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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 29/89; Case No. 10.198
Session:	Seventy-Sixth Session (18 – 29 September 1989)
Title/Style of Cause:	Reynaldo Tadeo Aguado Montealegre v. Nicaragua
Doc. Type:	Resolution
Decided by:	Chairman: Oliver H. Jackman; First Vice-Chairperson: Elsa Kelly; Second Vice-Chairman: Leo Valladares Lanza; Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; John R. Stevenson; Patrick L. Robinson
Dated:	29 September 1989
Citation:	Aguado Montealegre v. Nicar., Case 10.198, Inter-Am. C.H.R., Report No. 29/89, OEA/Ser.L/V/II.77, doc. 7 rev. 1 (1989-1990)
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HAVING SEEN:

1. Various reports presented about the situation of Reynaldo Tadeo Aguado Montealegre, in Nicaragua, and the transmission of the pertinent portions to the Government of Nicaragua, dated June 27, 1988, as follows:

REYNALDO TADEO AGUADO MONTEALEGRE, age 27, a former soldier in the Ministry of the Interior, was arrested at his home on March 4, 1986, taken to El Chipote, tried by the Military Court of First Instance in summary proceedings, and sentenced to 30 years' imprisonment on a charge of espionage. At present he is in the Tipitapa Model Prison.

Mr. Aguado was held in El Chipote for 30 days on orders from the State Security forces. During that time, he was compelled to make self-incriminating statements under duress, which constitutes a violation of the judicial guarantees recognized by Article 8 of the American Convention on Human Rights. It is believed that sections d and g of item 1 of that Article were violated in particular, since he did not have the assistance of a defense lawyer during his stay in El Chipote, the result was the self-incriminating statements. Article 8, 3 is also considered to have been violated. It should be emphasized that the confession extracted in the manner indicated constituted the only evidence against Mr. Aguado.

The State Security agents had unlimited time for their interrogation, in contrast with the brief periods of the summary trial. This resulted in rejection of the appeal that was submitted owing to its presentation, according to the Court Secretariat, one hour after expiry of the deadline. This interpretation is erroneous, since the periods run from midnight to midnight, as stipulated in the Procedural Code and in Article 4 of the Law of June 5, 1970.

The sentence imposed is moreover completely inconsistent with the legal interpretation of Articles 528, 530, and 537 in Chapter XIII of the Penal Code currently in force for crimes against the State External Security forces.

Furthermore, Reynaldo Aguado suffers from neuritis, polyneuritis, intra-costal neuritis, arthritis, tachycardia, and severe visual disorders, all of which require treatment outside the prison. The proper

steps to this end have been instituted with the National Committee for Promotion and Protection of Human Rights.

Finally, Reynaldo Aguado has been deprived of the benefits of the amnesty granted in November 1987. This constitutes discriminatory treatment, contrary to the spirit of the Esquipulas Accords and the subsequent Sapoa Agreement. Reynaldo Aguado was unjustly sentenced for reasons stemming from the current situation of Nicaragua. He should therefore be eligible for amnesty, since this represents a way to surmount the problems besetting Nicaragua.

2. The additional information provided by the claimant and transmitted to the Government on October 4, 1988, according to which:

You have duly processed the Complaint Document, together with its annexes, which I submitted to you on my behalf on March 18 of this year against Nicaragua's Sandinista Government and/or its members cited in the complaint for their flagrant, repeated, and continuous violations of the "human rights" of the victim, Nicaraguan citizen, Reynaldo Tadeo Aguado Montealegre, age 26, single, and a former soldier in the Sandinista People's Army, who is serving an unlawful sentence imposed by a military court in political-military proceedings. The court refused to recognize and violated his rights to personal liberty; his right to due process, recognized by the international agreements on human rights; and, all other human rights relevant to his life and personal and moral integrity, which were specifically mentioned in the complaint as supported by the American Convention on Human Rights signed in San Jose, Costa Rica, on November 22, 1962.

Distinguished members of the Commission, you deemed the aforesaid Complaint Document and its annexes admissible for processing and you asked the Sandinista Government, accused of violating the victim's human rights, for information which it was to furnish within a period of 90 days. The deadline which you set expired last September 27 (Article 48 of the Convention and Article 34, section 5 of the IACHR Regulations).

Only in the event that the Sandinista Government had requested the Commission for a 30-day extension, based on just cause, of the 90-day period granted to it for presentation of its report on the Complaint Document and annexes could that deadline be extended. Otherwise it is precluded and the presumption established in Article 42 of the Regulations applies pursuant to international standards of procedural law, which recognize the violations described in the Complaint Document and its annexes.

Since the period granted to the Sandinista Government to provide the information is precluded, and the deeds and acts of the responsible members of that Government violating the victim's human rights continue to occur repeatedly, endangering his life or physical integrity, the only step that remains to be taken, if you deem it advisable and necessary, is to call for an investigation of the victim's status in Nicaraguan territory, so that you may impose precautionary measures to protect his person.

