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First Vice Chairman: Patrick Robinson;
Second Vice Chairman: Oscar Lujan Fappiano;
Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; John R. Stevenson; Oliver H. Jackman
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HAVING SEEN:

1. The Report prepared on Cases Nos. 9768, 9780, and 9828 of Mexico approved provisionally at its session No. 1045 at its 76th Regular Meeting on September 29, 1989.
2. The observations of this Report of the Government of Mexico.

WHEREAS:

1. The Inter-American Commission on Human Rights considered the Report mentioned in point number 1 above, as well as the observations of the Government of Mexico.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To approve the Report on Cases No. 9768, 9780, and 9828 as attached.
2. To publish the Report in its Annual Report to the General Assembly of the Organization of American States in accordance with Article 41 g. of the American Convention on Human Rights.

FINAL REPORT ON CASES 9768, 9780 AND 9828 OF MEXICO

1. Introduction

1. The Inter-American Commission on Human Rights has had under consideration three cases regarding the July 7, 1985, electoral process to elect deputies in the State of Chihuahua (case 9768), the

July 6, 1986, municipal elections in the capital of the State of Durango (case 9780), and the July 6, 1986, elections for governor of the State of Chihuahua. The petitioners in all three cases belong to the National Action Party (PAN), and they allege that irregularities were committed by members of the Institutional Revolutionary Party (PRI), the party in power in Mexico.

2. There are allegations of various de facto irregularities in the years in question, both during the vote recount and in the preceding period. It is also alleged that, during the subsequent stage, the complaints of irregularities were dismissed by the electoral bodies because these were controlled by the PRI and therefore lacked the impartiality and independence that should characterize the electoral bodies responsible for ruling on such matters. They alleged that, even though the remedies under domestic law had been exhausted, the requirement of exhausting such remedies is not applicable in these cases under the provisions of Article 46.2 of the Convention, because due process of law is not afforded for the protection of the rights they deem have been violated. They expressly indicate that the remedy of amparo is not applicable to political rights, as the Supreme Court of Justice has ruled time and again.

3. Petitioners in the three cases allege violation of the free exercise of political rights, set forth in Article 23 of the American Convention on Human Rights, and Article 8 of the Convention, which sets out the judicial guarantees that must apply in the determination of their rights. Furthermore, in case 9828 petitioners allege violations of Article 5 (right to humane treatment), Article 11 (right to privacy), Article 13 (freedom of expression), Article 15 (right of assembly), Article 16 (freedom of association), Article 24 (right to equal protection), and Article 25 (right to judicial protection) committed by government agents against PAN supporters during the campaign.

4. The Government of Mexico held that two of the cases were inadmissible because remedies under domestic law had not been exhausted (cases 9768 and 9780). In the third case, it held that the Inter-American Commission on Human Rights lacks jurisdiction to render a decision on electoral processes for reasons of national sovereignty and by virtue of the application of the right of self-determination of peoples. It further held that the remedy of amparo to guarantee the rights affected in this case was still pending.

5. In the review of these cases, the Inter-American Commission on Human Rights has had the opportunity of studying the various aspects in question and deems it would be more appropriate to consider the aspects common to all three cases. The nature of the situations was such that the Commission felt the question would be more appropriately dealt with under the provisions of Article 41.b of the American Convention on Human Rights, according to which the Commission has the powers to make recommendations to the governments of the member States when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights.

6. In exercise of such powers, and acting under the provisions of Article 50 of the American Convention, the Commission sent to the Government of Mexico its recommendations, which are contained in the report provisionally approved on September 29, 1989, at its seventy-sixth session. The Government of Mexico presented its comments to the Commission's report, repeating some of the arguments already presented and adding new ones. Those arguments are discussed in section 3 of this report.

7. Common elements in the three cases

a. De facto irregularities

8. The three cases relate to alleged irregularities perpetrated by the Institutional Revolutionary Party

(PRI), in government in Mexico, against candidates of the National Action Party (PAN). In the three cases, the claimants offer documentary evidence on the events denounced, which they consider a violation of their political rights set forth in Article 23 of the Convention.

9. The de facto irregularities denounced in case 9768 consist of the forgery of the certificates of the original electoral tally sheets in certain polls. The forgery, according to the claimant, deals with both the numbers as well as the signatures of political party representatives and officials, with proof of the aforementioned. As a result, thereof, the majority which the PAN had obtained became a majority for the PRI.

10. The de facto irregularities denounced in case 9780 also concern forgeries of the voter rolls of several electoral polling places, the claimant alleging that he has certified copies of the original certificates in which the triumph of the PAN is verified, without the Chairman of the Municipal Committee allowing the examination of the certificate on which the final results were based, which were favorable to the PRI. The PAN representatives were expelled, according to the claimant, when they challenged the procedure being followed.

11. The de facto irregularities denounced in case 9828 are more serious and important because they refer to the legal procedures aimed at amending electoral legislation to give greater control to the government party, different episodes during the electoral campaign--the use of funds and other public resources, pressures to undermine freedom of expression, elimination of people from the list of voters, registration of non-existent persons, arbitrary creation and cancellation of polling places--and, during the election, stuffing ballot boxes; early opening of polling places; change of location of polling places; refusal to recognize representatives of opposition political parties; heavy presence of police and the military during election day under the control of the State Governor and by the President of the State Electoral Commission, both from the PRI, in charge of overseeing the electoral process and protecting the ballot boxes. All of this manipulation, according to the claimant, led to a massive fraud after the election while voters were being counted.

b. Internal remedies

12. In the three cases, the de facto irregularities denounced led to filing of writs with the competent electoral bodies, who rejected them. The claimants hold that the rejection was motivated by political reasons since said organizations are controlled by the PRI, and violate the right set forth in Article 8 of the Convention or, ultimately, of Article 25.

13. In case 9768, the claimant filed a complaint alleging forgery with the Attorney General of the Republic (Procuraduría General de la República) on August 26, 1985, without any apparent final result. Against the results consigned in the certificate of the district tally, the claimant filed a complaint in the Chamber of Deputies sitting as an Electoral College, which declared it inadmissible on August 23, 1985. On August 31, 1985, a writ (*recurso de reclamación*) was presented to the Supreme Court, the decision of which according to the claimant, was not communicated despite the fact that an address had been given for that purpose; he contends that he heard through other Deputies that his writ had been rejected.

