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HAVING SEEN:

1. That on May 7, 1986, Mr. Winston Spadafora filed a petition with this Commission against the Government of Panama, with respect to the violation of Articles 4 (the right to life), 5 (right to personal integrity), 7 (the right to personal liberty), and 25 (the right to legal protection) of the Inter-American Convention on Human Rights. The pertinent parts of that petition are transcribed below:

My name is Winston Spadafora Franco, Panamanian personal identification card No. 7-58-878, issued in Panama City, Republic of Panama, and valid until December, 1994.

The name of the victim to which this petition refers is that of my brother HUGO SPADAFORA FRANCO.

The date of my brother's murder was September 13, 1985, and the place was the Province of Chiriquí, Republic of Panama.

I have described the nature of the human rights violations, which led to the present petition, and the identity of the persons presumed responsible -the Defense Forces of the Republic of Panama- in a separate document which is appended hereto, in Spanish and in English, as well as relevant additional information.

Before my brother's corpse was found, my father had filed a petition of habeas corpus against the Defense Forces of Panama, which was dismissed as relevant and immaterial upon the discovery of the corpse.

I am filing this petition with the Inter-American Commission on Human Rights for the first time. In our country, we do not accuse anyone by name so as not to lend credence to the investigations that we knew, from the very outset, were biased as was demonstrated when the case was closed less than five (5) months following the murder.

We hereby authorize this August Commission to release our identity.

2. The petitioner has submitted the following documents with the petition:

a. BRIEF ACCOUNT OF THE FACTS PERTAINING TO THE MURDER OF DR. HUGO SPADAFORA FRANCO

Who Dr. Hugo Spadafora Franco was

He was born and raised in Chitré, a new, small provincial town, whose people are fair-minded, happy and

hospitable. By their own efforts, his parents, who were of humble origin, were able to achieve middle class status. He completed his elementary education, in public schools in his native town, and at a very early age, was recognized as an exceptional student. He completed his secondary schooling at the Instituto Nacional, in Panama City, where he ranked third in his class, was awarded a scholarship, and graduated in February 1958. In November of that same year, he began his studies at the School of Medicine of the University of Bologna, Italy, and graduated with the degree of Doctor of Medicine in November 1964. In January 1965, he returned to Panama, and began working at the Hospital Santo Tomás in Panama City. In August 1965, he travel to Cairo to begin postgraduate studies thanks to a fellowship from the Government of Egypt. In February 1966, he joined the Portuguese Guinea Independence Movement (now Guinea-Bissau) as a volunteer physician, and was the first physician that the independence movement had. He practiced his duties in liberated territory until May 1967, at which time he returned to Panama, once he had made certain that the independence movement had other physicians. In 1969, he fought against the military coup of General Torrijos, action which led to his being jailed, and subsequently, in his own words, "I joined that system when it changed course."

He practiced medicine for several years, and subsequently held the post of Director of the Integrated Health System in the Province of Colón, and that of Vice Minister of Health in the Government of General Omar Torrijos H. He resigned in September 1978, to join the Victoriano Lorenzo Panamanian Brigade, which fought against the Somoza dictatorship in Nicaragua. Eight days after the Sandinista victory, he returned to Panama, only to return to Nicaragua three years later, in 1982, this time to fight alongside Pastora against the Junta in power. Two years later, he abandoned Pastora, openly expressing his disagreement with the military strategy of that Nicaraguan leader. His last saw combat is the Atlantic region of Nicaragua, where he fought alongside Brooklyn Rivera, the native leader. In August 1985, one month before his assassination, he publicly declared that he was returning to Panama to enter politics. In 1980, he had already started a series of public denunciations of the repressive policy of General Manuel Antonio Noriega, who at the time was head of the G-2 of the Panamanian Army. General Noriega accused him of corruption in office, smuggling of weapons, and drug trafficking, and launched an investigation that lasted until his death. In one of his final writings, he accused General Noriega of having threatened to kill him several times, and held him responsible for what might happen.

September 13, 1985, the day of his assassination

On Friday, September 13, 1985, Dr. Hugo Spadafora Franco left his house in San José, Costa Rica, where he lived with his wife, a Costa Rican national, and traveled to Panama City, taking the following route or itinerary, one he had traveled several times: San José-Coto 47-Paso Canoas-David-Panama. He took a small plane to Coto 47, a small locality near the border with Panama. From there he took a taxi to Paso Canoas (on the Panamanian-Costa Rican border), and lunched in the "Los Mellos" restaurant, located in Panamanian territory. The owner of the restaurant, his friend, Mr. Iván Darío González Justavino, has made a statement to that effect. Next door to the aforementioned restaurant, is the bus terminal for service between Paso Canoas and David, capital of the Province of Chiriquí, with intermediate stops in the small town of Concepción. Along the route between Paso Canoas and Concepción (30 kilometers), the Panamanian Army, on the pretext of the Central American migration explosion, has established two (2) migration check points in addition to the one at border. As was the case during his last four (4) trips, Dr. Hugo Spadafora Franco was obliged to get off the bus for a few minutes at both check points (sufficient time to radio the military command), and was then allowed to continue his trip. It should be emphasized that at those check points, only undocumented persons are made to get off the bus, and Dr. Spadafora showed his Panamanian personal identity card to all those who were traveling in the same bus as he, and to the police as well. Once the bus reached Concepción, Dr. Hugo Spadafora Franco got off with an agent of the Defense Forces, dressed in civilian clothing who, by some deception, convinced him to leave the bus and pay his fare that far. That was the last time Dr. Hugo Spadafora Franco was seen alive. On the morning of Saturday, September 14, 1985, his body was found in Costa Rican territory decapitated and horribly mutilated some 300 meters from Panamanian border.

Denial of Due Process by the Panamanian Authorities

Aware of the great lack of credibility and lack of impartiality of the Panamanian judiciary and investigatory agencies, the Spadafora family, supported by the vast majority of the people of Panama, demanded that a special investigatory commission be established, pursuant to Article 216 of the National Constitution. Dr. Nicolás Ardito Barletta, the then President of the Republic, upon leaving for New York on a special mission to the United Nations, notified the Spadafora family that their request would be met upon his return. When President Ardito Barletta returned to Panama, he saw the "F-8" marking on one of the windows of his plane, the same mark found on the back on Dr. Spadafora's corpse. President Barletta was taken to the central barracks of the Defense Forces and forced to resign.

From the very outset Eric Arturo Del Valle, the new President, showed no interest in setting up an investigation into the death of Spadafora, and maintained that such action would be unconstitutional. The National Bar Association of Panama and 120 attorneys (among them the Dean of the School of Law and Political Sciences of the University of Panama) signed a document.

The Legislative Assembly, widely controlled by the Government party, established an ad hoc committee to help the Ministry of Public Affairs in its investigation. However, all of the members of that ad hoc committee who belonged to the opposition parties resigned in protest over fact that they were not allowed access to the case files.

The Panamanian Ministry of Public Affairs opened the case with the reports that the independent Panamanian newspaper "La Prensa" began publishing, and it immediately became obvious that the intent was to cover up the truth and discredit the reports published by "La Prensa" pertaining to the murder of Dr. Hugo Spadafora F. The reports had directly implicated Messrs. Francisco González Bonilla, Omar Vega Miranda, and Eliecer Ramos, all members of the Panamanian Defense Forces. Witness after witness was immediately provided, in all cases fellow military, who placed those persons far from the site of the crime. An extraordinary degree of uniformity was evident in their statements.

Despite the lack of impartiality with which the case was being conducted, it produced two (2) interesting statements, one made by the driver of the bus on which Dr. Hugo Spadafora traveled, and the other by the driver's assistant, both of whom were called in twice to make statements. The first time, they denied that Dr. Spadafora had been on the bus. It is important to point out that the aforesaid witnesses appeared for a second statement, this time under the protection of the Chiriquí Province Transport Workers Union out of fear that they had to make a statement, as they had done the first time. The second time, they expanded their original statement, and gave a true account that culminated in the arrest of Dr. Spadafora by an agent of the Panamanian Defense Forces dressed in civilian clothing. Out of fear, many witnesses dare not come forward to testify as long as the terror and intimidation tactics used by the Panamanian dictatorship in connection with this crime persist, a dictatorship headed by General Manuel Antonio Noriega, who has systematically been violating human rights in the Republic of Panama.

A mere five (5) months after his murder, the Hugo Spadafora Franco case was closed as per an act of discontinuance in favor of the three (3) individuals mentioned earlier. It should be stressed that one of the three magistrates on the bench that handed down the decision opposed the majority ruling, which the citizenry saw as an honest and courageous act. Owing to its importance, the latter part of the dissenting vote cast by Judge Andrés A. Almendral C. should be quoted:

"If the First Superior Court District Attorney (Fiscalía Primera Superior) began the case on the basis of the report published in the newspaper "Extra", and the newspaper "La Prensa" carried the same report on Tuesday November 26, 1985, i.e., that a military jeep took Dr. Spadafora to Corozo between 7:00 p.m. and 8:00 p.m. etc., etc., the place has to be visited, in order to determine whether this is true or false, look for clues, interrogate units and local inhabitants, etc.

Greater cooperation has to be requested of the Chief of the Fifth Military Zone, in order to provide details concerning the movement of his troops throughout the region, particularly along the border area in Paso Canoas, the Concepción barracks, and the presumed detachment in Corozo. The case cannot be closed so abruptly, with unanswered questions and doubts, all of which could be dealt with through further investigation.

The sacred responsibility for the administration of justice is singular. History will judge us by our deeds.

If even a trace of inspiration remains, then the most appropriate course of action would be for the case to be returned to the First Superior Court District Attorney that he may do what has to be done. In this matter, I cast my dissenting vote."

Although the Dr. Hugo Spadafora Franco case has been closed by the Panamanian judicial authorities, the Judiciary of the Republic of Costa Rica, which country his body was found, has kept it open, recognizing that the murder took place in Panama, as was declared publicly and on several occasions by the Director of the Office of Judicial Investigation of Costa Rica.

The Spadafora family has launched a civic, non-violent movement to seek the appointment of a special commission to investigate the cruel and vile assassination of Dr. Hugo Spadafora F. It has been involved in much peaceful civic action, such as fasts, marches, meetings lectures throughout the length and breath of the country, etc., with the support of civic associations, social clubs, political parties, the Church, and the vital forces of the country. The response of the military and civic authorities has been the absolute silence of an accomplice. Nevertheless, the Spadafora family continues to bring pressure to bear to see justice done.

b. A copy of the report prepared by the Judicial Investigating Agency of Costa Rica, dated September 19, 1985, addressed to Mr. Fernando Cruz Castro, Director of the Ministry of Public Affairs, reporting the numerous steps taken by the aforementioned body following discovery of the decapitated corpse of Dr. Hugo Spadafora in Costa Rican territory in the area referred to as Roble, Laurel, the approach to Roblito, a few meters from the Panamanian border. The purpose of those measures was to determine the nature of the crime committed, and establish criminal responsibility. The report concludes by pointing out that: "All the evidence indicates that Dr. Hugo Spadafora Franco was struck down in Panamanian territory, and his body was dragged into Costa Rican territory" (page 7 of the Report of the Judicial Investigating Agency of Costa Rica).

c. A copy of the statements made by Mr. Alexis Noe Baules Concepción, driver of the bus in which Dr. Hugo Spadafora traveled into Panamanian territory, before the Office of the First Superior Court District Attorney (Fiscalía Primera Superior) of the Third Judicial District of Panama, Ministry of Public Affairs.

In an initial statement made on September 18, 1985, Mr. Alexis Noe Baules denied having known Dr. Spadafora; he also denied as having witnessed anything irregular or unusual on the trip that took place on September 13, 1985 between the border and the city of David. Subsequently, on September 24, 1985, Mr. Alexis Noe Baules Concepción, elaborating on the statements which he had made to the same judicial authority, admitted having had Dr. Hugo Spadafora as a passenger on September 13, 1985, that Dr. Spadafora had been detained twice during the trip (Retén de Jacú and Retén de La Estrella) by the Defense Forces of Panama, and subsequently released. Lastly, he indicated that Dr. Spadafora got off the bus in the city of Concepción, in the company of Mr. Francisco Eliecer González Bonilla, nicknamed "Bruce Lee," who had been following him from the border. Mr. Alexis Noe Baules stated that his initial failure to describe all of the events that occurred on September 13, 1985, was because he feared for his own personal safety.

d. Also included was a copy of the statements sworn by Mr. Edwin Noel Nuñez, assistant to the driver of the bus that carried Dr. Hugo Spadafora on September 13, 1985. Like the bus driver, Mr. Edwin Noel Nuñez, in his original statement, denied any knowledge of the trip made by Dr. Hugo Spadafora on September 13, 1985; subsequently, when elaborating upon his original statement, he described the same events reported by the bus driver, adding that he recalled that the person nicknamed "Bruce Lee" had insisted that Dr. Spadafora accompany him when he got off the bus in "Concepción." Mr. Edwin Nuñez also stated that his initial failure to report all of the facts had been because of his fear for his own personal safety.

e. A copy of the dissenting vote cast by Mr. Andrés A. Almendral C., magistrate of the Fourth

Superior Court of Justice of Panama, dated February 7, 1986.

Judge Almendral dissented from the decision reached by his colleagues on the Fourth Superior Court of Justice, which issued a discontinuance of the case begun as a result of the murder of Dr. Hugo Spadafora Franco. In point of fact, the Fourth Superior Court of Justice issued a final discontinuance on February 7, 1986 (which has the effect of a completed judgement) with respect to the accused, i.e., Omar Vega Miranda, Eliecer Ramos or Eliecer Chavarría (sic), and Francisco Eliecer González Bonilla, all members of the Defense Forces of Panama, and the temporary discontinuance pertaining to the legal investigation per se. The latter means that the case may be reopened, but only in the event that evidence is submitted against persons other than those initially accused.

In his dissenting vote, Judge Almendral maintained that a final discontinuance of the case could not be issued because the facts were not consistent with the procedural premises provided for in Article 2136 of the Panamanian Code of Justice. In point of fact, the aforementioned article provides that final discontinuance may be issued only:

- 1) when it is obvious that the crime has not been committed;
- 2) when the deed referred to does not constitute a crime;
- 3) when the accused is exempt of criminal liability, either because he falls into one of the categories of non liability, or for another reason which exempts him or her; and,
- 4) when the punishable act involved has already been dealt with in another trial in which a final sentence has been issued involving the same accused person. Judge Almendral indicated in his dissenting vote that "none of these situations applies to the individuals under investigation."

Moreover, Judge Andrés Almendral noted numerous gaps and contradictions in the preliminary investigation conducted by the Ministry of Public Affairs of Panama. For example, in the aforementioned investigation, after having validated the autopsy report on Dr. Hugo Spadafora, drafted by appropriate Costa Rica authorities, said report indicates that Dr. Spadafora's death occurred between the night of September 13 and the early morning hours of September 14, and that Mr. Omar Vega Miranda, a member of the Defense Forces of Panama and a suspect in the case, was questioned about his activities, including those between 7:30 a.m. and 4:00 p.m. on September 13.

The same judge also pointed out certain contradictions in the testimony given by Mr. Eliecer Ramos or Eliecer Chavarría (sic), namely, that when interrogated about his activities on September 13, 1985, he produced a medical certificate attesting to a physical handicap: at the same time, however, he said that on the very same September 13, he had been engaged in several personal and commercial activities outside of the military barracks.