Because the case warrants no compromise whatsoever, inasmuch as this is not a claim for damages caused by infringement of human rights in connection with property or business, but the protection of the very life and physical and moral integrity of the victim, Mr. Reynaldo Tadeo Aguado Montealegre, I request that you proceed in accordance with the provisions of Article 50 of the Convention, establishing the report of the facts, the basis of the Sandinista Government's violations, and the pertinent juridical and equity-based conclusions which should be applied and imposed in order to safeguard and preserve the victim's human rights, notifying the interested parties of your factual and juridical conclusions.

3. The November 17, 1988, letter from the Inter-American Commission on Human Rights to the Government of Nicaragua transmitting the additional information submitted by the plaintiff and noting that "the communication that remains unanswered, to which the claimant refers when he asks that the Commission apply Article 42 of its Regulations, is the accusation lodged on June 27, 1988, a copy of which is attached herewith."

4. That the new additional information transmitted to the Government of Nicaragua on November

17 consists of the following:

Mrs. Yamilet Montealegre de Aguado hereby subscribes to the complaint in the capacity of a mother grievously affected by the misfortune of her son Tadeo, whose physical and moral integrity has been attacked and whose life is constantly threatened and/or his physical or moral person in danger of permanent damage as a result of the acts of officials and agencies of the Government of Nicaragua that have unlawfully sentenced him to serve thirty (30) years in prison following a military-type trial violating the rules of procedure recognized as the procedural rights in defense of the physical person by the Pact of San Jose.

Both the Pact of San Jose (Article 48,1 a) and your current Regulations (Article 34 - Initial Proceedings - 1 a, b, and c) state that when the complaint has been declared to be admissible, as is the situation with Case 10.198 (Nicaragua), the pertinent information shall be requested from "the Government of the State which the authority indicated as the party responsible for the alleged violation belongs." That information thus requested shall be remitted by that government within a reasonable period, to be established by the Commission after considering the circumstances in each case (Article 4, a of the Pact of San Jose).

Pursuant to the foregoing, the Regulations indicate 90 days as a reasonable period for the Government of the State to issue and deliver the pertinent report to the Commission, counted from the date of the official request calling for that report (Article 34, 5 of the Regulations). More importantly still, however, the provisions of the aforesaid Article 34, 2 urgently order the Commission, in cases when it is believed that the life, personal integrity, or health of the person (the victim) is in imminent danger, to demand an immediate and prompt response from the accused Government, to be submitted as quickly as possible.

Item 6 of the aforementioned Article 32 of the Regulations is pertinent in that it states that only at the request (understood to mean in writing) of the Government of the offending State, and for justified cause, may the original deadline for presentation of the report be extended for another 30 days. This is tantamount to saying that you, the Honorable Commission, cannot grant automatic extensions.

Article 42 of the oft-cited Regulations establishes that *juris tantum* presumption that if the Government of the offending State has not referred to the events transmitted to it by the Commission in requesting the report, they must be presumed to be true and, consequently, that the factual basis of the violation of the victim's human rights set forth in the List of Grievances is proven.

I have in my possession, as does Mrs. Yamilet Montealegre de Aguado, the official note dated June 27, 1988, in which the IACHR Executive Secretary, Dr. Edmundo Vargas Carreño, informed her that processing of her claim had started, pursuant to the Commission's Regulations (Ref: Case No 10.198 - Nicaragua). It goes on to say that "In a note dated June 27, 1988, the Commission has transmitted the pertinent portions of your communication to the Government of Nicaragua, requesting that it furnish the corresponding information. As soon as we receive the reply from that Government, we shall advise you of its contents so that you may submit your comments thereon."

Accordingly, the reasonable period of ninety days which the Commission granted to the Government of Nicaragua for presentation of the report began on June 27, 1988. The deadline expired on September 26, 1988. The Government of Nicaragua never asked for an extension: we have repeatedly asked for word as to whether the Government of Nicaragua has complied with the Commission's request or not.

The Commission was asked to apply the provisions of Articles 42; 44 1, 2, and 3; 46; and, 47 of the Regulations. In other words, that it conduct an on-site investigation, given the urgency of the case, that would confirm the violations of the victim's human rights, so that it could issue its opinion of the facts and its pertinent recommendations without further delay, restoring the victim's breached rights and ordering his immediate release.

Based on the foregoing, I respectfully ask the Honorable Commission to declare that the time limit for presentation of the report from the Government of the State of Nicaragua has passed; and that the IACHR proceed to apply Article 42 and the other pertinent provisions of the Regulations immediately, thereby resolving the case of the victim, Mr. Reynaldo Aguado Montealegre.

5. The various communications of the claimant denouncing the mistreatment, penalties, and

substandard prison conditions to which Reynaldo Aguado Montealegre has been subjected, stating that all these factors are producing a sharp deterioration in the state of his health.

6. The responses from the Government, containing an account of various medical check-ups performed on the person in question as well as interviews with government officials, and stating that the problems confronting Mr. Aguado stem from breaches of discipline; that he has not been discriminated against, much less subjected to treatment contrary to the standards of human rights.

