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File Number(s):	Report No. 87/07; Petition 733-04
Session:	Hundred Thirtieth Regular Session (8 – 19 October 2007)
Title/Style of Cause:	Luis de Jesus Victor Maldonado Manzanilla v. Mexico
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez Trejo.
Dated:	17 October 2007
Citation:	Maldonado Manzanilla v. Mexico, Petition 733-04, Inter-Am. C.H.R., Report No. 87/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANTS: Fabian Omar Salvioli, Soledad Garcia Munoz and Carolina Pineda Manriquez
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## I. SUMMARY

1. On May 13, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by Fabián Omar Salvioli, Soledad García Muñoz, and Carolina Pineda Manríquez (hereinafter “the petitioners”) alleging that the United Mexican States (“the State”) is internationally responsible for violating Articles 1(1), 5(1), 5(2), 2, 8(1), 8(2)(b), 8(2)(c), 8(2)(f), 8(2)(g), 25, 17, 11, 21, and 7(3) of the American Convention on Human Rights (“the American Convention”) as they relate to Article 2 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Luis de Jesús Víctor Maldonado Manzanilla.

2. The petitioners allege that, from the outset, the investigations conducted by the Prosecutor’s Office into the murders of Irma Elena Manzanilla Schaffer and Luis Maldonado Torres, parents of Mr. Luis de Jesús Víctor Maldonado Manzanilla, established a presumption of guilt on the part of Mr. Maldonado Manzanilla, placing him as the only person responsible for the murder, even though he had reported the robbery and assaults perpetrated by two people who were inside his parents’ home. They allege that in the course of the investigations he was forced to make a statement while in a state of emotional shock after the death of his parents and was arrested arbitrarily, violating his rights to personal integrity and judicial guarantees. They also allege that his right to judicial protection was violated in that the actions filed for appeal and appeal for constitutional protection after Mr. Maldonado Manzanilla was convicted by the first instance criminal judge failed to recognize the irregularities that occurred during the investigation and the violations of judicial guarantees committed during the criminal process, affirming the conviction and 40-year prison sentence. The petitioners allege that due to the amount of time that Mr. Maldonado Manzanilla has been in prison, he has been separated from

his wife and children, thus violating his right to protection for his family, and that the financial costs his family has incurred in the criminal process have violated his right to private property.

3. The State alleges that the murder investigation was conducted with respect for the rights of Mr. Maldonado Manzanilla, who did not file any complaint regarding the supposed irregularities alleged, as he could have sought the intervention of the Office of the Inspector General for Justice of the Federal District to detect and remedy such anomalies or, if applicable, the intervention of the Office of the Internal Controller for the purpose of penalizing such anomalies. The State alleges that Mr. Luis Maldonado Manzanilla was not forced to make a statement, since he appeared voluntarily before the Prosecutor's Office to submit his statement as a witness, but that after various pieces of evidence gathered were evaluated, it was determined that he was probably responsible for the crime. Additionally, the State denies that Mr. Maldonado Manzanilla was denied the ability to participate in the handling of any of the evidence-gathering procedures, in that he had an attorney from the start of the investigations. Regarding the conduct of the Criminal Process in the first instance, on appeal, and upon appeal for constitutional protection, the judicial guarantees of Mr. Maldonado Manzanilla were respected, his attorney was able to interrogate witnesses or experts, and he also offered more than 15 items of evidence. Thus, Mr. Maldonado Manzanilla did have the opportunity to defend himself. The State alleges that the petitioners have exhausted all the domestic remedies, but that it is clear that the petitioners are seeking to have the IACHR act as a fourth instance court to review the internal proceedings of jurisdictional bodies.

4. The IACHR concludes in this report that the petition is inadmissible, under Article 47(b) of the American Convention, because it does not describe events that constitute violations of rights protected by that international instrument. The Commission decides also to notify the parties of this decision, to publish the decision, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

5. The IACHR received a petition on May 13, 2004 and assigned it number 733-04. On August 31, 2004 the relevant sections of the petition were forwarded to the State, allowing it two months. On October 29, 2004, the State asked for an extension to submit its observations. On November 16, 2004, the petitioners submitted additional information. On December 2, 2004 the State submitted information, which was forwarded to the petitioners on December 27, 2004. On February 17, 2005, the petitioners submitted information, which was forwarded to the State on July 20, 2005. On August 22, 2005, the State submitted information, which was forwarded to the petitioners on September 9, 2005, allowing a period of one month. On October 12, 2005, the petitioners submitted additional information, which was forwarded to the State on May 21, 2007.

6. On October 12, 2005, the petitioners submitted a request for precautionary measures on behalf of Mrs. Anette Alejandra Mejía Cerdio, wife of Mr. Luis Maldonado Manzanilla; his daughters Zoe Maldonado Mejía and Isabella Maldonado Mejía; and Mr. Luis Maldonado Manzanilla himself. On May 31, 2006, the IACHR asked for additional information from the petitioners.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

7. The petitioners allege that Mr. Luis Maldonado Manzanilla was sentenced to 40 years in prison for murdering his parents, Irma Elena Manzanilla Schaffer and Luis Maldonado Torres, through a criminal process that was full of irregularities. They state that on January 17, 2001, Luis Maldonado Manzanilla, the only son of the victims, went to his parents house after buying a newspaper and going to the drugstore to buy alcohol a the request of his mother, Irma Elena Manzanilla. Upon entering his parents' home, he found two people threatening his father with a firearm and asking him to open the safe, as only he knew the combination. Upon opening the safe, his father was stabbed with a knife. The two people asked Mr. Maldonado Manzanilla to get more money, so he called a friend. The friend never arrived so the two attackers beat him about the head, causing him to lose consciousness. When he recovered, he called his wife on the phone and asked for help; the paramedics and police arrived right away and found the house nearly burned, Luis Maldonado Manzanilla nearly unconscious, and the corpse of his father. His mother was found stabbed to death in her room.

