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REPORT ON THE SITUATION OF
HUMAN RIGHTS OF A SEGMENT OF
THE NICARAGUAN POPULATION OF
MISKITO ORIGIN
AND
RESOLUTION ON THE FRIENDLY
SETTLEMENT PROCEDURE
REGARDING THE HUMAN SITUATION
OF A SEGMENT OF THE NICARAGUAN
POPULATION OF MISKITO ORIGIN

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INTRODUCTION

Few issues have sparked the much interest of the Inter-American Commission of Human Rights (IACHR) as much as the "Situation of Human Rights of a segment of the Nicaraguan population of Miskito Origin", as the Commission finally decided to refer to it after considering various preliminary titles.

This complex matter has figured as one of the major topics on the agenda of the last six sessions of the IACHR. On two occasions, its representatives toured extensive regions of the Atlantic Coast of Nicaragua, where many of the Miskitos live, investigating the events that took place there. Those representatives also interviewed Nicaraguan refugees of Miskito origin in Mocerón and other camps located in the Gracias a Dios Department of Honduras. In the course of these visits, and also as part of the Commission's activities at headquarters in Washington, it questioned dozens of witnesses and examined hundreds of documents.

The Commission frequently discussed this matter with high-ranking officials of the Government of Nicaragua, and consistently followed a policy of responding to the denunciations and complaints of all individuals or institutions who considered themselves to be victims of violations of human rights, while also seeking the cooperation of religious, humanitarian or Indian organizations concerned with the subject. Moreover, the Commission was in contact with international organizations that had a special interest in the solution of some aspects of the issue, as was the case of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC), which cooperated with the Commission throughout this process.

The very nature of this topic made it difficult to examine. The dispute that began in late 1981 and early 1982 was initially limited to the acts of violence that took place in the Río Coco area, to the forced transfer of a part of the Indian communities from their villages in that zone to the interior of the Department of Zelaya of Nicaragua, and to the flight to Honduras of another group of the traditional inhabitants of the banks of the Río Coco. However, this controversy entailed underlying and long-standing conflicts, and in the following months it began to give rise to new issues that drew the attention of the IACHR.

This gave rise to the problem of specifying the framework of the dispute, soon followed by the problem of specifying the normative system applicable to situations that appeared to be unprecedented in international law. The problem was further compounded by difficulty in

identifying an agency or organization that clearly represented the alleged victims. These issues suggest the difficulties the Commission faced in dealing with this matter. In addition to these problems, the events considered in this report took place in a zone where communication and access were seriously impaired, and which was highly militarized and offered very few impartial witnesses.

Given these impediments, the Commission made every possible effort to obtain the facts, to evaluate them correctly and in conformity with the American Convention on Human Rights, and to seek a friendly settlement of the matter based on respect for human rights.

Unfortunately, for reasons that will be set forth below, the Commission was not able to contribute to an achievement of such a friendly settlement. Given these circumstances, and in conformity with Article 50 of the American Convention on Human Rights, the Commission is mandated to write this report, setting forth the facts and its conclusions.

The Report has three parts. The first describes the origin and evolution of the dispute, with special emphasis on the role played by the IACHR in this matter.

The second examines the facts involved in the dispute and analyzes the relationship between the facts and the internationally-applicable juridical norms, especially the rights guaranteed by the American Convention on Human Rights, to which Nicaragua is a party.

Finally, the third section sets forth the pertinent conclusions and formulates the proposals and recommendations that the Commission believes that the Government of National Reconstruction of Nicaragua should adopt in its relations with Nicaraguan citizens of Miskito origin affected by the events detailed in this Report.

The present Report, which was approved by the Inter-American Commission on Human Rights during its 61^o Session, was transmitted to the Government of Nicaragua on November 29, 1983. Pertinent facts, which have occurred after this date, have been added to the text as footnotes.

PART ONE

ORIGIN AND DEVELOPMENT OF THE CONTROVERSY

A. Background

1. Before analyzing the various issues involved in the current human rights situation of a segment of the Nicaraguan population of Miskito origin, the Commission considers it advisable to provide some historical background that may facilitate the understanding of this complex matter.

2. What is called "the Atlantic coast" of Nicaragua is a region that includes the Department of Zelaya and part of the Department of the Río San Juan. From time immemorial, this area has been inhabited by the ethnic groups denominated Miskitos, Sumos and Ramas, the sole genuine descendants of the primitive aborigines who inhabited Nicaragua. Of these, the Miskitos are the largest ethnic group.

3. As a result of the particular circumstances of the historical development of Nicaraguan society, this part of the country is unlike the Pacific region from an ethnic, cultural, historical, linguistic or religious perspective.

Thus, while the Spanish, Catholic captains and religious orders colonized the Pacific zone, the Atlantic coast was the object of similar activity by the British, who since 1640 had established themselves in the northeast part of this region, dedicated to the exploitation of sugarcane and hardwood.

4. The English won and cultivated the friendship of the natives, and occasionally were allied with them in attacks on some Spanish settlements in the interior of the country. To consolidate their domination of the region, in 1687, the British created the Miskito Kingdom, which was brought under the protection of Great Britain. In the same year, the Governor of Jamaica approved the appointment of the Indian chief Oldman as monarch of the Miskito territory; this artificially established the Miskito dynasty, an institution which had not existed previously in Indian social organization. The monarchy lasted until 1894, when Nicaragua again acquired full sovereignty over these lands through the decree of reincorporation of the Mosquitia.

5. At the beginning of 1847, the British Government notified the Republics of Central America that what was called the "de la mosquitia" coast, extended from the Cape of Honduras to the southern bank of the San Juan River, and that in the future the Miskito Kingdom should be recognized as a sovereign nation under the protection of Great Britain.

6. In 1849 the Atlantic coast witnessed the first arrival in the region of missionaries of the "Unitas Fratrum" church, known as the Moravian church because it originated in Bohemia and Moravia, Czechoslovakia which soon became the dominant influence in the area, displacing the Catholic church which maintained its predominance in the Pacific region. Thus, by 1900 most of the Miskito and Sumo communities had embraced the Moravian faith; Criollo and Miskito pastors gradually replaced those of German and North American origin, and at present nearly all centers populated by Miskitos have a Moravian pastor trained at the Biblical Institute of Bilwaskarma, on the Coco River.

7. The Treaty of Managua was signed in 1860, whereby Great Britain recognized Nicaraguan sovereignty over the Atlantic region and declared that the British protectorate over that territory would expire following exchange instruments of ratification. The Treaty established that the Miskitos would have the right of self government and the right to govern all residents within the region, in accordance with their own customs and with whatever regulations they adopted that did not contravene the sovereign rights of the Republic of Nicaragua. In turn, the latter agreed to respect and not oppose their customs and regulations.

Due to the unique status obtained by the Miskitos as a result of this arrangement, serious and ongoing problems arose between the authorities of the Republic and those of the Miskito Reserve. On February 12, 1894, this led the Government of Nicaragua to reannex the reserve by means of a Decree issued by the Inspector General of the Atlantic coast, General Rigoberto Cabezas.

On November 20 of the same year, the inhabitants of the Reserve, speaking through their mayors and delegates, declared their acceptance of the sovereignty of Nicaragua, reserving some privileges through what was called the Miskito Convention.

8. On April 19, 1905, Great Britain and Nicaragua signed the Altamirano-Harrison Treaty, which annuled the 1860 Treaty of Managua. In accordance with this new instrument, Great Britain recognized the absolute sovereignty of Nicaragua over the territory constituting the earlier Miskito Reserve.

Subparagraphs b), c), d) and e) of Article 3 of that Treaty read as follows:

- "b. The Government shall allow the Indians to live in their villages in enjoyment of the concessions granted under this Convention, and in accordance with their own customs, insofar as they are not contrary to the laws of the country and public morality.
- c. The Government of Nicaragua shall grant them a period of two years to legalize their rights to the property they have acquired in conformity with the provisions that governed the reserve prior to 1894. The Government shall not charge for their lands, nor for the concession of titles. For that purpose, titles that were owned by the Indians and criollos prior to 1894 shall be renewed in conformity with the law; and where such titles do not exist, the Government shall give each family eight squares of property in their place of residence.
- d. Public land for grazing shall be set aside for the use of the inhabitants in the neighborhood of each Indian village.
- e. Should any Miskito or Criollo Indian prove that the property he owned in accordance with the provisions in force prior to 1894 has been revoked or adjudicated to another person, the Government shall compensate him by granting him idle land of like value, as close to his place of residence as possible."

9. The Altamirano-Harrison Treaty closed the chapter on Great Britain's claims to the Atlantic coast of Nicaragua. Yet several factors remained that made it difficult to legalize ownership titles to the properties that belonged to the Miskitos prior to 1894 and to specify other rights to lands referred to in Article III of the above-mentioned Treaty. Among such factors should be mentioned the lack of precision with respect to the boundaries of the former Miskito Reserve; the difficulty in transportation and communication among the remote Indian communities and with Bluefields, capital of the Department; and the persistence of some miskito chiefs in considering themselves subjects of the Kingdom of Great Britain.

Even though some communities obtained title to their lands, the problem still remains unresolved, and the Miskitos have since maintained an ongoing claim to compliance with the provisions of the treaty concerning their lands and their right to live in accordance with their customs.

10. Moreover, the relative economic and social development that took place in the country at the end of the nineteenth century and the beginning of the twentieth never reached the Atlantic coast. The liberal and conservative governments that governed the country following the reincorporation of the Miskito reserve until July of 1979 focused their attention on the rest of the country, particularly the Pacific zone. Thus, the Atlantic zone was not included in the general development process of the country, and was subject to economic exploitation and cultural domination.

The natural resources of that region, chiefly mineral, forestry and fishing resources, were exploited by national or foreign companies of the Pacific region. To mention but a few, these were: The Neptune Gold Mine Company; The Rosario and Light Mine Company; The Nicaraguan Long Leaf Pine Lumber Company (NIPCO); and the Pescanica, Plumar-Blue, and Boot fishing companies.

The Miskito population that worked in these enterprises received wages that were considered to be very low, while the Atlantic region as a whole received no particular benefit as a result of the economic activities of those companies. Thus, the only route of communication with the Pacific zone was by means of navigation of the Río Escondido from Bluefields to the City of Rama (6 hours), and then by road to Managua (5 hours); the principal population centers--Puerto Cabezas and Las Minas--are linked by rough dirt roads, which are not always passable.

11. In general, it may be stated that the Atlantic coast of Nicaragua in July, of 1979, lacked electricity, drinking water, sanitary facilities, transportation services, communications, radios and schools.

12. As a reaction to this state of absolute neglect, as a manifestation of the resurgence of an awareness of ethnic identity on the part of the natives vis-à-vis the attempts at acculturation by the previous government, foreign companies, and in general, the populace of the Pacific--whom the Miskitos called "the Spaniards"--, and as a means of defending their ancestral rights, in 1972, the Indian organization Alliance for the Progress of the Miskito and Sumo (ALPROMISO) was created, and in November of 1979 this was transformed and replaced by the Organization MISURASATA.^{1/}

1. MISURASATA, derives its name from the first syllables of the names of the ethnic groups: Miskito, Sumo, Rama, and Sandinista and the words Asla Takanka (which in the Miskito language means "united"), and in accordance with its broad outlines, defines itself as follows: "We are (continue)

B. Recent background

1. It was not long before serious problems arose between the Indian communities and the Sandinista Government, which had assumed power in July 1979.

2. According to substantial background material in the hands of the Commission, shortly after the triumph of the revolution, a good part of the Miskito population began to resist the attempts of the new Government of Nicaragua to make them adapt some of their ways of life and tribal organization to the political and social objectives set out by the Sandinista National Liberation Front (FSLN).

According to reports received by the Commission, the resistance of the Miskitos to such changes, and the insistence of the Government that they accept them, gradually gave rise to a distancing of the two groups which sharpened into antagonism, due to the conflict between the FSLN's expectations of the Miskitos and the expectations of the Miskitos with respect to the Sandinista Government.

3. As the Indian's resistance grew, the Government began to apply increasingly drastic measures to control what had become an organized counterrevolutionary movement in the eye of the official authorities, with influence on the whole Atlantic coastal region and with secessionist intent.

On February 19 and 20, 1981, approximately 30 miskito leaders of the Misurasata Organization were imprisoned by the State Security forces, among them, Brooklyn Rivera, Hazel Lau, and Steadman Fagoth. In addition, the organization's offices were placed under army control.

The Government accused the leaders of Misurasata of promoting a separatist movement on the Atlantic coast. New waves of protest broke out in the area, and led to the formation on February 25 of that year of a Peace Committee comprised of members of the FSLN, Misurasata, and religious institutions.

In response to the recommendations of that Committee, Rivera and Lau were released together with the other leaders who had been captured; Steadman Fagoth, representative of Misurasata in the Council of State,

1. (continuation)
three groups of Indian peoples of the region that comprise a single monolithic unit of Indian brotherhood, which defends and upholds the Sandinista Revolution in our society". In April of 1980, when membership on the Council of State was broadened, the Organization was granted a seat on that body. MISURASATA was dissolved by the government toward the end of 1981, however, and most of the former leaders currently do not live in Nicaragua.

accused of high treason and of being an agent of the Security Force of the previous regime, a charge he denied, was not released.

At the insistence of Misurasata and other organizations, Fagoth was released in May 1981, returned to the Atlantic coast and moved to Honduras, where he was followed by 3,000 Miskitos. Later, in September of that year, Brooklyn Rivera, who had continued to negotiate with the Government on behalf of Misurasata, also left the country.

4. In July, 1981, the Government announced the launching of the Agrarian Reform Program. Misurasata leaders believed that the program should take into account the claims of the Indian communities to ownership of lands involved in the program, since from their viewpoint, it would first have to be determined which lands belonged to them and which others the Government could dispose of without compensation.

Furthermore, the Miskito leaders accused the Government of not observing an agreement which, in their view afforded the Indian organization a four-month deadline to submit a study in support of their land claims.

5. In the course of these events, the Government of National Reconstruction repeatedly denounced the existence of anti-Sandinista armed groups operating along the border with Honduras, from within that country, which were organized and led by officers of the disbanded Somocista National Guard. According to the Government of the FSLN, those groups made constant incursions into Nicaraguan territory, attacking border posts and terrorizing the Miskitos who lived in various communities along the Coco River.

In response to this situation, the Nicaraguan Government expanded its military presence in the area, which gave rise to many confrontations or incidents between soldiers and Miskitos, which led some of the Indians to begin seeking refuge in Honduras, by crossing the Coco River border. In the last months of 1981, the incursions of these armed insurgent groups became more frequent, according to the Nicaraguan Government.

6. According to information received by the Commission, on December 20 and 21, 1981, rebels in opposition to the Government of Nicaragua crossed the Coco River from Honduras and occupied the town of San Carlos, where they ambushed soldiers of the Nicaraguan army, and mutilated and killed several of them. The Government of Nicaragua denounced this incident as part of a massive uprising planned to break out in the towns of the Coco River inhabited by Miskitos, in the course of Christmas week. At the same time, denunciations and information received by the IACHR stated that during this confrontation, and in retaliation for the killings in San Carlos, Sandinista Army forces killed a considerable, although thus

far undetermined, number of Miskitos in the area of Leimus and its surroundings.

7. On December 28, 1981, the Government of Nicaragua decided to move 42 villages of the Coco River region to an area located some 60 kilometers south of the river, on the Rosita-Puerto Cabezas road. The up-river towns, from Leimus to Raiti, had to be evacuated on foot, under very difficult and harsh conditions, as there were no passable roads for vehicles. The down-river villagers, from Leimus to the Atlantic coast, were moved in trucks and most of those evacuated were allowed to take some of their belongings. Throughout January and part of February, 1982, approximately 8,500 Miskitos were relocated in five different camps in what the Government has called the Tasba Pri project ("Free land" in the Miskito language).

8. As a result of the events related to the so-called Red Christmas operation, many Miskitos were captured by the Government of Nicaragua, and together with some ministers of the Moravian Church, accused of being counterrevolutionaries. A massive exodus then ensued, during which approximately 10,000 Miskitos and many Moravian ministers crossed the Coco River into Honduras, where some 8,000 were subsequently settled in refugee camps in the area of Mocerón, in the Gracias a Dios Department.

C. The Government of Nicaragua invites the IACHR to make an on-site visit

1. On February 22, 1982, Foreign Minister Miguel D'Escoto Brockmann, on behalf of the Government of National Reconstruction of Nicaragua, invited the IACHR to visit the country and to directly observe the situation of the new ethnic minority settlements on the Atlantic coast.

The pertinent section of the note addressed to the Executive Secretary of the Commission, Mr. Edmundo Vargas Carreño, reads as follows:

I AM HONORED TO GREET YOU AND TO TRANSMIT TO YOU, ON BEHALF OF THE DIRECTORATE OF THE GOVERNMENT OF NATIONAL RECONSTRUCTION, A MOST CORDIAL INVITATION FOR THE HONORABLE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO VISIT NICARAGUA AND MAKE AN ON-SITE OBSERVATION OF THE SITUATION OF THE NEW SETTLEMENTS OF ETHNIC MINORITIES ON THE ATLANTIC COAST OF OUR COUNTRY.

2. The Executive Secretary of the Commission, in reply to the Foreign Minister, indicated that the note would be considered by the IACHR, which would meet on March 1, 1982, at its Fifty-fifth Session.

D. The Misurasata Complaint

1. A few days prior to the invitation of the Nicaraguan Government, the Commission received from the Misurasata organization, whose Coordinator General is Mr. Brooklyn Rivera, the first formal complaint regarding the alleged violations of human rights committed against the Indian Miskito people by the Government of Nicaragua.

2. The complaint was submitted to the Government of Nicaragua on February 24, 1982 in accordance with Article 31 of the Statute of the Commission, with a request for information on the facts described therein. According to the complainant, the facts were as follows.

EVENTS OF DECEMBER 1981

a. On December 23, the Sandinista Air Force bombarded the Indian communities of Asang and San Carlos, located on the banks of the upper Coco River, with "Push and Pull" airplanes and helicopters, killing 60 Indian brothers with 80-lb bombs. Fifteen brothers were taken prisoner from San Carlos in the direction of Waspan or Puerto Cabezas, and among them were: Rev. Higinio Morazan (the community's Moravian minister), Juan Saballos, Julián Mansanares, Noel Wellington, Balandor Barrow, Manuel Saballos, Juan Charles, Alberto Zelaya, and Elsa Barrow.

A military air base and 82 members of the Sandinista Army were installed in Asang. San Carlos received reinforcements of 150 troops, with some Cubans among them. Both communities were militarized to prevent the populations from fleeing to Honduras. The soldiers take away the Indians' food, force them to dig trenches, and forbid them to leave their communities in search of food and other necessities.

b. In Leimus, close to Waspan, 80 brothers from Asang, San Carlos, Waspuk, Krasa, etc., were captured on December 22, as they prepared to travel to their respective communities from Waspan, Puerto Cabezas and Managua in order to spend Christmas and the New Year with their relatives (a Miskito custom). The next night (December 23), the army killed 35 of them, and buried them together in a single grave. Some of those killed were: Norma, Rogelio and Seimeón Castro, Joséln and Asel Mercado, Cristina and Mayra Lacayo, Víctor and Carlos Pérez, Justo Martínez, Villanor Pantin, Roseno Gómez, Luis Fajardo, Efraín Poveda, Celso Flores, Ramiro

Damasio, etc. The wives of these brothers were raped by the soldiers from Leimus and later forced to go to their communities. On the 24th, twelve (12) brothers were thrown into the Coco River and killed. On the 26th, four (4) brothers were buried alive near Leimus. The whereabouts of the remaining 80 brothers taken prisoner are unknown. The military base in Leimus runs a concentration camp and a forced labor program for prisoners.

c. In Bluefields, on December 26, 30 Criollos, Indians and Mestizos were imprisoned without any charges. A civilian Criollo was seriously wounded by a soldier for resisting forced recruitment into the Sandinista Army.

d. In the Raudales communities (Raiti, Aniwás, Walakitán, Bokay, etc.) along the Coco River, Indians who are part of the Sandinista Army are thrown into the river with their hands and feet tied for refusing to take part in the massacre of their brothers in those communities. The corpses of many of these military brothers can be found in the communities of Siksayaru and Andristara. In each of the communities of this zone, there are concentrations of from 100 to 300 soldiers.

EVENTS OF JANUARY, 1982

a. On January 7, 300 soldiers appeared in the Sandy Bay Tara community, repressed the people, militarized the community, and took 40 prisoners to Puerto Cabezas. Many Indians were forced to abandon their community and flee to the mountains.

b. In the Bilwaskarma community of Río Coco, the Moravian Hospital (the only in the area), was closed and converted into a command headquarters for the army. The community was militarized, and dozens of brothers were taken prisoner, among them, Bárbara Díaz (a nurse in the hospital and the daughter of the Minister of the community's Moravian Church).

c. In the community of Uhri, down-river on the River Coco, six (6) bombs were dropped by a Push and Pull airplane belonging to the Sandinista army, thus forcing the population to take refuge on the Honduran side.

As a result of the events of Leimus and of Asang-San Carlos, the militarization and bombardment of communities, the capture and massive repression of the Indians,

persecution of church and communal leaders, and the constant military threat to exterminate the Indian race, thousands of brothers from the Rio Coco communities fled to Honduras after December 23, joining those who had gone to that country a year earlier. Nearly 6,000 Indians from more than 20 entire communities are already in Honduras; among them, are the Siksayari, Andristara, Karisal, Santa Isabel, Krasa, Taniska, San Sang, Kitaski, Krinkrinkia, Pilpilia, Namahka, Winwika, Paliyuhmba (Esperanza), Isulibila (Santa Fe), Wirapahni (San Alberto), Pransa, Nasuni (San Jerónimo), Ipritingni, Bulsirpi, Lakuntara, Wiswis, Nilwas, Uhri. It should be noted that the brothers of these communities left empty-handed, abandoning their homes, their livestock and their other belongings because of the prevailing situation in the region.

RECENT EVENTS

The FSLN is carrying out an intense political propaganda campaign urging the refugee brothers in Honduras to return to their respective communities, since they know that the refugees have suffered hunger and sickness in that country, and the FSLN is offering food, medicine, doctors and every kind of assistance. They say that those who kill and oppress the Indians are the Somocistas or the counterrevolutionaries (??) and to pay no attention to the lies of other groups. But the Indian people is not to be deceived; they know nothing of the existence of such alleged anti-Sandinista armed groups, but they have experienced the oppression and bombardment of their communities, the mass killings of their brothers by the soldiers of Sandinismo. What is ironic in this FSLN campaign is that while their propaganda makes an effort to persuade on the basis of lies, their military sets fire to communities, expropriates the livestock and property of the refugees, and forces the few families who remained in the communities to move to another area as alleged refugees.

Beginning on January 11, the military began to burn houses, temples and schools in the communities of Ipritingni, Pransa, El Carmen, Lakun Tara, Bulsirpi, San Jerónimo, Wirapahni, etc.

Also, the livestock (cows and horses) of these communities are being given over to the INRA (Nicaraguan Institute for Agrarian Reform) and they are then used to feed these same officers (who have red meat daily).

In some communities, such as Santa Fe (Isulibila), Esperanza (Paliyuhmpa) and San Jerónimo (Nasuni) where a few Indian families still remained, the Armed Forces of Sandinismo have forced them to abandon their communities and move to the Tasba Raya area as supposed refugees, under the pretext of protecting them from Somocista and counterrevolutionary groups.

MISURASATA denounces to the world the ethnocide of its Indians by the Sandinista regime, the massacres at Leimus and Asang-San Carlos, the dozens of prisoners from San Carlos, Sandy Bay Tara, Bluefields, Bilwaskarma, and Leimus, the bombardment and burning of the communities of the Coco River, the expropriation of the livestock and other property of the Indian refugees, the persecution of the leaders of the churches and communities, the decision to annihilate the Indian race, the militarization of the communities and especially the defamation campaign to denigrate the authentic struggle of our Indian peoples for their lands and autonomy, which links them to the Somocista or counterrevolutionary groups. We repeat that the Somocistas have always been the enemies of our Indian peoples and we believe that no counterrevolutionary group represents the interests of the Indians of MISURASATA, so that the Indian struggle can in no way be related to the interests of these unknown groups. We denounce that the FSLN, while lacking grounds and fair arguments in the face of the claim of our Indian peoples for the defense of their historical rights, has launched this slanderous campaign to continue to deny us our ancestral rights and in order to exterminate the Nicaraguan Indian race.

3. In a note dated March 31, 1982, which refers to Case No. 7964 and to the pertinent sections of the complaint which had been transmitted by the Commission in its note of February 24, the Government of Nicaragua merely noted that:

The Government of National Reconstruction has invited the Inter-American Commission on Human Rights to visit and observe in loco the situation of the settlements of the Miskito groups on the Atlantic coast of Nicaragua. That invitation was accepted by His Excellency, Mr. Tom Farer, Chairman of the Inter-American Commission on Human Rights, who will arrive in Nicaragua with a delegation in the first week of May.

The same note adds that:

Our Government has been obliged to defend our country's sovereignty and at the same time protect the Miskito population from Somocista bans by relocating them in a safe place where they are not in danger. In the Miskito settlements, the most basic of all rights, the right to life, is fully protected. The Government of National Reconstruction and the Sandinista Front for National Liberation carry out integral programs to improve and lend dignity to their living conditions, especially with respect to health, education, and housing.

4. In a note dated May 21, 1982, the Commission reiterated its communication of February 24 to the Government of Nicaragua, and again requested that information it deemed appropriate be submitted to the Commission with respect to the facts in the complaint.

5. In a note dated June 24, 1982, from the Permanent Mission of Nicaragua to the OAS, the Government of Nicaragua replied to the Commission's request, with a note dated June 23, 1982 from the Ministry of Foreign Affairs, the pertinent sections of which read as follows:

The Government of Nicaragua was fully convinced that the facts contained in the complaint had been processed by the IACHR during its in situ investigation, carried out from May 4 to 7, and because it was known that these complaints were investigated during the above-mentioned visit carried out at the invitation of the J.G.R.N. to clarify the issue of the Nicaraguans of Miskito origin.

It is difficult for the Government of Nicaragua, as it would be for any other government, to understand why the complaints received by the IACHR prior to its visit to Nicaragua, and during whose stay we have understood investigated those complaints, still require a written reply, especially since the IACHR had that information and the object of its visit was to confirm the truth or falsity of the facts complained of in CASE 7964.

Despite the foregoing, this Ministry, at the request of the National Commission of Human Rights, will again urge the competent authorities to submit their own version within a reasonable period of time, since the previous request only allowed a deadline of ten days.

3. Other complaints and information

1. The Commission also received other complaints and reports from various individuals and institutions which, with some variation, referred to the facts set forth in the original complaint. 2/

2. Within this context, the Commission considers it important to refer to the message of the Bishops Conference of Nicaragua of February 18, 1982 addressed to the people and Government of Nicaragua and to the families of Miskitos, Sumos and Ladinos.

This message is signed by Monsignor Miguel Obando y Bravo, Archbishop of Managua; Monsignor Pablo A. Vega M., Bishop of Juigalpa; Monsignor Leovigildo López Pitoria, Bishop of Granada; Monsignor Julián L. Barni S., Bishop of Matagalpa and Apostolic Administrator of León; Monsignor Salvador Schläefer, Apostolic Vicar of Bluefields; Monsignor Rubén López Ardón, Bishop of Estelí and Monsignor Bosco Vivas Robelo, Auxiliary Bishop of Managua. One part of the message reads as follows:

The events that took place in the Coco River zone, on the border with Honduras, in the Department of Zelaya, Nicaragua, beginning in December, 1981, and which have culminated, on the one hand, in the massive transfer of entire Miskito populations to the interior of the country and on the other, to the flight off a considerable part of the population of that zone to Honduran territory, have had painful effects on all the inhabitants: Miskitos, Sumos and Ladinos of that region.

It is well known that the armed encounters in that zone that took place during those months led to the death of many members of the militia and soldiers of the Popular Sandinista Army, as well as the death of many of their political adversaries and even some uninvolved citizens.

As a result of these events, dozens of people have been detained, and almost all of the towns along the Coco River

2. Nearly coinciding with the complaint of Misurasata, there appeared separately at the Secretariat of the Commission, Mr. Armstrong Wiggins, accompanied by staff members of the US organization, Indian Law Resource Center; and Mr. Steadman Fagoth, who appeared accompanied by Colonel Sam Dickens of the American Security Council. Both men indicated to the Executive Secretariat of the Commission the seriousness, in their opinion, of the events that took place at the end of December 1981 and on the early weeks of 1982. Since the Commission was to meet soon thereafter, they were invited by the Executive Secretary to testify directly before the Commission, which they did some days later.

have been evacuated by the army. Even if the massive evacuation of these towns can be explained militarily we still must regret, from a humane and christian viewpoint, the displacement of these Indian groups whose roots in that region go back to time immemorial: displacements both to the settlements established by the Nicaraguan Government in the interior of the country, as well as to Honduras where many Indians fled, perhaps out of fear, or motivated by the sometimes drastic examples of some of the earlier transfers to the above-mentioned settlements.

As pastors of all our people we feel deeply the suffering caused by the uprooting of these peoples from their lands and we wish them to know that we share their suffering, and that we have for them deep pastoral concern, and fatherly love.

We recognize the government's authority, and its right to take the necessary measures to guarantee the defense and integrity of the country's territory.

We also recognize the autonomy of the State and its right to take emergency military measures in all or part of the country to effectively defend the country.

Nevertheless, we wish to remind everyone that there are inalienable rights which under no circumstances may be abridged, and we note with sorrowful surprise that in some specific cases, there have been serious violations of the human rights of individuals and families and even of entire villages:

- Evacuations conducted by the military, with no prior notice or explanation.
- Forced marches of several days with insufficient consideration for the weak, the elderly, women and children.
- Charges of counterrevolutionary collaboration aimed at entire groups of the population.
- The destruction of homes, belongings and livestock.
- Also, the death of individuals under circumstances which, very much to our regret, remind us of the drama which our brothers in the region are living.

These facts move us to denounce vigorously, attitudes on the part of those who, having power and force in their hands, should always be the first to guarantee the observance of human rights; and to urge the competent authorities to apply the disciplinary measures which would prevent a repetition of such events in the future.

In addition, recalling that the integrity of the country's territory must be protected as a historic duty of all Nicaraguans, once the integrity of the national territory is secured, one must also recall that it is a right and a duty to protect the legitimate possession and enjoyment of the riches of the natural, traditional and cultural patrimony of the Indian peoples of the Atlantic coast, in whom we find and recognize with pride not only the ancestry of the race, but also the identity of our age-old, pre-hispanic nationalities.

Having briefly put forward these facts that describe a situation where the dignity of the individual has not been respected and there has been a violation of their rights, as pastors, and in open solidarity with the Miskitos, Sumos and Ladinos of the Atlantic coast, we request that the competent authorities carry out an objective investigation and take the proper measures to promote peace and tranquility, by guaranteeing justice in the region.

F. The IACHR considers the matter at its 55th session

1. In March, 1982, the Commission held its 55th session, and considered the invitation extended by the Government of Nicaragua to visit the Atlantic coast of the country, and also considered the complaints that it had received with respect to alleged violations of the human rights of the Miskitos.

2. The Commission decided to accept the invitation extended by the Government, in the terms of a cable sent by the Chairman of the IACHR, Professor Tom. J. Farer, to His Excellency, Mr. Miguel D'Escoto Brockmann, Minister of Foreign Affairs, which is cited below:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AT ITS 55TH SESSION HAS TAKEN NOTE OF THE INVITATION OF THE GOVERNMENT OF NATIONAL RECONSTRUCTION FOR THIS COMMISSION TO CARRY OUT AN ON-SITE INVESTIGATION OF THE SITUATION OF THE NEW SETTLEMENTS OF ETHNIC MINORITIES ON THE ATLANTIC COAST OF NICARAGUA.

