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Title/Style of Cause: Former Employees of the Judiciary v. Guatemala
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
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Represented by: APPLICANT: the Human Rights Legal Action Center
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I. SUMMARY

1. On September 7, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission,” or “the Inter-American Commission”) received a petition from the Human Rights Legal Action Center (CALDH) (hereinafter “the petitioners”) lodged on behalf of 94 former employees of the Guatemalan judiciary.[FN1] The petition claims that the State of Guatemala (hereinafter “the State,” “Guatemala,” or “the Guatemalan State”) violated Articles 8 (fair trial), 16 (freedom of association), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with the general obligations set forth in Articles 1(1) (duty of respecting and ensuring those rights) and 2 (obligation to adapt domestic law) thereof, with respect to these former employees of the judiciary.

[FN1] List of the former employees represented by CALDH in this complaint. Former employees of the judiciary: Abraham Teodoro Santizo Velásquez, Adolfo Nery Rojas Martínez, Alba Dina Piedrasant Ramirez de Leon, Alba Ninet Letona de González, Alejandro Canel Pérez, Alfredo Castillo Veron, Apolonio Salazar Carrillo, Armando Maisés Rios de Leó, Arnulfo Girón, Carlos Antonio Leonardo, Carlos Enrique Guerra Valiente, Carlos Eduardo Morales Hernández, Carlos Enrique Arias, Carlos Enrique Escalante, Carmen Cojtí García, Cesar Augusto Minera Ramos, Concepción Mayen, David Rubén Veásquez, Dora Carolina Portillo, Edgar Arnoldo Luarca Domínguez, Edgar Arturo López Arias, Edgar Leonel Zamora Constancia, Edgar Romeo Morales Matías, Edna Araceli Ortiz Domínguez, Edwin Remigio Tecún García, Eldo Elfego Estrada Arriaza, Evelin Marleny Quevedo Quezada de Marroquín, Fermin Reyes Xitumul, Fernando Antonio Sologastoa Moran, Fidel Cuyán González, Freddy Eduardo Avila Rodríguez,

Gabriel de Jesús Girón Galindo, Genaro Orellana Orellana, Gerardo López García, German Eduardo de Leon Macal, Gloria Marina Moya Ruiz, Gustavo Adolfo Cheves Luna, Héctor Anibal Coehojil Martínez, Hermelinda Esperanza Trejo Castillo, Igmair Aracely Coroy Can, Irrael Ejcalón Majzul, José Francisco Pérez Sunay, José René Cristian Pellecer Cobar, Josefa Jurzuy Sanic, Juan Francisco Muñoz Tala, Juan Girón Caceros, Lilian Elizabeth Valle Trinidad de Velásquez, Ligia Irasema Estrada Aparicio de Sagastume, Lorenzo David Cupul Luna, Luis Eduardo Benítez, Luis René Arriola Conde, Magno Reginaldo Arana Rivas, Manuel Armando García Avandaño, Marco Aurelio Rodas Conde, Marcos Humberto López Girón, María Coralia Gómez Morales, María Eugenia Velásquez Ovalle, María Isabel Merida Herrera de Ogaldez, María Victoria Reyes Martínez, Mario Joaquin Echeverría Contreras, Mario Juan Humberto Caxaj Turnil, Mario René Palacios Urizar, Marvin Manolo López Reyna, Miguel Angel González Sánchez, Miguel Angel Paxtor, Miguel Augusto Ruano Sian, Miguel González, Milton Rogers Carías Gómez, Minor Rolando Reynoso Mas, Mynor Pablo Efraín Padilla Izeppi, Nidia Consuelo Lec Giron de Herrera, Norma Elizabeth Sipac Sipac, Oliverio Edmundo Roldan Castañeda, Orlan Manuel Morales Pineda, Oscar Basilio Padilla Mendez, Oscar David Alburez, Oscar Leonel Castañeda Vaides, Oscar Moisés Leonardo, Rafael Ajquejay Xec, Ramiro Fernando Velásquez, Ramón Aristides Salazar Gálvez, René Alberto López López, Ricardo Morataya Castellanos, Roberto Gutierrez García, Rolando Efraín Mendez Rodas, Rosa Nelly Illescas García de Suarez, Samuel Guillermo deLéon Estacuy, Sandra Nineth López Girón, Sergio Eduardo Soto Godoy, Vicente Samayoa Carias, Virgilio Marcos Bonilla López, and Wellington Francisco Salazar Villaseñor.