14. The claimant argues that the ruling of the Electoral College concurs with decisions of the PRI because most of its members belong to that political party. As to the Supreme Court, its members are named by the Federal Executive Power with the consent of the Senate, which is made up exclusively of members of the PRI.

15. In case 9780, the claimant requested that the decision of the Municipal Electoral Committee, be revoked (*recurso de revocación*). That complaint should have been heard by this body and that, according

to the claimant, was not processed, and no reasons given. When faced with this situation, the claimant filed a request for review (recurso de revisión), which also was not processed. This lack of procedure prevented an appeal to the Electoral College of the State Congress, which ratified the election without opposition. The writ of habeas corpus was not filed because, according to the claimant, Article 73.7 of the Law of Protection (Ley de Amparo) declares it inadmissible for political rights.

16. The claimant believes this refusal to hear these complaints against de facto irregularities is based on the political orientation of the bodies in charge of dealing with these remedies. Thus, he states, the State Electoral Commission, in the State of Durango, consists of the government Secretary General who is also its President, named by the Governor of the State of Durango, and, therefore, it is logical to assume that the appointment is given to a member of the PRI, and by the representatives of the Legislative Power who, since the PRI is in a majority, belong to the government party; two magistrates of the Supreme Court appointed by the plenary of that Court, whose members are named by the Governor of the State (from the PRI) with the consent of Congress (controlled by the PRI); a representative of the Municipality of the Capital (which on this occasion, as an exception, included a representative of the PAN); a representative of each political party (4 opposition plus the PRI and 4 of its allies according to the claimant); a notary public that will act as Secretary (following an appointment by proxy from the Governor of the State). The claimant alleges that said composition gives the PRI total control of the aforementioned electoral body.

17. For its part, the Municipal Electoral Committee in the State of Durango, consists of four commissioners appointed by the State Electoral Commission (controlled by the PRI as the claimant point out above), a commissioner of the corresponding Municipality and one from each political party, of which one is the PRI and the other four operate as allies, always according to the claimant, plus four other opposition parties. This had led, likewise, to the control of this electoral body by the government party according to the denunciation.

18. The control mentioned by the claimant leads him to two conclusions: first, that the rehearing and revocation remedies should have been heard by the Municipal Electoral Committee, where the alleged forgery was perpetrated, which is contrary to every sort of logic. The second conclusion is that since every electoral body is controlled by the PRI, there is no impartiality which guarantees due process for electoral complaints, therefore, producing the situation foreseen in Article 46.2 of the American Convention, according to which the requisite of exhausting internal remedies, when due process does not exist for the protection of the rights which are allegedly violated, does not apply.

19. In case 9828, it is the Congress of the State of Chihuahua which acting as the Electoral College rules on elections and where the corresponding complaints were filed and later rejected. According to a provision of the Constitution of the State of Chihuahua, the ruling of the Electoral College is final, and unappealable. Moreover, the claimant argues that the writ of protection (amparo) is inapplicable to cases of political rights because of an explicit provision of the Protection Law (Ley de Amparo) (Article 73.VII) and by the reiterated rulings of the Supreme Court.

20. The claimant believes that the complaints were rejected because the Electoral College is controlled by the PRI and that, therefore, there is no legal due process to protect rights which are alleged to have been violated. He holds, therefore, that domestic remedies have been exhausted, despite the fact that due process does not exist with respect to these rights.

21. The Government's position

22. The position of the Government of Mexico in the electoral cases changed, since it first adopted a procedural position in cases 9768 and 9780 and objected in toto to case 9828, including the jurisdiction of

the IACHR and the limits of the obligations as a party to the American Convention. In its observations to the Commission's report, the Government of Mexico advances its arguments on the inadmissibility of the cases under consideration, interprets the scope of Article 23.1.b of the American Convention with regard to political rights and electoral processes, sets out the possible effects of a decision of the Commission on the principle of nonintervention, and warns of the consequences such a decision could have on the validity of the Convention for Mexico.

3.a. Admissibility

23. Therefore, in case 9768, the Government of Mexico holds that the case is inadmissible since more than six months have elapsed since the Supreme Court notified the Chamber of Deputies of its rejection of the writ submitted by the claimant. With respect to case 9780, the government holds that it is also inadmissible because the claimant did not exhaust internal remedies against the resolution of the Electoral College of the Chamber of Deputies of the State of Durango since a writ could have been filed before the Supreme State Tribunal, but was not filed.

24. As to the admissibility of the cases, the arguments advanced repeat the government's previous positions. Thus, there is a restatement of the argument that the petitioner in case 9768 was given notice, in accordance with the law, in the Chamber of Deputies, to which he had not been elected and of which he was consequently not a member. The petitioner had completed the entire process of seeking remedies under domestic law and had established domicile to be given notice pursuant to the provisions of the Code of Civil Procedures, which the government did not apply even though it was an altogether reasonable procedure. The clearcut shortcoming of the law governing notifications justifies in this case the recommendation that the Commission sees fit to make on the need for Mexico to bring its domestic legislation into line with the requirements for proper protection of the rights set forth in the Convention.

25. In its comments, the Government of Mexico develops at length the argument put forward in case No 10.180 (which is not one of the cases on which the report was based) on the appropriateness of the remedy of amparo in connection with political rights. In this respect, the government indicates that the petitioners must object to the acts in violation of their political rights on the basis of the principle of legality--guaranteed by Article 14 of the National Constitution--in accordance with opinion 127 of the Supreme Court, which would allow recourse to amparo. Remedies under domestic law would therefore not be exhausted.

3.b. Alleged Incompetence of the Commission

26. In case 9828, the Mexican government adopts a rigid position, after three petitions for postponement of the deadline to respond to the complaint. Said position is then partially modified by the government. The arguments are presented below.

27. The first argument of the Mexican government is that the assessment of elections is a matter regulated by the Federal Constitution and the State Constitution and that, since the Constitution is the highest law, treaties must submit to it. Both Article 60 of the Federal Constitution, as well as Article 64 of the Constitution of the State of Chihuahua establish that the rulings of the electoral bodies in charge of elections are "final and unattackable" or "irrevocable." Hence, the decisions of these electoral bodies "is not and cannot be subject to international jurisdiction," therefore, the examination of the complaint is not pertinent and must be declared inadmissible.