THE COMMISSION ACCEPTS THIS INVITATION IN THE UNDERSTANDING THAT PURSUANT TO ITS JURISDICTION IT MAY CARRY OUT THE ACTIVITIES THAT IT DEEMS NECESSARY AND ADVISABLE TO CLARIFY THE FACTS RELATED TO THE SITUATION OF THE ETHNIC MINORITIES IN THE ATLANTIC ZONE OF NICARAGUA AND TO CONTRIBUTE TO THE OBSERVANCE OF THE HUMAN RIGHTS OF THESE MINORITIES.

THE COMMISSION HAS REQUESTED ME TO CONTACT OFFICIALS OF YOUR EXCELLENCY'S DISTINGUISHED GOVERNMENT IN WASHINGTON IN ORDER TO REACH AGREEMENT WITH THEM AS TO THE DETAILS OF THE TIMING AND DURATION OF THIS VISIT, THE SCHEDULE OF ACTIVITIES THAT THE COMMISSION WILL CARRY OUT IN THE VARIOUS PLACES THAT IT WILL VISIT AND THE FACILITIES THAT SHOULD BE PROVIDED BY THE NICARAGUAN AUTHORITIES TO ENSURE THE SUCCESS OF THIS MISSION. IN ADDITION TO EXPRESSING THE GRATITUDE OF THE COMMISSION TO YOU FOR THIS INVITATION; I REITERATE THE ASSURANCES OF MY HIGHEST ESTEEM AND CONSIDERATION.

3. At the same time, the IACHR authorized its Chairman, in consultation with the other members, to appoint a Special Commission which would visit Nicaragua ^{3/} and instructed the Executive Secretary to obtain authorization from the Government of Honduras to visit the camp of Nicaraguan Miskito refugees located in the area of Mocerón, Honduras.^{4/}

4. In view of the special importance of this case, the Commission devoted several sessions to its study, and in accordance with its Statute, held hearings and received testimony from individuals who had requested them. In addition, it received the representatives of the Government of Nicaragua who had asked to be heard by the Commission.

Those who gave testimony to the Commission were Mr. Steadman Fagoth Muller, Reverend Graham J. Rights and Mr. Armstrong Wiggins.

5. Mr. Steadman Fagoth, former Representative of Misurasata on the Council of State, repeated in a written presentation the charges that he had put forward on other occasions. According to Mr. Fagoth, a large part of the Indian population of the east coast of Nicaragua had been massacred, which constituted genocide; the Miskitos who had not fled to Honduras had been interned in concentration camps, after their property had been burned or otherwise destroyed; and the compulsory relocation to

3. The composition of that Special Commission is discussed in Section H of Part I of this report.

4. The Government of Honduras, by a note dated April 26, 1982, consented to the request for a visit, and offered its cooperation to the IACHR in carrying out its mission.

these camps had led to the deaths of those who were unable to survive the harsh conditions of the relocation.

6. Reverend Graham J. Rights, Executive Director of the Moravian Church of the United States of America, in his testimony referred to the religious work carried out by Moravian pastors in that region of Nicaragua and how they had been affected by the conflict. He emphatically denied that the Moravian pastors had carried out counterrevolutionary activities, and stated that if in some cases some kind of involvement had been proven, those pastors had been suspended from their official duties. Finally, Reverend Rights requested the Commission to investigate recent events and to act as a mediator between the Government of Nicaragua and the Miskito Indians in seeking a satisfactory solution to this matter.

7. Mr. Armstrong Wiggins, who had coordinated the regional Misurasata leadership in the Atlantic region in 1980 and the early months of 1981, submitted testimony on his own behalf and on behalf of the US Indian Law Resource Center.

Cited below are parts of Mr. Wiggins testimony:

Although there has been difficulty in obtaining factual information from that area, we have now received much reliable information which leads us to conclude that the Indians of the east coast are presently suffering a gross violation of their most basic human rights.

Thousands of Indians have been forcibly relocated by the Sandinista Government and are now interned in concentration camps far from their home villages. Many have been killed and injured. An unknown number have been imprisoned. Many Indian villages have been burned. Indian livestock and some Indian religious leaders have been imprisoned and others have been forced to leave the country. There are reports of forced labor by those held in the camps. The frontier area from which the Indians have been removed has been completely militarized, and almost all other Indian villages have been placed under direct control by military authorities.

In the view of Mr. Wiggins, the relocation of the Indians and the destruction of their property cannot be justified by the Nicaraguan Government's need to control counterrevolutionary activities.

According to this line of reasoning, counterrevolutionaries operating out of Honduras had

successfully infiltrated many Indian communities on the Nicaraguan side of the border and had created a situation where a "fifth column" of counterrevolutionary Indians was preparing to join with an invading army from Honduras. To remove this threat to national security, all the Indians were removed from the area and a military zone was created.

This argument would admit that the relocation of Indians and the destruction of Indian property was at least in part, punitive. Moreover, it suggests that the entire civilian population in the area is being punished for what might at most be the crimes of only a few. This situation is much like the situation which the United States government created during World War II when it relocated and interned in concentration camps the entire Japanese-American community as an alien, untrustworthy population. It is now generally agreed that the decision to relocate and intern the Japanese is a shameful chapter in United States history, and that such treatment of a racial group would today be recognized as a violation of fundamental rights.

Furthermore, we call on all concerned to investigate closely why there has been discontent within the Indian communities, and why the central government now views them as a dangerous, alien presence which must be confined and controlled. Are we to accept the time-worn cliché that this is merely a situation where outside agitators are stirring up the happy natives? We firmly believe that there will be no harmony between the Indians and the Sandinista Revolutionary Government unless and until there is a good faith agreement which respects the Indian's rights to self-determination and to their property and the resources of their territories. By taking the opposite approach, by forcibly imposing its will and denying fundamental Indian rights, the Sandinista Government has dramatically widened the gulf between itself and the Indians of Nicaragua and has thereby helped to undermine its own true security.

8. Mr. Wiggins concluded by stating that in his opinion the Government of Nicaragua had violated articles 1, 6, 7, 11, 15, 16, 21, and 22 of the American Convention on Human Rights, detailing the role of the Government in the violation of those rights.

9. Also in the course of its 55th session, the Commission received a delegation of the Government of Nicaragua which described the situation of the new settlements given to the Miskito Indians in the Atlantic region

of the country. The delegation was composed of Dr. Leonte Herdocia, Chairman of the National Commission for the Promotion and Protection of Human Rights in Nicaragua; Casimiro Sotelo, Ambassador, Permanent Representative of Nicaragua to the OAS; Commander Humberto Campbell, Vice Minister for Atlantic Coast Affairs; Mr. Saúl Arana, Ambassador, Alternative Representative to the OAS; Mr. Sixto Ulloa, Coordinator of the Evangelical Committee for Assistance to the Poor (CEPAD) and Reverend John Wilson, Bishop of the Moravian Church.

10. In its statement, the delegation ratified the terms of the Government's invitation to the Commission to visit the new settlements to which the Miskitos who had lived on the banks of the Coco River had been resettled. In addition, each member of the delegation briefly presented the reasons which, in the opinion of the Government of Nicaragua, justified the relocation of that population, and gave details on the conditions and characteristics of the settlements. In particular, the delegation referred to the relocation of the communities and how the evacuation was carried out, and pointed out that it took place without any resistance from the Miskito tribes and without a single casualty in the civilian population. They also stated that pregnant women, children and the elderly were transported by helicopter or trucks, and that the rest of the population that traveled on foot was given the necessary food and medical assistance.

The delegation explicitly acknowledged that Government agents proceeded to burn down houses, the personal belongings, furniture and other possessions of these families, and slaughtered their animals and set fire to their churches and crop fields, in order to leave no shelter or food for the armed insurgent groups that operate in the zone.

Ambassador Leonte Herdocia stated that it was quite possible that in the course of the evacuation some excesses had been committed by the authorities charged with carrying it out, but that they had been exaggerated by the international campaign to denigrate the Government of Nicaragua.

With respect to the scope of the invitation extended to the Commission to carry out an in loco visit, one of the members of the IACHR inquired if that visit would have to be limited to the zone where the new settlements were located, or if the places inhabited by the Miskitos prior to their relocation could also be visited. In reply, the delegates of the Government of Nicaragua considered that it was practically impossible to visit the places from which the Miskitos had been removed since it is a high security military zone and they would therefore have to consult with the government, which would give the definitive reply.

11. At its 55th session, the Commission also studied other information and testimony that had been submitted to it in writing.

G. Subsequent complaints and information

1. After its 55th session, the Commission continued to receive complaints and information on this matter. Among these, the Commission specifically wishes to refer to the presentation made by the Coordinator-General of Misurasata, Mr. Brooklyn Rivera.

2. In his written statement of April 8, 1982, Mr. Rivera explained the origins of the dispute of the Indian populations of the Atlantic coast with the Government of Nicaragua, and proposed a negotiated settlement that would allow the Indians use of their lands and autonomy within the state of Nicaragua. Some paragraphs of his document are cited below:

The principal reason for the Indian rights crisis in Nicaragua is the antagonism created by the Sandinista government policy which denies the ethnic identity of our Indian peoples. It follows that the recognition of Indian rights to their territory and their autonomy is also denied. The government's policy requires assimilation of Indians to the philosophy and culture of those who control the government in Managua, thus converting us into peasants and mestizos without definition and aboriginal rights.

This basic conflict with Indian rights has been revealed since the triumph of the revolution in 1979. Immediately after the revolution the Indian leadership had great faith in the Sandinista government and in the process of the revolution. We tried to walk as a people and as an organization with the current of the revolution and not against it. Later we learned that the Sandinista leaders never had good intentions towards our Indian peoples. Despite our efforts to work together as allies of the revolution, the Sandinista government consistently tried to impose its own will on MISURASATA and on the Indian peoples in general. We learned through experience that the government had no respect for our Indian customs and values, our traditional way of life and ancient rights.

Several MISURASATA leaders, including myself, stayed in Nicaragua after our release from prison and interrogation. We and all Indian leaders other than Steadman Fagoth had been cleared of all allegations of Somocista and counterrevolutionary activities. Our hope was to find a peaceful solution to the growing crisis through negotiations with the Sandinista government. We were worried that Somocista or other counterrevolutionary forces would try to

use our people for their own ends and we believed that an agreement could be negotiated which would protect the rights of our Indian peoples and the security of the Nicaraguan government.

We had talks with the Sandinista government and we had the government's agreement to go to Honduras and meet with those Indian leaders who had fled. It became very clear to us at that meeting that there was a great lack of trust among many of our people in Honduras. The past dishonesty of the Sandinista government, the many arrests of our people and the general repression in our Indian communities by military authorities had generated fear and suspicion among Indian peoples that even we might be agents for the Sandinista government. Upon our return to Managua, the Sandinista government openly turned against us and we were accused of simply fomenting counterrevolution. We were told that we had no choice but to join the Sandinista government, that we could not be "in the middle", that we were either for the revolutionary government or against it. We were subjected to intimidation, and some of our group were even threatened at gunpoint. I personally was told that if I did not take an administrative position with the Sandinista government and work to carry out the government's policies, that the government would not be responsible for my life.

These events made clear that denial of true Indian leadership and Indian self-determination was absolute. At the same time the denial of cultural rights had become very obvious as the literacy campaign was halted in our communities, and as the government began its practice of teaching our Indian children in Spanish rather than their native languages. Here again we saw the dishonesty of a government which preached bilingual education but which practiced instruction designed to assimilate our peoples to another way of life.

As we made our last efforts to negotiate with the Sandinista government in June, July and August, 1981, it also became clear that the government had decided to deny us our basic Indian land rights, the most important matter in the crisis. We told the government in June that a solution to the dispute over Indian land rights would be the key to resolving the Indian crisis. The government agreed that we would present a written statement of our position in July, but while we were in the process of preparing that document the government decreed its Agrarian Reform Law which

announced that the government would "give" to Indian peoples defined parcels or sections of land which each village would hold under an "agrarian title". This decree denied Indian ownership of all the lands of the Indian territory of the east coast of Nicaragua and set in motion a process which would promote confrontations between individual Indian communities. Once again Indian rights had been denied in a policy dictated by the government in Managua.

Shortly after the Agrarian Reform Law decree, we presented our own document which contained three principal points:

1. Indian land rights in Indian territory must be recognized as a whole and not as parcels or sections granted by the government.
2. Indians must be guaranteed their right to the natural resources of their territory.
3. The Indian right to self-determination or autonomy within their territory must be recognized.

These three points were flatly rejected by the Sandinista government at a meeting in the first week of August. Our demands were criticized as counterrevolutionary demands of Steadman Fagoth and as separatism. We were unable to persuade the government that these demands are not those of any individual but of all Indians of the Americas and that the autonomy or self-determination which we sought did not mean separatism or complete independence.

In little more than two years time the relationship of Indians to the Sandinista government deteriorated from harmony to extreme crisis. Today all the legitimate Nicaraguan Indian leadership is either in exile or underground. The unprecedented destruction of our communities and the undeniable assault on our peoples and their way of life has led to despair and anger. Some of our people have already engaged in confrontations with Sandinista forces, and many others are prepared and willing to fight for their fundamental rights.

Such a fight would, of course, compound the suffering and the tragedy already experienced. It must be avoided if at all possible.

My hope and my sincere intention is to convince all interested people of the gravity of the crisis and of the urgent need for sincere negotiations between our Indian leadership and the Sandinista government. The participation, support and encouragement of international human rights organizations and others will be necessary to make such talks a reality and to guarantee the implementation of the agreement which we will seek. We firmly believe that the basis for a comprehensive solution of the problems and struggle necessarily should begin with an honest compromise policy which includes FSLN recognition of the existence of Indian nations and their land base, aboriginal rights and the right to an Indian national personality. We continue to believe that we can arrive at an agreement which will protect the basic Indian rights to land and self-determination. Such an agreement would bring an end to the Indian crisis in Nicaragua, and just as important would serve as a model for other Indian peoples throughout the Americas who have been closely watching our struggle.

H. On-site observation in Nicaragua in May, 1982

1. In accordance with the scheduled program, a Special Commission of the IACHR began the planned in loco visit to Nicaragua on May 1, 1982. The members of that Special Commission were Mr. Tom. J. Farer, Chairman of the Inter-American Commission on Human Rights, Mr. César Sepúlveda and Dr. Luis Demetrio Tinoco Castro. The Special Commission was accompanied by Drs. Christina Cerna and Manuel Velasco Clark, attorneys of the Executive Secretariat, and Messrs. Juan Carlos Goldie and Marcelo Montecino, the former as administrative support staff and the second as the interpreter for Mr. Farer.

2. During the course of its stay in Nicaragua, the Special Commission held interviews with the members of the Junta of the Government of National Reconstruction, with the Minister of the Interior, with members of the Supreme Court of Justice and the Bluefields Court of Appeals, with the National Commission for the Promotion and Protection of Human Rights, with authorities of Nicaraguan Institute for the Atlantic Coast (INICA), and with other civilian and military, national and departmental authorities, as well as with the head of the Seventh Military Region of the Atlantic coast.

3. The Commission also met with representatives of various religious, humanitarian and professional institutions of the country, from which it received important testimony with respect to the problems involved in the case considered in this report.

4. On Monday, May 3, 1982 at 2:00 p.m., the Commission visited the "Héroes y Mártires de Nueva Guinea" penitentiary, formerly the Zona Franca prison, and following a tour of the installations where approximately 125 Miskitos of both sexes were in detention, proceeded to select a large group of prisoners to speak with them, in private. For assistance the Commission contracted the services of a Miskito interpreter.

5. On Tuesday, May 4, 1982 at 7:00 a.m., the Commission travelled in a Nicaraguan Air Force plane to the mining center of Bonanza, and from there to Rosita, accompanied by Drs. Julio César Avilés and Orlando Matus del Carmen, of the National Commission for the Promotion and Protection of Human Rights, Father Edgard Parrales, Ambassador of Nicaragua to the OAS, Moravian Bishop John Wilson, the legal adviser of the Ministry of the Interior, Dr. Melvin Wallace, and 2 delegates from CEPAD and the Ministry of Foreign Affairs, respectively.

6. In Rosita, Mr. Julio Rocha, Vice Minister of the Nicaraguan Institute for the Atlantic coast, explained to the Special Commission the scope of the "Tasba Pri" project and how the settlements in Wasminona, Truslaya, Sahsa, Columbus and Sumubila had been planned and organized and how they currently operate.

7. Continuing its tour by land from Rosita, in the Central Zone of Nicaraguan territory, to Puerto Cabezas on the Atlantic coast, the Commission visited the new settlements of Sahsa and Sumubila. On that occasion, it spoke with relocated Miskitos in order to hear directly from them their own versions of the events, the reason for the relocation and how it had been carried out; the Subcommittee also sought to inform itself as to the reaction of the Miskito population to the resettlement and their current circumstances, and on the conditions pursuant to which they carry out their activities.

8. After spending the night in Puerto Cabezas, the Special Commission visited the Chief of the Seventh Military Region of that area, Commander Manuel Calderón --Comandante Rufo-- and later visited the Detention Center of that military region where 47 miskitos were detained, in order to obtain information on the conditions of their detention, their state of mind, and to speak with them directly about the events that took place on the banks of the Coco River. Following other scheduled interviews, the Commission travelled by air to Bluefields.

9. At noon on Wednesday, May 5, 1982, the Special Commission arrived in the city of Bluefields, and interviewed members of the Court of Appeals in order to obtain information on developments in the proceedings against the Miskitos whose cases were pending before that court at the time of this visit.

10. The Special Commission also spoke with the defense attorneys for the accused, and discovered that none of them had met with clients or even spoken with them.

11. Finally, while still in Bluefields, the Special Commission held private talks with Monsignor Salvador Schlaefer, Apostolic Vicar of Bluefields and co-author of the message issued on February 18, 1982 by the Conference of Bishops of Nicaragua.

12. In Managua, on May 6, 1982 the Commission took leave of the Junta of the Government of National Reconstruction, represented by its member, Dr. Rafael Córdoba Rivas, to whom the Commission submitted a document containing the preliminary recommendations that the Commission considered should be implemented immediately ^{5/} and thus concluded its in loco visit. The Commission subsequently gave a press conference in which it expressed its thanks to the official authorities, the press, the various representative institutions of the nicaraguan community and to the people of Nicaragua for the facilities and hospitality offered to it.

I. In loco visit to Honduras

1. On May 7, 1982 at 6:45 a.m., a Special Subcommittee left Nicaragua for the city of Tegucigalpa, Honduras, in order to continue its investigation. The Subcommittee consisted of Dr. Luis Demetrio Tinoco Castro, who was assisted by Dr. Christina Cerna, Dr. Manuel Velasco Clark and Mr. Carlos Goldie.

2. After arriving in Tegucigalpa, the Subcommittee, accompanied by the general counsel of the Foreign Ministry, Dr. Ernesto Paz, was taken immediately in a Honduran Air Force plane to Puerto Lempira, capital of the Gracias a Dios Department, the zone corresponding to the Honduran Moskitia.^{6/} It was received by the Military Commander of that region, Major Leonel Luque, who personally drove the members of the Subcommittee to Mocerón.

3. The Subcommittee toured the refugee camp of Mocerón, which at that time sheltered 8,154 Miskitos, and held various interviews with the Nicaraguan Miskitos, whom it visited in their homes, churches and communal meeting centers.

5. These preliminary recommendations figure in Section J of Part I of this Report.

6. In 1960, a decision of the International Court of Justice of The Hague established the limits that separate the Honduran Moskitia from the Nicaraguan Moskitia.

4. The Subcommission also held a two hour meeting with a group of individuals representative of the Miskito community in the communal meeting room of the camp, where it received testimony on the events that took place on the banks of the Coco River. In addition, the Subcommission had an opportunity to question several Indians on the possibilities of reuniting the Miskito family and on their interest in returning to Nicaragua.

5. Despite the enormous population congregated in this refugee camp, the Subcommittee noted that it had no wire fences or control posts for the entry or exit of the Nicaraguan Miskitos, and that they had total freedom of movement; it also noted that the military control personnel assigned to maintain order among the refugees consisted of only 7 soldiers.

6. The Subcommission stayed in Mocorón until after 10 p.m. to continue its personal interviews with members of the Miskito Community and the officials of the Christian Churches working in that area. It also met with staff members of the Office of the United Nations High Commissioner for Refugees and with personnel from the World Relief Services that work in that camp.

7. On Saturday May 8, 1982, the Subcommission returned to Tegucigalpa and held an interview with the Director of the Office of the United Nations High Commissioner for Refugees, Mr. Guy Prim. The Subcommission also met with Mr. Tom Hawk, Director of World Relief Services in Honduras. Matters related to the situation of the Nicaraguan Miskito refugees in the Mocorón camp and possible solutions were discussed at both meetings.

8. On Sunday, May 9, 1982, the Subcommission concluded its activities in the Republic of Honduras and through the good offices of the Representative of the Ministry of Foreign Affairs reiterated its gratitude to the Government of Honduras and in particular to its Foreign Minister, Dr. Edgardo Paz Barnica, for the facilities and full support extended to it in carrying out its mission.

J. Preliminary recommendations

1. As stated above, at the conclusion of its visit to Nicaragua, the Commission submitted to the Junta of the Government of National Reconstruction a document containing preliminary recommendations aimed at improving the situation of human rights of the ethnic groups of the Atlantic coast.

2. The text of the document is cited below:

PRELIMINARY RECOMMENDATIONS

The Inter-American Commission on Human Rights (IACHR) reiterates, first, its gratitude to the Junta of the Government of National Reconstruction for the invitation extended to it to visit Nicaragua and observe in situ the situation of human rights of the ethnic groups of the Atlantic coast of that country. It also acknowledges the cooperation and support offered throughout by the governmental authorities to assist the Commission in carrying out its mission.

The Commission takes this occasion to set forth some preliminary considerations and recommendations.

Having concluded this visit, at its next session in June, the Commission will have occasion to submit to the Government of Nicaragua its final recommendations, after studying in greater detail the situation that gave rise to this visit.

1. The problem of the ethnic groups in the settlements

It appears to the Commission that the populations that were relocated have been affected in very different ways by the resettlement. In particular, not a few of them have suffered the loss of their homes, livestock and other property.

The Commission considers that the injury they have suffered could be substantially reduced in two ways: a. by assurances that in the near future, when there is no longer danger in the border zone, those who wish to return to their former homes may do so; and b. by assurances that those involved will receive adequate compensation for the damage done to their private property.

2. Reunification of families

On the basis of interviews held with various members of the communities that were visited, it is clear that they are deeply concerned for their family members located in Honduras.

The Commission considers that there is a deep desire to bring about the reunification of the Miskito family, and that

many Indians located in Honduras would return if they had the necessary guarantees and assurances.

It is therefore recommended that the Government of Nicaragua make use of intergovernmental agency channels to facilitate the return of the Miskitos to their own country, through the coordinated action of the Governments of Honduras and Nicaragua, with the participation of an international agency in a supervisory role.

3. Conditions of detention

The Commission visited the Miskitos who are detained in the "Héroes y Mártires de Nueva Guinea" prison, the former Zona Franca in Managua, and the detention center in Puerto Cabezas.

The Commission considers that there are three aspects to be noted with respect to "Héroes y Mártires de Nueva Guinea" prison. The first is what appears to be frequent punishment, consisting of being stripped and left naked in groups for prolonged periods. The second is restrictions on visits; they are kept almost entirely incomunicado, a situation which deserves special consideration due to the fact that family members who come from Managua must make enormous sacrifices in time and money to come visit them. Third, the Commission also recommends that sick detainees be given immediate and competent medical care.

With respect to the Miskitos confined in the detention center of Puerto Cabezas, the Commission considers that the conditions under which they are detained are restricted and inadequate in view of the fact that it is a provisional detention center, despite the fact that improvements have recently been made due to the efforts of the Chief of Operations of the Center. It is also recommended that sick detainees be given immediate and competent medical care.

4. Right to due process

The Commission has found that there is a substantial number of detainees in Puerto Cabezas who have not yet been submitted to the process established by law. They have been imprisoned for over two months in unsuitable conditions. In this regard, the Commission hopes that the Government will act expeditiously immediately to submit them to due process or release them, as appropriate.

In conformity with the principle of the presumption of innocence, the Commission recommends that the statements of self-incrimination made by the accused be taken in the presence of a judge and a defense attorney in accordance with the law that governs criminal proceedings in Nicaragua. By taking measures to ensure that all confessions are taken in conformity with the law, the Government would reduce the risk of the occurrence of mistreatment during the interrogation process. The Commission therefore considers it improper to televise the incriminating testimony given by the defendants themselves before a final decision is handed down in the trials. Television broadcasting of these statements leads public opinion to pre-judge the culpability of the defendants.

5. If the Miskitos have to remain in detention for a greater period of time as a result of the final judgments reached in their cases, the Commission recommends that they be transferred to places near their zone of origin to serve their sentences.

3. On June 15, 1982, the Commission received a cable from the Acting Minister of Foreign Affairs, Mr. Víctor Hugo Tinoco, addressed to the Chairman of the Commission, in which he refers to the implementation by the Government of Nicaragua with these preliminary recommendations. That document reads as follows:

I am honored to greet Your Excellency to refer to preliminary recommendations submitted Junta of Government of Reconstruction May 7 on invitation extended by my government to IACHR to visit Nicaragua and observe situation of the human rights of the Nicaraguan citizens of Miskito origin residing in Zelaya Department (north).

a. With respect to the first recommendation, the Government of Nicaragua guarantees, as was stated by member of the Junta Dr. Rafael Córdoba Rivas, assurances that when border danger passes, those who wish to return to their places of origin may do so and that the Government of Nicaragua has provided more than the adequate compensation suggested by giving these Nicaraguan citizens lands, homes, seeds, fertilizers, farm tools, food and medical attention, totally without charge.

b. With respect to reunification of families, the government guarantees assurances for the return of Nicaraguans in Honduran territory and to this effect lists

are being updated of all families residing in the Tasba Pri settlements to be transmitted by the UNHCR and the International Committee of the Red Cross to those Nicaraguans who moved to Honduras so that they may verify false statements that their families have been killed.

c. With respect to the conditions of detention, instructions have been given to give full respect to the dignity of these Nicaraguan citizens explaining that in the penitentiary system the only times when they may be fully searched (without clothes) is when entering or leaving workshops due to the danger of their taking with them scissors, knives, razors, pocket knives or sharp instruments that are used in the workshops for shoemaking, saddlery carpentry, tailoring, etc., but offering to reduce insofar as possible these searches, while safeguarding the security of the detainees and guards. The penitentiary reports that the family members have the right at any time to visit their detained relatives and this rule will be institutionalized by order. Also, medical care has been reinforced and measures are being taken to make improvements in the detention center.

d. All detained persons are submitted to due process and their cases are on appeal and awaiting decision in the Court of Appeals of Bluefields. The Government of Nicaragua has fully prohibited presentation by radio or television of the statements given by the defendants prior to a final verdict in the trials. Both the Supreme Court of Justice and the National Commission for the Promotion and Protection of Human Rights are actively working on these matters, and the latter has sent two attorneys to observe the work of the defense counsel.

e. Should the final verdict in these cases require longer detention of Nicaraguan citizens of Miskito origin, every effort will be made, within the severe economic constraints experienced by the country as a result of the recent disaster caused by floods, to have the sentences carried out in places close to where they lived previously.

The Government of Nicaragua reaffirms its will to maintain an ongoing and fruitful dialogue with the Honorable Commission and to this end would be grateful for information on the result of the visit made to Honduras by the IACHR and on the interviews held with the Nicaraguan residents with respect to desires expressed to return to Nicaragua. We maintain contact with Mr. Philippe Sargisson, a senior

official of the UNCHR and with the help of the local headquarters in coordination with the Government of Honduras and the Office in Tegucigalpa, provisions can be implemented with respect to their return.

K. The Commission adopts its Special Report on the Situation of the Human Rights of the Miskito Indians in Nicaragua

1. On June 26, 1982, the Inter-American Commission on Human Rights, at its 56th session, adopted the "Special Report on the Situation of Human Rights of the Miskito Indians in Nicaragua".^{7/}

2. The Report extensively analyzes the various problems that arose on the Atlantic coast with respect to the sector of the Nicaraguan population of Miskito origin, following the events of late 1981 and early 1982.

In the above-mentioned report, the IACHR particularly studied the existence and observance of the following human rights that affect this sector of Nicaraguans: a. the right to life; b. the rights to liberty, personal security and due process; c. the right to residence and d. the right to property. The Commission also extensively studied in this report whether the Miskito Indians could invoke special rights as an ethnic group.^{8/}

3. Upon provisional adoption of these conclusions, which were transmitted to the Government of National Reconstruction of Nicaragua together with the Report, the Commission proposed the following recommendations:

- a. To allow Misurasata or another Indian organization chosen by the Indian communities themselves to function, and to authorize the return of its leaders to Nicaragua, with guarantees of their security and liberty;
- b. To continue to seek an agreement with the Government of Honduras to guarantee peace on the

7. OEA/Ser.L/V/II.56, doc. 11, rev. 1. This is a reserved document.

8. The updated study of the observance of these rights appears in the second part of this Report.

common border in order to prevent potential conflicts;

- c. To investigate all matters related to the violation of the right to life of the Miskito Indians and to bring to trial and sanction with the full force of the law those who are found to be responsible.
- d. To consider the relocation of the Miskito Indian in Tasba Pri as a provisional measure, to be limited to the time required by the current emergency;
- e. Once the emergency has ended, to allow the return of the Miskito Indian who wish to do so from Tasba Pri to their homes by the Coco River;
- f. To facilitate, if possible, the voluntary repatriation of the Miskitos of Mocorón, with the assistance if possible of the Government of Honduras and of the United Nations High Commissioner for Refugees (UNHCR);
- g. To facilitate, while the emergency lasts, the exchange of information through the International Red Cross and the UNHCR between the Miskitos residing in Tasba Pri and those in Mocorón to contribute to family reunification and voluntary repatriation;
- h. To facilitate, under the auspices of the UNHCR, the voluntary resettlement of any Miskito of Tasba Pri to Mocorón or from Mocorón to Tasba Pri, to rejoin the family group, for the duration of the emergency.
- i. To permit, during the emergency, the return of the religious who serve the Miskito population of the Atlantic coast of Nicaragua so that they may perform religious services for their people;
- j. To consider the possibility of an amnesty for the pastors of the Moravian Church who have been tried or detained;
- k. To guarantee freedom of association and assembly, without interference, in the camps of the new settlements, to allow the Miskito community to

maintain its cultural identity, preserve its traditional structure and facilitate its participation in the decisions of the community;

- l. To clarify the number and location of detained Miskitos, to publish a complete list of their names and the detention centers where they are held;
- m. To declare null and void the decisions made by Judge Casaya in the cases of the Miskito Indians who were accused of "counterrevolutionary" activities, and to retry the accused in accordance with the guarantees of the right to due process;
- n. To study a just solution to the problem of the Indian Lands that will fulfill both the aspirations of the Indians as well as the economic interests and the territorial unity of the Republic;
- o. To compensate the Miskitos of the Coco River as soon as possible for the loss of their homes, crops, animals and other belongings;
- p. To include, on the basis of their merits, representative figures of the Miskito community in important positions in the administration of the Atlantic coast region.

