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Title/Style of Cause: Arges Sequeira Mangas v. Nicaragua  
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Decided by: Chairman: Carlos Ayala Corao;  
First Vice Chairman: Robert K. Goldman;  
Second Vice Chairman: Jean Joseph Exume.  
Dated: 18 February 1998  
Citation: Sequeira v. Nicaragua, Case 11.218, Inter-Am. C.H.R., Report No. 52/97,  
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## I. BACKGROUND

1. On January 21, 1993, the Inter-American Commission on Human Rights received a complaint alleging that Mr. Arges Sequeira Mangas, 58 years of age, President of the Asociación Nacional de Confiscados (National Association of Property Seizure Victims) and member of the board of directors of the Consejo Superior de la Empresa Privada (COSEP: Supreme Private Enterprise Council), had been murdered by unknown persons on November 23, 1992, in the city of El Sauce, department of León, Nicaragua. According to the claim, the police had identified the alleged perpetrators of the crime in mid-January 1993, including Frank Ibarra Silva, Germán Lacayo Guerrero, and Diego Javier Espinoza, former members of the Sandinista People's Army (EPS: Ejército Popular Sandinista). The information provided also indicated that responsibility for the murder had been claimed by an armed group known as "Fuerzas Punitivas de Izquierda" (Punitive Forces of the Left). The self-proclaimed highest authority of the group was Frank Ibarra Silva, a fugitive from justice, along with his accomplices in the crime.

2. In a note dated February 1, 1993, the Commission informed the petitioner that for the moment it could not process the complaint since the information contained therein failed to meet the requirements set forth in the Commission's Regulations, in particular Article 37, which states: "For a petition to be admitted by the Commission, the remedies under domestic jurisdiction must have been invoked and exhausted in accordance with the general principles of international law." As a result, the Commission asked the petitioner to provide additional information as to the exhaustion of the country's domestic legal remedies--such as a copy of the final judgment of domestic jurisdiction, or pertinent details, in the event that it had not been possible to make use of those legal remedies or that the decision in the case had been delayed without justification.

## II. PROCEEDINGS BEFORE THE COMMISSION

3. On December 1, 1993 the Inter-American Commission received another complaint concerning the same case. In addition to providing further details of the murder, the complaint stated that the case of Mr. Sequeira's murder had been heard by the Second Court of the Criminal District of León; and that on July 2, 1993, the jury trial that was to decide on the innocence or guilt of the accused--Frank Ibarra Silva, Diego Javier Espinoza Herrera, and Germán Lacayo Guerrero--had taken place; but that after deliberating for 27 hours, the jury was still divided (three votes against and two in favor) and unable to agree on a verdict. A second trial with a new jury took place on November 11, 1993, and Frank Ibarra Silva, former member of the Sandinista People's Army and chief of the Punitive Forces of the Left, was found guilty. Germán Lacayo Guerrero and Diego Javier Espinoza were declared innocent. Accordingly, the judge of the Criminal District sentenced Frank Ibarra Silva to 20 years in prison. Nonetheless, the same judge --in the same judgment-- ordered a dismissal, giving the person responsible for the homicide the benefit of an amnesty law issued by the Executive Branch in September 1993. The complaint also stated that despite the information that Guillermo Vargas, Attorney General of the Republic, had released to various communications media, the persons responsible for Mr. Sequeira's murder would be tried and convicted; and that their whereabouts had already been discovered but the National Police never proceeded to arrest them.

4. In a note of December 3, 1993, the Commission began its processing of the case and asked the Government of Nicaragua for pertinent information as to the events cited in that communication as well as any other relevant factors that would allow the Commission to determine whether the domestic remedies had indeed been exhausted.

5. The Government of Nicaragua acknowledged receipt of that note on December 8, 1993.

6. The petitioners provided the Commission with additional information in a note dated December 20, 1993. The note also stated that the Amnesty Law did not cover the persons who had murdered Mr. Sequeira, and that the judge had interpreted that law arbitrarily so as to benefit the perpetrators of the crime. They also denounced the position adopted by the Government of Nicaragua, which they said had consistently protected the murderers, since the Ministry of the Interior steadfastly refused to arrest Frank Ibarra and his accomplices, despite the existence of a court order to do so.

7. In a communication of January 14, 1994, the Government of Nicaragua replied to the Commission's request for information by sending a summary of the court proceedings and the actions taken by the Regional Prosecutor. The Government of Nicaragua stated that the judge, in an erroneous interpretation of the Amnesty Law, had dismissed the case of the accused, Frank Ibarra Silva, with prejudice; and that the Attorney General's Office had therefore appealed the verdict, at the same time amending its statement of grievances against the decision in question. The Government of Nicaragua ended its missive by asking the Commission to declare the case inadmissible owing to a duplication of proceedings, since the Committee on Freedom of Association and the ILO Governing Body were examining the case and had already handed down a provisional decision in the matter.

8. In notes dated February 1 and 2, 1994, the Commission transmitted pertinent portions of the Government of Nicaragua's reply to the petitioners; the Government provided additional

information to the Inter-American Commission on Human Rights in a note of March 23, 1994. In addition to expanding on the previous communication, the Government repeated its claim that a duplication of procedures was involved and it therefore invoked Article 47(d) of the Convention and Article 39(b) of the Commission's Regulations, requesting that the instant case be declared inadmissible. This information was relayed to the petitioners on March 31, 1994.

9. The petitioners sent their observations on the Government's reply April 4, 1994. In essence, these statements repeated the claims previously adduced, at the same time noting the procedure established by the International Labor Organization (ILO) is a specialized United Nations system used only to submit and examine claims that the right to freedom of association has been violated; and that it does not cover the rights protected by the American Convention on Human Rights such as the right to life or to justice. This reply was sent to the Government on April 18, 1994.

10. On May 24, 1994, the Government of Nicaragua formulated its observations on the petitioners' reply, which was transmitted to petitioners on May 31, 1994. The document sent by the Government contained a lengthy examination of the jurisdiction, functions, and principles of the ILO Committee on Freedom of Association. Consequently, the Government again asked the Commission to issue a statement of inadmissibility. That information was transmitted to the petitioners on May 31, 1994.

11. In a note of September 27, 1994, the petitioners apprised the Commission of a public statement by the Superior Private Enterprise Council (COSEP) in which that Council dissents from the position of the Government of Nicaragua, stating *inter alia* that "if the International Employers' Organization presented the claim to the ILO at our request, it was to attest once again to the harassment suffered by Nicaraguan entrepreneurs, but under no circumstances was this deemed to be the consequence of a labor relationship." The Commission transmitted the pertinent portions of this document to the Government of Nicaragua in a note dated October 31, 1994.

12. The Government acknowledged receipt of this missive on November 4, 1994.

13. In a communication dated January 25, 1995, the Commission repeated its request for information to the Government of Nicaragua, granting a period of 30 days for a reply.

14. The Government of Nicaragua replied to the Commission's request for information on February 7, 1995, by sending two communications from the Ministry of Foreign Affairs General Bureau for International Organizations. One of them contained a fax from Mr. Mario Castellón, Director General for International Organizations, to Ambassador José Tijerino, asking him, *inter alia*, "to lodge the pertinent protest with the Executive Secretariat concerning the way our replies are handled, and in this particular case the failure to keep tabs of them would seem to indicate that the intention is to issue no pronouncement, or to delay its pronouncement regarding our request for a declaration of inadmissibility."

15. On June 23, 1995, the Inter-American Commission asked the Government of Nicaragua for a copy of the provisional report adopted by the Committee on Freedom of Association, along

with its conclusions and recommendations, so that it could issue an opinion on the admissibility of the instant case.

16. In a note dated June 22, 1995, the petitioners sent additional information, which was incorporated into the file.

17. In a note dated July 24, 1995, the Government of Nicaragua sent the report of the ILO Committee on Freedom of Association, which had been approved at the 258th session of the Governing Body in November 1993.

18. The Inter-American Commission on Human Rights approved Confidential Report on Admissibility No. 12/95 during its 90th regular session; it was forwarded to the Government of Nicaragua on September 26, 1995, for observations, which were to be sent in within 90 days of the date it was forwarded. It should be noted that in the same note accompanying the Report on Admissibility, and pursuant to Article 48(1)(f) of the American Convention and Article 45(1) and (2) of its Regulations, the Commission made itself available to the parties to reach a friendly settlement.

19. In a note of September 26, 1995, the Inter-American Commission notified the petitioners--without forwarding Confidential Report No. 12/95 to them--of the decision as to admissibility in this case, and made itself available to them to facilitate friendly settlement.

20. The Government of Nicaragua, in notes dated November 21 and 22, 1995, requested reconsideration of Confidential Report on Admissibility No. 12/95, and at the same time accepted the friendly settlement procedure.

21. On January 22, 1996, petitioners requested a hearing with the Inter-American Commission on Human Rights at its 91st regular session. The Commission, in notes of January 29 and 30, 1996, informed both Government and petitioner that said hearing would be held February 23, 1996.

22. Petitioners, in a note of February 23, 1996, notified the Inter-American Commission on Human Rights that "the violation of the right to life of Mr. Arges Sequeira Mangas cannot be the subject of friendly settlement, as the damage done is irreversible."

23. The Commission, in a note of February 29, 1996, informed the Government of Nicaragua of petitioners' decision, and also communicated to the Government that in accordance with Article 45(7) of its Regulations, it considered its intervention in its capacity as an organ to assist in reaching a friendly settlement had concluded. With respect to the request for reconsideration, the Commission informed the Government that it would make "a decision--within the legal framework of the processing and analysis of this case--and will communicate it to the parties in due course...."

24. In a note of April 11, 1996, petitioners sent additional information on the case, which was forwarded to the Government on March 18, 1996. On March 14, the Government provided the

Commission a news clipping from the daily newspaper La Prensa of February 28, 1996, regarding this case.

25. The Government of Nicaragua, in a note of March 22, 1996, responded to the petitioners' additional information, stating: "I ask that you please review the accompanying document, which does not include new facts; consequently, in my judgment, this new procedural stage is improper."

26. During its 95th regular session, the Inter-American Commission on Human Rights adopted Report No. 11/97 in the case of ARGES SEQUEIRA MANGAS v. REPUBLIC OF NICARAGUA, under Article 50 of the American Convention on Human Rights. That report, which contained several conclusions and recommendations, was forwarded confidentially to the Government of Nicaragua on March 14, 1997; the Commission gave the Government 90 days to resolve the situation alleged.

27. In a note of June 30, 1997, received by the Secretariat on July 8, the Government of Nicaragua sent its observations to confidential report No. 11/97, approved by the Inter-American Commission on Human Rights at its session No. 1345, of March 13, 1997, after the time period established by the IACHR had lapsed.

28. On October 17, 1997, the Inter-American Commission on Human Rights adopted Report No. 52/97, on Case No. 11,218 (Arges Sequeira Mangas v. Republic of Nicaragua) at its session No. 1369, held during its 97th regular session. That report was adopted by the Commission under Article 51(1) and (2) of the American Convention on Human Rights, and sent to the Government of Nicaragua on October 17, 1997, for final observations.

### III. FACTS ALLEGED IN THE COMPLAINT

According to the information sent to the Inter-American Commission on Human Rights, the facts alleged are as follows:

#### A. DEATH OF ARGES SEQUEIRA MANGAS

29. Arges Sequeira Mangas, a lawyer, 58 years of age, President of the National Association of Property Seizure Victims (Asociación Nacional de Confiscados), Vice President of the Agricultural Producers Union (UPANIC: Unión de Productores Agropecuarios), and member of the Superior Private Enterprise Council (COSEP: Consejo Superior de la Empresa Privada), was murdered on November 23, 1992, at about 7:30 a.m. According to eyewitnesses, the victim was killed when three unidentified persons waylaid him near his farm, "La Queserita," in the city of El Sauce, department of León. The eyewitnesses stated that the perpetrators shot the victim from a red twin-cabin pick-up truck, which was moving at the time of the criminal act.

30. The witnesses further stated that Mr. Sequeira usually came to his farm every weekend by the same route; and that on the day of the events, he had received a telephone call asking him to come there immediately since something strange was happening. The victim therefore started on his way to the farm and when he reached the railroad crossing that was the site of the crime,

he was executed from a moving vehicle that had been lying in wait for him. He took several bullets to the head and was immediately killed. It should be noted that Mr. Sequeira was accompanied by Julián Alejandro Espinoza Martínez, who was attacked and violently beaten, but survived, although seriously injured.

31. In mid-January 1993, the police identified the persons allegedly responsible, including Frank Ibarra Silva, Germán Lacayo Guerrero, and Diego Javier Espinoza, former members of the Sandinista People's Army and of the former State Security office.

#### B. STATEMENTS TO THE PRESS BY THE PERSON ALLEGEDLY RESPONSIBLE

32. On February 23, 1993, the Barricada newspaper published an article on the Sequeira murder with the following headlines: "Fugitive and Former Member of the Military Reappears in Santa Carlota"; "Ibarra: I am the Head of the FPI" (Punitive Forces of the Left); "He claims that they wanted to kidnap Arges Sequeira, not kill him." The paper reproduced the statements Frank Ibarra Silva had made to the French newspaper *Le Monde*, in which he denied having taken part in the murder of the property seizure victims' leader, but nevertheless admitted that he had ordered the kidnapping. In his statements to the press, the former member of the Sandinista People's Army said he had ordered that Sequeira be kidnapped to compel him to say publicly that he worked for the United States Embassy. "Unfortunately, he [Arges Sequeira] reacted violently when he was accosted and was shot," said Ibarra.