8. The petitioners state that despite his state of emotional shock, Mr. Maldonado Manzanilla was forced to make a statement before the Prosecutor's Office, as a witness, despite medical reports that indicated his delicate psychological and physical condition at the time.[FN1] They allege that after that statement, the Prosecutor's Office considered him the perpetrator of the crime, which represents a violation of the right to a presumption of innocence and the right to a defense, as well as a violation of psychological integrity in that he was subjected to interrogation under these circumstances.

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[FN1] The Certificate on the Physical Condition of Maldonado Manzanilla, issued by the Medical Unit of the General Xoco Hospital and signed by Dr. Víctor Hugo Soto Flores on January 17, 2001, refers to his condition when being attended to at that hospital "with presence of absence seizure." The psycho-neurological report issued by the experts Adalberto Levi Hambra and Dr. Miguel Matrajt Karsemboin, dated August 29, 2001, states that: "There are clear indications that the statements made by the accused before the Prosecutor's Office on the day of the crime and two days later when he appeared again were made under the effect of a two-fold traumatized condition: physical and psychological. The physical trauma is the result of a blow that he very probably suffered in the occipital region, with the loss of consciousness for several minutes. The psychic trauma is the result of the events that he witnessed and of which he is a victim. [...] When they brought him [Maldonado Manzanilla] to the Xoco Hospital to be treated for the wound on his hand, the psychologist noted that the accused could not precisely state his name, the date, where he was, or what the situation was. This constitutes a state of mental confusion that is indicative of organic cerebral injuries.  
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9. The petitioners allege that immediately after the murder, an investigation was started on an unofficial basis, in that the preliminary inquiry formally began up to fifteen hours and three minutes after the events. The preliminary inquiry was recorded with the number 22/103/01-01,

conducted by the delegation of Coyoacán, Agency 22, of the Office of the General Prosecutor of Justice of the Federal District. The petitioners state that the Prosecutor's Office agreed to a summary proceeding in which numerous procedures were carried out without allowing Luis Maldonado Manzanilla an opportunity to participate, even though the investigation of the facts pointed to him as the only person responsible for the murder of his parents. They further allege that various reports were initiated before being ordered by the Prosecutor's Office, which also omitted the charge and indications that there were other people in the house, as well as the existence of cigar butts in various ashtrays, while neither Luis Maldonado Manzanilla nor his parents smoked. They allege that the knife used to kill Irma Elena Manzanilla Schaffer did not have any finger prints, nor did the box of matches with which they burned the body. The firearm used to kill Luis Maldonado Torres was not found in the course of the investigation.

10. The petitioners allege that on January 17, 2001, the Prosecutor's Office ordered experts to conduct the Harrison test[FN2] on Mr. Luis Maldonado Manzanilla. The day after the murders, January 18, 2001, Prosecutor Bernardo Batis Vásquez stated that according to the results from the Harrison test performed on him, Mr. Maldonado Manzanilla had shot a firearm.[FN3] The petitioners indicate that the results of the Harrison test never appeared in the court file. They allege that on January 18, 2001, the record in the register of Expert Services was altered, noting cancellation of the Harrison test by the Assistant Director of Expert Services in chemistry and entering in its place the "atomic absorption" test. Therefore, there was no chain of custody for the test, which became evident with the alleged handling of the chemical tests by the expert.

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[FN2] The Harrison[-Gilroy] test consists of taking samples from the hands of someone who presumably fired a firearm and submitting those samples to a chemical procedure to determine whether there are traces of lead and barium.

[FN3] A Press Release issued on January 18, 2001 by the Office of the General Prosecutor of Justice of the Federal District states: "In addition, Bernardo Bátis Vásquez reported that the investigations relating to the double homicide of Mrs. Irma Elena Manzanilla Scheffer and Mr. Luis Maldonado Torres at their home at No. 1 Cerro Xico Street in the Oxtopulco District included a Harrison test on their son, Luis Maldonado Manzanilla, which was positive for both hands."

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11. The petitioners indicate that they filed an appeal for judicial protection seeking to discover the Harrison test. In the context of the appeal, the appeals Judge ordered the participating authorities to give Maldonado Manzanilla a certified copy of that test, but the Prosecutor's Office and the Criminal Court asserted that they did not have a record of that test. The petitioners also stated that in view of the irregularities in the investigation, Mr. Maldonado Manzanilla filed a complaint with the Prosecutor informing that office of his disagreement with the manner in which the case was being investigated, as well as the subsequent court proceeding against him, asking him to correct those irregularities. However, Mr. Maldonado never received a response to his complaint.

12. The petitioners allege that a complaint was also filed with the Human Rights Commission of the Federal District of Mexico, which issued a report on January 30, 2002 concluding that the actions of the Expert Service violated domestic and international standards protecting human rights and asking that instructions be sent to the Prosecutor's Office to take its observations into account, but this was ignored and even thrown out in the decision.[FN4]