As to the third suspect, i.e., Mr. Francisco Eliecer González Bonilla, in the view of Judge Almendral, it seems unlikely that he would have remained in his quarters in the barracks of the David military zone, from 7:00 a.m., Friday, September 13, until Monday, September 16 --in other words, for three consecutive days-- without ever leaving the premises.

Lastly, Judge Andrés Almendral noted several gaps and lacunae in the measures taken by the Ministry of Public Affairs of Panama, which did not take into account the various charges levelled by the newspapers with respect to the place where Dr. Spadafora had been killed. In Judge Almendra's opinion, the judicial review is "full of unanswered questions and doubts that could be resolved through further investigation."

f. Lastly, the petition also submitted copies of certain political statements made by Dr. Hugo Spadafora Franco in which he seriously criticized the abuse of power by the Defense Forces of Panama, and particularly by certain political and military authorities in Panama. Moreover, he charged that he had received several death threats from high-ranking officers in of the Defense Forces of Panama for having made such criticism.

1. Under cover of a note dated May 16, 1986, the Commission transmitted to the Government of Panama the pertinent portions of the aforementioned petition, so that the Government might provide whatever information it deemed appropriate, within the period.

2. On August 6, 1986, in note OEA-570-86 from the Permanent Representative of Panama to the

Organization of American States, the Government of Panama replied to the request for information submitted by the Commission, and attached notes DM No. 576, dated July 21, 1986, from Mr. Jorge Abadía Arias, Minister of Foreign Affairs of the Republic of Panama, and note No. DGP-515-86, dated July 8, 1986, signed by Mr. Carlos Augusto Villalaz B., Attorney General of the Republic, the text of which is as follows:

Case No. 9726

I. The Panamanian Constitution provides that the Ministry of Public Affairs is responsible for prosecuting crimes. This is the provision of paragraph 5 of Article 217 of the National Constitution, which states as follows:

Article 217. The duties and responsibilities of the Public Ministry are:

.....

3. To prosecute offenses and violations of constitutional or legal provisions.

This authority is reiterated in Article 302 of Law No. 61 of 1946, which are the Bylaws of the Ministry of Public Affairs.

On the basis of the foregoing, we conclude that in our country, the competence to conduct such investigatory proceedings into crimes unquestionably belongs to the agents of the Ministry of Public Affairs.

In exercising such powers, the District Attorney of the First Superior Court of the Third District, based on reports in the newspapers "Extra" and "La Prensa", began the respective investigation in order to establish the corpus delicti and corresponding criminal responsibility.

To that end, the District Attorney made the following statement on September 17, 1985:

Inasmuch as this morning's issues of the local newspapers have reported that on Saturday, the 14th of this month, the body of a person who, according to the information reported, was Dr. Hugo Spadafora (in the newspaper "Extra"), was found in the community of Laurel, in the jurisdiction of the Republic of Costa Rica, and because the newspaper "La Prensa" reports that Dr. Hugo Spadafora entered Panama on the 13th of the same month and was seen by Mr. Iván García having lunch near the Costa Rican border, and subsequently, while traveling in the bus with license plates 4B-52, driven by Mr. Alexis López, accompanied by assistant driver Edwin Nuñez, was detained upon arrival at the bus stop in Concepción and taken to the local barracks of the Defense Forces, it is decided that the accounts reported by the aforementioned newspapers will be taken as grounds for launching the appropriate investigation to determine whether a crime has been committed and the culpability of its perpetrator or perpetrators.

Investigation of the crimes committed in our country was done by bringing together into a single case all of the evidence and procedures that had been conducted. Such a case is referred to as a summary proceeding as per the provisions of the Panamanian procedural criminal law.

In this regard, Article 2020 of the Legal Code provides the following:

Article 2020: Preliminary proceedings are all measures necessary to determine the corpus delicti and discover the criminals or those culpable. The officer who conducts such proceedings is known as an examining officer.

In keeping with the applicable criminal procedure, the District Attorney of the First Superior Court of the Third District completed the examining procedures to the extent possible, and referred the investigation to the appropriate jurisdictional body so that the proper procedural measure might be determined.

The action taken followed by the agent of the Ministry of Public Affairs was based on the provisions contained in Article 2129 of the Legal Code, which states:

Article 2129: Once the summary proceedings have been completed, the agent of the Ministry of Public Affairs will refer them to the competent judge with the request that the person deemed responsible be brought to trial or that a final or provisional discontinuance be ordered, as the case may be.

The transfer of the case by the District Attorney to the Fourth Superior Court of Justice, the appropriate jurisdictional body to decide on the summary proceedings, was done through Review Procedure No. 139, dated December 31, 1985, in which the examining official makes the following points and conclusions:

The investigation conducted by the Ministry of Public Affairs established that Dr. Hugo Spadafora Franco was dead, and that his corpse was found by Costa Rican authorities in Quebrada El Roblito, and that the autopsy on his body was conducted in Costa Rica. Emphasis is placed on the fact that the death certificate for Spadafora Franco --which appears in record 190-- indicates Laurel, Republic of Costa Rica, as the place of death.

Within the limits of what is permitted by Article 2125 of the Legal Code, this agency of the Ministry of Public Affairs took action to establish the corpus delicti and determine the identity of the criminals and their accomplices. The first of the particulars has been duly established by the Autopsy Report and the death certificate on record. However, as for the subjective element or criminal liability, the evidence that has been introduced in the case has not made it possible to identify the person or persons who committed the punishable act.

.....

In conclusion, while it is true that the death of Dr. Hugo Spadafora Franco has been proven, and that such death was the result of a criminal act, it is also true that the evidence introduced in this criminal investigation is not sufficient from the legal standpoint to prove that the accused Francisco González Bonilla, Omar Vega Miranda, and Eliecer Ramos were either directly or indirectly involved in acts which led to the violent death of the aforementioned physician, on September 13, 1985, as per the report on the autopsy conducted by Dr. Eduardo Vargas, Coroner for the Republic of Costa Rica.

In view of the foregoing, we are persuaded that the procedural legal situation arising from the measures taken is consistent with the premises provided for in Article 2136 of the Legal Code; we, therefore, pray that Court of Justice to issue a decree of discontinuance in favor of suspects Francisco González Bonilla, Omar Vega Miranda, and Eliecer Ramos, pursuant to the legal provision invoked, unless the Court should reason otherwise. Once that procedural phase had been completed, the Honorable Fourth Superior Court of the Third District took cognizance of the case, proceeded to evaluate it, and handed down a decision on February 7 of this year, in which it decided to issue a final discontinuance for the accused on the following grounds: Folios 282 to 323 contain authentic copies of the measures taken in the Republic of Costa Rica upon discovery of the corpse of Dr. Hugo Spadafora Franco in the territory of that nation; thus, we may establish the exact location was under the bridge of the La Vaquita River in the place known as Roble in the Laurel District. In the report, which appears on Folio 19, it was explained that the body was submerged to the waist with the lower extremities out of water, on its back. It was found to be a male, approximately 35 years of age, completely decapitated. The report further stated that even though a search was conducted, the head of the body was not found. The body was found by young Franklin Vargas Velarde, near Roblito de Laurel, a village which is located at a distance of 200 meters east of the border.

On Folios 290 and 291 contain the coroner's report, signed by Dr. Luis del Valle Carazo, resident physician, Dr. Rodrigo Quiroz Coronado, and validated by Dr. Félix Baudrit Gómez, Head of Forensic Pathology Section of the Investigation Agency of the Republic of Costa Rica.

As we have indicated in previous paragraphs, although it is quite true that the commission of an illegal act has been duly established through the autopsy report contained in authentic copies sent by the legal authorities of Costa Rica via diplomatic channels, we have also stressed the legal status of the only three suspects in the summary proceedings, and have pointed out that there is no evidence of elements linking them to the deed under investigation, inasmuch as there is not a single shred of documentary or testimonial evidence against the suspects.

The decision of the court was adopted by a majority of votes. Such a result is referred to as a "judicial decision" in the Panamanian procedural system, according of the provisions of Article 284 of the Legal Code, which provides:

Article 284: Judicial decision shall mean the one issued by courts or any public offices or private persons temporarily or permanently invested with judicial functions.

Judicial decisions may be adopted by a simple majority, according to the provisions of Article 45 of Law No. 47 of 1956, applicable to the Superior Courts of Justice, by virtue of the reference made in Article 131 of Law 61 of 1946. Article 45 mentioned above reads as follows:

Article 45: An absolute majority of votes is required in all decisions in bane the full court and in chambers. In bane, the majority shall be five judges, and in chambers, three.

It will be noted that the court dealing with the case weighed the various pieces of evidence contained in the case file, and determined that there were no elements linking the suspects to the crime under investigation.

II. Up to this point, we have specifically analyzed the criminal proceedings to which you refer in your letter. Nevertheless, in order to cooperate in the measures undertaken by the Inter-American Commission on Human Rights, our office deems it necessary to make known certain points with respect to the petition containing the Brief of the facts pertaining to the murder of Dr. Hugo Spadafora Franco, appended to the petition submitted to that international body.

For that reason, the following explanation is necessary:

1. As established in the criminal proceedings, all of the particulars reported in the media were investigated.

2. The accusation brought before the Inter-American Commission on Human Rights is based on what was alleged to be proof but which, when weighed by the jurisdictional body, was dismissed by the legal logic explained by the Court.

Let us review each particular carefully.

All of the details made known to the investigating officer by various channels, and somehow logically related to the deed under investigation, were analyzed, weighed, and explained by that officer to the Court hearing with the case, which also took them into account in reaching its decision.

Exhaustion of the procedures established in our legal system in jurisdictional matters was precisely what led the court to the procedural stage involving a decision with respect to the case.

The decision was well founded, and was taken with due regard for a pertinent constitutional and legal authorities. Hence, our Office believes that the procedures called for in our country have been exhausted.

III. Inasmuch as the request for information which has given rise to this statement requires an explanation as to whether or not internal jurisdiction remedies have been exhausted, we should mention the proceeding initiated by Dr. WINSTON SPADAFORA FRANCO, in a brief submitted to the Attorney General's Office on June 19, 1986, by which he requested that the alleged involvement of General Manuel Antonio Noriega in the assassination of Dr. Hugo Spadafora Franco be investigated.

In light of the abstract of the investigation conducted by the Public Prosecutor for the First Superior Court Third District, this Attorney General's Office requested that the court hearing the case provide duly authenticated copies of the judgement it handed down. This was requested in order to establish the current status of the investigation.

Having established that the petition filed by Dr. Winston Spadafora Franco involved the same criminal act that was considered and decided upon by the Fourth Superior Court of Justice of the Third District, that fact was considered and the documentation submitted by the claimant consisting of newspapers clippings, was weighed. The aforementioned brief was referred to the Criminal Chamber of the Supreme Court of Justice, as per review No. 28 of June 25, 1986.

In that document, this Attorney General's Office considered the following points:

First of all, given the existence of a proceedings in which the cause of the death of Dr. Hugo Spadafora Franco was investigated, proceedings now with the Fourth Superior Court of Justice as a result of a judicial decision, it is procedurally inadmissible to initiate a new investigation using as a basis the document submitted to this office by Dr. WINSTON SPADAFORA FRANCO, inasmuch as Article 1984 of the Legal Code does not allow this.

Hence, since there is a procedural constraint that obliges us to conduct only one proceeding for any given

crime, we are, therefore, unable to open up a new investigation based on the brief filed with this office. The best procedural tactic would be to process the brief as a request to reopen of the case, which is the only procedural approach that would be feasible.

To reopen a case, certain procedural requirements must be met.

Before a criminal investigation can be reopened, the investigation must have been provisionally closed by the appropriate Court. New evidence warranting the reopening must also be presented, as provided for in the second paragraph of Article 2138 of the Legal Code.

In this regard, it should be pointed out that the basic requirement of Article 2138 of the Legal Code, with respect to the reopening of criminal proceedings is ultimately the existence of new evidence, those facts that serve to establish the occurrence or nonoccurrence of the deed, which is a matter to be determined in a criminal proceeding.

After having conducted a thorough, detailed analysis of the newspaper clippings submitted by the petitioner, our Office believes that they are only hearsay; as evidence, they are not, in themselves, persuasive enough to establish a link between the personal named as the perpetrator of the crime and the crime itself.

It is a well known fact that the "new evidence" referred to in Article 2138 of the Legal Code, paragraph two, is evidence that was not known at the time of the investigation and that, when submitted after the conclusion of the inquiry, establishes whether or not there is criminal liability, which, in turn, would warrant a reopening of the case.

Inasmuch as the newspaper clippings submitted do not permit the necessary procedural premises required in order to reopen a case, our Office believes that it would be inappropriate to accede to the request, and we respectfully request your concurrence.

For better reference, we cite below the text of Articles 1984 and 2138 of the Legal Code, which read as follows:

Article 1984: Only one proceeding shall be instituted for any given crime, even when more than one person may be responsible. Moreover, a single proceeding shall be instituted when there is only one prisoner, although the crimes involved may be several.

A single proceeding shall also be instituted in the case of collective crimes, although there may be several criminals involved whose trial may be the purview of different jurisdictions.

Article 2138: A final discontinuance terminates the respective proceeding against the persons for whom it is ordered, and produces *exceptio rei adjudicata*.

A temporary discontinuance does not terminate the proceeding. The investigation of those for whom a temporary discontinuance has been ordered may be continued whenever new evidence is submitted.

We must point out that this Attorney General's Office had to refer the petition to the Supreme Court of Justice, inasmuch as the person indicated as accomplice to the crime is in public office; in such cases the forum of judgement must be the highest court.

In a Ruling dated June 27, 1986, the Honorable Criminal Chamber of the Supreme Court of Justice decided to make a determination in the case. The ruling considered the following points:

"An examination of the record containing the brief submitted by Dr. Winston Spadafora Franco indeed reveals that in addition to his petition, he submitted several newspaper clippings pertaining to news appearing in the June 12, 1986, issue of the New York Times, published in that city in the United States, which were reproduced in their original version and duly translated into Spanish in the local newspapers, *El Extra* and *La Prensa* in the issues for June 13 of this year; the content suggests involvement by General Manuel Antonio Noriega, Commander in Chief of the Defense Forces of Panama, in the murder of Dr. Hugo Spadafora Franco.

In this regard, it should be pointed out that the body of Dr. Hugo Spadafora Franco was discovered in Quebrada de "El Roblito", a community in the Republic of Costa Rica, and that the scientific evidence introduced during the corresponding investigation reveals that he had died during the night of the 13th or the early morning of the 14th of September 1985.

It is clear that the Ministry of Public Affairs in due course conducted a rigorous investigation into the homicide of the Panamanian citizen, and that the determination of the summary proceeding was made by the Fourth Superior Court of Justice, in a ruling dated February 7, 1986, a duly authenticated copy of which is contained in leaves 27 to 76 of this record.

.....
In keeping with the structure of our criminal procedural system, "Only one proceeding shall be instituted for any given crime, even when more than one person may be responsible. Moreover, a single proceeding shall be instituted when there is only one prisoner although the crimes involved may be several. The standard that establishes that principle for criminal proceedings is Article 1984 of the Legal Code which also provides the following: "A single proceeding shall also be instituted in the case of collective crimes, although there may be several criminals involved whose trial may be the purview of different jurisdictions." (Underlining by the Chamber).