33. Former Lt. Col. Frank Ibarra also said that he had started to organize the Punitive Forces of the Left with other members of the military two years earlier,[FN1] when still a member of the Sandinista People's Army. He went on to say that "the people have elected a bourgeois government, but we will not allow the achievements of the Sandinista Revolution to be called into question.... We are not terrorists, but we want to finish off the executioners of the people, who seek to take away the land, the factories, and the houses the Revolution has given them." According to *Barricada*, Ibarra told the French newspaper that the members of the Punitive Forces of the Left are not murderers, but the guardians of justice for the people, adding that the first name on their list is that of Christian Democrat Deputy Humberto Castilla. He also issued warnings against the mayor of Managua, Arnoldo Alemán; Vice President Virgilio Godoy; and the former President of the National Assembly, Alfredo César, all of whom he said were "politicians who want to return to the Somoza era, applying a neoliberal policy that will make the poor poorer and the rich richer."

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[FN1] It should be noted that the newspaper (*Barricada*) published this article on February 23, 1993.

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34. The newspaper article in *Barricada* added: "Along with Diego Javier Espinoza and Germán Lacayo Guerrero, Ibarra has been accused by the Nicaraguan authorities of being the perpetrator of the crime against the Confiscados' leader, Arges Sequeira, which took place last November 23 [1992] at El Sauce, León.... Numerous eyewitnesses to the crime have pointed him out as the man whose six lethal shots took Sequeira's life.... Three weeks after the murder, Ibarra

left the country and went to Mexico, then returned one month later, on December 9 [1992].... Asked by the Le Monde reporter how he had managed to leave Nicaragua and return, Ibarra replied with a smile: "Through the Managua airport, like everyone else." [FN2]

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[FN2] This issue of the newspaper is part of the documentary evidence in the Inter-American Commission on Human Rights files.  
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#### IV. COURT PROCEEDINGS

35. The case involving the murder of Mr. Sequeira was heard by the Second Court of the Criminal District of León. On July 2, 1993, the court and jury who were to decide on the innocence or guilt of Frank Ibarra Silva, Diego Javier Espinoza Herrera, and Germán Lacayo Guerrero deliberated for 27 hours without reaching a verdict: there were three votes against and two in favor; four votes are required for a decision.

36. On November 11, 1993, a second jury trial found former Sandinista People's Army Lt. Col. Frank Ibarra Silva guilty, and Germán Lacayo Guerrero and Diego Javier Espinoza innocent. Accordingly, the Second Court of the Criminal District handed down a decision on November 24, 1993, sentencing Frank Ibarra Silva to 20 years in prison. The aforementioned judge dismissed the case in the same proceedings, however, since he considered that the amnesty granted to those who had taken up arms on September 23, 1993 was applicable to him. The operative passage of the judgment indicated the following:

Frank Ibarra Silva, convicted, whose personal data is not known, is sentenced to serve twenty years in prison as the perpetrator of the murder of Mr. Arges Sequeira Mangas and grievous bodily harm in the case of Julián Alejandro Espinoza Martínez.... Based on these findings, the case against the accused Frank Ibarra Silva, whose personal data is not known, is dismissed by virtue of the Amnesty Law, as was made evident at the trial; and his criminal liability insofar as the instant case is concerned is therefore extinguished.

37. The judge of the Second Court of the Criminal District applied the Amnesty Law in favor of Ibarra Silva, pointing out that "consideration had to be given to the merits of the argument presented by Juan Carlos Vílchez Grijalba, Esq., who had been appointed public defender for the accused, and who presented the requisite documents to show that his client was eligible for the amnesty enacted by the National Legislature, ratified by the President of the Republic, known as Law 163, and published in issue no. 179 of the Official Gazette, dated September 23 of this year. Accordingly, we must now consider that argument and decide whether the accused Frank Ibarra Silva was eligible for such amnesty. The first article of the amnesty law cites the regions--Matagalpa, Jinotega, Estelí, and others--that are covered by the amnesty, pursuant to documents that appear in the record. The accused--that is to say, Frank Ibarra Silva--had been active in regions or departments included in that article of the law; in other words, his base of operations was among the districts mentioned in that article. Article Two states that the amnesty covers common and associated offenses committed prior to the twenty-eighth of August of this year, except for war crimes and crimes against humanity. And as this authority understands that no

war is in progress in Nicaragua nor have crimes against humanity been committed, which in this case would be genocide of the population of Nicaragua, Article Three of the law sets forth the conditions under which amnesty is to be granted; and according to the statements presented, the accused Frank Ibarra Silva entered that area before the law was published, where negotiations were conducted with the Government and other authorities for purposes of demobilization. This appears in the present case file, while Article Four of the Law, which tells us the ministry or the person responsible for granting such Amnesty--which, as the word AMNESTY itself indicates, means to FORGIVE AND FORGET. The Government grants amnesty to citizens such as, in this case, Frank Ibarra Silva. The Ministry of the Interior is responsible for issuing letters of amnesty and is on record as having done so in the case of Frank Ibarra Silva, who was born on December 5, 1954, and was a member of the FPI forces commanded by Pedrón; Certificate No. 001381 grants Frank Ibarra Silva the amnesty promulgated in the Official Gazette mentioned above, with the words: 'You Nicaraguans who are involved in armed conflicts or illegally possess firearms, come to the Units of the Special Disarmament Brigade or to the civilian or military authorities and show them this certificate and legalize your status by availing yourself of this AMNESTY or pardon granted by the Madame President of the Republic, Violeta Barrios de Chamorro.' In other words, according to the record, Frank Ibarra Silva availed himself of the amnesty granted by our National Assembly and ratified by the President of our Republic, Madame Violeta Barrios de Chamorro, on the date cited above. Consequently, Frank Ibarra Silva, as a former lieutenant colonel in the Sandinista People's Army, was given the pardon or the amnesty as decreed. He is therefore covered, from the juridical standpoint, by the Amnesty; as a result, the case against the accused Frank Ibarra Silva must be DISMISSED in this same judgment by virtue of Law 163, which was ratified by the President of our Republic, Madame Violeta Barrios de Chamorro and pursuant to our Code of Criminal Procedure and our Criminal Code, if the parties do not agree they have the right to appeal."

38. In documents dated December 10 and 13, 1993, the Regional Prosecutor appealed that judgment and expanded on its arguments alleging error below. To summarize: the documents thus presented pointed out that the case in question involved a regular murder and could not be covered by a special law which had nothing to do with the death of Mr. Arges Sequeira Mangas, inasmuch as Frank Ibarra Silva was tried for murder and grievous bodily harm, not for carrying firearms or for taking up arms again in the mountains of the north. And that only the judicial authorities had jurisdiction to decide who should be given the benefit granted by an amnesty law--not the authorities of the Executive, as had been the case with this judgment, whereby various articles of the Constitution and the Organic Law of Tribunals had been violated. Finally, the Attorney General's Office states that even if things were to reach such an absurd pass as to claim that this crime was of a political or related nature, former Lt. Col. Frank Ibarra Silva would still not be eligible for the benefit conferred by the Amnesty Law inasmuch as the murder of Mr. Arges Sequeira Mangas was included in the exceptions contemplated in that Law and its Explanation of Motives, in this case a rebel military officer acting to the detriment of a noncombatant civilian.

39. The Criminal Division of the Court of Appeals for Region II handed down its judgment on March 9, 1994, which included the following statements:

I. No nullities are found to exist in the present case and since a verdict was pronounced by the Honorable Court and Jury in a valid proceeding, it should be carried out in accordance with the law.

II. The sentence of imprisonment, issued at 2:30 p.m., February 1, 1993, finding Frank Ibarra Silva, Diego Javier Espinoza Herrera, and Germán Lacayo Guerrero, personal data unknown, guilty of the crime of murdering Mr. Arges Sequeira Mangas, is hereby upheld; as is the judgment pronounced at 2:00 p.m., February 2, 1993, convicting those same individuals of grievous bodily harm inflicted on the person of William Julian Alejandro Espinoza Martínez. Both of the aforementioned judgments were handed down by the Second Judge of the Criminal District of León.

III. The judgment pronounced by the aforementioned Judge at 8:00 a.m., November 24, 1993, concerning the principal sentence of 20 years imprisonment imposed on Frank Ibarra Silva as perpetrator of the murder of Mr. Arges Sequeira Mangas, personal data unknown, is hereby upheld. The dismissal of the charge against the accused in the aforementioned judgment is revoked.

40. In a document dated March 22, 1994, the defense attorney of former Lt. Col. Frank Ibarra Silva filed a special motion for cassation [recurso extraordinario de casación] with the Supreme Court of Justice, asking for annulment of the Court of Appeals decision that had revoked the dismissal.

41. On March 7, 1997, the Supreme Court of Justice of Nicaragua handed down a judgment on a motion for cassation filed by the public defender appointed for Ibarra Silva. The preliminary considerations of that judgment note as follows:

I. First, one must examine whether the motion has been properly admitted by the court below, as it is found that in effect the judgment appealed is one of those against which a motion for cassation may be brought; second, one must examine whether the motion was filed in proper time and form. The appellant filed its brief at 10:05 a.m. of March 16, 1994, in opposition to the judgment of 3:35 p.m. of March 9, 1994; in said brief appellant stated the grounds and the provisions of law that were misinterpreted, violated, or applied improperly, and also noted the error of law, as a basis for his arguments, to which end he invokes the second ground of Article 2 of the Law on Cassation in Criminal Matters and also the fourth ground of said Article 2. Having laid this foundation, this Criminal Division of the Supreme Court of Justice has concluded that the motion in question was filed timely and in proper manner, thus one should move on to examine the lower court errors that may or may not affect the merits of the matter. It should also be noted that the motion filed attacks only that part of the judgment contained in point III of the operative part, which says: "... the judgment handed down by said Judge at 8:00 a.m. on November 24, 1992, is affirmed with respect to the main penalty imposed on Frank Ibarra Silva, of 20 years imprisonment, for being the perpetrator of the crime of murder in the person of Mr. ARGES SEQUEIRA MANGAS, and the accessory penalties set forth in the same resolution. The dismissal with prejudice granted to the prisoner in the same judgment is revoked for the reasons set forth above," consequently in this appeal the Division must examine only the lower court errors caused the appellant only by virtue of point III. Based on the operative part of the

judgment just quoted, and as there was agreement with the other operative points of the judgment attacked, these points are affirmed.

II. The basis of the motion is the assertion that the division handing down the judgment misinterpreted Articles 1 and 2 of the Amnesty Law No. 163 published in the Official Gazette, No. 179, of September 23, 1993, because "... Mr. ARGES SEQUEIRA MANGAS held the following political and economic posts: Vice-President of the Partido Liberal Constitucionalista, President of the Unión de Productores Agropecuarios de Nicaragua (UPANIC)..." and because "it cannot be denied, then, that the rights exercised by Mr. Sequeira Mangas, and given the political polarization that still afflicts our people and the entire nation at that time, since they were diametrically opposed to the political objectives and socio-economic claims that were and continue to be the motive for many fellow citizens to take up arms as the beginning of the preparation of larger-scale FUTURE ACTIONS that irremediably give way to crimes against persons and property..." Analyzing the Amnesty Law at Articles 1 and 2, adduced by the appellant, this Supreme Court of Justice finds that the first of these articles makes strict reference to the places in which the events must occur to be considered covered by the benefits of the amnesty; and as these places are only the departments of "... Matagalpa, Jinotega, Estelí, Madriz, Nueva Segovia, Boaco, Chontales, and the North and South Atlantic Autonomous Regions...", "it is obvious that the department of León was not included in that list of places, and consequently the law cannot cover the perpetrator of an act committed in the department of León, these considerations have also been observed by the court below, and are sufficient and fundamental reasons for declaring the appellant's claim of error below inadmissible. Along these same lines, it should be noted that the Supreme Court of Justice, in a judgment of 9:30 a.m., August 26, 1985, which appears in B.J., page 293 of 1985, cons. II, held as follows: "...although in the criminal doctrine there is no completely well-defined theory of political crime, in general terms there are some elements that make it possible to characterize them. In this vein, according to the study by Argentine jurist Raúl Augusto Baradacco, in the legal encyclopedia OMEBA, Tome VI, page 447 ff., these include, among others: (a) "That the active subject of the political crime always acts in the name of a tacit representation of the social group he defends; (b) there is always an attack on the political organization of the country; (c) the active subject of the political crime works pursuant to philosophical, political, and social principles that condition and determine his or her conduct; and, (d) the essential tendency in political crime is almost always of social import." This doctrine has also been upheld in a consultation resolved by this Supreme Court on January 31, 1992, in accordance with the doctrine noted today by the court below, which referred to what appears in the Diccionario de Derecho Usual by Cabanellas, and these considerations are valid to dismiss, as the judgment challenged did, appellant's claims; consequently, the arguments of error below brandished by him on the misinterpretation of Articles 1 and 2 of the Amnesty Law by the Division will have to be dismissed.