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[FN4] The First Office of the Inspector General of the Human Rights Commission of the Federal District initiated case file CDHDF121/01/COY/D4818.00 based on a complaint submitted by Mrs. Annete Mejia Cerdio dated October 13, 2001 because the absence seizure that her husband, Luis Maldonado Manzanilla, was experiencing and that required psychiatric attention was not taken into account when he gave his statement; because the Harrison test was not entered in the records of the preliminary inquiry and was cancelled by an expert; Expert Services records were altered with correction fluid; instead of the Harrison test the Atomic Absorption test was recorded; the expert never collected samples from the hands of Luis Maldonado Manzanilla for conducting the Atomic Absorption test and used the samples that were taken for the Harrison test; Maldonado Manzanilla made his statement as a witness, even when the Prosecutor ordered that he be given the Harrison test, which linked him as the person probably responsible. On January 30, 2002, the First Office of the Inspector issued a resolution establishing: "The investigation indicates that the agent of the Prosecutor's Office asked that Luis Maldonado Manzanilla be given the Harrison test and hours later asked that he also be given the atomic absorption test. There is no evidence that the representative cancelled the first test requested. Based on the foregoing, we can presume that it was an improper decision made by Noé Tapia, a civil servant of the General Coordinating Office of Expert Services, with no basis or legal reason whatever. Neither is there any evidence that the Prosecutor's Office insisted on obtaining the results of the Harrison Test, which would probably have been for the indictment he filed against the complainant. This conduct is doubtful and irregular, particularly if we take into account that in the view of the defense Luis Maldonado Manzanilla showed by expert evidence in documented copy that the record book for expert test requests was altered by applying liquid correction fluid over the notation P. Harrison and writing on top of that Atomic Abs. Harrison Cancelled by Noé Tapia. It is inconsistent and unbelievable that the expert Anastasio Sánchez Flores was in two places at the same time, one to take samples on the hands of Luis Maldonado Manzanilla and another doing the blood trace at the scene of the crime, where the expert himself acknowledged (before the judicial authority) having stayed from ten-thirty in the morning until about three or four in the afternoon. In addition, the agent of the Prosecutor's Office failed to comply with the provisions of Articles 95 and 96 of the Code of Criminal Procedures, in that he neither described in detail the condition of Luis Maldonado Manzanilla, nor allowed the intervention of experts to confirm or deny the absence seizure that he was allegedly suffering. From the foregoing, we can conclude that the agents of the Prosecutor's Office who were responsible for putting together and investigating the preliminary inquiry, as well as the experts Noé Tapia and Anastasio Sánchez Flores acted improperly, violating the human rights of the complainant and of society. These actions led to an improper pursuit of justice, they failed to protect the rule of law, they violated the guarantees of judicial security and in doing so very likely left the complainant in a defenseless position." That same resolution made the following recommendations: a) The Prosecutor attached to the Fortieth Criminal Court of the Federal District should be instructed to take into account the content of this document when drawing up

the conclusions in case 18/2001 and b) The Internal Controller of that Prosecutor's Office should initiate the proceeding legally provided to investigate and determine whether the conduct of the aforementioned civil servants is administratively sanctionable. Should there be evidence of a crime, I ask that the corresponding preliminary inquiry be initiated as well.

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13. The petitioners state that the attempt to blame Luis Maldonado Manzanilla led to violating all the rules of due process to his detriment, leaving him defenseless since he never knew about the Harrison test, it was not added to the file, and an attempt was made to argue that the test was never performed. The petitioners explain that the only possibility is that the Harrison Test was performed, was negative, the record was adulterated, and an atomic absorption test with positive results was invented, although there is no information on it other than the expert opinion, since the samples were destroyed. Therefore, they assert that the Prosecutor's Office altered the expert tests, instructed witnesses to make statements against the victim, and since Luis Maldonado Manzanilla made a statement as a witness, he didn't have an attorney, although he was the only one accused. That statement was probably used later as evidence against him at the time of his conviction.

14. The petitioners allege that there were irregularities in the area of discovery, as reflected in the statements of various witnesses called upon at the proceedings, who were pressured and instructed by the Judicial Police and the Prosecutor's Office. These statements were used by the Judge to convict Mr. Maldonado Manzanilla despite having been obtained under duress. The petitioners state that, when testifying, the witness Débora Elena Durazo Vannier[FN5] indicated that the agent of the Prosecutor's Office coerced her to make a statement. When the witness Raúl Martínez Neri[FN6] was questioned on the same day as the events, the police officer who took his statement told him that if he believed in God he had to believe that the perpetrator of the murder was Luis Maldonado Manzanilla. Mrs. María Virginia Hernández Hernández[FN7] indicated in her statement to the court that she did not agree with some of the assertions attributed to her in the statement made to Prosecutor's Office and explained that she was unable to read the statement before signing it. The petitioners allege that the testimony of Crisanto Hilario Domingo[FN8] was distorted by the judicial officer who said that he had provided only isolated data and thus could not support the defense's position.

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[FN5] In the expansion to the Statement of Débora Helena Durazo Vannier, dated June 20, 2001, before the First Instance Criminal Judge, she stated: "...that she made the ministerial statement outside the house of the deponent on Cerro Xico, in a mobile truck; that inside the truck at the time was a man who said he was the Prosecutor and a man who said he was a court official, as well as a typewriter ... that they spent about two weeks spying on her, they would arrive and park outside and demand that the deponent come out; if she wasn't there, they would wait for her; they were after the deponent for a whole week; that is, if she was inside they didn't let her leave, if she was outside they didn't let her go in; and one of the many times they were there she said she [didn't] want to be involved, that she didn't know anything at all and they told her that they had many witnesses on the block who had seen her chatting with the doctor, whose name she doesn't know. She only knew him as doctor; that on the day she gave them her statement, she did not specify the date on which the events occurred because in truth she didn't remember; it

was they who pointed out to her the date, the month, and the time when she met with the man; the deponent indicated ... that they finally managed to get her to make a statement and this was because they were there until one in the morning waiting for her to come out, telling her also that they were going to order a fine or arrest for refusing to make a statement and that's why she agreed to make a statement so as not to have any more conflict ... that she did not appear for the two summonses that were sent by this court because she didn't want to get involved, because they had promised her when she made the first statement that they would not bother her and thirdly because on the day before the summons she received a call on her cell phone in which a male voice said she would die if she went where the deponent already knew, without specifying where or saying anything to connect it ...this was the first time. The second time was May 28 when she went to visit some relatives in Pedregal and a Jetta with Guerrero plates approached and shot at her car, hitting it twelve times with a high caliber bullet. On May 28, 2001, Mrs. Beborá Helena Durazo Vannier submitted a complaint based on these facts to the Delegation of Coyoacán, Department One for Preliminary Inquiries, Investigative Agency of the Prosecutor's Office.

[FN6] In the expansion of the statement before the First Instance Judge, Mr. Raúl Martínez Neri stated "...that on the 17th of December of January [sic], the times when he interviewed with agents of the police it was one or two times with different police officers ... one of them asked "do you believe in God" and the deponent answered yes, he asked him what he thought about the business with the lawyer and the deponent answered it was unbelievable and not true, and the judicial officer told him "if you believe in God, you have to believe that, because he did it, the deponent answered "you can believe what you want and I will believe what I want and this is what he said there at the delegation in the office, at about nine at night ..."