2. The petitioners argue that the State of Guatemala violated the human rights, as set forth in the Convention, of 508 workers through the actions taken by the Supreme Court of Justice (hereinafter referred to as “the CSJ,” its Spanish acronym) in a conflict with those workers. The petitioners claim that the CSJ acted as both the judge and an interested party in the labor conflict between the Court and its workers, in violation of the right to a fair trial.

3. The State argues that there was no violation of the rights in question, since the negative judgments handed down in the proceedings and remedies lodged by the petitioners do not imply any denial of justice, bias, or dependence on the part of the judges who ruled thereon.

4. Following an analysis of the arguments presented by the parties, and in accordance with the admissibility requirements set forth in the Convention, the Commission has decided to declare this petition admissible as regards the alleged violations of Articles 1(1), 2, 8, 16, 24, and 25 of the American Convention.

II. PROCESSING BY THE COMMISSION

5. On September 7, 2000, the petitioners lodged their petition with the Inter-American Commission. On February 1, 2002, the Commission began processing the petition and forwarded the relevant parts of it to the State, together with a period of two months in which to submit its comments.

6. On April 2, 2002, the State sent its reply regarding the complaint, arguing that the petitioners were given full access to justice and to the remedies offered by the domestic jurisdiction of Guatemala, and that the decisions of the competent courts were issued in accordance with the provisions of national law.

7. On July 8, 2002, the Commission conveyed the Guatemalan State's reply to the petitioners.

8. On August 5, 2002, the petitioners sent their observations on the State's reply regarding the facts of the case.

9. On April 4, 2003, the petitioners submitted a written request for the Commission to declare the petition admissible.

III. POSITIONS OF THE PARTIES

A. Petitioners

10. The petitioners state that in August 1992 the last Collective Working Conditions Agreement was signed by the judiciary and the judiciary workers' union (hereinafter referred to by its Spanish acronym "STOJ"), and that the agreement came into effect on November 20 of that year. The collective agreement was to remain in force for two years. In Guatemala, the working conditions of judicial employees are established by means of a collective agreement.

11. On October 18, 1994, the former employees denounced the 1992 agreement with the General Labor Inspectorate, with the aim of beginning negotiations with the judiciary for a new collective agreement. The petitioners pursued several administrative procedures and judicial formalities directly with their employer in an attempt to begin a process of collective negotiation between the two sides.

12. On November 21, 1994, with the aim of forcing their employer to negotiate through the courts and in accordance with the provisions of Article 51 of Guatemala's Labor Code, the STOJ filed economic and social conflict No. 730-94 with the first chamber of the Labor and Social Welfare Appeals Court. The court duly admitted the STOJ's filing. In response to this, on December 20, 1994, the CSJ ordered the processing of an injunction filed by the Office of the Attorney General of the Nation, the agency that acts in defense of the State, to challenge the resolutions of the STOJ's general assembly and to prevent the economic and social conflict filing from being processed.

13. On December 12, 1995, with negotiations on the collective agreement appearing impossible, a Conciliation Tribunal was set up between the parties. This tribunal was made up of the magistrates of the first chamber of the Labor and Social Welfare Appeals Court, representatives of the workers, and representatives of their employer.

14. On February 14, 1996, the Conciliation Tribunal served the parties with a number of recommendations. On February 15, 1996, the Conciliation Tribunal resolved to close the

conciliation process between the parties, since it had already issued recommendations in the case.

15. As a result of the CSJ's refusal to implement the recommendations extended by the Conciliation Tribunal, the petitioners readied themselves to exercise their right to industrial action.

