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Title/Style of Cause:	Olga Esther Bernal Duenas v. Colombia
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Decided by:	Chairman: Dr. Oscar Luján Fappiano; First Vice Chairman: Prof. Michael Reisman; Second Vice Chairman: Dr. Alvaro Tirado Mejía; Members: Mr. Oliver H. Jackman; Dr. Leo Valladares Lanza; Dr. Marco Tulio Bruni-Celli; Mr. Patrick L. Robinson
Dated:	12 October 1993
Citation:	Bernal Duenas v. Colom., Case 10.537, Inter-Am. C.H.R., Report No. 24/93, OEA/Ser.L/V.85, doc. 9 rev. (1993)
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1. On February 7, 1990 the Commission received the following petition:

At around 10:00 on the morning of January 7, 1988, in the city of Buenaventura in the Department of Valle del Cauca, OLGA ESTHER BERNAL was with Mr. Froylan Torres in a commercial establishment by the name of "Listo".

After leaving the establishment known as "Listo," Olga Esther was arrested by a police agent known in the city of Buenaventura by the alias of "Escoba". She was taken by force to the police station, in the presence of numerous witnesses. In the course of her violent arrest, Ms. Bernal screamed out for help, as she was afraid she would be killed.

Once inside the police station, witnesses watched as OLGA ESTHER was taken to an inside office; approximately five minutes later, the so-called "Escoba" came out, carrying in his hand a woman's underwear, which he handed to Captain CHAVES OCANA.

The individual known as "Escoba" was later identified as Alberto Botero Bernal, an agent of the National Police, attached to the Subsijin Seventh District in Buenaventura, identification number 16,583,294, issued in Cali.

OLGA ESTHER BERNAL DUENAS disappeared on January 7, 1988, and has not been seen since.

Despite the amount of time that has passed, the Nineteenth Court has not come up with any decision that sheds light on what happened to OLGA ESTHER BERNAL.

Given what has been said thus far, it is obvious that there has been an unwarranted delay in rendering a judgment under the remedy used to ascertain the fate of OLGA ESTHER BERNAL; despite the amount of time that has passed and even though the authors of the violence had been identified through testimony, neither the courts competent to pass judgement nor the administrative authorities of the Prosecutor's Office have handed down any decision. Therefore, we understand that under Article 46.2.c of the American Convention, and in accordance with Article 37.2.c of the Regulations of the Commission, the requirements concerning the admissibility of the petition that we are presenting have been fulfilled.

It is our opinion that the Colombian State has violated the Pact of San Jose, which is still binding upon it, inasmuch as the crime against humanity that has been committed transgresses the right to life recognized

in Article 4 of the American Convention, the right to humane treatment recognized in Article 5, the right to personal liberty recognized in Article 7 and the right to a fair trial recognized in Article 8.

We are therefore requesting that in accordance with Article 34 of the Regulations of the Inter-American Commission on Human Rights, the processing of this case begin so that it may be examined by the Commission in due course.

The petition was accompanied by the following eyewitness' testimony:

Statement from Euclides Mosquera, January 22, 1988: The last time I saw OLGA ESTHER BERNAL DUENAS was at around 10:30 a.m., January 7, 1988, in the city of Buenaventura; she was in the company of four police agents. I believe they were from F-2 because they were in civilian dress. One of them I know and I've seen him a number of times. I don't know his name, but they call him "LA ESCOBA". I don't know the names of the other agents. There was also Lt. Col. CHAVES OCANA, Commandant of the Buenaventura Police.