.....
"In as much as what is involved is a summary proceeding for which a final discontinuance has been ordered in favor of OMAR ENRIQUE VEGA MIRANDA, ELIECER RAMOS, and FRANCISCO ELIECER GONZALEZ BONILLA, the ruling cannot be otherwise, since on the basis of the criminal law claim represented in the plea entered by Dr. Winston Spadafora Franco, the only way would be to reopen the case, as a form of procedural governance given in this case to of the Chamber as Court, which is responsible for weighing the evidence submitted against certain persons in the corresponding formulation of the charges.

The reopening of a proceeding, when decided on the basis of a well-founded decision in favor of reopening, constitutes a way of contesting by means of newly adduced evidence, since it presupposes a previous well-founded decision of merit.

In this case, what is sought is the continuance of the formal proceeding, which is tantamount to a kind of resumption of the proceeding against another person. It should be stressed that reopening the proceeding must be based on a presumption of new evidence. Obviously, it is procedural policy to require that evidence be produced of an incriminating nature. Applicable in the case is the concept of the relevance of the evidence which, in the case of a criminal proceeding, functions as a limitation on the principle of freedom of evidence or the contribution thereof, with the result that, in the case of a summary proceeding, the evidence introduced must be weighed in order to determine whether it is reliable enough to make it effective.

One might say that in order for a criminal inquiry to be opened, the weighing of alleged evidence submitted for that purpose, namely to reopen the investigation, operates as an absolute limitation, which is necessary in order to reach a well founded decision as to whether on the basis of the evidence submitted, such a procedure should be opened.

.....
The work done by the Chamber in beginning to weigh the contents of the newspaper clippings submitted with the request, is in accordance with the system of sound judgement, for an assessment of the contents of news dispatches read in the aforementioned newspaper clippings, which in the final analysis determines whether or not they would be accepted as justification means for the aforementioned reopening, all of which can lead to an objective affirmation as to the certainty content of the alleged deeds, their actual incriminatory nature, and other characteristics, as proof against a certain person.

.....
At the time the summary proceeding was instituted, there was speculation with respect to the eventual implication of the Defense Forces in the homicide of Dr. Hugo Spadafora Franco. The same type of speculation is now being made with respect to General Manuel Antonio Noriega, with no factual grounds being found to link him to the aforementioned homicide. Said speculation is being made by persons or media outside of Panamanian jurisdiction, for which reason there is not sufficient control eventually to demand liability for libel, slander, or defamation of character.

In point of fact, none of the speculations, either those made within the national territory or those contained in foreign press dispatches provide any facts linking General Manuel Antonio Noriega to the

murder of Dr. Hugo Spadafora Franco.

Moreover, if this is the procedural situation that arises from the request made by Dr. Winston Spadafora Franco, it would not warrant classifying as a criminal someone who is not linked to the crime.

Indeed, in the newspaper reports submitted--all published by the aforementioned national newspapers--, the Chamber does not find sufficient merit in terms of relevance and effectiveness to act favorably upon the petition to institute a new investigation. To do this the summary proceeding would have to be reopened since the evidence is so insubstantial that it would be pointless to attempt to establish facts of relevance to an investigation on the basis of alleged evidentiary facts that offer nothing specific in the way of proof, and are not, therefore, proof.

In view of the foregoing, the Honorable Criminal Chamber of the Supreme Court of Justice declares that there are no grounds for reopening the summary proceeding.

According to the provisions of Article 204 of the National Constitution, rulings by the Supreme Court of Justice or its Chambers cannot be appealed either on the grounds of unconstitutionality or on the basis of constitutional guarantees against such, for which reason our Office believes that, in this case, all of the jurisdictional procedures established by the laws of the Republic of Panama have been exhausted.

Our Office believes that in the proceeding prompted by the request for information which we now provide, the constitutional and legal proceedings applicable to the matter have been observed, and that each and every one of the procedural guarantees enshrined in our legal system has been respected.

Jurisdictional power, a consubstantial element of the sovereignty of the State, has been applied to this case, without omitting any existing legal procedure.

4. On August 11, 1986, the Commission transmitted the reply of the Government of Panama to the complaint so that he might submit his comments within 45 days.

5. On August 22, 1986, the Commission received a letter from Mr. Larry Garber, representative of the International Human Rights Law Group, informing that, with the expressed authorization of the plaintiff, Mr. Winston Spadafora, he would represent the complaint with the advisory services of Ms. Laura Bocalandro and Mr. Stephen J. Schnably, in the proceeding to be conducted before the Commission.

6. In a note dated September 11, 1986, the Commission acknowledged receipt of the note sent by Mr. Larry Garber, asking that the International Human Rights Law Group be regarded as the representative of the petitioner for the purpose of continuing to process Case No. 9726.

7. On September 19, 1986, representatives of the International Human Rights Law Group submitted for consideration by the Commission the following document which summarizes the oral pleadings made on that date.

I. This case concerns the torture and death of Dr. Hugo Spadafora Franco, a national of Panama. Spadafora energetically opposed General Manuel Antonio Noriega, Chief of the Defense Forces of Panama (FDP). The facts establish beyond a doubt the responsibility of the Government of Panama in the cruel assassination of Dr. Spadafora. Nevertheless, the authorities of the crime and the subsequent punishment of the criminals. (sic)

II. Relevant facts.

A. Hugo Spadafora Franco.

1. An energetic opponent of the Government of Panama; active in democratic movements in Panama and other countries.

2. In recent years, severe criticisms of General Noriega in which he accused him of abusing his power, trafficking in weapons and drugs, and other illegal activities.

3. As a result of his criticisms, he received several death threats from emissaries of General Noriega.
4. Nevertheless, Dr. Spadafora began a campaign intended to publicize Noriega's illegal activities.

B. The Dr. Spadafora's trip to Panama, on September 13, 1985.

1. On September 13, 1985, he left his place of residence in San José, Costa Rica, on his final trip to Panama. He followed the same route that he had taken on other occasions, i.e., he flew to the Panamanian border, took a bus from there to David, and then continued on to Panama City.
2. During the bus trip in Panamanian territory, he was seen by several persons.
3. He was arbitrarily obliged to get off the bus at one of the check points of the Panamanian Defense Forces, despite the fact that he had on his person his Panamanian identification card. A plain-clothes agent of the FDP followed him, traveling in the same bus.
4. The last time he was seen alive was in Concepción, Panama, when he got off the bus in the custody of the plain-clothes agent out of uniform.
5. The following day he was found dead in Costa Rican territory, a few meters from the Panamanian border. Spadafora had been decapitated, and his body presented visible signs of torture.
6. The murder of Spadafora has contributed to the increasing climate of violence and terror that now grips Panama, particularly the Province of Chiriquí.

C. Events following the assassination of Dr. Hugo Spadafora.

1. The Judicial Investigation Agency of Costa Rica ordered the opening of investigations. Following the taking of testimony and other weighty evidence, the authorities concluded that Dr. Spadafora had been assassinated in Panama.
2. The Government of Panama barred a complete and impartial investigation into the facts, allowed interference by the Defense Forces of Panama, which led to the resignation of President Barletta when he acceded to the petition of the Spadafora family for an honest investigation.
3. Ignoring the overwhelming evidence of Spadafora's entry into Panama and his detention by an agent of the Panamanian Defense Forces, the Panamanian authorities continued to maintain that the victim had been killed in Costa Rica and that the matter, therefore, did not fall within their jurisdiction.
4. The only "investigation" conducted in Panama concluded with a final discontinuance, based on insufficient evidence, in favor of the three members of the Panamanian Defense Forces who had been investigated. The murder went unsolved. The flawless, well-grounded dissenting vote cast by Judge Andrés Almendral underscores the shortcomings of the Court's decision. The Law Group will submit comments on the presentation made by the Government of Panama and reply to the accusation, before September 25, 1986.

III. Violations of the American Convention on Human Rights.

- A. Panama is a signatory of the Convention.
- B. The Government of Panama violated Dr. Hugo Spadafora Franco's right to life, his right to humanitarian treatment, and his right to protection from arbitrary arrest. (Articles 4, 5, and 7).
- C. The Government of Panama has not conducted a thorough, impartial investigation, free of partisan interference. Hence, the Government has violated Dr. Spadafora's right to judicial protection. (Article 25).

IV. Petition

The petitioners respectfully request that the Commission:

1. Decide to condemn the Government of Panama for having violated the rights to life, humanitarian treatment, protection against arbitrary arrest and judicial protection, enshrined in Articles 4, 5, and 7 of the American Convention on Human Rights.
2. Recommend that the Government of Panama order a thorough and impartial investigation of the individuals responsible for the murder, so that they may be properly punished.
3. Recommend that the Government of Panama inform the Commission of the measures taken

within 60 days following the resolution.

4. Resolve to take whatever other measures it deems appropriate.

5. In Resolution No. 30/86, adopted during its 68th regular session, on September 19, 1986, the Commission decreed the admissibility of the charge filed by the complainant Mr. Winston Spadafora, particularly in view of the fact that the Government of Panama, in its reply dated August 6, 1986, recognized that the internal jurisdiction remedies had been completely exhausted.

8. On October 2, 1986, representatives of the International Human Rights Law Group sent their observations with respect to the reply of the Government of Panama, dated August 6, 1986.

In part of their presentation, the petitioners made the following verbatim reference:

III. ARGUMENT

The Government has violated the provisions of the American Convention on Human Rights.

A. The Government is responsible for the arbitrary arrest, torture, and murder of Hugo Spadafora.

1. Spadafora entered Panama

Spadafora publicly announced his return to Panama for the purpose of denouncing, together with his attorney Alvin Weeden, the corruption, drug trafficking, and other illegal activities of General Noriega. On Friday, September 13th, he left his house in San José, Costa Rica, to begin a trip to Panama City, following the same route that he had taken on four other occasions. Several witnesses saw Spadafora in Panamanian territory on September 13th, including Mr. González Justavino, owner of the Los Mellos restaurant, the bus driver, and his assistant, and two Panamanians who knew him well. Following a conscientious investigation, the Costa Rican authorities concluded that Hugo Spadafora was killed in Panama, and not in Costa Rican territory.

2. Spadafora was arrested by Government agents in Concepción, Panama.

All the evidence leads to the conclusion that Spadafora did not voluntarily alight from the bus in Concepción, but was arrested by an agent of the Panamanian Government. Spadafora had no reason to remain in Concepción since, on four other occasions, he had made the same trip: moreover, he had arranged to meet his wife in Panama City that same night.

3. The last time Spadafora was seen alive, he was in the custody of an agent of the Panamanian Defense Forces.

There was not a single witness who alleged having seen Spadafora free, or with friends or relatives, or involved in any activity during the afternoon or evening of September 13th, or the morning of September 14th, 1985. Spadafora's trail was lost in Concepción, Panama, and was picked up again with the appearance of his mutilated corpse on the following day. Under such circumstances, the burden proof is on the Government. The Government did not submit evidence to the contrary.

4. The conduct of the Government prior to the assassination is another indication of its responsibility for the crime.

All the evidence indicated that the Panamanian Defense Forces and General Noriega in particular, were willing to resort to violence against Spadafora. The latter was ready to make public Noriega's illegal activities. The Military Junta responded with death threats against someone they saw as a threat to the continued impunity of their criminal activities, with the result that words subsequently became deeds.

5. In those cases in which an individual has last been seen in the custody of Government agents, there is a strong presumption that the Government is responsible for the individual's disappearance or death.

This has been the position of the Inter-American Commission on Human Rights in similar cases involving disappearance and death, including Case No. 4326 (Argentina) and Case No. 7951 (Honduras). In this case, the evidence submitted is as convincing as the evidence in the aforementioned cases, if not more so. That being the case, it is requested that the same legal standard be applied, establishing the responsibility

of the Government of Panama for the assassination of Hugo Spadafora.

6. The judicial inquiry conducted by the Government was manifestly inadequate, and in no way mitigates the responsibility of the Government for the assassination.

The Government of Panama denied justice by conducting a flawed and partial summary proceeding. An analysis of that proceeding shows that the Fourth Superior Court accepted inconsistent and unsubstantiated evidence that favored to the three suspects and at the same time, for unacceptable reasons, dismissed essential evidence and ignored important clues that would lead to the truth. No effort has been made to find the culprits, participants or accomplices. On the contrary, the Government maintained something that cannot be supported in fact, namely, that the victim was killed in Costa Rica. Thus, the conclusion reached was that the Government had done everything within its power to avoid a thorough investigation of what happened to Hugo Spadafora.

B. The arbitrary arrest, torture, and assassination of Hugo Spadafora by the Government of Panama is a violation of the Convention (Articles 4, 5, and 7).

C. The Government did not conduct a thorough and impartial investigation, and this violated the provisions of Article 25 of the Convention.

Lastly, in the petition, the complainants request:

a) That it be resolved that the Government of Panama has violated articles 4, 5, 7, 13, and 25 of the Convention;

b) that it be recommended that the Government of Panama begin conducting a complete and impartial investigation, free of any influence from the Defense Forces, so that all those responsible may be judged according to Panamanian law;

c) that the Government of Panama be requested to inform to the Commission of any progress made in the investigation, within 60 days following the Commission's adoption of the resolution; and,

d) that the Government of Panama be requested to cease and assure cessation of all intimidation of the Spadafora family and of any other person involved in this case.

On that occasion, the accusers also submitted several documents including statements made by Mr. Iván Darío González and Mr. Edwin Guerra to the First Superior Court District Attorney's Office of the Third District of Panama. In that document, Mr. Iván Darío González (owner of "Los Mellos" restaurant) indicated that Dr. Hugo Spadafora had lunched at his restaurant at noon on Thursday, September 13, 1985, just before taking the bus to Panama City. For his part, Mr. Edwin Guerra, driver of the bus assigned to the David-border route, indicated that at approximately noon on September 13, 1985, three passengers got on the bus, Dr. Hugo Spadafora and Mr. Francisco Eliecer González Bonilla (known as Bruce Lee, the primary suspect in the homicide of Spadafora) and a member of the guard at the border barracks whom he had known for quite some time, was amongst them.

The complainants also submitted the testimony of Santos López Lobón, Ricaute Esquivel Rodríguez, José Asbrubal Ramírez Chavarría, and José Angel Chinchilla Ríos to the Costa Rican Judicial Investigation Agency. Messrs. López Lobón and Esquivel Rodríguez, who knew Dr. Hugo Spadafora quite well, testified that they saw him being arrested at the Jacú checkpoint on September 13, 1985, early in the afternoon. Messrs. Ramírez Chavarría and Chinchilla Ríos, residents of the area near where Dr. Spadafora's corpse was found, stated that near their residences they had seen and heard Panamanian Defense Force station wagons at midnight on September 13, 1986.

9. On October 8, 1986, the Commission transmitted to the Government of Panama the observations made by the complainants on October 2, 1986, and gave it 30 days to send its comments.

10. On January 14, 1986, the Commission reiterated to the Government of Panama the request it first conveyed on October 8, 1986.

11. In a note sent to the Government of Costa Rica on January 14, 1987, the Commission requested

that it send an authenticated copy of the legal proceeding initiated in that country as a result of the discovery of the corpse of Dr. Hugo Spadafora Franco.

12. In a note dated on February 24, 1987, the Government of Panama pointed out the following:

CASE No. 9726

The Government of the Republic of Panama is of the opinion that the supplementary complaint which has been sent to us on this occasion makes a series of assertions that are lacking in truth and objectivity, and are totally irrelevant to the substance of the case submitted to the Inter-American Commission of Human Rights.