16. On February 16, 1996, the petitioners lodged a filing with the first chamber of the Labor and Social Welfare Appeals Court, requesting the General Labor Inspectorate to carry out the count and declare the strike legal, as required by Article 241 of the Labor Code. The count was halted on February 26, 1996, on the order of the same court that was processing the filing, because challenges had been presented by both the State and the STOJ.

17. Regardless of this, between March 19 and April 7, 1996, several STOJ members went on strike. As a result, the petitioners report, the judiciary decided to cease paying the workers their wages, even though there were no legal grounds for doing so.

18. On April 2, 1996, the Constitutional Court ruled on the amparo injunction filed by the STOJ for the judiciary to be required to pay the March 1996 wages withheld from the workers. The Constitutional Court granted provisional amparo relief and ordered that the March 1996 wages be paid, provided that the employees immediately returned to work. The petitioners claim they obeyed this order and returned to work on April 7, 1996.

19. The CSJ filed a motion with the first chamber of the Labor and Social Welfare Appeals Court, requesting that the workers' strike be declared illegal. On May 10, 1996, the petitioners filed a remedy for annulment, claiming that the evidence phase was incomplete since no report had been sought from the judiciary's accounting department. However, on May 13, 1996, the first chamber of the Labor and Social Welfare Appeals Court ruled that the strike carried out by groups of judiciary employees was illegal.

20. The petitioners lodged an amparo filing with the CSJ against the decision of the first chamber of the Labor and Social Welfare Appeals Court, arguing that it had ruled the strike illegal prior to concluding the evidence phase and that it had not ruled on the remedy for annulment submitted by the petitioners. On January 27, 1997, the CSJ dismissed the amparo sought by the petitioners.

21. Over a period of more than two years, the petitioners pursued remedies for the refusal of the CSJ judges hearing this case on the grounds that they were involved in the conflict. The CSJ's civil chamber refused the judges, one after another, on the grounds of partiality. As a result, the problem that arose was the absence of a competent court for resolving this conflict. The judiciary therefore proposed amending the Judiciary Law to allow those judges to continue hearing the case. In spite of the petitioners' efforts to dissuade the legislature from enacting this law, it was published in the Official Journal on December 15, 1997. Among other amendments, this law ruled that there could be no appeal against decisions handed down by chambers of the Appeals Court.

22. On March 17, 1999, in accordance with the terms of new Judiciary Law, the CSJ refused to hear the case on the grounds that the challenged ruling had been handed down by a court comprising several magistrates and thus, under the new law, admitted no appeal.

23. The petitioners filed for amparo relief against this ruling on July 8, 1999, but the application was denied by the Constitutional Court. Thus, on August 23, 1999, the judgment declaring the workers' strike illegal was upheld.

24. On September 3, 1999, acting as the representative of the judiciary and on the basis of the minutes of its administrative session No. 33-99, the CSJ proceeded to dismiss the 508 employees who had participated in the strike.

25. On September 24, 1999, the petitioners filed a provisional amparo remedy against the CSJ's decision with the Constitutional Court, seeking the temporary suspension of the ruling of September 3, 1999, under which the 508 workers were being dismissed. On October 1, 1999, the Constitutional Court denied the provisional amparo and, on February 29, 2000, it denied the amparo.

26. On March 10, 2000, the Constitutional Court rejected the petitioners' clarification remedy filed against the judgment of February 29, 2000, on the grounds that there were no obscure, ambiguous, or contradictory terms to clarify.