[FN7] In her expanded statement to the First Instance Judge, Mrs. María Virginia Hernández Hernández stated "...that she only partially confirms that statement, in that the deponent did not read any statement, did not read the statement at all, and it also says that she took the clothes of Mrs. Annet, and she didn't, just his clothes, i.e., Mrs. Anette's father, since they were personal belongings of her father ...That she did not read the statement she made to the agent of the Prosecutor's Office, that they gave it to her to read but at the time an agent was questioning her and the agent that took her statement brought her the papers to sign, but didn't give her time to read it because the other person was asking questions and later, without glasses the deponent can't read ...that she signed the statement without reading it ..."

[FN8] The first instance decision issued by the Fortieth Criminal Judge of the Federal District stated: "...as well as Crisanto Hilario Domingo, but they do not indicate that Maldonado Manzanilla purchased a newspaper on January 17, 2001, this witness offered by the defense indicates that the time when Luis Maldonado Manzanilla handed him the bill with change was at 8:10 to 8:15 a.m., while Andrés Aguilar Hernández infers that Crisanto actually gave him a bill, but does not indicate whether Luis Maldonado Manzanilla gave it to him. In that these witnesses only provided isolated data, without correct and reliable information ..."

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15. The petitioners state that on May 6, 2002, Federal District Criminal Judge 40 issued a final decision sentencing Luis Maldonado Manzanilla to 22 years and 6 months in prison for the murder of his father, Luis Maldonado Torres, and 27 years and 6 months for the murder of his mother, Irma Elena Manzanilla Shaffer, a total of 50 years in prison, exceeding the maximum term in Mexico which is 40 years, an error pointed out in the second instance court. The

petitioners state that the decision is groundless, reverses the burden of proof by placing it on the accused, and flagrantly violates the right to a presumption of innocence. To challenge that decision, Luis Maldonado Torres filed an appeal that fell to the Fifth Criminal Chamber of the Federal District Superior Court of Justice, which reduced the sentence from 50 to 40 years in prison based on technical considerations in a decision dated July 2, 2002, but made no mention of the lower court errors indicated by Luis Maldonado Manzanillas' defense. They allege that the second instance decision is also without proper grounds, as it overlooks the irregularities in the production of evidence as noted by the Human Rights Commission of the Federal District, the lack of a motive, the absence of the weapon, and the fact that it was not [sic] established that there were third parties in the house.

16. The petitioners state that Luis Maldonado Manzanilla challenged that decision by filing an action for protection with the Sixth Collegiate Court of the Judicial Branch of the Federation for the First Circuit. On October 31, 2003, that court decided not to support or protect Mr. Luis Maldonado Manzanilla against the sentence being appealed, informing him on November 13, 2003. The petitioners state that the decision only corrected one technical error of the Appeals Court, establishing that the reparation of damages imposed on Luis Maldonado Manzanilla should be paid to his wife as mother of his daughters. But again, they failed to consider all the aforementioned irregularities that occurred in the criminal process.

17. The petitioners state that the decisions issued in all the appeals levels violated Article 8(1) of the American Convention in that they were motivated by the presumption that the accused was guilty. They allege that the participating judge affirmed an investigation rife with irregularities. They also allege that the principle of a presumption of innocence was broken and Article 8(2) of the Convention was violated with the issuance of a criminal conviction without certainty and the fact that the accused was treated as guilty by the Prosecutor's Office and the judicial office from the start of the investigation, as well as the failure to give Luis Maldonado Manzanilla prior and detailed information regarding the indictment filed against him so that he could defend himself.

18. The petitioners state that taking the biological samples from Luis Maldonado Manzanilla to conduct chemical tests that were later changed prevented the defense from checking the evidence. Sentencing Maldonado Manzanilla to 40 years in prison, the petitioners allege, would also represent a violation of the right to personal freedom enshrined in Article 7(3) of the American Convention in that there have clearly been violations of judicial guarantees, of a presumption of innocence, and of the right to a defense. The petitioners state that Luis Maldonado Manzanilla was forced to make a statement as a witness while in a state of confusion and anguish and without receiving medical and psychological treatment, thus violating the right to personal integrity enshrined in Article 5 of the Convention.

19. The petitioners allege the violation of Articles 11 and 17 of the American Convention because as a result of the conviction Luis Maldonado Manzanilla has been separated from his family for more than three years, did not see the birth of one of his daughters, and as a result of the social stigma his wife and daughters have moved away to live in the State of Aguascalientes, depriving them of a relationship with their father, for which reason they also allege a violation of Article 19 of the American Convention. In view of the expenses that the family of Luis

Maldonado Manzanilla incurred in the criminal process, the petitioners indicate that they had to sell their assets, his wife was forced to leave her job, and the inheritance from Maldonado Manzanilla's parents has been depleted due to his conviction. These violations relate to Article 1(1) and Article 2 of the Convention because Article 248 of the Code of Criminal Procedure of the Federal District violates Article 8(2) of the Convention, the presumption of innocence. The petitioners assert that the State must take the necessary measures to ensure adequate administration of justice, impartiality, and the competence of its employees.

20. They allege that the assessment of the evidence did not meet the standards of free conviction [allowing a judge absolute freedom in his evaluation of the evidence presented] or reasoned judgment. The first instance judge, by affirming the earlier courts whose decisions were being appealed, failed to consider that the murder weapon was not found and that the expert ballistic reports signed by specialists Mayor Rafael Bringas Guillot, José Guadalupe Uribe Barrera, Manuel Luises Castro, and Martín Noriega López indicated that the weapons found at the scene of the crime did not match the bullet that was found. They add that according to expert testimony none of the five firearms found in the house had been fired, so that the weapon that killed Maldonado Manzanilla's father was never found.[FN9]

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[FN9] On January 18, 2001, the Forensic Chemistry experts performed the Walker Test on Mr. Maldonado Manzanilla's clothes, "a navy blue sweater ... a white long-sleeved shirt with blue stripes ... They obtained negative results on both sleeves in both tests ..."