III. The appellant argues that the Criminal Division of the court below committed an error of law in view of the discrepancy between the law and the second considering paragraph of the judgment appealed, invoking ground 4 of Article 2 of the Law on Cassation in Criminal Matters: this error is because it was up to the Ministry of Government to apply the Amnesty Decree, not the courts. With this error in the part of the appellant, he seeks to elude the Constitutional provisions contained in the following Articles: 158, which proclaims: "Justice emanates from the people and shall be imparted in their name and delegation by the Judicial branch, made up of the

Courts of Justice...."; 159, which reads: "The Courts of Justice for a unitary system.... The exercise of the jurisdiction of the Courts lies with the Judicial branch...." We observe that the Division has not made the error indicated, for its legal explanations and assessments have been correct, which makes it necessary to dismiss to the allegation of error below based on ground 4 of Article two, which was argued, declaring that the Ministry of Government is not the organ in charge of the administration and enforcement of justice; and, furthermore, for the argument of error of law under ground 4 of Article 2 of the law of August 29, 1942, this Court has upheld the position "... that for an argument of error of law based on improper weighing of the evidence to prevail, it is essential to cite, as violated, the procedural laws that refer to the value, efficacy, or force of the evidentiary measures, or to the manner in which they have been weighed...." (Judgment of 12:00 noon of January 18, 1989, cons. III, p. 10) This same position is set forth in a judgment of 11:00 a.m. of December 21, 1993. In filing this appeal, the appellant invoked ground 2, section 5, of the Law on Cassation, as the basis for the appeal, and this Supreme Court finds that ground 2 of the Law on Cassation in Criminal Matters has no section 5, thus we must dismiss the petition founded thereon, and also, consequently, dismiss all further argument, contained in the brief setting forth the allegations of error below referring to said section 5, in which, moreover, the provisions of law violated are not indicated, misinterpreted, or improperly applied. This line of argument is applicable with respect to the arguments of error set forth by the appellant because there is no section 6 in ground 2 of the Law on Cassation in Criminal Matters. Moreover, as this Supreme Court has stated: "It is essential to specify the provisions infringed and the nature of the infraction" (Judgment of 11:00 a.m. of August 20, 1958. B.J. 19119) and the alleged errors below must meet the requirements set forth in the law on cassation in criminal matters, based on paragraph 6 of the law of August 29, 1942. Although the case law has consistently noted that the criminal cassation remedy does not share the rigorous formalism of the civil cassation remedy, in view of its special nature, the appellant may limit himself to indicating only the grounds on which he bases his motion and then, in alleging the errors below, he must specify the legal provisions violated by the judgment appealed and the specific manner in which they have been violated, misinterpreted, or improperly applied; if these requirements are not met, the appeal has no legal viability. With the cassation sought by the appellant, it should be noted that when seeking cassation in criminal cases, it is not necessary to make a distinction as to whether it is based on the merits or on procedural grounds, since "the law of cassation in criminal matters sets forth a single motion for cassation that includes the grounds for arguing infraction of the law, and infraction of procedure, such that it is not necessary to make a distinction that is necessary when seeking cassation in civil matters." (Judgment of 11:40 a.m. of November 22, 1972, p. 279, Cons. I.) These criteria are also applicable for dismissing the allegations of error below by the appellant in his brief upon filing, when he bases it on ground 2, section 6 of the law on cassation in criminal matters, in order to claim the nullity of a second adverse verdict, which has been declared to have absolute value by the court handing down the judgment, for the law on cassation in criminal matters contains only 6 grounds, with no sections, of any kind, and ground 2 of that law contains no section, consequently, this allegation of error need be examined no further.

THEREFORE: Pursuant to Articles 424, 426, and 446 Pr, Decree No. 223 of August 29, 1942, the undersigned Justices RULE: The sentence appealed shall not be annulled. The judgment handed down by the Court of Appeals of Region II, at 3:35 p.m. of March 9, 1994, is affirmed in its entirety.

## V. POSITION OF THE PARTIES

### A. THE GOVERNMENT OF NICARAGUA

42. In its first communication to the Inter-American Commission on Human Rights, of January 14, 1994, the Government of Nicaragua sent a summary of the appeal brief filed by the Regional Prosecutor challenging the judgment handed down by the Second Judge of the Criminal District, who "in an erroneous interpretation of the Amnesty Law dismisses without prejudice the case against the accused Frank Ibarra Silva." The Government also states that "in a note dated February 23, 1993, the International Employees' Organization presented a complaint to the International Labor Organization regarding the murder of Mr. Sequeira Mangas." And that "pursuant to the procedures of the International Labor Organization (ILO), the case was considered to be urgent since it involved the life of persons; was admitted as Number 1700; and is being examined by both the Committee on Freedom of Association and the ILO Governing Body, which have already rendered a provisional decision on the subject." Consequently, the Government of Nicaragua ended its missive with the statement: "I am therefore invoking Article 47(d) of the American Convention on Human Rights and Article 39(b) of the Regulations of the Commission, for the purposes set forth in the paragraphs cited."

43. In a note of March 23, 1994, the Government of Nicaragua reported on the latest judicial proceedings, and stated *inter alia* that "proceedings have continued in the present case in accordance with the internal legislation of the Republic, which is the competent entity to examine the case. Consequently, since the Commission has not yet responded to the request presented by the Government of Nicaragua which I transmitted in my letter of December 14, 1993 (and which I am reiterating in the present note) on the grounds that the case is being investigated by another government agency, I am taking the liberty of invoking--and at the same time remind the Commission of--the provisions contained in Article 37 of the Commission's Regulations, for the purposes set forth therein."

44. On May 24, 1994, the Government of Nicaragua sent another letter to the Inter-American Commission, in which it included a detailed explanation of the legal framework, jurisdiction, and functions of the International Labor Organization (ILO) Committee on Freedom of Association. To that end, the Government stated that "in 1950, considering the particular importance of trade union freedom, the International Labor Organization (ILO) established a special procedure to protect trade union freedom in conformity with the United Nations." And that "in 1951, the ILO Governing Body created the Committee on Freedom of Association, which consists at present of nine members: three governmental representatives, three employers, and three workers. Each of these members acts in his or her individual capacity. Nine alternate members, who are also appointed by the Governing Body, are entitled to take part in the discussion of cases submitted to the Committee." The Government of Nicaragua also stated that the Committee on Freedom of Association performs quasi-judicial functions and has included various measures in its proceedings to guarantee its impartiality. Precise rules have been drawn up for examining complaints, and a more streamlined procedure has been established for urgent cases. Those classified in this category are the ones dealing with the life or freedom of individuals; cases in

which existing conditions affect the freedom of action of a collective movement; cases relating to a permanent state of emergency; and cases that involve the dissolution of an organization."

45. The Government of Nicaragua concluded by stating that "the Committee on Freedom of Association of the ILO Governing Body is examining, with proper jurisdiction, the case of the murder of Mr. Arges Sequeira (case No. 1700), inasmuch as he was the member of an employers' trade association (vice-president of COSEP). The Committee on Freedom of Association has been studying the case of Mr. Arges Sequeira since February 23, 1993, i.e. prior to the claim submitted to the Commission. The reason or motive the provision contained in Article 47(d) of the American Convention on Human Rights was included by the States is to avoid or impede the possibility that the events constituting the grounds for a single claim as to the violation of fundamental rights might be the subject of a conflict of jurisdiction between an international organ (as is the case of the Committee on Freedom of Association) and the IACHR, which is regional in scope--a situation that might result in conflicting decisions."

46. "... In view of the preceding statements, and since the Committee on Freedom of Association is a body with jurisdiction to hear a case involving the right to life in combination with the right to trade union freedom when the persons concerned are members of workers' or employers' groups; and as Mr. Arges Sequeira was a leader of the Superior Private Enterprise Council (COSEP), a Nicaraguan business organization that represents employers both in the ILO Governing Council and at its General Conference, the Government of Nicaragua therefore repeats the request expressed in its note dated December 14, 1993 and again in a communication of March 16, 1994, that Article 47(d) of the American Convention on Human Rights and Article 39(b) of the Commission's Regulations be applied for the purposes established therein."

47. In a missive dated February 7, 1995, the Government of Nicaragua again repeated the statements included in earlier communications and declared that "we submitted clear evidence in our note dated May 18, 1994, citing documents and jurisprudence of the International Labor Organization's Committee on Freedom of Association to show that the Committee on Freedom of Association does indeed have jurisdiction to hear the instant case and has issued a statement to that effect, since it began to examine the case before it came to the IACHR."

## B. THE PETITIONERS

48. The initial communications from the petitioners indicated, in short, that "Mr. Arges Sequeira Mangas--who was a president of the National Association of Property Seizure Victims and a member of the board of directors of the country's foremost employers' organization, the Superior Private Enterprise Council (COSEP)--was murdered on November 23, 1992 by three former members of the Sandinista People's Army, Frank Ibarra Silva, Germán Lacayo Guerrero, and Diego Javier Espinoza Herrera. The alleged perpetrators, in addition to having confessed their part in this crime, had threatened to kill a number of prominent members of the country's entrepreneurial sector.... The case of Mr. Sequeira's murder was tried by the Second Court of the Criminal District of León.... On July 2, the jury that was to determine the innocence or guilt of the accused (Frank Ibarra Silva, Diego Javier Espinoza Herrera, and Germán Lacayo Guerrero) began its deliberations. After 27 hours of deliberation, the jury was divided--three votes against and two in favor. But this did not constitute a verdict, since four votes are required for that

purpose. A second jury met on November 11 and found Frank Ibarra Silva guilty and Germán Lacayo Guerrero and Diego Javier Espinoza innocent.... Accordingly, the judge of the Criminal District of León sentenced Frank Ibarra to 20 years in prison. Thereafter, however, the case was dismissed on the grounds that it was covered by the latest amnesty law, issued the previous September.... The human rights groups express their dismay at this situation of flagrant injustice, which attests to the impunity now reigning in the country since the amnesty law covers only those persons who have taken up arms for political purposes or to press socioeconomic claims, and who have committed political or politically-related offenses. In this case we are confronted with a common crime, a murder compounded by a number of aggravating factors. Moreover, Nicaragua's Criminal Code fails to address political crimes in any of its sections. It should be noted that the accused were sentenced to prison even though their whereabouts were initially unknown. Nevertheless they were publicly granted protection by the latest amnesty law, issued on September 22. Later, they turned in their weapons at the El Dorado enclave in the department of Jinotega and remained in the custody of the Special Disarmament Brigade (an entity of the Sandinista People's Army). Despite the information given to the various communications media by Guillermo Vargas, Attorney General of the Republic, stating that the persons who had murdered Mr. Sequeira would be tried and sentenced and that their whereabouts had already been discovered, the national police never arrested them."

49. In a communication dated April 4, 1994, the petitioners forwarded their observations on the response from the Government of Nicaragua, stating that "by means of various print media, officials of the Executive and the Judiciary have declared that the rule of law has been reflected in the judgment handed down by the Criminal Division Chamber of the Court of Appeals [which had revoked the judgment dismissing the case in favor of the accused].... The court's action has unquestionably abided by objective law. We the petitioners nevertheless concur with many authors of human rights treatises that there can be no true rule of law if the respective state agencies or institutions fail to carry out court judgments or orders. In the present case, there has been no initiative to execute either the judgment of the Court of Appeals or the arrest warrants handed down in the proceedings in the first instance. It should be noted that Mr. Frank Ibarra Silva has not been arrested by the National Police in spite of the fact that his whereabouts are known. Moreover, the irregular group to which the accused belongs has threatened to take up arms again if the Judiciary fails to apply the amnesty decreed in September 1993 to him."

50. As to the alleged duplication of procedures, petitioners pointed out that the International Labor Organization has a special procedure for the submission and review of claims regarding freedom of association, and has no jurisdiction over violations of other human rights, such as the right to life or to justice. Consequently, "the reply from the Government of Nicaragua is designed to evade the duties imposed on the states parties by Article 1(1) of the American Convention on Human Rights. Among other duties which it has failed to perform, we may cite the following:

- a. The Judicial Branch of Nicaragua, represented in this case by the Second Court of the Criminal District of León, should have--prior to the unwarranted application of the Amnesty Law--termed it an act against human rights.
- b. The National Police, in a display of obedience and cooperation with the Judicial Branch, should carry out the judgments, decisions, and orders issued by the courts.

c. The civilian authorities should take the pertinent measures to prevent acts such as the one that took the life of Mr. Arges Sequeira Mangas. Irregular forces such as the Punitive Forces of the Left nevertheless enjoy complete freedom in the national territory, thereby endangering the safety of the population."

51. In a communication dated September 27, 1994, the petitioners sent the Inter-American Commission on Human Rights an explanatory letter from the Superior Private Enterprise Council, which had asked the International Employers' Organization (IEO) to file a claim with the ILO in regard to the death of Mr. Arges Sequeira Mangas. In summary, the Superior Private Enterprise Council stated that the murder of Mr. Sequeira Mangas exceeded the limits of a mere violation of freedom of association; that it was not the result of a labor relationship, but a common crime not covered by the Amnesty Law decreed by the Government of Nicaragua. The letter also said that "if the International Employers' Organization (IEO) submitted the claim to the ILO at our request, it was to attest once again to the harassment suffered by the Nicaraguan entrepreneur, but under no circumstances was this deemed to be the consequence of a labor relationship." And, finally, that "the murder was perpetrated by retired active members of the Sandinista People's Army, so that from a legal standpoint, it can by no means be attributed to a relationship stemming from a trade union or work-related relationship."

52. The most recent communication from the petitioners, dated June 22, 1995, stated that "while it is true [that in the reply from the Government of Nicaragua] the statement is made that the murderers of Mr. Sequeira Mangas had been convicted and sentenced to prison, as ordered by the Court of Appeals of León, they were still completely free, despite the arrest warrant. The Government has made absolutely no effort to take them into custody." It went on to say that "we have asked the Nicaraguan Supreme Court of Justice--which is where the special appeal for annulment is currently pending--to give us the latest details of the case; and we were told by Rubén Montenegro, an officer of that court, that the case is now awaiting a response to the charges from the Criminal Prosecutor's Office; therefore the Attorney General of the Republic, José Antonio Fletes Largaespada, has had this file on his desk for more than a year, when the legal term for such answer to the brief alleging errors below is 10 days--thus contributing to justice not being done in the murder of Mr. Sequeira Mangas, since such action simply benefits the murderers."