L. Later developments

1. On August 24, 1982, the Government of Nicaragua replied to the Commission on the report that had been submitted to it by the IACHR. In the reply, the Nicaraguan Government analyzed the conclusions and recommendations put forward by the Commission, and proposed that it assume the role of mediator in order to reach a friendly settlement, in conformity with Article 48-1(f) of the American Convention on Human Rights. The Government of Nicaragua indicated the procedure that should be followed for the purpose.

The proposal of the government of Nicaragua was considered by the Commission at its (special) 57th session, which was held in September in San José, Costa Rica.^{9/}

9. For organizational purposes, all matters relating to the process of reaching a friendly settlement will be considered together in Section N.

2. Although at that and all subsequent sessions up to the adoption of this report, the subject of human rights of the Nicaraguans of Miskito origin was principally considered in the context of the process of reaching a friendly settlement which the Commission had undertaken, the Commission also continued to be concerned with the general situation of the Miskito Indians, and it received all information concerning new events which were taking place in the northern zone of the Department of Zelaya, and adopted the measures at its disposal.

3. Among the events that took place following the adoption of the Report on June 26, 1982, note should be taken of the harassment by government authorities and soldiers of the Sandinista Army of the Miskito towns and villages; the frequent skirmishes between the Sandinista Army and armed insurgent groups--generally comprising or supported by Miskitos--that took place in the northern part of the Department of Zelaya, particularly in locations near Puerto Cabezas, and which led to dozens of deaths; the November 4, 1982 declaration of the territory of 24 municipalities in the Departments of Chinandega, Madriz, Nueva Segovia, Jinotega and Zelaya, adjacent to the border zone with Honduras, as a military emergency zone; the consolidation of the Tasba Pri settlements; the relocation in November and December of 1982 of approximately 4,000 Miskitos from their villages in the Coco River and the Bokay River zone, in the Department of Jinotega, to settlements located in the interior of the same department; the accident on December 9, 1982, which took place in the course of the relocation of several Miskito children to these new settlements, and which claimed the lives of 75 of them and of 9 of their mothers, when the helicopter transporting them accident ally crashed; the increase in the number of detentions of Miskitos, and the subsequent release of some of them; the transfer of nearly 400 Miskito prisoners to Managua, first to the Zona Franca prison and then to the Granja del Régimen Abierto (minimal security work farm); the flight to Honduras of hundreds of Nicaraguan Miskitos; the claim of disappearances of Miskitos; and the sentences handed down on September 16, 1983 by the Supreme Court of Nicaragua, which by nullifying the criminal proceedings overturned the sentences that had been given by the Court of Appeals of Bluefields and dismissed the charges against the accused.

These facts, which were not included in the previous report, were given special consideration by the IACHR, and they are considered Part II of this Report.

4. At sessions held following the adoption of the Report on June 26, 1982, the Commission received the testimony of several individuals and of representatives of institutions concerned with the situation of the Miskitos. Thus, at its (special) 57th session, held in San José, Costa Rica in September, 1982, the Commission received the testimony of Mr. Rafael Zelaya Herrera, representing Misurasata, who insisted on the

preconditions that the Government of Nicaragua should establish to make possible mediation between the Miskito people and the Government. Among these preconditions, Mr. Zelaya Herrera insisted on the release of all imprisoned Miskitos and on "an end to the massacre of the Miskito Indians."

5. At its 58th session, held in November of 1982, the Commission gave a special hearing to Dr. Leonte Herdocia, National Commissioner for the Promotion and Protection of Human Rights, and to Ambassador Edgard Parrales, Permanent Representative of Nicaragua to the OAS. In addition, in another interview it spoke with Reverend Fernando Colomer, Superintendent of the Moravian Church of Nicaragua, who submitted a document titled "Considerations with respect to Peace and Reconciliation in Nicaragua: An Indian Proposal". In the course of this session, the Commission also gave a hearing to Mr. Tillet Mullins and four other members of the Council of Elders, all of whom are currently exiled in Honduras. The group's spokesman, Mr. Wyciffe Diego, stated on its behalf that 15,000 Miskitos had left Nicaragua for Honduras due to repression and terror and that they were opposed to the repatriation of Miskitos from Honduras to Nicaragua. The Council of Elders also submitted several documents summarizing their viewpoints to the Commission.

6. At its 59th session, held in April, 1983, the Commission received Mr. Armstrong Wiggins of the Indian Law Resource Center. According to Mr. Wiggins, the procedure to reach a friendly settlement had failed because the human rights situation of the Miskito peoples had deteriorated considerably. He also referred to the events which, according to him, had led to the machinegunning of 4300 Miskitos by the Nicaraguan Air Force as they tried to reach the border with Honduras after abandoning one of the relocation camps. He said that hundreds of Miskitos had been killed or wounded in confrontations with the army, that others had been arbitrarily arrested and interrogated and that perhaps over 600 were currently imprisoned, accused of counterrevolutionary activities. Mr. Wiggins added that the entire region was still under military occupation, and that Indian leaders had been replaced by officers of the Sandinista Government and Security Forces, while access to the northeast region of Nicaragua was closed off and the Government insisted that all of the problems arose from an external imperialistic conspiracy. As a result, Mr. Wiggins added that the mediating role of the Commission should be terminated, and without prejudice to subsequent renewal of the process, the report should be published now.

In the course of that session, the Commission also interviewed Mrs. Margarita Wilde of the Moravian Church of the United States, who had been to Nicaragua the previous month. She stated that the role of the Commission had been very positive and that it would be regrettable if no progress were made in the search for a friendly settlement. Mrs. Wilde added that the Commission still had much to do, either on its own or in

cooperation with the ICRC and the UNCHR, in contributing to improving the circumstances under which the Miskitos live. Mrs. Wilde added three matters of particular concern to her: 1. the fact that some 60-70 persons had disappeared, of whom the Moravian Church has a list; 2. the fact that the cases of the accused Miskitos are currently at a standstill in the Supreme Court of Justice; and 3. that the rules of due process have not been followed in these cases. In response to a question from the Chairman, Mrs. Wilde replied that the only institution that at this time genuinely unites the Miskitos in Nicaragua is the Moravian Church, which nevertheless does not wish to assume a role of political representation.

7. At its 59th session, the IACHR decided to authorize the Executive Secretary and whatever staff members he might appoint to travel to Honduras and to Nicaragua in order to gather reports and update the information in the possession of the Commission.

8. As a result of this decision, a lawyer from the Secretariat, Dr. Guillermo Fernández de Soto and a staff member Mrs. Dafne Murgia travelled to Honduras, and interviewed Honduran authorities and staff members of the UNHCR in Tegucigalpa; they also held several meetings with representatives of the refugee Miskito communities in Mocerón and other settlements in the Gracias a Dios Department. At these meetings, the refugees expressed their desire to remain permanently in Honduras and not to return to Nicaragua.

9. On June 7, 1983, Dr. Edmundo Vargas Carreño, Executive Secretary of the Commission, and Dr. Christina Cerna travelled to Nicaragua and interviewed senior officials of the Government of National Reconstruction, including a member of the Government Junta, Dr. Rafael Córdoba Rivas; the President of the Supreme Court, Dr. Roberto Arguello Hurtado; the Minister of Foreign Relations, Miguel D'Escoto; the Minister Secretary General of the Government Junta, Dr. Rodrigo Reyes Portocarrero; the Minister of the North Atlantic Zone, Commander William Ramírez and the National Commissioner for the Promotion and Protection of Human Rights, Dr. Leonte Herdocia. They also held several meetings with the defense attorneys for the Miskitos, with the Representative of the International Committee of the Red Cross, Moravian clergymen, and representatives of other institutions such as the Permanent Commission on Human Rights of Nicaragua.

They also visited the penitentiaries where the Miskitos are detained, both in Managua and in Puerto Cabezas; they toured the towns of Sliila Lila and Yulu and two of the Tasba Pri settlements, on which occasions they obtained testimony from various Miskito inhabitants, with the assistance of the Moravian pastor, Fernando Colomer, who served as interpreter.

10. At its 60th session, held in June of 1983, the Commission studied the status of the dispute in the light of the events that had

taken place in recent months. In addition, it discussed who could be considered as a party to the dispute in addition to the Government of Nicaragua; and it evaluated the compliance of the Government of Nicaragua with the previous recommendations of the Commission.

11. At its 61st session, held in September of 1983, the Commission received testimony from representatives of the Council of Elders, headed by Messrs. Mullins and Diego and also from the US anthropologist, Bernard Nietschmann. It also continued to study the matter at length, and considered that the partial compliance by the Government of Nicaragua with the previous recommendations set forth by the Commission were insufficient to establish an atmosphere of détente between the Government and a large part of the population of Miskito origin to reach the necessary friendly settlement. For that reason, the Commission decided to adopt this report in accordance with Article 50 of the American Convention on Human Rights. Nevertheless, the Commission wished to make one last effort with the Government of Nicaragua before concluding its participation as the mediator in a friendly settlement, and for that purpose it submitted to the Government a concrete proposal aimed at obtaining a settlement.^{10/} Should the proposal not be accepted by the Government of Nicaragua within the deadline indicated by the Commission, it would proceed to terminate the friendly settlement procedure and publish this report, after meeting the requirements and time periods established in Articles 50 and 51 of the American Convention on Human Rights.

M. The problem of determining the parties to the controversy

1. In light of Article 48 1.f of the American Convention on Human Rights, one of the most important problems that arose in this matter has been to determine who should be considered the other party to the dispute, in addition to the Government of Nicaragua. In this respect, it should be pointed out that there have been changes in the viewpoints of those who initially submitted a complaint to the Commission; furthermore, the problem at this time involves new aspects due to the position taken by the Government of Nicaragua. This has produced a situation that merits further analysis.

2. On January 28 of 1982, the Commission received a "Charge of genocide by Sandinismo of the Indians of Misurasata", dated January 15 of 1982 and addressed to various other international organizations, unsigned

10. The terms of that proposal appear in the note dated September 30 of 1983, which is included in Section N of this report. The reply of the Government of Nicaragua appears in the note dated November 14 of 1983, which is also included in that section.

and with no address, but with the stamp of the Coordinator General of Misurasata. Once it had been confirmed that the charge was that presented by the Coordinator General of Misurasata, Mr. Brooklyn Rivera, with whom the Commission had had contact, the Commission transmitted the pertinent parts to the Government of Nicaragua on February 24 of 1982. Subsequently, by means of a written presentation dated April 8 of 1982, Brooklyn Rivera reiterated his earlier charge, explained the origins of the dispute of the Indian peoples of the Atlantic Coast with the Government of Nicaragua and proposed a negotiated solution that would give the Indians title to their lands and autonomy within the State of Nicaragua.

3. In February of 1982, Mr. Steadman Fagoth, former representative of Misurasata on the Council of State, came to the Commission's offices and gave an oral presentation on the events that took place in the surroundings of the Coco River late in 1981. Mr. Fagoth later submitted to the IACHR, at its 55th session, a written statement dated January 7 of 1982, in which he brought serious charges against the Government of Nicaragua.^{11/}

4. Mr. Armstrong Wiggins, who had acted as coordinator of the regional leadership of Misurasata on the Atlantic Coast in 1980 and the early months of 1981, also came to the Commission's offices in February, and gave background information on the events that took place on the Atlantic Coast of Nicaragua. Mr. Wiggins subsequently came to the Commission when it was holding its 55th regular session, representing the US Indian Law Resource Center, at which time he expressed the viewpoint of that institution with respect to the Nicaraguan Government's behavior towards the Miskitos.^{12/} In addition, on May 19 of 1982, the Indian Law Resource Center formally requested the Commission to consider it a party to this matter.

5. In the course of its 55th regular session, the Commission also received the testimony of Reverend Graham J. Rights, representing the Moravian Church of the United States, and he requested that the Commission investigate the events that took place in late 1981 and early 1982 on the Atlantic Coast of Nicaragua, and that it also act as mediator between the Government of Nicaragua and the Miskito Indians.

6. The position of the original claimants changed as further events took place and evolved in Nicaragua.

7. At this time, Misurasata is deeply divided between the faction headed by Steadman Fagoth and that directed by Brooklyn Rivera. To some

11. See Section F of Part I.

12. See Section F of Part I.

extent, this division reflects the differences which exist at a broader political level among the groups that oppose the Sandinista Government. Thus, while Fagoth, in close coordination with the Nicaraguan Democratic Front (FDN), has taken up arms against the Government of Nicaragua, Brooklyn Rivera, in Costa Rica, has united with Alfonso Robelo, Fernando Chamorro and Eden Pastora in the Democratic Revolutionary Alliance (ARDE).

8. According to the information available to the Commission, it is clear that a considerable number of the Miskitos who have taken refuge in Honduras give their unconditional support to Fagoth and consider him to be predestined to lead the Indian rebellion to topple the Sandinista regime. For that reason, the refugee Miskitos in Honduras consider Brooklyn Rivera and those who follow him as traitors who have encouraged "Divisionism in our national liberation movement, who prejudice and seek to destabilize our MISURASATA Organization which is made up and organized from within and without Nicaragua". The MISURASATA faction led by Brooklyn Rivera, on the other hand, in addition to the support of the leaders in Costa Rica, appears to have greater international recognition, especially from Indian organizations such as the Indian Law Resource Center.

9. With respect to this dispute, Misurasata (Costa Rica), led by Brooklyn Rivera, has been relatively cooperative with the Commission. Initially, Brooklyn Rivera suggested that the Commission assume a mediating role; however, with the passage of time, this position has gradually been abandoned and at this time its position is that the Commission publish its Special Report on the situation of the Miskitos in Nicaragua. Thus, in a letter dated April 30 of 1983, Brooklyn Rivera stated the following to the Executive Secretary of the Commission:

We wonder when we will see some firm resolution on the part of the IACHR against the FSLN regime, concerning their continuous violations of the human rights of the Indians. It is clearly not just to continue to allow the commanders who use pretext and calumnies to freely continue to commit atrocities against the humble Indians. It is time that the IACHR publicly admit that the commanders are not interested in a friendly settlement with the Indians, and that it publish its report on the situation of the human rights of the Indians in Nicaragua.

10. On the other hand, Misurasata (Honduras), which is now called Misura, and headed by Steadman Fagoth, has been harshly critical of the Commission, and has attributed base motives to it. Thus, in an interview that appeared in Diario Las Américas on October 20, 1982, Fagoth stated "The IACHR does not enjoy either the trust or the esteem of the Indian

populace ... and the IACHR will try to find a ghost representative of the Indians to use in the mass communications media in order to divide the refugee populations, but we can confidently state that Indian unity is indestructible." Later, the Political Committee of Misura, through one of its spokesmen, stated to the Diario La Tribuna of Tegucigalpa, on May 4 of 1983, that: "We recognize no authority in the measures taken by the Inter-American Commission on Human Rights of the OAS because it has conspired with the genocidal Sandinista Regime to force our people to return to Nicaragua and be completely exterminated".

11. The position of the Indian Law Resource Center, stated by its most authoritative spokesman in this matter, Mr. Armstrong Wiggins, has been similar to that maintained by Misurasata (Costa Rica) headed by Mr. Brooklyn Rivera, i.e., in the course of the last few months they have been in close contact with the IACHR, and at present are urging it to abandon its mediating role and publish its report. Thus, Mr. Armstrong Wiggins, in his testimony to the Commission on April 12 of 1983, stated:

We believe that it is time for the Commission to declare that it will no longer continue to act as mediator. The Commission should openly declare that its efforts to promote a friendly settlement have not been successful, and the Commission should invite other institutions, including governments and human rights organizations, to investigate the situation of human rights in Indian territory in Nicaragua.

12. The position of the Moravian Church, both in the United States and in Nicaragua, as stated through authorized spokesmen, continues to be that the Commission should continue to play a mediating role, despite the difficulties encountered. Thus, Mrs. Margaret Wilde, in her testimony to the IACHR on April 12 of 1983, reaffirmed the view of the Moravian Church of the United States that the role of the Commission as mediator has been very positive and that it should continue that role. During a visit to Nicaragua, the Executive Secretary and Dr. Cerna spoke at length with religious authorities of the Moravian Church, such as Bishop John Wilson, Reverend Fernando Colomer, and Pastor Santos Cleban, and were given the impression that they saw the Commission as an important instrument for promoting the observance of human rights, and for that reason it should not abandon its presence in Nicaragua and its relations with the government.

13. The viewpoint of the Government of Nicaragua is that Misurasata cannot be considered a party to this dispute, as it is an organization that has been disbanded and whose principal leaders are currently in exile, and who have taken up arms against the Government.

14. As early as December of 1981, Mr. William Ramirez declared that the Government of Nicaragua was "obliged to withdraw official recognition of Misurasata both because its claims had reached the point of violating national sovereignty and because it had undergone an objective distancing from its bases".

15. The Government of Nicaragua, in its proposal Document to the Commission of August 24, 1982, later responded to the recommendation of the IACHR that Misurasata or another Indian organization be allowed to operate in Nicaragua, in the following terms:

The Government of Nicaragua maintains a position of respect for international agreements signed with respect to human rights, for which reason it guarantees the right of assembly of Nicaraguans, obviously including Indian Nicaraguans. Within this framework, there is already an association of Sumos and organizational structures are being established for Criollos, Ladinos, Ramas and Miskitos. With respect to the return to Nicaragua of the leaders of the disbanded Misurasata organization, the Government of National Reconstruction states for the record that there is no persecution in Nicaragua of leaders for membership in any organization, and it assures all Nicaraguans residing abroad that they may return, with full guarantees.

16. Nevertheless, the Government of Nicaragua later stated that it would not allow the leaders of Misurasata to return because of serious criminal charges pending against them. In a note of January 5, 1983, the Ambassador, Permanent Representative of Nicaragua to the OAS, gave the following reply to the Commission's recommendation that it allow these leaders to return so that they could participate in the process of a friendly settlement:

An unacceptable element has been added, as the Government of Nicaragua is required to provide security and liberty to all those who attend such a meeting, even when there are formal charges against some of them. This requirement by its very nature violates the juridical structure of the State and places the Executive Branch in the position of impeding, should it accept the requirement, the exercise of an autonomous and independent judiciary.

17. The same position was subsequently reiterated in a note dated November 14 of 1983, in which, in reply to the recommendation of the

Commission to hold a Conference with the participation of representatives of the broadest possible sectors of the various communities of Miskito origin, the Government of Nicaragua expressly rejected "the presence of any representative of the Council of Elders, of Mr. Armstrong Wiggins and of the counterrevolutionary Misurasata Organization, guilty of numerous crimes against the people of Nicaragua and instruments of barbarous North American aggression."

18. Thus, the Government of Nicaragua does not allow either of the factions that comprise Misurasata to be considered a party to this dispute: neither that headed by Brooklyn Rivera nor that led by Steadman Fagoth.

19. Who then would be acceptable to the Government of Nicaragua to be a party to the dispute? With which representative sector of the Miskito population could the Government of Nicaragua have a dialogue to seek a settlement to their difficulties? The reply that the Government has given is that contained in the proposal document of August 24, 1982, according to which, once the Miskitos who are now in Honduras are repatriated, under the observance of the IACHR, "the Indian communities would democratically elect the delegates that would meet at the table in conversations with the delegates of the Government of Nicaragua to seek solutions".

20. In the view of the Commission, at this time the proposal of the Nicaraguan Government cannot be implemented. As the IACHR or the staff members of its Secretariat have had opportunity to note on two occasions, at this time the conditions do not obtain that would allow the refugee Miskitos in Honduras to return to Nicaragua, and thus participate in the election of the representatives who would negotiate with the government. On the other hand, even in the hypothetical case that such a return took place, those Miskitos would only represent part of the Miskito population, whose problems and difficulties, as will be seen throughout this report, go beyond the mere question of the return of the refugees to Nicaragua.

21. In view of the above situation, there would be no institution or agency that could truly represent all of the Miskitos, within and outside Nicaragua, and act on their behalf with respect to the matters that concern them.

Under these circumstances, and taking into account the importance of reaching a friendly settlement that can meet the aspirations and interests of those concerned, the Commission considers that although the status of party in this matter cannot be strictly assumed by representatives of a single organization, it is possible to try to obtain the participation of Miskitos to represent their various communities.

22. On this point, the Commission notes the following:

- a. There is no organization in Nicaragua which at this time represents all of the ethnic groups. The Commission has observed, however, that the religious groups that are active on the Atlantic Coast maintain close contact with the Miskito people of that region. Of these religious groups, clearly the most numerous and important is the Moravian Church, although the Catholic and Anglican Churches also maintain a small but relatively important presence in the region. Therefore, the Commission considers, first, that there is a possibility that the religious groups, especially the Moravian Church, could assume representation of the interests of the Miskitos.
- b. A second group whose interests should be represented in negotiations aimed at achieving a friendly settlement is that of the Miskitos who have been moved from their traditional villages and relocated in new settlements. Of these new settlements, those of Tasba Pri appear to be the largest, and according to information provided by the Government, they have already elected their own representatives.
- c. The largest group of Nicaraguans of Miskito origin outside of Nicaragua is that which has taken refuge in various parts of the Gracias a Dios Department in Honduras. The most representative institution that these Miskitos have is apparently the Council of Elders.
- d. It is also necessary to bear in mind that a group of Miskito leaders who continue to claim representation of the Misurasata Organization are refugees in Costa Rica and have assumed an important role in this matter.
- e. Furthermore, the Commission cannot overlook the existence of the Indian Law Resource Center, which formally requested to be considered a party to this dispute, and which through its representative, the Miskito Nicaraguan leader Armstrong Wiggins, has participated actively in this matter.

The Commission considers that the organizations, agencies and persons mentioned above could have acted as counterpart to the Government of Nicaragua in seeking a friendly settlement, as the Commission proposed to the Government of Nicaragua.^{13/} Unfortunately, the Government of Nicaragua's failure to accept any of these organizations and persons has meant that it has not been possible to reach a friendly settlement to the dispute.

N. Attempts to reach a friendly settlement

1. The American Convention on Human Rights, in Article 48 1.f, provides that the Commission, when it receives a petition alleging violation of any of the rights protected under that Convention shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the above-mentioned Convention.

2. In its report of June 26, 1982, the Commission held that not only because of the binding nature of this rule of the Convention, but also and especially because of the very nature of the matter, the Commission was convinced that in the interest of the Government of Nicaragua itself and that of the claimant, Misurasata, the best solution would have been a friendly settlement, arising as a result of negotiations between the authorities of the Government of National Reconstruction of Nicaragua and the Misurasata Organization, with the assistance of the Commission.

3. Mr. Brooklyn Rivera himself, Coordinator General of Misurasata, expressly came to the Commission's headquarters to insist that the Commission play a mediating role in this case that would allow, through an arrangement between the Nicaraguan Government and Misurasata, for satisfaction of the claims and interests of the Miskitos that gave rise to the charges that led to this report. Likewise, in oral or written presentations, organizations such as the Moravian Church of the United States and the Indian Law Research Center, encouraged the Commission to play that role in contributing to a friendly settlement between the Government and the Indian communities concerned, based on respect for human rights.

4. However, the Commission understood that the Minister of the Interior, Commander Tomas Borge, did not accept that initiative in the

13. See the note of the Commission dated September 30, 1983 in the next section.

course of the interview that it held with him on May 3, 1982, when the Commission discussed with him the need to seek a friendly settlement; to this is added the fact that the Misurasata Organization had been dissolved and its chief leaders detained and later forced to leave Nicaraguan territory. All of this led the Commission to consider in this report that, at least at that time, conditions did not obtain for it to assist the parties to the dispute. At the same time, the Commission insisted that it remained at the disposal of the parties when the circumstances were such that a friendly settlement of the matter was possible.

5. Despite the foregoing, the Government of Nicaragua, in its reply of August 24, 1982 to the IACHR report, requested the Commission to assume the role of mediator in a friendly settlement bestowed on it in Article 48 1,f of the American Convention on Human Rights. In that document, the Nicaraguan Government, after studying the conclusions and recommendations contained in the Commission's Report of June 26, 1982, proposed the following procedure for a peaceful settlement:

- a. The IACHR will contact the National Commission for the Promotion and Protection of Human Rights in order to obtain information on its steps, opinions and recommendations with respect to the investigation of the alleged violations of the right to life.
- b. The IACHR will facilitate the repatriation of the Nicaraguans of Miskito origin located in Honduras and involved with these events, through the operation of a commission composed of the IACHR, the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the Governments of Honduras and Nicaragua, which Commission shall be chaired by the IACHR.
- c. After repatriation, and under the observation of the IACHR, the Indian communities will democratically elect the delegates who would meet at the table in conversations with the delegates of the Government of Nicaragua to seek solutions.

6. On September 20, 1982, the Commission, which was meeting in San José, Costa Rica to hold its 57th (special) session, considered the proposal made by the Government of Nicaragua and decided to accept its petition that the Commission place itself at the disposal of the parties

concerned with a view to reaching a friendly settlement. The text of the note of the Commission reads as follows:

Excellency:

I have the honor to address Your Excellency with respect to the Proposal Document of the Government of Nicaragua to the Inter-American Commission on Human Rights, dated August 24 of 1982, in which the Commission is requested "to assume its role as mediator in seeking a friendly settlement in accordance with the American Convention on Human Rights and the Commission's own Statute and Regulations" with respect to the difficulties that have arisen between the Government of Nicaragua and citizens of that country of Miskito origin.

At its 57th (special) session held in the same city, the Commission has carefully studied that document and accepts the petition contained in it to place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for human rights, in accordance with Article 48.1.f of the American Convention on Human Rights. Of course, the Commission will act with the authority and discretion necessary to carry out that task within the limits established in its Statute and Regulations.

To carry out this task, the Commission has appointed a Special Commission made up of the Chairman, Dr. Marco G. Monroy Cabra; First Vice Chairman, Mr. César Sepúlveda and former Chairman, Tom J. Farer. The Special Commission expects to meet as soon as possible with Nicaraguan authorities in order to discuss with them the procedure and other specifics regarding the search for a friendly settlement to all of the matters that involve the observance and respect for the human rights of the Nicaraguan citizens of Miskito origin, in an attempt to reconcile the interests of the parties concerned.

In addition, that Special Commission will contact the representative leaders of the Nicaraguan Miskito communities and the representatives of international agencies that can contribute to the solution of some of the problems that led to the establishment of this Commission.

Naturally, the Commission reserves its discretion to terminate its function should it consider that it is not possible to obtain a friendly settlement.

Finally, I wish to advise Your Excellency that the Commission considers that to be effective in the mediating role that it will assume, the Government of Nicaragua must adopt measures that will make it possible to overcome the difficult relations it has with a considerable sector of the Miskito population. In this regard, the Commission trusts that Your Excellency's Government will be able to comply with such recommendations contained in its Preliminary Report of June 26, 1982, as may be implemented immediately.

I take this opportunity to give Your Excellency the renewed assurances of my highest consideration.

(s) Marco Gerardo Monroy Cabra
Chairman

7. On September 27, 1982, the Government of Nicaragua indicated its satisfaction at the Commission's acceptance of its proposal and at the same time expressed a willingness to discuss procedure and other details of the matter.

8. On September 28 of that year, the Chairman of the IACHR sent a cable, and the Executive Secretary sent a letter advising the United Nations High Commissioner for Refugees of the agreement that had been reached with the Government of Nicaragua, and asked it for its support and assistance. In a cable dated October 25, the United Nations High Commissioner for Refugees expressed its willingness to cooperate with the IACHR in its mediating role on the matter of the Miskito refugees in Honduras.

9. In addition, on October 5, 1982, the Executive Secretary of the Commission, at its direction, advised the Ministry of Foreign Affairs of Honduras of the agreement that the Commission had reached with the Government of Nicaragua. It requested the Ministry, insofar as possible and as deemed appropriate by the Government of Honduras, to provide the assistance and facilities that would be necessary in order to carry out the mission it accepted. The Government of Honduras, in a note dated October 19, 1982, and addressed by the Minister of Foreign Affairs to the Executive Secretary of the Commission, stated its willingness to lend to the IACHR any cooperation requested, although it specified that the Commission should also seek the consent of the Miskito population that had taken refuge in Honduras, which group the Government of Honduras views as "the other party to the dispute".

10. On November 18, 1982, the Special Committee of the IACHR met with Dr. Leonte Herdocia and with Ambassador Edgard Parrales to analyze

the problems bearing on the participation of the Commission in seeking the proposed friendly settlement. As a result of these conversations, the Chairman of the IACHR addressed the Permanent Representative of Nicaragua to the OAS, in a note dated November 22, 1982, to clearly set forth how the IACHR understands its mediating role and what the applicable procedure in this matter should be; at the same time, he pointed to the measures which, in his opinion, should be adopted by the Government and which could contribute to establishing the necessary conditions to allow the Commission to carry out its mediating role. That note reads as follows:

Excellency:

I have the honor to address Your Excellency with respect to the conversations held on November 18 last between representatives of the Government of Nicaragua and members of the Special Commission of the Inter-American Commission on Human Rights (IACHR), during which some of the problems related to the participation of the IACHR in a friendly settlement of the difficulties between the Government of Nicaragua and the citizens of that country of Miskito origin were discussed.

After I reported to the Commission on those conversations, the Commission instructed me to set forth to the distinguished Government of Your Excellency the Commission's understanding of its mediating role and of what the applicable procedure in this matter should be.

Naturally, the Commission wishes to reiterate, as it indicated in its note of last September 28 addressed to the Minister of Foreign Affairs of Nicaragua, that its participation as a mediator in the friendly settlement must include all matters that concern the observance of the human rights of the Nicaraguan citizens of Miskito origin.

Likewise, the Commission wishes to reiterate its viewpoint that, in order to be effective as a mediator, it would be advisable for the Government of Nicaragua to adopt as soon as possible some measures to improve the difficult relations that it has with a considerable sector of the Miskito population.

In this regard, the Commission would be grateful if the Government of Your Excellency implemented the recommendations contained in its report of June 26, 1982, and which may be applied immediately. In particular, the Commission considers

that the following measures could contribute effectively to creating the proper conditions that would allow the Commission to assume its role:

1. To pardon or give amnesty, as the case may be, to all Miskitos who have been detained or convicted of alleged counterrevolutionary activities;
2. To permit the return to the Atlantic coast of Nicaragua of all the clergymen who serve the Miskito population.
3. To facilitate an exchange of information through the International Committee of the Red Cross and the United Nations High Commissioner for Refugees, between the Miskitos residing in Tasba Pri and those in Mococon, in order to contribute to family reunification and voluntary repatriation; and
4. To explicitly state that the relocation of the Miskitos to Tasba Pri was a temporary measure, and that once the emergency is over, those who wish to return to their lands in the Coco River region may do so, with the cooperation and help of the Government.

I would now like to refer to the procedure that should be followed in this complex and difficult matter. In this regard, the Commission would like to suggest to the Government of Your Excellency a procedure with three stages, as indicated below.

First, the Commission hopes that the Government of Nicaragua will inform it in writing in the course of the coming months of all the issues in which it considers that the Commission could intervene to facilitate a friendly settlement. At the same time, the Government of Nicaragua should report in that same document on how it has implemented the recommendations set forth above.

Second, once that document has been received from the Government of Nicaragua, the Commission will contact all of the Miskito leaders, either within or outside of Nicaragua, to whom it has had access in order to determine their opinions on the above-mentioned document and their willingness to cooperate with the Commission in achieving a friendly settlement with respect to all the difficulties they have with the Government of Nicaragua.

Finally, once these stages have been completed, the Commission would sponsor a meeting between representatives of the Government of Nicaragua and representative leaders of the Miskito people, at which they may discuss the basis of a definitive solution with respect to all existing difficulties. The Commission, of course, offers its services to assist the parties at that meeting should they so desire.

Should that meeting be held in Nicaraguan territory, the Commission would naturally require that the Government of Nicaragua give its solemn commitment to guarantee the security and liberty of all the Miskito leaders who attend the meeting, even if there are formal charges against some of them.