On January 18, 2001, the Forensic Ballistics Department of the Office of the General Prosecutor of Justice of the Federal District issued the ballistics report on tests conducted on five firearms, two magazines, three cartridges that were found at the scene of the crime, stating: "No test shots were fired using the weapons because: The two Escuadras and Luger pistols, as well as the revolver [identified as 38SW caliber] cited in point 8 (eight) have jammed (incorrect) mechanisms. Regarding the remaining two revolvers described in point 7 (seven) and 9 (nine), they are not found with this caliber cartridges.

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21. The petitioners state that they learned through the media that the Criminal Judge who convicted Luis Maldonado Manzanilla is being prosecuted for an alleged crime against the administration of justice.

B. The State

22. The State alleges that at approximately 10:00 a.m. on January 17, 2001, Elena Manzanilla Schaffer and Luis Maldonado Torres were murdered inside their home. At 3:03 p.m. on that day, preliminary inquiry 22/103/01-01 was initiated based on those events and included the following procedures: visual inspection of the scene of the crime, certification of the corpses, acknowledgment and certification of their wounds. On the same day, Víctor Maldonado Manzanilla appeared as an identification witness. Marco Antonio Anzaldo Trápaga, Juan Carlos Rodríguez Ortiz, Fidel Sánchez Méndez, Eustaquia Amador Martínez, Rubén Sánchez Porras, Raúl Martínez Neri, and José Fernando Díaz Estua Avelino also submitted statements to the Prosecutor's Office.

23. The State alleges that on January 18, 2001 the Prosecutor's Office sought the intervention of a chemistry expert to perform the atomic absorption test on Luis Maldonado Manzanilla, which concludes by identifying lead, barium, and antimony, components of cartridges, in the areas most frequently stained on the hands of Luis Maldonado Manzanilla. The report was signed by the experts Alfonso Aquino Espejel, and Edmundo Vásquez Martines. The State indicates that an official letter was sent to the expert services seeking the intervention of ballistics experts. On that same date, there is a record of the physical condition and medical certificate of Luis Maldonado Manzanilla, who was experiencing an absence seizure and said only his name. In addition, Luis Maldonado Manzanilla gave verbal descriptions of those who were probably responsible. Mr. Luis Maldonado Manzanilla's clothes were sent to expert services for chemistry experts to perform the Walter, blood trace, and blood group tests on them.

24. The State alleges that on January 17, 2001, Luis Maldonado Manzanilla voluntarily appeared at agency 50 of the Prosecutor's Office in the company of his defense attorney, Juan Antonio Araujo Riva Palacio, in order to make a statement regarding the events. The State alleges that when the atomic absorption test conducted on Luis Maldonado Manzanilla was positive, the Prosecutor's Office changed his legal status from witness to suspect, so that on January 20, 2001, preliminary inquiry 22/00103/01-01 ordered criminal action against Luis Maldonado Manzanilla as the person probably responsible for committing the crime of murder based on various relationships, against Irma Elena Manzanilla Schaffer and Luis Maldonado Torres. On May 6, 2002, the Fortieth Criminal Judge of the Federal District issued a decision sentencing Luis Maldonado Manzanilla to 50 years in prison.

25. The State asserts that Luis Maldonado Manzanilla appealed the decision issued by the Fortieth Criminal Judge of the Federal District to the First Criminal Chamber of the Superior Court of Justice of the Federal District. In a ruling dated July 2, 2002, that court reduced the sentence from 50 to 40 years in prison. Maldonado Manzanilla challenged this second instance decision in an appeal for protection heard by the Sixth Collegial Court of the First Circuit. Under a Final Decision dated October 31, 2003, he was denied the protection of federal justice against the actions he challenged from the Fifth Criminal Chamber of the Superior Court of Justice of the Federal District and the court indicated only that the reparation of damages he was ordered to pay should be paid to the mother of his daughters, as heirs of their paternal grandparents. Thus, the decision was affirmed and with this the petitioners exhausted all domestic remedies.

26. The State alleges that there is no violation of the right to personal integrity as embodied in Article 5 of the American Convention, in that although it is true that Luis Maldonado Manzanilla had wounds, the source of these wounds was other than acts of torture. The State indicates that these wounds were confirmed by the physician at the Xoco Hospital, but there is no indication that there were wounds other than those already stated, and the criminal process confirmed that Mr. Luis Maldonado Manzanilla inflicted them on himself and did so before presenting himself to the investigating authorities.

27. The State indicates that Mr. Luis Maldonado Manzanilla was not forced to make a statement as a witness in a state of confusion and anguish, and that cannot be likened to an act of torture against him. The State alleges that the record of the criminal proceeding against him

shows that he appeared voluntarily at all times. The State notes that although the agent of the Prosecutor's Office asked some questions to clear up some aspects of the investigation, Maldonado Manzanilla was never pressured to answer one way or another, nor was he induced to answer what he didn't know. The State alleges that Mexican law does not provide that witnesses must be assisted by an attorney. In addition, the State asserts that Maldonado Manzanilla did not report any harassment or acts of torture during the preliminary inquiry phase nor during the criminal proceeding, other than the wounds described above. The State asserts that it was not informed of any other actions that could have been investigated.

28. The State alleges that there is no violation of Article 7 of the American Convention because the arrest of Maldonado Manzanilla occurred with the causes and under the conditions established in the Criminal Code of the Federal District and the Political Constitution of Mexico itself. Therefore, the arrest was not carried out arbitrarily since it was conducted under conditions of "equipollent flagrancy," in that 72 hours had elapsed since the crime was committed and the investigation had begun.

29. The State also asserts that there has been no violation of Article 8 of the American Convention because Luis Maldonado Manzanilla appeared voluntarily before the Prosecutor's Office to submit his statement as a witness, but that after various items of evidence gathered were evaluated, it was determined that he was probably responsible for the crime. Similarly, the State denies that Maldonado Manzanilla was denied the opportunity to participate in any of the procedures carried out to gather evidence, in that he had an attorney from the start of the investigations. Regarding the switch from the Harrison test to the atomic absorption test, the State asserts that this was done in order to give the investigating authority certainty since due to the wound that Mr. Luis Maldonado Manzanilla had inflicted on his own left hand, that hand was washed and disinfected and it was thus necessary to conduct a test that would provide greater technical certainty.