7. Resolution No 11/89 adopted by the Inter-American Commission on April 14, 1989, in its considerations points out:

a. The various accusations received, a summary of which was sent to the Government of Nicaragua on June 27, 1988, meet the formal requirements for admissibility.

b. That despite repeated requests, the Government of Nicaragua has failed to provide the information concerning the facts underlying this case, although it has cooperated in timely fashion by supplying information on the status of Reynaldo Aguado Montealegre's imprisonment and health.

c. That Article 42 of the Inter-American Commission on Human Rights Regulations, which the claimant has repeatedly requested be applied, stipulates:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

d. That the deadline cited in Article 34.5 of the Regulations has long since expired, while no further criteria expressly contrary to the presumption referred to in Article 42 of the Regulations has been added to the case record.

The Inter-American Commission therefore resolved:

a. To consider the accusations to be true and to declare that the Government of Nicaragua has violated the right to due process enshrined in Article 8 of the American Convention on Human Rights in the prosecution of Reynaldo Tadeo Aguado Montealegre, on which his current detention is based.

b. To transmit Resolution No 11/89 to the Government of Nicaragua so that it might submit its observations within sixty days of the date of transmittal, April 19, 1989.

e. The observations of the Government of Nicaragua, transmitted by note of June 14, 1989, and received by the Executive Secretariat on June 26 of the same year, according to which:

The Government of Nicaragua sees fit to transmit to the Inter-American Commission on Human Rights its observations on Resolution No 11/89 concerning REYNALDO TADEO AGUADO MONTEALEGRE, which presumes the accusations to be true and declares that the Government of Nicaragua has violated the right to due process.

It is necessary to evaluate the accuracy of the statements that the IACHR says it presumes to be true.

First Statement: That Mr. Aguado Montealegre was prosecuted under summary proceedings.

This statement is totally inaccurate. Former Second Lieutenant Reynaldo Aguado Montealegre, as a member of the Armed Forces, was under military jurisdiction, and was tried in accordance with the procedure set forth in Decree No 591 of December 2, 1980, the Organic Law of the Military Auditor's Office and Provisional Military Criminal Procedure, which has neither the characteristics nor the structure of what in our legal systems would be known as summary proceedings. A plain copy of that law is attached.

Second Statement: That he was jailed for 30 days at El Chipote and that there, self-incriminating statements were extracted from him under pressure.

The fact that Mr. Aguado Montealegre had been at El Chipote for 30 days (he was there for less than 30 days) would not be in violation of any right, because during the period in question a state of emergency was in effect in Nicaragua, involving the suspension of several individual rights, including the time limit

on detention.

There is no indication or evidence that the statement given by Mr. Aguado to the General State Security Bureau (DGSE) was made under actual pressure; the only sort of pressure admissible in this case is the logical effect of being imprisoned and under investigation. It should be noted in the text of the statement that the investigating officer gave Aguado the option of making a statement or not and that he chose to do so, and that statement is signed.

Third Statement: It should be taken into account that the confession extracted in that manner was the only evidence against Mr. Aguado.

This is absolutely false. While it is true that the investigations conducted by the General State Security Bureau were added to the case record and are legally valid according to the aforementioned Decree Law No 591, they were not the only evidence gathered during the trial to determine the criminal liability of Mr. Aguado.

To wit: At 2:15 p.m. on April 2, 1986, Reynaldo Aguado makes his statement to the investigating military attorney. The statement is amplified at 6:00 p.m. on April 10, 1986. On both occasions, the prisoner confesses to committing the crimes and states that he did so because the safety of his mother and siblings living in Miami was endangered by threats from the CIA. At a later stage in the proceedings, at 3:30 p.m. on April 12, 1986, in his confession to the chartres, he does not deny committing the crimes of which he is accused, but says that he does not take responsibility for them because he acted under the CIA's threat against his family living in Miami. Another piece of evidence is the record of the search and seizure of objects found at the home of Mr. Aguado Montealegre by agents of the General State Security Bureau, as follows:

A search was made of the place mentioned above and the following objects were confiscated: four sheets of carbon paper for secret messages; a wicker ashtray with a secret compartment for espionage materials; a cushion with a secret compartment for espionage materials, two cameras disguised as cigarette lighters for espionage activities; a transparent plastic tape with step-by-step instructions on the use of cameras (lighters); a transparent plastic tape with step-by-step directions for the using the carbon paper and bringing messages to light; two black Cricket brand lighters; a half-burnt paper with a number of questions concerning the work of the Ministry of the Interior; a Magnum 44 revolver; a Browning 9 mm pistol No 31160; a rifle No 60654; an M-16 AL-1505457; a T.T. 349; a 22-caliber revolver No 259197, and a Ceska No 673204.

The seizure of these objects was performed in the presence of Mrs. Fátima Ortega Roa, who confirmed that when the authorities searched the house, they took the ashtray that was in the living room and the Cricket lighters. She also explained that her daughter brought the lighters from Miami, and said they were being sent to her uncle Reynaldo, but that she, Aurora, decided to keep them and gave only one to Reynaldo, giving another to her husband, and keeping the others in her closet, and that she recognized them when they were shown on television. In other words, there is no doubt that the objects employed by the CIA were in her possession.