28. The other argument of the Mexican government is that if a "State agreed to submit itself to international jurisdiction with respect to the election of its political bodies, a State would cease to be sovereign." "There is no principle of international law of international obligation on the part of Mexico

that establishes that international bodies examine the composition of the political bodies of the United States of Mexico." As a result of this reasoning, the government holds the complaint to be inappropriate, and, therefore, believes that it should be declared inadmissible.

29. The Government of Mexico also invokes the principle (deeming it a right) of the self-determination of peoples, and believes that the Commission would violate said principle if it accepted the denunciation because it would infringe upon the political autonomy of the State of Chihuahua. The aforementioned principle would also be affected if an interpretation of the American Convention violated the right of a sovereign state to elect its political bodies, which furthermore, would be in conflict with the Pact of San Jose, which must be compatible with the aim of the treaty and which must be carried out in good faith, as set out in the Vienna Convention.

30. Finally, the Mexican government holds that the American Convention does not limit the sovereign powers of the States to elect their political bodies and that Mexico, when it ratified the Pact of San Jose, "did not conceive that the same could be interpreted so as to give jurisdiction to an international body to review the election of its political bodies." If this had in fact occurred, the government holds that it would abide by its Constitution and would deny legal force to anything that would oppose it. Consequently, it would deny jurisdiction to the Commission to judge the results of the elections.

31. At a later time, the Government of Mexico claims that the petitioner had not exhausted domestic remedies, thereby partially modifying its position with respect to the irrevocability of the decisions of electoral bodies, without specifying what procedures are available. It reiterates its position on the lack of jurisdiction of the Commission to render a decision on electoral processes.

32. In its comments on the Commission's Report, the Government of Mexico sets forth a new interpretation of the rule contained in article 23.1.b of the American Convention. According to that interpretation, the right protected by the Convention is the right "to vote and to be elected," which is an individual right of immediate enforceability that imposes upon the State an obligation not to act. In contrast, the need for the elections to be legitimate imposes upon the State an obligation to act. Based on this reasoning, the government maintains that

The Commission is competent to consider individual petitions concerning human rights of immediate enforceability which the States are obligated to observe ..., but it is not competent to consider petitions concerning collective rights that the State is obligated to develop progressively for its inhabitants. The need for honest elections imposes upon the State an obligation to act: to progressively develop, in accordance with circumstances and conditions in each country, the guarantee that voters may freely express their will.

33. The government's reply refers also to elections, describing them as "internal processes" that affect the rights of citizens (rights which the Mexican legal system distinguishes from individual rights) and to their characteristics (page 10).

34. After setting forth the interpretation underlying the distinction between the right to vote and to be elected and the right to have legitimate elections, the Government of Mexico, in its comments, states that any conclusion issued by the Commission on the legitimacy of the elections would violate the principle of nonintervention:

... Any conclusion issued by the Commission on the "legitimacy" of an electoral process would be an attempted threat against the personality of the officials elected in that process and would constitute an act of intervention, according to the definition set forth in Article 18 of the Charter, by which the Organization of American States, of which the Commission is an organ, is forbidden to carry out by the

second paragraph of Article I of its Charter.

35. The government further maintains in its comments that "... if the Convention allowed the Commission to issue conclusions on the legitimacy of elections in the States Parties to the Convention, then the Convention would be juridically null in the extreme" because the principle of nonintervention is a mandatory rule in inter-American law. Accordingly, if the Commission persists in issuing opinions on "the conditions for electoral processes in Mexico, on the basis of individual petitions, and thus insists on threatening the personality of individuals who represent the Mexican State, the Convention will be vitiated."

36. Observations on the Government's position

37. The observations on the Government's position fall into two categories: those pertaining to the Government's procedural position with respect to cases 9768 and 9780 and those pertaining to the substantive arguments advanced in case 9828 and in the comments on the Commission's report.

4.a. Admissibility

38. As to the statement that the complaint in case 9768 is untimely because it was presented after six months from the date on which the Supreme Court notified the Chamber of Deputies of its decision on the writ filed by the claimant, the latter holds that such a requirement does not apply because he had given his address so that he might be served notice, which was never forthcoming. The claimant holds that it is illogical that the Chamber of Deputies be given notice when a casually adopted decision stripped him of his position as Congressman, while stating that the Supreme Court itself has set precedents on the need to personally give notice to anyone affected by its decisions. The regulation of the law on electoral processes, known as LOPPE--in force at this time--stipulates personal notice in Article 153, while Article 240 of this law provides for submission of the Supreme Court decision to the Chamber of Deputies. The claimant adduces that this lack of personal notice is contrary to Article 8 of the Federal Constitution and that is why a personal notice should have been given, to fill the vacuum, as stipulated in the Mexican Code of Civil Procedure.

39. In case 9780, the government adduces that internal remedies have not been exhausted, while the claimant argues that the repeated refusals by electoral bodies to hear his writs preclude the possibility of continuing the process. Moreover, that the composition of the bodies called upon to decide the complaint is evidence that there is not the requisite of due process to protect his violated rights.

40. The issues to be resolved in the cases under consideration are, in the first place, specification of the scope of political rights defined in Article 23 of the American Convention with respect to the characteristics that elections must have in accordance to the Convention. Second, an analysis of the jurisdiction of the organizations created by the American Convention to protect these rights and, in the specific case of the Inter-American Commission on Human Rights with regard to political rights, through the different pronouncements on the subject. Third, it must refer to the obligations acquired by Mexico when it ratified the Convention as regards political rights, ending with the specific allegations of the claimants and the government in the cases under consideration.

4.b. The political rights in the American Convention

41. Political rights are recognized by Article 23 of the American Convention on Human Rights which states that:

1. All citizens must enjoy the rights and opportunities listed below:

- a. To participate in public affairs, directly or through freely elected representatives;
 - b. To vote and be elected in authentic periodic elections, carried out through universal and equal suffrage and by a secret vote that guarantees the free expression of the will of the electorate, and
 - c. To have access, in general conditions of equality, to the public functions of their country.
2. The law can regulate the exercise of rights and opportunities referred to in the aforementioned article, based solely on age, nationality, residency, language, education, civil or mental capacity, or sentence, by a competent judge, in a criminal process.