30. The State notes that performing the atomic absorption cannot be considered unlawful since it is more precise than the Harrison test; thus, the Harrison test was never performed on Mr. Luis Maldonado Manzanilla. It states that all the experts who participated in the various procedures satisfied the legal requirements established in Article 36 of the Organic Law of the Office of the General Prosecutor of Justice of the Federal District.

31. The State indicates that the preliminary inquiry does not indicate that either Luis Maldonado Manzanilla or his attorney presented any defense against alleged irregularities in putting together the preliminary inquiry. It states that Mr. Maldonado Manzanilla could have called upon the Office of the Inspector General of Justice of the Federal District to intervene in order to detect and remedy such anomalies or, if applicable, could have sought the intervention of the Internal Controller in order to sanction such anomalies.

32. The State asserts that there was an investigation regarding the alleged presence of two people at the victims' home who had stolen money, killed Mr. Maldonado Manzanilla parents, and wounded the latter. Nonetheless, no signs were found of the presence of two people in the home, which was corroborated by the field criminalistics report and the visual inspection. Regarding the existence of cigar butts, which do not appear in the field criminalistics report, the

State indicates that they were noted in the judicial inspection, but were found after everyone had been at the scene of the crime and samples and evidence had been taken. This, together with the absence of any harm done to the house security measures, led to a determination that the probable suspect had access to the home, either because he had keys or because he was allowed to enter.

33. The State indicates that Mr. Maldonado Manzanilla's judicial guarantees were respected during the handling of the Criminal Process, in the first instance, on appeal, and upon appeal for protection. It asserts that his attorney was able to interrogate the witnesses or experts and also submitted more than 15 items of evidence, so that he did in fact have the opportunity to defend himself. It states that Article 248 of the Code of Criminal Procedures of the Federal District did not violate the presumption of innocence because Luis Maldonado Manzanilla's denial that he had committed the crimes is not contrary to the presumption of innocence, so that he was not required to demonstrate his innocence.

34. The State asserts that the file does not show contradictions between the various statements that witnesses made to the Prosecutor's Office and the Criminal Judge, because when expanding their statements they are making the circumstances clearer based on questions posed by the parties. The State alleges that none of the witnesses was pressured or intimidated so that they would make a statement and that the requirements of Article 255 of the Code of Criminal Procedures for the Federal District were considered in evaluating the testimony.

35. The State asserts that there has been no violation of Article 25 of the American Convention because Luis Maldonado Manzanilla at all times had simple, rapid, and effective remedies he could use to assert his areas of disagreement. The State maintains that the fact that Maldonado Manzanilla's attorney did not use some of the remedies and that the ones he filed did not rule in his favor cannot be considered a human rights violation. Regarding the alleged violations of Articles 17, 11, 19, and 21 of the American Convention, the State maintains that no violation of those articles can be found as a result of the conviction of Luis Maldonado Manzanilla upon having been found responsible for the crime of murder.

36. The State alleges that although it is true that the then Criminal Judge 40 of the Superior Court of Justice of the Federal District was removed from office, it is also true that the Judge was reinstated to his position pursuant to an appeal for protection and was thus reinstated as a Judge, but now in the Sixty-Fifth Criminal Court of the Federal District.

37. The State alleges that the Human Rights Commission of the Federal District entered complaint CDHDF/121/01/COY/D4818.000 on October 13, 2001, a complaint that was submitted by Anette Mejía Cerdio, wife of Mr. Maldonado Manzanilla. On January 30, 2002, the Human Rights Commission of the Federal District asked the Office of the Assistant Prosecutor for Justice and Human Rights to immediately take adequate and sufficient measures to ensure that instructions were sent to the Prosecutor's Office attached to the Fortieth Criminal Court of the Federal Distribution, so that in preparing the conclusions in criminal case 18/2001 it would take into account the content of that document and the Internal Controller of the Prosecutor's Office would initiate the legal procedure established to investigate the administrative responsibility that might have been incurred by civil servants in the Office of the General

Prosecutor of Justice of the Federal District when putting together the preliminary inquiry against Mr. Maldonado Manzanilla.

38. The State notes that the Prosecutor's Office attached to the Fortieth Criminal Court of the Federal District heeded the request for precautionary measures from the Human Rights Commission of the Federal District and on January 31, 2002 it began an administrative proceeding before the Internal Controller of the Office of the General Prosecutor of Justice of the Federal District, asking the Office of the Assistant Prosecutor for Justice and Human Rights to investigate the administrative responsibility that might have been incurred by civil servants in the Office of the General Prosecutor of the Federal District when putting together preliminary inquiry 22/103/01-01, the source of criminal case 18/2001. On November 12, 2002, the control body settled, not having found sufficient evidence to give credit to the alleged irregularities indicated by Annete Mejía Cerdio in her complaint. The State asserts that the Human Rights Commission of the Federal District did not issue any recommendation because it did not detect human rights violations.

39. The State alleges that although the petition was submitted within the period of six months and the petitioners have exhausted all domestic remedies, nonetheless it is obvious that the petitioners are seeking to have the IACHR act as a fourth instance to review domestic actions taken by jurisdictional bodies.

#### IV. ANALYSIS

##### A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* of the Inter-American Commission

40. In accordance with the provisions of Article 44 of the American Convention, the petitioners are authorized to submit a petition to the Commission. The petition in question indicates that the alleged victim was subject to the jurisdiction of the Mexican State at the time of the events reported. Regarding the State, the Commission indicates that the United Mexican States is a State Party to the American Convention, having deposited its ratification instrument on April 3, 1982. As a result, the Commission is competent *ratione personae* to examine the charges submitted.