The Republic of Panama believes that the proceedings filed with the Inter-American Commission on Human Rights of the Organization of American States, and any other supplementary proceedings filed with that Organization, should be strictly confined to what is relevant and pertinent for purposes of establishing the truth of the assertions. Consideration of relevance and pertinence compel us to conclude that the document entitled Supplementary Complaint ought not to be processed with the Inter-American Commission on Human Rights in case No. 9726, inasmuch as the aforementioned document contains a speculative list of assertions not at all germane to the processing of the aforementioned case.

In the aforementioned Supplementary Complaint certain statements are made with respect to the investigation of the facts brought to the attention of the Inter-American Commission on Human Rights with respect to case No. 9726. Hence, we are obliged to reiterate to Your Excellency the content of note DMN-576, dated July 21, 1986, in which, as we indicated, there is a detailed thorough list of the facts being investigated. The Supplementary Complaint has been reviewed by our Office, and we are of the opinion that it constitutes a series of irrelevant and highly subjective statements which are not only untrue but also do not warrant further consideration since they are not germane to the case under consideration, which has been presented to the Inter-American Commission on Human Rights. This brings us back to the starting point, namely the situation as originally set forth, which we answered in our note.

The Office of the Attorney General of the Nation is of the opinion that in the proceeding which has given rise to the request for information, information our country is to supply to the Honorable Inter-American Commission on Human Rights, the constitutional and legal procedures applicable to such cases have been complied with, and all procedural guarantees enshrined in our legal system have been observed.

13. The Commission gave the complainant 45 days, beginning on March 3, 1987, to submit his observations.

14. On March 25, 1987, the Government of Costa Rica sent an authenticated copy of the legal documentation requested by the Commission with respect to the murder of Dr. Hugo Spadafora. The aforementioned documentation pertains to the case brought before the Trial Court in Golfito, Costa Rica, and contains both the coroner's report on to the autopsy on the corpse of Dr. Spadafora, as well as legal formalities discharged by the Costa Rican Judicial Investigation Agency mentioned to earlier by the Government of Panama and by the complainant.

15. On April 20, 1987, the petitioners sent their comments to the Commission, and reiterated that the Government of Panama had not answered the charges made in the complaint, which the Government has dismissed as allegedly untrue, having found that it was based on "irrelevant" evidence. The complainants maintain that such evidence, based on eye witness testimony, establishes that Dr. Hugo Spadafora Franco entered Panamanian territory on September 13, 1985, that he was arrested by the Defense Forces in Concepción and that it was the last time he was seen alive. The complainants added that in its reply to the Commission the Government of Panama had not explained the reason why the Panamanian Legal Investigation had accepted and confirmed contradictory alibis prepared by members of the Defense Forces who were suspects accused in the case, had dismissed essential evidence, and had conducted a completely inadequate investigation into the acts dealt with in the complaint.

16. On May 26, 1987, in note No. OEA-264-87 of the Permanent Mission of Panama, the Government of Panama sent its comments to the Commission, transcribed below:

I am writing you to offer a reply to your note DM No. 321 of May 5 of this year under cover of which you sent us a copy of the unnumbered note dated April 28, 1987, addressed to you by Mr. Edmundo Vargas Carreño, Executive Secretary of the Inter-American Commission on Human Rights. The note was accompanied by documentation containing comments pertaining to the reply of the Government of the Republic of Panama with respect to the case designated by the Inter-American Commission on Human Rights as No. 9726.

As you will readily understand, and we are certain that the Officers of the Inter-American Commission on Human Rights will understand, the reports submitted by government attorneys to the Commission should be based exclusively on the facts and circumstances that they discover. In our case, the facts and circumstances brought to light in the investigations that were conducted, and which have been gathered into a case file are referred to in our criminal procedural law as a summary proceeding.

The foregoing explains the conceptual framework in which the note from this Attorney General's Office -- designated as DPG-515-86, and dated July 8, 1986-- was drafted. In that note, we endeavored to sum up for Your Excellency the legal framework in which criminal investigations are conducted in our country, and to outline the facts brought to light by the investigation.

Following the reply, our Office received from Your Excellency, under cover of note D.M.V. No. 792 of November 7, 1986, a document entitled "Supplementary Complaint", which was submitted to the Inter-American Commission on Human Rights concerning the same case. This document elicited our note DPG-206-87, of January 27, 1987.

In this case, we are dealing with a document which seeks to contest assertions contained in our note of January 27, 1987. The purpose of this challenge would appear to be to convince the Honorable Inter-American Commission on Human Rights to consider the report submitted by our country as insufficient.

In our view, there is a problem of approach with respect to the facts that the complainants have submitted to the Commission since, as you will note, the case designated as No. 9726 refers to acts that caused the death of Dr. Hugo Spadafora Franco. It is, therefore, the opinion of this Office of the Attorney General that any assertion extraneous to such a regrettable event should be considered completely unpersuasive by the Honorable Inter-American Commission on Human Rights. When in our note DPG-206-87, dated January 27, 1987, we described to the Supplementary Complaint as a series of subjective statements that are not only untrue but also completely alien to the substance of the case brought before the Inter-American Commission on Human Rights, we did so on the grounds of the same considerations developed earlier in case No. 9726, since in our view said case should not become a forum for waging attacks of a purely political nature against the Government of Republic of the Panama, based on allegations devoid of truth and of the connotations that the complaints insinuate.

Since the kind of resistance that cases filed with the Honorable Inter-American Commission on Human Rights precipitate is alien to us as explained earlier, we would be grateful if that body would provide us with a detailed account of the facts with respect to case No. 9726; if our analysis of the situation is correct in the sense that the Inter-American Commission on Human Rights should set aside any assertions which are not germane to the specific deed being investigated, this Office of the Attorney General should refrain from offering any reply to such assertions. By way of example, the assertions begin with considerations that predate and are not germane to the fatal event that gave rise to the proceedings before the Inter-American Commission on Human Rights.

In a strictly legal sense, and bearing in mind the matter of concern to the Inter-American Commission on Human Rights, which is to determine whether or not the proper proceedings within the internal jurisdiction of the country have been complied with, designed to determine the existence of a crime and its authorship, this Office of the Attorney General must make the following point:

1. As indicated in our note DPG-515-86, dated July 8, 1986, the internal jurisdiction procedures have been complied with, though they should not be interpreted as the final conclusion of the actual

investigation procedure. If we take up the points dealt with in the communication referred to, we discover that the investigation was conducted by the First Superior District Attorney of the Third District, which was in due course upheld by the Fourth Superior Court of Justice. The letter closed the inquiry by handing down a final discontinuance in favor of the persons being investigated. Moreover, it was further decided to order a temporary discontinuance of the investigation: in other words, in the event that new evidence were to be presented, the summary proceeding could be reopened.

The foregoing led us to a determination of the concept designated by the term "new evidence". In this regard, in a ruling dated June 27, 1986, the Honorable Supreme Court of Justice took a stand on the issue, a decision which we delved into further in our note DPG-515-86, dated June 8, 1986.

In that regard the Criminal Chamber of the Honorable Supreme Court of Justice stated:

In keeping with the structure of our criminal procedural system, only one proceeding shall be instituted for any given crime, even when more than one person may be responsible. Moreover, a single proceeding shall be instituted when there is only one prisoner although the crimes involved may be several." The standard that establishes that principle for criminal proceedings is Article 1984 of the Legal Code, which also provides the following: "A single proceeding shall also be instituted in the case of collective crimes, although there may be several criminals involved, whose trial may be within the preview of different jurisdictions". (Underlining by the Chamber).

It should be pointed out that in keeping with the provisions of Article 204 of the National Constitution, decisions handed down by the Supreme Court of Justice or its Chambers cannot be appealed on the basis of unconstitutionality, or on the grounds of constitutional guarantees against the Court, for which reason our Office believes that, in this regard, all the jurisdictional procedures established by the laws of the Republic of Panama have been exhausted.

The complainants to the Inter-American Commission on Human Rights seek a new investigation. This would be inadmissible under Panamanian jurisprudence, though this is not to say an investigation that has already been decided by the courts of our country cannot be reopened. The substance of the issue raised would appear then to be the determination of whether there is new evidence that would make it possible to reopen the proceeding.

It should be recalled that the court hearing with the case issued a final discontinuance for those who had been summoned, and a temporary discontinuance for the investigation, pursuant to the provisions of Article 2138 of the Legal Code, which provides:

Article 2138: A final discontinuance terminates the respective proceeding against the persons for whom it is ordered, and produces *exceptio rei adjudicata*.

Temporary discontinuance does not terminate the proceeding. The investigation of those for whom a temporary discontinuance has been ordered may be continued whenever new evidence is presented.

In this regard, the examining authorities of the Republic of Panama cannot accede to what the complainants seek, inasmuch as the only elements they add to their briefs are speculative assertions devoid of evidentiary value.

An adverse decision handed down by the Honorable Commission, based on consideration of such speculative assertions, would constitute a dire precedent, inasmuch as it would be based on adverse legal interests which are producing assertions devoid of evidentiary value. That in turn, would complete to undermine the legal process as an appropriate means to seek the truth. This, in turn, would destroy the very essence of the democratic societies in the American hemisphere.

2. If we maintain the premise that the Honorable Inter-American Commission on Human Rights is interested in determining whether or not the appropriate internal jurisdictional procedures have been complied with in our country, we will have to refute supposed declarations contained in investigations conducted by other States, official cognizance of which has not been taken by the authorities of the Republic of Panama. Once again, we return to the original point. We wonder whether, in order to nullify the briefs submitted by the plaintiffs, it would be necessary to force the internal jurisdiction procedures of each country, indicating to the examining authorities that they should regard as presumed pieces of evidence, facts heretofore unknown to them, inasmuch as they had not been introduced earlier.

In our view --and in so doing we reiterate our initial conclusions-- the proceeding underway with the

Honorable Inter-American Commission on Human Rights with respect to case No. 9726 offers two approaches, that are presently at odds. One is the legal aspect, based on the consideration of the evidence submitted and weighed at the proper stage of the proceeding, and in accordance with appropriate legal procedures. The second approach involves a series of assertions based on speculation from political sources that are adverse to the government of the country. Hence, as you will readily understand, the Inter-American Commission on Human Rights will be dealing with a dilemma in which serenity, equanimity, and proper legal sense must determine whether the appropriate legal remedies in the country's internal jurisdiction have been complied with in the investigation that was conducted, as indeed they have.

Upon reiterating each and every one of the concepts developed by this office in our notes DPG-515-86, dated July 8, 1986, and DPG-206-87, dated January 27, 1987, expressly establishing that we respect the efforts being made by the Inter-American Commission on Human Rights, that we admire the good intentions of the persons comprising each of its parts, and that it is our view that said body has an objective legal criterion that will enable it recognize that our country has complied with the State's internal jurisdictional procedures.

3. On June 26, 1987, the complainants also submitted several documents pertaining to the case in reference, among them statements made by Mr. Nicolás Ardito Barletta, former President of the Republic of Panama, and by Coronel Roberto Díaz Herrera.

On June 11, 1987, Mr. Nicolás Ardito Barletta made the following statement:
STATEMENT MADE BY DR. NICOLAS ARDITO BARLETTA

The present situation confronting the country is critical, but one that offers opportunities. Critical because all of the information that is being revealed by Coronel Díaz Herrera draws attention to very serious matters that strike the conscience of all Panamanians, and opportune, because it paves the way for the situation to be clarified with a maximum sense of national responsibility and with everyone's involvement, in a manner that will make possible the national reconciliation so essential, on the basis of respect for the Constitution and law as basic standards for the democratic way of life.

Now that events have demonstrated what I had foreseen in the economic and political spheres, I should make two clarifications, and I have been waiting for the proper moment to do so in order to put them to the people of Panama, which is sovereign with respect to decisions concerning the fate of the nation:

1. The entire country is aware of the fact that I was forced out of the office of the Constitution, primarily because of my decision to have a non-political commission appointed to investigate the crime committed against Dr. Spadafora. On Wednesday, September 25, 1985, from New York, I insisted with Mr. Del Valle and Coronel Díaz Herrera--who were together at the General Barracks--that the Commission be announced. I had decided on its memberships the day before. When on the following Friday, there were complaints against my decision at the Command of the Panamanian Defense Forces, I told the commandants that they should "support it, since otherwise the entire country would interpret the complaints as indicative of their involvement in the crime." Colonel Díaz Herrera has given the details of what transpired on the day I was forced to leave office.

On April 26, 1986, I stated publicly at the Command Headquarters of the Panamanian Defense Forces that I was not forced to leave the Office of President "because of economic policy, as some had alleged. Differences in this area are negotiated and agreed upon, and such agreements already had reached an advanced stage. Instead, the causes were due to basic political differences with respect to the constitutional operation of the various agencies of the government, effective democracy and the events that occurred in September 1985", an obvious reference to the investigation of the crime committed against Dr. Spadafora.

I continue to hold the belief that national peace and reconciliation call for a full clarification of that crime.

2. I assumed the Presidency in 1984, convinced that there had been a narrow but legitimate electoral triumph, with credentials that had been issued by the proper body, a conviction based on information then available to me, and which I still possess. If there had been fraud, as now alleged by former high ranking

government officials, then the vote should be recounted, and the results should be verified for the good of the nation.

The country needs a constructive change toward effective democracy with justice and development in peace, with respect for the Constitution and through national reconciliation. For that reason, I made the constructive change which was the central plank of our election campaign and the centerpiece of my administration's program. I also believe that this is the feeling of the Panamanian people today. All of us Panamanians should selflessly help achieve this objective. May God help us find the way!

(signed) N. Ardito Barletta

For his part, Colonel Roberto Días Herrera made the following statement on June 10, 1987:

STATEMENT BY COLONEL ROBERTO DIAZ HERRERA

10:00 a.m., Wednesday June 10, 1987

Question: Can you describe, from the beginning and in your own words, exactly when it was that the possibility of murdering Hugo Spadafora was first discussed, and everything that happened? And once we know what happened in your own words, I would like to ask certain specific questions. When was the first time that the possibility of murdering Hugo Spadafora came up in meetings with the guards? Was there any discussion about this?

Reply: I am going to be very specific about this. Look, General Noriega complained to me at least twice, since he (Noriega) was G-2. We were more or less at the same level--Lieutenant Colonels--. I had a personal friendship with Hugo Spadafora; a couple of times we went out together with our wives. Anyway, at that time I was not in a position to put much pressure on him.

Question: How long ago was that?

Reply: From '75 to '78. At that point, Hugo also made himself scarce, although I did see him a couple of times, and about four months prior to his death, he saw my wife at a store and sent me along regards. He was with one of his daughters. Now when I arrive, really well, a series of publications written by Hugo came out against him, in which Hugo accused him of very grave, serious things, and he began to lobby within the Chiefs of Staff saying that Hugo was a danger to national security, etc. I heard these things. Now, he has always had what I would call a group, or a small team, for repression, for crimes....

Question: And had this group already committed other crimes? Had it already been established, and had it done other things prior to this affair?

