpaid dividends and for the nationalization of the quarries referred to in paragraph 2.
4. To send this resolution to the Government of Nicaragua so that it may make any observations it deems pertinent within 60 days of the date of the respective letter of transmittal.
5. To publish this resolution in the Annual Report of the Commission, for the purposes of Article 63.g of the Regulations, if the Government of Nicaragua does not make the pertinent observations within the period stipulated in the foregoing paragraph.

2. The observations made by the Government of Nicaragua through a note dated June 11, 1986, wherein it states:

Inasmuch as the complaint described above remains in effect and in light of the provisions of the resolution that the Honorable Commission has issued, the Government of Nicaragua sees fit to make a statement on the matter, as follows: Mr. Carlos Martinez Riguero and the assets that he claims in the

complaint brought before that Commission were not affected by Decree No. 3 of June 20, 1979. With regard to the shares that he claims to have owned in the Empresa de Cereales Nicaraguenses (CERSA), these were placed under temporary government control and later released, as attested to through certification issued by the Ministry of Justice on May 8, 1980. (Please find attached a copy of said certification.) (Appendix No. 2).

Accordingly, the certification and exemption from tax liability was issued in the name of Mr. Carlos Martinez R. and Mrs. Melba Paez de Martinez, while settlements that the claimant had pending from the Nicaraguan Government for various holdings were in process. That certification is dated April 8, 1981. (Enclosed is a copy of that certification, Appendix No 3.) In the exercise of its powers and procedures, the Government of Nicaragua enacted the Law on Nationalization of the Mining Sector and Establishment of the Corporation Nicaraguense de Desarrollo Minero - CONDEMINA, by virtue of which the quarry owned by Mr. Carlos Martinez Rigüero, located in Las Brisas, was affected. The effect on that property is, therefore, the consequence of a general law. It can never be alleged that it was an individual and separate decision on the part of the Government of Nicaragua.

As for the appraisal and compensation procedure, if said procedure was not followed, it was precisely because the party concerned did not take the measures called for in the matter. (Please find enclosed signed photocopies of the Gazettes publishing the Law on Nationalization and the Establishment of CONDEMINA, Decree No. 137 and Decree No. 314) (Appendix No. 4.) Mr. Chairman, the Government of Nicaragua wishes to reiterate to the Commission that under our system of law the regular and special remedies available to all Nicaraguans seeking to settle a legal situation are immutable. Nonetheless, of his own free will, Mr. Carlos Martinez Rigüero opted to leave the country without availing himself of the remedies available to him as a citizen under the laws of the country. Though he has been absent since 1981, it is utterly false that the Government of Nicaragua declared him to be in absentia.

3. The complainant's observations on the reply from the Government dated September 9, 1986, and which in essence states:

My observations on the documents sent by the Government and mentioned previously will appear together with the pertinent paragraphs of the Government's reply.

#### FIRST PARAGRAPH

"Mr. Carlos Martinez Rigüero and the assets that he claims in the complaint brought before that Commission were not affected by Decree No. 3 of June 20, 1979."

#### MY OBSERVATIONS ON THE FIRST PARAGRAPH

Attached to correspondence I addressed to you on June 11, 1981 was a copy of "La Gaceta," the official newspaper of the Government of Nicaragua, page 5 of which contains Decree No. 3, of July 20, 1979.

Since this was nothing more than a copy of Decree No 3, let us look at your "Report on the Situation of Human Rights in Nicaragua, 1981."

Chapter I of that report, on the existing legal system in that country, establishes the following in paragraph F, section c:

"Moreover, through Decree No. 3 of July 20, 1979, the Nicaraguan Government empowered the Attorney General to take steps to seize, requisition and confiscate all property of the Somoza family and of the military and officials who had abandoned the country since December 1977."

In turn, Decree No 3, dated July 20, 1979, given as Supporting Document No. 9, establishes the following:

"The Attorney General is empowered to proceed forthwith to take steps to seize, requisition and confiscate all property of the Somoza family and of the military and officials who have left the country since December 1977."

In view of the foregoing, the following are pertinent excerpts from a communication I received on december 18, 1979 from another branch of the Government of Nicaragua, the original of which I included

as Supporting Document No. 7 (Appendix No. 5). Through that communication, I am advised of the following:

"On November 20, the National Reconstruction Trusteeship received from the Attorney General the list of shareholders whose shares in the corporation known as CEREALES DE CENTROAMERICA, S.A. (CERSA) were confiscated:

...  
...

Carlos Martinez Rigüero

Said shares are being represented by this Trusteeship as of that date."

It is therefore clear that the Attorney General included me among the persons who had been divested and that my shares were also confiscated.