42. The transcribed text fundamentally coincides with Article 25 of the International Covenant on Civil and Political Rights and recognizes as background the text of Article 21 of the Universal Declaration of Human Rights. The three aforementioned texts refer to authentic, universal, and periodic elections, by secret vote or another method to express the will of the people. The American Declaration of the Rights and Duties of Man, for its part, refers to "genuine" elections, the only different wording in Article XX.

43. It is important to point out that Article 27, paragraph 2, of the American Convention, referring to the suspension of guarantees "In case of war, public danger or any other emergency that threatens the independence or security of the State party...", does not authorize the suspension of political rights.

44. Hemispheric legal discourse has insisted, for its part, on the existence of a direct relationship between the exercise of political rights thus defined and the concept of representative democracy as a form of the organization of the State, which at the same time presupposes the observance of other basic human rights. Indeed, the concept of representative democracy is based on the principle that it is the people who are the nominal holders of political sovereignty and that, in the exercise of that sovereignty, elects its representatives--in indirect democracies--so that they may exercise political power. These representatives, moreover, are elected by the citizens to apply certain political measures, which at the same time implies the prior existence of an ample political debate on the nature of policies to be applied--freedom of expression--between organized political groups--freedom of association--that have had the opportunity to express themselves and meet publicly--freedom of assembly.

45. On the other hand, the observance of the abovementioned rights and freedoms requires a juridical and institutional order in which the laws are above the will of the leaders and in which there is a control by some institutions over others, to preserve the purity of the expression of the popular will--the rule of law.

46. The Commission has referred in numerous opportunities to the exercise of political rights within the framework of representative democracy and in its relationship with the other basic rights of human beings. Said statements have never been attacked by any of the member States of the Organization, and the General Assembly, acknowledging the recommendations and observations of the Commission, has restated on numerous occasions the need to hold authentic and free elections, establishing a direct link between this electoral mechanism and the system of representative democracy which the basic instruments of the Organization consider as the basis of continental solidarity and as the system which best protects human rights.

47. In short, the exercise of political rights is an essential element of representative democracy, which also presupposes the observance of other human rights. Furthermore, the protection of those civil and political rights, within the framework of representative democracy, also implies the existence of an institutional control of the acts of the branches of government, as well as the supremacy of the law.

48. Since popular will is the basis for the authority of government, according to the terms of the Universal Declaration, it is consistent with a method for naming public officials through elections. Both

the Universal Declaration and the American Declaration, the International Covenant on Civil and Political Rights and the American Convention on Human Rights coincide in that elections must have certain specific characteristics: they must be "authentic" ("genuine" in the American Declaration), "periodic", "universal" and be executed in a manner that preserves the freedom of expression of the will of the voter.

49. Bearing in mind the characteristics of the allegations contained in the cases under review, the presentation that follows will only refer to characteristics of "authenticity" which elections must have since the other characteristics are not in question in these cases. Therefore, an analysis will be made of the authenticity of the elections, according to pronouncements of the Inter-American Commission on Human Rights with regard to specific situations.

4.c. Authenticity of the elections

50. The act of electing representatives must be "authentic," in the sense stipulated by the American Convention, implying that there must be some consistency between the will of the voters and the result of the election. In the negative sense, the characteristic implies an absence of coercion which distorts the will of the citizens.

51. The different pronouncements which the Inter-American Commission on Human Rights has made on the subject, and which will be presented below, show that the authenticity of elections covers two different categories of phenomena: on one hand, those referring to the general conditions in which the electoral process is carried out and, on the other hand, phenomena linked to the legal and institutional system that organizes elections and which implements the activities linked to the electoral act, that is, everything related in an immediate and direct way to the casting of the vote.

i. General conditions of the electoral process

52. As to the general conditions in which the electoral contest takes place, from the concrete situations considered by the Commission we can deduce that they must allow the different political groups to participate in the electoral process under equal conditions, that is, that they all have similar basic conditions for conducting their campaign. In negative terms, this characteristic implies an absence of direct coercion or undue advantages for one of the participants in the electoral contest. Some texts prepared by the Inter-American Commission in regard to the matter are presented below.

53. The Commission, in its 1982-1983 Annual Report, indicates that the municipal elections held in Haiti in 1983 "were carried out in an atmosphere of insecurity and fear because of the virtual existence of a state of siege, the absence of individual guarantees and while the principal opposition leaders were imprisoned or in exile..." (page 27). With respect to Nicaragua, in that same Annual Report, the Commission in considering the political parties law of August 17, 1983, noted that it should be implemented with an electoral law "that establishes the conditions and circumstances required to hold free, secret, and informed elections within a short time, and to which all political sectors of Nicaragua can have access" (page 28).

54. Also in the 1982-1983 Annual Report, when referring to elections in Paraguay, the Commission noted that the existing state of siege during the electoral campaign, as well as the repressive laws "determined that the electoral process had been conducted in an environment of restrictions on public liberties, of fear and insecurity and while the opposition leaders... were prosecuted and jailed or expelled from the country" (page 28).

55. Also in the 1983-1984 Annual Report, the Commission considered the general conditions

affecting electoral processes, pointed out that as to Nicaragua:

... The Commission has been able to verify that during the current electoral process the Sandinista National Liberation Front has profusely used all of the resources which the power of the State, which it holds, puts at its disposal, placing it in an advantageous position over other contenders. In this matter, the denounced harassment of political and labor leaders constitutes an unacceptable method. In this sense, the IACHR thinks that it would be very positive if the Government of Nicaragua were to use all its available resources to achieve, in the next elections, the participation of all of those who represent different political options, with absolute equality (page 119).

56. Also in its Report on the Situation of Human Rights in Chile in 1985, the Inter-American Commission, when it criticized the plebiscite to which the 1980 Constitution was subjected, stated:

The Commission is not in a position to refer to the specific irregularities in the plebiscite that were reported. However, that does not preclude it from forming a judgment on the circumstances prior to it, and considering that the lack of electoral rolls, the existence of the state of emergency, the inactivity of political parties, the practical disadvantages of opposition sectors in access to the information media, and the absence of viable options to the rejection of the proposal of the Government, are all elements that seriously affect the credibility of that procedure. (page 272).