On January 7, 1988, I was in Buenaventura and was passing by the police station, which is in front of the pier. It was around 10:30 a.m., because I was heading for the passenger terminal to catch a bus. Then I heard a woman screaming. This caught my attention and that of other people who were passing by. The screams were coming from the street, from the middle of the street, near the entrance to the police station. I saw that the woman who was screaming was OLGA ESTHER BERNAL DUENAS. My friend FROYLAN TORRES, whom I met about two years ago here in Cali, had introduced me to her just the day before. He is from Buenaventura and sometimes comes to Cali. We have been friends. When I saw that it was OLGA ESTHER, I went closer as did a number of other people who were passing by, to see what was happening to her, why she was screaming, what was happening. OLGA ESTHER BERNAL DUENAS was wearing bleached blue jeans, a blouse with blue and white fringe, and blue sport shoes. A police agent, known in Buenaventura by the alias "LA ESCOBA", had her from behind; that is to say, he was holding her by the waistline of her pants, pushing her ahead violently. She was yelling: "Help me, they're going to kill me; please help me, they're going to kill me". She was terrified, pale and frightened, screaming for help. Behind the policeman they call "LA ESCOBA" were three other F-2 men. I know that they were F-2 because they were in civilian dress; they were not wearing uniforms. The agent known as "LA ESCOBA" shoved her violently as he held her by the pants waist. He shoved her into the police station and the three F-2 agents who were with LA ESCOBA and OLGA ESTHER also entered the police station. Lt. Col. CHAVES OCANA went in immediately; I stayed there with the others, in front of the station, watching what was happening. There were other people waiting with me, in front of the police station. The colonel entered right behind the police agents who had OLGA ESTHER BERNAL in custody. After getting her through the entrance they took her toward the back and through a door. Then they shut the door; they slammed it shut. They realized there were a lot of people outside, witnessing everything they were doing, because there were a lot of curious people there. I was out there with a lot of other people waiting to see what happened. I should point out that when they took OLGA ESTHER BERNAL to the police station, she had in her hand a red briefcase. At the door to the police station, when they pushed her true, this agent called "LA ESCOBA" took the briefcase out of her hand, and continued to shove her with her own briefcase. After a few minutes, approximately five minutes after they had taken OLGA ESTHER inside the station, I saw the agent "LA ESCOBA" walking inside the police station, in the direction of the street, headed for the Office of Colonel CHAVES OCANA, which is adjacent to the police station, at the main entrance, but inside the same building. In his hands he had a woman's underwear; he was carrying a brassier and a woman's light blue underpants, and some sheets of white paper, like 10 sheets. That was the only thing I saw agent "LA ESCOBA" carrying. I saw him hand these things to Col. CHAVES OCANA, who by that time had gone to his office. LA ESCOBA handed the underwear to Col. CHAVES OCANA, there at the door of the colonel's office. He took the underwear and went into his office. Agent "LA ESCOBA" immediately returned to the police station. Two of the other agents who had been with agent "LA ESCOBA" when he took OLGA ESTHER, left once agent "LA ESCOBA" returned to the police station after having handed over the two articles of women's underwear

and the white sheets of paper to Col. CHAVES OCANA. They were standing at the street entrance to the police station, and I stayed a short while longer, together with some other curious bystanders. These two F-2 agents who came out and who had also been with the agent called LA ESCOBA when OLGA ESTHER was taken to the police station, were dressed as follows: one was wearing red sweatpants and a green T-shirt and white tennis shoes; his black hair was quite long, down to about the nape of his neck; he was average height, somewhat slim, a young man approximately 27 or 28 years old, with white skin. The other one was also standing at the door, dressed in a havana shirt and pants. He was of average build, some 1.65 cm in height and approximately 28 years old, white, with straight black hair. Both were young men.

In giving a physical description of the agent who goes by the alias "LA ESCOBA" he said: He is tall and fat. He has a black beard. He is Indian, and his white hair is shoulder length. He is approximately 35 or 40 years old. The color of his skin is black, but he has very Indian features. He is over 1.8 cm tall; he may be about 1.9 cm tall. He is fat and has a belly. He was dressed in a blue T-shirt, with black and blue checks on the front like a chess board. He was wearing blue pants, white leather shoes with black rubber soles. The fourth F-3 agent who remained inside and did not come out while I was standing inside but who did participate in the arrest of OLGA ESTHER was also young, but I didn't get a good look at him. I don't remember what he looked like physically, because I only saw him when he was taking OLGA ESTHER in custody and I couldn't get a good fix on him, because he didn't come out later as the others had.

The physical description of Col. CHAVES OCANA is as follows: He is a young man, approximately 30 years old. His skin is white; he has straight black hair; he is slender and of average height. That day he was dressed in uniform, wearing green pants, a khaki-colored shirt, with green insignia on the shoulders. I enquired that day and was told that it was Col. CHAVES OCANA. I don't remember his first name.