27. The petitioners argue that the CSJ violated Article 8 of the Convention in that it showed bias in the decisions issued in the legal proceedings, thus failing to comply with the requirements of impartiality and independence set forth in the Convention. The petitioners hold that the CSJ violated Article 8 in its decision of September 1, 1999, when it resolved to dismiss a total of 508 workers without first working through the lists by means of the applicable administrative procedure.[FN2]

[FN2] The ruling of the first chamber of the Labor and Social Welfare Appeals Court of May 13, 1996, states that: "In the case at hand, it merely falls to this court, under the aforesaid provision (Article 244 of the Labor Code) to set the period of twenty days for the employer, since the power to terminate labor contracts is the employer's, with respect to workers who effectively took strike action, and that is a situation that must be established administratively and exactly by working through the lists that were submitted as evidence, since an examination thereof indicates certain imprecision that could negatively affect the rights of employees who did not suspend work and are included on the list."

28. The first chamber of the Labor and Social Welfare Appeals Court, in a judgment of May 13, 1996, denied the workers' union rights, including the right to strike set forth in Article 16 of the American Convention, in Articles 102 and 104 of the Constitution of the Republic of Guatemala, in Article 241 of the Labor Code, and in Decree 71-86 on the Unionization and Strike Regulations of State Workers.

29. The petitioners allege that the judiciary violated Article 24 of the Convention in that none of the union leaders were rehired or reinstated,[FN3] while the workers who participated in the strike were rehired and some were even reinstated in the same positions.

[FN3] The reinstated workers lost none of the benefits due to them by law, since their employment status remained unaffected; the employees who were rehired lost their legal benefits, did not receive the wages corresponding to the months during which they were unable to work, and were required to establish a new contractual relationship with their former employer.

B. State

30. The State of Guatemala maintains that neither the rights claimed by the petitioners, the provisions of the Constitution, or those of the Convention were violated.

31. The State also claims that the petitioners were given the remedies offered by Guatemala's domestic jurisdiction and thus enjoyed full access to Guatemalan justice. It also maintains that the competent courts and tribunals issued resolutions that were in accordance with the terms of domestic law. The report submitted by the CSJ to the State through the offices of the Presidential Coordinating Commission for Executive Human Rights Policy notes that:

In declaring the strike of the former judiciary employees illegal, Guatemalan law was upheld. This is because the strike denied the population the right to justice and the access thereto enshrined in the Constitution of the Republic of Guatemala by causing the paralysis of the justice administration for a period of twenty days, during which judicial deadlines were interrupted, hearings and proceedings were suspended, arrest warrants and release orders were not issued, no orders were given for alimony payments to be deposited or delivered, and urgent safety measures and precautionary measures for individuals were not put in place. This voided the functioning of the judiciary and, consequently, violated the human rights of all the individuals involved in the different types of proceedings pursued within Guatemala's national territory.

32. At no time did the State challenge the facts as claimed in the petition and instead insisted that the negative results of the domestic proceedings and jurisdictional remedies pursued by the petitioners in no way meant they had been denied justice or indicated any dependence or bias on the part of the judges who resolved those filings. After analyzing the actions of the parties involved, the State concluded that: "No precepts of the Constitution or of the Convention were violated, as the petitioners claim, since they were given the remedies offered by Guatemala's domestic jurisdiction and were afforded full access to justice, and the decisions of the competent courts and tribunals were issued in accordance with the law."

IV. ADMISSIBILITY

A. Competence of the Commission

33. The Commission has competence *ratione personae* to examine and process this petition. As regards the petitioners, they have the judicial right of appearance (*locus standi*) for lodging petitions with the Commission as described by Article 44 of the Convention. The petitioners name, as the alleged victims, individual persons with respect to whom the State of Guatemala had assumed the commitment of respecting and ensuring the rights enshrined in the Convention. The State of Guatemala has, in turn, been a state party to the Convention since ratifying it on May 25, 1978.

34. The Commission has competence *ratione loci* to hear this petition since it alleges the occurrence of violations of Convention-protected rights within the territory of a state party.

35. The Commission has competence *ratione temporis* over this petition in that the alleged incidents took place at a time when the obligation of respecting and guaranteeing the rights enshrined in the Convention was already in force for the State.

36. Finally, the Commission has competence *ratione materiae* in that the violations reported in the petition constitute breaches of human rights that are protected by the Convention.

