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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 12/08; Petition 175-00
Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)
Title/Style of Cause: Edgar Raul Rivas Rodriguez and Family v. Guatemala
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated: 5 March 2008
Citation: Rivas Rodriguez v. Guatemala, Petition 175-00, Inter-Am. C.H.R., Report No. 12/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: Mario Alcides Polanco Perez
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I. SUMMARY

1. On August 22, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint lodged by the Grupo de Apoyo Mutuo [Mutual Support Group] (GAM), represented by Mario Alcides Polanco Pérez (hereinafter “the petitioners”), against the Republic of Guatemala (hereinafter “the State,” “the Guatemalan State,” or “Guatemala”), for international responsibility in the forced disappearance of Edgar Raúl Rivas Rodriguez (hereinafter “the alleged victim”), a professor at the University of San Carlos of Guatemala, who on June 6, 1983, was said to have been kidnapped and subsequently disappeared, allegedly at the hands of army personnel, and whose whereabouts are still unknown.

2. The petitioners allege that the State is responsible for the violation of the rights established in Articles 1(1), 3, 4, 5, 7, 17, 19, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), as well as violation of Articles I and II of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Edgar Raúl Rivas Rodríguez and his family. The petitioners argue that their petition is admissible because it satisfies the requirements established in Article 46 of the American Convention.

3. For its part, the State of Guatemala argues that in the instant case there are domestic remedies that should be exhausted first. Nevertheless, it stated that it is not opposed to having the petition declared admissible.

4. After analyzing the parties' positions, the Commission concludes that it is competent to consider the petition and that the case is admissible, in the light of Articles 46 and 47 of the American Convention, concerning the alleged violation of Articles 3, 4, 5, 7, 8, and 25 in connection with Article 1(1) of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Edgar Raúl Rivas Rodríguez and his relatives. The Commission further concludes that in application of the *iura novit curia* principle it is competent to consider the petition for the alleged violation of Article 2 of the Convention in connection with Article 1(1) of the same instrument. Finally, the Commission decides to transmit this decision to the parties, to publish it, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. On August 22, 2000, the Commission received the petition and assigned it number 175-00, in accordance with the rules of procedure then in force. The petitioners sent additional information in a note of October 9, 2000, received on October 10, 2000. On October 13, 2006, the petition was forwarded to the State with a request for its response within two months as provided in Article 30(3) of the IACHR Rules of Procedure.

6. On December 18, 2006, the Commission received the State's response to the petition. On January 18, 2007, it transmitted a copy of the State's response to the petitioners, giving them one month to present their comments.

7. On February 13, 2007 the IACHR acknowledged receipt of a note sent by the State on February 6, 2007. On February 26, 2007, the petitioners submitted comments on the petition's admissibility and on March 14, 2007, the IACHR forwarded them to the State, giving it one month to present observations.

8. On April 19, 2007 the State submitted additional information, which was forwarded to the petitioners on May 10, 2007, to present their observations within one month. On June 6, 2007 the petitioners provided additional information, which was sent to the State for comment on June 29, 2007. On August 24, 2007 the State supplied additional information, which was forwarded to the petitioners on September 17, 2007.

9. On October 5, 2007 the petitioners sent updated information, which was forwarded to the State on November 8, 2007, to present its observations within one month. On December 5, 2007, the IACHR received a note from the State with its observations and sent it to the petitioners for comment on December 14, 2007. On January 30, 2008 the petitioners furnished their comments, which were forwarded to the State on February 6, 2008.

III. POSITIONS OF THE PARTIES

A. The petitioners

10. According to information supplied by the petitioners, on June 1983 Edgar Raúl Rivas Rodríguez was 27 years old, married to Carmen Mejía de Rivas, had 4 children, and was a professor at the University of San Carlos.

11. The petitioners state that on Monday, June 6, 1983, Edgar Raúl Rivas Rodríguez left his parents' home at 12-23 16th Avenue in Zone 1 of Guatemala City to board a public bus to meet with Ana Lucrecia Orellana Stormont, who was allegedly kidnapped that same day at a different location.[FN1] They state that between about 6:00 p.m. and 7:00 p.m. on that date the alleged victim was kidnapped and later disappeared, allegedly by army personnel.