#### C. REQUEST FOR RECONSIDERATION OF THE REPORT AS TO ADMISSIBILITY No. 12/95 BY THE GOVERNMENT OF NICARAGUA

53. On November 21, 1995, the Government of Nicaragua stated: "Pursuant to the agreement of the Commission, page 21, paragraph 4, we asked if we could submit to the IACHR a certified copy of the court file on the death of Mr. Arges Sequeira Mangas, which has already been sent to it by express mail. In relation to paragraph 5 of the same agreement, the Government of Nicaragua accepts the IACHR's position of making itself available to the parties to reach a friendly settlement in the matter, pursuant to the provisions of Article 48(1)(f) of the Convention and Article 45(1) and (2) of its Regulations. Therefore, we ask that we be notified immediately of the IACHR's decision in respect of our acceptance, so that the parties may try to reach a friendly settlement of the matter on the date determined by the IACHR."

54. "Likewise, the IACHR should be informed that the Government of Nicaragua reserves the right to request reconsideration of said decision, since domestic remedies have not been exhausted, and in addition because there is pending litigation, as has been proven before the Inter-American Commission on Human Rights, as per the terms of Articles 46(c) and 47(d) of the American Convention on Human Rights, and Article 39(1) of the Commission's Regulations, since this case is before the International Labor Organization."

55. "I must also note that the case regarding Mr. Arges Sequeira Mangas is before the Supreme Court of Nicaragua, pursuant to the special appeal that the public defender brought against the judgment issued by the Court of Appeals, Criminal Division Region II, which is shown with the certification mentioned in section (A), and which is ample proof of the failure to exhaust domestic remedies; this is spelled out in specific terms."

56. On November 22, 1995, the Government of Nicaragua completed the previous response, indicating: "On November 21 of this year, the Government of Nicaragua accepted the offer of the IACHR to use the friendly settlement procedure as provided for in Article 48(1) of the Convention and Article 45(1) and (2) of its Regulations. We trust that the results will be positive. In addition, on that same date the certification of the judicial file on the death of Mr. Arges Sequeira Mangas was sent; it is being processed before the Supreme Court of Justice, pursuant to a motion for cassation; the Commission had asked for this file."

57. "In relation to the litigation pending before the Committee on Freedom of Association, we consider that said committee does have jurisdiction to hear this case, since it took cognizance of it before the IACHR. According to Article 47 of the American Convention: 'The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: ... the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.'"

58. "Similarly, consistent with the above-noted provision of the Convention, the Regulations of the Honorable Commission, at Article 39, state in pertinent part: "1. The Commission shall not consider a petition in cases where the subject of the petition: a) is pending settlement in another procedure under an international governmental organization of which the State concerned is a member; b) essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the state concerned is a member."

59. "That is, both the Convention and the Regulations speak to situations in which the case is being heard by a governmental organization, and the ILO is an international governmental organization, of which Nicaragua is a member state, just as it is a member state of the OAS, all of which duly appears in documentation that is in the hands of the IACHR."

60. "With respect to the non-exhaustion of domestic remedies, it was alleged legally and properly, in timely fashion, and there is absolute evidence, throughout the file, which is already at the Commission; it also contains the special appeal that was filed, and on which a ruling is pending. We believe it is not necessary to go into detail as to what is entailed in the special appeal in our legislation, for the reason noted above, i.e. that action has been consistent with the

American Convention on Human Rights, and with the jurisprudence of the illustrious Inter-American Court of Human Rights. In other words, it is clear that domestic remedies have not been exhausted in this case."

61. "Finally, we request of the honorable Commission that it reconsider its decision that appears in Report No. 12/95, approved at the 90th regular session, considering that this case is before the Supreme Court of Justice, which was just restructured and organized into divisions so as to render judgments more expeditiously."

D. RESPONSE BY THE NICARAGUAN STATE TO REPORT No. 11/97 APPROVED BY THE IACHR ON MARCH 13, 1997, PURSUANT TO ARTICLE 50 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

62. In a note of June 30, 1997, Nicaragua responded to the report from the Inter-American Commission on Human Rights stating, inter alia: "In the face of such conclusions [reached by the IACHR], the Government of the Republic of Nicaragua takes this opportunity to express as follows to the Honorable Commission on Human Rights:"

63. "The Nicaraguan state cannot be characterized as liable for the violation of the right to life. The crime against Mr. Arges Sequeira Mangas cannot be characterized as a violation of the right to life perpetrated by a state agent.... As the Commission is aware, the crime was not committed by a state agent, but by Frank Ibarra Silva, who identified himself as the leader of the Punitive Forces of the Left, an irregular armed group that has no link whatsoever to the civilian or military institutions of the Nicaraguan state."

64. "We have been very surprised to observe that the conclusions of the report before us it is affirmed that the Nicaraguan state is liable for a violation of Article 8(1) of the American Convention on Human Rights. On this point, the Government of Nicaragua informs the Honorable Commission that all the pre-judicial and judicial actions in the case of the crime committed against Arges Sequeira Mangas and for the crime of grievous bodily harm against Julián Alejandro Espinoza Martínez were carried out at its own initiative. At no time did relatives of the victim come before the police or judicial authorities to file a complaint, or a formal accusation, or to take any procedural initiative whatsoever in the case."

65. "The judicial process was begun the same day as the underlying events by the Second Court for the Criminal District of León. That same day, Denis Rueda Mendoza, Regional Prosecutor, formally lodged a complaint regarding the crime."

66. "Nicaraguan state authorities and institutions worked arduously to identify the guilty in this case and to apply the laws of the Republic, acting pursuant to the law.

67. The National Police prepared an prepared a description and photographs of the person responsible for the crime.

68. Testimony was taken from several persons, including:

- Lilian de Socorro Ruiz Solís
- Mercedes Rocha Sandoval
- María Concepción Vílchez Alvarez
- Prudencia Castillo Luna
- Antonio Alejandro Ramírez Flores
- Carlos Ernesto García Mantilla
- Humberto Larios Pérez
- Silvio Agüero Castellón
- Flor de María Vílchez Alvarez
- Ana Dolores Carrión Parajón
- María Elena Ramírez
- César Fernando Valle Matute.

69. "All of them offered their statements with no pressure or coercion of any kind, and there has been no news of threats received, or that anything has happened to endanger their physical integrity."

70. "Less than two months after the unfortunate events occurred, the police authorities had already identified the person responsible, and proceeded to encircle him and to prohibit him from leaving the national territory."

71. "Authorities from the Office of the Attorney General and the courts of justice of the country pooled efforts to guarantee the right to justice in this case. As was indicated above, the criminal investigation was carried out by the authorities on their own initiative."

72. "It is known to the Commission on Human Rights that a jury trial that was begun on November 11, 1993, and concluded November 12, 1993, convicted Frank Ibarra Silva. Based on this conviction, the Second Judge for the Criminal District of León, on 8:00 a.m. of November 24, 1993, handed down the respective judgment, in which he sentenced Frank Ibarra to 20 years imprisonment for being the perpetrator of the murder of Arges Sequeira Mangas, and for grievous bodily injury to Julián Alejandro Espinoza Martínez, but at the same time dismissed the matter, with prejudice, in an erroneous application of the Amnesty Law (Law No. 163).

73. "The judgment indicated was reported to the Regional Prosecutor, who on behalf of and in representation of the state appealed it on November 26, 1993, considering it to have no supporting legal argument, to be unlawful, with no legal foundation, a mockery of the law, and a show of contempt for our laws; it was a preposterous dismissal."

74. "The Court of Appeals of Region II handed down its judgment at 3:35 p.m. of March 9, 1994, in which it confirmed the judgment of the Court of First Instance with respect to the sentence of 20 years imprisonment for Frank Ibarra Silva, and revoked the dismissal with prejudice extended to the very person convicted in that judgment. Therefore, we consider that there is no basis for paragraph 112 of the report in question, which reads: 'This presentation enables the Inter-American Commission to consider that there can be no justification whatsoever for a crime committed in 1992 to remain unpunished five years later.'"

75. "It has been shown that the courts of justice of Nicaragua handed down a conviction one year and four months after the crimes were committed."

76. "The defense attorneys for Frank Ibarra Silva brought a special motion for cassation, which was admitted and processed by the Supreme Court of Justice. The highest court in the land issued a judgment affirming the judgment of the Court of Appeals for Region II."

77. "Honorable Members of the Inter-American Commission on Human Rights: from all the foregoing, it is clearly deduced that the Nicaraguan state is not responsible for the violation of Articles 1(1), 4, 5, 8(1) and 25(1) and (2)(c) of the American Convention on Human Rights, since Report No. 11/97, at paragraphs 28 and 32, reflects that Frank Ibarra Silva, who was found guilty, belonged the Sandinista People's Army and the now-defunct State Security office, and that at the time he committed the crime he was the chief of an armed group, which operated outside of the law, and in opposition to the civilian authorities freely elected by the Nicaraguan citizenry."

78. "Nicaragua's positive law provides the remedies and guarantees necessary to punish crimes committed. Consequently, a jury trial, the Court of Appeals for Region II, and the Supreme Court of Justice found Frank Ibarra Silva guilty of the crime of murder of Arges Sequeira Mangas, and of grievous bodily injury in the person of Mr. Julián Alejandro Guerrero Martínez."

79. "The Nicaraguan state, through its various offices, National Police, Office of the Attorney General, and courts of justice, undertook all the proceedings necessary, pursuant to the procedures established in the laws of the Republic, to guarantee the rights set forth in the American Convention on Human Rights, particularly the right to justice."

80. "In view of the all the foregoing, the Honorable Inter-American Commission on Human Rights is asked to undertake an exhaustive review of Report No. 11/97, approved by the Commission at its session 1345, held March 13, 1997."

## VI. THE ISSUES RAISED IN THIS CASE

81. The Inter-American Commission on Human Rights will examine, first, the request for reconsideration filed by the Government of Nicaragua with respect to Report on Admissibility No. 12/95, adopted September 13, 1995, at the 90th regular session. In this regard, the Commission will analyze, once again, the allegations of the Government of Nicaragua regarding an alleged duplication of proceedings, and the failure to exhaust domestic remedies.

82. Another issue that the Inter-American Commission on Human Rights must sort out is whether domestic remedies have been brought and exhausted in this case, based on generally recognized principles of international law.

83. The Commission must also determine whether the death of Mr. Arges Sequeira Mangas occurred with the support or tolerance of the public authorities, or whether the authorities have acted such that the crime took place absent any prevention, or with impunity. In other words, the

Inter-American Commission on Human Rights must determine whether the Nicaraguan state is liable internationally for the victim's death, and whether justice has been denied in this case.

## VII. GENERAL CONSIDERATIONS

### A. CONSIDERATIONS WITH RESPECT TO THE REQUEST FOR RECONSIDERATION OF TO THE REPORT ON ADMISSIBILITY No. 12/95 BY THE GOVERNMENT OF NICARAGUA

84. The Inter-American Commission on Human Rights declared this case admissible at its 90th regular session (September 13, 1995). The operative part of the report indicates as follows:

1. To reject the Nicaraguan Government's objections that the instant case is inadmissible under Article 47(d) of the American Convention on Human Rights and Article 39(2)(a) and (b) of the Commission's Regulations, since it has been shown that the exception of Article 39(2)(a) of the Regulations is fully applicable.

2. To declare the instant case admissible, pursuant to Article 46 of the American Convention on Human Rights, except for the issue of the failure to exhaust domestic remedies, which will be decided upon together with the merits of the case.

3. To continue hearing the instant case.

4. To ask the Nicaraguan Government to submit to the Inter-American Commission on Human Rights within 90 days a copy of the court file on the death of Mr. Arges Sequeira Mangas.

5. To make itself available to the parties to reach a friendly settlement of the case, pursuant to Article 48(1)(f) of the Convention and Article 45(1) and (2) of the Commission's Regulations. The Commission requests the Nicaraguan Government to take whatever steps it deems appropriate to reply to the Commission within 30 days.

6. To transmit this report to the Government of Nicaragua, which is not authorized to publish it.

85. With respect to exhaustion of remedies, the Inter-American Commission stated as follows:

1. The Government of Nicaragua invoked the failure to exhaust domestic remedies only once and in generic terms, limiting its remarks to indicating that proceedings in the case had continued in accordance with domestic law, which has jurisdiction over the case. It is widely recognized--in the context of international protection of human rights--that a party who invokes the failure to exhaust domestic remedies is obliged to indicate the remedies to be exhausted and the effectiveness thereof. Consequently, the Inter-American Commission on Human Rights deems it appropriate to apply Article 37(3) of its Regulations.

2. Independent from what is indicated in the previous paragraph, the Inter-American Commission on Human Rights considers that in this case the non-exhaustion of domestic remedies is related to the merits of the case.

86. In written communications of November 21 and 22, 1995, the Government of Nicaragua requested reconsideration of the report on admissibility and at the same time accepted the friendly settlement procedure. This was reiterated at the hearing held during the 91st regular session (February 23, 1996). The Government reiterated once again that there was a problem of pending litigation since the case was examined earlier by the Governing Body of the International Labor Organization (ILO). In addition, the Government reiterated that the case was pending before the Supreme Court of Justice, as a motion for cassation was brought by the public defender on behalf of the perpetrator of the crime.

87. With respect to the supposed duplicity of procedures alleged by the Government of Nicaragua, the Commission deemed that "there has been no effective settlement of the violation claimed, and therefore, the exception set forth at Article 39(2)(a) of its Regulations is fully applicable." In effect, the murder of Mr. Arges Sequeira Mangas has met with impunity, i.e. the perpetrator of the crime, Frank Ibarra Silva (former member of the Sandinista People's Army) is free, even though he publicly confessed to the media that it was he who took Mr. Sequeira's life. In other words, in this case, as the Commission will prove below, the Nicaraguan state has not fulfilled its obligation to punish the persons liable, nor has it made reparations to the victim for the damage caused.