Furthermore, the investigators describe the confiscated objects. Naturally, there are no eyewitnesses to the conversations between Mr. Aguado and CIA agents in Miami or in Managua, but one consideration should also bear in mind the statement of Petronio Martín Morice Montealegre, cousin of Mr. Aguado, who relates how a visa was issued to Reynaldo at the United States Embassy in Managua. This is in complete agreement with the defendant's statement: When he received the exit permit, he went to the embassy and they would not let him in. He immediately called his mother, who said that a brother-in-law would get it right away and she would call him in half-an-hour. Half-an-hour later, his mother called and directed him to go to the embassy, and they immediately gave him a one-year visa; but Petronio Martín Morice, who also was requesting a visa, did not receive one.

Furthermore, Mr. Aguado's defense attorney, Dr. Bendaña, in a protest against the conviction of Mr. Aguado Montealegre, filed after the statutory time limit had passed, stated that the defendant had been coerced into committing those crimes and that it was true that the objects with which he would commit the crime had been confiscated from him but he had not used them. That is, the defense attorney himself

only alleges extenuating circumstances but never denies the defendant's involvement in the events under investigation.

In other words, there is sufficient proof of the facts and of the criminal liability of Reynaldo Aguado Montealegre; therefore it is totally untrue that the only evidence against him is his statement to the General State Security Bureau.

It should also be emphasized that Reynaldo Aguado Montealegre from the very start of the proceeding before the military prosecutor, was assisted by one of the best criminal lawyers in the country, Dr. Orlando Bendaña Darbelles. The record reflects Dr. Bendaña's participation in the proceedings, and shows that he had the opportunity to request the measures he deemed appropriate for the defense of Mr. Aguado and cross-examined all of the witnesses. At that time he could have refuted any piece of evidence gathered by the General State Security Bureau.

Fourth Statement: That the appeal filed was rejected because it was presented one hour late and that this is improper because the time periods run from midnight to midnight.

That statement is incorrect because:

1. The Court pronounced sentence against Mr. Aguado Montealegre at 2:00 p.m. on April 23, 1986.
2. The defense attorney is notified of the sentence at 10:30 a.m. on May 7, 1986.
3. The defense attorney files a written appeal, which is presented at 9:30 a.m. on May 9, 1986.
4. The appeal is allowed by writ and the defense is summoned to prepare and present its plea within five days. The writ is served at 4:20 p.m. on September 25, 1986.
5. At 10:30 a.m. on October 1, 1986, the Court declares the appeal void because the five-day period beginning at midnight on September 25 expired at midnight on September 30.
6. The defense attorney presents a plea after the statutory time limit has passed, at 10:48 a.m. on October 1, 1986.

It should also be noted that at no point did the defense attorney object to the voiding of the appeal; he could have requested reinstatement, but took no action.

Fifth Statement: That the sentence imposed is in total discord with the legal interpretation of Articles 528, 530, and 537 of the current Penal Code.

That statement, presented without any substantiating arguments, lacks validity. The acts of having twelve conversations in Miami with CIA agents, agreeing to collaborate with them; submitting to a polygraph or lie detector test twelve times; providing verbal information on the organization of the Ministry of the Interior (MINT); supplying information on the defense plans against the FDN (Nicaraguan Democratic Front) and the names of the senior officials of the General State Security Bureau; receiving instruments for spy activities and an initial payment of US\$25,000 from them, and carrying out in Managua the series of contacts and meetings requested of him clearly prove or constitute the crimes of treason and espionage attributed to the defendant and codified in the aforementioned Articles 530 and 537 PC. He also committed the crime of divulging military codified secrets in Article 66 of the provisional law covering the crimes committed.

On the basis of the preceding information, we feel that at no time has there been a violation of the right to due process enshrined in Article 8 of the American Convention on Human Rights in the prosecution of Reynaldo Tadeo Aguado Montealegre.

We attach the following:

- Plain copies of the statements of Mr. Aguado Montealegre.
- A copy of the statement of Petronio Martín Morice.
- A copy of the search and seizure record.
- A copy of the defense attorney's writ of appeal.

8. The observations of the petitioner on the Government's response, according to which:

For the sake of brevity, in referring to the observations of the Government of Nicaragua on Case No

10.198, my responses will follow the sequence of those observations:

FIRST STATEMENT:

The Government of Nicaragua says that the prisoner "was under military jurisdiction and was tried in accordance with the procedure set forth in Decree No 591 of December 2, 1980, the "Organic Law of the Auditor's Office" and states that that procedure has neither the characteristics nor the structure of summary proceedings.

The complaint filed in defense of the human rights of the aforementioned prisoner shows that he spent more time in the "El Chipote" jail under investigation by the Secret Police of the General State Security Bureau (March 4 to June 4, 1986). Before the proceedings were initiated, during the proceedings, and even after the guilty verdict was issued, young Aguado was held incommunicado at El Chipote prison at the mercy of officials of the General State Security Bureau (DGSE). (I attach the sworn statements of two prisoners who can substantiate this.)

The "American Convention on Human Rights" in Article 7 (Right to Personal Liberty), paragraph 3, establishes that "No one shall be subject to arbitrary arrest or imprisonment" and paragraph 4 of that article says that "Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him."

The prisoner spent 90 consecutive days (from March 4 to June 4, 1986) in the custody of the General State Security Bureau.