I should also like to advise Your Excellency that the Commission has already established contact with the United Nations High Commissioner for Refugees, whose cooperation it has requested in solving some of the various matters which will involve it. The request was explicitly accepted by the High Commissioner in the case that there is a voluntary repatriation of the Miskitos who have taken refuge in Honduras.

Finally, I should like to advise Your Excellency that the Commission considers that it might be useful to have an agreement between the Government of Nicaragua and the Commission, in which it shall be agreed that the Commission shall have all facilities and authority in Nicaraguan territory that may be necessary to carry out its task.

Accept, Excellency, the renewed assurances of my highest consideration.

Marco Gerardo Monroy Cabra
Chairman

11. On December 16, 1982, the Minister of Foreign Affairs of Nicaragua addressed a note to the Executive Secretary of the Commission in which he sets forth several considerations with respect to the participation of the IACHR as a mediator in the friendly settlement. In this note, the Foreign Minister particularly referred to the actions of the Chairman of the IACHR, Mr. Marco Gerardo Monroy Cabra, in the Committee on Juridical and Political Affairs of the twelfth regular General Assembly of the OAS. At the instructions of the Commission, the

Executive Secretary replied to that note in a letter of April 15, 1983, which states that the Commission vigorously rejects the serious and unjustified accusations that call into question the impartiality with which the Chairman had acted, and informed him that in order not to interrupt the achievement of a friendly settlement, Dr. Monroy Cabra had decided to no longer be a member of the Special Commission on this matter.

12. On January 5, 1983, the Ambassador, Permanent Representative of Nicaragua to the OAS, addressed a note to the Chairman of the IACHR in which he considered at length the procedure that the Commission had proposed in its note of November 22, 1982, as well as the recommendations that were put forth at that time. The letter reads as follows:

Mr. Chairman:

I have the honor to address Your Excellency to refer to your letter dated November 22 last, received in this Mission of Nicaragua to the OAS, which makes reference to the conversation held on November 18 last "between representatives of the Government of Nicaragua and members of the Special Commission of the Inter-American Commission on Human Rights (IACHR)", at which the need to work by stages was discussed, for which purpose the Special Commission would submit to the Government of Nicaragua for its consideration some aspects of those stages, aimed at reaching a friendly settlement of the situation of some sectors of Nicaraguan citizens of Miskito origin.

Allow me to point out in this regard that that conversation was preceded by one held in San José, Costa Rica, among the Chairman of the National Commission for the Promotion and Protection of Human Rights in Nicaragua, Dr. Leonte Herdocia, Your Excellency, and His Excellency, Mr. César Sepúlveda, from last September 27 to 29. Those conversations had been held after those held in Washington, last August, with the Executive Secretariat of the IACHR, upon submittal of the Proposal Document of the Government of Nicaragua, aimed at a friendly settlement according to the terms of Article 48, subparagraph 1, f of the American Convention on Human Rights.

On both occasions, and in particular on that in San José, Costa Rica, extensive contact was made with delegates from the UNHCR and the ICRC, and those conversations were a continuation of what had been initiated by the Government of Nicaragua, as stated in a cable addressed to this Honorable

Commission on last June 15, which reported the activities of the UNHCR to the Commission, the former having already made contact with the Nicaraguan citizens of Miskito origin residing in Mocerón. At the same time, we have recently provided a special airplane to the International Committee of the Red Cross so that it may visit the Tasba Pri settlements for three days. On the basis of a special agreement with Mr. Philippe Sargisson, Regional Delegate of the UNHCR, reached at a meeting held with Dr. Herdocia on December 9, in San José, Costa Rica, it was decided to transfer to the International Committee of the Red Cross all of the matters relating to communications between Tasba Pri and Mocerón. Delegates of the ICRC left precisely on the 17th of the same month for Honduras, headed by Mr. François Musy.

With respect to the reiteration of the concepts set forth in your letter of last September 28, which I understand is dated September 20, since we have received no letter dated September 28, with respect to the need for my government to include in the proceedings for a friendly settlement, everything concerning "observance of the human rights of Nicaraguan citizens of Miskito origin", I am pleased to inform you that the Proposal Document submitted by the Government of Nicaragua to the IACHR last August 24 contains a copy of the text of the cables sent on last June 15, signed by the Acting Minister, Mr. Víctor Hugo Tinoco, which reports on implementation on each and every one of the recommendations made by the IACHR, and which also appear in the same text, from pages 10 to 17, of the Proposal Document of the Government of Nicaragua.

It is, therefore, surprising that Your Excellency should again refer to the recommendations, which have already been implemented, and in the context of which I would like to comment on the terms of your communication:

The two-month period that is given to the Government of Nicaragua to "make known in writing all of the issues in which it considers that the Commission could intervene to facilitate a friendly settlement", allow me to recall that page 17 of the Proposal Document indicates three basic ideas on this point, which obviously can and should be elaborated, that the Commission considers most advisable to facilitate its mediating role, since in the numerous conversations that have taken place, although no rigid mechanisms are established, some parameters have been set forth, and we understand that the Commission has some concrete ideas which could be added to the procedure to be carried out by stages.

In this respect, allow me to suggest that one or several members of the Special Commission should make personal and direct contact with the competent officials of the Government of Honduras, and that they should visit the Mocorón camps so that they may effectively help the work being done by the UNHCR and the ICRC, thus making a real contribution to international peace and tranquility in the area.

Second, Your Excellency adds that "once this document has been received from the Government of Nicaragua the Commission would contact all of the Miskito leaders within or outside of Nicaragua, to whom it has access, in order to determine their opinions with respect to that document, and their willingness to cooperate with the Commission in achieving a friendly settlement".

In this regard, allow me to again point out to Your Excellency that p.17, subparagraph C of the Proposal Document of the Government of Nicaragua states the following: "After repatriation, and under the observation of the IACHR, the Indian communities will democratically elect their delegates, who will deal at the negotiating table with delegates of the Government of Nicaragua in seeking solutions."

Finally, Your Excellency states that "should these prior stages be implemented, the Commission would sponsor a meeting between representatives of the Government of Nicaragua and representative leaders of the Miskito people, so that they may discuss the basis that would allow for a definitive solution with respect to all existing difficulties. The Commission, of course, offers its services to assist the parties to that meeting, if they so desire".

In this respect, allow me to inform you that this is precisely the objective pursued by the Government of Nicaragua, in requesting the Commission to assume the role of mediator in a friendly settlement, and election procedures were discussed with Your Excellency and with His Excellency Mr. César Sepúlveda, as well as Mr. Sargisson of the UNHCR.

Finally, Your Excellency adds that "should that meeting be held in Nicaraguan territory, the Commission would naturally require that the Government of Nicaragua give its solemn commitment to guarantee the liberty of all the Miskito leaders who attend the meeting, even if there are formal charges against some of them".

With respect to the foregoing and to the content of your note to which I reply, the impression is given that the Proposal Document submitted by the Government of Nicaragua on last August 24 has not been fully evaluated, and ideas that have already been definitively agreed upon are repeated, although a further element that is unacceptable has been added, since the Government of Nicaragua is required to provide security and liberty to all those who attend that meeting, even if there are formal charges against some of them, a requirement which by its very nature violates the legal system of the State and places the Executive Branch in the position of impeding, should it comply, the exercise of an autonomous and independent Judiciary. In this situation, allow me once again to recall the democratic election procedure suggested on page 17, subparagraph C, of the Proposal Document of the National Government.

Apart from the foregoing consideration, my Government, which has consistently expressed its conciliatory position, reiterates to the Honorable Commission its firm hope that a member of the Commission will visit Nicaragua as soon as possible, with full provision of all necessary facilities, so that the IACHR may carry out its mandate as mediator in a friendly settlement, and interview our Government Junta, to prepare a document for signature, since it is clear that verbal agreements that had been reached are not reflected in your kind letter to which I reply.

The representative appointed to visit Nicaragua could discuss with our authorities the terms of the agreement, which the National Government would be pleased to sign with the IACHR. The discussion could also clarify any matter having to do with the mediating role that the Commission has agreed to assume, for the effective completion of which the Government of Nicaragua reiterates its fullest cooperation, in the certainty that the final settlement of this matter will be not only an effective contribution to international peace and security, but will also be an example to the world of what can be achieved in a framework of cordial relations and through a fruitful dialogue between the State and the highest regional authority in matters relating to the protection and promotion of human rights.

Finally, and as stated by the Foreign Minister of Nicaragua, Father Miguel D'Escoto, in a note of December 16, 1982, addressed to the Executive Secretary, the presence in Nicaragua of a Delegate of the IACHR could and should provide

the information necessary to assess the painful atmosphere of violence unleashed from Honduras in an undeclared war by elements of the National Guard of the genocidal dictator Somoza, with the support of sectors of the Honduran Army and Government, and as is internationally known, also with the support of the current administration of the United States of America.

My Government believes that the suffering undergone by our people because of the violence launched against it should be taken into account in the evaluation of the formula for a friendly settlement, to which I have referred throughout this note.

The situation of Nicaragua, Mr. Chairman, is far from being a normal situation; even the press in the United States has publicized situations relating to this undeclared war, which has cost so much Nicaraguan blood, due to the irresponsibility of a bellicose regime, which does not leave our people in peace and which impedes the exercise of the people's inalienable right to self determination.

I enclose, to form part of the procedure as a whole, a list of Nicaraguan citizens of Miskito origin who were released last December, and I will inform you in a timely fashion of further releases granted due to pardons, which is under study by the National Commission for the Promotion and Protection of Human Rights, for a decision under the terms of the Amnesty Law.

Accept Excellency, the renewed assurances of my highest consideration and esteem.

(s) Edgard Parrales
Ambassador

13. On April 15, 1983, the IACHR which was meeting at its 59th session, addressed the Ambassador, Permanent Representative to the OAS, through its Chairman, advising him that before the Commission adopted a final decision on this matter, it would be advisable to have more complete information, especially with respect to the following points: 1. Who, apart from the Government of Nicaragua, should be considered a party to the dispute?; 2. What was the framework of the dispute?; and 3. To what extent had the Government of Nicaragua complied with the recommendations set forth previously by the IACHR? In turn, the Commission appointed the

Executive Secretary and the Secretariat staff chosen by him to travel to Honduras and Nicaragua in order to make whatever assessments they deemed appropriate. The Government of Nicaragua gave its agreement for the Executive Secretary to travel to that country.

14. In the course of its 60th (special) session, held in June, 1983, the Commission extensively and carefully analyzed the events that had taken place in Nicaragua since November, 1982, with respect to the Miskito population, in order to determine if it was still advisable and feasible to reach a settlement of this matter on the basis of respect for human rights. It also reiterated its request to the Government of Nicaragua to provide further information on certain pertinent points, chiefly in connection with compliance with the previous recommendations of the IACHR.

In the note addressed by the Chairman at the IACHR, Mr. César Sepúlveda to the Foreign Minister, Miguel D'Escoto Brockman, stated:

The Inter-American Commission on Human Rights, at its 60th (special) session, held in Washington, has continued consideration of the subject of seeking a friendly settlement to the difficulties between the Government of Nicaragua and a group of Nicaraguans of Miskito origin.

The results of the observations made during the visit of the special delegation of the IACHR, which with Your Excellency's Government consent was recently made to your country, and an extensive and careful study of the events that took place since November of 1982, have led the Commission to decide that, in order to determine if it is still advisable and feasible to seek a settlement of the matter based on respect for human rights, it would be necessary to have further information from your government on certain relevant points.

For that purpose, the Inter-American Commission of Human Rights would be grateful if the distinguished Government of Your Excellency would inform it, as fully as possible, on how it has complied with the Commission's previous recommendations, as they appear in its reports of June 26, 1982 and the note of November 22 of the same year, addressed by my predecessor, Dr. Marco Gerardo Monroy Cabra, to the Ambassador, Permanent Representative of Nicaragua to the OAS.

In particular, for the purposes indicated in the above paragraph, the Commission would like to know if the investigation has been concluded of the alleged violations of

the right to life of Miskito citizens as a result of the events that took place in the Coco River region at the end of 1981; if previously detained Miskitos are still being released; if the trials now underway in the Supreme Court have been expedited, and if therefore, other Miskitos have already been released.

In general, the Commission is interested in knowing if further actions have been undertaken to create the conditions that would improve the difficult relations of the government with a considerable sector of Nicaraguan citizens of Miskito origin. The Commission is of the view that implementation of the above-mentioned recommendation would make it possible to attain the desired friendly settlement of this dispute.

In order to be able to resolve the question of the participation of the Commission in the friendly settlement as requested, the Commission has decided to grant Your Excellency's Government until September 16, 1983, to submit this important information.

The Commission hopes to receive the full cooperation of the Government of Nicaragua on the matters discussed in this communication which would allow it to satisfactorily carry out the mission that has been entrusted to it.

Accept Excellency, the renewed assurances of my highest consideration.

(s) César Sepúlveda
Chairman

15. On September 16, 1983, the Government of Nicaragua replied to this communication from the IACHR. The note, signed by the Foreign Minister and addressed to the Chairman of the Commission, reviews the process of friendly settlement, and then states the viewpoints of the Nicaraguan Government with respect to implementation of the Commission's recommendations. With respect to the recommendation that it investigate the alleged violations of the right to life of Miskito citizens as a result of the events that took place in the region of the Coco River at the end of 1981, the note merely indicates that enclosed is "the report of the military investigation of the Leimus case, which contains the plan known under the name of Red Christmas, by means of which the armed Somocista counterrevolution attempted to invade Nicaragua from Honduras in the border area of Zelaya Norte, to seize part of our territory and

declare it a liberated zone (seizure of the territory of Nicaragua), and to set up a provisional government that would immediately request the recognition of the governments in the region as well as military support."

That action, adds the Government of Nicaragua:

Would be accompanied by an attempt to sow confusion through propaganda disseminated by a broadcast that is transmitted from Honduras in the Miskito language; many Miskitos, misled, left for that country, manipulated by the former agent of the Somocista security guard Steadman Fagoth Muller, who urged them to invade our territory in support of the Somocista bands that attacked the border populations, which were poorly armed and trained.

It also states that:

The deaths that occurred in Leimus were the consequence of the fierce attacks directed by the counterrevolutionary units that tried to take the town, and finding a group of 14 detainees, accused of collaboration with the counterrevolution, they took advantage of the confusion that prevailed at the time to flee toward the river under crossfire.

And that:

Also enclosed is the judgment of the Judge Advocate's Office of the Sandinista Armed Forces, which investigated the events that took place at the end of December, 1981, which led to a report dated April 2, 1983.

With reference to the matter of the decisions on appeal before the Supreme Court for nullification of the criminal proceedings, the note indicates that it encloses:

A certification of the sentences handed down by the Supreme Court of Justice, and which is in response to the recommendation made by the Commission in its document of June 26, which states: "to declare null and void the decisions made by judge Casaya in the cases of the Miskito Indians accused of counterrevolutionary activities, and to retry the accused with full guarantees of their right to due process. To demonstrate the seriousness of the National Reconstruction

Government, we explained in the Proposal Document for a Friendly Settlement that at that time we could not implement this recommendation because of the obligation to respect the autonomy of the judiciary, and that in accordance with our laws, the Supreme Court of Justice may only annul sentences when the Court's decisions are brought before it through the special remedy of annulment in criminal matters, which is exactly what took place in a large number of cases."

The note also states that:

Orders for releases and pardons have in fact continued to be given. First, allow me to recall Note No. 023/83/M/OAS of January 5, 1983, which our ambassador to the Organization of American States sent to your distinguished predecessor, Dr. Marcos Gerardo Monroy Cabra, which enclosed a list of Nicaraguan citizens of Miskito origin who had been released in December, 1982.

The note adds that release orders for 45 citizens, whose names are included, were subsequently given on August 2, 1983.

Finally, with respect to the wish of the Commission to know if further actions have been undertaken to establish conditions favorable to a friendly settlement, the note of the Foreign Minister states that the following measures seek to attain that purpose:

Creation of a system of minimum security workfarms, where Nicaraguan citizens of Miskito origin who are under investigation or awaiting trial are housed. This newly established system was observed by Dr. Edmundo Vargas Carreño, Executive Secretary of the IACHR, and Dr. Christina Cerna, during their recent visit last June to Nicaragua. The special conditions of nearly complete liberty enjoyed by the Nicaraguan citizens of Miskito origin, accompanied in many cases by their own families who have voluntarily come from the Atlantic coast, and where they receive wages that they never received before for their productive labor, is fully valid only for the Nicaraguans of Indian origin, whatever the charge against them although there are some other detainees who are subject to the same regime.

The Government of Nicaragua has accepted as valid interlocutors the same persons suggested by the IACHR: Bishop John Wilson, Ministers Norman Bent and Fernando

Colomer and the members of the Christian Committee for Peace on the Atlantic Coast, Rev. Sandoval Herrera, Minister of the Moravian Church, Rev. Francisco Baker of the Catholic Church and Rev. Víctor Ordóñez of the Anglican Church.

Furthermore, the Government of Nicaragua has encouraged the Miskito and Sumo leaders to participate in the meetings of the working groups of the UN Commission on Human Rights on Indigenous Peoples, and in fact several delegations have attended such meetings, the last held in Geneva from August 8 onward. The delegation was made up of Oscar Hodgson, Hazel Lau, both Miskitos, and Murphy Almendarez (Sumo). In this regard, I enclose the working document distributed by the International Indian Treaty Council, a nongovernmental organization and advisory body to ECOSOC, category II, which has visited Nicaragua three times.

Moreover, the Junta of the Government of National Reconstruction has approved a special budget for the establishment of an office that will function as a Subcommittee on Human Rights in Puerto Cabezas, with jurisdiction over the entire Special Zone I (Zelaya Norte). Steps are already underway to set up the office with an attorney, a recently graduated law student and the necessary administrative staff, in addition to vehicles for their transportation.

Allow me also to recall that when Dr. Edmundo Vargas Carreño visited Nicaragua, he was given a report of the CNPPDH, lists of detainees and other documents, and he was introduced to 5 people who were found alive and who had allegedly died in the unfortunate events of "Red Christmas", which documents we believe should be studied.

Before closing, allow me to state to Your Excellency that the individuals who were not granted the remedy of annulment because the deadline for appeal had expired, may still exercise the right to bring a special review remedy, and the attorneys who submitted the remedy past the deadline are being submitted to an inquiry initiated by the Supreme Court of Justice.

My government, Mr. Chairman, believes that the measures adopted and the recommendations implemented give the IACHR ample margin to reach the desired friendly settlement. To this effect, the Commission will receive the full cooperation of the Government of Nicaragua in satisfactorily carrying out

the mission that has been entrusted to it, although it considers it to be of greater interest to sponsor a dialogue with Honduran authorities in order to allow the Commission, the UNHCR and the International Committee of the Red Cross to obtain facilities in Honduran territory to investigate in depth the true feeling of the Nicaraguan citizens of Miskito origin who are now there, and who according to our reports would very much like to return voluntarily, since it is well known that there is a number of persons who have been kidnapped and forced to move to Honduras by counterrevolutionary bands that operate in the region.

The note of September 16, 1983, signed by the Foreign Minister, Miguel D'Escoto Brockmann, concludes by stating:

We understand the complexity of the problem, but we also understand that any effort that is carried out to seek the desired friendly settlement will be one of the most valuable achievements of this distinguished body.

16. As stated above,^{14/} the Commission studied this material at length at its 61st session, and before terminating its activities as a mediator in the friendly settlement, it decided to put a concrete proposal to the Government of Nicaragua, which represented "the last effort that the Commission can make after more than a year of active participation...". The note of September 30, 1983, addressed to the Minister of Foreign Affairs of Nicaragua, reads as follows:

Excellency:

I have the honor to address Your Excellency on behalf of the Inter-American Commission on Human Rights in reference to your note of last September 16, in which your distinguished government has been kind enough to report to this Commission concerning implementation of the recommendations made by the Commission in its document of June 26, 1982 and in the communication of November 22 of the same year, with respect to the search for a peaceful settlement to some problems that concern Nicaraguan citizens of Miskito origin.

14. See Section L, page 37.

At its 61st session, the Commission carefully studied this last communication from Your Excellency's government, and has taken due note of the measures adopted and of those proposed for the future with respect to the liberty and other rights of those Miskitos who currently do not enjoy the exercise of such freedoms and rights. Unquestionably, the Commission considers those measures positive, and expresses its gratitude to the Government of Nicaragua for having taken into account some of the recommendations previously set forth by the Commission.

Nevertheless, at the same time, the Commission cannot fail to state that this partial implementation of its recommendations is not sufficient to create the necessary atmosphere of detente that is required in order to overcome the serious difficulties that the Government of Nicaragua still has with a large group of Nicaraguans of Miskito origin.

In light of this, and so that the Commission may effectively carry out the task of mediator in a peaceful settlement, entrusted to it by the American Convention on Human Rights, I have been instructed by the Commission to address Your Excellency in order to set forth the following proposal:

1. The Commission considers it indispensable that a pardon or amnesty be declared that covers all Nicaraguan Indians charged with the commission of crimes against public order and security or any related crime, and who are currently in prison, either serving sentence at the order of a competent judge or court, at the order of the Office of the Attorney General, or detained for purposes of investigation for State security reasons; or who have been released, and are in or outside of Nicaragua, against whom charges have been brought.
2. Once all of the Miskitos who are currently held prisoner are released, a conference should be held between representatives of the Government of Nicaragua and persons representing the broadest possible groups of the various communities of Nicaraguans of Miskito origin, so that, with the presence of representatives of the IACHR and other interested international organizations, that conference can discuss and seek to settle their differences so that the Nicaraguans of Miskito origin may exercise the rights set forth in the American Convention on Human Rights.
3. The agenda of that conference should include the following topics, although this is not necessarily an exhaustive list:

- a. The appropriate means and conditions to allow the Miskito, Sumu, and Rama peoples to participate in the dialogue with the Government of Nicaragua that would be initiated at this Conference, through existing organizations or those to be established, if those peoples so desire;
- b. Participation of the Miskitos and other ethnic groups in national decisions that may concern their interests, as well as in the administration of the Atlantic coast region;
- c. Procedure and mechanisms for granting compensation to the close relatives (parents, children and spouses) of those who died as a result of the conflict, as well as to those who have been physically impaired for the same reason;
- d. Ways to guarantee that the Miskitos and other Indian peoples may exercise the right to assembly and association, and the right to freedom of expression and information;
- e. Ways to guarantee that the Miskitos and other Indian peoples of the Atlantic coast region may exercise the right to transit, residence and movement in that region and in the rest of the country;
- f. Establishment of mechanisms to allow the Miskitos who wish to do so to return to the Coco River region, when the emergency is over;
- g. Mechanisms that would allow the repatriation or voluntary resettlement of any Miskito now in Nicaragua to the refugee camps in Honduras, or from those camps to Nicaragua for purposes of family reunification;
- h. Improvement of communications between the Miskitos who reside in Nicaragua and those who have taken refuge in Honduras, for which it will be desirable to have the cooperation of the International Committee of the Red Cross and the the United Nations High Commissioner for Refugees in the course of the conference;

- i. Establishment of procedures and mechanisms to compensate the Miskitos for the loss of their homes, crops, livestock or other belongings when they were evacuated from their villages;
 - j. Study of a solution to the problem of the Indians' ancestral lands that would take into account both the aspirations of the Indians and the economic interests and territorial unity of the Republic;
 - k. Study of means to promote and guarantee respect for the cultural identity of the Indian peoples of the Atlantic coast region.
4. The above-mentioned conference would be organized as follows:
- a. It would be held in a place chosen by the Government of Nicaragua;
 - b. It would be held as soon as possible, but not later than during the first quarter of 1984;
 - c. The Government of Nicaragua would be represented by the highest level officials;
 - d. The following institutions and persons would act as counterpart to the Government of Nicaragua:
 - i. A representative of the Moravian Church of Nicaragua;
 - ii. A member of the Catholic clergy, appointed by the Apostolic Administrator of Puerto Cabezas;
 - iii. An Indian clergyman to represent the Anglican Church;
 - iv. A representative of the various Tasba Pri settlements;
 - v. A member of the Council of Elders, representing the Miskitos who have taken refuge in Honduras;
 - vi. A leader in representation of Misurasata.

In addition to these six people that would represent the institutions that have been mentioned, the Commission considers that the participation in the above-mentioned conference of the following three Miskito leaders, who have maintained an ongoing concern in the matter, would be useful: Rev. Fernando Colomer, Mr. Norman Bent and Mr. Armstrong Wiggins.

- e. Through its appointed representatives, the Commission would participate in the conference under the terms of the mission that it is carrying out as mediator in the friendly settlement.
- f. The United Nations High Commissioner for Refugees and the International Committee of the Red Cross would participate in the conference as observers.
- g. The Executive Secretariat of the IACHR would act as Technical Secretariat of the Conference.
- h. At the conclusion of the conference, a report would be drawn up of its decisions, which would be implemented by the Government of Nicaragua through its legal system; but until they are so implemented, they should be carried out in good faith.

5. It is the view of the Commission that in order for this proposal to be effective, the release of all Miskitos held prisoner for reasons of public order should be effected by November 15, 1983, and the Government of Nicaragua should inform the Commission by that date as to whether or not it accepts this proposal, and it should indicate the place and date of the conference, which in any case, as stated, should take place no later than during the first quarter of 1984.

The Commission, in view of the terms set forth in the communication of Your Excellency of last September 16 and of the repeated intentions expressed by high-ranking officials of the Government of Nicaragua to reach a friendly settlement with the Nicaraguans of Miskito origin with whom it has difficulties and differences, harbors the hope that the Government of Your Excellency will express its agreement with the proposal set forth in this note.

This proposal represents the last effort that the Commission can make after over a year of active attempts to

bring about the desired friendly settlement. For that reason, should the Government of Your Excellency not accept this proposal, the Commission would have no alternative, under the terms of the pertinent norms of the American Convention on Human Rights, but to consider terminated its participation as mediator in the friendly settlement, and to publish the report that it is preparing on the situation of human rights of the Miskito Indians of Nicaragua.

While awaiting a prompt and favorable reply, I take this occasion to reiterate the assurances of my highest consideration.

(s) César Sepúlveda
Chairman

17. The Government of Nicaragua, in a lengthy communication dated November 14, 1983, addressed by the Vice Minister of Foreign Affairs, Mr. Víctor H. Tinoco, to the Chairman of the Commission, Mr. César Sepúlveda, stated, in sum, that the serious crisis that affected the Central American region and Nicaragua in particular impeded it from immediately or in the short term implementing some of the recommendations made by the IACHR. In particular, the Nicaraguan Government stated that it was impossible to establish a deadline for the issuance of an amnesty decree for Indians detained for security reasons--a measure which it conditioned upon "cessation of aggression"--and the impossibility of accepting participation in the conference proposed by the Commission of "those persons who act as leaders in the aggression against the Nicaraguan people".

The pertinent parts of that communication are as follows:

The Government of National Reconstruction is pleased to note that the measures that it has adopted within the framework of the procedures for a Friendly Settlement with respect to matters concerning the minority ethnic groups in Nicaragua, have merited from the Commission "...its gratitude to the Government of Nicaragua for having taken into account some of the recommendations that it had set forward..." In addition, my Government is pleased to note that "the Commission considers those measures to be positive".

Nevertheless, my Government must bring to the attention of the Commission the serious crisis that affects the Central

American region and Nicaragua in particular, which is a fundamental and insuperable factor that impedes immediate implementation or implementation in the short term of some of its recommendations.

Your Excellency is certainly not unaware of the aggression against my country as a result of the policy of the US Administration which, through so-called "covert operations", has led, armed, financed and trained mercenary groups that are composed mostly of former members of the genocidal Somocista guard, for the purposes of destabilizing and destroying the Sandinista People's Revolution. For that purpose, the US Government uses Honduran territory as a base and refuge for such armed bands, with the open complicity, if not direct participation, of some civilian authorities and the Army of Honduras.

Within this context, my country is involved in a war which, while not officially declared by the US Government, has brought tragic consequences including the assassination of more than 786 Nicaraguans in this year alone, the genocide committed against the populations of such towns as Pantasma, the attack on Puerto Cabezas, Puerto Benjamín Zeledón, the customs post of Peñas Blancas and El Espino and other civilian, economic and productive targets, with a high cost in human lives and the loss of over \$103 million. The scope of these criminal actions became apparent to the international community with the despicable and inhumane attack on Port Corinto, carried out on October 10, 1983, by groups armed and trained by members of the Central Intelligence Agency (CIA), which endangered the lives of over 30,000 persons, and forced an immediate evacuation of the inhabitants of the port.

At the same time, I wish to point out to Your Excellency that the real dangers that threaten peace in Central America have been recognized by the international community with alarmed concern. As Your Excellency will recall, Resolution 530 of the Security Council of the United Nations of May 19 of this year deals with the problem in Central America with specific reference to the potential conflict of incalculable proportions that may erupt between the states of Honduras and Nicaragua, on whose borders some of the events under the consideration of the Commission took place, and which made an appeal to the concerned countries to lend their full support to the efforts made by the Contadora Group. Given the dangers that it poses for regional and world peace and

security, the Central American problem that was included on the agenda of the Thirty-eighth General Assembly of the United Nations, which approved, by consensus, a resolution which points out the seriousness of "the attacks launched from abroad and directed against strategic installations in Nicaragua, such as airports and seaports, energy depots and other targets, the destruction of which would seriously affect the economic life of the country and endanger dense population areas". With special attention, allow me to remind Your Excellency of the resolution issued by the Subcommittee for the Prevention of Discrimination and Protection of Minorities, which states in one of its paragraphs its concern "...over the numerous fatal incursions of armed groups from a neighboring country sustained by an external force..." and the condemnation of "... these events that seriously affect the right to self determination of the Nicaraguan people...".

Under these circumstances, it would be a serious misreading of history to require implementation of certain recommendations by a precise date, since the conditions under which my country lives as a result of aggression are not only worsening, but the risks of direct or indirect intervention in Nicaragua by the US Government are becoming greater. As Your Excellency knows, my government has repeatedly denounced the plans of the US Administration to create the conditions that would allow open aggression against my country. The recent invasion of Grenada by US troops, the presence of warships along our coasts, and the reactivation of the Central American Defense Council (CONDECA), are factors that heighten the apprehension of my government with respect to an imminent invasion.

At this historic time for Central America, the central concern of my government lies almost exclusively in seeking peace and in preparing for defense against the aggressions suffered daily by the people of Nicaragua. Your Excellency will understand that, in the face of the strong possibility of intervention in Nicaragua, the primordial and fundamental obligation of our officials is to safeguard the lives of thousands of Nicaraguans.

In the framework of the background that I have sketched for Your Excellency, I wish to inform you that I have very carefully studied the interesting proposals that you put forth in your above-mentioned note, some of which are unquestionably a notable effort on the part of this eminent

body to bring about the desired friendly settlement. Nevertheless, the tragic circumstances of my country do not appear to have been taken into consideration in the formulation of some of the proposals.

Having made the foregoing observations of a general nature, I believe it advisable to proceed with a study of the concrete proposals put forth by the Commission, in the spirit that moves my government to seek commonly-agreed-upon formulas to support the noble mission entrusted to the IACHR.

With respect to the first proposal, supplemented with the deadline contained in point 5, on the need to decree "a pardon or amnesty that would cover all Indians..." that "should be effected by November 15, 1983," allow me to recall that in a note of September 16 of this year, the Foreign Minister of Nicaragua, Miguel D'Escoto, informed the Commission that he was authorized "...to state to Your Excellency that this Amnesty Decree will be issued by the Government of Nicaragua when the new aggressive escalation has ended, and the more concrete fruit of the noble and renewed efforts of the Contadora Group, to which my government has given its full support", are to be seen. As Your Excellency has been able to ascertain, the escalation in aggression against Nicaragua has not only increased noticeably, but the dangers of a regional conflagration seriously threaten international peace and security. Under these circumstances, the Government of Nicaragua reiterates its full political wish to grant a pardon or amnesty, but one which can be subject to no other condition than termination of the aggression against my country.