[FN1] The Commission processed petition 9120 received on June 14, 1983, concerning the kidnapping and forced disappearance of Ana Lucrecia Orellana Stormont, Guatemalan, 32 years old, professor of psychology at the School of Medicine of the University of San Carlos of Guatemala. On December 6, 1996, the IACHR published the report on admissibility and merits N° 56/96 in which it concluded that "on June 6, 1983, Ana Lucrecia Orellana Stormont was abducted by elements of the Guatemalan State security forces. Since then, her whereabouts are unknown. The Commission further concludes that Ana Lucrecia Orellana Stormont was held in a military installation where she was tortured."

12. The petitioners state that on June 19, 1983, the alleged victim's family received a telephone call from an unidentified party who told them that Edgar Raúl was being held at Matamoros barracks and would be executed in five days.[FN2]

[FN2] See note taken by a family member of the alleged victim upon receiving the telephone call.

13. The petitioners report that the alleged victim's family made many inquiries to judicial and administrative authorities, national and international organizations, and the media in an effort to learn of his whereabouts.

14. According to the petitioners, the family members searched many places, including morgues, cemeteries, jails, and hospitals. They also sent letters to the Minister of Defense, General Oscar Humberto Mejía Victores,[FN3] and the Special Rapporteur of the United Nations Commission on Human Rights,[FN4] requested help from Rector of the University of San Carlos of Guatemala, where the alleged victim was a professor,[FN5] reported the case to the public through the media, issued communiqués, and took out paid advertisements in several media.[FN6] After the signing of the Peace Accords, they lodged complaints with national human rights organizations[FN7] and international organizations.[FN8]

[FN3] See letter dated June 30, 1983, to General Oscar Humberto Mejía Victores, Minister of Defense. Document in the case file.

[FN4] See letter dated June 30, 1983, to Viscount Colville de Culross, Special Rapporteur of the United Nations Commission on Human Rights.

[FN5] See article “Preocupa a rector secuestro de ex catedrático” [Rector concerned over kidnapping of ex-professor]. In “Sucesos”, July 1, 1983. Document in the case file.

[FN6] The following clippings are in the case file:

- “Ex – Catedrático de la USAC aún permanece sin aparecer” [Former USAC prof still missing]. In “El Imparcial”, June 24, 1983.

- “Está desaparecido un licenciado in fieri” [Licenciate in fieri missing]. In “Prensa Libre,” June 24, 1983.

- “Denuncian ante el Rector la desaparición de Excatedrático” [Disappearance of ex-professor reported to Rector]. In “El Imparcial,” July 1, 1983.

- “Familiares denuncian ante el rector desaparición de un miembro de la Comunidad Universitaria” [Family tells rector of disappearance of university community member]. In “7 días de la semana”, Series 1 N° 198, Week of July 4-10, 1983.

- “AEU [Asociación de Estudiantes Universitarios] intercede por desaparecidos” [University Students Association intervenes for disappeared persons]. In “Prensa Libre,” August 16, 1983.

- “La policía pide que se denuncien los secuestros” [Police call for reporting of kidnappings]. In “La razón,” October 19, 1983.

- “Algunos de los muchos intelectuales secuestrados o asesinados” [Some of the many intellectuals kidnapped or assassinated]. In “Prensa Libre,” December 27, 1996.

- “Día del Detenido Desaparecido” [Day of the Disappeared Detainee]. In “La Hora,” June 17, 1997.

[FN7] The following documents are in the case file:

- Complaint lodged with the NGO Guatemalan Human Rights Commission on January 27, 1997.

- Complaint lodged with the NGO Convergencia por la Verdad [Convergence for Truth]. Undated.

[FN8] See open letter to Christian Tomuschat, Representative of the United Nations in Guatemala. In “Prensa Libre,” May 15, 1997. Document in case file.