After that I didn't learn anything else on the whereabouts of OLGA ESTHER BERNAL. Two days later in Buenaventura, I learned that my friend FROYLAN TORRES had disappeared, because relatives of his asked me about him. When I told them I didn't know where he was, they told me that he had disappeared. Then I told them about the events that I just recounted here, where a friend of FROYLAN TORRES, OLGA ESTHER BERNAL, was arrested. I learned through relatives that on the morning of January 7, 1988, FROYLAN TORRES and OLGA ESTHER BERNAL had been together in a restaurant, and that he had disappeared. Since I told them that I had witnessed the arrest of OLGA ESTHER, FROYLAN's relatives then told me that both had disappeared; both OLGA ESTHER and FROYLAN. The last time they were seen together was on the morning of January 7, 1988, in a restaurant. That is all I know about the subject.

I demand that this statement be kept confidential, because I fear for my life in view of the dangerous situation threatening us. It was only on that condition that I agreed to make this statement.

2. Within the required time period, the Government of Colombia forwarded the following provisional response, which was sent to the petitioner on April 6, 1990:

I have the honor to address Your Excellency, on behalf of the Government of Colombia, in reference to your communication of April 6, 1990, in connection with Case 10,537, concerning Ms. OLGA ESTHER BERNAL DUENAS.

In this regard, I should inform Your Excellency that on September 5, 1989, the Office of the Special Prosecutor for the Defense of Human Rights commissioned the Section Chief of Buenaventura to investigate whether the police agents may have had a hand in the purported disappearance of the young woman OLGA ESTHER BERNAL DUENAS.

As soon as a response is received concerning the present status of the inquiries, both criminal and disciplinary, that information will be made available to the Inter-American Commission.

3. On September 7, 1990, the petitioners sent additional information, which was also forwarded to the Colombian Government. It included the following testimony:

Statement by Melba Stella Bernal Duenas, September 5, 1990: On January 6, 1988, my sister Olga said that she was going to Ladrilleros, which is a beach near Buenaventura. She left her four-year old son, Augusto César Bernal, with my father, my mother and myself. Everything was as usual until Sunday, January 10. A man whose last name is Panameno and who is with the Union Patriótica, located us and told us that our sister had been arrested in Buenaventura. My brother-in-law, Gilberto Pareja, and my older sister, Luz Elena Bernal, got up early on Monday, January 11, and went to Buenaventura to make inquiries. They had told us that Olga was being held at the police station. My brother-in-law and sister went there and the Commandant Guillermo Chavez Ocana, who at the time was the Buenaventura police chief, denied that she had been arrested. Chavez went over the police station's records. He showed them the records and told them that there had been no raids that day. They then asked him if a guy by the name of "La Escoba" worked for him; he then said that no, there was no one there by that name. In Buenaventura, my sister Luz Elena went around showing a photograph of Olga to see if anyone knew something about her. A woman from Buenaventura told Luz Elena that she had seen Olga when they put her in the Buenaventura hospital in the early morning hours the day after her arrest, in other words January 8, 1988; that two uniformed policemen were carrying her, saying that she was drunk. The woman told Luz Elena that Olga had been beaten and that it didn't look like a case of intoxication. The woman was in the street and could see Olga close up. The woman asked Luz Elena not to say anything about what she told her because it was dangerous. The woman also said that about a half hour after Olga was put in the hospital, the police brought her out again, saying that she had to be put in jail again. Luz Elena was in the hospital with a friend of hers who belonged to the union of doctors and nurses. They were looking for the duty nurse, but no one wanted to say who the duty nurse was.. They did give her the name of the physician on duty. I don't know his name, but I can get it. The doctor said that there were many people there because it was festival time and that he wasn't going to say anything about Olga, because he didn't want problems. They called Luz Elena around that time, saying that they knew where Olga was. When she asked who was calling, they hung up.

Olga was a member of the Union Patriótica from the time the organization was founded around 1985. Before joining the Union Patriótica Olga was a member of the Communist Youth of Yumbo. She was also a member of the Yumbo Municipal Workers Union when she was a teacher. She was not affiliated with the union, but she did engage in union activities.