I have already reported to the Chairman the various measures adopted by my country in order to bring about the release of numerous detainees of Miskito origin, the most important of which I summarize below:

- a. In Note No. 023/83 MPN/OAS of January 5, 1983, our Ambassador to the OAS reported to the Commission that 59 prisoners had been released.
- b. In the above-mentioned note of September 16 of this year, the Commission was advised of the release of 45 detainees, and the note enclosed the Draft General Amnesty Decree for all Nicaraguans of Miskito, Sumo, Criollo or Rama origin, without exception. This same note also enclosed

certification of the sentences handed down by the Supreme Court of Justice in which several court decisions were nullified, to the benefit of over 100 defendants.

- c. In a note of September 26 of this year, our Ambassador to the OAS reported to the Commission that a pardon had been granted to 18 Miskitos on the basis of the decision of the National Commission for the Promotion and Protection of Human Rights, and that a Resolution on 24 detainees listed in the decision is pending in the Council of State.

In addition, my government is studying the possibility of applying temporary measures to some Miskitos, which would consist of "house arrest" with authorization to work, in accordance with Decree No. 1230 which amends the Ley de Gracia.

With respect to the proposals contained in paragraphs 2-4 and the last part of 5, I bring to Your Excellency's attention the strong interest of my government, indicated to the Commission in topic 4, subparagraph c of the Proposal Document for a Friendly Settlement of the Government of National Reconstruction, in holding conversations with representative groups of the Indian communities. In a note of September 16 of this year, information was transmitted to Your Excellency to the effect that the Government of Nicaragua accepted as valid interlocutors "Bishop John Wilson, Pastors Norman Bent and Fernando Colomer and the members of the Christian Committee for Peace in the Atlantic Coast, Rev. Sandoval Herrera, Pastor of the Moravian Church, Rev. Francisco Baker of the Catholic Church, and Rev. Víctor Ordóñez of the Anglican Church". My government accepts the proposal to include a representative of the various Tasba Pri settlements; however, it categorically rejects the presence of a representative of the Council of Elders, of Mr. Armstrong Wiggins and of the counterrevolutionary Misurasata organization, guilty of numerous crimes against the people of Nicaragua and instruments of the barbaric US aggression against my country. My government considers the attendance of the UNHCR and the ICRC in the scheduled conversations to be very positive, as is that of the distinguished Inter-American Commission on Human Rights in its capacity as mediator in the friendly settlement procedure.

For its part, the Government of Nicaragua urges the Commission to make new efforts with the Honduran authorities so that the Nicaraguans who involuntarily remain in that territory may return to Nicaragua with the full guarantees of the Government of National Reconstruction.

Mr. Chairman, although my government accepts most of the proposals put forward in your above-mentioned note, I wish to reiterate our fundamental objections, which can be summarized under two headings:

- a. The impossibility of establishing a deadline for approval of the Amnesty Decree, which will definitively depend upon the cessation of aggression against my country, a factor that lies outside the good will so often demonstrated by my government, and
- b. The impossibility of including in the conference those persons who act as leaders of the aggression against the Nicaraguan people.

My government deeply regrets that the Honorable Inter-American Commission refers in its above-mentioned note to the possibility of "...terminating its activities as mediator in a friendly settlement procedure and publishing the Report that it is preparing on the situation of human rights of the Miskito Indians of Nicaragua".

Subsequently, in the note of November 14, 1983, the Government of Nicaragua put forth several considerations with respect to the procedure that the Commission should apply in this matter, in accordance with its interpretation of Articles 50 and 51 of the American Convention on Human Rights.

The note signed by the Vice Minister of Foreign Affairs ends by pointing out:

In ratifying the full political will of my government to maintain an ongoing and fruitful dialogue with the Honorable Commission, I wish to underline the historic importance of the friendly settlement procedure for the matters connected with the ethnic minorities in Nicaragua, since the challenges and difficulties posed by the complexity of the problems require the most disinterested and renewed efforts in search

of appropriate mechanisms, that take into account the aggression and imminent intervention in my country, with a view to reaching a friendly settlement which unquestionably will give enlightenment to other processes of ethnic understanding in Latin America.

18. In view of the terms of the above-cited note of the Government of Nicaragua and in conformity with the decisions adopted at its 61st regular session, the Commission had no alternative but to terminate its activities as mediator in seeking a friendly settlement to this matter. This was stated by the Chairman of the Commission, César Sepúlveda, in a note of November 29, 1983, addressed to the Minister of Foreign Affairs of Nicaragua, in which he states that the circumstances invoked by the Government of Nicaragua "...lead the IACHR to the necessary conclusion that at this time there is no possibility of carrying out its task. All of the parties involved in the conflict are affected in some way by these dramatic circumstances, and it is not possible to reconcile them at this time. For that reason, the Commission has instructed me, in light of this situation, to terminate its activities as mediator in the friendly settlement procedure." The note of the Chairman of the IACHR adds:

Finally, the Commission wishes to place on the record the continuing efforts that it made since accepting the honorable mission that the Government of Nicaragua entrusted to it to act as mediator in a friendly settlement procedure, and regrets that circumstances beyond its control and beyond the control of the Republic of Nicaragua have prevented it from attaining its desired goal.

Of course, the Commission states its continued willingness, once the present circumstances have been overcome, for the Government of Nicaragua to turn to it, if it so desires, to contribute to the solution of the pending problems in the area of human rights that affect that Republic.^{15/}

15. By cable dated November 29, 1983, the Foreign Minister of Nicaragua informed the Chairman of the Commission that the Government of Nicaragua had declared a general amnesty on behalf of the Miskitos. Further, by cable dated April 28, 1984, the Foreign Minister of Nicaragua communicated to the Chairman of the IACHR that the Government of Nicaragua had expressed its agreement, in principle, regarding the holding of the proposed conference, but that, due to the circumstances prevailing in Nicaragua it could not be convoked immediately. Further, he expressly rejected the participation of certain leaders in the mentioned Conference.

PART TWO

THE RIGHTS WHICH THE GOVERNMENT OF NICARAGUA IS ALLEGED TO HAVE VIOLATED

A. The facts of the controversy

1. Part Two of this report will set forth the events which have affected a part of the Nicaraguan population of Miskito origin from December of 1981 to September of 1983, i.e., until a few days prior to the adoption of this Report.
2. These events have been analyzed in the light of the norms of the American Convention on Human Rights, to which Nicaragua is a party, especially those that guarantee the following rights: to life, to personal liberty, to personal security, to due process, to residence and movement, and to property.
3. The Commission will also study the complaints put forward by a group of Indian leaders with respect to the special rights of the ethnic groups that inhabit the Atlantic coast region of Nicaragua.
4. With respect to the right to life, the Commission, while not unaware of other accusations made against the Government of Nicaragua with respect to this right, will concentrate chiefly on the events that took place in December of 1981 in the Miskito villages of San Carlos, and in particular, of Leimus, to determine whether the actions taken by the Sandinista Army constitute a violation of the right to life.
5. Given the interrelation between the rights to personal liberty, personal security and due process, they will be considered jointly in the light of the following facts: a) the detention of Miskitos in San Carlos in December of 1981 and other detentions and restrictions of personal liberty that took place in 1982, and the first half of 1983; b) the imprisonment of Miskitos in Puerto Cabezas and Managua; c) the charges brought against the detained Miskitos; d) the release of Miskitos; and e) the disappearances of Miskitos.
6. With respect to the right to residence and movement, three major situations have concerned the Commission: a) the compulsory relocation of approximately 8,500 Miskitos from their villages in the Coco River region to five settlements located in the interior of the Zelaya Department, known as Tasba Pri; b) the compulsory relocation of approximately 4,000 Miskitos from their villages in the region of the Coco River and the Bokay River, to the Department of Jinotega, to new settlements in the interior of that Department; and c) the repatriation of Miskitos of Nicaraguan origin who are currently refugees in Honduras.
7. Finally, with respect to the right to property, the Commission will study two very different complaints which have been submitted. The

first refers to the destruction of the houses, personal belongings and crops of the Miskitos, as well as the slaughter of their animals, while the Miskitos were being relocated; the other complaint has to do with ancestral lands which, according to certain Indian institutions, belong to the Miskitos as a people.

8. The IACHR is certainly not unaware that the facts indicated above represent but one demonstration, and a partial one, of the general situation which is broader and more complex. Nevertheless, the Commission has limited its study to these events and to their relation to the norms of the American Convention on Human Rights, since they alone comprise the matter on which the Commission may give an opinion, in accordance with the legal norms that govern its activity.

B. Special protection of the Miskitos as an ethnic group

1. There are a number of international instruments that uphold special rights for certain ethnic and racial groups.

Nevertheless, the American Convention on Human Rights only guarantees individual rights, "...without any discrimination for reasons of race, color, sex, language, status, birth, or any other social condition" (Article 1). However, the same Convention indicates that the provisions of the Convention cannot be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State party or by virtue of another convention to which one of the said states is a party" (Article 29, subparagraph b).

2. Nicaragua, in addition to being a party to the American Convention on Human Rights, is also a party to the International Covenant on Civil and Political Rights, which expressly sets forth certain rights with respect to ethnic groups. In effect, Article 27 of the Covenant states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

3. That article of the International Covenant on Civil and Political Rights reaffirmed the need to protect ethnic groups, since it was important to establish additional protection for them beyond that granted to the nationals of a state, in order to bring about true equality among the nationals of that state.

4. In a UN debate on Article 27 of the Covenant, the difference between the concepts of "equality and nondiscrimination" and "protection of minorities",¹ was emphasized, and the following distinction was made:

1. UN Secretary General: The Main Types and Causes of Discrimination, UN Publ. 49.XIV.3, paragraphs 6-7.

The prevention of discrimination means impeding any conduct which denies or restricts the right of a person to equality.

The protection of minorities, on the other hand, although also based on the principles of equal treatment of all peoples, requires a positive action: a concrete service is offered to a minority group, such as the establishment of schools in which education is given in the native language of the members of the group. Such measures, clearly, are also based on the principle of equality: for example, if a child is educated in a language which is not his native language, this can mean that the child is treated on an equal basis with other children who are educated in their native language. The protection of minorities, therefore, requires affirmative action to safeguard the rights of minorities whenever the people in question (the parents in the case of minors) wish to maintain their distinction of language and culture.

At this time, Article 27 is interpreted to mean that the States Parties are obligated to allow persons who belong to those groups to enjoy their own culture, to profess and practice their own religion, and to use their own language.

5. In addition to the above-mentioned Article 27 of the International Covenant on Civil and Political Rights, other UN General Assembly resolutions 2/ and other international instruments 3/ have also granted special protection to ethnic groups.

2. The UN General Assembly has adopted some resolutions on minorities or ethnic groups, such as Resolution 217 C of the General Assembly (III), of December 10, 1948, in which the United Nations declared that it "cannot remain indifferent to the fate of minorities" and that "it is difficult to adopt a uniform solution to this complex and delicate issue, which presents special aspects in each state where it arises"; and resolution 532 B (VI) of February 4, 1952, in which the General Assembly stated its opinion that "the prevention of discrimination and the protection of minorities constitute two of the most important aspects of the positive work undertaken by the United Nations".

3. The Convention on Combatting Discrimination in Education (UNESCO) of 1960, in Article 5, recognizes "the right of all members of national minorities to carry out educational activities of their own, among them, that of establishing and maintaining schools, and according to the policy of each state on education, to use their own language".

6. With specific reference to Indian populations, on the other hand, the codification and progressive development of international law has been relatively scant.^{4/}

7. It should also be considered whether or not ethnic groups also have additional rights, particularly the rights to self-determination or political autonomy.

8. In his presentation to the Commission, Mr. Armstrong Wiggins stated that the Indian peoples of Nicaragua had the right to full self-determination. In part of his statement, Mr. Wiggins stated the following:

The right to self-determination applies to all peoples, including the Indian population of Nicaragua, which possesses territory with defined borders, a permanent population, a government and the capacity to establish external relations.

Mr. Armstrong Wiggins also stated this viewpoint in his article titled "Nicaragua: A Perspective" (Akwasne Notes, Spring, 1982). A similar view was set forth by the Coordinator General of Misurasata, Mr. Brooklyn Rivera, in a document of April 8, 1982, submitted to the Commission, although Mr. Rivera expressly denies a secessionist intent on the part of the Indian peoples of the Atlantic region of Nicaragua.

Messrs. Wiggins and Rivera claim that if the territorial and political autonomy of the Indian population is not recognized, their traditional way of life and their cultural identity would be destroyed, since the exercise and enjoyment of the right to a language, culture and religion are meaningless without the right to self-determination.

9. The present status of international law does recognize observance of the principle of self-determination of peoples, which it

4. In this respect, the only significant instrument is Convention No. 107 of the International Labor Organization on the protection and integration of Indian populations and other tribal and semi-tribal populations in independent countries, which establishes that "it shall be the obligation chiefly of governments to carry out coordinated and systematic programs to protect the populations in question and progressively integrate them into the lives of their respective countries", and it states that until this occurs, "special measures should be adopted to protect the institutions, persons, property and labor of the populations in question, as long as their social, economic, and cultural status prevents them from benefitting from the general legislation of the country of which they are nationals". However, there has not been a significant number of ratifications of that agreement, and Nicaragua has not ratified it.

considers to be the right of a people to independently choose their form of political organization and to freely establish the means it deems appropriate to bring about their economic, social and cultural development. This does not mean, however, that it recognizes the right to self-determination of any ethnic group as such.

10. In the debates of the Third Committee of the General Assembly of the United Nations on the scope of the right to self-determination, some delegates argued that the broadest interpretation should be adopted to prevent domination of weak peoples by powerful nations.

However, the Delegate of New Zealand reflected the majority viewpoint when he indicated that the principle of self-determination was:

Opposed to the idea of colonialism, and related to the wishes of the majority occupying an area or territory, and should not be confused with the rights of minorities scattered within a territory who could be seeking equal treatment with the majority, but not political separation. The Convention on Human Rights would, without doubt, be interested in establishing equal treatment for each person included in those minorities, but this should not be confused with the broader issue of political separation, which involves serious political, constitutional, economic, social and financial considerations, in sum, the capacity for self-government.^{5/}

Several states held the opinion that recognition of the right to self-determination of minorities would promote subversion and would finally lead to separation. Consequently, it was agreed that self-determination should be harmonized with the other principles of equality under the law, sovereignty, territorial integrity and political independence that are set forth in the Charter of the United Nations.

The Delegate of Iran expressed the prevailing viewpoint that national sovereignty and territorial integrity could not be undermined under the pretext of exercise of the right to self-determination:

If self-determination is abused and considered as an absolute right, the only result is anarchy. The right can only be considered within the limits of national sovereignty. It cannot be used to undermine the sovereignty of a state over its territory or natural resources; recourse to the right of self-determination to incite dissident minorities to rise up against the state or to endanger its stability would be as contrary to the true spirit of the right of self-determination as aggression or subversion itself. Nevertheless, as history has shown, groups with

5. UN Doc. GAOR, 3rd Committee, page 321. (1952).

subversive and aggressive objectives have been used by foreign powers to overthrow the governments of countries whose territory they wish to occupy. Many independent countries have been the victims of irresponsible groups that have been incited to destroy the national unity of their own country. Moreover, the right to self-determination should never be confused with the right to secession. Secession is not the result of respect for the right to self-determination, but rather the disregard for fundamental human rights in the absence of free consent of peoples to the exercise of the right of self-determination... [no] country represented on the Committee would exist if every national, religious or linguistic group had the absolute and unlimited right to self-determination.^{6/}

With the adoption in 1960 of Resolution 1514 (XV) on the Declaration on the Granting of Independence to Colonial Countries and Peoples, the principle of self-determination was identified by the United Nations with the liberation struggles of colonial peoples in non-metropolitan territories.

Resolution 2625 (XXV), titled Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, developed the principle of equal rights and the self-determination of peoples, and stated:

That the establishment of a sovereign and independent state, free association or integration with an independent state or acquisition of any other freely chosen political status by a people constitutes that people's means of exercising the right to self-determination.

At the same time, the above-mentioned statement expressly affirmed that the right to self-determination could never be interpreted ...in the sense of authorizing or encouraging any action aimed at breaking up or undermining, totally or partially, the territorial integrity of sovereign and independent states that conduct themselves in conformity with the principle of equal rights and the self-determination of peoples described above, and which are, therefore, possessed of a government that represents the entire people to whom the territory belongs, without discrimination by race, creed or color.

Every state shall abstain from any action aimed at the partial or total breaking up of the national unit and the territorial integrity of any other state or country.

6. UN Doc. A/C.3/SR.888, 13 GAOR 3rd Committee, page 257 (1888 Session. 1958).

11. The above does not mean, in this case, that the absence of a right to political autonomy or self-determination on the part of the Miskitos, Sumos and Ramas of the Atlantic coast grants the Government of Nicaragua an unrestricted right to impose complete assimilation on those Indians.

12. The Government of Nicaragua itself initially followed a policy of preservation of the cultural values of the Indian populations. In effect, the Declaration of the Principles of the Sandinista Peoples' Revolution on Indian communities of the Atlantic coast, of August 12, 1981, establishes in operative paragraph 3:

The Government of National Reconstruction supports the preservation of different cultural forms, and grants the Miskito, Criollo, Sumo and Rama communities of the Atlantic coast the necessary means to promote their own cultures, including the preservation of their language.

Furthermore, in April, 1980, as stated earlier, a position was assigned on the Council of State to the Indian organization of Misurasata.

13. Nevertheless, as was also explained, serious difficulties soon began to arise between the Indian population and the Government, which first took the form of detention of the Misurasata leaders, and then the dissolution of that organization, culminating in the disintegration of the Miskito communities that inhabited the Coco River region.

14. In the view of the Commission, for an ethnic group to be able to preserve its cultural values, it is fundamental that its members be allowed to enjoy all of the rights set forth by the American Convention on Human Rights, since this guarantees their effective functioning as a group, which includes preservation of their own cultural identity. Particularly relevant are the rights to protection of honor and dignity; freedom of thought and expression; the right of assembly and of association; the right to residence and movement and the right to elect their authorities.

15. Although the current status of international law does not allow the view that the ethnic groups of the Atlantic zone of Nicaragua have a right to political autonomy and self-determination, special legal protection is recognized for the use of their language, the observance of their religion, and in general, all those aspects related to the preservation of their cultural identity. To this should be added the aspects linked to productive organization, which includes, among other things, the issue of the ancestral and communal lands. Non-observance of those rights and cultural values leads to a forced assimilation with results that can be disastrous. For that reason, the Commission considers that it is fundamental to establish new conditions for coexistence between the ethnic minorities and the Government of Nicaragua, in order to settle historic antagonisms and the serious difficulties present today. In the opinion of the IACHR, the need to preserve and guarantee the observance of

these principles in practice entails the need to establish an adequate institutional order as part of the structure of the Nicaraguan state. Such an institutional organization can only effectively carry out its assigned purposes to the extent that it is designed in the context of broad consultation, and carried out with the direct participation of the ethnic minorities of Nicaragua, through their freely chosen representatives.

C. The Right to Life

1. With respect to the right to life, which the American Convention guarantees in Article 4,^{7/} the Commission will refer in this section to the events that took place in December, 1981, in the villages of San Carlos and Leimus, on the banks of the Coco River, and which led to an undetermined number of deaths.

2. The fact that the IACHR gives special attention to these events does not mean that they are the only ones that have been found to conflict with the observance of the right to life; it is due to the fact that in one case, certain facts denounced as violations of this right were studied by the IACHR, which reached the conclusion that such violations did not take place. With respect to the other incidents, the Commission has not had sufficiently persuasive information to reach a final decision. Finally, two situations in which there were or may have been losses of human lives have been considered by the IACHR with respect to rights other than the right to life, for reasons that will be set forth below.

3. One of the communications that the IACHR received at the beginning of this matter alleged that during the compulsory relocation of the Miskitos to the Tasba Pri settlements, a considerable number of people

7. Article 4 of the Convention establishes: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. 2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply. 3. The death penalty shall not be reestablished in states that have abolished it. 4. In no case shall capital punishment be inflicted for political offenses or related common crimes. 5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. 6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

died.^{8/} The Commission inquired about these facts with the refugee Miskitos in Mocorón, who, unlike their descriptions of what took place in San Carlos and Leimus, could not give a precise description of the events. Furthermore, the Commission privately spoke on two occasions with dozens of inhabitants of the Tasba Pri settlements who had participated in the relocation. Although several of them had severely criticized the Government, none stated any knowledge of any deaths during the course of the relocation.^{9/} This testimony and other information available to the IACHR, failed to confirm the charges that there had been deaths in the course of the relocation of the Miskitos to the Tasba Pri settlements, although that relocation was not carried out in a peaceful, orderly and uneventful fashion, as was claimed by some Nicaraguan officials.

4. After adopting its report of June 26, 1982, the Commission received information that a number of violent actions had been committed in the second half of 1982 and the first half of 1983 in several villages of the northern part of the Zelaya department, leaving dozens of Miskitos dead. According to this information, those acts of violence took place in the following villages populated by Miskitos: Karata, Landing, Yulu, Dakban, Sandy Bay (which includes 14 closely situated villages some 30 miles north of Puerto Cabezas), Limbaikan, Alamikamba, Seven Benk, Tilba, Musawas, Kuabal, Tasbapaúni and Holoover.

The Government has not denied that there were acts of violence committed in those villages as a result of which some Miskito inhabitants died, as did soldiers of the Sandinista Army, but it has stated that all of them died in the course of the fighting which took place in that zone.

The members of the Commission's Secretariat who visited the zone in June, 1983 sought unsuccessfully to discover what took place in those villages. Thus, interviews held with the inhabitants produced no results, as was the case in the town of Yulu, despite the fact that these interviews were held in the presence only of Moravian pastors who served as interpreters. Under these circumstances, the Commission does not find itself in a position to affirm, or to deny, that these deaths are attributable to governmental authorities in violation of Article 4 of the American Convention on Human Rights.

5. The Commission cannot omit the fact that on December 9, 1982, 75 Miskito children and nine of their mothers died when the helicopter in which they were being evacuated to San José de Bokay from their homes in the border zone with Honduras, near the Coco River and the Bokay River, in the Department of Jinotega, caught fire. Although the Commission finds it a regrettable accident, this does not mean that the Government of Nicaragua is exempt from responsibility, as will be seen when the right to residence and movement is discussed.^{10/}

8. In his statement to the Commission, Mr. Steadman Fagoth stated that "at least 393 Miskitos were killed" in the course of the relocation.

9. The testimony of one of those inhabitants with respect to this matter is transcribed on page 92.

10. See Section E of this Chapter, Subsection b) "New evacuation of Miskitos from the Coco River and the Bokay River to settlements in Jinotega".

6. Finally, the IACHR has decided to consider the alleged disappearances of Miskitos, which supposedly took place in recent months, in the section on the right to liberty and personal security, and not in this section on the right to life. The Commission made this decision because it believes that those disappearances are not the result of a Government policy of exterminating dissidents, as has occurred in other countries.

7. Having stated the above clarifications, the Commission will now consider the events that took place in the Indian communities of San Carlos and Leimus, in which the Government of Nicaragua does have serious responsibility.

8. In the last days of December, 1981, events took place in those Indian communities and in others located in the north of the Zelaya Department which, according to complaints and testimonies submitted to the Commission, constituted acts of violence perpetrated by the army of Nicaragua against the Miskito population, and which included the capture and summary execution of their inhabitants.

9. For its part, the Government of Nicaragua gave its official version of the events on February 3, 1982, and alleges that it discovered a counterrevolutionary plot, which it called "Red Christmas" because it was to be carried out during Christmas week of 1981, and which was organized and led by members of the former National Guard of Nicaragua in alliance with members of the Miskito community.

10. With reference to the above-mentioned events, the Commission received the complaint of MISURASATA and a statement made by Mr. Steadman Fagoth. In addition, on several occasions it received testimony from former residents of the zone who said they had witnessed these events.

11. In its first communication, the Misurasata organization, after accusing the FSLN of having carried out a policy of "racial hatred", "internal colonialism", "racial discrimination", "assassination and social repression", "remilitarization, hunger and deceit", in the Atlantic zone of Nicaragua, alleged that the following events constituted genocide:

- a. On December 23, the Sandinista Air Force used helicopters and Push and Pull airplanes to bombard the Indian communities of Asang and San Carlos, located on the banks of the Coco River, with 80-lb bombs, thus killing 60 Indians.
- b. On December 22, 80 Indians were captured in Leimus near Waspan, from the communities of Asang, San Carlos, Waspuk, Krasa, etc. ...and the following

night, (December 23), the soldiers killed 35 people and buried them all in a mass grave: Norman, Rogelio and Simeón Castro, Joselín and Asel Mercado, Cristina and Mayra Lacayo, Víctor and Carlos Pérez, Justo Martínez, Villanor Pantín, Roseno Gómez, Luis Fajardo, Efraín Poveda, Celso Flores, Ramiro Damasio, etc. are the names of some of the victims.

Twelve more Indians were killed on December 24, and their corpses thrown into the Coco River.

On the 26th, four Indians were buried alive near Leimus, while the whereabouts of the other 84 Indian prisoners are unknown.

- c. The Indian members of the Sandinista Army from the communities of the Raudales (Raiti, Aniwas, Walakitan, Bokay, etc.) are thrown into the river with their hands and feet tied for refusing to participate in the killing of their brothers, and many of their corpses can be found in the communities of Siksayari and Andistara.

12. Mr. Steadman Fagoth stated in his testimony to the Commission:

- a. On December 26, 1981--"Leimus Massacre"--35 people were buried alive precisely in the place known as the raft crossing beneath the filamate tree in the Leimus community. Massacres never before seen in the history of the Atlantic coast. (...) Among others, buried there are Mr. José Lino Mercado from Asang, Coco River; Mr. Asel Mercado from the same community; Mr. Panthing of Krasa, Efraín Poveda of Klisnak Waspuc; Juan Poveda from the same community; Luis Fajardo from Raiti; Justo Martínez, Norma Castro, Rogelio Castro, Simeon Castro from Raiti; Carlos Pérez and Víctor Perez from Raiti; Rocio Gomez, Celso Flores and Ramiro Damacio of Raiti; a survivor of the massacre was Vidal Poveda, brother of Efraín and Juan Poveda, buried in the same mass grave.

It should be noted that the survivor named Vidal Poveda had to bury his brother ... it was his turn, he ran and was shot while fleeing; he is now recovering in a hospital in Honduras where he took refuge.

It was subsequently confirmed that his left arm had been amputated. The brothers David and Eduardo

Flores, both from Raiti, brothers of one of those who was buried alive, Mario Damasio, brother of the other victim and Roger Pérez who was wounded in the abdomen, brother of the two Pérez buried in the same mass grave, all of these survivors, currently refugees in a camp of the Moskitia in Honduras, are eyewitnesses to the most inhumane act that has taken place in the history of our communities.

13. With respect to the events in San Carlos, one of the eyewitnesses stated the following, according to the version recorded by the Commission:^{11/}

On Sunday, December 20, the judge of the community (appointed by the Sandinistas) received a note from the "contras" who had come from up-river from the Honduran side. The judge, Layman Frederick Dublon, received instructions to advise the 6 Sandinista militia who were in the border area of San Carlos, that the "contras" had come to fight. Only 2 of the 28 "contras" were Miskitos, the rest being former Somocista guards. Most of the San Carlos population fled to the mountains, terrified by the "contras" and Sandinistas, although some remained in the village. The day before, on Saturday afternoon, the 6 militia had left for Waspan. Later, when they encountered the "contras" from Honduras, they returned to the garrison and there was no one in the Command. The "contras" forced the San Carlos community to give them food, but since the people had none, they took what provisions were available at the headquarters. They were even accompanied by two women when they came from Honduras, who began to cook and who ate and slept that night in San Carlos. This took place Saturday night.

On Monday, December 21, at 7:00 a.m., a helicopter of the Sandinista Armed Forces arrived, and began a battle in which 7 Sandinistas from the helicopter died. After the battle, the Church bell rang and the people returned from the mountains. Layman Frederick, who had remained in the village because he was the spokesman between the Sandinista Front and the people, was detained. According to his relatives, his name is not on the lists of detainees and they fear he is dead. Half of the village of San Carlos fled to Honduras and the other half was moved to Sumubila.

14. With respect to what took place in Leimus, the Special Commission received testimony from Miskitos at a meeting in the

11. The Commission has made slight stylistic changes in this version (as well as in other testimony that will be cited below) to facilitate comprehension.

refugee camp at Mocerón, at which approximately 150 of them gathered, of whom 10 apparently served as their spokesmen, who spoke with the members of the Special Commission openly, and without showing any hesitation.

15. As stated by a witness, named Leonel Martínez:

On December 23, 70 people were killed in Leimus. The killing led most of the Miskitos to flee to Honduras. The men who were killed had worked for Condeminah, a nationalized goldmine which is now being exploited by the Sandinistas. Apparently, the workers had not been paid, and with only a few days left before Christmas, they decided to go to the Central Office of Condeminah, in Waspan, to collect their pay. They were made to wait for three days, and were finally paid on the third day, on December 23, at 7:00 in the morning.

Having gotten their pay, they were ready to return to their villages, but on the way back they had to go through Leimus. They rented a car, and upon reaching Leimus were detained and imprisoned. At 6:00 in the afternoon, six of the detainees were taken from the jail and shot. Furthermore, the rest were taken in a larger group to the banks of the river and also shot.

Vidal Poveda, another witness, saved himself by jumping into the river. He was shot in the arm, which later had to be amputated. His two brothers were also shot. The names of the victims that can be remembered are: Justo Martínez, Juan Poveda, Joselín Mercado, Asel Mercado, Ricardo Mercado, Esteban Antonio, Ponier Escobar, Sinforiano Alarcón, Nando Mora, Natalio José, Napoleón Wilson, Gerardo Collins, Celso Flores, Atin Carlos, Layman Frederick, Roger Pifers, Carlos Pérez, Eugenio Morales and others.^{12/}

Several hours later there was another incident. A truck with 35 men looking for better paid work in Managua, Puerto Cabezas, Bluefields, Bonanza and La Tronquera, returned to their villages by going through Leimus. These men were also detained in Leimus, and since the Sandinistas had already dirtied their hands, they tied them and buried them alive. The Sandinistas tied their hands, covered their heads with hoods, and killed them in groups of five. They were also forced to dig their own graves.

16. For its part, the Government of Nicaragua gave its version of these events through Captain Roberto Sánchez, spokesman for the Armed

12. The names in this group appear in the complaint made by Misurasata as people who were buried alive.

Forces of Nicaragua, who in a press conference of February 3, 1982, affirmed that there had been a counterrevolutionary plot begun in the month of November, 1981, which included a chain of armed aggressions, seizure of towns, death threats to inhabitants who did not collaborate with the "contras", kidnappings, murders and rapes, thus creating an atmosphere of terror and insecurity throughout the region. The plan, stated Captain Sánchez, consisted of simultaneously carrying out ambushes along the length of the Coco River, the only means of communication, in order to paralyze the region and to force the communities to emigrate to Honduras. In Zelaya del Norte, a number of armed incursions were made by counterrevolutionary bands in the border zone and against the inhabitants of several communities, which had been denounced by the Nicaraguan Government. The purpose of the plan was to separate the Atlantic coast from the rest of the country by violent, armed attacks that would be launched from Puerto Lempira, Honduras.