Further, on January 4, 1980, as shown in Supporting Document No. 11 (Appendix No. 6) of these proceedings, the Attorney General himself in charge of the confiscation, addressed correspondence to my wife, Mrs. Melba Paez de Martinez. The opening words of that communication constitute ample proof of the CONFISCATION of my shares in CERSA. That document starts as follows:

"In order to revoke the confiscation of CEREALES DE CENTROAMERICA, S.A. that you request..."

The Attorney General was empowered to seize or confiscate assets; but all the documentation referred to above shows that in the case of the undersigned, his decision was to confiscate. Beyond any question, I was the target of confiscation.

We see, then, that the claim made by the Government of Nicaragua in the FIRST PARAGRAPH of its reply to the effect that the undersigned claimant and his property were not adversely affected by Decree No. 3 of July 20, 1979, is false.

## SECOND PARAGRAPH

The Government states:

"With regard to the shares that he claims to have owned in the Empresa Cereales Nicaraguenses (CERSA), these were placed under temporary government control and later released, as attested to through certification issued by the Ministry of Justice on May 8, 1980. (Please find attached a copy of that certification.)" (Appendix No. 2)

## MY OBSERVATIONS ON THE SECOND PARAGRAPH

An initial observation on the second paragraph: The company from which the Government confiscated my shares and the corresponding dividends is not called "Cereales Nicaraguenses (CERSA)," but rather CEREALES DE CENTROAMERICA, S.A. (CERSA).

Let us now turn to the certification to which the Government of Nicaragua refers in this second paragraph, a copy of which it encloses. As noted above, the undersigned enclosed the original version of that certification. That "certification" states verbatim:

"THE MINISTRY OF JUSTICE OF THE REPUBLIC OF NICARAGUA HEREBY ATTESTS that the shares belonging to Mr. Carlos Martinez Rigüero in the Empresa CEREALES DE CENTROAMERICA S.A. are not affected by Decrees Nos. Three (3) and Thirty-eight (38) issued by our JUNTA OF THE GOVERNMENT OF NATIONAL RECONSTRUCTION. Those shares must therefore be released.

We see, therefore, that the Minister of Justice and the Attorney General ATTEST that those shares must be released. Further, in reference to the shares, the Minister of Foreign Affairs states that they were released.

As may be seen from the documentation in the proceedings on this CASE 7788, the shares in CERSA that were confiscated from me are worth a vast sum of money. If indeed these shares were released, it is illogical for the Government to offer as evidence a statement to the effect that "they must be released," rather than a receipt signed by the injured undersigned attesting to the fact that he had in fact received the shares that "must be released."

Apart from the matter of the "release of the shares" --which we know did not occur--, the matter of the dividends earned on those shares is still pending.

Your Resolution 20/86, which was duly transmitted to the Government of Nicaragua, resolves the following:

"To declare that the Government of Nicaragua has violated the right to private property set forth in Article 21 of the American Convention on Human Rights by confiscating the dividends earned on shares..."

You also apprised of the following:

"To recommend to the Government of Nicaragua that it take steps to reimburse, in accordance with the law, Mr. Carlos Martinez Rigüero for the amounts owed to him as unpaid dividends..."

However, throughout its reply to your request for information concerning your Resolution 20/86, the Government of Nicaragua does not make the slightest mention of the word "dividends" and merely enclosed "a statement" to the effect that "those shares must be released."

Moreover, included in the existing documentation in the files on the present CASE 7788 are a number of irrefutable documents wherein the undersigned demands the actual release of his shares in CERSA, and that the dividends earned on those shares be paid to him, however many resources the Nicaraguan Government used--the Government Junta, Ministers and Deputy Ministers of State responsible for government agencies, Judges, Courts of Appeal, Supreme Court of Justice, etc.--to definitively confiscate my shares in CERSA and the dividends those shares earned for me.

These documents, which are too numerous and lengthy to duplicate here--even partially--were enclosed with written correspondence presented to you, the Commission, on June 11, 1981 and thereafter. I request that these documents be included, in their entirety, in your resolution on the present CASE 7788, as called for under the terms of the Convention and your Regulations.

The foregoing observations on the SECOND PARAGRAPH of the reply from the Government of Nicaragua on my shares in CERSA are incontrovertible proof that no such shares "were released" despite the Government's unfounded denial in its reply.

It is equally clear from the SECOND PARAGRAPH and even from the Government's entire response that it makes not even the slightest allusion to your resolution concerning the recommendation to that Government of Nicaragua that it proceed to reimburse Mr. Carlos Martinez Rigüero for the amounts owed to him in the form of unpaid dividends.