88. As for the decision to rule on the issue of exhaustion of domestic remedies together with the merits, the Inter-American Commission cited the Court's jurisprudence on the question:

In such cases, given the interplay between the problem of domestic remedies and the very violation of human rights, the question of their prior exhaustion must be taken up together with the merits of the case. (Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, paragraph 94; case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, paragraph 93; and case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, paragraph 96).[FN3]

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[FN3] Cited by the Inter-American Court of Human Rights, Jean Paul Genie Lacayo Case, Preliminary Objections, Judgment of January 27, 1995, p. 9, paragraph 30.

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89. Finally, the Inter-American Commission on Human Rights highlights that a request for reconsideration is only proper for reports approved under Article 50 of the American Convention on Human Rights, and not to the reports on admissibility. Moreover, reconsideration in respect of Article 50 reports is allowed only for states that are not party to the American Convention.[FN4] Further, Article 54 of the Commission's Regulations is clear when it states that new facts or considerations of law not previously examined are necessary for the Commission to declare that the request for reconsideration can stand. These conditions are not met in this case. Consequently, the Inter-American Commission on Human Rights considers the

request for reconsideration brought by the Government of Nicaragua on November 21 and 22, 1995, to be unlawful and unfounded.

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[FN4] Article 54, Regulations of the Inter-American Commission on Human Rights.

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## B. CONSIDERATIONS ON THE EXHAUSTION OF DOMESTIC REMEDIES

90. The question of exhaustion of domestic remedies is addressed at Article 46(1)(a) and (b) of the American Convention, which reads as follows:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 and 45 shall be subject to the following requirements:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally accepted principles of international law;
- b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

91. The American Convention on Human Rights also provides for three exceptions to the exhaustion of domestic remedies:

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

92. Article 37 of the Commission's Regulations tracks almost all of Article 46 of the Convention, along with the objections to the exhaustion of domestic remedies, but with the additional factor that "When the petitioner contends that he is unable to prove exhaustion as indicated in this Article, it shall be up to the government against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition." [FN5]

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[FN5] Article 37(3) of the IACHR Regulations, Exhaustion of Domestic Remedies.

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93. In the instant case, the Government of Nicaragua invoked the failure to exhaust domestic remedies on only one occasion, and in generic terms. In effect, on March 23, 1994, the

Government informed the Commission with respect to the latest judicial proceedings, stating in addition that "this case has continued its procedure in accordance with the domestic laws of Nicaragua, which has jurisdiction over it...."

94. Later, and after the Commission referred to this issue in its report, the Government of Nicaragua stated in its request for reconsideration that the issue of the failure to exhaust domestic remedies "was alleged legally and properly, in timely fashion, and that there is clear and convincing evidence throughout the court file, which is already in the Commission's hands, which also includes the motion for cassation that was brought, and with respect to which a ruling is pending...." The Government of Nicaragua clearly admits that the evidence of non-exhaustion of domestic remedies is in the court record that it sent in response to the request from the Commission in its report on admissibility, i.e. only when the Commission so requested, and towards the end of its processing of the case.

95. The Inter-American Commission on Human Rights would like to reiterate what was said in its admissibility report, when it noted that the argument used by the Government of Nicaragua in this connection is not compatible with the practice of international human rights law, as it is well-known that the party who invokes the objection of non-exhaustion of domestic remedies has, in addition, the duty to identify them to the Commission specifically, not generically. In other words, it does not suffice for the state to invoke non-exhaustion of domestic remedies generically when it addresses the Commission; rather, it must spell out the remedies not exhausted and report on their effectiveness. The Inter-American Court of Human Rights set down jurisprudence on this point in its first contentious cases:

... the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.[FN6] [Emphasis added.]

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[FN6] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987 (paragraph 88).

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96. Without prejudice to the foregoing, the Commission should also reiterate its doctrine on crimes in respect of which the state is obliged to press charges, which is as follows: In the case of crimes of public action, and even in those which may be prosecuted by a private actor, it is not valid to demand exhaustion of domestic remedies of the victim or the victim's relatives, for the state has a duty to maintain public order, and therefore it has an obligation to set the criminal law system into motion and to process the matter until the end. As the Inter-American Court of Human Rights has stated, the obligation to investigate "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." [FN7] In other words, the obligation to investigate, prosecute, and punish the persons liable for human rights violations is a non-delegable duty of the state. One

consequence is that public employees, unlike private persons, have a legal obligation to denounce all crimes of public action that they come to learn of in performing their duties.

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[FN7] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988 (paragraph 177).

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97. The preceding statement is confirmed in those procedural regimes that deny the victim or victim's relatives any standing, as the state monopolizes the ability to press criminal charges. And where such standing is provided for, its exercise is not compulsory, but optional for the person who has suffered harm, and does not take the place of state action.

98. In the instant case, the defense attorney for former EPS Lieutenant Colonel Frank Ibarra Silva, in a document dated March 22, 1994, filed a special appeal before the Supreme Court of Justice against the judgment of the Court of Appeals, which revoked the dismissal with prejudice. In other words, the case has been paralyzed in the Judiciary as of that date.

99. As can be observed, the failure of the Judiciary to respond to the special appeal brought March 22, 1994, and the failure of the Office of the Attorney General to press criminal charges shows that the Nicaraguan state has not undertaken the investigation in this case with due diligence.

100. The Inter-American Commission on Human Rights considers, nonetheless, as it stated in its report on admissibility, that at this stage of the analysis the issue of non-exhaustion of domestic remedies is related to the merits of the case, i.e. with the effectiveness of the judicial remedies in Nicaragua, and their applicability. The Inter-American Court of Human Rights has set forth extensive jurisprudence on this point:

... when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[FN8]

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[FN8] Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987 (paragraph 91).

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### C. CONSIDERATIONS WITH RESPECT TO THE LACK OF DUE PROCESS

101. The Inter-American Commission on Human Rights deems it fundamental to evaluate the judicial process as a whole in order to determine whether the remedies brought were effective or substantiated pursuant to standards for due process. On this point the Court has noted that:

The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN9]

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[FN9] Velásquez Rodríguez Case, Preliminary Objections, *supra* 4, paragraph 91.

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102. Article 8 of the American Convention establishes a series of requirements that should be observed at the various procedural stages to be able to speak of the right to a truly fair trial.[FN10] Article 8 includes several rights and guarantees that arise from a common value or legally protected interest, and which considered as a whole constitute a single right not specifically defined, but whose unmistakable purpose is clearly to ensure a fair trial for all.[FN11] This right is a basic guarantee of respect for the other rights recognized in the Convention, as it represents a limit on the abuse of power by the state.[FN12]

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[FN10] Inter-American Court of Human Rights. Judicial Guarantees in States of Emergency (Articles 27(2), 25, and 8, American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A, No. 9, paragraph 27.

[FN11] See European Court of Human Rights, Golder Case, Judgment of February 21, 1975, Series A, No. 18, paragraph 28, in relation to Article 6 of the European Convention on Human Rights, which covers substantially the same rights and guarantees as Article 8 of the American Convention.

[FN12] The right to a fair trial is regulated in several articles of the Convention, namely Articles 7, 8, 9, and 25.

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103. In addition, it must be recalled that both Article 8 and Article 25 of the American Convention on Human Rights "are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees." [FN13] It should be noted that "[g]uarantees are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof." [FN14] Article 25(1) of the American Convention incorporates the principle recognized in international human rights law on the effectiveness of procedural instruments or means for guaranteeing such rights.[FN15] In order for such a remedy to exist, the Convention requires that it truly be suitable for determining whether there has been a violation of the rights established in the Convention and to provide as necessary to remedy it.[FN16]

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[FN13] Inter-American Court of Human Rights, Advisory Opinion OC-9/87, *supra* note 1, paragraph 30.

[FN14] Inter-American Court of Human Rights, Advisory Opinion OC-8/87, January 30, 1987, Habeas Corpus in Emergency Situations (Articles 27(2), 25(1), and 7(6)), paragraph 25.

[FN15] Inter-American Court of Human Rights, Advisory Opinion OC-9/87, supra 1, paragraph 24.

[FN16] *Id.*, paragraph 24.

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104. In that context, the organs of the American Convention on Human Rights have jurisdiction, pursuant to Article 33, to determine whether the actions or omissions of any state organ, including the Judiciary, give rise to state responsibility in view of the international obligations assumed in good faith on ratifying the Convention. In this sense the Inter-American Commission is fully empowered to examine whether in a given criminal trial the judicial guarantees established in Articles 8 and 25 of the American Convention were respected. Determinations as to whether a judicial proceeding meets the requirements of Articles 8 and 25 should take account of the circumstances of each particular case, examining the proceeding in its totality.[FN17]

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[FN17] See the jurisprudence of the European Court of Human Rights: Barberá, Messegue and Jabardo Case, Judgment of December 6, 1988, Series A, No. 146, paragraph 83; Asch Case, supra note 9, paragraph 26; Delta Case, supra note 9, paragraph 35.

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105. The characteristics of the judicial proceedings in this case are as follows:

**JUDICIAL PROTECTION AND THE NICARAGUAN STATE'S OBLIGATION TO GUARANTEE THAT THE COMPETENT AUTHORITIES CARRY OUT THE JUDICIAL DECISIONS IN WHICH THE REMEDY HAS BEEN DEEMED LAWFUL**

106. The American Convention on Human Rights, at Article 25, provides the obligation of all states party to provide due judicial protection. This judicial protection entails not only the right of every person to a simple and swift remedy before the competent judges or tribunals, but also, that the states party undertake "to ensure that the competent authorities shall enforce such remedies when granted." (Article 25(2)(c)).

107. In this context, the Inter-American Commission on Human Rights wishes to state that from the outset of the proceedings in this case, petitioners constantly denounced the lack of political will on the part of the Executive to order the arrest and detention of the perpetrator of the acts, which was translated into a failure by the police authorities to carry out the judicial orders mandating preventive detention.

108. The Inter-American Commission on Human Rights considers it necessary to cite the pertinent parts of the communications of petitioners:

December 3, 1993: "an arrest warrant was issued for the accused, even though initially their whereabouts were unknown; nonetheless, they were publicly pardoned by the latest Amnesty

Law, promulgated September 22. Later, the accused turned in their weapons at the El Dorado enclave, in the department of Jinotega, and they remained under the custody of the Special Disarmament Brigade (a unit of the Sandinista People's Army). Even though the information provided the different communications media by Guillermo Vargas, the Attorney General, that those culpable in the murder of Mr. Sequeira would be tried and sentenced, and that their whereabouts had already been discovered, the National Police never arrested them."

December 20, 1993: "we wish to denounce the attitude of the Government of Nicaragua in this case, which at all times has been to protect the murderers of Mr. Sequeira Mangas, since the Ministry of Government always refused to arrest Franklin Ibarra and his accomplices, even though a judicial warrant was issued for his arrest. Quite to the contrary, they became involved in unusual negotiations to make it appear that Franklin Ibarra had taken up arms against the government and that his demobilization was actually being negotiated, so that he was really the subject of the amnesty."

April 4, 1994: "... there is no real rule of law if the respective state agencies or institutions do not carry out the judicial judgments or orders. In this case, there has been no impetus to carry out either the judgment of the Court of Appeals, nor judicial arrest warrants that were issued in the procedural phase in the first instance. It should be noted that even though his whereabouts are known, Mr. Frank Ibarra Silva has not been arrested by the National Police. Moreover, the irregular group to which he belongs has threatened to take up arms once again if the Judiciary does not cover him with the September 1993 amnesty decree."

109. The Government of Nicaragua made no observations with respect to these statements. Moreover, the Government never communicated to the Commission that it had executed the arrest warrant issued by the Judiciary. In effect, on January 12, 1993, the Second Court for the Criminal District of León issued the following provisional arrest warrant:

110. "As this authority has learned that one of the alleged perpetrators of the death of doctor Arges Sequeira Mangas is Diego Javier Espinoza Herrera, a provisional arrest warrant is issued for him for the time period and in the manner provided for by law, and likewise the search where he may be found for the purpose of arresting him. Likewise, an official note is to be sent to the chief of the national migration service to impede the departure from the country of this subject, who was born December 21, 1958, and to report on any departures from or arrivals to the country of this subject. The letters rogatory are sent to all the judges of the Criminal District of the Republic to order the arrest of Diego Javier Espinoza Herrera, and the respective search, should he be found in their district, and gratitude is expressed to the Judges to whom the letters rogatory have been issued for reciprocity in like circumstances. It is so notified."

111. On January 13, 1993, the same Court issued another provisional arrest warrant, which noted as follows:

As this authority has learned that another of the alleged murderers of Mr. Arges Sequeira Mangas is Frank Ibarra Silva, his provisional arrest is ordered for the time and in the manner provided for by law, and letters rogatory are issued to the Fifth Judge of the Criminal District of Managua, Martha Quezada, to order his arrest and the search of his residence, which is located in

Las Colinas, main entrance, two blocks east, or in any other place where evidence indicates he may be located. The Judge to whom the letters rogatory are issued is hereby offered reciprocity in like circumstances. It is so notified.