The Government of Nicaragua and its Military Tribunal, which issued the verdict, bases both the corpus delicti, or the supposedly incriminating facts, and the defendant's responsibility for them EXCLUSIVELY ON HIS CONFESSION, which was obtained in the "El Chipote" prison, in violation of his human rights, and therefore has no legal validity.

SECOND STATEMENT:

The Government of Nicaragua states that: the fact that Mr. Aguado spent 30 days in the "El Chipote" prison does not violate any right, because at the time there was in effect a STATE OF EMERGENCY UNDER WHICH SEVERAL INDIVIDUAL RIGHTS WERE SUSPENDED, INCLUDING TIME LIMITS ON DETENTION.

"There is no indication or evidence that the statement given by Mr. Aguado to the General State Security Bureau (DGSE) was made under actual pressure; the only sort of pressure admissible in this case is the logical effect of being imprisoned and under investigation ..."

Disrespect for the exercise of human rights and for the international treaties on the matter is clearly demonstrated by the fact that the Government of Nicaragua itself claims not to have violated any human right of the prisoner in DETAINING HIM with no legal counsel for 30 days under investigation by the Security Office.

Reynaldo Aguado spent 90 days in the "El Chipote" prison, not 29 days as stated by the Government of Nicaragua. In Article 5 (Right to Humane Treatment), paragraphs 1 and 2, the "Convention" establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

The Inter-American Court of Human Rights, in its July 29, 1988, finding on the VELASQUEZ RODRIGUEZ case, decided the following:

3. Furthermore, the prolonged isolation and coercive incommunicability to which the victim is subjected in themselves constitute forms of cruel and inhumane treatment which are harmful to the mental and moral integrity of the individual and the right of every detainee to due respect for the inherent dignity of the human person and are therefore a violation of the provisions of Article 5 of the Convention that recognize the right to humane treatment.

The fact that for the preliminary investigation, during the military trial, and after the nonappealable

verdict, the investigating officials held Reynaldo Aguado in "EL Chipote" prison in Managua for over 90 days, subjecting the victim to every sort of physical and moral torture, indicates to us that the prisoner's confession was extracted under torture.

The human rights recognized in the "Convention" have a twofold purpose. On the one hand, they represent the minimum legal elements that are essential for guaranteeing respect for and the existence of the human individual: liberty, the right to equal protection under law, the right of defense, the right to humane treatment, by virtue of the abolition of torture and degrading methods of interrogation, etc.

On the other hand, such guarantees in defense of human rights, to the extent they are respected, ensure the important state function of imparting justice. They surround the accused with the necessary guarantees to ensure that human rights will never be sacrificed to a misguided interpretation of state interests.

THIRD STATEMENT:

The Government of Nicaragua states that the confession extracted from the defendant was not the only evidence against him submitted by the Government.

"While it is true that the investigations conducted by the General State Security Bureau were added to the case record and, under Article 111 of the aforementioned Decree Law No 591, they are legally valid, they were not the only evidence gathered during the trial to determine the criminal liability of Mr. Aguado."

This third statement contains erroneous ideas about the essential prerequisites for a criminal military trial, which it is well to clarify prior to refuting the government's statements.

Military Jurisdiction: The aforementioned Decree Law No 591, established in Nicaragua a system of military justice that not only has jurisdiction over military personnel in times of war, peace, or internal revolutionary conflict, for crimes strictly connected with the military, but also extends to any other crime and goes even so far as to bring under its jurisdiction civilians who have participated in any crime as perpetrators, accomplices, or accessories after fact to the crime of a military person or in association with him.

When the military judge feels it is appropriate, he can disqualify himself from trying the case in the military court and transfer the jurisdiction over the case to the ordinary common courts (Article 19 of Decree Law No 591).

From that it can be inferred that when a member of the military, whether of the Sandinista People's Army or of the Ministry of the Interior, is connected with a case involving civilians, it is left to the discretion of the military judge whether he thinks it is appropriate to disqualify himself from trying the case. That procedure is a clear violation of the Pact of San Jose.

Any criminal trial, regardless of the court in which it is tried, requires compliance with the necessary rules of procedure in order for the verdict to be valid, because the defendant is presumed innocent until proven guilty of the criminal offense through public proceedings at which he has been accorded all of the guarantees necessary for his defense (Article 8, Right to a Fair Trial, Pact of San Jose).

In order to issue a valid conviction, the judge or court, regardless of the jurisdiction in which the case is tried, must duly comply with the following rules of procedure, which must be legally tested in court:

- a. Full proof of specific facts which, subsumed under criminal and substantive laws, demonstrate the existence of specific legally defined offenses (*corpus delicti*).
- b. The definition of a punishment for those acts under the penal code or under special legislation prior to their perpetration (*nullum crimen sine lege*).
- c. That there be half proof or serious concordant presumptions concerning the participation of the defendant or accused and his level of participation in perpetrating the crime, either attempted, frustrated, or consummated.

The first element, under letter a, is simply the application of the principle "*nulla pena sine crimen*," which requires that the act under investigation must be proven, specifically defined, and subsumed under substantive penal law; that is, it must not be an imagined, presumed, or simply alleged act. This element is intended to "prevent thinking based merely on subjective intentions and any more or less well-grounded prejudgment," because although such reasoning is valid for the secret police of the Ministry of the Interior, it is in no way admissible to a judge or court of justice in any jurisdiction trying a criminal case.