### THIRD PARAGRAPH

"Consequently (en consecuencia), the certification and exemption from tax liability was issued in the name of Mr. Carlos Martinez R. and Mrs. Melba Paez de Martinez, while settlements that the claimant had pending from the Nicaraguan Government for various holdings were in process. That certification is dated April 4, 1981. (Enclosed is a copy of that certification, Appendix No. 3.)"

### MY OBSERVATIONS ON THE THIRD PARAGRAPH

First, we should take a look at the word "consecuencia".

According to the Dictionary of Synonyms and Antonyms by Professor Sainz de Robles, that word is synonymous with "deduction and conclusion."

Thus, according to the Government's reply, by deduction, in conclusion, "as a consequence" of the fact that that Government had taken control of and released my shares in the CERSA Corporation, "the certification and exemption from tax liability was issued" in my name, while settlements that the claimant had pending from the Nicaraguan Government for various holdings were in process.

There cannot be the slightest connection, link or relationship of any kind whatsoever between the fact that some of my shares were seized or CONFISCATED and later released and the fact that the undersigned was exempted from any tax liability. The very "certification" in question makes no reference to CONFISCATION, seizure, release of shares, but rather to the fact that the Government must pay me for several properties.

Moreover, let us look at the copy of the "certification and exemption from tax liability" that in the THIRD PARAGRAPH the Government of Nicaragua states it sent. I should clarify at this point that that document, dated April 4, 1981, was enclosed with correspondence that I conveyed to the Commission on

July 15, 1981 as Supporting Document No. 16, more than five years ago, and that has been part of the file for CASE 7788 since that time.

That document states the following verbatim:

"In view of the fact that Comrade CARLOS MARTINEZ RIGUERO has pending from the Government settlements on various holdings that were negotiated by the Ministry of Transport as well as a quarry that was nationalized, I am authorizing you to give him and his wife, Mrs. MELBA PAEZ DE MARTINEZ, credit worthiness, until such time as the government pays off that balance."

Summing up and to clarify the pertinent statements made by the Government in the document quoted above, what we have is the following: Since the undersigned claimant has pending from the Government settlement (payment of a debt, according to the Larousse Dictionary) for several holdings, the appropriate persons are authorized to extend credit worthiness (capacity to pay debts, according to Larousse) until such time as the Government makes settlement (pay off a debt, according to Larousse).

In other words, in the "Certification" that the Government encloses, according to the THIRD PARAGRAPH of its reply, IT CERTIFIES that Comrade CARLOS MARTINEZ RIGUERO has pending from the Government settlement on several properties; but in its reply to you, the Commission, the Government talks about settlements on several properties that the claimant had pending with the Government.

As can be seen, there is a world of difference between the CERTIFICATION issued by the Government and the reply you received from the Government, since the enclosed Certification clearly states that the undersigned HAS several properties pending payment by the Government.

Finally, with regard to the THIRD PARAGRAPH of the reply from the Government of Nicaragua under discussion, we see that it is not true that a certification and tax exemption was issued in my and my wife's name by virtue of the release of my shares in CERSA. We have also seen from the CERTIFICATION that the Government enclosed that it admits it must settle or pay to the undersigned claimant the amount owed to him for several properties and the quarry involved in CASE 7788.

#### FOURTH PARAGRAPH

The reply from the Government.

"In the exercise of its powers and procedures, the Government of Nicaragua enacted the Law on Nationalization of the Mining Sector and Establishment of the Corporation Nicaraguense de Desarrollo Minero - CONDEMINA, by virtue of which the quarry owned by Mr. Carlos Martinez Rigüero, located in Las Brisas was affected."

The undersigned and the Commission know that a general law such as the law on nationalization of the means of production affects each and every company involved in the production of the nationalized branch.

In relation to the FOURTH PARAGRAPH of the Nicaraguan Government's reply, it is obvious that the Government is correct in stating that the Law on Nationalization of the Mining Sector affected the quarry owned by Mr. Carlos Martinez Rigüero, located in Las Brisas.

#### FIFTH PARAGRAPH

"The effect on that property is, therefore, the consequence of a general law. It can never be alleged that it was an individual and separate decision on the part of the Government of Nicaragua."

The undersigned again notes that the files on this CASE 7788 contain no document wherein the undersigned is claiming or contending or implying that the law on nationalization of the mining sector under discussion has been enacted as an individual and separate decision taken by the Government of Nicaragua against him, though this has no bearing upon the case whatsoever, which is that the Government owes me compensation for my property.

The sole purpose of my complaint in CASE 7788 is that the Government of Nicaragua comply with the provisions of the Law on Nationalization of the Mining Sector that it enacted and with the American

Convention on Human Rights. As you well know, that Government accepted that Convention, taking it as national law, pledging its national honor to its observance.