Statement by Euclides Mosquera del Castillo, September 4, 1990: The day Olga was arrested, she was in Buenaventura because she had attended a meeting in Buenaventura the day before; then on Monday, between 9:00 and 10:00 in the morning, I was on my way from the pier to catch a bus for home. I was distracted by screaming coming from the street; there, in the middle of the street, they were taking in Olga Esther. An F-2 agent, known as "La Escoba," followed by three other men, had her in custody. I stopped there in front of the seventh precinct police station. I realized that it was a friend of mine and that they were mistreating her; they were shoving her. She was struggling and screaming that they were going to kill her; she was begging for help. Within moments the four men had her inside the seventh precinct police station. I stood there about a half an hour until I decided to go and notify the Office of Union Patriótica in Buenaventura. I went there to report the incident because they knew her there, because she was a friend of Froylan. I don't know whether she was a member of Union Patriótica or not, but I do know that they were friends of hers. I advised a young man whose name was Pablo Valois and after that I didn't learn anything else until a month later when they called me to the Office of the Prosecutor to testify.

In the half hour that he was in front of the police station he declared having seen the following: At the police station there are cells in which they put people; you can see the cell from the street; you can see when people are put there. But there are also cells that are not visible from the front, where they mistreat and torture people. That's where they put her. They've picked me up in these police raids and have taken me there, and that's why I know about these cells. That's where the people who are going to be tortured are put. I saw them put her in there. They put her back there, in the cells where they torture people and you could hear her screams from the streets. She cried, she screamed when they hit her. They were screams of pain. The one known as "La Escoba" left that back cell about five or ten minutes later, carrying her briefcase; he also had her underwear in his hand, her brassiere and a pair of woman's

underpants. He walked out of the cell with the briefcase and the underwear in his hand and entered the Police Chief's Office. Col. Chaves Ocana, who was district police chief, was standing in the doorway of his office, and he took the briefcase and the underwear. The two entered the police chief's office and were still in there by the time I left; I was there about twenty minutes, waiting for them to come out but they didn't come out. In the meantime, Olga Esther continued screaming. The agent known as El Cholo had also entered the cell where Olga was being held. He remained there with the other two who had arrested Olga, since there were four in all: "La Escoba", "El Cholo" and two others whose names I don't know. I don't know their aliases either. In the time that I was standing there, none of the three who were in the cell with Olga came out.

There were other people who witnessed the arrest of Olga Esther and who saw her being shoved into the police station and who heard her screams from the street, since at that hour the neighborhood is very busy and there were a lot of people like myself standing in front of the police station. But the rule of silence prevails. No one knows anything and no one sees anything.

4. On October 22, 1990, the following reply was received from the Colombian Government, which was forwarded to the petitioner:

The petitioner cites a statement made to the Office of the Prosecutor by an alleged eyewitness. This is Mr. Euclides Mosquera who, in a statement taken on January 22, 1988, asserted that the events took place in a restaurant on the morning of January 7, 1988.

According to testimony of Mr. Euclides Mosquera and the petitioner's observations, the alleged arrest of OLGA ESTHER BERNAL DUENAS occurred in an establishment by the name of "Listo" in the city of Buenaventura, Department of Valle del Cauca, at around 10:00 a.m. on the morning of January 7, 1988.

Following this testimony and other information supplied to the appropriate authorities, the Chief of the Technical Corps of the Judicial Police of Buenaventura, at the time Dr. Josñ Natanael Guzman, certified on February 15, 1990, to the Office of the Section Prosecutor for Buenaventura, that to investigate the facts surrounding the alleged disappearance of OLGA ESTHER BERNAL DUENAS on the date in question, he personally interviewed the supervisor and other employees at the establishment known as "Listo". All of them said that they had not witnessed any events of the nature being alleged.

By the same token, the Administrative Security Department (DAS), Section Office for the Department of Valle del Cauca, which has its headquarters in Buenaventura, assigned detective Fabio Contreras Ayala to conduct an investigation to clarify the alleged disappearance of OLGA ESTHER DUENAS. Detective Fabio Contreras Ayala spoke with the owner of the establishment and with some of its employees, all of whom said they had not witnessed the alleged arrest.

The Administrative Security Department (DAS) assigned detective Contreras Ayala to make inquiries with neighbors in the vicinity of the seventh precinct police station in Buenaventura, concerning the occurrence of the alleged events on January 7, 1988

The neighbors whom DAS Detective Contreras Ayala questioned all said that they had seen nothing like the alleged arrest.

It is worthwhile noting that according to the version given by Mr. Euclides Mosquera, the events occurred in broad daylight, on January 7, 1988, and were witnessed by many people, because of the circumstances that he described, which according to him attracted the attention of passers by and neighbors.