See report: “Guatemala: Memoria del Silencio” [Memory of Silence], Comisión para el Esclarecimiento Histórico [Historical Clarification Commission] (CEH), Case N° 22, “DESAPARICION FORZADA [FORCED DISAPPEARANCE OF] DE AMERICA YOLANDA URIZAR MARTINEZ DE AGUILAR, ANA LUCRECIA ORELLANA STORMONT, EDGAR RAUL RIVAS RODRIGUEZ, MARIA ANGELA AYALA SARAVIA Y ROSA ESTELA PEREZ VILLASEÑOR”. First edition, June 1999. Document in case file.

15. Family members resorted to the justice system “to denounce the disappearance to the respective organs, including the national police, in the Technical Investigations Office (DIT), which was registered as case number 7237 in section 8, and filed criminal charges with the National Police for the kidnapping and disappearance. However, the complaint was never processed in order to conduct an effective investigation to clarify the alleged facts.”[FN9]

[FN9] In the petitioners’ note of February 26, 2007.

16. They add that the Grupo de Apoyo Mutuo (GAM) filed habeas corpus petitions with the Supreme Court on behalf of the alleged victim on July 9, 1997,[FN10] September 11, 1997,[FN11] and October 17, 1997,[FN12] all to no avail.

[FN10] See motion for habeas corpus of June 23, 1997, stamped received by the Secretariat of the Supreme Court on July 9, 1997. Document in case file.

[FN11] See motion for habeas corpus of September 10, 1997, stamped received by the Secretariat of the Supreme Court on September 11, 1997. Document in case file.

[FN12] See motion for habeas corpus of October 17, 1997, stamped received by the Secretariat of the Supreme Court on the same date. Document in case file.

17. They also state that on December 2, 1997,[FN13] and February 13, 1998,[FN14] the GAM filed a request with the Supreme Court to start a special investigation procedure, which was granted on May 28, 1999,[FN15] giving a legal mandate to the Guatemalan Human Rights Prosecutor's Office to conduct an investigation pursuant to the provisions of Articles 467 to 473 of the Penal Procedure Code. The Human Rights Prosecutor was said to have presented a report to the Supreme Court in which he reported there had been no results from the investigation of the alleged victim's disappearance. On October 28, 1999, the Supreme Court revoked the mandate of the Human Rights Prosecutor and ordered "Marina Adela Rodríguez de Rivas, mother of the alleged victim, to investigate the forced disappearance of Edgar Raúl Rivas Rodríguez in accordance with Articles 467 to 473 of the Penal Procedure Code." [FN16]

[FN13] See request for special investigation procedure of November 25, 1997, with illegible stamp of receipt by the Supreme Court. The petitioners say that the Supreme Court received the motion on December 2, 1997. Document in case file.

[FN14] See request for special investigation procedure of February 13, 1998, stamped received by the Supreme Court on the same date. Document in case file.

[FN15] See Supreme Court, Criminal Chamber, resolution of May 28, 1999. Document in case file.

[FN16] See Supreme Court, Criminal Chamber, resolution of October 28, 1999. Document in case file.

18. The petitioners state that all efforts made by the family of the alleged victims and the GAM have been fruitless.

B. The State

19. Commenting on the petition's admissibility, the State said in its note of December 18, 2006, that although the petitioners attempted various domestic remedies, such as habeas corpus motions and the request for a special investigation procedure, the State of Guatemala "made a

commitment in the Peace Accords, and in accordance with the recommendations of the Commission for Historical Clarification created the National Reparations Program, established in Government Agreement 258-2003 of May 7, 2003 as amended by Government Agreement 619-2005, of November 29, 2005, governed by the Program's Regulations in Government Agreement 43-2005, of February 3, 2005, which provide that the program's purpose is to compensate victims of human rights violations that occurred during the armed conflict that ended on December 29, 1996.”[FN17] The State adds that for the purpose of said agreement, victims of the domestic armed conflict are persons who directly or indirectly, individually or collectively, experienced violations of their human rights, such as forced disappearance, summary execution, torture, or forced relocation. It explains that the reparation measures include material restitution, financial compensation, psycho-social compensation and rehabilitation, restoration of the victims' dignity, and cultural reparations.