Moreover, the Law on Nationalization of the Mining Sector (photocopies of which the Government states it has enclosed, duly signed by the appropriate official of the Ministry of Justice) states in its Article 2:

"Mining companies, working mines and quarries in the country are hereby nationalized through state acquisition... The transfer of equity to state ownership shall be effected as prescribed by the Law upon publication on this Decree."

A look at the underlined parts of the above article in the foregoing paragraph reveals that they were nationalized (in other words, transferred to the community, according to the Larousse Dictionary) "through," "as a result of," "thanks to," according to that same dictionary) state acquisition ("purchase" according to that dictionary) of the mining companies.

Had the State of Nicaragua observed its own Decree or Law on Nationalization of the Mining Sector, it would have endeavored to effect that nationalization through or by means of state purchase of the property or means of production that had been nationalized.

Insofar as the Convention is concerned, your Resolution 20/86 on the present CASE 7788 under discussion CONSIDERS:

8. That Article 21 of the American Convention on Human Rights establishes:

"2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law."

#### SIXTH PARAGRAPH

The Government states in this paragraph that:

"As for the appraisal and compensation procedure, if said procedure was not followed, it was precisely because the party concerned did not take the measures called for in the matter."

The word "measure," according to the dictionary, has the following meanings: procedure, action, step.

Note that in this paragraph of its reply, the Government of Nicaragua makes allusion to the appraisal and compensation procedure but immediately thereafter states, "if said procedure was not followed..."

Clearly, the Government is making reference only to the compensation since, if it had referred to assessment and compensation alike, it would have had to state, "if these were not followed," thereby using the plural, the proper form.

In reference to the COMPENSATION PROCEDURE referred to by the Government, we should discuss the wording of the Law on Nationalization of the Mining Sector.

Article 2 of that Law, which appears under the heading, Nationalization of the Mining Companies, has already been quoted and partially discussed in the observations on the FIFTH PARAGRAPH of the Government's reply.

We know that the undersigned was notified to turn over his quarry mining business. That notification is Appendix No. 7 in the files.

After my company had been taken over by the State, I addressed correspondence to the appropriate authorities asking them to proceed to pay the fair compensation due, noting at that time that it would have to proceed thus. That communication from the undersigned is included as Appendix No. 8.

I received a reply from the Government, which is the only one I have received in response to my aforementioned petitions. That reply has also been included in the files as Supporting Document No. 12 (Appendix No. 9). It states the following:

"The compensation, which we are sure will in no case exceed the value you reported to the appropriate authorities as being the real value, can be decreed by installments."

Since the Government has not specified the authority that would be called upon to pay the compensation, I addressed many other pieces of correspondence to the authorities involved in the enactment of the law of nationalization, to those who ordered me to hand over my company to the Government, and to those who authorized that order, etc. These communications have been included in the records as supporting documents No. 13, 15 and 15 (Appendix No. 10).

I have never received a reply from the various branches of government to my requests, set forth in the indicated documents--not even an indication of the authority that would be called upon to effect the compensation required under the law.

And so we see that the injured claimant addressed all those involved--the Government Junta, Ministers and Ministries, the Junta of Reconstruction, and autonomous and semiautonomous government entities--in an effort to have the State acquisition or purchase transaction concluded in the appropriate logical manner: upon enactment of the decree or law on nationalization or upon ordering that the undersigned hand over his company.

The next article, Article 3 of the Law of Nationalization of the Mining Sector, deals with the "Purchase Price." As we have seen, in its reply the Government of Nicaragua refers to this as "appraisal," but makes no comment thereon whatsoever. It therefore does not warrant any comment in these observations on the Government's reply. I do, however, wish to point out that in writing and documents that the undersigned is again asking be incorporated into resolution 20/86 of the case or the report, that "acquisition price" was already fully established (Appendix No. 11).

Thus, in connection with the COMPENSATION procedure indicated by the Government, I shall copy below the pertinent article of the "Law on Nationalization of the Mining Sector," entitled "Form of Payment":

"Article 4. The price of the shares shall be paid in Treasury bonds earning interest at 6 1/2 percent per annum every twelve months, calculated from the date of publication of this decree, and maturing in five years."

The very ample documentation in these records, consisting of several communications or "overtures" to the Government Junta, the Junta of Reconstruction of Managua, to CONDEMINA, and to several Ministers of State demonstrate that the measures I have taken have never met with any success. In accordance with the Law on Nationalization in question, such overtures should have been quite unnecessary, since that Law does not establish or indicate or imply that the party affected by the nationalization should make any "overture" whatsoever.