17. According to the Government, the village of San Carlos was taken by the counterrevolutionaries who killed six members of the Sandinista People's Army. The so-called counterrevolutionaries controlled the village for 2 or 3 days until they were forced out.

The Government of Nicaragua showed photographs to the Special Commission of the IACHR of the faces and bodies of the Sandinistas, as proof of the fact that they were tortured before being killed, and it accused the residents of San Carlos, (especially those who did not escape to the mountains), of conspiring with the "contras", of aiding and abetting in the ambush laid for the group in the helicopter, and of collaborating with them in seizing the village.

18. On November 18, 1982, at its 58th session, the IACHR received 5 members of the Council of Elders of Misurasata who were exiles in Honduras, who came forward to testify and who submitted documents signed by the direct relatives of the victims of Leimus. Both documents are dated October 26, 1982, in Mocorón.

19. The first document reads as follows:

On December 18, 1981, leaders of the Evangelical Development Committee left Asang to go to Waspan, the capital of the Coco River region, to make purchases for the inhabitants of their village, Asang.

Returning to their village, and passing by the Sandinista border post of Leimus, they were detained on December 21 by the Sandinista Command.

On December 23, at 6:00 p.m. they were taken from the jails and shot in cold blood. They were machinegunned or shot together with many mine workers of Santa Rosa by 8 Sandinista soldiers.

The names of the assassinated leaders are: Asel Mercado, 35 years old, married, 6 children; Joselyn Mercado, 68 years old, married, 7 children; Ricardo Mercado, 30 years old, married, 3 children; Esteban Antonio, 44 years old, married, 6 children; Roger Bobb, 23 years old, single, Sinforiano Alarcón, 34 years old, married, 4 children; Napoleón Wilson, 49 years old, married, 6 children; Gerardo Collins, 40 years old, single; Nando Mora, 40 years old, married, 2 children; Macario José, 25 years old, single. All from Asang. They were killed in Leimus.

This statement is signed: Erna Hunter (mother of Asel Mercado); José Mercado (son of Joselin Mercado); Nomilino (wife of Esteban Antonio); José Mercado (brother of Ricardo Mercado); E. Bobb (mother of Roger Bobb); Wialins Wilson (father of Napoleón Wilson); Victoria Collins (mother of Gerardo Collins); Gliantina Krapot (grandmother of Nando Mora); Elfrida José (mother of Macario José) and Semplisio Alarcón (father of Sinforiano Alarcón).

20. The other document submitted by the Council of Elders states:

I, Eduardo Flores and my brothers David Flores and Celso Flores worked in the Santa Rosa mine for three months. We were dismissed and the mine was closed due to a problem with theft of the gold extracted. We had to get our pay by going to Waspan, and for this we had to travel by car for 6 hours to get there, and we arrived on December 16, 1981. On December 17, I was paid together with my two brothers, but I had to wait for my companions whom they did not want to pay. I was returning to my village on December 19 by boat, the engines stalled about 5 kilometers downriver from Leimus, I had to continue on foot to reach Leimus. The Sandinistas detained me there for no reason, put me in jail, I saw that there were many prisoners, some 50 people. I spoke with some of them and discovered that some had been put there on different dates, some on the 12, 13, 14, 15 and 18, so that they let no one go by, and among the prisoners were also my 2 brothers who were detained on December 20. Later other prisoners were brought in on 21, 22 and 23 of December, and the last were arrested on the 23rd at 10:00 a.m.

On December 23, 1981, at 6:00 p.m. or 7:00 p.m., they began to take out 7 prisoners, to whom they gave shovels and they took them to a field and in half an hour we heard shots. Those 7 were from Asang, and among them were Hazel Mercado, Joselyn, Ricardo and others; thus they began to kill them group by group. Finally it was our turn, and I was among the last, with my two brothers, Vidal Poveda, Efraín, Mario Damasio, Rosino Gómez, Evangelio Muller, Tito and nine other men, we were taken last. As we left we had said: "We must try to save one of us, we are the last 18 men, if they

kill us no one will ever know what has happened". With that plan, we walked ahead of 40 soldiers armed to the teeth. When we came to a dark part, we began to run in the direction of the river, which was our only hope. When we began to run, the soldiers began to shoot at us like crazy; some of my companions were wounded, we heard groans and cries from the wounded. I, thank God, fell into the river with no wounds and I began to swim, I saw that there was no one ahead of me and I reached the banks on the side of Honduras. After a while I heard someone swimming and crying out, we went to help him but we could not; I and someone else who was swimming close to me were not wounded, we started to look for people on the bank of the river and we found my brother Celso Flores, 19 years old, single, stretched out on the beach. He had been shot from behind and the bullet had gone straight through his navel, where his intestines were falling out, and he was in very serious, very bad shape. We asked for help at a house and we stayed there, he was not dead yet. Later we found Vidal Poveda with a shot in his left arm; later we found my brother David Flores who had been shot in the stomach. My brother Celso Flores died on December 24 at 4:00 a.m. and we buried him in Leimus, Honduran territory. Of a total of 83 prisoners only 7 of us had saved ourselves. The names of the officers who were in charge in Leimus were: "Gustavo", "Julio Curvelo", José María, Eliseo Ingram, from Waspam. We state these facts as family members and sign as witnesses saved from the massacre. Eduardo Flores, Vidal Poveda and Delia de Poveda (mother of Efraín).

21. The Government's official version of the facts appears in an undated document signed by Deputy Commander Roberto Sanchez, Chief of the Office of the Director of Public Relations of the Defense Ministry, which was submitted to the Commission on September 19 by the National Commissioner, Ambassador Leonte Herdocia. That document states that:

That month, the Armed Somocista Counterrevolution launched from bases in Honduran territory what became known as the "RED CHRISTMAS" plan, which consisted of invading Nicaragua from Honduras along the border area of Zelaya Norte, to take part of our territory and to declare it a "Liberated Zone" (seizure of territory from the Nicaraguan state) and having achieved this, to set up a provisional government which would immediately ask for the recognition of the governments of the area and request military support.

The plan was undertaken in late November with armed attacks on Miskito villages on the Nicaraguan bank of the Coco River, following propaganda by the counterrevolutionary station that broadcasts from Honduras, from which the religious beliefs of the Miskito and Sumo villages were manipulated against the Nicaraguan revolution. This attempt to sow confusion was somewhat successful, as some Miskitos

moved to Honduras where they were armed by deceit and taken to counterrevolutionary camps by the former agent of Somoza's Security Forces, Stedman Fagoth Muller, who sent them poorly armed and with little training to invade our territory in support of the Somocista bands that were attacking border villages, so that they would die in combat that they believed would free them from the EPS, and thus accuse our government of mass killings.

In light of this serious situation, the Government of National Reconstruction was obliged to take the necessary measures to defend our territorial integrity and to protect the lives of the inhabitants of the border region in the northeast, and in view of the war-like situation, a decision was made to evacuate the communities of the Nicaraguan bank of the Coco River, in order to relocate or resettle them deeper within our territory. That evacuation was accelerated in late December, 1981, as counterrevolutionary activity increased, particularly after the attack on the villages of Bilwaskarma and San Carlos, and the killing of military forces and civilians in Krasa and Asang. That is to say, that the entire bank of the Coco river, from Raití to the mouth of the river, was in a state of war, which led to a decision to prohibit river travel.

On December 18, 1981, two vehicles belonging to CEPAD and the evangelical church of Bilwaskarma, arrived from Waspán, occupied by some 30 people, men, women, and children, who wished to travel upriver toward the communities of Asang, Klisnak, Santa Fé, etc.

In response to the passengers' intentions, the Chief of the Border Post, Sergeant Gustavo Martínez Rivera explained to them that the zone was dangerous and that river transit was prohibited, and since the above-mentioned vehicles had already returned, which made it impossible for them to go back to their point of origin, they decided to remain with their suitcases in the hallways of the local commissariat, where they spent the night. On the afternoon of the following day, soldier Danilo Castro Cordero noticed that a radio antenna protruded from one of the suitcases carried by the passengers (Miskitos), and immediately informed the Chief of the border post, who ordered Lieutenant Juan Antonio Soza Gonzales to detain the men in order to investigate the origin of the radio, the purpose of transporting it and its destination. He proceeded to carry out his orders to detain 14 men, who were placed in a cellar of INRA, (Nicaraguan Institute of Agrarian Reform), as there was no jail in the area.

The detainees were subsequently interrogated, and most of them affirmed in their statements that they were collaborators with the counterrevolution. The pertinent measures were then taken to take them into custody, in order to later transfer them to Puerto Cabezas, once conditions allowed, and bring them before the competent courts.

It should be pointed out that after the 14 men were apprehended, the remaining passengers were directed to return to their point of origin, which they did. On December 23 of the same year, at approximately 9:00 p.m., a group of counterrevolutionaries attacked Leimus in order to seize it, and the border guards and the members of the reserve garrisoned there took up defense positions, at which time the detainees took advantage of the opportunity to try to flee, running in the direction of the river, a feasible escape route, since there was fighting and it was not possible to determine precisely which ones succeeded in escaping nor how many died in the crossfire, since in the course of the following day some 300 meters downriver from the Leimus village in a place known as Barcaza, 3 corpses were found floating whose characteristics matched those of some who had escaped.

After these events, and in light of the increase in counterrevolutionary activity, it was necessary to carry out an emergency evacuation of the village of Leimus, and in the evacuation many of the documents of the border post were lost, among them the list containing the names of those who had been detained.

22. On June 9th and 10th, 1983, the Executive Secretary of the IACHR, Dr. Edmundo Vargas Carreño, with an attorney of the Secretariat of the Commission, Dr. Christina Cerna, accompanied by officers of the Government of Nicaragua and the National Commission for the Promotion and Protection of Human Rights, toured several villages and towns in the northern part of the Zelaya Department, in order to verify the circumstances of the deaths that took place in the areas of San Carlos and Leimus.

At that time, those officers stated that some of the persons whose deaths had been alleged to have occurred as a result of the Leimus incidents of December, 1981, were still alive. And such was the case of Asel Mercado, Juan Poveda, Simonet Ingram and Loren Ingram, whom the Executive Secretary and Dr. Cerna interviewed during their visit.

23. At the same time, inquiries made by the staff members of the IACHR made it possible to confirm that in December, 1981, there were serious violations of the right to life in Leimus of several Miskitos, which events were attributable to Sandinista Army forces, although the number of Miskitos involved was possibly not as high as that initially alleged. Of the testimony taken by the staff members of the IACHR, of

special interest is that of Asel Mercado, who was brought forward at the instructions of the CNPPDH and spoke in their presence, and that of another Miskito who was interviewed privately.

24. Mr. Asel Mercado stated that he was in Leimus from December 18 to 22, together with "35 brothers" all of whom he "has never seen again". He stated that among them were his uncle, José Mercado, his first cousin Ricardo Mercado, Sinforiano Alarcón, who worked in La Tronquera, Esteban Antonio, Nando Mora and Roger PETERS. That all of them were detained in Leimus by the officer in charge, whose first name was "Gustavo". That he was carrying beans, flour and sugar to sell in his community, and that he was accused of carrying this load to the counterrevolutionaries, which he denied. He added that on December 22, 1981, at about 12:00 o'clock midnight, the State Security Forces took him to Puerto Cabezas where he was interrogated by Commander Rufo, who assured him that the other 35 people who had been apprehended in Leimus would also be taken to Puerto Cabezas, but since that day he has not heard of any of them, and on the contrary, has heard it said that they were all killed.

25. During the visit of the staff members of the IACHR to one of the Tasba Pri settlements on June 10, 1983, an inhabitant who lived in Leimus at the time of the events narrated in this Report 13/ spoke with them and gave the testimony transcribed below:

- And what happened in Leimus?
- They did that on the night of the 23rd.
- What did they do?
- They came and took some prisoners. Then they took about 12 of them out into the dark. They put them in the back of a boat and killed them all.
- In a boat?
- Yes in a motorboat.
- All together?
- Yes, all of them. They were tied up.
- We have been meeting persons here who were released.
- Yes, in the early morning I was coming when we found them dead on the beach.
- Are you from Leimus?
- Yes, from Leimus.
- And you found the corpses?
- Yes, I was quite close to them.
- Do you know their names?
- Of those who died?
- Yes.

13. The name of this witness is in the Commission's files.

- No. They were from upriver, from Raitf. They were not from here.
- And how many corpses did they find?
- Eighteen and others that they killed that way in the woods.
- And where were the corpses? On the beach?
- They were buried on the other side of the river. Two are buried.
- On the Honduras side?
- No. Yes, on the Honduras side. The soldiers buried them on the other side. They buried them.
- From Honduras?
- Yes. They took them out.
- And who was responsible?
- Those who did that. The very ones.
- But you don't know any names?
- "Gustavo", was the chief around here, of Leimus.
- But you personally saw the corpses?
- Ah, yes, sure, if I didn't I wouldn't say so. That is why I told you that I could show you where they are buried and everything.
- And others were with you?
- No, only me. Everyone realized. The whole town. And anyway you can't talk around here because they don't let you. And they are afraid because afterwards they might be killed. They kill people here. They take someone prisoner, okay, let's go for a walk and bang, bang, bang.
- Have there been killings here in the settlements?
- Here, on this mountain.
- People who are fleeing?
- No, deliberately, because they were afraid. If that causes harm to one, there it is, that's all.
- Is there a strong feeling here against the government? Most of the people?
- We are not at ease. We are in bad shape here, bad. The main thing is that we have no food. We eat almost nothing, what we can find around. They give each of us a pound of rice per week. The food is as bad as it can be.
- You were from Leimus?
- Yes.
- And during the relocation there were killings, difficulties?
- No, there were no killings or beatings. Nothing. Only those that were killed over there.
- And why were they killed?
- Because they felt like it. What were some poor fools going to do there? They had no weapons.

26. On June 11, the CNPPDH submitted to the Commission a Preliminary Report on the investigations carried out by that agency on the events that took place in Leimus in December, 1981. That report includes the

testimony of Deacon José Rodolfo Baquedano Ebeel, originally from Leimus and currently living in the settlement Sahsa. In that testimony, which coincides with that given by Asel Mercado, he states:

That on December 18, 1981, approximately 40 Miskitos coming from Puerto Cabezas and La Tronquera on their way to Asang and San Carlos were captured in Leimus. That all of the detainees who came in a truck were imprisoned in a cellar blocked off with squares of cement. That same day, the witness could see EFRAIN POVEDA MULLER, of Wasbuk, among those who had been captured. He could also see VIDAL POVEDA and SINFORIANO ALARCON. That on December 23, at 9:15 p.m., a single round of shots was heard that lasted about 15 seconds. That on December 26, 1981, he spoke with the Sandinista in charge of the Leimus command, named Gustavo Martínez, who informed him that during the night of December 23, 14 of the detainees had escaped. That Gustavo told them that they had shot at them without later finding any trails of blood. That on the 26th of December he spoke with Gustavo Martínez, he saw no sign of corpses anywhere. That Gustavo's assistants were "Pepe" and "Cheyito Ingrand". That on December 26, 1981 there was no gunfire in Leimus. That Gustavo Martínez himself told him that Asel Mercado had been sent to Puerto Cabezas.

27. In accordance with the information and testimony set forth above, which has been carefully examined and weighed, the Commission is convinced that between 35 and 40 Miskitos were detained in Leimus by military forces commanded by an officer who was referred to by some individual witnesses as Gustavo or Gustavo Martínez, and that a yet undetermined number of Miskitos, all unarmed, were summarily executed on December 23, 1981, possibly in retaliation for the events that had taken place a few days before in San Carlos, during which 6 members of the Sandinista army were killed.

It is the view of the Commission that such events constitute a serious violation of the right to life, set forth in Article 4 of the American Convention on Human Rights, and require from the Government of Nicaragua at least a thorough investigation of the facts and a severe punishment for those responsible for these illegal killings.

28. The Government of Nicaragua formally undertook to begin an investigation of these events. Thus, in the Proposal Document of the Government of Nicaragua to the Inter-American Commission of Human Rights of 24 August, 1982, after studying the recommendations of the IACHR contained in its Report of June 26, 1982, it is stated that:

With respect to the recommendation to "investigate all matters relating to the violation of the right to life of the Miskito Indians and to judge and punish those responsible to the full extent of the law", the Government of Nicaragua,

independently of its belief that there have been no violations of the right to life, has transferred that recommendation to the National Commission for the Promotion and Protection of Human Rights so that this autonomous agency may proceed to carry out an investigation aimed at clarifying the alleged events, in conformity with Article 5 of its Statute.^{14/}

Likewise, in its Report to the United Nations Human Rights Committee, the Nicaraguan Government affirmed having carried out a "thorough investigation" of the events that took place in Leimus, which it linked to the "outrageous attacks" that had taken place a few days before.^{15/}

29. Despite these offers to undertake a thorough investigation of the events that took place in Leimus, the IACHR has thus far only received the document from the Nicaraguan Government titled "Preliminary Report of the CNPPDH on its mandate, contained in the 'Proposal Document for a Friendly Settlement'"; the version of the events submitted by the Public and International Relations Section of the Ministry of Defense transcribed above; and a certificate from the Judge Advocate of the Sandinista Armed Forces which states that the Military Tribunal of the First Instance of the Office of the Judge Advocate of the Sandinista Armed Forces, on April 2, 1983, decided to fully and finally exonerate Gustavo Manuel Martínez Rivera and Juan Antonio Sosa González, "of the alleged crime of murder".

30. In the document of the CNPPDH, after pointing out that "the current state of emergency and the state of aggression experienced by the country has made it impossible to carry out as careful an investigation as the CNPPDH would have liked..." and that "nevertheless, the Commission (the CNPPDH) intends to continue its investigations until fully clarifying these events ...", the following conclusions are set forth:

With respect to the events that took place in Leimus, Asang and San Carlos, late in December, 1981, the Commission believes it is appropriate to take into account, for general understanding, the events known as "Red Christmas" that were referred to in paragraph 27 of this Preliminary Report and the disinformation campaign launched from Radio 15 September

14. Proposal Document of the Government of Nicaragua to the IACHR, August 24, 1982, page 16.

15. United Nations, Human Rights Committee: Study of the report submitted by the states parties in conformity with Article 40 of the Pact, Nicaragua CCPR/C/14/ page 3, March 8, 1983, page 54.

that operates from Honduras. The lack of precise and concrete data, together with the serious contradictions encountered in the texts of the complaints, casts substantial doubt on the truth of the allegations. The Commission is certain that some of the alleged victims are still living, as has been clearly demonstrated, and that a sufficient investigation of Mocerón (Honduras) might even provide revealing new information. The versions of the confrontations mentioned in paragraph 31 merit a more detailed investigation.

The preliminary conclusion of the Commission is that there is implausible information with respect to the massacre of Leimus, some of which has been fully clarified. The physical presence of the alleged victims Norman Castro, Asel Mercado, Juan Poveda and Simonet Ingram are persuasive proof that must be evaluated objectively. The Commission does not dismiss the possibility that some of the alleged victims may have died in fighting with the Sandinista forces.

31. The IACHR can only consider unsatisfactory, and in some respects even surprising, the reply that the Government of Nicaragua through the CNPPDH has given. Indeed, the entire document is intended to contest the complaints set forth in the Report of the IACHR of June 26, 1982, rather than to determine the truth of what took place, as the Government offered to do. This explains why this document contains no information as to whether the military officers who may have been involved in the events were questioned. Nor were survivors, such as Asel Mercado, questioned, who stated to the Nicaraguan officials and the staff of the IACHR Secretariat that until that day he had not been questioned with respect to these events.

The Commission, of course, well understands the difficulties of undertaking a thorough investigation given the prevailing military situation on the Atlantic Coast of Nicaragua. Nevertheless, it should be noted that these events took place nearly two years ago, and the only result of investigations thus far has been the discovery that five people whom the complainants thought were dead are fortunately still alive.

32. Finally, the IACHR wishes to refer to the statement of the CNPPDH that it "does not dismiss the possibility that some of the alleged victims may have died in fighting with the Sandinista forces". This statement is simply surprising. According to all the information and testimony received by the IACHR, some from the Government itself, the victims were unarmed, were detained by Sandinista military forces, and were in their custody, while the Commission has no information that would lead it to believe that there was fighting in Leimus.

D. Right to liberty, personal security and to due process

1. In view of the fact that observance of the rights to liberty,^{16/} personal security,¹⁷ and due process,^{18/} are closely related in this case,

16. Article 7 of the American Convention states: 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat. This remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

17. Article 5 states: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

18. Article 8 states: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal (continue)

the Commission will concern itself with these three rights, as they are set forth in the American Convention, in this section. This section will study the following situations concerning the Miskito population: a. detentions and other restrictions of liberty; b. imprisonments; c. trials initiated; d. releases that were granted; and e. alleged disappearances.

a. Detentions and other restrictions of personal liberty

2. A number of Miskitos were detained in connection with the events of San Carlos in December, 1981, some of whom were subsequently released.

3. In the first half of 1982, as militarization of the Atlantic zone increased as a result of the incursions of armed insurgent groups and combat in several places in the northern part of Zelaya Department, the number of detentions rose and the government began to adopt various measures to restrict personal liberty, invoking a state of emergency, and thus created an atmosphere of uncertainty for the inhabitants of the Miskito villages.

4. According to a complaint received by the IACHR, the detentions took place as follows:

Since establishment of the State of National Emergency, the number of detentions in the Atlantic Coast Region has increased considerably. These detentions are made on the

18. (continuation)

offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

basis of allegations or vague accusations that the detainee is involved in counterrevolutionary activities. Detention involves violations of the person, and destruction of his home. The detainee is usually kept incomunicado from two to three months, while interrogated in prisons of the State Security forces, while the family remains uninformed of his whereabouts and the reasons for his detention. The State of Emergency has nullified the habeas corpus remedy, the only legal mechanism to prevent incomunicado imprisonment, to require a hearing before a Judge, and above all to demonstrate the physical and emotional condition of defendant. Abuse of prisoners is frequent in rural zones, and there are many complaints of rape, beatings, harassment and other illegal proceedings in the prison.

5. According to information received by the Commission, in March, 1982, 17 communities on the banks of the Prinzapolka River were militarily occupied, including their temples and schools; in the following months, the communities of Prata, Kuahbul, Lkigna, Riatí, Arandakna, Wailahka and Musawas were destroyed or burned, leading their inhabitants to flee to the mountains or to Honduras. In July, 1982, a state of siege was declared in the communities of Tuara, Sisin, Juaquil, Boomsirpi and Yulotigni, under which the inhabitants were not allowed to leave their homes. In the following months, August, September and October, 1982, the situation is described as follows by a complaint received by the IACHR with respect to 10 Indian communities near Puerto Cabezas:

- "a. Total proscription of fishing;
- b. Expropriation of communal lands;
- c. Prohibition on leaving the community;
- d. Restriction on masses or religious services, which can be held only with prior permission;
- e. State of siege within the communities."

6. These restrictions on the personal liberty of the Miskitos culminated with the enactment of Decree 1132 on November 4, 1982, by which the Government declared the territory of 24 cities in the Departments of Chinandega, Madriz, Nueva Segovia, Jinotega and Zelaya, near the border zone with Honduras, to be a military emergency zone. According to this Decree, which is in force at the time of approval of this report, military authorities, by delegation of the Directorate of National Reconstruction and as necessary to deal with the emergency, may issue whatever orders, regulations and provisions are necessary to maintain order and security and to guarantee national defense.

7. Military authorities have used this authority to detain hundreds of Miskitos without following legal formalities and without allowing any

judicial remedy, even the remedy of habeas corpus. Several Moravian pastors who hold great moral authority over their villages are among those who have been detained. 19/

b. Imprisonment of Miskitos

8. Despite all of the efforts made by the Commission before the Government of Nicaragua to discover the exact number of miskitos currently detained, awaiting trial or sentence, the Commission is not able to provide an exact number of Miskitos now in prison. 20/

9. In this respect, it is advisable to bear in mind that under the state of emergency now in force in Nicaragua, a person may be imprisoned either under the regular prison system or by State Security forces. In the latter case, detainees may remain in that situation for an indefinite period of time while under investigation.

10. The Commission considers, in accordance with the various information sources available to it, that in July, 1983, there were approximately 400 Miskito detainees in Managua alone. Of these, approximately 300 were in the Managua prison "Heroes and Martyrs of New Guinea" formerly called the prison of "Zona Franca", and 100 were in the Minimal Security Work Farm. 21/

11. Prison conditions, as observed by the Commission in 1980 22/ and in 1982 have not improved significantly in the Zona Franca Prison, as noted by the staff members of the Secretariat who visited the prison in

19. Among the pastors and Moravian clergy who are currently imprisoned or who were detained and have disappeared, the following may be cited: Higinio Morazán, Morris Vidaurre, Nilio López, Sandalio Patrón, Angel Bello, Serminio Nicho, Fernando Justiniano, Nicolás Zamora, Ortega Walden, Lorenzo Nicho, Tomás Zamora, Teodoro Downs and Samuel Mercado.

The following pastors and Moravian Religious were detained and later released: Juan Martínez, Tomás Dixon, Guido Herrera, Burton Benjamin, Santos Kleban, Salvador Sarmiento, Santiago Obando, Finler Vanegas, Gustavo Downs, Ricardo Castillo, Rolando Downs, Bernardo Arthur, Joaquín Webb, Diógenes Molina, Abel Flores and Roberto Peralta.

20. When the Special Commission visited Nicaragua in May, 1982, there were 172 Miskitos in detention: 125 in Managua and 47 in Puerto Cabezas.

21. In his visit to the Secretariat of the Commission on September 19, 1983, the National Commissioner for the Promotion and Protection of Human Rights, Ambassador Leonte Herdocia, stated that on that date approximately 300 Miskitos were detained and that all of them were in the Minimal Security Work Farm near Managua.

22. See "Report on the Situation of Human Rights in the Republic of Nicaragua", OEA/Ser.L/V/II.53 doc.25 of June 30, 1981, pages 97 and 98.

June, 1983. At that time, the staff members interviewed two Moravian pastors who, while stating that they had not been physically abused during their detention in Managua, stated that they had been cruelly tortured during initial interrogations, and complained of the severe conditions of their imprisonment.

12. On the other hand, the prison conditions in the Minimal Security Work Farm are considerably better. In June, approximately 100 Miskitos were held there, including 12 women. At this time, that figure comes to some 300 Miskitos, according to the statement of the National Commissioner for the Promotion and Protection of Human Rights, as they have all been transferred to that detention center. The women worked in handicrafts and maintenance of the establishment. The men were assigned agricultural tasks, which apparently were carried out satisfactorily. Prison conditions in general are good and almost the only complaint of the prisoners is the lack of communication with their families.

c. Trials of the Miskitos

13. The Commission will consider below the trials of the Miskitos detained at the end of 1981 and the first months of 1982. Most of them were arrested in San Carlos and in Las Minas, but there are also others who were arrested in Sandy Bay, Waspan, Bilwaskarma and Zelaya.

14. During the visit made by the Special Commission to Nicaragua in May, 1982, it had the opportunity to speak with the Miskitos who had been detained, of whom approximately 125 were held in Managua and 47 in Puerto Cabezas, as indicated above.

15. In its conversation with the detainees, the Special Commission received various testimonies on torture and other violations of personal security alleged to have occurred during interrogation sessions by the State Security Force, in order to extract from them signed confessions to be used at their trials.

The Miskitos who were interviewed gave details of the methods used to force them to sign the confessions; a considerable number of them declared that they had been punished, tortured and threatened with death. They were warned that they would have their tongues cut out if they told anyone of these abuses. Some of them showed the Commission members who interviewed them the bruises and marks that they claimed resulted from this physical mistreatment.

16. For the applicable law to be used at these trials the Government turned to the articles still in force of the Law on Maintenance of Order and Public Security, the Procedural Law on the Maintenance of Order and Public Security and the Law on the State of Economic and Social Emergency. By application of these provisions, the Miskitos have been accused of the crimes of not obeying a ceasefire; attempting to reinstate the Somoza Regime; and conspiracy to submit the nation to foreign domination. These allegations, as will be seen, have not been supported by sufficient evidence.

17. The Commission is particularly concerned that the applicable procedural law allowed the following irregularities:

- a. That the statements of the accused were made to officers of the Department of State Security, without having been taken by a competent judicial authority.
- b. That the judge did not even question the accused afterwards and accepted as true the facts contained in the document presented by State Security.
- c. That the judge was not obliged to ask the accused if he agreed with what he stated in his declaration, since the defendant was asked only by the officer of State Security whether his statement corresponded to what he had declared.
- d. That during questioning, the Miskitos did not have the services of an interpreter, although a large number of them do not speak Spanish, but only their native languages.
- e. That the accused were not given prior and detailed information on the charges brought against them before making their statements, nor did they have adequate means to prepare their defense, since they were not permitted the assistance of a defense attorney at the time they made their declarations.
- f. That the right not to testify against oneself and to plead not guilty was not observed.

18. As an example, and in order to specify concretely the violation of the above-mentioned judicial guarantees, the Commission has selected the legal proceedings followed against the Miskitos who had allegedly participated in the events that took place in the village of San Carlos, and which like the other proceedings followed against other Miskitos, was carried out under Judge Pompilio Casaya M., District Judge of Puerto Cabezas, who was subsequently removed by the Supreme Court of Justice of Nicaragua.

The disciplinary action of the Supreme Court, which unfortunately did not completely nullify the judge's actions, states that the dismissal of Judge Pompilio Casaya Mendoza was due to his having committed a number of irregularities.

19. The case record opened with an accusation by the Assistant District Attorney of the Department of Justice of Zelaya, submitted on January 29, 1982. Its tone is sharply critical of the Indian communities of the Atlantic Coast, which it describes as a "zone that was previously

used only as a hunting and fishing preserve of the various imperialists and their puppets"; referred to the defendants as "traitors of the Revolution", "neo-Somocistas" and "bootlickers of Somocismo who tried to use the power that the Revolution gave them".

The Assistant District Attorney submitted as proof of the charges the confessions of the defendants, all of which were taken in the presence of officers of the Department State Security, in Puerto Cabezas. The above-mentioned statements are dated in the first and second weeks of January, and special care was taken in all of them to include the affirmation, which the accused Miskitos interviewed by the Special Commission stated to be false, that they had been informed of their rights under law to make a statement or to remain silent, and that they chose, in all of the cases, to "spontaneously" confess their crimes.

In response to the Assistant District Attorney's request, on January 29 the Court of Puerto Cabezas issued an arrest order for the accused, as if they were still at liberty, when in fact most had been apprehended in December and were in incomunicado detention. At the same time, by means of an official communication of the same date, he asked the Operation Sections of the Director General's Office of State Security to send him the persons whose names he listed in his two page note who, he indicated, "are detained for having participated in the events of San Carlos".

Also on the 29th, the date of the complaint and the official letter in which the Judge requested that the detainees be sent to him, State Security responded by sending and placing the detainees at the disposition of the Judge. On the same date, the Court notified the detainees of the contents of the charges brought by the Assistant District Attorney, and gave them two days to reply to these charges.

Given the length of the above-mentioned documents, which take up the first ten pages of the record, and the fact that they all bear the same date, the impression of the IACHR is that it had all been prepared in advance to comply with established legal formalities. But what has most drawn the attention of the Commission is that the judge warned the defendants to respond to the charges within two days of notification, when he knew that their replies were part of the proof of the Assistant District Attorney's charges.

The appointment of a defense counsel in these circumstances also appears to be a mere formality, since the statements and replies of the defendants had been obtained by State Security. This impression was later confirmed by the useless and even counterproductive role played by the defense counsel, who, when the time came to present his case, tacitly acknowledged the charges brought against his clients, with the two exceptions, of whom he said: "Their crime cannot be proved, since they did not have any direct or even indirect participation in the events of San Carlos".