Furthermore, in Mr. Mosquera's testimony, he said that he had met OLGA ESTHER BERNAL the day before the alleged events occurred, yet he provides physical descriptions, details of how he was able to see, from a considerable distance, the color and features of the underwear and other specifics that point up contradictions in his statement.

Nevertheless, for the sake of defending and protecting human rights, the Office of the Special Prosecutor for Human Rights is continuing its investigation and at the present time the inquiries that the Buenaventura Prosecutor was assigned to conduct are being evaluated by the Office of the Special Prosecutor for Human Rights.

As for the criminal investigation, at this time the case is with the Third Special Court of Buenaventura.

On January 23, 1990, an order was given to take statements from other witnesses. Likewise, the Investigative Unit of the Technical Corps of the Buenaventura Judicial Police is cooperating in this investigation.

As Your Excellency can appreciate, the remedies under domestic law are fully under way. Any information that the investigations currently in progress produce will be made available to the Commission immediately.

5. In response to the above communication, the petitioners sent the following observations on January 10, 1991.

There are any number of aspects to the reply sent by the Government of Colombia in the communication that the Commission forwarded on October 30.

On the one hand, the communication contains a statement to the effect that "According to testimony of Mr. Euclides Mosquera and the petitioner's observations, the alleged arrest of OLGA ESTHER BERNAL DUENAS occurred in an establishment by the name of "Listo"..." That statement was not made either by Mr. Mosquera or by us as petitioners, since what the eyewitness stated, as our communication states repeatedly, is that he saw OLGA BERNAL as she was being taken to the police station. Nowhere in his testimony or in any other testimony in the Commission's file is it said that Olga and her companion were arrested in the establishment known as "Listo". What the witnesses state (see attachments to our communication of February 7, 1990) is that after leaving that establishment, the woman was forcibly taken into custody by a number of police agents, among them Alberto Botero, alias "La Escoba".

This is an important clarification, since the Colombian Government asserts that "... the investigation being conducted by the Technical Corps of the Buenaventura Judicial Police and by the Administrative Security Department, both intelligence services in Buenaventura, followed up this testimony." In the communication to which we refer, the Colombian Government stated that each intelligence service appointed a detective who spoke with employees at Listo and that those employees stated that no one had been arrested on January 7, 1988 at the "Listo" cafeteria. This statement, an apparent attempt to deny the disappearance of OLGA BERNAL DUENAS, raises certain doubts that, from the standpoint of our procedural norms, causes grave concern, since it makes no sense.

- The investigators appointed were members of intelligence forces in the small city of Buenaventura, who must know and have frequent contacts with the people accused, especially when one of the individuals appointed is a member of the judicial police force, making any chance of objectivity and impartiality even slimmer.

- The investigators confined themselves to submitting reports on conversations they allegedly had with neighbors at the scene of the event and, in particular, with employees of the "Listo" establishment; however there are no statements and there are no signatures and the other formalities required by law to substantiate the existence of these conversations.

- The investigations conducted by detectives from the security forces have been aimed not so much at finding the disappeared woman, as at demonstrating that nothing unusual happened at the "Listo" restaurant on the day of the events.

In that same communication the Government of Colombia states that "in Mr. Mosquera's testimony, he said that he had met OLGA ESTHER BERNAL the day before the alleged events occurred, yet he provides physical descriptions, details of how he was able to see, from a considerable distance, the color and features of the underwear and other specifics that point up contradictions in his statement." The maxim of the law is that the judge will weigh the evidence once all the evidence needed to clarify the facts has been compiled, and that the judge's assessment must reflect a knowledge of procedure showing how the evidence was pieced together and weighed to arrive at an assessment. The assessment that the Government of Colombia is now making of the statement made by the eyewitness to the arrest of OLGA ESTHER BERNAL is quite indicative of how interested the Government is in clarifying these crimes against humanity and punishing those responsible. The assessment comes not only too early, well in advance of that point in the process when it should be made, but also comes from an executive authority

who should refrain from any type of pre-judgment, taken entirely out of context from the other existing elements in connection with these facts, is not only disturbing for an agency that oversees the observance of human rights but highly prejudicial to the judicial and administrative decisions that must be made at the appropriate time. All this merely goes to show that the Colombian Government is quick to assert that Mr. Mosquera's testimony contains "contradictions" and to cast doubt on any possibility that he might have seen the color of the underwear that was taken from Olga Bernal by her abductors at the Buenaventura Police Station. The statement that Mr. Mosquera saw the underwear from a "considerable distance" is the Colombian Government's conclusion, and is not supported by the evidence available.