112. On January 15, 1993, the Second Judge of the Criminal District issued the arrest warrant, stating:

As this authority has learned that another suspect involved in the death of Mr. Arges Sequeira Mangas is Germán Lacayo Guerrero, his provisional arrest is hereby ordered and likewise the respective search so as to arrest him and whoever lives at the Colonia Miguel Bonilla, from the Rincón Universitario three blocks south, one-half block east in the city of Managua. Official note is to be sent to the Chief of Migration to impede the departure from the country of Germán Lacayo Guerrero, since he is being sought and a provisional arrest warrant has been issued for him as an alleged perpetrator of the death of Mr. Arges Sequeira Mangas. Letters rogatory are hereby issued to the Fifth Judge of the Criminal District of Managua to order the arrest of Germán Lacayo Guerrero and the search of his residence; he lives at Colonia Miguel Bonilla, from the Rincón Universitario three blocks south and one-half block east, or wherever he may be found in the city of Managua. Reciprocity is offered in like circumstances to the Judge to whom letters rogatory are issued. It is so notified.

113. Finally, on February 22, 1993, the Judiciary declared the accused to be in contempt, noting that:

As the term of the publication of the first Decrees has expired without the accused Frank Ibarra Silva, Diego Javier Espinoza Herrera, or Germán Lacayo Guerrero having been arrested, they are hereby declared to be in contempt. The instant case is transmitted to the plenary and public defenders are appointed as follows: for Frank Ibarra Silva, Juan Carlos Vélchez Grijalba, Esq.; for accused Diego Javier Espinoza Herrera, Oscar Danilo Pereira López, Esq.; and for accused Germán Lacayo Guerrero, Noel Ruiz Lacayo, Esq., and they shall be so informed for their acceptance and for all other legal effects. It is so notified.

114. Based on the foregoing antecedents, it is apparent that in this case there was a complete failure of the theoretically appropriate mechanisms available to the Nicaraguan state to guarantee the enforcement, by the competent authorities, of the judicial decisions in which the remedies brought were deemed lawful, as Nicaragua was bound to do pursuant to Article 25(2)(a) of the American Convention on Human Rights.

115. The Inter-American Commission on Human Rights reaches the conclusion not only based on the repeated complaints of petitioners and the silence of the Government of Nicaragua in this respect, but also based on the declarations that the perpetrator of the deeds made to the communications media. In effect, the Barricada daily newspaper, of Nicaragua, published an interview Frank Ibarra Silva granted to Le Monde, the Parisian daily, which ran with a story that read: "Three weeks after the murder, Ibarra left the country for Mexico and returned one month later, December 9 [1992]. The journalist from Le Monde asked Ibarra: 'How did you leave Nicaragua and then return?' to which he answered with a smile: through the Managua airport, like everyone else."

116. It is clear that if the actual perpetrator of the deeds is fully free to enter and leave the country, even though he is facing criminal charges, without the Nicaraguan authorities enforcing the judicial orders, it is meaningless, in the view of the Inter-American Commission on Human Rights, for the petitioners to exhaust domestic remedies, since they are not effective. As the Inter-American Court of Human Rights has noted:

The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective. This is why Article 46(2) of the Convention sets out exceptions to the requirement of recourse to domestic remedies prior to seeking international protection, precisely in situations in which such remedies are, for a variety of reasons, ineffective.[FN18]

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[FN18] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 93.

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117. The presentation made suggests to the Inter-American Commission on Human Rights that the exception to the requirement of exhaustion of domestic remedies, set out at Article 46(2)(a) of the American Convention on Human Rights, is fully applicable.

#### D. CONSIDERATIONS WITH RESPECT TO THE UNJUSTIFIED DELAY IN THE ADMINISTRATION OF JUSTICE

118. The inter-American system for the protection of human rights includes provisions on the reasonable time within which a human rights violation case should be solved. In effect, the American Convention stipulates a series of guarantees that should be observed in every judicial investigation, to ensure the charges are substantiated within a reasonable time. Article 8(1) indicates that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal....

119. Similarly, Article 25 establishes that:

Everyone has the right to simple and prompt recourse...to a competent court or tribunal from protection against acts that violate his fundamental rights....

120. If a case is not resolved before the local courts within a reasonable time, complainant, petitioner, or victim is released from the obligation to exhaust domestic remedies (Article 46(2)(c) of the American Convention). In effect, the rule of prior exhaustion of domestic remedies has been established to the benefit of the states party to the Convention, as the petitioner is obliged to demonstrate that he has exhausted them, except, as in the instant case, where there is a manifest delay in the administration of justice.

121. Both the European Commission of Human Rights and the European Court of Human Rights, as well as the Inter-American Commission, have laid down a series of criteria or considerations that should be taken into account to determine whether in a specific case there was unjustified delay in the administration of justice, "which shall not stand in the way of only one of them weighing decisively in a given case." [FN19] (Emphasis added.)

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[FN19] European Court of Human Rights, Eckle judgment of 15 July 1982, Series A. No. 51; Zimmerman and Steiner judgment of 13 July 1983, Series A. No. 66; European Commission of Human Rights, Decisions & Reports, No. 41, Strasbourg, April 1985. Inter-American Commission on Human Rights, Annual Report 1988-1989, Case No. 10,037, "Firmenich."

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122. The criteria established by the doctrine to determine the reasonability of the time are as follows:

1. The complexity of the case.
2. The conduct of the damaged party in terms of cooperating with the process as it evolves.
3. How the investigative stage of the process unfolds.
4. The action of the judicial authorities.

123. In order to undertake an appropriate analysis of the complexity of the case, we must refer to the factual setting: violation of the right to life. Consequently, we must make an objective assessment of the characteristics of the act and the personal conditions of the persons allegedly responsible. First, there is a single criminal cause of action, the crime of homicide; second, there is but a single victim. These characteristics render this case non-complex and easy to investigate. The doctrine adopted by the Inter-American Commission on Human Rights in case No. 10,037 (Firmenich) [FN20] is illustrative, as the complaint was declared inadmissible on the grounds that the very characteristics of the case and the complexity of the causes of action involved did not constitute an unjustified delay in the administration of justice. It should be noted that in that case petitioner underwent two trials for different crimes.

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[FN20] IACHR, Case No. 10,037, op. cit., p. 67.

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124. Another important precedent, also decided on by the Inter-American Commission on Human Rights, is case No. 10,792 (Jean Paul Genie). In that case the Court stated:

... considering the complexity of the matter, as well as the excuses, impediments, and replacement of justices of the Supreme Court of Justice, the period of more than two years that has transpired from the admission of said motion for cassation [August 31, 1994] is not reasonable, and consequently this Court should consider it violative of Article 8(1) of the Convention. It shall do so in the operative part, with respect to Article 1(1) of the Convention, which contains the general obligation to respect the Convention.

In addition to studying the possible delays in the various procedural stages, the European Court has used what it calls the "global analysis of the proceeding" to determine the reasonability of the time elapsed in the entirety of the process (Motta, supra 77, para. 24; Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A, No. 157). Even when the police investigation and the time used by the Office of the Attorney General of the Republic of Nicaragua to file charges before the judge of first instance, i.e. computing from July 23, 1991, the date when that judge ordered the process opened, until now, when there has yet to be a firm judgment, more than five years have elapsed, a time which this Court considers goes beyond the limits of reasonability provided for it Article 8(1) of the Convention.[FN21]

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[FN21] Inter-American Court of Human Rights, Case of Jean Paul Genie Lacayo, Judgment of January 29, 1997, paras. 80 and 81.

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125. It is clear that if for the Inter-American Court of Human Rights a motion for cassation that sits more than two years in the domestic jurisdiction constitutes an unwarranted delay in the administration of justice; it is all the more serious that this motion was before the Supreme Court of Justice for almost three years without any resolution. In effect, the public defender for the person presumed responsible filed a motion of cassation before the Supreme Court on March 22, 1994, which has not been ruled on to date. In addition, more than five years have elapsed since the murder of Arges Sequeira Mangas (November 23, 1992), and the crime remains in impunity to this day.

126. In the case Neubeck vs. Federal Republic of Germany, the European Commission of Human Rights concluded that the duration of the process had exceeded by far the reasonable term established in Article 6.1 of the European Convention. One of the Government's arguments to justify its delay was the complexity of the case, based on:

- The large amount of evidence, written and testimonial, that had to be reviewed.
- The request for assistance from foreign authorities and the fact that these requests yielded scant results since the foreign authorities refused to provide such assistance.
- The need to coordinate with other proceedings, including civil and tax proceedings.

127. The European Commission of Human Rights noted that "the complexity and volume of the case can only be invoked insofar as it actually contributed to the delays in the proceedings. In effect, the proceedings were complex and lengthy, but in this case the judicial authorities did practically nothing.... In the final judgment, issued in 1980, very difficult points were discussed, but the unjustified delay in the final decision cannot be attributed to the complexity of the case. Therefore, the complexity of the case cannot be argued against the applicant." [FN22]

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[FN22] European Commission of Human Rights, Decisions & Reports, No. 41, Strasbourg, April 1985, p. 29, paragraphs 104-105.

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128. The European Commission of Human Rights found that even though the case was particularly complex, the Government had no reason to argue that for this reason such a long delay occurred in the judicial processing of the case.[FN23]

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[FN23] European Commission of Human Rights, *op. cit.*, p. 30, paragraph 107.

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129. As distinct from the case of *Neubeck vs. Federal Republic of Germany*, in this case the Inter-American Commission on Human Rights considers that other procedures did not exist so as to render it complex. Further, the statements to the media by the person responsible three months after the crime (February 23, 1993) should have accelerated the arrest and later punishment. Yet this never happened.

130. Another factor that has weighed considerably in the unreasonable delay in this case is the action of the judicial authorities. First, we have a judge of first instance who sentenced the person responsible to 20 years prison, and later dismissed the case with prejudice--in the same judgment, applying an Amnesty Law issued by the Executive to persons who were up in arms. In his decision the judge indicated, *inter alia*, that: "Amnesty is pardon and forgetting, which the Government does for citizens, in this case it would be Frank Ibarra Silva; the Ministry of Government ... has responsibility for giving out Amnesty letters, and as appears in certificate issued to Frank Ibarra Silva ... he was given said certificate No. 001381, granting convict Frank Ibarra Silva the Amnesty promulgated in the above-noted Official Gazette...."

131. One important consideration to bear in mind to evaluate judicial conduct is the opinion of the Regional Prosecutor of Nicaragua, who stated that "it is a run-of-the-mill murder case...that cannot be covered by a special law that has nothing to do with the death of Mr. Arges Sequeira Mangas, as Frank Ibarra Silva was tried for murder and for the crime of grievous bodily harm and not for going about armed, not for having rearmed in the mountains of the north. That only the judicial authorities have competence to determine who is covered by the benefit granted in an Amnesty Law, and not the authorities of the Executive, as can be inferred from the judgment appealed...."

132. The deficient judicial process does not end there. The Inter-American Commission should also state that more than two years to rule on a motion for cassation is an unreasonable time from every angle.[FN24] In this context, the Commission must note that Nicaragua, as a state party to the American Convention on Human Rights, has an obligation to organize its legal system so that its courts meet the requirements of the proper administration of justice, such as trying a case with the proper guarantees, and within a reasonable time by a competent, independent, and impartial tribunal, as stipulated in Article 8 of said Convention.

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[FN24] The motion for cassation was brought before the Supreme Court of Justice, by the attorney for the liable party, on March 22, 1994.

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133. In the view of the Inter-American Commission on Human Rights, each state, including Nicaragua, has a duty to adopt as many measures as necessary to ensure that the excess case load in the courts of justices does not translate into a delay in the proceedings in criminal cases. The large number of cases not resolved due to the excessive work load of the Judiciary does not mean that the state is released from its obligation to process those cases with due diligence, and in addition to take the administrative measures that would make it possible to overcome this situation, since in no way can the victims or their relatives be deprived of their right to a fair trial within a "reasonable time."

134. There is no question but that the duty to conduct a proceeding expeditiously and swiftly is a duty of the organs entrusted with the administration of justice. The relatives of the victim are not obligated, as has been stated earlier in this report, to contribute actively to making the process more expeditious. Indeed, if the complainant had wanted deliberately to delay the process, the courts of justice were under an obligation to reject such attempts.

135. This presentation enables the Inter-American Commission to consider that there can be no justification whatsoever for a crime committed in 1992 to remain unpunished five years later. With this, the victim's relatives have seen an infringement of their rights to an independent and impartial judicial process within a reasonable time, to punishment for the persons responsible, and to just reparation for damages and losses. Héctor Faúndez Ledesma, jurist and professor of the Universidad Central de Venezuela, confirms the foregoing, noting that:

136. "The second condition a trial should meet so as to not be unjust or arbitrary has to do with its speediness. In effect, it is the essence of the administration of justice that, to be just, it must be speedy. Justice that is slow or unduly delayed is, in and of itself, unjust. It is of no use to the plaintiff or respondent, in a civil trial, or the accuser or accused, in a criminal trial, to have their allegations accepted and their rights recognized if the mere passing of time has caused him or her irreparable damage, or if having been involved in a lengthy trial has prejudiced his or her interests.... In addition, very often the one who can wait is he who knows he is defeated, and he who benefits from a delayed decision. To the contrary, he who is right, and whose rights have been harmed, has no time, and cannot wait eternally for justice to be re-established." [FN25]

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[FN25] Héctor Faúndez Ledesma, *Administración de Justicia y Derecho Internacional de los Derechos Humanos*, Universidad Central de Venezuela, School of Law and Political Science, Graduate Studies Committee, Instituto de Derecho Público, Caracas, Venezuela, 1992, p. 270.

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137. Consequently, the Inter-American Commission on Human Rights considers that in this case the exception to non-exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention on Human Rights is fully applicable, since almost four years after the crime was committed to the detriment of Mr. Arges Sequeira Mangas, it remains unpunished, as the victim's relatives have been denied justice and fair compensation for damages and losses.