57. In the conclusions of the chapter referring to the exercise of political rights of the aforementioned Report on Chile, the Inter-American Commission, when referring to the referendum in 1978 as well as the 1980 plebiscite expressed that in both occasions there existed:

... restrictions arising from the existence of states of constitutional emergency, which have had a negative impact on the exercise of other human rights associated with the exercise of political rights such as the right to freedom of expression and opinion, the right of association, the right of assembly, and the right to personal freedom. The Commission has also been able to observe that, when those polls were held, political parties were proscribed or dissolved and that a significant group of Chileans was impeded from returning to the country. The Commission has also been able to observe that when those polls were held, the Government used all the resources at its disposal and put the opposition in a clearly disadvantageous position. In the opinion of the Commission, these serious restrictions violate the principle of pluralism, which is characteristic of a regime of representative democracy; they also affect the freedom and the authenticity that are fundamental characteristics of any poll in which the right to vote is exercised. All these elements cast well-founded doubts on the credibility of the two procedures (pages 282-283).

58. In its 1986-1987 Annual Report, also referring to Chile and the background analyzed in its 1985 Report, it was pointed out that:

Also in light of previous experiences and in accordance with human rights norms, the Commission must point out that the exercise of the right to vote must be included in a context favoring the authenticity of elections in which the free expression of the will of the voters is ensured, as Article 23 of the American Convention on Human Rights states.

The Commission therefore hopes that this important period that is beginning will help to establish an atmosphere that will encourage citizens to make these important decisions. In this regard, it would be very useful for those taking part in the political process to avoid at all costs the use of violence and proscription, such as has been repeatedly requested by important sectors of Chilean society. In the Commission's view, it is essential to break the vicious circle generated by the proscription and violence that threatens to distort the Chilean political scene.

In the Commission's view also, it is of basic importance that in the period before the scheduled election, the various political groups be given every guarantee and means to have their views expressed and accurately transmitted to the voters. Accordingly, the Commission regards as positive the steps taken by the Government to allow important opposition leaders to take part again in the country's political life after their long exile (p. 220).

59. With respect to Paraguay, the Inter-American Commission pointed out, in its Report on the situation of human rights in that country in 1987, the deficient conditions in which electoral processes are carried out, when it stated that:

It must also be remembered that elections have been held under the current state of siege, which is lifted for 24 hours only, on the day of the elections. The many restrictions on the action of political opponents resulting from this situation have also been adduced to justify abstention from voting. Such restrictions include the arrest and harassment of political opponents and the ban on public meetings and party meetings, which are prohibited during the state of siege. Those provisions have not been applied, however, in the case of acts of the official party.

In addition to those restrictions, mass communications media are controlled directly or indirectly by party members or persons close to the President of the Republic, as discussed in Chapter V of this report. Even simple political information about the activities of opposition parties sufficed for numerous repressive measures to be taken against the ABC Color newspaper and Radio Ñandutí.

60. With respect to Chile, in its 1987-1988 Annual Report, the Inter-American Commission noted that the mature and reasoned exercise of the right to vote during the 1988 plebiscite demanded a series of conditions in effect for a sufficiently long period before the aforementioned electoral act. Those conditions were the lifting of the states of exception, a sufficient number of registered voters, equitable access by the different political positions to communications media and the absence of any form of pressure on voters (page 306).

61. After verifying the existence of the first two conditions, the Commission analyzes the situation of the communications media to point out that:

The presentation makes it possible to draw the conclusion that access to communications media, during the period covered by the present Annual Report and with reference to the plebiscite's campaign, has been characterized by a disproportionate presence of the government, which has used all the resources at its disposal to promote messages and images that favor its position in the next plebiscite. To that, numerous restrictions, legal and the facto, must be added, those affecting independent organs of expression and journalists and political leaders. Also, it must be pointed out that the authorization to broadcast political programs constitutes progress that, nevertheless, does not compensate the unequal access to communications media derived from the aforementioned circumstances (pages 307-308).

62. As to absence of pressure on Chilean voters during the 1988 plebiscite, the Commission points out in the abovementioned Annual Report, "the existence of a wide range of resources employed by the government, whose effect is to cast a favorable light on its policies among citizens. Some of these resources, consist in legal norms and others are practices indulged in because of lack of controls to prevent these government actions." (Page 308.)

63. In this regard the Commission points out three types of situations: the intimidation campaign as a result of official statements on the effects of a triumph of the opposition, the activities carried out by mayors and the threats and actions against opposition leaders originating from unidentified groups which have been occasionally linked to security forces (page 308).

64. In its Report on the Human Rights Situation in Panama of 1989, the Commission stated regarding the electoral process that led to the elections of May 7, 1989:

The general conditions in which the process was taking place ... were slanted in favor of the ruling party coalition and against the opposition because of the lack of freedom of expression, the serious restrictions on the opposition's right to personal liberty, the grave violations of the right of assembly and the intimidation of members of the opposition and pressures exerted against voters to support the ruling party candidates, both by high-ranking government officials and by officers of the Defense Forces. (Page 52)

ii. Organization of the voting process

65. Another aspect linked to the authenticity of elections is the organization of the electoral process and the actual casting of votes. With regard to this subject there have also been numerous statements by the Inter-American Commission in connection with specific situations analyzed in its annual or special reports. Some extracts are included in order to refer to their main features.

66. Therefore, in the 1978 Report on the Situation of Human Rights in El Salvador, after analyzing the exercise of political rights, the Commission reaches the following conclusion:

There is a generalized skepticism on the part of citizens with regard to the right to vote and participation in government. In particular, opposition political parties go as far as doubting the possibility of having pure and free elections, not only in the light of experiences during recent elections, but also with respect to the structure of the electoral system and the obstacles which parties face to organize in the interior of the country. Because of all this, the Commission is of the opinion that electoral rights are not effective in the present circumstances.

67. In view of the aforementioned, the Commission recommends to the Government of El Salvador in that Report to "Reform the electoral system, specially reorganizing the Central Council on Elections with the aim of achieving an equitable representation of political parties in it so that confidence in the system is restored" (page 153).