[FN17] In the State's note of December 18, 2006.

20. Based on the foregoing, the State considers that “the National Reparations Program is a domestic mechanism that pursues the same ends as the Inter-American Commission on Human Rights, which are moral and financial reparations.”

21. It adds that another domestic remedy or mechanism of the Guatemalan State is the Presidential Commission for the Search for Persons Disappeared During the Domestic Armed Conflict, established by Government Agreement 264-2006, whose purpose is “to coordinate efforts with available resources and support all efforts undertaken by organizations of victims of disappearance or human rights violations, to search for the disappeared persons and reunite the victims and their families, especially children and teens.”[FN18]

[FN18] In the State's note of December 18, 2006.

22. The State concluded that it had domestic mechanisms or remedies to address cases such as the one presented in this petition: The National Commission for the Search for Victims of Forced Disappearance and other forms of disappearance, and the National Reparations Program on measures for moral and financial reparations. In this regard it states that these domestic remedies or mechanisms “must be used in order to be strengthened; so it considers that since the instant case is already included in the case examples in the report Guatemala: Memory of Silence, it should be dealt within domestic jurisdictions before being accepted by the Inter-American Commission on Human Rights.”[FN19]

[FN19] In the State's note of December 18, 2006.

23. In notes dated April 19, August 24, and December 5, 2007, the State reiterated its position that the petition sub-examine should be addressed in domestic jurisdiction before it is analyzed by the IACHR. However, it indicated in said notes that it did not oppose the admissibility of the petition.

IV. ANALYSIS

A. The Inter-American Commission's competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

24. The petitioners are eligible to submit petitions to the IACHR under Article 44 of the American Convention. The alleged victim identified in the petition is a person for whom the State of Guatemala has undertaken to respect and guarantee the rights recognized in the American Convention and other international instruments. Guatemala ratified the American Convention on May 25, 1978, so the Commission has *ratione personae* competence to examine the petition.

25. The Commission has *ratione loci* competence to consider the petition, because it alleges that violations of rights guaranteed in the American Convention took place in a state party to that treaty. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and guarantee the rights recognized in the American Convention was in force for the State at the time of the facts alleged in the petition.

26. The Commission has *ratione materiae* competence because the petition alleges violations of rights protected in the American Convention on Human Rights. In addition, the Commission has competence to consider the position by virtue of the provisions of Articles I, II, and XIII of the Inter-American Convention on Forced Disappearance of Persons, ratified by the State of Guatemala on February 25, 2000, which provides that forced disappearance shall be deemed continuous or permanent as long as the fate or whereabouts of the victim have not been determined.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention stipulates that admission by the Inter-American Commission of a petition lodged in accordance with Article 44 de la Convention, requires that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to be seized of the alleged violation of a protected right and, if appropriate, resolve it before it is considered at the international level.

28. In the instant case, the petitioners have argued that they attempted remedies under domestic law to no avail. The State said that although the petitioners filed habeas corpus motions and requested a special investigation procedure, there are still domestic remedies that must be exhausted. Nevertheless, it did not oppose admission of the petition by the Commission.

29. The case file shows that the family of Edgar Raúl Rivas Rodríguez filed complaints with the courts and police concerning his illegal arrest and forced disappearance; demanded an investigation of the facts; made intensive appeals to authorities; searched for him in detention centers, hospitals, and morgues; and bought ads in the media in order to try to find his whereabouts.

30. The GAM, through its representative Mario Alcides Polanco Pérez, filed habeas corpus motions on behalf of the alleged victim with the Supreme Court on July 9, 1997, September 11, 1997, and October 17, 1997, all to no avail.