#### E. CONSIDERATIONS WITH RESPECT TO THE PERPETRATORS OF THE DEEDS AND THE ANALYSIS OF THE EVIDENCE

138. Documents have been submitted in this case that provide grounds for passing judgment on the facts denounced, which in addition were made public by the national and international press. Among the documents submitted to the Inter-American Commission on Human Rights is the testimonial evidence of the following persons who were at the place of the events, at the time they occurred, on November 23, 1992: Julián Alejandro Espinoza Martínez (surviving victim of the events who was wounded during the crime), Lilian del Socorro Ruíz Solís, Mercedes Rocha, María Concepción Vílchez, Antonio A. Ramírez Flores, Carlos Ernesto Mantilla, Juarino Humberto Larios, Ana Prudencia Castillo, Silvio Aguero, Flor de María Vílchez, Dolores Carrión, María Elena Ramírez, and César Fernando Valle. The Commission also has the testimony of Luciana Mercedes Puerto, a domestic employee of former EPS Lt. Col. Diego Javier Espinoza Herrera, one of the persons implicated in this case.

139. Based on the statements of the eyewitnesses and all other evidence taken in this case, it is deduced that on November 23, 1992, between approximately 7:00 a.m. and 8:00 a.m., Arges Sequeira Mangas, 58 years old, was murdered by Frank Ibarra Silva, Germán Lacayo Guerrero, and Diego Javier Espinoza, all former members of the Sandinista People's Army, and of the State Security office (Dirección General de Seguridad del Estado), which no longer exists. The witnesses all noted that the above-mentioned former members of the military waylaid the victim in the environs of his farm, "La Queserita," located in the city of El Sauce, department of León. The eyewitnesses have also stated that the persons responsible used a red twin-cabin pick-up truck to perpetrate the act.

140. The Inter-American Commission on Human Rights also observes that the crime against Mr. Arges Sequeira Mangas was intentional, premeditated, and treacherous. This conclusion derives from the very judgment of the Court of Appeals, which stated, *inter alia*: "The crime should be considered murder [asesinato] ... since those who killed Sequeira Mangas had premeditated their action, as they were not known in the place or town where the events occurred, and considering that they travelled from other cities with the precise aim of taking his life. Considering these factors, it is easy to explain that there was premeditation and also treachery and advantage, since the record indicates that the victim was taken by surprise and had not the slightest opportunity to defend himself."

141. One important issue that the Inter-American Commission would like to highlight is the allusion made by the Court of Appeals to the victim's character: "Based on the same evidence it appears that Mr. Sequeira Mangas was a man of civil ways accustomed to resolving matters through dialogue, and so it is that when murdered he was unarmed...." The Inter-American Commission reaffirms what was said by that court, since in April 1992, on the occasion of an on-site visit to Nicaragua, it met with Mr. Arges Sequeira Mangas in his capacity as President of the National Association of Property Seizure Victims.

#### F. CONSIDERATIONS WITH RESPECT TO THE INTERNATIONAL LIABILITY OF THE NICARAGUAN STATE

142. Having determined the facts as they occurred on the morning of November 23, 1992, the Inter-American Commission on Human Rights must determine whether the Nicaraguan state is

liable internationally for the death of Mr. Arges Sequeira Mangas, or if there has been a denial of justice in the instant case. The essential elements for establishing international liability can be summarized as follows:[FN26]

- I) An act or omission that violates an obligation established by a rule of international law in force.
- II) The illicit act must be imputable to the state as a juridical person.
- III) Losses or damages were incurred as a result of the illicit act.

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[FN26] Manual de Derecho Internacional Público, Max Sorenson, Fondo de Cultura Económica, Mexico City, 1985, p. 508. These elements of international liability are also set forth by Eduardo Jiménez de Aréchaga, in his treatise Derecho Internacional Público, Vol. IV, p. 34, Fundación de Cultura Universitaria, 1991.  
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#### I. AN ACT OR OMISSION THAT VIOLATES AN OBLIGATION ESTABLISHED BY A RULE OF INTERNATIONAL LAW IN FORCE

143. The Inter-American Commission on Human Rights should highlight that the obligation to respect and protect the right to life is an obligation erga omnes, i.e. it should be assumed by the state before the inter-American community as a whole, and before all individuals subject to its jurisdiction, as the direct subjects of the human rights recognized by the American Convention on Human Rights, an international instrument to which Nicaragua has been a state party since September 25, 1979.

144. The jurist and former Judge of the Inter-American Court of Human Rights, Asdrúbal Aguiar, confirms the foregoing, noting: "Within the inter-American system, like its European counterpart and the international system of the United Nations, a general obligation governs that speaks to respect for the basic rights of man by the states." [FN27] The "obligations assumed by each member state before the inter-American community, represented by its organs, and before each and every member state of the Organization of American States... are obligations erga omnes; this can be compared with the Preamble to the Charter of the OAS, where the states declare they are certain that the genuine meaning of American solidarity and good neighborliness can mean the consolidation in the Hemisphere, within the framework of democratic institutions, of a system of individual liberty and social justice, based on respect for the essential rights of man."

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[FN27] Asdrúbal Aguiar, La Responsabilidad Internacional del Estado por Violación de Derechos Humanos, in: Estudios Básicos de Derechos Humanos, IIDH, Vol. I, p. 127, paragraph 25, San José, Costa Rica, 1994.  
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145. The Inter-American Commission on Human Rights would also like to highlight that the right to life understood as a fundamental right of the human person set forth in the American

Convention on Human Rights and in several international instruments, both regional and international, is jus cogens. In other words, it is a peremptory norm of international law, and is therefore non-derogable. The concept of jus cogens derives from a higher order of standards established in ancient times that cannot be breached by the laws of man or of nations. The norms that enjoy the status of jus cogens have been described by the publicists as those that cover the international public order. They are the rules that have been accepted, either explicitly in a treaty or tacitly by custom, as necessary to protect the public interest of the community of nations, or to maintain the levels of public morality recognized by them.[FN28]

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[FN28] See Sir Ian Sinclair, *The Vienna Convention on the Law of Treaties*, Manchester University Press, 1973, p. 208. The concept of jus cogens is set forth in Article 53 of the Vienna Convention on the Law of Treaties, which provides that: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

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146. After analyzing the value and importance of the right to life, understood as an essential right of the human person set forth in the American Convention on Human Rights, the Inter-American Commission deems it fundamental to determine whether in this case the Nicaraguan state has committed actions or omissions that have caused it to become internationally liable for the death of Mr. Arges Sequeira Mangas.

147. In the instant case the evidence collected, such as the statements of the eyewitnesses, the coroner's opinions, and the considerations of the investigating judge and the Court of Appeals, as well as the testimony of the police officer who was investigating the case, all agree in indicating that on the morning of November 23, 1992, Arges Sequeira Mangas was intercepted and murdered by three individuals who were later identified, through eyewitness descriptions and photographs, as Frank Ibarra Silva, Diego Javier Espinoza Herrera, and Germán Lacayo Guerrero, former members of the Sandinista People's Army.

148. Of all the testimony taken, the Inter-American Commission on Human Rights accords special weight to the statement by Julián Alejandro Espinoza Martínez, as he, while walking with Mr. Sequeira the morning of the crime, escaped with his life, though he was injured by the same persons responsible for the punishable act. Hence the Commission wishes to cite part of his testimony:

... the only one I can recognize looking at him is the one who threw me from the bridge and beat me/if I can describe him he is a short man, stocky, dark complexion, almond-shaped eyes, thick mustache, and a cap on his tooth, there were two of them/....

May the declarant please state whether he is aware that on television days after the death of Mr. Sequeira Mangas several persons appeared on the screen including one who stated that he had

not participated in the death of Mr. Sequeira--did he see that presentation on the television screen, and if the answer is affirmative, please state whether that person who appeared making statements on television is the same one who turned his weapon on the declarant and then killed Mr. Sequeira/he answers the question/yes I was aware/yes I saw it and it is the same person who I saw that day/At that point the prosecutor, Denis Rueda Mendoza, Esq., asked the declarant the following questions. May declarant state whether the photographs shown to him that appear on the back of folio two hundred sixty-seven identifies the person who killed Mr. Arges Sequeira/answer/the one in front of folio two hundred seventy, the lower part of folio two hundred seventy/he recognizes him and said photograph is of former Lt. Col. Frank Ibarra Silva/

149. The Inter-American Commission on Human Rights should highlight that while there certainly was intent and premeditation on the part of the perpetrators, and their identity has been amply demonstrated, this intent is irrelevant in determining the international liability of the Nicaraguan state. The fundamental point in this case is to elucidate whether the violation of the right to life has occurred with the support or tolerance of the state, or whether that state has acted in such a manner that the violation has been carried out in the absence of any prevention, or with impunity.

150. The duty to prevent violations of human rights, which applies to all states party to the American Convention on Human Rights, is interpreted by the Inter-American Court in the following terms:

This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.[FN29]

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[FN29] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988 (paragraph 175).  
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151. The Inter-American Commission on Human Rights considers that the death of the former president of the National Association of Property Seizure Victims of Nicaragua was not only premeditated and intentional, as already shown in this report, but that in addition it took place in the absence of any prevention. To show this, the Commission need only review the facts of this case. Indeed, the Commission made an on-site visit to Nicaragua in April 1992, and on that occasion received the testimony of Mr. Arges Sequeira Mangas:

Doctor Sequeira was one of the principals negotiating the return of properties confiscated during the previous administration and--according to reports received--recently rejected the Government's offer of securities as compensation, given the lack of funds to meet the demands of those whose property had been confiscated. The Inter-American Commission on Human Rights had an opportunity to meet with him, as President of the Asociación de Confiscados de Nicaragua, during its visit there last April [1992].[FN30]

152. In other words, Mr. Sequeira, as president of the National Association of Property Seizure Victims, made important statements to the Inter-American Commission during his visit to Nicaragua in April 1992, and seven months later was murdered, with impunity, by Frank Ibarra Silva, Diego Javier Espinoza, and Germán Lacayo, all, at the time of the Commission's visit, members of the Sandinista People's Army, and officers of the State Security office (Dirección General de la Seguridad del Estado). All of the foregoing is in violation of Article 58 of the Commission's Regulations, which provides as follows:

In extending an invitation for an on-site observation or in giving its consent, the government shall furnish to the Special Commission all necessary facilities for carrying out its mission. In particular, it shall bind itself not to take any reprisals of any kind against any persons or entities cooperating with the Special Commission or providing information or testimony.

153. It is clear to the Inter-American Commission on Human Rights that the crime against Mr. Arges Sequeira was an act of vengeance for his work on behalf of the property seizure victims and for the statements he made to the Commission during its visit to Nicaragua in April 1992. That the perpetrators of the crime were discharged in August 1992, three months prior to the crime, is irrelevant in determining the international liability of the Nicaraguan state, as the state's acquiescence in the events that are the subject of this case is amply shown. In effect, on February 23, 1993, the daily newspaper *Barricada* published an article on Sequeira's murder, quoting what Frank Ibarra Silva had told the French newspaper *Le Monde*. Frank Ibarra had told *Le Monde* that he wanted to kidnap Arges Sequeira, not kill him, but that "Unfortunately he reacted violently at the moment of being intercepted and was shot." Further on, Ibarra stated that two years ago he began to organize, along with other members of the military, the "Punitive Forces of the Left," when he was still in the Sandinista People's Army. Ibarra stated that "the people have elected a bourgeois government, but we will not allow the achievements of the Sandinista Revolution to be called into question.... We are not terrorists, but we want to finish off the executioners of the people who seek to take away the lands, the factories, and the houses the Revolution has given them."

154. In summary, the Inter-American Commission on Human Rights considers that it has been shown that the Nicaraguan state did not take any measures to reasonably prevent the events that occurred the morning of November 23, 1992. Moreover, the Commission considers it extremely serious that the Sandinista People's Army would allow the formation among its armed members of an irregular group called the "Punitive Forces of the Left" that would later kill Mr. Arges Sequeira Mangas. The Commission also considers that Nicaragua, as a state party to the American Convention on Human Rights, has become internationally liable on allowing the crime to remain in impunity.

## II. THE ILLICIT ACT SHOULD BE IMPUTED TO THE STATE AS A JURIDICAL PERSON

155. The Inter-American Commission on Human Rights considers that the serious events that occurred on the morning of November 23, 1992 are imputable to the Nicaraguan state as a juridical person, based on the following reasoning:

(A) The persons responsible for the crime acted under the coverage of a public function. The fact that these state agents had passed into retirement three months before the crime is irrelevant for the Inter-American Commission on Human Rights. The date when they went into retirement appeared in a press note in the newspaper *El Nuevo Diario* of Managua on January 14, 1993:

The National Police was convinced this Wednesday that the murderers of Mr. Arges Sequeira Mangas were Lt. Col. Frank Ibarra Silva, Capt. Diego Javier Espinoza Herrera, and former Ministry of Government Lieutenant Germán Lacayo Guerrero, aka El Gato, all demobilized from the Army, who supposedly fled the country after the atrocious crime. Reliable reports indicated that the three former members of the military were discharged from the institutions for which they worked on August 2, 1992, the day when the PL-3 Plan was implemented throughout the western region of the country. At that time, Lt. Col. Frank Ibarra Silva was Chief of Defense Information [former Office of State Security] for Region II, and Diego Javier was his assistant.