Reply: Well, in my opinion, that group, has been involved in unresolved deaths, particularly that of Major Madriñan, and later, in the case of Hugo Spadafora, Major Córdoba, and even in the case, although I don't have concrete evidence, but I have verbal confessions, in the case of Dr. Mauro Zúñiga, Major Trujillo, and other lower ranking officers. When this happened, the first news I had of it, as Chief of Staff, was in the newspaper "La Prensa" which denounced it; but when they reported it to me, I made inquiries the night before, there was a dispatch signed by Colonel Ow Young, if memory serves me well, and I myself, hearing the dispatch when the G-2 gave me all of the information to the effect that there was talk, and that it was going to appear in the newspaper "La Prensa", that Hugo Spadafora had disappeared, etc., and that no such thing had happened and that they knew that he was on the other side. Several things like that...

Question: Do we know the date of that?

Reply: I cannot place the date just now. The news was published on the 15th (September, 1985). Tuesday the 13th, the corpse was found on the 14th... but I really did not have information about this, until I actually read about the death in the newspaper; I mean his... Then, since I was in charge of the Commander's office, I first called Colonel Ow Young, who is the G-2, he told me that he did not know anything. I called Major Córdoba, who was in Chiriquí and I really interrogated him. He told me that he did not know either and that Hugo Spadafora had not died in Chiriquí. I called Major Madriñan, Chief of the DENI, who told me that Hugo Spadafora had not died in Chiriquí, that they did not know anything, since he had been up in Europe until the time the corpse was found in Costa Rica. Then I checked, tried to check further, that he had been calling David, really, through this and that person and others in Chiriquí. They were not calling me. When I tried to contact him a couple of times to give him the information, they kept telling me that he was in a clinic. This really made me suspicious, particularly because I was here,

because he really was not a man who played clean, no. I continued to put pressure on particularly Córdoba. I summoned him to Panama, he made excuses, and he really tried to avoid coming, as per my orders, where he should be at that time. However, Córdoba had been one of his real favorites. Naturally, I now understand that he was telling him "do not go to Panama, do not go to Díaz Herrera, and do not give him the information". Well, he did not give it to me; he felt much more protected, just like Madriñan.

After that, there was the Hoffman case. When the Hoffman case occurred, Colonel Justine called me; (it is good that I remembered it) and told me that they had sent a German who had a lot of information on the Hugo Spadafora case, but, that since I had more "feeling" than he --and there is something that I really remember now, very curious-- he would have Inspector Demitilo Córdoba from the DENI bring him to me. So I began to talk with this man. I thought he was a bit nervous. Nevertheless, I thought that his nervousness was because of the type of statements that he was making. And I really have to admit that I was completely taken in by the gentleman, who is a ... anyway... I now realize that he is a pathological liar, and that he had been involved with him for quite some time. I was so taken in, that with Congressman Alfredo Oranges in my office, thinking that we really had a man who knew a great deal about the case, I had Oranges try to contact Winnie Spadafora when they were already on their way to Chitre, and I called the base in Rio Hato, the National Guard, Captain ...

With all these facts, and everything he said he knew about the crime against Spadafora, and all this malarky that has been written around here, I have to say that they really fooled me. I then tried to spare the Spadafora family any further pain. I thought there was a man who was a key figure in the assassination, and with Alfredo Oranges, I tried to tell him that they're sending him a message, and trying to stop the Spadafora family, particularly Winnie, because there was a man. Not only that, I also put the man on television, and I got this live, trying to avoid a massacre in the country, believing that we had a key piece, really, but everything was really a bunch of malarky, a trick, concocted by the very people who worked with General Noriega... From that standpoint, he is the one that concocted all of this, in order to try to get rid of a terrible enemy kept accusing him of things, during one of his trips to Europe, and any responsibility of the street or population (sic) (public opinion) would involve the responsibility that I had at the time...

Question: Why were you there and ...?

Reply: Apparently in command, as I say, because really he has always given me limited commands: in other words, he had contact with all of the officers and ...

Question: In this group that committed crimes, can you name the individuals or persons who were in this group?

Reply: Well, look, I would say that my most important link to the Spadafora case was when I realized that everything had been concocted in Chiriquí or most of the execution, the crime, under the direction of Major Córdoba and with subordinates who had been indicated, el Cholito, the other one ... I do not know, "Bruce Lee"... since it was "Bruce Lee" who did the thing... So I went back to Colonel Justine very worried--at least I was worried--I do not know about Colonel Justine. At his office in Amador, I ordered him to hand over those responsible, and he told me that he could not hand over Major Córdoba. I then realized that he was protecting Major Córdoba. I used a little strategy in my response. I said "okay, at least hand over those who committed the crime, in other words those who physically committed the crime, who most likely were sergeants, corporals, or what-have-you, and I told him, "protect Córdoba if you want ..." But at that point I, too, am protecting myself from him, because I was so much as telling him "I know what you are", and that was really dangerous. So then I added: "...and after they have been officially implicated, man, in seven or eight months when the case is closed you send them to Israel--that is what I said to him--to your friend General Harari. You give them money and let them go there, and escape." But naturally I wanted to gain some time. He said he was about to do so, but after he had more or less promised to do so, I left and I realized that he was doing exactly the opposite.

Because, naturally, he was involved, and could not hand over a small "fry", because after the medium size fry there was a medium size piece, and from the small piece on up. It was at that point, I would say, that I tried to force the situation, so that at the levels involving the actual physical execution there might be some element. With the explosive situation in Panama it might be very difficult for him to really prevent

the whole thing from ballooning. (sic)

Question: Delving a bit into the planning of the crime, was there any reason to believe that... in other words, what role did Noriega play in all of this, in the prior planning? In other words, he went off to Europe, right, while the crime was being committed? But prior to that, he had some sort of relationship with the group. He gave direct orders. What sort of relationship was it?

Reply: I am not so clear about that specifically. I assume he left a plan in operation, which has a lot to do with his ability to use electronic spying, and, ultimately with... The type of connection that he has always had with certain police authorities in Costa Rica, who undoubtedly had been following Hugo there, and sending back information... And also paying them... He pays out a lot for work abroad.

So he set up a plan, while abroad, and left the plan in motion. I have no doubt that this is what happened, although I have no concrete evidence. But, I am certain that this is what happened.

Question: And were there any talks with Noriega afterwards about the crime in which he could somehow be implicated?

Reply: No, no. After I pressured him there in Amador and I immediately realized that if he did not want to hand over anyone, either a corporal or a sergeant, it was because he himself was involved. At that point I simply moved on to another subject because after all, I was not about to say to him that he was the criminal.

Question: So, what I have heard around here is that you have implicated a group organized within the National Guard, in the assassination of Hugo Spadafora, and that this includes, at least, Colonel Córdoba...

Reply: Major Córdoba.

Question: ... and other subordinates under him? Are there others at his own level who...?

Reply: Major Madriñan. Captain del Cid. Mario del Cid.

Question: You are implicating them at least as officers, in the murder of Spadafora? Secondly, did this group operate under orders from Noriega?

Reply: Directly. This group has always dealt directly with General Noriega. Furthermore, it is a group that, as the other members of the Chiefs of Staff know,--though they will not say so now--has never taken orders from anybody else. It is a group totally, that is to say, almost completely independent of other members...

Question: Within the National Guard?

Reply: Yes, that is to say, they operate very freely because they have been adopted directly by General Noriega.

Question: Did they have meetings, for example, directly with Noriega?

Reply: It is a very closely knit group that even has drinks together, etc. Major Córdoba is a real alcoholic, to such an extent that out in Chiriquí, in public, early in the morning, at 6:00 a.m. he began shooting a machine gun, and things of that sort. So he must have other types of problems, the ...

Question: And your feeling that this group, including Major Córdoba, was responsible for the murder, was in part because of the chat, the talk that you had with him afterwards. In other words, do we have here a recording of any conversation between you and Major Córdoba? And if I remember what you said correctly, you were disposed to suspect the persons implicated.

Reply: That is interesting. Look. Before the meeting in Amador--and it is good to bring this out--when I realized, calling Córdoba and asking him "What happened, what happened, what happened", and he says, "no, nothing", and I learn that the crime had been committed in Chiriquí, then I began to play another role with Córdoba, particularly because Noriega was not here in Panama. So I said to him, "Okay, Córdoba, I already know what they did. What happened then? Tell me who the people are?, so I can try to help." But at that point, he refused to give me any information, and what he began telling me afterwards was that he had put all of the pieces together. So, this is very important. Then I discovered that Córdoba was involved in the case, beyond a doubt. This I discovered when General Noriega arrived, because General Noriega went from Europe to New York. In New York, I said to him "get back here." And it was at that point that what I told you just now happened, which only "La Prensa" reported shortly thereafter. I really do not know where they got the information, because it was quite accurate. I believe it was from Guillermo

Sánchez Borbón. I planned to overthrow Noriega because of the Spadafora case, and when Colonel Castillo and Colonel Justine and I reached an agreement, in particular, in recognizing that I could be sold out, but they, too, had an interest in trying to overthrow Noriega, not because of the Spadafora case but because of succession within the Institution.

However, from the tactical standpoint, I had very little mobilization capability. All of the important commands were directly under General Noriega, as is the case now. Well, that's natural. I myself took a chance with Major Palacios Góndola of the 2000th Batallion in Cimarrón. I do not have to say why here; however, we have been on good terms and he is a wonderful person, and I ordered him to transfer the Batallion to Panama. Half the Batallion. I was expecting Castillo to react, because as G-3--Justine less, actually--however, as G-3 he was the one who had combat units at least formally under his orders. Well, this is history now, but if I had been able to consolidate, especially with this one company that was guarding us, under the command of "Captain Girolodi, who definitely was on the look out for me at all times. That company provided us security in the area. I wanted to have a counterweight in the area of the central barracks itself, to try even to provoke the situation, with Dr. Nicolás Ardito Barletta, who had and showed an interest at least as far as I could tell, in appointing an investigatory commission; that we would coordinate the presidency and engineer an internal (military) coup d'etat. It really was not easy, and I was taking a tremendous risk. Because he had troops there three kilometers into Amador, and these are the troops that have been trained by Israelis so they are really dangerous troops when sent on a mission. And I was able to confirm this, because by a trick, fifteen days before I retired, I sent half of my escort to train there and I had them trained, actually, for the first time. I used some story. I told Colonel Castillo that I had a troop full of bums, and "restaurant diners", and that I wanted to wear them down; I wanted them to be trained. Oddly enough, they agreed. At that point, Second Lieutenant Ochoa, who was the head of my escort and another eight men were trained for me, and I saw what their capability was, because in 15 days they really got them trained, although the training was not as intensive as what they got in Israel.

So, I knew with by a telephone order from Captain Girolodi, the Urraca company would arrest me. I could not let Major Palacios Góndola know too much about this, because I did not want to involve him. I did not know how he would react if I said to him "Look, what we are trying to do is overthrow General Noriega." This was very difficult. Then he got nervous, and called me for the first time saying: "What's going on? Why are troops being moved?" Then Justine got nervous, and Castillo said "Well, Colonel, what's this about?" So what I said was "Look", and here I was covering myself, "I am ..." and since they have a certain respect for me --they have to because of my political capabilities-- I said to them: "Look, there's going to be such a reaction in the street because of the Spadafora thing that we'll have to have troops. And we have to have somebody of higher rank at the central barracks." So I started toying with these two ideas, but I felt a great deal of anxiety. Later, when I had him come from New York, he wanted to stay another night there, trying to buy time to see if things would get more complicated in Panama. Most likely thinking that I would be brought to trial because I was the duty commandant, he wanted to take more time. But then the fact that I had mobilized troops because I moved them by force, that is to say I brought pressure to bear, and Palacios Góndola listened to me--another Major did not, and half the batallion left--. When I saw the degree of risk, I put part of this half batallion on traffic duty, under the orders of my brother-in-law Major Sifiro. That was protection as well, in order to have a few things there. I transferred Major Palacios to the central barracks for a company. But, at that point, I saw that both Justine and Castillo were holding back. So when Justine and Castillo began holding back, they took away my insurance policy and went into what here in Panama we call "Rifa Time" in other words, in a desperate act in which you have to take some sort of decision. And I took advantage of the situation for the sake of my survival as well as Dr. Barletta's. From the ethical standpoint, I had no qualms about this, because I myself had maintained that he and the judges were involved in fraud. I then decided to call in several politicians such as Dr. Bethancourt, and President Del Valle himself, and some 20 or 30 persons. I changed the thing because Nicolás Ardito Barletta was trying to overthrow General Noriega using the Spadafora case. At that point, we went over the whole situation, and I began to pressure Dr. Barletta to leave when he arrived. So, when he arrived here, what I did was change the direction of things and tell him Dr. Barletta was behind my movements.

Question: So then, you are implicating the National Guard, specifically a group within the National Guard...?

Reply: One group, one group, one group. There were very many people who, like me, did not know anything...

Question: ... Under the direct command of General Noriega in the death of Hugo Spadafora. (sic)

Reply: Who died in Panamanian territory, and you may report that to any international body. I will stand by what I have said here.

Question: Fine, fine.

Reply: I declare that the foregoing statements constitute testimony concerning my knowledge with respect to the events that occurred surrounding the murder of Dr. Hugo Spadafora.

Panama, June 10, 1987.

(Signed) COLONEL (R) ROBERTO DIAZ HERRERA

17. On July 17, 1987, when submitting their observations to the Commission, the complainants once again reiterated, that despite the fact that the Government of Panama had hitherto submitted three documents explaining its position regarding the case under consideration, none of them undermined from the documentary and testimonial evidence that they had submitted.

Moreover, the complainants made the following verbatim statement:

The Government of Panama misrepresents view of the function of the Commission. First of all, because determinations of fact by the Commission must be based on all the evidence before the Commission, whatever the origin might be: statements made by eye witnesses, whether presented or not to Panamanian courts; statements by high-ranking officers of the Panamanian Defense Force; or official report of the Costa Rican Government. It would be arbitrary to disregard any relevant evidence. Secondly, because the Commission does not act as a court of cassation or court of appeal for internal decisions made by countries members of the Convention, but bases its decisions on the substantive law contained in the Convention and on international law, and not on domestic law. The latter is pertinent to the violation of Article 25 of the Convention. As regards the right to legal remedy envisaged in Article 25 of the Convention, obviously a determination had to be made at least as to whether or not the different procedural steps required by domestic law had been complied with. Nevertheless, the determination of the existence of a violation of Article 25 will not remain exclusively at that. A review of the procedural formalities does not guarantee protection of the right to effective legal recourse.

As we stated in the observations made on October 2, 1986, the Government has conducted a summary proceeding that is clearly inadequate.

Lastly, the complainants indicated that there is no controversy with respect to determining whether or not internal remedies had been exhausted, since both parties confirmed that said remedies had been exhausted.

18. On July 20, 1987, the Commission requested that the Panamanian Government send the following documents:

- a. The decision of September 17, 1985, by the District Attorney of the First Superior Court of the Third District, to the Fourth Superior Court of Justice;
- b. Government Attorney's opinion No. 139, dated December 31, 1985, by District Attorney of the First Superior Court of the Third District, to the Fourth Superior Court of Justice;
- c. The ruling of February 7, 1986, of the Fourth Superior Court of the Third Judicial District;
- d. Opinion No. 28, of June 25, 1986, by the Attorney General of the Nation to the Honorable Criminal Chamber of the Supreme Court of Justice;
- e. The ruling of June 27, 1986, of the Honorable Criminal Chamber of the Supreme Court of Justice referring to the aforementioned opinion No. 28;

f. The Report of the Legislative Assembly on the events that motivated the case referred to.