31. In addition, on December 2, 1997, and February 13, 1998, the GAM asked the Supreme Court to start a special investigation procedure regarding Edgar Raúl Rivas Rodríguez, based on Article 467 of the Penal Procedure Code of Guatemala. That article provides:

If a habeas corpus motion has been filed, without producing the respective person, and there exists reasonable grounds to suspect that the person has been detained or held illegally by a public official, members of the State security forces, or by regular or irregular agents and the person's whereabouts are still unknown, the Supreme Court, at the request of any party, may:

- 1) Require the Public Prosecutor's Office to report to the Court within five days on the progress and results of the investigation, the measures taken and called for, and on those still to be taken. The Supreme Court may shorten the deadline when required.
- 2) Entrust the investigation (preparatory procedure) to any of the following in turn:
 - a) The Human Rights Prosecutor.
 - b) An entity or association legally established in the country.
 - c) The spouse or relatives of the victim.[FN20]

[FN20] Article 467 of the Penal Procedure Code of Guatemala.

32. On May 28, 1999, the Penal Chamber of the Supreme accepted the request for a special investigation procedure for Edgar Raúl Rivas Rodríguez and assigned the investigation to the Human Rights Prosecutor. In its resolution, the Supreme Court found that for effective compliance with the mandate, the Prosecutor was equivalent to the agents of the Public Prosecutor's Office, with all the rights and duties of that office, and ordered State officials and employees to provide all due cooperation with the Prosecutor. Finally, the Supreme Court ordered the Prosecutor to present the result of his investigation not later than August 27, 1999 and appointed the Fifth Judge of the Criminal Court of First Instance, Drug Trafficking, and Environmental Offenses to head the investigation.

33. According to information furnished by the petitioners, on October 28, 1999, the Supreme Court revoked the mandate of the Human Rights Prosecutor and gave a new mandate in

accordance with the provisions of Article 467(2)(c) of the Penal Procedure Code to the mother of the alleged victim to conduct the investigation of the forced disappearance of her own son.

34. The case file reflects the many attempts made by the family of Edgar Raúl Rivas Rodríguez and the GAM to learn his whereabouts, and to obtain investigation, trial, and punishment for the offenders, steps that included motions to both the judicial and executive branches. Despite the numerous motions filed for domestic remedies to locate Edgar Raúl Rivas Rodríguez, such as the requests for habeas corpus and the special investigation procedure, none was effective, and to this date the whereabouts of the alleged victim and the identify of those responsible for his forced disappearance remain unknown.

35. The Commission has established that the appropriate remedy in cases of alleged forced disappearance is the motion for habeas corpus.[FN21] In this case a series of habeas corpus motions were filed with the Supreme Court to no avail. Furthermore, the Supreme Court of Guatemala, faced with the ineffectiveness of the habeas corpus requests, ordered a special investigation procedure as established in Article 467 of the Penal Procedure Code, which to this date has not been completed.

[FN21] I/A Court H.R., Cantoral Benavides Case, Judgment of August 18, 2000. Series C No. 69, para. 165; Bámaca Velásquez Case, Judgment of November 25, 2000. Series C No. 70, para. 192.

36. Moreover, the Commission notes that although the State alluded to other remedies under domestic laws, it did not specify which remedies were available and effective for resolving the forced disappearance in the complaint.[FN22]

[FN22] IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons Living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, Judgment of February 1, 2000. Series C No. 66, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

37. Therefore, considering that the offense of forced disappearance is continuous or permanent as long as the fate or whereabouts of the victim have not been determined,[FN23] and that remedies applied by the family of the alleged victim and the GAM have proved ineffective, the Commission decides that the instant case falls under the exception set forth in Article 46(2)(c) of the American Convention because there has been unwarranted delay in rendering a final judgment through domestic remedies.

[FN23] Inter-American Convention on Forced Disappearance of Persons, Article III.

2. Deadline for lodging the petition

38. Article 46(1)(b) of the Convention stipulates that in order to be admitted, a petition 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. The six-month rule guarantees certainty and legal validity once a decision has been adopted.

39. According to Article 32(2) of the IACHR Rules of Procedure, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. This article provides that to determine this, the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances in each case."

40. For the petition in this case, the Commission has found that exception "c" of Article 46(2) is applicable, so it must decide whether the petition was lodged within a reasonable period of time in the light of the specific circumstances of the matter presented for its consideration.