(B) It is also shown that the Nicaraguan state acquiesced in the events that are the subject of this case. There is evidence that Frank Ibarra Silva, the confessed murderer of Arges Sequeira Mangas, organized--when still in the Army--the "Punitive Forces of the Left," the grouping with which he consummated the crime of murder. That fact, plus the fact that the person responsible spoke freely with the news media that he circulates inside and outside of Nicaragua, with no restrictions whatsoever, and the circumstance that he belonged to the Army when Mr. Arges Sequeira made a statement to the Commission during its April 1992 visit, makes it possible for the Commission to consider that the crime was committed with the acquiescence of the Nicaraguan state; in addition, it took no measures to reasonably prevent the crime. The Inter-American Commission on Human Rights in its analysis also takes into account the fact that the Ministry of Government, through Certificate No. 001381, sought to grant an amnesty to the perpetrator of the crime.

(C) There is an evident denial of justice in this case, for five years after Arges Sequeira Mangas was murdered, the crime remains in impunity. An additional element that is particularly serious is that the Judicial Branch has issued numerous arrest warrants for the persons responsible, yet they have not been carried out, to date, by the corresponding authorities.

156. Consequently, the Inter-American Commission on Human Rights considers that the facts that occurred the morning of November 23, 1992, which took the life of Arges Sequeira Mangas, are imputable to the Nicaraguan state as a juridical person.

### III. SOME LOSS OR DAMAGE MUST HAVE BEEN CAUSED BY THE ILLEGAL ACT

157. The Inter-American Commission on Human Rights considers that the damage caused as a result of the illegal acts committed by the Nicaraguan state is as follows: a) the irreparable physical damage consisting of the death of Mr. Arges Sequeira Mangas; b) the pain and suffering, including psychological damages, of the victim's relatives, consisting of emotional

suffering at the loss of a loved one, the circumstances that surrounded his death and the denial of justice, considering that four years after the crime it is still in impunity, even though it is known who was responsible for the punishable act; and, c) the material damages, consisting of the lost profits and consequential damages.

158. Therefore, the Inter-American Commission on Human Rights should highlight that the Nicaraguan state is obliged to make reparations for the damage caused and to indemnify the relatives of Mr. Arges Sequeira Mangas.

#### G. CONSIDERATIONS WITH RESPECT TO THE OBSERVATIONS OF THE GOVERNMENT OF NICARAGUA TO CONFIDENTIAL REPORT No. 11/97

159. The first observation made by the Government of Nicaragua has to do with the nature of the actor who perpetrated the crime against Arges Sequeira Mangas. According to the Government of Nicaragua, the Nicaraguan state is not liable internationally because "the crime was not committed by a state agent, but by Frank Ibarra Silva, who identified himself as the leader of the Punitive Forces of the Left, an irregular armed group that has no link whatsoever to the civilian or military institutions of the Nicaraguan state."

160. The Inter-American Commission on Human Rights states as follows with respect to this argument:

a. The violation of the right to life in relation to the tolerance of the Nicaraguan state of the commission of the crime

161. Frank Ibarra Silva, identified by Nicaraguan criminal justice as the person responsible for the murder of Arges Sequeira Mangas, acted in his capacity as lieutenant-colonel in the Sandinista People's Army, and a member of the now-defunct State Security office up until August 1992. In other words, he went into retirement two months before committing the crime.[FN31]

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[FN31] Arges Sequeira Mangas was murdered in the morning hours of November 23, 1992.  
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162. The Inter-American Commission on Human Rights considers that the separation of Frank Ibarra Silva, perpetrator of the criminal act, from his post as lieutenant-colonel in the Sandinista People's Army and as a member of the now-defunct State Security office, was to abide by a formality. Both the later conduct of the individual responsible for the crime and of the state confirm the tolerance of the state for the events of November 23, 1992. In effect, the silence of the Sandinista People's Army--it presented no arguments in its defense, nor any communiqué to the press refuting those statements--when Frank Ibarra Silva declared to Le Monde of Paris that he began to organize the Punitive Forces of the Left with other members of the military when still in the army[FN32], taken together with the way in which the Sandinista People's Army was organized when the unlawful act was committed, yield serious indicia that the crime was, in effect, committed with the knowledge of the army. The Inter-American Commission on Human

Rights analyzed the Law on the Military Structure of the Sandinista People's Army, in force at the moment of the crime, in its Annual Report for 1990-1991, in the following terms:

... the power of the security forces is due to the authority granted to members of the Sandinista Front under the Law on the Military Structure of the Sandinista People's Army. The genesis of this law is itself somewhat unique, since it was approved by President Ortega on December 20, 1989, during the Legislative Assembly's recess, and published in the official Gazette on February 23, 1990, which came out in March of that year.

The provisions of that law invest the Army with certain authorities that undermine functions that, under the Constitution, belong to the President of the Republic. Thus, the Commander in Chief of the Sandinista People's Army--who is appointed by the Military Council and is to be the highest ranking officer with greatest seniority--directs all matters of any consequence, including appointing officers and deciding what posts they will hold, setting up production, supply and service activities associated with Army business, deciding whether foreign troops will be allowed to move through Nicaraguan territory, etc. It is also up to the Commander in Chief to decide on the structure and membership of the military unit charged with guaranteeing the safety of the President.

...

Particular mention should be made of the biased behavior of the security forces, which have become a state within a state, acting in concert with one particular political party and to the detriment of the civilian authority of the democratically-elected, constitutional Government.[FN33]

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[FN32] The Nicaraguan daily *Barricada*, of February 23, 1993, published the entirety of the interview of Ibarra by the French newspaper *Le Monde* under the following headline: "Former military officer, at large, reappears in Santa Carlota," "Ibarra: I am the Chief of the FPI [Punitive Forces of the Left]," "He alleges they wanted to kidnap Arges Sequeira, not kill him."

[FN33] IACHR, Annual Report 1990-1991, pp. 477 and 479, OEA/Ser.L/V/ii.79.rev.1, Doc. 12, February 22, 1991.

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163. It is clear that a high-ranking military officer and member of the State Security office, as was Frank Ibarra Silva, was not going to pass into retirement simply to rise up in arms later--as his defense counsel sought to show the Judiciary, so as to avail himself of the amnesty. Based on the foregoing circumstances, the separation of Frank Ibarra Silva would appear to have as its motive his participation in the murder of Arges Sequeira Mangas, who had given testimony and filed several complaints against the Nicaraguan state in the on-site visit of the Commission to Nicaragua in April 1992, just seven months before the crime. During the Commission's visit to Nicaragua, Frank Ibarra Silva was still on active duty in the Sandinista People's Army and in the State Security office. In summary, all the indicia analyzed coincide in pointing to Frank Ibarra Silva as presumably responsible, as it was as a military officer that he organized the crime against Arges Sequeira Mangas, while still on active duty in the Sandinista People's Army, and

suggest that he retired merely to remove him from the institution formally, in view of the criminal act that was to be committed.

164. With these antecedents, and given the way the Sandinista People's Army was structured, the Nicaraguan state should have prevented the events of November 23, 1992. Moreover, after Arges Sequeira Mangas gave important testimony to the Commission in April 1992, and bearing in mind that Article 58 of the Commission's Regulations establish clearly that the state "shall bind itself [during an on-site observation visit] not to take any reprisals of any kind against any persons or entities cooperating with the Special Commission or providing information or testimony." Nicaragua as a state party to the American Convention on Human Rights should have prevented the events that are the subject of the instant case. The Inter-American Court of Human Rights has noted:

This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN34]

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[FN34] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 166.

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165. Another fact that shows the tolerance of the Nicaraguan state in the instant case is that the Ministry of Government, by Certificate No. 001381, sought to amnesty the person responsible for the crime. In effect, as appears in the judgment by the judge of first instance, "the Ministry of Government, as confirmed in the process, is in charge of giving out Amnesty letters, and as appears in the certificate extended to Frank Ibarra Silva, born December 5, 1958, who belongs to the F.P.I. [Punitive Forces of the Left] under the command of Pedrón, he was given said Certificate No. 001381, in which convict Frank Ibarra Silva is granted the Amnesty promulgated in the Official Gazette, mentioned above...." In this respect, the Supreme Court of Justice, in its judgment of March 7, 1997, declared the granting of said amnesty contrary to law and affirmed the 20-year prison sentence imposed by the Court of Appeals.

b. The impunity in this case and the absence of reparation for the relatives of the victim

166. Article 25 of the American Convention on Human Rights establishes that all states parties are under an obligation to provide citizens under their jurisdiction with due judicial protection. This protection also includes the state parties undertaking "to ensure that the competent authorities shall enforce such remedies when granted." (Article 25(2)(c)) For its part, the Inter-American Court of Human Rights has indicated: "If the State apparatus acts in such a way that the violation goes unpunished ... the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons with its jurisdiction. The same is true when the

State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."[FN35]

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[FN35] Id., para. 176.

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167. The Inter-American Commission on Human Rights has stated on repeated occasions that the person presumably responsible for the murder of Arges Sequeira Mangas is free, despite the numerous arrest orders issued against him by the Judiciary. Moreover, after the final decision of the Supreme Court of Justice affirming the guilty verdict of the Court of Appeals, the Nicaraguan state has not made any serious effort to detain the person responsible for the criminal act, thereby leaving the crime in total impunity. The report from the Asociación Nicaragüense Pro-Derechos Humanos of February 1997 is quite eloquent in stating:

It should be mentioned that throughout the process, and to date, at no time have the persons incriminated been detained, and even Frank Ibarra Silva freely attends the RUFCA educational student, like any other student, according to an article published in the daily newspaper La Prensa on November 23, 1996.[FN36]

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[FN36] Asociación Nicaragüense Pro-Derechos Humanos, Retos del Nuevo Gobierno Frente a la Situación de los Derechos Humanos, page 6, Managua, Nicaragua, February 1997.

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168. Consequently, the Inter-American Commission on Human Rights should reiterate, based on the arguments set forth above, that the Nicaraguan state has become internationally liable for the violation of Article 4 in connection with Article 1(1) of the American Convention on Human Rights. This is because the persons responsible for the crime murdered Arges Sequeira Mangas with the tolerance of the Nicaraguan state.

c. The violation of Article 8(1) of the American Convention on Human Rights in relation to a reasonable time for determining the rights violated

169. The Inter-American Commission on Human Rights must reiterate, once again, that the violation of Article 8(1) of the American Convention on Human Rights does not have to do with the judicial activity regarding this case in Nicaragua, but with the unreasonable delay in the administration of justice in producing a decision that restores the legal rights violated. In effect, the defense counsel for the person responsible for the crime filed a special motion for cassation with the Supreme Court of Justice on March 22, 1994. That court recently handed down a judgment, on March 7, 1997, i.e. almost three years after the motion was filed. In the case of Jean Paul Genie Lacayo v. Nicaragua, the Inter-American Court of Human Rights determined that the Nicaraguan state was liable internationally for the violation of Article 8(1) of the Convention, based on the following criterion:

... considering the complexity of the matter, as well as the excuses, impediments, and replacement of justices of the Supreme Court of Justice, the period of more than two years that has transpired from the admission of said motion for cassation [August 31, 1994] is not reasonable, and consequently this Court should consider it violative of Article 8(1) of the Convention. It shall do so in the operative part, with respect to Article 1(1) of the Convention, which contains the general obligation to respect the Convention.[FN37]

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[FN37] Inter-American Court of Human Rights, Case of Jean Paul Genie Lacayo, January 29, 1997, para. 80.

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170. Following this doctrine established by the Court, and mindful of the complexity of this case, the Inter-American Commission on Human Rights considers that the duration of three years is not a reasonable time for considering and ruling on a motion for cassation; consequently, it considers that the Nicaraguan state has violated Article 8(1) of the American Convention on Human Rights.

#### VIII. CONCLUSIONS

171. The Nicaraguan state is liable for the violation of the right to life, the right to a fair trial, and the right to judicial protection of Mr. Arges Sequeira Mangas--Articles 4, 8(1), and 25(1) and (2)(c) of the American Convention on Human Rights--for the events that occurred in the city of El Sauce, department of León, Nicaragua, on November 23, 1992.

172. The Nicaraguan state is liable for the violation of the right to humane treatment, right to a fair trial, and right to judicial protection of Julián Alejandro Espinoza Martínez--Articles 5, 8(1), and 25(1) and (2)(c) of the American Convention on Human Rights--for the events that occurred in the city of El Sauce, department of León, Nicaragua, on November 23, 1992.

173. The Nicaraguan state has not met its obligations to respect human rights and guarantees imposed by Article 1(1) of the American Convention on Human Rights, to which Nicaragua has been a state party since September 25, 1979.

#### IX. RECOMMENDATIONS

174. It is recommended that the Nicaraguan state punish the amnesty granted to the persons responsible for the death of Mr. Arges Sequeira Mangas, so as to punish them for the events that occurred in the city of El Sauce, department of León, Nicaragua, on November 23, 1992.

175. It is recommended that the Nicaraguan state punish the persons responsible for the injuries inflicted on Julián Alejandro Espinoza Martínez, who survived the events that occurred in the city of El Sauce, department of León, Nicaragua, on November 23, 1992.

176. It is recommended that the Nicaraguan state undertake an exhaustive investigation so as to bring to trial and impose disciplinary sanctions on the police authorities who failed to carry out the arrest orders issued by the Judiciary for the persons responsible for the criminal act.

177. It is recommended that the Nicaraguan state pay fair compensation to the victim's relatives for physical and non-physical damages, including pain and suffering.

#### X. PUBLICATION

178. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51(3) of the American Convention on Human Rights, and to include it in the next Annual Report of the Commission, since the Nicaraguan state did not adopt the measures to restore the legal rights violated within the time periods granted--as it did not follow through on the recommendations--nor did it respond to Report N° 52/97, which was sent to it on October 17, 1997.