Moreover, the Commission requested from the Government of Panama information concerning the steps taken by the Judiciary Branch of the Government of Panama with respect to the statements made by Mr. Nicolás Ardito Barletta, former President of the Republic of Panama, and by Colonel Roberto Díaz Herrera.

19. On July 21, 1987, the Commission transmitted to the Government of Panama the observations made by the petitioner on July 17, 1987, and granted it a period of 45 days to send its reply.

20. On September 8, 1987, in note D.M. No. 573 from the Permanent Mission of Panama, the Government of Panama sent the documents that had been requested on July 20, 1987, and its observations to the Commission, which are transcribed below:

I am pleased to refer to the communications from that Executive Secretariat, dated July 20, 1987, and July 21, 1987, in which several requests are made to the Government of Republic of Panama with respect to case No. 9726, and provide a reply for both as follows:

1. As of July 8, 1986, in note DM No. 576, dated July 21, 1986, the Government of Panama gave a thorough and detailed account both of the applicable constitutional and legal provisions and of the facts and circumstances dealt with in the investigation proceeding into the death of Panamanian citizen Hugo SPADAFORA.

We wish to report that on that occasion, in the decision dated February 7, 1986, the court dealing with the case decided to issue a final discontinuance for those being investigated. Nevertheless, that decision did not bring the investigation to a final close. That notwithstanding, prior to that procedural stage, the procedures established in our legal system with respect to jurisdictional matters had been exhausted.

Now then, a temporary discontinuance affecting an investigation, according to Article 2138 of the Judicial Code in force at the time, permits reopening such an investigation in the event that new evidence is submitted, i.e., new conclusive evidence which would make it possible to determine the occurrence or nonoccurrence of an act which is a matter for a determination in a criminal proceeding.

Inasmuch as a procedure had been initiated whereby citizen Winston SPADAFORA FRANCO requested that the presumed involvement of General Manuel Antonio Noriega in the murder of Dr. Hugo Spadafora Franco be investigated, it should be pointed out that even if the procedures established in our legal system had been considered exhausted, in view of the temporary discontinuance, the presence of presumed new evidence makes it necessary to await evaluation of such by the jurisdictional body, in order to determine whether or not the inquiry will be reopened.

In its decision of June 27, 1986, the Criminal Chamber of the Supreme Court of Justice examined the supposed evidence submitted by the petitioner and determined that it did not have "sufficient merit, in terms of relevance and effectiveness, to constitute a basis on which to proceed according to the request for a new investigation, for which it would be necessary to reopen the summary proceedings..." It should be recalled that the petition was based on newspaper clippings lacking factual validity that would determine criminal responsibility.

On that occasion, we indicated "that in this connection all the jurisdictional procedures established in the laws of the Republic of Panama have been exhausted." Obviously, we were referring to the judicial proceeding to reopen the case, initiated at the urgings of citizen Winston SPADAFORA FRANCO.

2. In note DGOCTI/DOI/171 dated January 28, 1987, the Government of Panama gave its opinion of the documents containing the supplementary request submitted by the petitioners.

On that occasion, we were of the opinion that the supplementary request contained in a series of assertions lacking in truthfulness and objectivity and completely extraneous to the essence of the case presented.

On that occasion we stated our opinion that the proceedings before the Honorable Inter-American Commission on Human Rights should be strictly conducive and relevant to the achievement of the

supposed confirmation of what had been raised, for which reason we believed that the supplementary request was out of order, inasmuch as it contained a speculative account of assertions completely extraneous to the processing of the aforementioned case.

We therefore believe that the assertions contained in the supplementary request constitute a series of improper and eminently subjective statements which, in addition to lacking veracity do not warrant further consideration because they are conducive or relevant to the case dealt with in the proceeding which has been submitted to the Inter-American Commission on Human Rights.

Lastly, it was felt that "in the proceeding that has given rise to the request for information by the Honorable Inter-American Commission on Human Rights to our country, the constitutional and legal procedures applicable in such cases have been complied with and each and every one of the procedural guarantees enshrined in our legal system has been respected."

Obviously the foregoing is clearly in keeping with the respect for the procedural rights enshrined in Panamanian legal due process.

3. In note DV No. 082 dated May 25, 1987, the Government of Panama gave its opinion on the document containing the comments made by the petitioners with respect to the reply by the Panamanian Government.

On that occasion, we explained that the report which the government attorneys submit for consideration by that Commission should be based exclusively on the facts and circumstances known to them; in our case, the facts and circumstances revealed in the investigations conducted, have been brought together in a case file which our criminal procedural law refers to as a summary.

On that occasion, we expressed the opinion that the case designated as No. 9726 refers to the deeds that caused the death of Dr. Hugo Spadafora Franco. Hence, any assertion extraneous to that regrettable deed must be considered completely ineffective by the Honorable Inter-American Commission on Human Rights.

We explained that from a strictly legal standpoint, and bearing in mind the question which is of interest to the Inter-American Commission on Human Rights, which consists in determining whether or not there has been compliance with the appropriate internal jurisdictional proceedings of the country and which are designed to determine whether or not the crime has been committed and the responsibility for it. (sic)

It was clear on that occasion that "the internal jurisdictional procedures had been complied with, but that nevertheless this should not be interpreted as final closure of the appropriate investigation, and we added that "in the event that new evidence were to be presented, the summary proceeding could be reopened."

Now then, at the urging of the petitioner himself, judicial proceedings designed to reopen the investigation was initiated; however, the absence of new evidence led to the decision handed down by the Supreme Court of Justice on June 27, 1987.

In our note DB No. 82, dated May 25, 1987, which we have been referring to, we stated that decisions handed down by the Supreme Court of Justice or by its Chambers cannot be the subject of appeals based on unconstitutionality or of resort to constitutional guarantees against them, for which reason the Government of Panama deems all of the jurisdictional procedures established by the laws of the Republic of Panama to have been exhausted.

Obviously, we were referring to the procedure to reopen the case undertaken at the urgings of the petitioner himself, but not the procedural situation created by the decision reached on February 7, 1986, by the Fourth Superior Court of Justice, which reviewed the investigation and ordered it to be temporarily closed.

4. In view of the foregoing comments, the Government of Panama decided that its replies would cover four basic aspects, i.e.,:

A. That the proceeding before the Inter-American Commission on Human Rights seeks to prove the responsibility of the Government of Panama for the supposed violation of the rights enshrined in Articles 4, 5, 7, 13, and 25 of the American Convention on Human Rights, with respect to the facts referred to in Case No. 9726.

B. That the documents submitted by way of support for such proceedings do not prove that in actual fact the Government of Panama is responsible for such assumed violations.

C. That the Government of the Republic of Panama, specifically the appropriate jurisdictional body, has at all times complied with legal due process, and has afforded the members of the victim's family effective use of the internal jurisdictional remedies during the various procedural stages.

CH. That the decision of the court reviewing the investigation, as contained in the decision dated February 7, 1986, has not been changed, and therefore, as provided in Article 2138 of the Judicial Code in force at the time and repeated in Article 2213 of the current Judicial Code, the temporary discontinuance does not bring the proceeding to a final close and the investigation may be reopened whenever new evidence of the charges is submitted.

At this juncture, it would be useful to stress the fact that in accordance with Article 2213 itself, which is the equivalent of prior Article 2138, a temporary discontinuance only becomes final when the criminal action has been prescribed, which obviously has not occurred; for that reason the internal jurisdictional remedies have not been exhausted from the standpoint of the provisions made in Article 35, subparagraph a) and Article 37 of the Regulations of the Inter-American Commission on Human Rights.

Let us take each item separately:

A. The intention of the petitioner to prove that the Government has violated Articles 4, 5, 7, 13, and 25 of the American Convention on Human Rights by reason of the facts referred to in Case No. 9726.

1. Articles 4, 5, 7, 13, and 25 of the Convention refer to the right to life, the right to personal integrity, the right to personal freedom, the right to freedom of thought and expression, and the right to judicial protection.

2. Violation of the rights enshrined in Articles 4, 5, and 7 of the Convention require a demonstration that the Government participated in the deeds pertaining to the homicide. Violation of the rights enshrined in Article 13 requires a demonstration freedom of thought and expression have been denied, and violation of the right enshrined in Article 25 requires a demonstration that judicial protection has been not existent.

3. Let us consider:

a. The investigation conducted in the jurisdiction of the State did not demonstrate that the Government had in any way been involved in the deeds pertaining to the homicide, for which reason the supposed violation of Articles 4, 5, and 7 of the Convention is rejected out of hand.

b. Both the victim's family members and private citizens have used the mass media to express their thought freely, for which reason, there has been no violation of Article 13 of the Convention.

The foregoing does not exclude the existence of jurisdictional procedures to examine subsequent liability possible arising from the exercise of freedom of expression as provided in subparagraph 2 of Article 13 of the American Convention on Human Rights, which in no way could be considered as violating the right to freedom of thought and expression, inasmuch as in such procedures the procedural guarantees established in the judicial system must prevail, as indeed they do.

c. There has been no violation of Article 25 of the Convention, inasmuch as the victim's family members have at all times had access to the judicial legal remedies granted them by Panamanian law.

In point of fact, the victim's family members were entitled to bring private action, pursuant to Articles 1993 et seq. of the Judicial Code in force at the time; they had a right to attend the proceeding to provide the information and elements they publicly said they possessed with respect to the fatal event and concerning criminal responsibility; and lastly, they have had, and indeed do have, the opportunity to request a reopening of the case, which had been temporarily closed, by submitting new evidence, not known earlier, that would demonstrate criminal responsibility.

Regarding the foregoing, it would be appropriate to give detailed information with regard to each aspect, which we now do as follows:

1. Articles 1993, 1994, 1998, 1999, 2000, 2001, and 2002 primarily are the ones governing the right of the victim's family members to bring private charges. These provisions read as follows:

"Article 1993: The accuser is the one who asks the courts to punish a criminal; the accuser becomes a

party, and undertakes to prove the veracity of his assertions."

"Article 1994: Anyone may initiate criminal legal action as an accuser, by reason of a crime or misdemeanor committed against himself or against a relative within the second degree of kindred or against those who are in his charge or whose he was the legal representative he is."

"Article 1998: The charge shall always be made in writing, and shall contain the names of the accuser and the accused, the crime and the place and date it was committed, as well as an account of all the essential circumstances of the deed, including reference to the legal provisions that were violated. The accuser shall undertake therein to continue the charge and to prove the veracity of his account."

"Article 1999: At the petition of the accused, any accuser shall post a bond to cover the costs and monetary results of the trial in the event that the decision is against him.

"The bond shall be posted through a hearing with the Government's attorney or the judge in the case, and shall comply with such requirements as are stipulated in the case of obligations by the Fiscal Code. The record of the hearing shall be added to the case file.

"The bond dealt with in this article shall consist of a deposit in cash, a lien or a mortgage."

"Article 2000: The bond referred to in the previous article shall be proportioned in amount to the costs, which it is estimated that the accused will have to incur in order to defend himself."

"Article 2001: The accuser will not be condemned to pay costs unless the charge is declared false and baseless, and the charge shall be so declared:

- 1) when the accuser in no way proves the charge;
- 2) when it is proven that the accuser procured his testimony by subornation or bribery; and,
- 3) when it is found that the documents he submitted were forged by him or he submitted them aware that they were false."

Article 2002: The charge shall not be declared false and baseless when the accuser has presented two or more witnesses to prove his charge, even if they have been challenged for a reason other than the one indicated in the previous article or their statements have been contradicted by a greater number of witnesses or by more credible documents."

At this juncture it should be mentioned that in a document dated May 7, 1986, the petitioner informed the Inter-American Commission on Human Rights that: "In our country we did not lodge a private charge in order to avoid giving credence by our presence to those investigations which we knew from the very outset to be lacking in impartiality, as was demonstrated when the case was closed less than five (5) months after the murder."

The foregoing quotation demonstrates that the petitioner prejudged the investigation "from the very outset", that the petitioner did not choose to exercise the legitimate right to bring criminal action as an accuser by stating the name of the accused, the place and date of the crime, and the essential circumstances of the deed, or indeed to exercise his right under Article 2002 of the Judicial Code to present two or more witnesses in order to prove his charge, thereby preventing its being declared false and baseless. And avoiding monetary penalty that would stem from the provisions of Articles 1999 and 2000 of the Judicial Code, transcribed above.

The omission of a personal charge is surprising since, as shown in the investigation conducted by the appropriate authority in the Republic of Costa Rica and in the copy of the record thereof included in the investigation conducted in Panama, Messrs. Ricaute ESQUIVEL RODRIGUEZ and Santos LOPEZ LOBON, alleged witnesses of the detention of the victim at the first checkpoint two kilometers from the border, were presented to the Costa Rican authority by a close family member of the now late Dr. HUGO SPADAFORA.

It follows then that on the basis of a family relationship the petitioner not only has legitimate right to bring charge, but also had supposed witnesses who were presented to the Costa Rican Government attorney.

We note that the petitioner argued to the Commission that the failure to present a personal accusation was due to a lack of impartiality which in his judgement was demonstrated when the case was closed less than five (5) months after the murder: this ignored the fact that according to Article 2125 of the Judicial Code

in force at the time a criminal investigation must be conducted within a period not to exceed more than two (2) months and in this case the intervening period of investigation was substantially longer.

It was also established in the proceeding that a distinguished local jurist had requested and received copies of the record of the investigation in order to decide on the possibility of lodging a private charge against the person or persons responsible for the homicide.

Lastly, it is noteworthy that the failure to exercise the legitimate right to lodge a private accusation was an act based exclusively on the will of the petitioner, and such being the case, cannot be attributed to the Government.

2. The relatives had the right to attend the proceeding in order to provide information and elements which they stated publicly they possessed concerning the fatal event, and with respect to responsibility for the crime.

In point of fact, the record of the proceedings shows that on several occasions legal steps were arranged for an appearance by the victim's father who had publicly stated that he had knowledge concerning the circumstances and causes of the death.

The record also shows that the aforementioned citizen refused to appear, arguing that the persons that he had accused in the media should appear first. Nevertheless, it is undeniable that his testimony was the item that could have provided the alleged relationship between the deed and the persons he publicly accused of being its perpetrators.

Consequently, not only was the proceeding kept open to the relatives of the victim but the competent authority attempted on more than a few occasions to get the benefit of the information that the relatives claimed to possess, which, as we have seen, was not submitted in timely fashion.

3. The relatives have had and continue to have the right to request a reopening of the proceeding, upon the submission of new and previously unconsidered evidence of criminal responsibility.

Indeed, the petitioner initiated the aforementioned procedure, but the Supreme Court of Justice held that the documentation presented did not have the evidentiary value required by law.

This decision of June 27, 1986, does not have the effect of changing the relative and provisional nature of the closure of the investigation, which will accordingly become final only if the investigation were reopened at such time as criminal action might be prescribed under the final part of Article 2213 of the Legal Code, which obviously has not occurred.

In view of the foregoing, the Government of Panama is of the opinion that the rights enshrined in Article 25 of the Convention on Human Rights have not been violated.

B. The documents presented in support of the brief do not prove that the Government was in fact responsible for the violations referred to.

1. It has not been proven that the victim was seen for the last time in the custody of Government agents, a claim which constitutes, according to the presentation of the petitioner, the basis for presuming the responsibility attributed to the Government.