41. In this regard, considering the particular circumstances of this petition alleging the forced disappearance of Edgar Raúl Rivas Rodríguez, an offense deemed continuous or permanent as long as the fate or whereabouts of the victim have not been determined,[FN24] and considering that the petitioners argue that to date there has been no investigation, trial, or punishment for those responsible for the disappearance of the victim and the State posed no objection to admission of the petition, the Commission concludes that the instant petition was lodged within a reasonable period of time.

[FN24] IACHR, Report N° 91/06. Petition 12.343. Admissibility, Edgar Fernando García, Guatemala, October 21, 2006, Para. 30; I/A Court H.R., Blake Case. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40.

3. Duplication of proceedings and international res judicata

42. The case file has no information that would indicate that the subject is pending in another international proceeding for settlement, nor that it has been previously studied by the Commission or by another international organization. Therefore, the IACHR concludes that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Nature of the allegations

43. To determine admissibility, the Commission must decide whether the facts stated tend to establish a violation of rights, as required by Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as specified in paragraph "c" of said article. The criteria for evaluation of these requirements differ from those

used to decide on the merits of a petition; the Commission must make a prima facie evaluation to determine if the petition states facts that tend to establish a violation of the rights guaranteed by the Convention, not establish the existence of a violation of rights. This determination is a preliminary analysis, without prejudging the merits of the case.

44. From the information submitted by the petitioners, and without prejudging the merits, the Commission finds that the facts alleged by the petitioners, if proven, tend to establish a violation of the right to life, the right to humane treatment, the right to personal liberty, the right to a fair trial, and the right to judicial protection, guaranteed in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, in connection with Article 1(1) of the same international instrument, to the detriment of the alleged victim and his family. In addition, the Commission considers that the facts alleged tend to establish a violation of the obligations assumed by the Guatemalan State in Article I of the Inter-American Convention on Forced Disappearance of Persons when it ratified said instrument. The IACHR therefore concludes that this requirement has been satisfied.

45. Furthermore, in application of the *iura novit curia* principle, the Commission will consider in the merits phase whether there may be a violation of Article 2 of the Convention in connection with the violation of the generic obligation to respect and guarantee rights contained in Article 1(1) of the American Convention, given the tenor of Article 467 of the Penal Procedure Code of Guatemala, which authorizes the Supreme Court to entrust the investigation to the victim's spouse or relatives in cases where a habeas corpus motion has been filed without locating the person sought and there is a reasonable presumption that the person has been held or detained illegally by a public official, members of the State security forces, or by regular or irregular agents without finding the person.[FN25]

[FN25] Article 467 of the Penal Procedure Code of Guatemala.

46. Finally, the IACHR considers that the facts alleged do not tend to establish a violation of Articles 17 and 19 of the American Convention.

V. CONCLUSION

47. The Commission finds the case admissible and that it is competent to consider the complaint lodged by the petitioners with regard to the alleged violation of Articles 3, 4, 5, 7, 8, and 25 in connection with 1(1) of the American Convention and with regard to Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Edgar Raúl Rivas Rodríguez and his family. It also concludes that in application of the *iura novit curia* principle it is competent to examine the petition for the alleged violation of Article 2 of the Convention in connection with Article 1(1) of the same instrument.

48. By virtue of the foregoing arguments of fact and law, and without prejudging the merits of the matter,

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION

DECIDES:

1. To declare the instant case admissible as regards to Articles 3, 4, 5, 7, 8, and 25 of the American Convention in connection with Article 1(1) of the same treaty, and as regards to Article I of the Inter-American Convention on Forced Disappearance of Persons.
2. To declare the instant case admissible, in application of the *iura novit curia* principle, as regards Article 2 of the American Convention in connection with Article 1(1) of the same treaty.
3. To declare the instant petition inadmissible as regards to the rights guaranteed in Articles 17 and 19 of the American Convention.
4. To transmit this report to the State and the petitioners.
5. To begin its analysis of the merits of the case.
6. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 5th day of March, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.