B. Exhaustion of domestic remedies

37. Article 36(1)(a) of the American Convention provides as follows:

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

– that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

38. In the case at hand, the petitioners claim to have lodged the appropriate remedies for resolving the alleged violations of their constitutional rights with the domestic courts established under Guatemalan law. However, they hold that those remedies were ineffective in protecting the rights undermined by the State.

39. The petitioners claim that the domestic remedies were exhausted by their lodging filings with the different procedural venues available to them under the Guatemalan legal system. Finally, the petitioners lodged a clarification remedy against the Constitutional Court's ruling of March 10, 2000, rejecting the amparo they had sought regarding the merits. The petitioners sought provisional amparo against the Supreme Court of Justice's ruling of September 1, 1999, in which it fired 508 workers.

40. The State of Guatemala has not disputed the petitioners' claims regarding the exhaustion of domestic remedies. The State, in contrast, claims that the petitioners were given the remedies offered by domestic Guatemalan law and that they did in fact enjoy full access to justice. Its arguments also maintain that the rulings of the competent judicial bodies were given in compliance with law.

41. The petitioners made recourse to the domestic venues provided by Guatemalan law for asserting their violated rights. The Commission believes that the petitioners used the appropriate remedies in accordance with the procedural rules set forth in Guatemala's Constitution and laws.

C. Timeliness of the petition

42. Article 46(1)(b) of the Convention stipulates that for a petition to be admitted, it must be "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."

43. The last decision issued by the domestic courts, whereby the petitioners take the domestic remedies as being exhausted, is dated March 10, 2000. Since nothing has been said regarding the notification of that resolution, the Commission assumes that the petitioners were given notice thereof on that same date. Moreover, at no time during the Commission's processing of this case did the State argue that the deadline requirement with respect to the exhaustion of remedies had not been met. Consequently, the petition was lodged five months and 27 days after notification of the final judgment, within the six-month deadline.

D. Duplication of proceedings

44. Article 46(1)(c) of the Convention states that for a petition or communication to be admissible, the subject matter with which it deals must not be pending in any other international proceeding for settlement. Similarly, Article 47(d) of the Convention requires the Commission to rule inadmissible a petition or communication that is substantially the same as one previously studied by the Commission or any another international organization.

45. The submissions made by the parties and the documents contained in the case file do not indicate that this petition is pending in any other international procedure or settlement process or that it reproduces any other petition already examined by the Commission or other international organizations. The Commission therefore believes that in the case at hand, the admissibility requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention on Human Rights have been met.

E. Characterization of the alleged facts

46. The State asked the Commission to dismiss this complaint because it did comply with the obligations imposed by the Convention with respect to the articles that the petitioners claim were violated.

47. The Commission holds that this stage in the proceedings is not intended to establish whether or not a violation of the American Convention was committed. At the admissibility stage, the Commission must decide whether the stated facts tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as stated in section (c) of that same article.

48. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a prima facie assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them. Thus, the Commission's Rules of Procedure, by setting two clearly separate phases for admissibility and for merits, reflects the distinction between the evaluation that the IACHR must conduct to declare a petition admissible and the assessment necessary to establish a violation.

49. With reference to the instant petition, the Commission believes that the arguments submitted by the State require that the merits of the case be analyzed before they can be resolved. Consequently, the Commission does not find the petition to be "manifestly groundless" or "obviously out of order." In addition, the Commission believes that, prima facie, the petitioners have met the requirements contained in Article 47(b) and (c).

50. The Commission believes that in the case at hand it is competent to assess the alleged violations of the rights to a fair trial, freedom of association, equality before the law, judicial protection, all in connection with the obligation of respecting and ensuring those rights and with the duty of bringing national law into line with the international commitments assumed by the State, which could constitute violations of the rights of the alleged victims enshrined in Articles 1(1), 2, 8, 16, 24, and 25 of the Convention.

V. CONCLUSIONS

51. The Commission believes that it is competent to hear this complaint and that the petition is admissible under the admissibility requirements set forth in Articles 46 and 47 of the Convention with respect to the alleged violations of Articles 8, 16, 24, 25, 1(1), and 2 of the Convention.

52. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of the rights protected by Articles 8, 16, 24, 25, 1(1), and 2 of the American Convention.

2. To declare the petition admissible with respect to the following individuals: Abraham Teodoro Santizo Velásquez, Adolfo Nery Rojas Martínez, Alba Dina Piedrasant Ramirez de Leon, Alba Ninet Letona de González, Alejandro Canel Pérez, Alfredo Castillo Veron, Apolonio Salazar Carrillo, Armando Maisés Rios de Leó, Arnulfo Girón, Carlos Antonio Leonardo, Carlos Enrique Guerra Valiente, Carlos Eduardo Morales Hernández, Carlos Enrique Arias, Carlos Enrique Escalante, Carmen Cojtí García, Cesar Augusto Minera Ramos, Concepción Mayen, David Rubén Veásquez, Dora Carolina Portillo, Edgar Arnoldo Luarca Domínguez, Edgar Arturo López Arias, Edgar Leonel Zamora Constancia, Edgar Rómeo Morales Matías, Edna

Araceli Ortiz Domínguez, Edwin Remigio Tecún García, Eldo Elfego Estrada Arriaza, Evelin Marleny Quevedo Quezada de Marroquín, Fermin Reyes Xitumul, Fernando Antonio Sologaitoa Moran, Fidel Cuyán González, Freddy Eduardo Avila Rodríguez, Gabriel de Jesús Girón Galindo, Genaro Orellana Orellana, Gerardo López García, German Eduardo de Leon Macal, Gloria Marina Moya Ruiz, Gustavo Adolfo Cheves Luna, Héctor Anibal Coehojil Martínez, Hermelinda Esperanza Trejo Castillo, Igmair Aracely Coroy Can, Irrael Ejcalón Majzul, José Francisco Pérez Sunay, José René Cristian Pellecer Cóbar, Josefa Jurzuy Sanic, Juan Francisco Muñoz Tala, Juan Girón Caceros, Lilian Elizabeth Valle Trinidad de Velásquez, Ligia Irasema Estrada Aparicio de Sagastume, Lorenzo David Cupul Luna, Luis Eduardo Benítez, Luis René Arriola Conde, Magno Reginaldo Arana Rivas, Manuel Armando García Avandaño, Marco Aurelio Rodas Conde, Marcos Humberto López Girón, María Coralía Gómez Morales, María Eugenia Velásquez Ovalle, María Isabel Merida Herrera de Ogaldez, María Victoria Reyes Martínez, Mario Joaquin Echeverría Contreras, Mario Juan Humberto Caxaj Turnil, Mario René Palacios Urizar, Marvin Manolo López Reyna, Miguel Angel González Sánchez, Miguel Angel Paxtor, Miguel Augusto Ruano Sian, Miguel González, Milton Rogers Carías Gómez, Minor Rolando Reynoso Mas, Mynor Pablo Efraín Padilla Izeppi, Nidia Consuelo Lec Giron de Herrera, Norma Elizabeth Sipac Sipac, Oliverio Edmundo Roldan Castañeda, Orlan Manuel Morales Pineda, Oscar Basilio Padilla Mendez, Oscar David Alburez, Oscar Leonel Castañeda Vaides, Oscar Moisés Leonardo, Rafael Ajquejay Xec, Ramiro Fernando Velásquez, Ramón Aristides Salazar Gálvez, René Alberto López López, Ricardo Morataya Castellanos, Roberto Gutierrez García, Rolando Efraín Mendez Rodas, Rosa Nelly Illescas García de Suarez, Samuel Guillermo deLéon Estacuy, Sandra Nineth López Girón, Sergio Eduardo Soto Godoy, Vicente Samayoa Carias, Virgilio Marcos Bonilla López, and Wellington Francisco Salazar Villaseñor.

3. To give notice of this decision to the parties.
4. To continue with its analysis of the case.
5. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.