At this juncture, it must be recalled that MORE THAN TWO YEARS elapsed between the date of publication of the "Law on Nationalization of the Mining Sector" on November 3, 1979, according to the certified copy enclosed by the Government in its reply, and December 17, 1981, when I was compelled to leave the country. The pertinent authorities to whom I had written had not responded to my petitions: they made no decision on the matter; they paid no monies, Treasury bonds, or interest "payable every twelve months," despite my requests and the fact that in my communications to the Government and the authorities involved I indicated my domicile or address.

From the Law on Nationalization of the Mining Sector and the sixth paragraph of the Government's reply, it is glaringly apparent that the Law in question makes no mention of the measure or "measures called for in the matter"--as the Government states in its reply--or of any other type of measure that should or might have been used or taken by the party affected by the Law of Nationalization in question.

As regards remedies of any kind, let us first look at what the Government says in the next paragraph of its reply:

#### SEVENTH PARAGRAPH

"Mr. Chairman, the Government of Nicaragua wishes to reiterate to the Honorable Commission that under our system of law the regular and special remedies available to all Nicaraguans seeking to settle a legal situation are immutable."

As we know, CASE 7788 concerns my shares in CERSA, and dividends on those shares, and the nationalization of my quarry mining company.

As for my shares in CERSA, we have seen that on June 27, 1980, a voucher on the "release" of those shares was delivered to me, even though the actual shares were never given to me, nor were the dividends they earned.

As for the national quarries, we have seen that on July 16, 1980, I received a communication informing

me that the compensation could be decreed in installments. However, no mention was made of the authority that was called upon to pay the due compensation, as the undersigned had requested. What is more, thus far the Government has implicitly refused to provide that information.

From the records and from the Government's own reply, we see that the just compensation that the Law and the Convention require was never honored, either in cash or in installments.

Let us see below what the undersigned could have done in regard to what the Government appears to be saying in the seventh paragraph of its reply, which is that "under our system of law, the regular and special remedies available to all Nicaraguans seeking to settle a legal situation are immutable."

The "Law on Immunity," Decree No. 441, was published in the official newspaper, "La Gaceta," 139th issue of June 20, 1980--when the order to release my shares in CERSA, which were never released, was given, and when the compensation for my quarry had not been paid, as it still has not been paid.

The complete text of Article I of that "Law on Immunity" states the following:

"To grant immunity to the members of the Junta of the Government of National Reconstruction, representatives on the Council of State, Magistrates of the Supreme Court of Justice, Ministers and Deputy Ministers of State and Directors of Autonomous Agencies. Consequently, while in office those officials may not be subject to any judicial or prejudicial action before the Tribunals of the Republic."

We note from the above article that immunity was granted to, inter alia, each and every official mentioned or involved in one way or another in the documentation--decrees, laws, communications, vouchers, certifications, etc.--on both measures, the CONFISCATION of my shares in CERSA and the NATIONALIZATION of my quarry.

However, in the legal proceedings that could logically have been instituted, and had there been a possibility of "settling a legal situation," as the Government states in its reply, it would have been absolutely essential for "the members of the Junta of the Government of National Reconstruction" and the "Ministers," "Deputy Ministers" and "Directors of Agencies" involved to be brought to court in one way or another --judicial or prejudicial.

With regard to the "Law on Immunity" previously cited and to the contents of the foregoing paragraph, I am requesting that the discussion set forth on page 31 of my brief dated May 10, 1981 be considered and added to the present document of observations on the Government's reply. That discussion is further and more irrefutable proof that it was impossible for the undersigned claimant to avail himself of the remedies to which the Government of Nicaragua refers in its reply.

Under the laws that are generally invoked in many countries, there is another well-known remedy: Amparo.

I must once again refer to this remedy of Amparo.

According to the "Fundamental Statute of the Republic of Nicaragua" published in "La Gaceta," issue No. 1 of August 22, 1979, and under the provisions of Article 3 of that "Fundamental Statute," the constitutional laws in effect as of that date, including a Law on Amparo, were repealed.

As we have seen, I was advised of the CONFISCATION of my shares in CERSA on December 18, 1979 (shown as supporting document No. 7) (Appendix No. 5). The Government prepared a statement to the effect that my shares should be released on May 8, 1980, though this never occurred (shown as Supporting Document No. A4).

With enactment of the Law on Nationalization of the Mining Sector, on April 29, 1980, I received orders to hand over my quarries to the Government. This was done (see Supporting Document No. 9) (Appendix No. 7).

When I complained that nationalization should have been effected through payment of fair compensation, I was informed on May 29, 1980 that the payment of that compensation could be "decreed by installments." As the records show, despite several written attempts on my part, no payment has even been made, either in cash or in installments.