As for the investigation that the Third Court of Buenaventura is conducting into the disappearance of Olga Bernal, which the Colombian Government cited to contend that the remedies of domestic law "are fully under way", the Commission should be advised that thus far, no criminal proceedings have been formally instituted and no individual has been named as a suspect in that investigation. What there is, is a preliminary inquiry that is about to be filed since, under Article 347 bis of our Code of Criminal Procedure, if after six months from the start of an investigation, the identity of the responsible party has not been established, the Director of the Technical Corps of Judicial Police shall suspend the inquiry." Since more than six months have passed since the inquiry, it is very possible that the investigation is about to be suspended, if it has not already been suspended.

Therefore, we reiterate what we have said before to the effect that this is a case of an unwarranted delay in rendering a final judgment on the internal remedies which, once again, have proven to be utterly ineffective; from what has transpired thus far, it is obviously untrue that proceedings are fully underway. This is one of the exceptional cases provided for under Article 46.2.c of the American Convention, and we are requesting that Commission so stipulate.

6. In a note of September 20, 1991, the Colombian Government stated the following:

I have the honor to address Your Excellency on behalf of the Government of Colombia in reference to your note of January 15, 1991, concerning case 10.537, the case of Ms. OLGA ESTHER BERNAL DUENAS.

The criminal investigation that was instituted by the Nineteenth Examining Court of Buenaventura was transferred to the Public Order Jurisdiction by virtue of standards issued by the Government to preserve justice. At present, the case is in the judge's chambers to allow him to study and weigh the evidence compiled.

According to information supplied by the National Human Rights Unit of the National Bureau of Criminal Investigation in connection with this case, the Administrative Security Department, DAS, conducted inquiries and, on September 2, returned the file to the examining judge in the aforementioned public policy jurisdiction when the DAS was unable to produce any results.

The Human Rights Unit in Cali, working with the Public Order Section, is conducting a special review of the case file in order to present an assessment of the evidence.

As for the disciplinary investigation, this is still under way in the Office of the Special Prosecutor for Human Rights.

However, despite the efforts made by the competent authorities, the evidence compiled in the various proceedings has not shed any light on the facts and has not identified those responsible for the alleged disappearance. Unfortunately, there is only one piece of testimony, that of Mr. Euclides Mosquera, which I analyzed in my note of October 22, 1990. I must reiterate what I said in that note, and also that the testimony in question cannot be regarded as full proof of the events narrated therein.

As Your Excellency can see, the remedies under domestic law have not been exhausted and the proceedings and investigations are still in progress.

7. In a memorandum dated November 5, 1991, the petitioner added the following information on the case:

The Colombian Government has said again that the remedies under domestic law are fully under way in the case that concerns us, insisting that the investigations continue "in the hope that some information will turn up concerning the whereabouts of Ms. Bernal Duenas." In its note it adds that there is no evidence of the authorship of the disappearance and that "unfortunately there is only one piece of testimony, that of Mr. Euclides Mosquera".

In the Colombian Government's earlier communication, it said that in its judgment, Mosquera's testimony has "contradictions". The purpose of that unfounded assertion was to detract from the credibility that the testimony deserves. If, rather than discrediting that statement, the state agent in charge of the investigation had pressed the investigation into the whereabouts of Olga Bernal, perhaps the situation concerning this disappearance might have turned out differently. But an evaluation of the testimony given by the only person who dared make a statement about what he saw, even at the risk of his own life, was discarded.

Having said that, we need only point out that the testimony given by Euclides Mosquera describes very clearly what happened to Olga Bernal; there is also the testimony of Stella Bernal, the sister of the disappeared, who made statements concerning the subsequent inquiries that the victim's family made, wherein it established that members of the police force took Olga Bernal to the Buenaventura hospital, after she was arbitrarily seized, which is indicative that the disappeared was in the custody of those identified by the eyewitness. Stella Bernal had the following to say on this point: "In Buenaventura, my sister Luz Elena went around showing a photograph of Olga to see if anyone knew something about her. A woman from Buenaventura told Luz Elena that she had seen Olga when they put her in the Buenaventura hospital in the early morning hours the day after her arrest, in other words January 8, 1988; that two uniformed policemen were carrying her, saying that she was drunk. The woman told Luz Elena that Olga had been beaten and that it didn't look like a case of intoxication. The woman was in the street and could see Olga close up. The woman asked Luz Elena not to say anything of what she told her because it was dangerous. The woman also said that about a half hour after Olga was put in the hospital, the police brought her out again, saying that she had to be put in jail again."