68. In the Seventh Report on the Situation of Human Rights in Cuba, in 1983, the Commission deems that one of the elements that determines the limited political participation of the population in important matters is the result of electoral mechanisms and control exercised over it by the Government and the Cuban Communist Party. After analyzing the principal characteristics of the Cuban electoral system, it points out as a "counterproductive" element the preponderance of that political party, whose leaders intervene "in a decisive manner in the operation of mechanisms to select candidates to occupy free elective offices" (pages 44, 45, and 48).

69. The Commission also refers to the legal and institutional system entrusted with the organization of elections in the Special Report on Paraguay in 1987, when, referring to elections in that country, it analyzes the effect of proportional representation current when its measures were applied to the Electoral Statute (Law 886/81). According to said measures, two thirds of the members of electoral boards are members of the government party, when these are the bodies entrusted with the organization of elections. This led the Commission to conclude that:

The system instituted through the Electoral Statute... seriously demeans the electoral process because it gives a party not only the absolute majority of the legislative bodies, but also of the bodies entrusted with organizing the electoral process. This system lacks, therefore, the necessary institutional controls which guarantee the purity of elections (page 106).

70. In the 1986-1987 Annual Report, the Commission refers to the electoral process in Chile at that time, discussing the provisions of the Voter Registration Act designed to organize the registration procedures and to create an Electoral Service. The Commission underscores the relevance of criticism formulated at that time to the practical implementation of the law (page 236).

71. In the same Annual Report, the Commission extensively examines the crisis in Haiti as a result of the confrontation between the Provisional Electoral Council and the National Government Council, which is in great measure attributed to the struggle for control over the operational aspects of the election process (pages 258 to 263). This is again reviewed in detail in the Report on the Situation of Human Rights in Haiti in 1988.

72. In its 1989 Report on the Human Rights Situation in Panama, the Commission points out that "the legal and institutional system for the organization of elections offered no guarantees of impartial conduct on the part of the organs responsible for implementing the actions related to it." (Page 52)

73. According to the presentation on the opinions of the Inter-American Commission on Human Rights regarding specific situations related to the authenticity of the elections, the purpose is to achieve general conditions so that the electoral process offers every group that participates an equal opportunity.

74. The absence of coercions implied in this has led the Commission to specifically bear in mind the existence of states of exception that restrict the exercise of political rights. This measure gives the authorities very powerful instruments of control over the opposition such as freedom of expression, the freedom of assembly, the right to residency and travel, and the right to personal liberty and judicial guarantees.

75. With respect to the exercise of the right to freedom of expression, the Commission has considered the manner in which the government uses its power both for disseminating messages in its favor as well as restricting the possibility of the opposition to broadcast its message. On that matter the Commission has analyzed the legal measures which regulate the exercise of this right and practices related to it, studying both direct and indirect restrictions which can be used by the authorities against the opposition.

76. With respect to the freedom of assembly, the experience of the Commission has led it to examine the restrictions of this right resulting from states of exception or other legal restrictions (police permits, for example) or the use of indirect controls such as the obligatory participation of public employees in demonstrations.

77. An element of special importance with respect to the general conditions in which electoral processes are conducted, are the activities of groups informally linked to one of the participating parties--usually the government party--who, through acts of violence, tend to intimidate those who oppose them. The Commission has referred, on numerous occasions, to situations the effect of which is to modify the basic conditions of equality under which elections must be held.

78. As to specific features of the organization of elections, the Commission has referred to the laws that regulate them with the aim of determining whether those laws guarantee both the adequate casting of the vote, as well as their correct tally, underscoring the powers vested in those bodies entrusted with implementing the activities of the electoral process and of monitoring both the implementation as well as the results. The institutional system, therefore, has been thoroughly examined by the Commission.

79. The aim of this examination has been to detect the possible manipulation of the process in favor of those who control institutions (usually the government, a political party or military forces), determine

who decides on the validity of the vote (composition of the electoral bodies) and how their decisions are verified (appellate bodies).

80. In this regard, the Commission has examined aspects of practical operations such as electoral rolls and registration requirements; the composition of polling stations; the composition of the electoral tribunal and its powers, and the existence of understandable ballots, devoid of any influence on voters.

81. As can be seen, the authenticity of the elections has been the subject of numerous and frequent pronouncements by the Inter-American Commission on Human Rights. They have included references to the general conditions in which the electoral contest has taken place and equal participation of all the various political groups; the pronouncements of the IACHR have also referred to the organization of procedures employed for casting of the votes and the monitoring of the results, as well as institutional and legal aspects. The activity of the Inter-American Commission in this regard has been aimed at obtaining elements that make it possible to assess the relationship between popular will and the final results of the electoral contest since this is what is meant by "authenticity" of elections to which universal as well as regional legal instruments on human rights refer. When so doing, the Commission has performed the functions assigned to it by the American Convention on Human Rights, as analyzed below.

4.d. The Competence of the Commission

82. The Commission considers that it is competent to examine the cases relating to the complaints and to adopt the decision that, according to the Convention, its Statute and Regulations, it deems pertinent (Art. 44 of the Convention), since political rights, as mentioned above, are among those protected by the Convention (Art. 23), as well as by Article 25 of the United Nations Covenant of Civil and Political Rights, which has also been ratified by Mexico on March 23, 1981. This gives the Commission competence to act accordingly.

83. It must be pointed out, that Article 23 has two parts: paragraph 1, letters a, b and c that enunciate the nature of the rights protected and paragraph 2 which sets out the reasons that are the basis for the regulation of political rights, something to be considered jointly with Article 29 of the Convention according to which States, when regulating the exercise of rights and opportunities referred to in paragraph 1 of Article 23, cannot "limit them to a greater extent" than stipulated in the Convention.

84. The Commission considers that the act of ratifying the American Convention presupposes acceptance of the obligation of not only respecting the observance of rights and freedoms recognized in it, but also guaranteeing their existence and the exercise of all of them. It is these elements of political rights presented in item 5 of this document that the State commits itself not only to respect but "guarantee their full and free exercise," according to Article 1.1 of the Convention. It must be pointed out that the Inter-American Court of Human Rights in its Decision of July 29, 1988, in the case of Velásquez Rodríguez, has stated that Article 1.1 of the Convention:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

85. According to the Court, "this obligation implies the duty of the State party to organize all the State apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a manner that they are able to legally insure the free and full exercise of human

rights." That is the basis of the obligation stipulated in Article 2 of the Convention for the adoption of measures of internal law to make those rights and liberties effective. Therefore, this carries with it the obligation of the State party to adapt its internal legislation when it suffers defects that prevent or hinder the full observance of the rights recognized by the Convention and, in this specific case, the rights protected by Article 23.