In light of the dates indicated on this page and bearing upon action taken in the cases of the CONFISCATION and the NATIONALIZATION--August 22, 1979, December 28, 1979, May 8, 1980, April 29, 1980, and May 29, 1980--I wish to note that Decree No. 417 on the "Law of Amparo" came into existence as of its publication in "La Gaceta," the official newspaper, issue No. 122 of May 31, 1980--

subsequent to all of the dates noted above.

But paragraph 5 of Article 28 of this "Law on Amparo" establishes that Amparo is not admissible "against measures ordered by the authorities or measures taken by them prior to the date on which the present Law takes effect."

Therefore, in view of the fact that the "Law on Amparo" entered into force on May 31, 1980 and that the measures ordered and taken by the authorities, as we have seen, predated the Law in question, "Amparo is not admissible."

The assertion by the Government of Nicaragua in the Seventh Paragraph of its reply that regular and special remedies are "available to all Nicaraguans seeking to settle a legal situation" is therefore inaccurate.

#### EIGHTH PARAGRAPH

The Government states:

"Nonetheless, of his own free will, Mr. Carlos Martinez Rigüero opted to leave the country without availing himself of the remedies available to him as a citizen under the laws of the country. Though he has been absent since 1981, it is utterly false that the Government of Nicaragua declared him to be in absentia."

Let us now turn to the allegation that I opted of my own free will to leave the country.

In paragraph 7 of the Preamble of your Resolution on this CASE 7788, you state that you learned that the Government of Nicaragua:

- 1) had expropriated the residence of Martinez Rigüero, who was forced to leave it;
- 2) had taken control of a portion of his property;
- 3) had proceeded to collect the rent on houses on the property of the undersigned, and
- 4) proceeded to detain him on one occasion.

In a brief dated May 17, 1982, the undersigned denounced, among the many actions perpetrated against him by the Government, those to which you, the Commission, refer in the previous paragraph. I am asking that those complaints, which were accompanied by irrefutable substantiating documents, be included in your report and/or the resolution on the present CASE 7788.

The above points, which you summarized in that seventh paragraph of the preamble of Resolution 20/86, appear in the letter, as follows:

"MAY 1981 - MINISTRY OF HOUSING - A doctor, who is a very good person and my friend, a graduate of the Patrice Lumumba People's University, Moscow, USSR, sent to the Direccion General de Migracion a certificate attesting to the fact that Carlos Martinez Rigüero "has been treated, as he was in a delicate state of health, is currently under treatment and requires further laboratory tests that cannot be performed in our country for technical reasons and because the equipment is lacking. The patient must travel to the United States for that purpose."

"On April 9, 1981, a visa was issued to me by the appropriate branch of the Ministry of Foreign Affairs, and that very same day, I traveled to the United States."

"Employees or helpers, furniture, domestic animals and other persons remained in our home. But at 10:45 a.m. on May 5, 1981, less than one month after leaving to seek medical treatment, a painful notice from that Ministry was received at my home, concerning my family's home. That notice stated: 'In accordance with the provisions of Article 15 of the Tenancy Law, I am hereby giving you, Mrs. Melba de Martinez, [my wife] notice that you must make this housing available to the public for rent... Failure to do so will force this Office to seize the property to see that this order is enforced. Jorge A. Saamper B. Tenancy Office.'"

"SEPTEMBER 1980 - MINISTRY OF HOUSING. On the 8th of this month I received a communication addressed to me: 'By virtue of Decree No. 97 of September 22, 1979, proceed to hand over all documentation on the illegal subdivision 'Bajos de Acahualinca.' If you fail to comply, the forces of law and order are authorized to carry out this order.' I confirmed that the person who signed that document was in charge of the Oficina Nacional de Repartos Intervenidos."

"I have never been informed that I had a subdivision that had been placed under government control; I am not the owner of any illegal subdivision; I am not the owner of the illegal subdivision 'Bajos de Acahualinca,' and finally, the aforementioned Decree No 97 does not authorize what was claimed in the 'order' from the Ministry of Housing."

I so informed that branch of Government in writing.

I further pointed out that my family did own a subdivision and that it was not illegal since it complied with all the requirements at the time it was authorized.

I pointed out that that partition of lands was authorized by the Decree on Urban Development issued by the Executive Committee of the National District, Agreement No. 168 of December 27, 1939, issued by the then President of the National District--the appropriate authority at that time-- Mr. Hernan Robleto and the Secretary, Dr. A. Narvaez I. There was no possible way.