In fact, a review of the documentation submitted by the petitioner, which is not part of the investigation, is completely irrelevant and ineffective as a means of proving the alleged deed, which centers the argument on the evidence contained in the record of the investigation, evidence in the form of testimony by Edwin Noel NU EZ and Alexis Noé BAULES CONCEPCION, given before Panamanian jurisdictional authorities, and by Ricaute ESQUIVEL RODRIGUEZ and Santos LOPEZ LOBON, given before Costa Rican jurisdictional authorities.

A detailed analysis of the statements made by these four persons shows that even if for the sake of argument, the thesis advanced by ESQUIVEL RODRIGUEZ and LOPEZ LOBON, were accepted as valid, the circumstances they suggest are rendered invalid by the statements of NU EZ and BAULES CONCEPCION. We say this for two reasons: first of all, because the latter stated that vehicles headed for the border are not stopped at the checkpoint; and secondly because at no time have the latter asserted that Dr. Hugo Spadafora was detained at the first checkpoint, located just some two kilometers from the border, and showed his identity card to passengers on the bus, indicating to them who he was and the

circumstances of his arrest.

If the concrete fact alleged by the petitioner is not borne out by the case file containing the record of the investigation, and if the documents submitted by him at his request and as per his supplementary request, (sic), then it can hardly be asserted that the presumption of guilt which he seeks to attribute to the Government arises therefrom.

2. It has not been proven - inasmuch as it does not arise from the investigation or from the documents presented - that there have been violations of the freedom of expression and thought, for which reason the responsibility attributed to the Government in this respect does not arise.

3. It has not been proven that in the jurisdictional proceedings there were violations of due process, concretely with respect to procedural rights, which the relatives of the victim have enjoyed, and continue to enjoy, and which, as we have explained, in some cases were not exercised at all and in others have not been adequately exercised, all of which in no way is the responsibility of the Government.

C. The Government of the Republic of Panama, specifically the appropriate jurisdictional body, has at all times complied with due process of law, affording the members of the victim's family effective access to the recourses inherent in internal jurisdiction at successive stages of the proceedings.

1. Further indications of this will be found in the explanations given earlier concerning the right to lodge a private charge, the possibility of attending the proceeding in order to present information and evidence allegedly in hand, and the right to submit new evidence as an appropriate means of reopening the investigation.

As we have said these procedural rights were not exercised by the victim's relatives, or they were exercised only inadequately.

2. Moreover, there is not a single argument or any evidence that establishes that the jurisdictional body has failed to provide the judicial protection referred to in Article 25 of the Inter-American Convention on Human Rights, so that the charges made to that effect are groundless.

CH. The internal jurisdictional remedies have not been exhausted for the specific purposes provided for in Articles 35.a and 37 of the Regulations of the Inter-American Commission on Human Rights.

1. The decision rendered by the Fourth Superior Court of Justice of the Third Judicial District on February 7, 1986, is the only jurisdictional decision which has the effect of reviewing the investigation, and that decision, as we have already indicated, led to a relative or temporary closing, which pursuant to Article 2138 of the Judicial Code in force at the time to Article 2213 of the current Judicial Code, is subject to the principle that the procedure continues and to exist only when the possibility of criminal is invalidated by negative prescription and the closing therefore becomes final.

2. Inasmuch as there is a temporary measure in effect with regard to the investigation, it would not be possible, according to the provisions of Article 37 of the Regulations of the Inter-American Commission on Human Rights, to consider that the internal jurisdictional remedies have been exhausted and brought into play.

Let us examine the following facts carefully:

a) The domestic legislation of the State provides due legal process for the protection of the right or rights that have allegedly been violated. This process is constitutional in rank, and in the present study we have explained the procedural rights accruing to the relatives of the victim, for which reason the petition does not comply with the provisions of subparagraph a) of paragraph 2) of Article 37 of the Regulations of the Inter-American Commission on Human Rights.

b) The victim's relatives have been and are currently given access to the remedies of internal jurisdiction, and they have not been prevented from exhausting them. This was amply explained earlier, when it was established that it was a voluntary decision by the relatives of the victim not to lodge a private complaint and not appear at the investigation to provide the information they claimed to have; neither they submitted new evidence having the legal merit for reopening the proceedings.

The foregoing shows that the presumption contained in subparagraph b) of paragraph 2) of Article 37 of the aforementioned regulations has likewise not occurred.

c) There has been no delay whatsoever in deciding on the aforementioned appeals; which means that no further explanation is required in order to conclude that the conditions stipulated in subparagraph c) of paragraph 2) of Article 37 of the Regulations referred to have likewise not occurred.

3. The Executive Secretariat of the Inter-American Commission on Human Rights has requested that we report "on the consideration granted by the Judicial Branch of the Government of Panama to the statements made by Mr. Nicolás ARDITO BARLETTA, former President of the Republic of Panama, and by Colonel Roberto DIAZ HERRERA, a photocopy of each of which is appended hereto, with respect to the deeds which gave rise to the case under consideration."

Now then, consideration by the Judicial Branch can only be reported when the judicial body has taken action, which means that, as provided in Article 37 of the Regulations of the Inter-American Commission on Human Rights, the petition is inadmissible until such time as the domestic jurisdictional proceeding is reopened and concludes with a final decision or the statute of limitation for criminal action expires and the provisional closure of the investigation therefore become final.

4. The statements made by the Government of Panama in notes DM No. 576 of July 21, 1986, DGOCTI/DOI/171 of January 28, 1987, and DV No. 082 of May 25, 1987, were in no way intended to limit the competence of the Commission on Human Rights. Quite to the contrary, their purpose was to offer a careful and throughout explanation of the applicable constitutional and legal provisions and of the deeds and circumstances which are the subject of the proceeding to investigate the death of Panamanian citizen Hugo SPADAFORA.

We have expressed earlier, and do so now more thoroughly, the reasonable doubt we have with respect to the practical usefulness of presenting supposedly new evidence to the Inter-American Commission on Human Rights, inasmuch as a suitable means for the consideration of such evidence exists within the internal jurisdiction of the State and standards relating to this matter exist in the Regulation of the Commission.

The foregoing supports the approach indicated that it would be incongruous to subject the State to a review of the alleged new evidence, through the procedures of the inter-American system which is the guardian of human rights, since the domestic legislation of the State provides appropriate judicial remedies for taking cognizance of new material evidence for the prosecution.

5. In view of the foregoing concepts, the Government of Panama is of the following opinion:

a. That the Government of Panama has not violated articles 4, 5, 7, 13, and 25 of the Convention, as alleged by the petitioner.

b. That the Commission should not recommend that the Government of Panama conduct a complete and impartial investigation, free from the influence of the Defense Forces, so that all those responsible would be judged according to the Panamanian Law, as requested by the petitioner, since, under Panamanian law, there are legal remedies to consider new evidence supporting the petitioners' charges, all of which has been confirmed by the Public Prosecutor, and decided by the Judiciary, both of which are completely independent of the other agencies and branches of the State.

c. That, in view of the foregoing explanation, it is unnecessary to grant any time to conduct an investigation, inasmuch as our legislation has regulations concerning the appropriate deadlines for reopening the proceedings.

d. It is unnecessary to request that the Government of Panama cease or ensure cessation of any intimidation of the SPADAFORA family, and of any other person who may be involved in the case, as requested by the petitioner, inasmuch as there has been no proof or any knowledge whatever of acts of intimidation such as those alleged to have occurred.

In view of the foregoing considerations, the Government of Panama is of the opinion moreover that, pursuant to the provisions of Article 37 of the Regulations of the Inter-American Commission on Human Rights, the petition is inadmissible because the judicial remedies available under Panamanian law have not been involved and exhausted, and the exceptions set forth in paragraph two, subparagraphs a), b) and c) of the aforementioned Article 37 of the Regulations of the Inter-American Commission on Human Rights do not apply, as was explained earlier in detail.

6. Duly authenticated copies of the following documents are attached for the appropriate purposes:

- a. The decision dated September 17, 1985, of the First Superior Court District Attorney's Office of the Third Judicial District.
 - b. District Attorney's Decision No. 139, dated December 31, 1985, by the First Superior District Attorney's Office of the Third Judicial District.
 - c. The ruling of February 7, 1986, handed down by the Fourth Superior Court of the Third Judicial District.
 - d. Decision No. 28, of June 25, 1986, by the Office of the Attorney General of the Nation.
 - e. The ruling of June 27, 1986, handed down by the Criminal Division of the Supreme Court.
- Inasmuch it has not been possible as to date to obtain a copy of the report of the Legislative Assembly, and since that body was still in recess, and just recently reconvened on September 1, as soon as we receive that report, it will be sent to you in due course for the appropriate purposes.

22. On September 21, 1987, the petitioners sent their observations to the Commission, which are transcribed below:

On May 7, 1986, Dr. Winston Spadafora Franco submitted a petition to the Inter-American Commission on Human Rights with respect to the arbitrary arrest and subsequent torture and murder of his brother, Dr. Hugo Spadafora Franco, by the Government of Panama. On August 6, 1986, the Commission transmitted the petition to the Government of Panama, which responded on July 21, 1986. In a note dated August 11, 1986, the Commission transmitted the Government's reply, and advised that comments on that reply should be made within 45 days.

On September 25, 1986, the petitioner and the International Human Rights Law Group as co-petitioner, submitted observations on the Panamanian Government's reply and a Supplementary Petition, accompanied by an annex with documentary evidence. The Commission transmitted to the Government all the documentation submitted by the petitioners. The Government replied on January 28, 1987. In its note of March 3, 1987, the Commission transmitted that reply to the petitioners and notified them that they had 45 days to comment on it.

On April 17 of this year, the petitioners submitted their observations. In a note dated May 15, 1987, the Government replied to those comments. The Commission transmitted that reply of the Government dated June 4, 1987, to the petitioners, and 45 days for submission of observations on it. On July 17, the petitioners responded to the observations made by the Government in its reply of May 25, 1987. That presentation was transmitted to the Government on July 20, 1987, and replied to on September 8, 1987.

These observations concerning the Government's reply of the Government dated September 8, 1987, are respectfully submitted to this Commission within the deadline set.

We wish to state for the record that these observations shall be confined to a concise brief of the issues set forth, due to the advanced stage of the proceeding, our request for a prompt decision by the Commission, and primarily the fact that the Government has not submitted any new arguments.

OBSERVATIONS

I. ADMISSIBILITY BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

In Resolution No. 30/86 adopted at its 68th regular session, on September 19, 1986, the Commission ruled favorably on the admissibility of the complaint submitted by Mr. Winston Spadafora Franco, the petitioner, taking particularly into account the fact that the Government had recognized in its reply of August 6, 1986, that Panamanian judicial remedies had been exhausted.

A year after that Resolution and following many submissions by the Government in which it states repeatedly that "in this case, all the judicial procedures established by the laws of the Republic of Panama have been exhausted", the Government is now attempting to block the proceedings under way by alleging non-compliance with the requirement concerning exhaustion of internal remedies. At this stage, that is superfluous. The Commission had already ruled on this issue after having heard both parties.

At any rate, the Government's arguments that the proceedings were not totally closed to the presentation

of new evidence, can by no means be interpreted as indicating that the internal remedies had been exhausted. First of all, this is so because in the case of the decisions, the formal procedures in a judicial investigation have been followed under the guise of meeting the requirements of the Panamanian criminal law system. Alleging that there is a possibility of reopening the proceedings with the submission of new evidence, the petitioner could exercise his rights before the international forum only in those cases where the perpetrator of crime has been found, or the period of the statute of limitations has expired. This result is absurd. Secondly, the judicial branch of the Panamanian Government has on two occasions, heard the evidence concerning the murder of Dr. Hugo Spadafora. In both cases, it reached completely unsatisfactory decisions, as we have already demonstrated and reiterated above. The Commission does not cease to have jurisdiction over this matter because the "right" to submit new evidence in a third predictably presentation has not been exercised.

II. SUBSTANTIVE LAW

A. Articles 4, 5, and 7 of the American Convention on Human Rights

As we have indicated in our earlier presentations,[FN1] more than enough evidence has been submitted to establish that Dr. Hugo Spadafora entered Panamanian territory on September 13, 1985; that he was arrested in Concepción by a member of the Defense Forces dressed in civilian clothing ("Bruce Lee"), after having been temporarily detained on two occasions at the two military border posts of Jacú and La Estrella; and that he was last seen alive when he was arrested in Concepción, before his decapitated body showing evidence of severe torture was found on the morning of September 14.

[FN1] See Supplementary Petition and Comments on the Government's Reply dated October 2, 1986.

In its reply, the Government maintains that the legal investigation conducted in Panama did not show "that the Government had in any way been involved in the events connected with the homicide, so the alleged violation of Articles 4, 5, and 7 of the Convention was rejected out of hand." [FN2] Furthermore, the Government maintains that the Commission's case file does not contain any evidence demonstrating such involvement. It is obvious that the Government has deliberately disregarded both the evidence contained in this case file and the findings of judicial investigation (including the Costa Rican investigation transcribed in the Panamanian case file). This includes the eye witness accounts of Alexis Noe Baules Concepción, Edwin Noel Nuñez, Edwin Guerra, José Asdrubal Ramírez Chavarría, José Angel Chinchilla Ríos, Mario Barrantes Escorcia, Iván Darío González Justavino, Ricaute Esquivel Rodríguez, and Santos López Labón.[FN3]

[FN2] Reply from the Government of Panama, dated September 8, 1987, page 6.

[FN3] See the testimony given before Panamanian and Costa Rican authorities, quoted in the ruling handed down by the Fourth Superior Court, February 7, 1986. Also see the Supplementary Petition of October 2, 1986, pp. 16-29; and other presentations made by the petitioners.

In support of its allegations that the petitioner's arguments are not pertinent and relevant in demonstrating the facts, the Government only asserts that the testimony of Edwin Noel Nuñez and Alexis Noe Baules Concepción, on the one hand, and of Ricaute Esquivel Rodríguez and Santos López Labón, on the other, are inconsistent. The conclusion that such testimony is inconsistent and, therefore, invalid is unsubstantiated. The petitioners have already dealt in detail with such "inconsistency" in their observations on judicial investigation in Panama, submitted to the Commission on October 2, 1986, pages 17 and the following, and referred the Commission to them.

B. Article 25 of the American Convention on Human Rights

Article 25 of the Convention guarantees the right to effective protection by the courts. A patently inadequate and partial judicial investigation that disregards essential evidence, accepts contradictory alibis, and reaches a superficial decision on the case --such as the one handed down by the Panamanian authorities-- does not constitute effective judicial protection.[FN1] This is so, regardless of whether or not the petitioners were present in the proceeding, which, by its very nature, does not require an accusation by a private party.

[FN1] See the observations dated October 2, 1986.

The Government has described in detail the petitioner's right to be present in the Panamanian courts, and has maintained that "there has been no violation of Article 25 of the Convention, inasmuch as the victim's relatives have at all times enjoyed the legal remedies that are granted to them by Panamanian law." [FN2] The formality of access to judicial remedies is not enough in itself to meet the guarantee in Article 25. The minimum standard in the convention is effective judicial protection. For the reasons given here and in previous presentations, the Spadafora family's formal access to justice is not sufficient to meet that standard; nor is having completed the various procedural steps required by Panamanian law sufficient either, without effective legal protection having been granted to the Spadadora family.

[FN2] Reply dated September 8, 1987, page 7.