86. The competent organs to "decide on matters related to the fulfillment of commitments contracted by the State party in this Convention" are, according to Article 33, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights with regards to the States that have expressly accepted its jurisdiction. The Commission, therefore, has the functions and attributions assigned to it by Article 41 of the Convention, in its task "of promoting the observance and defense of human rights."

87. Mexico contracted the commitment to respect and guarantee the exercise of the rights listed in the Convention when it ratified it on April 3, 1982, and as regards the exercise of political rights, only expressed the reservation referring to the right to vote and association with political aims applicable to clergymen, according to provisions of Article 130 of the Constitution of the State. When it contracted the obligations derived from the Convention, it also accepted that the Inter-American Commission exercise the functions and attributions conferred by the Convention; no reservations or limitations were recorded in the instruments deposited when the Convention was ratified.

88. With regard to the Mexican Government's new interpretation, contained in its comments of the Commission's report, which is based on a distinction between the right to vote and to be elected, as a right of immediate enforceability, and the right to legitimate elections, as a progressively achievable right, it should be pointed out that according to Article 23.1.b of the Convention the right of citizens to vote and to be elected of necessity entails the question of the method or requirements for making that right a reality, an election, the characteristics of which give explicit validity to that rule. An electoral act is required in order to give practical effect to the abstract right to vote and to be elected, which is the reason why the Convention spells out the characteristics that elections should have.

89. From a juridical standpoint, several observations are in order. First of all, it should be pointed out that in order for this interpretive distinction between individual rights of immediate enforceability (the right to vote and to be elected) and collective rights to be developed progressively (the right to elections with particular characteristics) to have validity in the cases under consideration, it would have been necessary for Mexico, at one time or another, to have advanced this interpretation of the article and to have stated this distinction unequivocally.

90. No reference to such a distinction can be found in the Preliminary Draft Comments of the Government of Mexico on the Draft Convention (see Proceedings of the Specialized Inter-American Conference on Human Rights, 1969, page 257 of the Spanish text.) Neither does any such interpretation appear in the minutes (Actas), where it is found that, in fact, the present formulation of Article 23.1.b was approved with the affirmative vote of the highly qualified delegation sent by Mexico to that Conference (see page 257, *op. cit.*) No interpretive statement to that effect appears to have been made at the time of Mexico's signature of the Convention or during its ratification.

91. From the normative point of view, the structure of Article 23.1.b makes reference to certain features that should be present in order for the right to be recognized to be valid in practice. Indeed, any mention of the right to vote and to be elected would be mere rhetoric if unaccompanied by a precisely described set of characteristics that the elections are required to meet. If the provision were not considered in its entirety, the interpretation now being advanced by the Government of Mexico would result in outright suppression of the enjoyment and exercise of political rights. Mexico would thereby be violating

Article 29.a. (Restrictions regarding Interpretation) of the Convention.

92. The comments also contain the argument that "... the need for the elections to be legitimate imposes upon the State an obligation to act: To progressively develop, in accordance with circumstances and conditions in each country, the guarantee that the voters may freely express their will." This argument would condition the existence of human rights on "the circumstances and situation of each country" leaving the whole legal system in a precarious state.

93. With respect to the argument contained in the Mexican Government's comments which holds that any opinion issued by the Commission on an electoral process on the basis of individual complaints constitutes a violation of the principle of nonintervention, it should be stated here once again that the Mexican State, by virtue of having signed and ratified the Convention, has consented to allow certain aspects of its internal jurisdiction to be a subject of judgments on the part of the organs instituted to protect the rights and guarantees recognized by the Convention. If this is true whenever a State signs any international instrument, it is even truer when the instrument is a treaty that recognizes the inalienable rights of man, which, antedate and are paramount over those of the State.

94. Moreover, as stated in Article 18 of the OAS Charter, the principle of nonintervention is a rule of conduct that governs the acts of States or groups of States. All of the normative precedents developed within the inter-American system (Seventh International Conference of American States, Montevideo, 1933, and Inter-American Conference for the Strengthening of Peace, Buenos Aires, 1936, Additional Protocol on Nonintervention), have taken that approach. The Inter-American Juridical Committee, in its "Draft Instrument" on cases of violations of the principle of nonintervention (1972), indicated that one of the basic criteria followed preparing it was that "only States can be subjects of intervention."

95. It should be noted further that in 1972, at its second session, the General Assembly of the Organization of American States adopted a resolution entitled "Strengthening of the Principles of Nonintervention and the Self-determination of Peoples and Measures to Guarantee their Observance." This resolution reaffirms the concept that only States can be subjects of intervention. It is relevant to quote the text of the following paragraph of that resolution:

All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure and with absolute respect for human rights and fundamental freedoms.

96. The principle of nonintervention is therefore linked to the right of peoples to self-determination and independence and is described as a principle to be practiced in suitable harmony with human rights and fundamental freedoms. This important interrelation of principles of international law is formalized as a rule of law in Article 16 of the OAS Charter, which reads as follows:

Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of individuals and the principles of universal morality.

97. According to this rule, the right of the State to develop its internal life freely has a counterpart in its obligation to respect the rights of individuals. And in inter-American law these rights are formally recognized in the American Convention on Human Rights. The correct interpretation of the principle of nonintervention is, therefore, one based on protecting the right of States to self-determination provided that right is exercised in a manner consistent with respect for the rights of individuals.

98. The above leads to the conclusion that the Commission, based on its regulatory instruments, is empowered to examine and evaluate the degree to which the internal legislation of the State party guarantees or protects the rights stipulated in the Convention and their adequate exercise and, obviously,

among these, political rights. The IACHR is also empowered to verify, with respect to these rights, if the holding of periodic, authentic elections, with universal, equal, and secret suffrage takes place, within the framework of the necessary guarantees so that the results represent the popular will, including the possibility that the voters could, if necessary, effectively appeal against an electoral process that they consider fraudulent, defective, and irregular or that ignores the "right to access, under general conditions of equality, to the public functions of their country."