A uniformed and armed detail delivered a sealed notice signed by the author of the earlier notice and from the same Ministry. It states the following: "October 13, 1980 - SANDINISTA POLICE PRECINCT STATION - Comrades: Pursuant to Decree No. 97 of September 22, 1979 (Law on Illegal Subdivisions), we are hereby requesting your assistance in retrieving documentation from Mr. Carlos Martinez, part owner of los Bajos de Acahualinca in this city, which this office placed under government control on September 23, 1979."

I need not describe the effect on my family--wife and children, the youngest of which is four years old--when they saw their home and father's study, which they were entering to play, invaded by the armed forces and their own father threatened.

When the armed forces had completed their assignment, I took the painful decision: to take my youngest children out of Nicaragua.

MARCH 1980 - MINISTRY OF HOUSING - 4 days - First payment collected by that Ministry from the first tenant of one of my properties. Receipt No. 124. This action was taken without my authorization and with no regard for the law.

28th of the month - I protested the foregoing in writing and provided proof that my properties were legal. I asked that the monies taken in by government representatives, based on a number of receipts, be returned to me.

April 21, 1980. The Ministry of Housing drew up a record to the effect that the property corresponding to the afore indicated receipt, 'property of Mr. CARLOS MARTINEZ RIGUERO, of this city, is not under government control.'

July 18, 1980. In writing, I continued to ask for my rent monies that the government was still collecting. There was not the slightest indication that it intended to deliver up said money to the undersigned.

FEBRUARY 1981 - MINISTRY OF THE INTERIOR. They arrested me on the 20th of this month, accusing me of attempted murder. They took me to prison.

Under the law, the procedures for investigation and/or punishment of a crime like this involve a considerable period of time.

I spent an indescribable, terrible night during which I was threatened (I am diabetic and hypertensive) and menaced. I signed what had to be signed with such offices and bodies.

The following day, the 21st, I was released after paying C\$120.00 (for which I was given a receipt) and I was given the release form which states: "Individual was detained on charges of public drunkenness and disturbing the peace (signatures and seals of the Ministry of the Interior)."

Even with all its amendments and related decrees, Decree No. 488 issued by the Government Junta states: "ARTICLE 4. Persons committing the following offenses shall be punished by arrest and hard labor for ten days to two years:... b) Vagrancy, drunkenness with disturbance of the peace, drug addiction and prostitution."

But neither Decree No. 488 nor any other decree allows for payment of a fine or commutation of sentence or that I might be released the following day, without remaining under arrest for the 'offense' with which I was charged--for at least--ten years.

In the body of that same document referred to above, and always with all the corroborating and irrefutable documents enclosed, I have a summary account of actions perpetrated against the undersigned claimant to

persecute me. I pointed out several of those perpetrated by the Ministry of Industry, the Office of the Deputy Minister of the Corporacion Industrial del Pueblo, District Judges, Courts of Appeal, the Supreme Court of Justice and its very President.

In that same document, I prepared a partial list, in chronological order, of certain other acts of persecution against the undersigned, to which I attached the pertinent substantiating documentation.

The Government's assertion in this eighth paragraph to the effect that of my own free will I opted to leave my country is, therefore, absurd. As you may have sensed, this was a matter of survival.

And the Government goes on to say in this eighth paragraph that we now see that the undersigned claimant left the country "without availing himself of the remedies available to him as a citizen under the laws of the country."

But in the observations of the seventh paragraph of the Government's reply, it is clear that it was quite impossible for the undersigned to avail himself of any recourse.

In any event, with a wide range of irrefutable documents, the undersigned claimant has demonstrated that he somehow could not have availed himself of the remedies mentioned by the Government.

In the eighth paragraph, the Government of Nicaragua goes on to assert that the persecuted undersigned "has been absent since 1981."

Neither is this assertion accurate. In fact, let us look at the meaning of the word "ausencia" (absence).

The Diccionario de Derecho Procesal Civil by Eduardo Vallares considers it to be a forensic term that means:

"Legal status of a person whose whereabouts are unknown."

And you, the Commission, know very well that my whereabouts, dwelling, place of residence, abode, are not unknown.

This is so much so that when completing your "Complaint Forms" for the four complaints that I presented to you, I carefully filled in all of the respective forms, including the part requesting the following information:

"IX. Identification: Please indicate whether you wish your identity to remain confidential:"

I consistently answered that question as follows: "It is not necessary that my identity remain confidential."

And at the end of the "Complaint Forms," in the part where you ask for the "FULL ADDRESS OF COMPLAINANT," I have invariably supplied my full address, including the city, state, postal zone, country and telephone.

Thus, since you complied with your Regulations by forwarding my complaints to the Government of Nicaragua, it is only logical that they should know or be able to find out, through you, what my exact address is.

I am thus quite sure that if the Government of Nicaragua had asked you for my address for the purpose of looking for me to pay me for the shares in CERSA or the dividends or the plots of land in my real estate development or for the houses and income derived therefrom, etc., you would have supplied the address.