There should be clear recognition of what the Government of Nicaragua has been able to recognize, i.e., the "body of the crime," which is called instruments of the crime or material evidence for the prosecution which help to demonstrate the existence of the criminal act.

Thus, in the crime of robbery, the body of the crime is the item stolen; its EXISTENCE IS PROVEN THROUGH A PURCHASE RECEIPT, if available, and STATEMENTS OF WITNESSES who were familiar with the object. Its value is proven through expert testimony.

The crimes of which Reynaldo Tadeo Aguado-Montealegre was accused leave behind physical evidence, traces, and signs, documents, plans, written studies, photographs, etc. However, there is no evidence of facts connecting the prisoner to the crime of "treason."

In the documents submitted by the Government of Nicaragua, there is no proof of criminal acts committed by the prisoner, Aguado-Montealegre, in connection with consummated crimes of "treason." Therefore, the prisoner should have been absolved of those charges in accordance with the aphorism "nulla penae sine crimen."

Concerning the charge of espionage (Article 537 of the Penal Code), the prisoner did not commit that crime and there is no proof that he obtained, transmitted, trafficked in, or illicitly used secret materials or political, military, or diplomatic information concerning state security, defense activities, or the foreign affairs of Nicaragua, with the intention of delivering them to a foreign nation, person, group, association, or organization that is an enemy of Nicaragua.

The same should be said of the crime of "Disclosing Secrets," which must involve the transmittal of documents, photographs, drawings, plans, and any other sort of data on military personnel, fortifications, or military operations, or of information on classified matters essential to the interests of the country.

This latter crime must involve transmitting "secrets" in the form of plans, drawings, documents, photographs, etc., or leaving such items, if in the possession, custody, or knowledge of the employee, vulnerable to ready access by unauthorized individuals (Article 538 of the Penal Code). Where was there proof in the trial of a disclosure of secrets by the accused?

Article 49 of aforementioned Decree No 591 indicates what is relevant to the "body of the crime" as well as to the participation, and degree of participation, of the accused in perpetrating the criminal acts. It defines not only a confession (which almost always refers to the participation of the accused), but also statements by witnesses, expert reports, MATERIAL EVIDENCE FOR THE PROSECUTION, DOCUMENTS, and, lastly, OTHER SIMILAR ELEMENTS INTENDED TO PROVE OR DISPROVE THE EXISTENCE OF A CRIMINAL ACT, THE GUILT OR INNOCENCE OF THE ACCUSED, and the circumstances which, if applicable, gave rise to the perpetration of the crime.

In the remarks made by the Government of Nicaragua under the subtitle "THIRD STATEMENT," it is clear that that government, through its administrative and judicial officials (the DGSE secret police of the Ministry of the Interior, the military prosecutor, and the military court) violated the human rights of Reynaldo Aguado, who is serving an illegal sentence of 30 years in jail for crimes that were not proven in the military trial.

I have already said that the trial did not demonstrate the "corpus delicti" of the acts of which the prisoner was accused by the military prosecutor in his "criminative findings" (see the accusation filed by the aforementioned prosecutor).

First, it is very serious that the military prosecutor added to the case proceedings (first phase) the "inquest file" issued by the DGSE secret police of the Ministry of the Interior, who used on the prisoner, Aguado, for crimes that were not proven in the military trial, methods of interrogation that we know all too well. A period of more than thirty days was taken for the inquest (during the inquest, during the trial, and after sentencing, a total of 90 days), in which the prisoner, WITHOUT THE ASSISTANCE OF ANY DEFENSE COUNSEL, was subjected to interrogation by the DGSE in "El Chipote" prison.

If the prosecutor accepted the inquest file of the DGSE (secret police) as legal, the accused should have been accorded a full defense by an attorney of his choice.

The Government of Nicaragua, which committed itself to preserving, adhering to, and enforcing the American Convention on Human Rights, violated it by admitting in the MILITARY TRIAL against the defendant the record of the inquest performed by the DGSE secret police, in which the prisoner had no

defense whatsoever, and by according it legal validity, THAT DOCUMENT IS INVALID.

The military prosecutor bases his "criminative findings", as does the military court during the trial, on the statement which the prisoner made to the military prosecutor during investigations and subsequently amplified, as well as on the defendants' statements to the DGSE secret police (I would like to repeat that before, during, and after the trial, the prisoner was held incommunicado at "El Chipote" prison).

The military prosecutor and the military court also admit as valid--and they are not--the evidence or instruments confiscated by the DGSE secret police, who presumed that they would be used for espionage, and who interrogated the defendant with no attorney present.

The official entry and search of the defendant's home for the seizure of the aforementioned instruments was not carried out by the military prosecutor but "manu militari" by the DGSE secret police, with no witnesses to corroborate the fact that it was actually done that way. Those objects could have been "planted" by the DGSE.