With respect to the lack of autonomy and impartiality alleged by the accused on the part of Judge Pompilio Casaya Mendoza, it is enlightening to quote verbatim the introduction of some of his official communications, particularly that on page 16 of the record, which he addressed, on February 1, 1982, to "Comrade in charge of the Operations Section of the Office of the General Director of the State Security" in the following terms:

Today when the Sun of Liberty of our Commander-in-chief CARLOS FONSECA AMADOR shines in all its splendor, I address you for the following purpose.

The confessions have been written in a style which is easily seen by those who interviewed them not to be the language of the Miskitos. There is no indication that any of the accused have been assisted by an interpreter, and as the confessions are all in Spanish, the Commission wishes to know how the interrogators managed to communicate with the accused, 70% of whom only speak the Miskito language.

The Commission also notes with concern that the record includes the signatures of Miskitos who are completely or almost completely illiterate. Despite this circumstance, all of the testimonies without exception contained a statement, certified by the presiding officer, that once the confession had been given, it was read by the defendant, who in acknowledgement of his agreement with its content, attached his signature to render it legitimate.

20. All of the procedural abnormalities noted in the record of the case on the events of San Carlos, which would nullify that procedure, are not unlike the abnormalities contained in the proceedings followed against the other detained Miskitos. To this should be added the fact that the lower court's guilty verdict was rendered without examining and considering the extent of individual participation on the part of each defendant, but rather grouped them together and gave them different sentences.

21. Another fact which concerns the Commission relates to the performance of the defense attorneys. In a meeting with them in Bluefields, the Special Commission learned that they had not spoken with their clients, and therefore had not had an opportunity to hear their versions of the events. Clearly, this is extremely damaging to the proper discharge of their duties and makes it difficult to clarify whether each of the accused in fact committed the alleged crimes. According to information received by the Commission, the defense attorneys in general are unable to prepare an effective defense due to the limited period for the submission of evidence (8 days) and the distances to be covered to gather data to support the defendant's case, which means that they cannot present witnesses or expert evidence, nor produce evidence by examination of exhibits by the judge. On the other hand, the State Prosecutor has all the time he may need to gather such evidence.

22. A further abnormality noted by the Special Commission was the television broadcasting of the incriminating confessions by the defendants themselves before the final verdict was rendered. The broadcasting of these statements, in the opinion of the Commission, leads public opinion to prejudge the guilt of the defendants, and is a practice totally at variance with the fundamental dictates of due process. Fortunately, this anomaly is presumably being corrected, according to information provided to the Commission by the Government in its reply concerning implementation of the preliminary recommendations set forth by the Special Commission during its visit to Nicaragua in May, 1982.

23. Another serious anomaly, in the opinion of the Commission, is that the Court record does not state precise charges. It is not clear that the defendants participated actively in the acts of sabotage or acts of pillage, looting or vandalism that were attributed to armed groups of former Somocista guards.

24. With respect to what was called by the Assistant District Attorney "arms and military ordnance" in the possession of the accused in the San Carlos case, the statement is obviously exaggerated since the description of the arms contained in the record of the Court Proceeding, maintained at the request of the claimant, indicates that the alleged weapons of war were but old rifles, perhaps useful for hunting or personal defense, the possession of which is easily explained given the region where their owners lived.23/

25. On August 24, 1982, the Government of Nicaragua, through its Permanent Mission to the OAS, informed the Commission of the Bluefields Court of Appeals decisions of July 1, 1982, in the appeals of the guilty verdicts handed down by the Judge of Puerto Cabezas. According to this information, 26 cases were provisionally dismissed, and three were definitively dismissed; sentences were considerably reduced in the remaining cases, some of them by more than 70 percent. According to this information, the longest sentence was reduced from 30 to 14 years imprisonment with an additional two years of forced labor. It was also reported that "the corresponding special remedy of annulment in criminal proceedings has already been applied, and is currently being processed. It is to be hoped that, as a result thereof, sentences will be reduced in some cases and others will be dismissed".

23. Page 121 states verbatim in the record that the apprehended arms were the following: "1. Old rifle, approximately a meter long, make and model number impossible to determine; 2. A twenty-two (22) rifle model number 812225 LORI-R, with other letters that are illegible; 3. An old rifle, with no apparent make, model or number, approximately a rod long; 4. Shotgun Number 9T651, with no indication of make or model, approximately a meter long; 5. Shotgun which shows on the upper part of the cock the following number, 641-449, approximately a meter long, make and model impossible to determine."

26. On September 16, 1983, the Supreme Court, by means of a remedy of annulment in criminal proceedings, nullified some of the sentences handed down by the Bluefields Court of Appeals, dismissing the cases of 35 Miskitos from San Carlos, 8 from Sandy Bay, 12 from Waspan and 8 from Zelaya. Nevertheless, it denied the remedies sought on behalf of 35 Miskitos from Las Minas and 7 from Bilwaskarma, who had been sentenced previously, because the statute of limitations had expired. According to the note of September 16, 1983, from the Foreign Ministry of Nicaragua to the Chairman of the IACHR, "the persons whose remedy of annulment was denied for being presented when the deadline had expired, still have the right to bring a special remedy of review, and the lawyers who submitted the remedy beyond the time limit are being submitted to an inquiry initiated by the Supreme Court of Justice."

27. Although the decision of the Supreme Court of Nicaragua was tardy and partial, it remedied a situation of manifest injustice in which the applicable norms of due process which are guaranteed by the American Convention on Human Rights and to which Nicaragua is a party, had been disregarded.

d. Release of the Miskitos

28. On January 5, 1983, the Commission was informed by the Ambassador, Permanent Representative of Nicaragua to the OAS, of the names of 49 Miskitos who had been released, on two occasions, in the course of December, 1982.

Later, on August 3, 1983, the Commission was again informed that 45 Miskitos who had been detained had also been released.

In addition, the Ambassador of Nicaragua to the OAS advised the Commission by note of September 26, 1983, that a pardon had been granted to 18 Miskitos.

29. Together with these releases, the Commission has taken note of the efforts being made by the National Commission for the Promotion and Protection of Human Rights of Nicaragua to obtain a pardon for a considerable number of Miskitos, and thus establish better conditions for an understanding between the Government and the Miskito communities.

30. The Commission has also taken due note that on September 2, 1983, the Ministry of Justice, at the instructions of the Government Directorate, prepared a Draft General Amnesty Decree for all Nicaraguans of Miskito, Sumo, Criollo or Rama origin, which would cover those detained in Nicaragua and even those outside of Nicaragua, without exception. The amnesty, as reported by the Government, would cover all crimes committed from December of 1981 to date. Nevertheless, the events of the 7, 8, and 9 of September, which included the bombardment of the Augusto César Sandino Airport of Managua and other attacks, led the Government to make a decision to issue the decree "whenever the new wave of aggression ceases and when the more concrete results of the noble and repeated efforts of the Contadora Group can be seen".

31. Despite these efforts, which the Commission acknowledges and esteems, it finds that there is still a considerable number of people detained without charge, or sentenced in violation of the minimal norms of due process. In light of these considerations, the Commission has persistently pressed the Government of Nicaragua to grant a general pardon or amnesty to all Miskitos; on the one hand, this would correct past injustices, and on the other, would contribute to establishing conditions for better relations with the Miskitos.

32. The Commission also regrets, as it indicated above, that it cannot give a precise figure of the number of Miskitos who have been detained and where they are now; it can only insist, once again, that the Government of Nicaragua publish the complete list of all detention centers, both those of the prison system and those under State Security, and that it issue lists of the names of detained Miskitos. 24/

e. Disappearances of Miskitos

33. The failure to make public information about the detentions carried out by the civilian and military authorities has resulted in

24. The Government of Nicaragua, on December 1, 1983, promulgated a decree, which in its resolute part provides: "ARTICLE I: Amnesty is granted to Nicaraguan citizens of Miskito origin who have committed crimes against public safety and order and whatever related crimes between December 1, 1981 and December 1, 1983, and who currently are found in any of the following situations: A) Under detention, whether already sentenced, pending sentence, pending trial, by order of the Attorney General's Office, or detained for investigation. B) At large, either inside or outside national territory. ARTICLE II: Amnesty is also granted to all Nicaraguan citizens who, because of the events that occurred along the Coco River or, whatever other event that has occurred as a consequence of the aggression that has been imposed upon northern Zelaya between December 1, 1981, and December 1, 1983, have become involved in the criminal activities referred to in Article I. ARTICLE III: In order to partake in the benefits of this law, Nicaraguan citizens who are outside national territory may freely return and join in the tasks required by the Revolution. ARTICLE IV: The Delegation of the Government Junta in the northern Zelaya region is empowered to adopt the appropriate procedures to facilitate and expedite the reunification and the reincorporation in daily activities of all those benefitted by the amnesty. ARTICLE V: Upon publication of this decree, the police and the authorities of the judicial, penitentiary, and security systems must immediately release the persons benefitted by the amnesty." A small number of Miskitos remain in detention, however, since they were not covered by this amnesty.

complaints concerning the disappearances of a considerable number of Miskitos. Given the IACHR's past experience in other countries with this abominable practice, these claims of disappearances have been a principal source of concern to the Commission.

34. According to a complaint submitted by the Permanent Commission on Human Rights of Nicaragua, disappearances have occurred under the following circumstances:

Beginning in July, 1982, hundreds of Indian Miskitos were captured in the communities of Zelaya Norte, and were taken to Puerto Cabezas where they were kept incomunicado. Their families were later informed by the local authorities that they had been taken to Managua, to the jail known as Zona Franca, but after making great efforts to reach that city, to visit their imprisoned relatives, they were informed by the offices of the National Prison System that those defendants had not been moved to Managua.

Seventy-two cases of DISAPPEARANCES in these circumstances have been reported to our offices and the Permanent Commission of Nicaragua has made repeated efforts on behalf of our Nicaraguan brothers before the authorities of the Ministry of the Interior, responsible for these captures, both in Managua and in the First Special Region, which is located in Puerto Cabezas, although thus far no authority has taken responsibility for the fate of these prisoners, nearly ONE YEAR AFTER THEIR CAPTURE.

Although some relatives of these prisoners have indicated that they have been informed by other prisoners that their relatives "WERE TAKEN" from the cells, on the night of July 19, 1983, to an unknown destination, the hope that they will be found alive is still harbored, particularly in light of the "APPEARANCE" or DISCOVERY of Mr. MANUEL THOMPSON CLARK, who had been detained on July 19, 1982 and was allowed to be visited by his family until May, 1983, after which time he remained incomunicado in the State Security prisons at Puerto Cabezas.

35. The list of names of the disappeared provided by the Permanent Commission on Human Rights of Nicaragua includes the following persons:

Larry Wellington August, Emilio Wellington August, Alberto Wellington August, Neman Wellington August, Tomas Borge Kittle, Carlos Rammer Berry Suls, Askin Reginald Francis, Bernardo Chow, Tomas Pineer Richinal, Luis Chow Jacobe, Vernon Werster Silvano, Ambrosio Thompson Bigman, Augustin

Zamora, Justiniano Natalian, Candido Urbina, Unecio Usyan Amadias, Harold Davis, Guierdin Maikel Castillo, Martin Fracis Warman, Milton Hodson Wilson, Roberto Alfred Joseph, Maikel Amdias Williams, Nicolas Zamora, Alfonso Flores Frank, Alfonso Wilson Teofilo, Adistan Norman Lam Amadias, Guadalupe Romero, Jose Saiman Tacio, Carlos Amadias Williams, Alberto Zamora Warman, Ricardo Zamora Warman, Bernardo Martinez David, Mostemos Bertan Daysi, Leytran Teofilo Humberto, Cipriano Omier Prado, Rene Arthurs McDonalds, Julio William Godoy, Wilfredo Rodriguez Garth, Hernaldo Vargas Albina Vargas, Harry Williams, Ignacio Martinez Teofilo, Ricardo Estriano Chico, Paul Taylor Jr., Harold Warman, Napoléon Joel, Medando Zeledon Lackwood, Rodriguez Garth, Gregorio Joel Alfius, Gabriel Anderson, William Lopez, Plutario Ronas, Pinley Amstrong, Justo Herbacio Lampson, Feliciano Arthurs Lopez, Lorenzo Parquier, Salitan Pasquier, Agapito Almanza, José Salvador, Nicolás Hernández, Celestino Amstrong, Daniel Lopez, Rosa McWilliams, Concepción Rosales, Pedro Gonzalez, Andres Soza, Electerio Picktan, Jose Mitchelie, Harold Jerry, Enterio Dixon, Anibal McLean and Antonio Manzanares Lackwood.

36. At the end of the visit to Nicaragua of the Executive Secretary and Dr. Cerna, the National Commission for the Promotion and Protection of Human Rights--which the Government had entrusted with carrying out the pertinent investigations with respect to the claims of disappearances--provided the following information with respect to 28 names that appeared on the list of the Permanent Commission:

Luis Chow Jacobe (according to information of the Ministry of the Interior, released on July 29, 1982, and is not now in Zona Franca); Hernaldo Vargas (according to information of the Ministry of the Interior, released on August 1, 1982); Adistan Norman Lam Amadias (according to information of the Ministry of the Interior, released on August 1, 1982); Tomas Borge Kittle (according to information of the Ministry of the Interior, was released on July 31, 1982); Pinley Amstrong (not in jail); Ricardo Zamora Warman (not in jail); Larry Wellington August (not in jail); Neman Wellington August (not in jail) Alberto Wellington August (not in jail); Emilio Wellington August (not in jail); Martin Francis Warman (not in jail); Bernardo Chow (not in jail); Justiniano Natalian (not in jail); Tomas Pineer Richinal (not in jail); Alfonso Wilson Teofilo (on the list of defendants in Zona Franca appears as Teofilo Wilson Balberino, detained October 12, 1982, crime: counterrevolutionary. Penalty: under indictment and orders not to leave the jurisdiction); Guadalupe Romero (on the list of prisoners of Zona Franca appears as Guadalupe Romero Guzman, detained on October 12, 1982. crime: counter-revolutionary; penalty: under indictment, and orders not leave the jurisdiction of the Judge of Puerto Cabezas); Nicolás Hernández (on the list of prisoners of Zona Franca appears as Hernandez Salvador

Nicolas, detained July 20, 1982, crime: counterrevolutionary, penalty: under indictment, not to leave the jurisdiction of the Judge of Puerto Cabezas); Celestino Armstrong (on the list of prisoners in Zona Franca, appears as Anstran Jacobi Celestino, detained July 19, 1982, crime: counterrevolutionary, penalty: under indictment and orders not to leave the jurisdiction of Puerto Cabezas); Cipriano Omier Prado (according to a note sent to the IACHR on January 5, 1983, was released on December 15, 1982); Napoleón Joel (according to a note submitted to the IACHR of January 5, 1983, was released on December 2, 1982, appearing under the name Napoleón Joel Francis); Justo Herbacio Lampson (according to a note sent to the IACHR of January 5, 1983, was released on December 15, 1982); Albina Vargas (according to a note sent to the IACHR of June 5, 1983, was released on December 2, 1982); Domingo Filemon Talavera Pérez, (the Ministry of Foreign Affairs informed the IACHR on March 13, 1983, that he is not on the prison list); Manuel Thompson Clark (detained in Special Region I, at the orders of the Ministry of the Interior, on October 25, 1982); Clover Lezcano Perez, Abundio Perez Lopez and Jacinto Lopez Mendez (between April 15 and 20, 1982, died in combat with Sandinista troops, note of the Ministry of the Interior of April 20, 1982); and Nicolás Zamora (appears on the prisoner list of Zona Franca as Tomas Zamora Nicolas, detained March 1, 1982, crime: counterrevolutionary, penalty: under indictment and orders not to leave the jurisdiction of Puerto Cabezas).

37. The staff members of the Secretariat of the Commission, during their visit to Puerto Cabezas, attempted to inquire about the fate of Mr. Manuel Thompson Clark, who according to the Permanent Commission on Human Rights "had been detained since July 19, 1982, and had been visited by his relatives until May, 1983, since kept incomunicado in the State Security jails of Puerto Cabezas" and who, according to the National Commission for the Promotion and Protection of Human Rights was "detained in Special Region I under the orders of the Ministry of the Interior since October 25, 1982." Commander Julio González, in charge of Special Region 1 of Puerto Cabezas, informed the staff members of the Secretariat that he "had never detained a miskito by the name of Manuel Thompson Clark", and showed a registry listing detainees, which did not include reference to Manuel Thompson Clark. Likewise, the two detainees who spoke to the staff members of the Secretariat in private, and who had been detained for two months and one year respectively, indicated they had never heard mention of Manuel Thompson Clark.

38. The Commission can only express its deep concern over the facts described above, that show contradictory information given by Government agencies and which, therefore, should be investigated as soon as possible.

39. The Commission recognizes that the problem of the disappearances of Miskitos in Nicaragua entails aspects different from those in other countries where this deplorable phenomenon has taken place. For that reason, the Commission allows the possibility that, lacking a census of the population and given the conflict situation obtaining in the Nicaraguan Atlantic Region, some Miskitos may have changed their names, which is not unusual among them, and are now living in places other than where they lived before, or that others, who were presumed to have disappeared, may have moved to Honduras. However, at the same time, the Commission cannot fail to express its deep concern over this problem, given the absence of any kind of formality in carrying out detentions of Miskitos, the lack of notification to their families when they have been moved to Managua, and the absence of a list containing the names of Miskitos who have been detained and their place of detention.

E. Right to Residence and Movement

1. With respect to the right to residence and movement that the American Convention on Human Rights guarantees in Article 22, 25/ this section studies three situations: a. the compulsory relocation of Miskitos in January of 1982 from their communities on the Coco River to the Tasba Pri settlements in Zelaya Department; b. the compulsory relocation of Miskitos in November and December of 1982 from their communities on the Coco and Bokay rivers in Jinotega to settlements in the interior of that Department; and c. the repatriation of Nicaraguan Miskitos currently residing in Honduras.

a. The relocation from the Coco River Region to Tasba Pri

2. With respect to the compulsory relocation of approximately 8,500 Miskitos from the Coco River to five camps in what has been called Tasba Pri, in this section the Commission will consider the compatibility of this measure with the obligations undertaken by Nicaragua under the

25. The pertinent parts of Article 22 of the American Convention States: 1. Every person lawfully in the territory of a State party has the right to move about in it, and to reside in it subject to the provisions of the law. 2. Every person has the right to leave any country freely, including his own. 3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crimes which protect national security, public safety, public order, public morals, public health, or the rights and freedoms of others. 4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest. Article VIII of the American Declaration of the Rights and Duties of Man states: Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

American Convention on Human Rights. The Commission will seek to establish whether the relocation was legally justified by the fact that there was an emergency in Nicaragua which authorized its authorities to adopt such a measure, even though the emergency was declared subsequent to the relocation.^{26/}

3. Article 27 of the American Convention on Human Rights, applicable to this case reads as follows:

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

26. It was only on March 15, 1982 that the Government of Nicaragua suspended for thirty days, which could be extended, "throughout national territory, the rights and guarantees set forth in Decree No. 52 of August 21, 1979 with the exception of the provisions of Subparagraph 2 of Article 49 of that Decree." The Decree suspending these guarantees was sent to the General Secretariat of the OAS on March 22, 1982.

4. Since the right to residence is one of the rights that may be suspended, the Commission will limit its examination to considering whether in this case the requirements set forth in paragraph 1 of Article 27 have been met, i.e., that the compulsory relocation move was undertaken: a) in time of war, public danger or other emergency that threatened the independence or security of the State; b. that it was adopted for the period of time strictly required by the exigencies of the situation; and c. that it was not inconsistent with other obligations under international law and did not involve discrimination on the ground of race, color, sex, language, religion or social origin.

The formal requirements set forth in paragraph 3 of Article 27 were not observed by the Government at the time of the relocation, as has been indicated. The effects of that omission will be considered at the end of this section.

5. With respect to the first requisite of paragraph 1 of Article 27, i.e., that there be a state of war, public danger, or other emergency that threatens the independence or security of the state, the doctrine generally accepts the propriety of suspension of obligations in terms of human rights only when there are extremely serious circumstances.27/

6. For its part, the European Convention on Human Rights and Fundamental Freedoms 28/ and the International Pact on Civil and Political Rights 29/ set forth provisions similar to those of the American

27. In this regard, see, for example, Higgins: Derogation Under Human Rights Treaties, 48, British Year Book of International Law. page 282-3.

28. Article 15 of the European Convention states: 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Article 3, 4 (paragraph 1) and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

29. Article 4 of the International Covenant on Civil and Political Rights states: 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, (continue)

Convention, since all of these instruments require the existence of a serious national emergency, that the measures adopted be "strictly required by the exigencies of the situation" (these terms are the same in all three instruments) and that those measures be compatible with the state's other international obligations.

7. The European Commission has several times considered the bases of the declaration of a state of emergency. The criteria arising from the implementation of the European system indicate, on the one hand, that the threat to the normal life of the nation should stem from an important disruption, certainly one greater than a mere civil disorder; that the danger should be real, in the sense that the danger to security is imminent and not latent or potential; but, at the same time they recognize that the State has a margin of discretion to determine the existence of these threats to its normal life.^{30/}

8. The United Nations Human Rights Commission, for its part, has also had to deal with some problems in this respect, and has shown understanding towards states that have truly suffered serious internal disturbances, as was the case of Lebanon, although that country did not send notification of the suspension of rights.^{31/}

In light of this background, the Commission considers, in interpreting the first part of paragraph 1 of Article 27 of the American Convention, that the emergency should be of a serious nature, created by an exceptional situation that truly represents a threat to the organized life of the state.

10. Were the events that took place near the Coco River, on the border zone with Honduras, in December of 1981, of such a nature?

29. (continuation)

sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

30. The first analysis of the invocation by a state of an emergency to justify suspension of obligations arising from the European Convention was prepared by the European Commission in the case of "Cyprus" (Greece vs. the United Kingdom of Great Britain, 1958-1959). Additional bases of investigation to determine the existence of an emergency and whether the measures adopted by a government were "strictly limited to the exigencies of the situation", were prepared in three other cases by the European Commission and Court. The "Lawless" case (1961); the Greek Case; and the case between the Republic of Ireland and the United Kingdom (1976-1978).

31. UN Doc. 34 UN. GAOR supp. No. 401.

11. The Government of Nicaragua, in the statement made by its representatives to the Commission on March 4, 1982, stated that they had previously planned to transfer part of the Coco River population to a more fertile region protected from annual floods, but that the frequent incursions of the "counterrevolutionary bands" from the Honduran side of the river had created a "war situation in the zone" that they viewed as part of an international attack on Nicaragua that represented a "growing danger to its territorial integrity and national sovereignty". As a result, the Government decided on December 28, 1981 to evacuate the entire area and make it a military zone.

With specific reference to the problem of relocation of the Miskito population, Commander Campbell, in the interview held with the Commission on March 4, 1982, stated that the Government had previously decided to relocate part of the population inhabiting the banks of the River Coco to more fertile lands and more secure areas, in view, among other things, of the frequent flooding of the villages on the river banks as a result of the rising of the Coco River and the poverty of the land, which cannot produce sufficient food or food of sufficient nutritional value.

The resettlement process was planned to be carried out in stages, beginning with efforts of persuasion. However, Commander Campbell added, the resettlement process necessarily had to be undertaken quickly for military reasons, due to the war situation in the zone as a result of the presence of counterrevolutionary camps along the left bank of the Coco River, in Honduran territory, whose existence had been repeatedly denounced by the Government of National Reconstruction.

Commander Campbell explained that these "counterrevolutionary bands", have constantly harassed the border towns either by shooting from the other side of the river or through frequent incursions into Nicaraguan territory, which had also been repeatedly denounced by the Government of Nicaragua. The Commander added that this is part of an international aggression against Nicaragua to destroy its revolution, and represents a growing danger to its territorial integrity and national sovereignty. Thus, the revolutionary government decided to declare this strip of territory a high security military zone, and proceeded to reinforce detachments. This situation meant that the civilian population was trapped between two military forces. The Commander said that for that reason, the Government of National Reconstruction, acting responsibly and in the interest of saving the lives of the Miskitos, decided to relocate the inhabitants of the above-mentioned communities to five new settlements where they are now being resettled, community by community, and where the government is building houses for them and providing them with food and the necessary medical care.

12. The Commission finds that the security of the Nicaraguan state was truly threatened by the incursions of the groups of former members of the National Guard, which justified the declaration of a state of emergency and its maintenance. The ongoing penetration of these armed groups into Nicaraguan territory demonstrates that there was a real and imminent threat to the security of the State.

13. The Commission will now consider whether the second requisite established in paragraph 1 of Article 27 of the American Convention has been met, according to which the measures adopted shall be strictly required by the exigencies of the situation, in terms of the duration and nature of such measures.

14. According to the above-mentioned criterion, the measures adopted should be proportionate to the danger, both with respect to degree and duration; thus, once the danger that threatens the security of the state has been overcome, the special provisions should also be terminated.

15. The basic measure adopted by the Government was the relocation of approximately 8,500 persons from the banks of the Coco River to five new settlements situated approximately 60 kilometers from the border with Honduras. These settlements are: Wasminona, Sahsa, Sumubila, Truslaya and Columbus, and as a whole they are called Tasba Pri, in Miskito.

16. According to a government publication titled "Tasba Pri", the relocation has given the population opportunities they did not formerly have with respect to health and education, according to that publication:

The organization of the population by family and neighborhood units, to which the Indian peoples are accustomed, has been guaranteed in the existing settlements. All of the members of each of the communities are together, which guarantees that their social structure will not be disrupted.

In all of the settlements, the population has been vaccinated against malaria, measles and tetanus. Health campaigns have been carried out that include environmental and personal hygiene, with emphasis on the use of boiled water to prevent disease.

The children are organized by school age, and schools have been built in all of the settlements. Normal religious worship takes place in Sunday services. Likewise, cultural events among the populace of the settlements have taken place, such as the organization of festivals, dances, choirs, and musical groups, and sports are encouraged among children, young people and adults.

17. The reasons for carrying out the relocation are presented by the above-mentioned publication in the following terms:

What were the reasons that led the People's Sandinista Revolution to decide to relocate the Rio Coco communities?

The TASBA PRI program is not something new and improvised. It was immediately preceded by the feasibility study undertaken by the Revolutionary Government through its Nicaraguan Institute of the Atlantic Coast (INNICA) in

November of 1980, to improve and lend dignity to the lives of the Miskitos inhabiting the Nicaraguan side of the Coco River. (Commission's underlining).

This resettlement will safeguard the Miskito population from the attacks of counterrevolutionary bands, and ensures protection of their principal human rights: the right to life and the right to work in peace.

The resettlements will solve the historic problems of the inhabitants, which are a subsistence agriculture, lack of fertile lands, inaccessibility of the region and consequent difficulties for transporting inputs and obtaining state services, and the floods which annually cause serious damage to housing and crops.

18. In light of the above-mentioned considerations, the Commission considers that the Government's plan to relocate the population of the Coco River was replaced due to military necessity. The plan to voluntarily relocate the Coco River population to "improve and lend dignity to the living conditions of the Miskitos" would have been justifiable only if that move had been voluntary, as was allegedly planned.

19. The Government's argument that this planned relocation was changed as a result of a military emergency requires careful examination to determine whether it was in proportion to the nature of the emergency. The prevailing situation in the zone at the time of the move was in fact very tense, and created both a danger to the lives of the Miskitos and a threat to the Nicaraguan Government; this situation has been confirmed by subsequent developments in that region. It could be considered, then, that the requirement of proportionate measures has been met.

20. The forced evacuation of nearly 8,500 people, in some cases in the middle of the night and by armed forces, to create a military zone is only justifiable in the absence of any other alternative to meet a serious emergency. Even granting the Government of Nicaragua a margin of discretion, since it was a military decision applied to a military emergency, the Commission must now consider whether the duration of the measure is appropriate to the situation.

21. The relocation is justified by an emergency situation; therefore, the measure should not outlast the emergency, and termination of the emergency should allow the return of the civilian populace to their original region, if they so desire.

22. A note of June 15, 1982, addressed by the Government of Nicaragua to the Chairman of the Commission, regarding the right of the Miskito population to return to the Coco River when the emergency is over, stated the following:

The Government of Nicaragua guarantees, as stated by a member of the Junta, Dr. Rafael Córdoba Rivas, ... that when

the danger on the border is over, those who wish to return to their places of origin may do so, and the Government of Nicaragua has surpassed the adequate compensation suggested by giving these Nicaraguan citizens land, homes, seeds, fertilizers and farm tools, and medical attention, without charge.

23. This reply implies, in the opinion of the Commission, that the Miskitos who choose not to remain in Tasba Pri once the emergency is over may return to the Coco River region, which means that the measure would be limited only to the duration of the emergency, thus meeting the other requisites established by the pertinent norms; nevertheless, they will not receive assistance from the Government to reestablish their communities.

It may be understood from the note that the government considers that it has met its obligation to compensate the Miskitos for their losses by providing them an alternative social framework in Tasba Pri, which nevertheless was neither requested nor accepted by the Miskitos. Certainly this refusal to provide compensation represents a serious obstacle for the return of the Miskito population to the Coco River Region, and contradicts in fact the declared willingness of the Government to allow that population to return to the zone, once the current emergency is over.

24. Nevertheless, the Government of Nicaragua has stated to the Commission that it had planned the relocation for reasons of economic development, and that it was to be carried out voluntarily. To impede their return, directly or indirectly, would imply that the resettlement arising from the compulsory relocation is permanent, which would be contradictory to the statements given by the Government and in violation of the right to residence and movement set forth in the American Convention.

25. Due to the circumstances under which the relocation took place, it is only justifiable on the basis of the military needs invoked by the Government. Therefore, in order for these measures to fall within the parameters set forth in paragraph 1 of Article 27 of the American Convention, they should be adopted "for a period of time strictly required by the exigencies of the situation". For that reason, the Government should expressly declare that the Tasba Pri project may only be carried out with the Miskitos who voluntarily choose to remain there, and in addition, should declare that it will assist in resettling other Miskitos who wish to return to the Coco River Region, which entails granting them adequate compensation for the loss of their property.

26. The Commission will now consider the third requisite set forth in Article 27 (1) of the American Convention, i.e., that the exceptional measures that have been adopted, "are not incompatible with the other obligations ... of international law and do not involve any discrimination based on race, color, sex, language, religion or social origin".

27. The preponderant doctrine is that massive relocation of population groups may be juridically valid if done with the consent of the population involved.^{32/} In fact, with the exception of some cases of relocation of Indians, which are subject to criticism, the large majority of population relocations for reasons of economic development have taken place after negotiations with the populace concerned, and with assurances of adequate compensation.

28. The view set forth above should be taken into consideration in studying this matter. For that reason, in cases where the State has moved an Indian minority, study of the conduct of that State should verify that the move is not based on one of the proscribed forms of discrimination.

29. Studies on the forced relocation of rural communities in America show without exception that this process is a traumatic experience, particularly when it concerns Indian populations with strong ties to their land and homes.^{33/}

30. When governmental restrictions are aimed at limiting the rights of a racial group, the rationale for such restrictions should be declared strictly and explicitly, in order to determine if the motive was racial

32. The Institute of International Law, at its meeting in Sienna, 1952, adopted the position that population relocations may be legal only if they are "voluntary". 44/2 Annuaire. 138 (1952).