Finally, in the last part of the eighth and final paragraph of the reply from the Government of Nicaragua, it states that "Though he has been absent since 1981 it is utterly false that the Government of Nicaragua declared him to be in absentia."

The following constitutes a veiled threat to declare me in absentia in order to apply its decree whereby all of my properties would be expropriated.

First, there is nothing in the record showing that the undersigned mentioned or implied that he was declared in absentia by the Government or that you so imply.

Formal petition to the Honorable Inter-American Commission on Human Rights:

In accordance with the principles of paragraph 1 (in fine) of Article 50 of the American Convention on Human Rights and paragraph 5 of Article 47 of the Regulations of the Inter-American Commission on Human Rights (updated as of July 1<sup>o</sup>, 1985), I am asking that all of the verbal or written statements made by the parties, including this document, be included in the Report or in your resolution.

For greater facility and because these statements are so voluminous, I would suggest that mention be made only of the date stamped by the parties in those statements and the date of receipt by your Executive Secretariat.

#### OMMISSIONS IN YOUR RESOLUTION No. 20/86

At this point, I wish to make the observation that your Resolution No. 20/86, CASE 7788 (Nicaragua), which was approved by the Commission at its 888th meeting held on April 18 of this year, suffers from certain omissions inasmuch as its condemnation of the Government of Nicaragua falls short of what it should be and since it does not make a ruling on all the issues in dispute.

For example, in operative paragraphs 1 and 3, you resolve to declare that the Government of Nicaragua has violated Article 21 of the Convention "by confiscating the dividends earned on shares" and you recommend to the Government that it proceed to reimburse the undersigned for "the amounts owed to him for unpaid dividends" but you render no decision on the shares themselves, whose value is fully determined in the records of the case, or on the compensation that the undersigned claimant is due for damages caused by the Government.

Another example is your failure to establish in the aforementioned resolution the value of the quarry that was nationalized and that was disputed with ample and specific documentation in CASE 7788.

I would request here that, inasmuch as the present notification has been given, the aforementioned omissions in your resolution be corrected.

#### CONSIDERING:

1. That in its observations dated June 11, 1986, the Government of Nicaragua does not provide any new evidence that invalidates the facts reported to the Commission.
2. That the claimant, Mr. Carlos Martinez Rigüero, has convincingly rebutted the arguments of the Government of Nicaragua and presented satisfactory documentary evidence of the facts reported by him.
3. That therefore, in the Commission's view, Mr. Martinez Rigüero has not yet received fair compensation for the assets referred to in this case: shares in the Empresa Cereales de Centroamerica S.A. (CERSA) and dividends earned on those shares, as well as the quarry located in Las Brisas.
4. That Mr. Martinez Rigüero took all possible action to obtain fair compensation for his assets, without success, and that, further, he was prevented from continuing such action, given the de facto situation created by officials of the Government of Nicaragua, which gave rise to the situations provided for in Article 46.2.a and b of the American Convention on Human Rights regarding the exhaustion of remedies under domestic law.
5. That Mr. Martinez Rigüero has estimated the value of the assets of which he was deprived as a result of action taken by the Government of Nicaragua, at US\$63,402,651.00, according to the appraisal itemized in Appendix No. 11 of this resolution.
6. That in the present case, the friendly settlement procedure provided for in Article 48.1.f of the American Convention on Human Rights is applicable.

In view of which the Inter-American Commission on Human Rights,

#### RESOLVES:

1. To declare that the Government of Nicaragua has violated the right to private property set forth in Article 21 of the American Convention on Human Rights by not giving Mr. Carlos Martinez Rigüero adequate compensation for shares he owned in the Empresa Cereales de Centroamerica S.A. (CERSA) and dividends earned on those shares.

2. To declare that the Government of Nicaragua has violated the right to property set forth in Article 21 of the American Convention on Human Rights by failing to honor, thus far, the pecuniary obligations arising out of nationalization of the quarry located in the "Las Brisas" subdivision belonging to Mr. Carlos Martinez Riguero.

3. To recommend to the Government of Nicaragua that it proceed to reimburse Mr. Carlos Martinez Riguero for the amounts owed to him for his shares in the Empresa Cereales de Centroamerica S.A. (CERSA) and dividends thereon and the amount of money arising from nationalization of the quarry located in the "Las Brisas" subdivision.

4. To send this resolution to the Government of Nicaragua and to the complainant and to publish it in the Annual Report of the Commission for the purposes of Article 63.g of the Regulations if, within ninety days as of the date of its approval, the Government and the complainant have not reached a friendly settlement on the matter.