Even though almost 4 years have passed since the disappearance of Olga Bernal, the criminal justice system has issued no ruling. There has been no punishment and no compensation to those injured by this crime against humanity. The small son of the disappeared continues to await, in vain, his mother's return. Therefore, as the only means to prevent this case from going unpunished, as so many other human rights violations in Colombia have, we are requesting that at its next session the Commission kindly adopt a RESOLUTION wherein it declares the Colombian State responsible.

8. During its Eighty-third Session in March 1993, the Commission issued Report 6/93, which was sent to the Government of Colombia so that the latter might issue any observations it deemed appropriate within a period of three months from the date of transmittal.

WHEREAS:

1. As to admissibility:

a. The Commission is competent to examine this case because it involves violations of rights recognized in the American Convention on Human Rights: Article 4, the right to life; Article 7, the right to personal liberty and Article 25, the right to judicial protection, as provided in Article 44 of that Convention, to which Colombia is a State Party.

b. The petition satisfies the formal requirements for admissibility as contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

c. In the present case, it is obvious that the petitioners have been unable to obtain effective protection from the domestic jurisdictional organs.

d. The petition is not pending settlement in another procedure under an international governmental organization and is not a duplication of a petition already examined by the Commission.

2. As to the Colombian Government's investigation:

In spite of the testimony given by Euclides Mosquera del Castillo, no decision has been handed down in the proceedings concerning the arbitrary arrest and subsequent disappearance of Olga Esther Bernal.

3. As for other aspects related to the Commission's processing of this case:

a. By their nature, the facts that prompted the petition cannot be resolved through application of the friendly settlement procedure and the parties did not request the Commission to apply that procedure, which is provided for in Article 48.1.f of the Convention and in Article 45 of the Regulations of the Inter-American Commission on Human Rights.

b. Since the friendly settlement procedure does not apply, the Commission must carry out the provisions of Article 50.1 of the Convention, by issuing its opinion and conclusions on the matter submitted to it for consideration.

c. In prosecuting the present case, all of the legal and regulatory procedures established in the Convention and in the Commission's regulations have been exhausted.

4. Other considerations:

a. To in any way allow the authors of a punishable act to go unpunished, is a violation of the rule of law and the principles of justice.

b. That the Government of Colombia, on July 8, 1993, presented its observations on Report 6/93 of March 11, 1993;

c. That, in the remarks contained in its reply note, the Government of Colombia does not provide any information that refutes the accusations made or that shows that appropriate measures have been taken to resolve the situation described in the complaint; and

d. That the Commission has no new evidence that would justify a modification of the original report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
CONCLUDES:

1. That the Colombian Government has failed in its duty to respect and guarantee Article 4 (right to life), Article 13 (freedom of thought and expression), Article 25 (judicial protection), in respect of Article 11, recognized in the American Convention on Human Rights, of which Colombia is a State Party, in the arbitrary arrest and forced disappearance of Olga Esther Bernal.

2. To recommend to the Colombian Government that the investigations be continued until those responsible are identified and punished in accordance with criminal law, thereby avoiding the consummation of serious acts of impunity that strike at the very foundation of the legal system.

3. To recommend to the Colombian State that it pay compensatory damages to the victim's next of kin.

4. To request the Colombian Government to guarantee the safety of Mr. Euclides Mosquera del Castillo and Ms. Melba Stella Bernal Duenas, and to provide them all with necessary protection.

5. To order the publication of this report in the Annual Report to the General Assembly, pursuant to Article 53.1 of the American Convention and Article 48 of the Commission's Regulations, because the Government of Colombia did not adopt measures to correct the situation denounced, within the time

period stipulated in Reports No. 6/93 of March 11, and No. 24/93 of October 12, 1993, approved by the Commission in its 83^o and 84^o sessions.

(*) Commission member Dr. Alvaro Tirado Mejia abstained from participating in the consideration and voting on this report.