99. It is understood beyond a shadow of a doubt that, in the light of general international law and the terms of the Convention, that it is a multilateral treaty, and that the Inter-American Commission has jurisdiction to hear and examine complaints or claims on matters affecting rights protected by the Convention (Art. 44). Nevertheless, and since the Government of Mexico has questioned said jurisdiction, in its observations to the denunciation that arose from case 9828, it is important to state the following:

i. The Vienna Convention (1969) on the Law of Treaties establishes, in connection with the application of the international law norm *pacta sunt servanda*, that "every treaty in effect binds the parties and must be observed by them in good faith."

ii. In the Commission's opinion we can distinguish in this precept, the proposition that the fact that the treaty is binding does not mean that the same establishes a norm that can point out obligations and rights to the contracting parties. Therefore, the treaty has the quality of applying and at the same time creating law. It applies the law, because when a treaty is signed the general rule of international law *pacta sunt servanda* is applied, and it creates law because it establishes rights and duties which did not exist before the treaty, that begin to grow as a result of the treaty and its application by each one of the parties.

iii. From the aforementioned it can easily be deduced that each State party to the American Convention on Human Rights contracted, when it ratified or acceded to the Convention, the obligation of recognizing the competence and jurisdiction of the means of protection that the Convention itself establishes to "promote the observance and defense of human rights," and one of those means of protection is the IACHR.

iv. The duty to refrain from doing or acting negatively with respect to the application of the treaty can also be deduced from the context of this obligation. That is, what the International Law Commission defined when it stated "that every party must abstain from executing acts aimed at frustrating the aim and objective of the treaty" (Report of the International Law Commission: OAS/Ser.Q/II.11 (A), CJI-18 (A), pages 44-45) that, as the Inter-American Court of Human Rights states, when referring to the aim and objective of the American Convention, "it is not the reciprocal exchange of rights between a limited number of States, but the protection of the rights of all human beings in America, notwithstanding their nationality" (Advisory Opinion on the Effects of Reservations -OC-2/82, p. 43).

v. Moreover, it is deduced that according to the Vienna Convention (Art. 29), that the American Convention is applicable in all the territory of the United States of Mexico because "a treaty is obligatory for each one of the parties with respect to the totality of its territory, except if a different intention is inferred from it or is obvious in another way." (Vienna Convention, doc. CJI-18, cit. p. 14). So, the provisions of the Convention are applicable in all the States of the Mexican Union as "supreme law of all the Union," in the spirit of Article 133 of the Mexican Constitution, because Mexico ratified the American Convention without amendments or interpretations applicable in this matter. Therefore, what is stated by Article 28 of the federal clause is applicable.

vi. The pertinent matter for the protection of human rights in the inter-American system is regulated, for the States parties, by the decision of the governments themselves of the member States of the OAS, which approved and put in effect the American Convention on Human Rights, among them the Government of Mexico, through a formal source of international law such as the Convention.

100. Therefore, as a matter of law every right related to this subject is not presently reserved, in an exclusive fashion, to the jurisdiction of the member States of the OAS, at most those who have ratified the Convention, because this is the situation that creates the present state of hemispheric international

relations.

101. From what has been discussed thus far, Mexico, when it ratified the American Convention on Human Rights, committed itself to respect and guarantee the exercise of the political rights described or defined in Article 23 of the aforementioned treaty which includes the right to vote in authentic elections, and adopt legislation that will lead to that objective, as stated in Article 2. It also committed itself to provide an effective remedy for those who believe that that right has been affected, under Article 25 of the Convention and to guarantee the right of every person to be heard by a competent, independent, and impartial judge or tribunal for the determination of rights and obligations. In order to determine the adequacy of the behaviour of the Mexican government with respect to obligations contracted under the American Convention, said government has also accepted that the Inter-American Commission on Human Rights systematically give opinions on such matters, exercising the powers granted to it by said international instrument, without said powers having ever been questioned.

5. Issues in this case

102. The three denunciations hold that the elections held were not authentic because they did not adequately represent the popular. As for the specific allegations, the Commission has decided to refrain from making any reference to the de facto situations alleged in these cases because the validity of some of the allegations would have to rest on a presence of the Commission during the electoral campaign and at the time of the voting. To this should be added the fact that the Commission did not engage in any exhaustive monitoring of the situation in Mexico, as had done in certain cases in which it had issued judgments on electoral processes and even made inspection visits to some of the countries concerned. Accordingly, it neither accepts nor denies the veracity of the facts as alleged. This precludes the possibility that the Commission comment on the origin of the mandate of the officials chosen in these elections. At present, this is also the intention of the claimants.

103. In relation with the internal remedies and guarantees in Mexico, the matter to be examined is whether Mexican law offers adequate means or a simple and quick remedy or of "any other effective remedy before competent judges or independent and impartial courts" that protect those who petition against "acts that violate their fundamental rights," as is the case with political rights. The Commission has been able to perceive that no such remedy do exist in Mexico.

104. In view of the aforementioned and pursuant to provisions in Article 41, letter c of the Convention, which grants the power to make "recommendations, when appropriate, to the governments of member States in order that they adopt progressive measures in favor of human rights within the framework of their internal laws and their constitutional precepts" and, bearing in mind moreover, the provisions of Article 2 of the Convention, the Commission deems it advisable to remind the Government of Mexico of its duty to adopt measures of internal law, in accordance with its constitutional procedures and the provisions of the Convention, whether legislative or of another character, necessary to make effective the rights and liberties which the Convention recognizes.

105. The Commission must remind the Government of Mexico at this time that it duty is to assure the free and full exercise of political rights and judicial protection in accordance with Article 1.1 of the American Convention. In this regard, the Commission must mention that it has been informed that there is underway an active process of reform of the electoral laws. The Commission hopes that these reforms will lead to the adoption of standards that will adequately protect the exercise of political rights and create a rapid and effective procedure assuring the protection of the same. The Commission places itself at the disposal of the Government of Mexico to cooperate with it in all matters that might lead to the achievement of these ends in the same way that it has so offered itself to other Governments. The Commission also requests that the Government of Mexico send it information relating to the electoral

reform process currently underway, in accordance with Article 43 of the American Convention on Human Rights.