C. Article 13 of the American Convention on Human rights

The Government maintains that "victim's relatives as well as other private citizens have used the media to freely express their thoughts." [FN3] Indeed, the Spadafora family and other citizens have suffered and continue to suffer intimidation and threats by the Government (including by the Defense Forces) because of their efforts to obtain justice with respect to the murder of Dr. Hugo Spadafora Franco. (See Supplementary Petition, pp. 39-41; Statement by Valerio Iodice, dated September 20, 1986, submitted at the hearing on March 23, 1987; statement by Winston Spadafora Franco, on June 25, 1987, submitted during the hearing on June 26, 1987.

[FN3] Reply of the Government, dated September 8, 1987, page 6 (the underlining is ours).

PETITION

In its reply dated September 8, the Government of Panama did not provide any new facts or arguments. In view of the present procedural stage of the case and the fact that the events that gave rise to it occurred more than two years ago, and considering that both the Government of Panama and the petitioners have made many presentations, we request that the Commission issue a ruling.

In view of the foregoing, we reiterate our petition of July 17, 1987, (pp. 7-8).

23. That the Government of Panama, on January 25, 1988, requested, by its note numbered DVM No. 033, reconsideration of Resolution No. 25/87, adopted by the Commission at its 71st Regular Meeting.

WHEREAS:

1. In Resolution No. 30/86, adopted on September 19, 1986, the Commission ruled favorably on the

admissibility of the complaint filed against the Government of Panama by Mr. Winston Spadafora, inasmuch as all the requirements contained in Articles 46 paragraph a) to d) of the American Convention on Human Rights, and Articles 32 and 37-1 of the Regulations of the Commission have been met.

2. In accordance with the legal information provided by the complainant, by the Government of Panama and by the Government of Costa Rica, the material facts in this case are as follows:

a. On September 13, 1985, at 8:00 a.m., Dr. Hugo Spadafora Franco left his house in San José, Costa Rica, on a trip to Panama. At 9:00 a.m. on the same day, Dr. Hugo Spadafora boarded the SANSA airline plane bearing the name "Ricardo Velázquez", the destination of which was the city of Coto 47 on the Panamanian border.

b. Dr. Hugo Spadafora arrived at the Coto 47 airport at 10:05 a.m. on September 13, 1985, and was driven by the taxi driver Mr. Mario Barrantes Escorcia to the city of Paso Canoas, near the Panamanian border. At midday he had lunch at the "Los Mellos" restaurant owned by Mr. Iván Darío González Justavino located in Panamanian territory. Mr. González Justavino specifically recognized this fact in his testimony to the Panamanian Ministry of Public Affairs on September 24, 1985.

c. Subsequently, Dr. Hugo Spadafora Franco boarded a bus, on the "Border-David" line, driven by Mr. Edwin Guerra, as reflected in his deposition to the Panamanian Ministry of Public Affairs on September 25, 1985. In his depositions Mr. Guerra said that on September 13, 1985, he cancelled his trip because he had only three passengers, among them Dr. Hugo Spadafora and Mr. Francisco Eliecer González Bonilla, alias Bruce Lee.

d. According to the testimony quoted earlier by Messrs. Alexis Noe Baules and Edwin Noel Núñez, the driver of another bus on the Border-David line and his assistants, on September 13, 1985, Dr. Hugo Spadafora and Mr. Francisco Eliecer González Bonilla (Bruce Lee) got on the bus that they were driving to the city of David after their unsuccessful attempt to travel in the bus driven by Mr. Edwin Guerra.

e. According to the testimony obtained by both Panamanian and Costa Rican legal authorities, Dr. Hugo Spadafora Franco was temporarily detained at the "Jacú" military checkpoint. In fact, both the bus driver, Mr. Alexis Noe Baules, and his assistant, Mr. Noel Núñez, agree on this point. Moreover, Costa Rican legal authorities took a deposition in Costa Rica from Messrs. Orlando José Ortega Alfonso, Ricaute Esquivel Rodríguez, and Santos López Lobón, all of Panamanian nationality, who witnessed Dr. Hugo Spadafora's detention at the Jacú border point.

f. Subsequently, Dr. Hugo Spadafora was once again forced to get off the bus at the "La Estrella" military checkpoint, together with Mr. Francisco González Bonilla (Bruce Lee), and was released a short time later, according to the testimony of Messrs. Alexis Noé Baules and Edwin Noel Núñez. Lastly, the same witnesses assert that Dr. Hugo Spadafora Franco, accompanied by Mr. Francisco González Bonilla (Bruce Lee), got off the bus in the city of Concepción. According to the statements made by the bus driver and his assistant, Mr. González Bonilla got off the bus, took Dr. Spadafora's suitcase, insisted that he accompany him and was followed by him to an unknown place.

g. On the night of September 13, 1985, according to the investigation conducted in Costa Rica, a witness, Mr. José Angel Chinchilla Ríos (who lives some one thousand meters from the place where Dr. Spadafora's body was found in Costa Rican territory) said that at midnight on September 13, 1985, near his place of residence, he saw two green vans wagons of the type used by the Panamanian Guard. Moreover, others who live in the area said that they had heard automobile noise similar to that made by the type of jeep used by the Panamanian Guard in that sector.

h. On September 14, 1985, at 8:00 a.m., Mr. Franklin Vargas Valverde discovered the decapitated corpse of Dr. Hugo Spadafora Franco, in El Roblito de Laurel, 200 meters from the Panamanian border, in Costa Rican territory. According to the report of the autopsy, performed in Costa Rica, Dr. Hugo Spadafora had been tortured and decapitated while still alive.

3. It is a well-known fact that Dr. Hugo Spadafora entered Panama on September 13, 1985, and was later temporarily detained at two border military posts (Jacú and La Estrella, respectively), as

corroborated in statements made by the following witnesses: Mario Barrantes Escorcía, the taxi driver who drove Dr. Spadafora from Coto 47 to Paso Canoas, a city near the Panamanian border; Iván Darío González Justavino, owner of the "Los Mellos" restaurant, located in Panamanian territory, where Dr. Hugo Spadafora had had lunch; Edwin Guerra, driver of the first bus on the Border-David line on which Dr. Spadafora tried to travel; Alexis Noe Baules, driver of the bus on the Border-David line, that transported Dr. Spadafora to the city of Concepción; Edwin Noel Núñez, assistant driver of the bus on the Border-David line that transported Dr. Hugo Spadafora to the city of Concepción; Orlando José Ortega Alfonso, Ricaute Esquivel Rodríguez, and Santos López Lobón, witnesses who saw Dr. Spadafora being detained for the first time, at the Jacú military checkpoint located in Panamanian territory.

4. In his judgement No. 139, dated December 31, 1985, quoted in part by the Government of Panama in its reply dated August 6, 1986, the First Superior Court District Attorney indicated that the "Investigation conducted by the Ministry of Public Affairs has been able to establish beyond a doubt that Dr. Hugo Spadafora Franco died, that his corpse was discovered in La Quebrada El Roblito by Costa Rican authorities, and that an autopsy was performed on him in that country. It is also pointed out that Spadafora Franco's death, the certificate of which is found on Folio 190, occurred in Laurel, in the Republic of Costa Rica." In view of the foregoing, the District Attorney recommended dismissal of the case against Messrs. Francisco González Bonilla, Omar Vega Miranda, and Eliecer Ramos, all members of the Panamanian Defense Forces.

5. Following the investigation conducted by the Ministry of Public Affairs of Costa Rica, the Fourth Superior Court of the Third Judicial District, in a decision dated February 7, 1986 (quoted in part by the Government of Panama in its reply of August 6, 1986), decided, by a majority vote, to dismiss the case against the three individuals accused González, Vega, and Ramos, thus accepting the arguments of the First Superior Court District Attorney. In point of fact, the Government of Panama reproduced the decision adopted by the members of the Fourth Superior Court in part as it did not indicate the evidence that led that court to decide on a dismissal the case and also did not refer to the dissenting vote cast by Judge Andrés A. Almendra.

6. In accordance with the information provided by the Government of Panama on August 6, 1986, Mr. Winston Spadafora Franco on June 17 of this year, filed a charge with the Office of the Attorney General of the Republic against General Manuel Antonio Noriega, for the murder of Dr. Hugo Spadafora, to which he attached a series of newspaper clippings.

7. Pursuant to legislation for criminal proceedings, the Office of the Attorney General of the Republic transferred review of the case to the Criminal Chamber of the Supreme Court, as per Decision No. 28, of June 25, 1986. In view of the fact that a proceeding had been initiated in the matter, which had been temporarily stayed, the Office of the Attorney General decided to consider the possibility of reopening the proceeding, on the basis of the newspaper clippings submitted by the plaintiff, and finally concluded that "the newspaper clippings presented do not satisfy the procedural assumptions required to reopen the case...", for which reason it finally recommended not to proceed with the accusation made by Mr. Winston Spadafora.

8. In its decision dated June 27, 1986, the Criminal Chamber of the Supreme Court, accepted the opinion of the Office of the Attorney General and declared that it could not begin a new proceeding, inasmuch as one had already been initiated and discontinued. At the same time, the Supreme Court also ruled that it would likewise not be possible to allow to reopen the proceeding against Messrs. Omar Vega Miranda, Eliecer Ramos, and Francisco González Bonilla, since as the case against them had been dismissed.

Finally, the Supreme Court evaluated the new evidence submitted by Mr. Winston Spadafora, which

consisted of newspaper clippings, to consider the possibility of reopening the proceeding, this time against General Manuel Antonio Noriega. After its review, the Supreme Court decided to reject the charge filed by Mr. Winston Spadafora, maintaining that the evidence submitted was not sufficient to warrant a reopening of the proceeding. In that regard, it should be recalled that the investigation begun on September 17, 1985, by the First Superior Court District Attorney, was also prompted (as was recognized by the Government of Panama itself, in its reply dated August 6, 1986) by newspaper reports published in "La Prensa" and "Extra" newspapers, which accused three members of the Defense Forces of Panama of the murder of Dr. Hugo Spadafora Franco.

9. In its reply dated August 6, 1986, the Government of Panama concluded that in the present case the remedies under domestic jurisdiction had been completely exhausted, inasmuch as the proceeding had been dismissed in favor of the accused Messrs. Vega Miranda, Ramos, and González Bonilla, and that there were no grounds for reopening the case. In that connection, the Government of Panama pointed out that "in this case, all of the jurisdictional procedures established by the laws of the Republic of Panama have been exhausted."

10. In its replies to the Commission, the Government of Panama has merely given partial information concerning the legal proceedings conducted to exhaust the remedies under domestic jurisdiction, without reviewing the substance of the matter.

11. In accordance with the position taken by Judge Andrés A. Almendral C. of the Fourth Superior Court of Justice of Panama, in his dissenting vote, dated February 7, 1986, the legal investigation conducted by the Panamanian courts to clarify the homicide of Dr. Spadafora contains serious contradictions, gaps, and inconsistencies. In that regard, the Commission agrees with the aforementioned judge, to the effect that the provisions of Article 2136 of the Legal Code of Panama regarding grounds for dismissal do not warrant a dismissal of the case.

Moreover in this regard, the Commission wishes to draw attention to a serious error contained in the legal investigation conducted by the First Superior Court District Attorney of the Third District of Panama, who in the preambular part of his resolution, maintains that, in accordance with the report of the autopsy performed by the Costa Rican coroner, Dr. Spadadora's death occurred in Laurel, Costa Rica. The documentation that the Commission obtained from the Government of Costa Rica indicates that the decapitated body of Dr. Spadafora was found in Laurel, but in no way states that his death occurred there.

12. In its reply dated May 26, 1987, the Government of Panama maintained that "if we continue on the assumption that the Honorable Inter-American Commission on Human Rights is interested in determining whether the procedures under domestic jurisdiction have been complied with in our country, we will have to refute supposed declarations contained in the investigations conducted by other governments, of which the authorities of the Republic of Panama have not officially taken cognizance." In this regard, it should be pointed out that the problem of exhaustion of domestic remedies is not a matter of controversy between the parties, since as both agree that such remedies have been fully exhausted. Moreover, as indicated in Resolution No. 30/86, adopted by the Commission at its 68th session, the express recognition by the Government of Panama that the domestic remedies had been exhausted was one of the preambular paragraphs of which special account was taken when ruling in favor of the admissibility of the case in question.

Moreover, in its aforementioned declaration, the Government of Panama disqualifies the formal testimony of some witnesses to the Costa Rican legal authorities in the proceeding initiated in Costa Rica to shed light on the homicide of Dr. Hugo Spadafora Franco. In this regard, the Commission would like to point out that, according to information provided by the Government of Panama, the domestic judicial bodies in Panama responsible for conducting an investigation into Dr. Spadafora's homicide have, on several

occasions in their resolutions referred to the coroner's investigation conducted in Costa Rica. Moreover, as stated in the previous preambular paragraph, the First Superior Court District Attorney was mistaken when he said that the autopsy on Dr. Hugo Spadafora, which was performed in Costa Rica, indicated that his death had occurred in Costa Rican territory.

13. The first versions of the facts provided by different witnesses in this case, which implicate members of the Panamanian Defense Forces in the murder of Dr. Hugo Spadafora Franco, were subsequently confirmed in statements made on June 11, 1987, by Mr. Nicolás Ardito Barletta, former President of the Republic of Panama and on June 10, 1987, by Colonel Roberto Díaz Herrera.

14. The legal investigations conducted in Costa Rica clearly demonstrates as stated in the report drawn up by the Legal Investigation Organization, that "Mr. Hugo Spadafora was killed in Panamanian territory, and his body was disposed of in Costa Rican territory."

15. The Commission has the necessary criteria to conclude that the Government of Panama is responsible for the murder of Dr. Hugo Spadafora Franco.

16. That the Commission, seated at its 72nd Regular Meeting, after studying the request for reconsideration of this resolution presented by the Government of Panama, decided unanimously to confirm its resolution, in view of the fact that the observations made by the Government of Panama did not credibly detract from the Commission's original conclusions.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLVES:

1. To declare that the Government of Panama has violated Articles 4 (the right to life); 5 (the right to personal integrity); and 7 (the right to personal freedom) embodied in the American Convention on Human Rights, to which Panama is a State Party, because it is responsible for the death of Dr. Hugo Spadafora Franco.

2. To declare that the Government of Panama has violated Article 8 (legal guarantees) and Article 25 (the right to legal protection) enshrined in the American Convention on Human Rights, to which Panama is a State Party, because of its failure to conduct an impartial, exhaustive legal investigation into the homicide of Dr. Hugo Spadafora Franco.

3. To recommend that the Government of Panama order an exhaustive and impartial investigation into the deeds that have been alleged, to determine the individuals responsible for the murder of Dr. Hugo Spadafora Franco, and to bring them to justice so that they may receive appropriate legal penalties.

4. To recommend that the Government of Panama report to this Commission concerning the results of the investigation into the murder of Dr. Hugo Spadafora Franco, within 60 days of the date of this resolution.

5. To request that the Government of Panama guarantee the safety of and grant the necessary protection for the family of Dr. Hugo Spadafora Franco, as well as of all persons who have taken part as witnesses, or in any other manner in this case.

6. To recommend that the Government of Panama accept the jurisdiction of the Inter-American Court of Human Rights with respect to this case.

7. To include this resolution in its Annual Report for the purposes of Article 63 "g" of its

Regulations and to so inform the plaintiff.