It should be pointed out that it is the accused's constitutional guarantee and human right to be presumed INNOCENT until proven guilty of specific acts (corpus delicti) that are recognized under criminal law as punishable acts or omissions. The defendant is also guaranteed that in case of doubt, when the facts are vague and doubtful, he will receive the least severe punishment for attempted acts, possibly criminal, that do not constitute high treason and espionage. As I explained, the military prosecutor's office did not produce any secret documents, plans, operations, or secret agreements whatsoever. The military attorney has the burden of proof and the defendant is presumed innocent as long as the existence of criminal acts and his liability for them have not been fully established.

Honorable Commission, there are no specific and defined facts which demonstrate for the Government of Nicaragua that the prisoner has committed acts of TREASON and of ESPIONAGE. Nor is there proof that the crime of DISCLOSING SECRETS was committed.

Honorable Commission, when doubts arise as in the case of this defendant, the time-honored principle IN DUBIO PRO REO, respected and applied in civilized countries, should be followed.

In its allegations, the Government of Nicaragua says that there are no "eyewitnesses to the conversations between Mr. Aguado and CIA agents in Miami or in Managua, but one should also bear in mind the statement of Petronio Martín Morice Montealegre, cousin of Mr. Aguado, who relates how a visa was issued to Reynaldo at the United States Embassy ... but Petronio Martín Morice, who also was requesting a visa, did not receive one."

Honorable Commission, as I have already said, there are no specific facts to demonstrate that Reynaldo Aguado committed crimes of treason, and the officials of the Government of Nicaragua admit that by indicating that there are no witnesses. The Government of Nicaragua bases its accusation on trivial facts such as the granting or denial of a visa by the United States. It is well-known that embassies in-country have the right to grant or deny visas. It is very common for embassies of the United States to grant a visa on the basis of the socioeconomic status of the applicant.

The Government of Nicaragua says that Reynaldo Aguado Montealegre, "from the very start of proceedings before the military prosecutor, was assisted by one of the best criminal lawyers in the country, Dr. Orlando Bendaña Darbelles."

The prisoner, Mr. Aguado Montealegre, had the opportunity to see his lawyer, Dr. Orlando Bendaña Darbelles, for no more than twenty minutes and in the presence of the secret police, in violation of Article 8 (Right to a Fair Trial), paragraphs c and d, of the Pact of San Jose:

d. Adequate time and means for the preparation of his defense.

e. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.

Honorable Commission, the prisoner was subjected to interrogation by the Secret Police (DGSE) for more than 30 days until they obtained a confession. The accused had no defense counsel whatsoever. The prisoner, Mr. Aguado Montealegre, was given 20 minutes to prepare his defense with his lawyer, and always in the presence of the DGSE. This is in violation of Article 8 (Right to a fair Trial), paragraph g:

f. The right not to be compelled to be a witness against himself or to plead guilty.

In its allegations, the Government of Nicaragua says that "Mr. Aguado-Montealegre's defense attorney,

Dr. Bendaña, in a protest against the conviction of Mr. Aguado, filed after the statutory time limit had passed, stated that the defendant had been coerced into committing those crimes and that ..." It is very irresponsible of the Government of Nicaragua to avail itself of a writ that its own officials declared lapsed. I ask the Honorable Commission not to take into account the allegations of the Government of Nicaragua, which are frivolous and irresponsible.

FOURTH STATEMENT

The Government of Nicaragua comments on the expiration of the accused's writ of appeal, declared by the judge of the military court ad-quem, alleging that the expiration is legal. This is in violation of Article 25 (Right to Judicial Protection) of the Pact of San Jose:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

The political and military case brought against Reynaldo Aguado Montealegre by the Government of Nicaragua is full of flaws that give rise to violations of human rights and of international agreements that recognize those rights, especially the Pact of San Jose, which Nicaragua promised on its "national honor" to implement and obey.

FIFTH STATEMENT:

In its Fifth Statement, the Government of Nicaragua indicates that the accused, Reynaldo Tadeo Aguado, had "twelve conversations in Miami with CIA agents, agreeing to collaborate with them." In its "Third Statement," the Government of Nicaragua says **THAT THERE ARE NO WITNESSES TO MEETINGS BETWEEN MR. AGUADO AND CIA AGENTS.**

The military court of first instance accepts as valid the argument of the military prosecutor that the confession of the victim demonstrates both his guilt and existence of the criminal acts, which the court classifies as crimes of treason, espionage, and disclosure of military secrets. Any criminal lawyer knows that the crime of treason, and the other alleged crimes, are proven through evidence of the acts which the law specifies in defining them and the existence of those acts cannot be proven solely for the confession of the accused, because further evidence is required by law. This means that the material prerequisites to proving the facts that would constitute these crimes are not present in the case against the victim, Reynaldo Tadeo Aguado Montealegre.

CONCLUSIONS:

Honorable Commission, the following conclusions can be drawn from the response of the Government of Nicaragua:

1. It was the State Security Bureau (DGSE) of the Ministry of the Interior that arrested Reynaldo Tadeo Aguado Montealegre and held him incommunicado for at least 30 days (there is oral evidence that the period was longer).

The victim's human rights have been violated, first during the investigation, and then during the illegal military trial that found him guilty of the supposed criminal charges and that, without proving the facts specified in the corresponding criminal provisions, condemned the victim to the maximum sentence of 30 years in prison.