41. The Commission is also competent *ratione materiae* because the petitioners allege violations of rights protected within the framework of the American Convention.

42. The Commission is competent *ratione temporis* to examine this petition, which is based on allegations regarding events that occurred starting on January 17, 2001, the date on which the murder investigation began and irregularities were allegedly committed in putting together the investigation against Maldonado Manzanilla. The facts reported thus occurred after the entry into effect of the State's obligations as Party to the American Convention. The Commission is also competent to hear violations of the Convention against Torture, in that it was ratified by Mexico prior to the events.[FN10]

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[FN10] The Inter-American Convention to Prevent and Punish Torture was ratified by the State of Mexico on June 22, 1987.

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43. In addition, since the petition alleges violations of rights protected within the framework of the American Convention that took place in the territory of a State party, the Commission concludes that it is competent *ratione loci* to hear the petition.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

44. Article 46(1) of the American Convention on Human Rights establishes that in order for a petition or communication submitted in accordance with Articles 44 or 45 to be admitted by the Commission, it is required that “the domestic remedies have been pursued and exhausted in accordance with generally recognized principles of international law.”

45. The petitioners say they have exhausted the domestic remedies since they filed an appeal against the first instance decision sentencing Maldonado Manzanilla to 50 years in prison. The second instance decision reduced the sentence to 40 years in prison but did not review the alleged irregularities and violations of judicial guarantees, so the petitioners filed an appeal for protection against the second instance decision, but the Court decided not to provide protection to Mr. Maldonado Manzanilla for the alleged violations of rights. The petitioners were informed of this decision on November 13, 2003, thus exhausting the domestic remedies. The State did not dispute the allegations made by the petitioners regarding the exhaustion of domestic remedies and stated that they were exhausted with the decision in the appeal for protection. The Commission concludes that the prior exhaustion of domestic remedies requirement has been satisfied.

2. Deadline for submitting the petition

46. In accordance with the provisions of Article 46(1)(b) of the Convention, in order for a petition to be admitted it must be submitted within a period of six months after the date on which the complainant was notified of the final decision at the national level.

47. With respect to this petition, the Commission has established that the domestic remedies were exhausted with the decision on appeal issued by the Sixth Collegial Court of the Judicial Branch of the Federation on October 31, 2003, with notification to the petitioners on November 13, 2003. The Commission received the petition on May 13, 2004, and thus within the period of six months. As a result, the Commission concludes that this requirement has been met.

3. Duplication of proceedings and *res judicata*

48. There is nothing in the file to indicate that the petition submitted to the Inter-American Commission is currently pending another proceeding in the international system, nor that it reproduces any previous petition or communication that has already been examined by the

Commission or another international organization, as established under Articles 46(1)(c) and 47(d), respectively.

4. Characterization of the facts

49. The petitioners allege that the facts reported constitute violations of Articles 1(1), 5(1), 5(2), 2, 8(1), 8(2)(b), 8(2)(c), 8(2)(f), 8(2)(g), 25, 17, 11, 21, and 7(3) of the American Convention, all as they relate to Article 2 of the Inter-American Convention to Prevent and Punish Torture.

50. The Commission believes that its task at this stage of the proceeding is not to establish whether or not there has been a violation of the American Convention. For admissibility purposes, the IACHR must decide whether facts are presented that characterize a violation, as stipulated by Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph c of the same article. The standard for assessing these points is different from that used to decide on the merits of a complaint. The IACHR must perform a prima facie evaluation to examine whether the complaint provides the basis for an apparent or potential violation of a right guaranteed by the Convention, not to establish the existence of a violation.[FN11]

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[FN11] IACHR, Report N° 128/01, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the “La Nación” Newspaper. Costa Rica. December 3, 2001. para. 50.

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51. The petitioners in this case allege that the Prosecutor’s Office violated the right to the presumption of innocence of Maldonado Manzanilla by placing him as the sole person responsible for the murder of his parents, because he was forced to make a statement as a witness while in a state of emotional shock[FN12] and an assumption of culpability was established. They allege that the result of the Harrison test given to Maldonado Manzanilla to determine whether he had fired a weapon never appeared in the file and the test was replaced by the atomic absorption test. The petitioners state that given the lack of results of the Harrison test they filed an appeal for protection with the Appeals Court, which decided to order the Prosecutor’s Office and the Criminal Judge to submit certified copy of the Harrison test; however, the Prosecutor’s Office and the Criminal Judge indicated they didn’t have the results. The petitioners also state that they filed a complaint with the Human Rights Commission of the Federal District of Mexico, which drew up a report on January 30, 2002 concluding that the experts’ conduct violated domestic and international standards protecting human rights.[FN13] The petitioners also alleged that various witnesses were coerced to make statements against Maldonado Manzanilla, and the record of this appears in the criminal file.[FN14]

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[FN12] Supra paragraph 8.

[FN13] Supra paragraph 12.

[FN14] Supra paragraph 14.

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52. The petitioners alleged that the Criminal Process violated the right to judicial protection and judicial guarantees in that after the alleged victim was convicted by the first instance Criminal Judge they filed an appeal and later an appeal for protection, which failed to recognize the irregularities committed in the investigation and the violations of judicial guarantees in the criminal process, allowing the conviction and 40-year prison sentence for Mr. Maldonado Manzanilla to stand. They state that the courts that heard the case failed to consider the fact that the Walker test conducted on the clothing of Mr. Maldonado Manzanilla to determine whether he had fired a weapon proved to be negative, that none of the five firearms found at the scene of the crime were fired, and that the murder weapon was never found or presented at trial.[FN15]

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[FN15] See paragraph 20 of this report.

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53. With respect to the irregularities alleged by the petitioners, the State indicated that the murder investigation was conducted with respect for the rights of Mr. Maldonado Manzanilla. It alleges that he was not forced to make a statement since he appeared voluntarily at the Prosecutor's Office to submit his statement as a witness, but after various pieces of evidence gathered by the Prosecutor's Office were evaluated, it was determined that he was probably responsible for the murder. The State denies that Mr. Maldonado Manzanilla was not afforded the opportunity to participate in the conduct of any of the procedures to gather evidence, since he had an attorney from the start of the investigations. The State alleges that the switch from the Harrison Test to the atomic absorption test was done in order to give the investigative authority certainty, since the allegedly self-inflicted wound on Luis Maldonado Manzanilla's left hand was washed and disinfected and it was thus necessary to conduct a test that would provide greater technical certainty. The State indicates that Maldonado Manzanilla could have submitted a complaint regarding the supposed irregularities alleged before the Office of the Inspector General of Justice of the Federal District asking it to intervene to detect and remedy such anomalies or, if applicable, could have sought the intervention of the Internal Controller to sanction those anomalies. However, he never filed any charge or complaint regarding the alleged irregularities.

54. The State indicated that in the handling of the criminal process, in the first instance, on appeal, and on appeal for protection, Maldonado Manzanilla's judicial guarantees were respected, his attorney was able to question the witnesses or experts, and also offered more than 15 items of evidence, so that he did have the ability to defend himself. The State indicated that the Prosecutor's Office attached to the Fortieth Criminal Court of the Federal District heeded the request for precautionary measures made by the Human Rights Commission of the Federal District and on January 31, 2002 began an administrative proceeding before the Internal Controller of the Office of the General Prosecutor of Justice of the Federal District. However, it did not find sufficient evidence to give credit to the alleged irregularities indicated by Annete Mejía Cerdio in her complaint.

55. Having examined the evidence presented to the Commission and the positions of the parties, the Commission concludes that the events described do not, prima facie, constitute

violations of rights recognized in the American Convention or in the Inter-American Convention to Prevent and Punish Torture.

56. The Commission has already stated that the international protection afforded by the Convention's monitoring bodies is of a subsidiary nature. This is the basis for the "fourth-instance formula" applied by the Commission, which is consistent with practice in the European human rights system. The premise underlying that formula is that the Commission cannot review judgments handed down by national courts acting within their sphere of competence and with due judicial guarantees, unless it believes that a possible violation of the Convention is involved. The Commission has added that it is competent to declare a petition admissible and rule on its merits when it relates to a claim that a national court's judgment was rendered without due process or in violation of some other right guaranteed by the Convention. If, on the other hand, the claim simply alleges that the domestic judgment was mistaken or unjust, the petition must be rejected pursuant to the formula stated above.[FN16]

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[FN16] I/A Court H.R., Villagrán Morales et al. Case ("Street Children" case"). Judgment of November 19, 1999. Series C, No. 63; para. 228.

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57. For its part, the jurisprudence of the Inter-American Court has also established that "...[i]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine domestic proceedings to determine whether they are compatible with the American Convention." [FN17] In this regard, the Court has added that "the domestic proceedings must be considered as a whole, including the rulings of the appellate courts, and the role of the international court is to establish whether the proceedings as a whole, as well as the way evidence was produced, were in accordance with international provisions." [FN18]

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[FN17] I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 146.

[FN18] I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C, No. 99. para. 120.

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58. In this case, the Commission does not find evidence of arbitrary measures in the judicial proceedings. According to the pleas and documentation, Mr. Maldonado Manzanilla had access to all judicial remedies, with due guarantees. The evidence for the defense was examined and rejected by the national courts, leading to Mr. Maldonado's conviction. In previous reports, the Commission has maintained that "The judicial protection recognized by the Convention includes the right to fair, impartial and prompt procedures that offer the possibility, but certainly not the guarantee, of a favorable outcome. A negative outcome from a fair trial does not, by itself, constitute a violation of the Convention." [FN19] Therefore, the IACHR concludes that the fact that the outcome was unfavorable to Mr. Maldonado does not constitute a violation of his rights as protected by Articles 8 and 25 of the American Convention.

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[FN19] See, for example, IACHR, Report N° 6/98, Case 10.382, Máximo Rodríguez, Argentina, February 21, 1998, paragraph 17.  
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59. Moreover, the IACHR notes that the petitioner's allegations that Mr. Maldonado Manzanilla's conviction to 40 years in prison also constitutes a violation of the right to personal liberty enshrined in Article 7(3) of the American Convention, since "it has been in clear violation of the supposed judicial guarantees, presumption of innocence, and right to a defense," have not been supported with arguments separate from those presented on the alleged violations of judicial guarantees and due process previously mentioned. In addition, the alleged violations of Article 5 of the American Convention and Article 2 of the Inter-American Convention to Prevent and Punish Torture, based on the claim that Luis Maldonado Manzanilla was obliged to give testimony in a state of confusion and anguish, without access to medical and psychological care, are not sufficient evidence of a violation of the right to humane treatment. Similarly, the claims of alleged violations of Article 11 and 17 of the American Convention, on the grounds that, because of the conviction, Luis Maldonado Manzanilla would spend more than three years separated from his family, which would be deprived of their relationship with him, for which they also claim a violation of Article 19 of the American Convention, also are not separately substantiated.

60. Therefore, having analyzed all the evidence, the IACHR concludes that this petition does not provide sufficient prima facie evidence of violations of human rights protected under the American Convention or the Inter-American Convention to Prevent and Punish Torture and that, consequently, the Commission is not competent to continue hearing this petition.

## V. CONCLUSIONS

61. The Commission concludes that the petition does not describe events that constitute violations of rights protected under the American Convention.

62. On the basis of the arguments of fact and of law presented above,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare this case inadmissible under the provisions of Article 47(b) and (c), of the American Convention on Human Rights in relation to the violation of Articles 1(1), 5(1), 5(2), 2, 8(1), 8(2)(b), 8(2)(c), 8(2)(f), 8(2)(g), 25, 17, 11, 21, 7(3) of the American Convention on Human Rights and in relation to Article 2 of the Inter-American Convention to Prevent and Punish Torture.

2. To report this decision to the State and the petitioner.

3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2007.  
(Signed): Florentín Meléndez, President; Sir Clare K. Roberts, Evelio Fernández Arévalos, and  
Freddy Gutiérrez Trejo, Commissioners.