2. The State Security Bureau (DGSE) of the Ministry of the Interior obtained the self-incriminating statements from Reynaldo Tadeo Aguado-Montealegre without his having the advice of counsel.

The DGSE of the Ministry of the Interior and the investigating officials from that department kept the victim incommunicado for the preliminary investigation proceedings in "El Chipote" prison in Managua for more than 30 days, subjecting the victim to all sorts of physical and moral torture. The defendant's confession was extracted under torture.

3. The State Security Bureau proceeded to perform a search of the victim's home and obtained items which are considered incriminating.

The military prosecutor and the court admit as valid the instruments "confiscated" by the DGSE Secret Police. The official entry and search of the prisoner's home was not performed by the military attorney's office but by the Secret Police (which interrogated the accused and secured his confession without the advice of counsel). Those items could have been "planted" by the DGSE. And

4. The accusation by the prosecutor and the conviction by the Military Court of First Instance of the Managua Regional Circuit are based entirely on "evidence" supplied by the Secret Police.

The prosecutor and the court have based both the body of the crime, or the alleged incriminating facts, and the guilt of the accused in connection with those acts EXCLUSIVELY on the DEFENDANT'S CONFESSION, obtained in "El Chipote" prison in violation of his human rights and therefore totally devoid of legal validity.

LEGAL CONSIDERATIONS:

The Government of Nicaragua is directly responsible for the continual violations of the human rights of the accused, Nicaraguan citizen Reynaldo Tadeo Aguado Montealegre, which are recognized by the "American Convention on Human Rights," concluded at the Inter-American Specialized Conference on Human Rights in San Jose, Costa Rica, on November 22, 1969.

The Government of Nicaragua deposited the Instrument of Ratification of the Convention with the OAS Secretariat on September 25, 1979, which made the Convention an internal law of Nicaragua, committing its government to strict adherence thereto.

I would like to make clear that when I specify the human rights violations that the Government of Nicaragua perpetrated against the victim, I refer exclusively to those recognized and spelled out in the Convention, which, by virtue of its ratification by the Government violating it, is Nicaraguan Law, and the Government is obligated, *urbi et orbi*, to adhere to it.

Art. 5 (Right to Humane Treatment)

Art. 7 (Right to Personal Liberty)

Art. 8 (Right to a Fair Trial)

Art. 9 (Freedom from Ex Post Facto Laws)

Art. 25 (Right to Judicial Protection)

According to the preceding analysis, it should be understood that the acts of which the military prosecutor accuses the victim, Reynaldo Aguado, cannot be proven solely through a self-incriminating confession by the accused, obtained under torture and cruel and inhuman treatment, to which he has been subjected, and continues to be subjected without regard for his physical well-being. Rather, the body of the crime and its existence must be demonstrated through full proof of the actions constituting treason, as well as proof that secrets were disclosed, proof of their strategic importance, and proof of the damage caused to the security of the Nicaraguan State. None of these exists in the suit filed, and all of it, including the confession extracted from the accused under torture, is absolutely invalid by virtue of the violation of the aforementioned principles of the CONVENTION.

MORAL CONSIDERATIONS:

Honorable Commission, I would point out that the Government of Nicaragua did not submit its observations on time during the processing of the complaint I lodged in defense of the human rights of the victim, Reynaldo Tadeo Aguado Montealegre, and that the Government sent no COMPLETE RECORD OF THE POLITICAL MILITARY TRIAL it brought against the victim.

Honorable Commission, I ask you to reject the observations of the Government of Nicaragua because they were presented after the established deadline.

PETITION:

Honorable Commission, I respectfully request that you confirm your finding in Case No. 10.198 (Nicaragua) and that you recommend that the Government of Nicaragua immediately release REYNALDO TADEO AGUADO MONTEALEGRE.

CONSIDERING:

1. That from the response of the Government it can be deduced that the statements of Reynaldo Tadeo Aguado Montealegre were obtained during the period in which he was detained incommunicado under the custody of the General State Security Bureau and are therefore invalid in light of the provisions of Articles 8.2.g and 8.3 of the American Convention on Human Rights;

2. That from the response of the Government it can also be deduced that Reynaldo Tadeo Aguado Montealegre was tried and sentenced to 30 years in prison by a military court in a period of six weeks, which warrants the conclusion that he was not accorded adequate time and means for the preparation of his defense as stipulated in Article 8.2.c of the American Convention on Human Rights;

3. That from the response of the Government it can be deduced that the writ of appeal was rejected because it was submitted one hour after the time limit had lapsed and it would there not be appropriate to consider the content of a document that was not made part of the judicial records.

Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of Nicaragua has violated the right to due process enshrined in Article 8 of the American Convention on Human Rights in the case brought against Reynaldo Tadeo Aguado Montealegre, on which his current imprisonment is based.[FN1]

[FN1] Released on March 14, 1990, after this resolution was adopted by the Inter-American Commission on Human Rights, in accordance with a general pardon issued by the Government of Nicaragua.

2. To transmit this resolution to the Government of Nicaragua and to the petitioner.

3. To publish this resolution in its next Annual Report.