33. For example, a study of the programmed relocation of approximately 10,000 Navajo Indians demonstrated the following negative effects arising from resettlement: For most of the people who have been moved, the deep shock of the forced relocation is similar to the grief caused by the death of a father, wife, or son. This multidimensional tension has given rise to numerous negative effects. The relocation undermines the person's self-confidence, who finds it humiliating to have been unable to protect his basic interests. In the case of the Navajos, these interests were preservation of their native soil (for them, and more importantly, for their children), their homes, their system for raising livestock associated with their way of life, and environmental ties to their birth sites. The trauma of resettlement alters the family group and the lives of each of its members. It undermined the influence and authority of the head of household when he or she has been shown to be unable to preserve the family's way of life. The individual members of the family may suffer severe depression. Violence, alcohol abuse and mental and physical illnesses are too frequently closely related to compulsory relocation. The move also undermined the influence and authority of local leaders. Since most of those relocations are resisted, in one way or another, their leaders are discredited if they cooperate with the authorities of the resettlement process. On the other hand, these leaders are also discredited if the relocation takes place despite their opposition. See Scudder: "No Place to go. Effects of Compulsory Relocation on Navajos", 1982.

discrimination. In this case, it is necessary to determine if the relocation was a form of punishment applied to what may have been considered a disloyal ethnic group.

As indicated by the above background, the problems encountered by an Indian population as a result of relocation can affect that population seriously, considering the special ties they have with their original lands. In the Indian's complex scheme of values, what gives meaning to life is its intrinsic connection with their land, their livestock, their plantations, their cemeteries, their religion and a complex weave of other elements that combine to infuse the territory with a deep spiritual meaning. In that culture, a sense of value is closely tied to one's place of origin. For that reason, it is important that the international community seek to avoid, if possible, disturbances of Indian populations.

31. In this case, the Commission is of the opinion that the relocation for military reasons was not carried out in a discriminatory fashion but that if the Miskitos are not helped to return to the Coco River region, once the military emergency is over, their prolonged stay in Tasba Pri will become a form of discriminatory punishment, in violation of the American Convention on Human Rights.

32. Finally, the Commission wishes to refer to the fact that the Government of Nicaragua did not make use of the right of suspension of guarantees prior to the relocation, nor did it report to other states on the "provisions application of which has been suspended" and "the reasons that gave rise to the suspension" until March 15, 1982.

33. Since the evacuation took place during the press censorship imposed by Decree 511, which effectively isolated the Atlantic Coast from the rest of Nicaragua, an atmosphere of terror and confusion was created that together with the incendiary broadcasts of Radio 15 September led to the dramatic flight of 10,000 Miskitos to Honduras, to avoid relocation.

34. The Commission considers that this result might have been avoided, at least in part, if the Government of Nicaragua had declared the state of emergency in the Coco River zone in December, 1981, when it decided to relocate the population, and if it had reported on the military justification for the temporary evacuation. This measure would have undermined the credibility of the Radio September 15 reports of relocation to concentration camps, and it would have avoided the consequent panic which gave rise to the exodus of half of the Miskito population from the Coco River region to Honduras.

35. This omission has now led to the problem of how to induce the Nicaraguan population of Miskito origin now in Honduras to return to their country. The arbitrary detention of Miskitos and the absence of proper treatment thereof by the Government, because it considers them a subordinate and suspect population manipulated for military purposes, has given rise to a deep-seated distrust in the Nicaraguan Miskitos who are in Honduras.

That is one further reason that leads the Commission to consider that once the Government of Nicaragua has decided that the military emergency in the border zone is over, it should provide and even encourage the return of the Miskito population from Tasba Pri and Honduras to the Coco River zone, and help them to reestablish the communities that were destroyed.

b. New evacuation of Miskitos from the Coco River and Bokay River to settlements in Jinotega

36. In November, 1982, another evacuation of Miskito communities that inhabited the surrounding areas of the Coco River and the Bokay River in the Department of Jinotega took place. The Commission only learned of these relocations when it learned of the tragic accident that took place on December 9, 1982, in which 75 children and 9 mothers lost their lives when the helicopter that was transporting them to the new settlement of San José de Bokay, between Jinotega and Matagalpa, caught fire.

37. Initially, the Commission received the following information from the National Commission for the Protection and Promotion of Human Rights in Nicaragua on this matter:

The National Commission for the Promotion and Protection of Human Rights shares the deep sorrow and indignation of the Nicaraguan people at the terrible death of 95 Miskito children and 9 mothers, who were evacuated by helicopter from the border zone with Honduras to safe places, far from the siege of the counterrevolutionary bands coming from that country. Rescue by another helicopter from Wiwilí was impeded, due to the damage done to it by those same bands.

While the Government of National Reconstruction was protecting the right to life of these children and that of the communities located in the border zone with Honduras, the counterrevolutionaries satisfied their hatred and vengefulness with the innocent blood of these 75 children.

Since the right to life is inherent in human beings, this tragedy mourned by Nicaraguans takes on greater significance since this right has been violated for the most important part of a people, the lives of their children. The National Commission repudiates and denounces these criminal acts, that not only move the conscience of our people, but which unite the deepest feelings of all of those who struggle throughout the world for the protection and observance of human rights.

38. Apart from this communication, the IACHR has received no further information from the Government of Nicaragua with respect to that evacuation.

39. During their visit to Nicaragua, the Executive Secretary of the IACHR and Dr. Cerna, on June, 1983, received the following statement from

the only survivor, Mrs. Lesbia Castillo, who lost her three-month old son and several relatives in the accident.

The name of the new settlement where they were to be taken was called San José de Bokay. They began the evacuation at the beginning of November. Since they couldn't take everyone to the new settlement at one time, they had to make several trips, so they decided to concentrate everyone in a community called Ayapal, to later be relocated in San José de Bokay. The vehicle that was to relocate the population was in bad condition, i.e., it had had accidents. Both the people and the crew knew this. I say that the helicopter had accidents because it was loaded with bundles and ran into a tree, and one of its blades was broken. The helicopter was being repaired on the 18th and 19th so as to be used in the evacuation.

On November 1, the entire town of San Andrés de Bokay was taken to the Ayapal community. We were in Ayapal for 20 days (I mean the people of San Andrés de Bokay), and there were people from other refugee communities there. The authorities gave us food but even so we were homesick for our community and belongings (home, farms, livestock, etc.).

After we were evacuated, the communities and houses were burned, and the livestock killed to be eaten. I am talking about our natal community San Andrés de Bokay. On December 9, one of those in charge of the evacuation told all of those evacuated from the Ayapal communities that they were all going to be reevacuated to a new San José de Bokay settlement where we would live definitively. He also emphasized that a) the flight would only take children, the sick and the elderly; b) the others would have to go on foot to the new settlement. The person in charge said this after the helicopter had already made three trips to the settlement. For the fourth trip, the mothers of the small children who were going in the helicopter complained because they wanted to go with their children. There were even some who said they preferred to go with their children on foot if they could not go with them in the helicopter. But the person in charge insisted that only the children, the old people and the sick could go and the mothers let their children go alone. Once those of us who were going were inside (they let me go in the helicopter because I had a three-month old child), the pilot said to the other mothers that they would make six more trips after this one. Immediately after it took off, the helicopter had another accident, and a whole blade fell off, and immediately in the sight of all the passengers who were desperate, the plane fell, turning over on the landing strip of Ayapal, where the main door stuck in the ground.

The crew was made up of a pilot, a copilot and a mechanic. They were aboard, and the above-mentioned people in charge did not help or stay there to try to save lives. Instead they got out through a window and tried to save themselves. The death of those children was slow because help was needed to get out of the helicopter. But no one would help anyone then. The number of passengers aboard were: 79 children from 3 days old to 15 years of age. Seventy-five of these died, and only 4 were saved. There were 10 adults, mothers, and I was the only one that was saved from the tragedy. The crew, a pilot, a copilot and a mechanic saved themselves. The fire followed its slow course while the hopes of saving these children and adults disappeared. Six coffins were made and they put the remains of the children and their mothers in the coffins to give them a Christian burial.

40. In the view of the Commission, testimony of the only survivor contradicts the version given by the Government of Nicaragua with respect to the cause of the accident. In addition, the fact that the evacuation was carried out in secret and without external observers suggests once again the same critical observations that the Commission made with respect to the relocations carried out in January, 1982, to Tasba Pri. From the viewpoint of the IACHR as mediator in a friendly settlement, it can only regret not having been informed of this evacuation until after the helicopter accident. It is clear, given the role that the Commission had assumed at the very initiative of the Government of Nicaragua itself, it should have been duly informed of this new compulsory relocation of Miskito populations, particularly if one bears in mind that the Government of Nicaragua was already informed of the misgivings and concerns that the Commission had expressed with respect to the way in which the earlier relocation to Tasba Pri had taken place.

c. The relocation of Miskito refugees in Honduras to Nicaragua

41. Both in its preliminary recommendations and in the recommendations contained in its Report of July 26, 1983, the Commission pointed out that, if possible, voluntary repatriation of the Nicaraguan Miskitos who had taken refuge in Mocoron should be facilitated. For that purpose, the Commission stated that it would be desirable to have the assistance of the Government of Honduras and of the United Nations High Commissioner for Refugees and both were asked for their cooperation.^{35/}

42. For its part, the Government of Nicaragua always stated its willingness to accept such relocation. It even made that relocation the central point of the Commission's intervention in the friendly settlement procedure.^{36/}

^{35.} See Sections L and N in Part One.

^{36.} See paragraph 5, Section N, Part One, which contains the proposal of August 24, 1982 of the Government of Nicaragua.

43. Nevertheless, as stated above, the arbitrary detentions of Miskitos, the destruction of their property and the lack of proper treatment by the Sandinista Government has led to a deep distrust by the refugee Miskitos in Honduras of the Nicaraguan Government.

44. After twice interviewing Nicaraguan refugees of Miskito origin in Mocerón and other camps in Gracias de Dios Department of Honduras, the Commission has reached the conclusion that for the time being such repatriation is not possible, given the resistance of the large majority of the Miskitos to returning to Nicaragua. Nevertheless, should prevailing circumstances change, the Commission believes that efforts to bring about their repatriation should again be undertaken in the future.

45. Despite the foregoing, the Commission considers that efforts can be made through the UNHCR and with the cooperation of the Government of Honduras so that, in some cases, some Miskito families may be reunited, as is the case for example of the heads of family who have remained in Nicaragua, such as the pastor of the Moravian church, Tomás Escobar, whose family is now in Honduras.

F. Right to Property

1. With respect to the right to property set forth in Article 21 of the American Convention on Human Rights,^{37/} the issue studied in this report has two distinct aspects. The first is the claim made by the leaders of Misurasata and Indian communities to an inherent right of the Indian people to possess, use and enjoy their ancestral lands, as well as its resources and riches. The second refers to the destruction of the homes, crops, livestock and other belongings of the Miskitos in the course of the compulsory relocation to new settlements.

2. In his written presentation to the Commission, Mr. Armstrong Wiggins, on his own behalf and on behalf of the Indian Law Resource Center, stated that if the intention of the Sandinista Government was to permanently locate the inhabitants of the Coco Region elsewhere, this would be prejudicial to their interests and the basic rights of the Indians. Mr. Wiggins added that if such relocation were permanent:

...then the Indians of Nicaragua are experiencing the same, classic anti-Indian rights policy which Indians have historically suffered throughout the Americas. They are being forcibly uprooted from their traditional homelands and from their traditional ways of life by their more militarily

^{37/} Article 21 of the American Convention states: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

powerful non-Indian neighbors. This would mean that Indian property rights to substantial areas of their territory and Indian cultural rights to continue their way of life are being usurped. If this is the objective, then the Indian right to self-determination is being denied not merely as a temporary emergency measure but as official government policy for the indefinite future. Such outrageous denial of these Indian peoples' most basic human rights would fairly be called imperialism.

3. For his part, Brooklyn Rivera, Coordinator General of Misurasata, in his presentation of April 8, 1982, claimed that a fundamental part of the allegations of his organization related to the problem of the lands, since the Indians' rights to the lands in Indian territory should be recognized as a whole and not in parcels or sections guaranteed by the Government. Likewise, Rivera stated that the Indians' right to the natural resources of their own land should be guaranteed.

4. The position of the Government of Nicaragua has thus far been diametrically opposed to that set forth by Wiggins and Rivera. In the view of the Government, the Indians have no special rights that allow them to exercise rights other than those of other Nicaraguan citizens in Nicaraguan territory. Thus, in a document submitted to the United Nations Seminar on resources and other forms of protection for victims of racial discrimination, the Minister of the Nicaraguan Institute of the Atlantic Coast, William Ramírez, refuting these special rights of the Indian communities, stated:

Territorial unity stands above any other consideration and is not subject to discussion of any kind. The imperialist dream is to separate the Atlantic Coast from the rest of Nicaragua. We will never permit this. Our Indians are as Nicaraguan as any other citizens, and they have the same rights as any one of us.

5. In addition, the Agrarian Reform Law that came into effect on August 21, 1981, has tried to harmonize the eminent domain of the Nicaraguan state over its national territory with the interests of the Indian communities, by providing in Chapter VIII that:

The State may dispose of the amount of land necessary so that the Miskito, Sumo and Rama communities may work them individually or collectively and so that they may benefit from their natural resources, so that their inhabitants may improve their standard of living and contribute to the economic and social development of the Nicaraguan nation.

Nevertheless, the Commission is not informed about how this provision has been implemented. On the contrary, it is aware of Misurasata's disagreement with agrarian reform as it concerns the Indian communities.

6. The Commission is not in a position to decide on the strict legal validity of the claim of the Indian communities to their ancestral lands. This does not mean that it is unaware that this problem is one of the most serious between these communities and the Government of Nicaragua, and a de facto situation that must be recognized and considered sooner or later. In addition, it should be taken into account that this kind of problem is neither novel nor exclusive to Nicaragua, since there is a large number of similar situations in America, where vast groups of the Indian population have seen their development potential diminished, due to the absence of a political response that would adequately take into account the peculiarities of their social and economic organization. The resolution of this kind of problem by the Government of Nicaragua would represent a valuable precedent for consideration of similar situations. Obviously, this in no way implies a limitation on the sovereign rights of Nicaragua over its territorial integrity. Hence, the Commission recommends to the Government that it study a just solution to this problem as soon as possible, and that it meet both the aspirations of the Indians and the requisites of territorial unity of the Republic.

7. With respect to the destruction of the homes, crops, livestock and other belongings of the Miskitos at the time of the relocation, Government officials themselves have recognized that these acts took place. It would therefore be appropriate for the Government, in conformity with the American Convention of Human Rights, to authorize just compensation for the destruction of their property to those concerned.

PART THREE

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. With respect to the claim of Misurasata and of other Indian organizations, according to which the ethnic groups of Nicaragua have a number of rights that go beyond those granted to all Nicaraguan citizens, which in particular include the right to self-determination (political autonomy), their cultural identity and the use of their own language and religion, the Commission believes that in the current status of international law the claim is supported only with respect to the preservation of their culture, practice of their religion and the use of their own language, but it does not include the right to self-determination or political autonomy.

2. Forces in opposition to the Nicaraguan Government crossed the Coco River from Honduras and occupied the town of San Carlos, on the bank of that river in December, 1981, where they set up an ambush, mutilated and killed six Nicaraguan soldiers. The Government of Nicaragua denounced this incident as part of a massive uprising planned to begin in the villages along the Coco River during Christmas week, 1981. In turn, forces of the Nicaraguan Sandinista Army killed Miskitos during these border confrontations, and the Commission has sufficient information to hold that the Government of Nicaragua illegally killed a considerable number of Miskitos in Leimus, in retaliation for the killings in San Carlos, in violation of Article 4 of the American Convention on Human Rights.

3. On December 28, 1981, the Government of Nicaragua decided to relocate 42 villages along the Coco River to five settlements located approximately 60 kilometers south of the river, on the Rosita-Puerto Cabezas Road, which was called "Tasba Pri" (Free Land, in the Miskito language). The up-river villages, from Leimus to Raití, had to be evacuated on foot under difficult and harsh circumstances because there were no roads passable by vehicles. The down-river villages from Leimus to the Atlantic coast were relocated in trucks and many were allowed to take some belongings with them. In the period between January 1 and February 20, 1982, the relocation of approximately 8,500 people was effected. Approximately half of the Rio Coco region population fled to Honduras, fearing that their lives were in danger. Despite the fact that the relocation and resettlement of the Miskitos in Tasba Pri was carried out in an atmosphere of fear and severe conflict, the Commission is not in a position to state that there was loss of life during the relocation, with which the Government had been initially accused.

4. The relocation in Tasba Pri of some Miskitos, and the flight to Honduras of others, uprooted the Miskitos from the banks of the Coco

River, where they had lived from time immemorial, resulting in the division of numerous towns and entire families, the destruction of their homes, the loss of their livestock and in some cases, all of their belongings. The Miskito structure of authority was undermined and later dissolved de facto as a result of the repression of the Misurasata leaders, who were accused of "counterrevolutionary" activities. Later, as Nicaragua began to receive greater threats to its external security and as the conflict in the Atlantic zone intensified, the Miskito villages were increasingly harassed, and the deprivation or limitations on the liberty of the Miskitos became more frequent, culminating on November 4, 1982, with the establishment of a military emergency zone which affected 24 municipalities along the border with Honduras, several of which were almost entirely inhabited by Miskitos.

5. Hundreds of Miskitos have been arbitrarily detained without any formalities and under vague accusations of carrying out "counterrevolutionary activities"; many of these detentions have been followed by prolonged periods of incomunicado imprisonment and in some cases the Commission has verified that illegal torture and abuse took place. Although according to information provided by the Government, most of the detained Miskitos are currently in the Minimal Security Work Farm, near Managua, which provides considerably better prison conditions than any other Nicaraguan prison, the fact of being separated from their families has contributed to the dispersal of these Miskitos. In addition, the Commission has taken due note of the information provided by the Government on three occasions, that 49, 45 and 18 Miskitos, respectively, were released, although the Commission is unaware of the motive for their detention or whether they were duly tried.^{1/}

6. The trial of the Miskitos who were arrested at the end of 1981 and early in 1982 as a result of the incidents of San Carlos and three other nearby towns, was initially carried out without regard to the universally applicable norms of due process. On September 16, 1983, the Supreme Court of Nicaragua, by nullification of the criminal proceedings, annulled the second instance convictions of 59 of the 105 Miskitos who had previously been convicted by the Bluefields Court of Appeals.

7. The Commission has received complaints according to which nearly 70 Miskitos who had been detained have now disappeared. Although the Commission admits the possibility that some of them may, after their release, have changed names or even sought refuge in Honduras, the recorded circumstances of their detention, the lack of notification of their families, and the absence of a list with the names of all detained Miskitos and their place of detention confirm the concern that the Commission has maintained with respect to this serious problem.

1. On December 1, 1983 the Government of Nicaragua decreed a general amnesty for the Miskitos, however a small number remained in detention because they were not included in this measure.

8. The Commission regrets the tragic accident in which 75 Miskito children and 9 mothers died in December, 1982, upon the burning of the helicopter that was transporting them to new settlements in the Department of Jinotega, which fell to the ground and caught fire. Nevertheless, at the same time, it cannot fail to express its concern at the lack of information provided by the Government with respect to this additional compulsory relocation of a significant number of Miskitos.

9. The Commission considers that at this time it is not possible to effect a voluntary repatriation of the Nicaraguan Miskitos in Honduras, which does not preclude the possibility of adopting certain partial measures that would contribute to reunification, or at least communication within Miskito families.

10. The Commission considers that, in general, the Miskitos of the Atlantic region of Nicaragua are in a situation of inevitable economic dependence on the Government, as they have been deprived of their traditional means of subsistence and as they have not reached agreement with respect to their claims to their ancestral lands. The Commission recognizes the efforts of the Government of Nicaragua to provide services with respect to health, education and welfare, both in the new settlements and in the northern towns of the Department of Zelaya inhabited by Miskitos (although until now it has not been possible to solve problems of adequate food supply). Nevertheless, the Commission considers that the greatest obstacles that still confront the Miskito population are due to their lack of participation in the decisions that concern them, resulting from the mutual distrust between that people and the government, all of which exacerbates existing tensions and difficulties.

11. The Commission acknowledges that an overall solution to the difficulties of the Government of Nicaragua with a considerable number of Nicaraguans of Miskito origin to some extent will depend on the achievement of peace throughout Central America, and in particular on an agreement between Honduras and Nicaragua which guarantees peace along the border, thus avoiding detentions that have prevailed until now in these border zones. In that sense, the Commission can only urge the so-called Contadora Group to continue to make its valuable and important contribution to the achievement of peace. At the same time, it is confident that the governments concerned, including that of the United States of America, will conduct themselves in a way compatible with the above-mentioned purpose of establishing a stable and lasting peace in this region.

B. Proposals and Recommendations

In accordance with Article 50, paragraph 3 of the American Convention on Human Rights, the Commission proposes to the Government of Nicaragua the following recommendations and proposals:

1. To declare a pardon or amnesty to cover all Indian Nicaraguans who have been accused of committing crimes against public order and security or any other connected crime and who are currently in prison,

either carrying out a sentence at the order of a competent judge or court, at the order of the Office of the General Attorney, or detained for purposes of investigation for state security; or who are at liberty, within or outside of Nicaragua, and against whom charges have been brought.

2. Once all of the Miskitos who are now imprisoned are released, a conference should be held in the first quarter of 1984 by the representatives of the Government of Nicaragua and persons representing the broadest possible sectors of the various Nicaraguan communities of Miskito origin so that, in the presence of representatives of the IACHR and other concerned international organizations, that conference may discuss and seek solutions to their differences, so that Nicaraguans of Miskito origin may enjoy the rights established in the American Convention on Human Rights.

3. The agenda of that Conference should include the following subjects, although this is not necessarily a complete list.

- a. The appropriate means and conditions to allow the Miskito, Sumo, and Rama peoples to participate in the dialogue with the Government of Nicaragua that would be initiated at this Conference, through existing organizations or those to be established, if those peoples so desire;
- b. Participation of the Miskitos and other ethnic groups in national decisions that concern their interests, as well as in the administration of the Atlantic coast region;
- c. Procedure and mechanisms for granting of compensation to the close relatives (parents, children and spouses) of those who died as a result of the conflict, as well as for those who have been physically impaired for the same reason;
- d. Ways to guarantee that the Miskitos and other Indian peoples may exercise the right to assembly and association, and to freedom of expression and information;
- e. Ways to guarantee that the Miskitos and other Indian peoples of the Atlantic coast region may exercise the right to residence and movement in that region and in the rest of the country;
- f. Establishment of mechanisms to allow the Miskitos who wish to do so to return to the Coco River region, when the emergency is over;
- g. Mechanisms that would allow the repatriation or voluntary resettlement of any Miskito now in Nicaragua to the refugee camps in Honduras, or from those camps to Nicaragua for purposes of family reunification;

- h. Improvement of communications between the Miskitos who reside in Nicaragua and those who have taken refuge in Honduras, for which it will be desirable to have the cooperation of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees in the course of the conference;
- i. Establishment of procedures and mechanisms to compensate the Miskitos for the loss of their homes, crops, livestock or other belongings when they were evacuated from their villages;
- j. Study of a solution to the problem of the Indians' ancestral lands that would take into account both the aspirations of the Indians and the economic interests and territorial unity of the Republic;
- k. Study of means to promote and guarantee respect for the cultural identity of the Indian peoples of the Atlantic coast region.^{2/}

2. On April 28, 1984, the Government of Nicaragua communicated to the IACHR that it accepted, in principle, the idea of holding a conference, such as the one that had been proposed, nevertheless such a conference could not be held immediately, due to the conditions prevailing in the country, and rejecting the participation at the conference of persons accused of activities against the security of the State.

Approved by the Commission at its 814th meeting,
62nd session, held on May 16, 1984

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RESOLUTION ON THE FRIENDLY SETTLEMENT PROCEDURE
REGARDING THE HUMAN RIGHTS SITUATION OF A
SEGMENT OF THE NICARAGUAN POPULATION OF
MISKITO ORIGIN

Approved by the Commission at its 814th session
held on May 16, 1984

Resolution on the Friendly Settlement Procedure
regarding the Human Rights Situation of a Segment
of the Nicaraguan Population of Miskito Origin

Case No. 7964 (Nicaragua)

WHEREAS:

1. The complaint presented by the organization Misurasata informs the Inter-American Commission on Human Rights that various and serious violations of human rights attributable to the Nicaraguan Government had occurred following the events of December 1981 and January 1982 that had taken place in the Miskito communities of the Rio Coco area;
2. The invitation of the Government of Nicaragua on February 22, 1982 to the Commission to visit Nicaragua in order to learn firsthand about the situation in the new settlements of the ethnic minorities that inhabit the Atlantic zone;
3. The on-the-spot observation in Nicaragua of a special commission of the IACHR from May 1 to 6, 1982, which was complemented by a visit made by a special subcommission to a refugee camp in Mocoron, Honduras, from May 7 to 9, 1982;
4. The preliminary recommendations delivered by the special commission to the Government of National Reconstruction at the close of the on-site visit to Nicaragua;
5. The Special Report on the Human Rights Situation of the Miskito Indians in Nicaragua, adopted by the IACHR on June 26, 1982, which was transmitted to that government;
6. The reply of the Government of Nicaragua of August 24, 1982, in which it analyses the conclusions and recommendations of the aforementioned special report and proposes to the Commission that it assume the role of mediator in a friendly settlement procedure;
7. The consent of the IACHR to serve as mediator in a friendly settlement procedure, communicated to the Nicaraguan Government by note of September 20, 1982;
8. The note of the IACHR to the Government of Nicaragua dated November 22, 1982, in which it specifies the ways in which it ought to undertake its conciliatory function, the procedure to be followed and the

measures that ought to be taken by the government in order to create the conditions of détente essential for the effective exercise of its function;

9. The visits made by the staff of the Secretariat of the Commission to Honduras in May 1983 and to Nicaragua in June of that year, in order to update the information available to the IACHR;

10. The later notes sent by the IACHR, in which it requested the Government of Nicaragua to inform it as to how it had been complying with the Commission's recommendations and the replies made by the government;

11. The note of September 30, 1983, in which the IACHR informs the Nicaraguan Government of its intent to make one last effort to reach a friendly settlement, and for this purpose requests it to undertake a set of measures which the Commission considers indispensable in order to continue its function as mediator in the friendly settlement procedure, in particular a pardon or amnesty for all the Miskitos arrested as a result of the events that had occurred since December 1981, and the holding of a conference with ample participation of Miskito leaders representative of the different sectors of the population;

12. The reply of the Government of Nicaragua of November 14, 1983, in which it states that, due to the conditions prevailing in Nicaragua it is impossible to grant the amnesty requested by the IACHR by the date set and it rejects participation in the proposed conference of some of the persons mentioned by the Commission in its note;

13. The note of the Chairman of the Commission to the Minister of Foreign Affairs of Nicaragua dated November 29, 1983, terminating the activity of the IACHR as mediator in the friendly settlement procedure, and the transmittal on that same date, of the report approved by the Commission;

14. The cable also of November 29, 1983, addressed by the Foreign Minister of Nicaragua to the Chairman of the IACHR, in which he reports, elaborating on the note of November 14, that the Government of Nicaragua has decreed a general amnesty in favor of the Miskitos and inviting the Chairman of the Commission to the ceremony at which the amnesty will be announced;

15. The cable from the Chairman of the Commission to the Foreign Minister of Nicaragua in which he expresses satisfaction that the amnesty has been decreed;

16. The cable of April 28, 1984, from the Foreign Minister of Nicaragua, in which he informs the Chairman of the IACHR of the agreement, in principle, of that country's government to hold a conference such as

that proposed by the Commission, even though he considers that, because of the convulsive climate in the Central American region, it cannot be held immediately and he again rejects the participation of certain leaders in the conference;

17. The provisions of articles 48.1(f) and 49 through 51 of the American Convention on Human Rights and of articles 42 through 45 of the regulations of the IACHR; and

CONSIDERING:

1. That given the problems that have arisen between the Government of Nicaragua and the Miskito population of that country, it is necessary to distinguish between those that are long-standing in Nicaraguan society from others which arose in 1980 and 1981 and deteriorated at the end of this past year;

2. That both the long-standing as well as the recent problems have become intertwined in the context of a situation of conflict with obvious international repercussions, creating a state of great social tension within which framework serious violations of human rights have occurred, attributable to the Government of Nicaragua;

3. That in order to effectively protect the human rights of a group of Nicaraguan Miskito citizens, the Commission, on the basis of complaints received began the processing of this case, and for that purpose directed itself to the Nicaraguan Government;

4. That the Nicaraguan Government first invited the IACHR to carry out an on-site observation to ascertain the situation and later requested it to assume the function of mediator in a friendly settlement procedure with respect to the problems that had arisen with the Miskito population, in an effort to resolve them on the basis of respect for the human rights set forth in the American Convention on Human Rights and following the procedure established by the Convention;

5. That the analysis of the recommendations made by the Commission and the replies given by the Nicaraguan Government permit an objective evaluation of the results obtained through the friendly settlement procedure;

6. That in that evaluation account must be taken of both the existence of diverse circumstances which determine the degree of compliance by the government with certain recommendations of the Commission and the very nature of the problem to be solved by means of the actions recommended;

7. That the subject matter of the friendly settlement procedure, the recommendations of the Commission in this regard, and the actions taken by the Government of Nicaragua have been as follows:

a. Beginning with the forced displacement of the Miskito communities on the Coco River to the interior of Nicaragua, the Commission recommended to the Nicaraguan Government that it state that this move was a temporary measure and that it would therefore guarantee the return to their places of origin to those who wished to return once the emergency was over. The Government of Nicaragua complied with this recommendation of the IACHR.

b. In view of the transfer to Honduras of a large number of Miskito Indians as a result of the circumstances indicated in the report, the IACHR recommended to the Government of Nicaragua that it facilitate the voluntary repatriation of Miskitos now refugees in other countries, thus contributing to family reunification, in order to respect in this manner the right of residence and movement of that population. The government stated its willingness to comply with this recommendation of the IACHR, and in January of this year, it established a committee to encourage and facilitate repatriation of the Miskitos. Representatives of religious institutions and international organizations participate in this committee.

c. In view of the poor physical condition of the Miskitos in detention as a result of the events mentioned, the Commission recommended improving the conditions of detention. The Commission was subsequently able to ascertain that this recommendation had been carried out by the Nicaraguan Government with regard to Miskitos detained under the system of minimal security farms, but not with regard to those in detention in Zona Franca prison.

d. In light of the many and serious irregularities that had taken place during the trials of the Miskitos, the Commission recommended that the standards of due process of law be observed in their trials, which would include, among other things, abolishing the practice of torture confirmed in some cases, eliminating television broadcasting of the defendants confessing while the trial was still in progress, providing proper legal assistance to the accused, and reviewing the sentences issued by the Court of Puerto Cabezas. The Government of Nicaragua complied with the Commission's recommendation, which included review and dismissal by the Supreme Court of Justice of most of the sentences handed down and the removal of the judge responsible for the irregularities committed.

e. The Commission recommended that the Moravian ministers of the Atlantic Coast who had been arrested be pardoned and this recommendation was complied with by the government.

f. Taking into account the action by the Government of Nicaragua which prevented many church people from returning to the Atlantic Coast, the Commission recommended that this prohibition be invalidated. The Government complied with the Commission's recommendation.

g. In view of the distressing situations brought about by the separation of families as a result of the forced displacement and the search for refuge in Honduras on the part of the Miskito population, the Commission, for humanitarian reasons, recommended to the Nicaraguan Government that it create conditions to facilitate the interchange of letters between the camps of Tasba Pri and Mocoron. The government complied with this recommendation, working jointly with the International Committee of the Red Cross.

h. In view of the destruction by Nicaraguan Government agents of the houses, crops and communities in general, as well as the livestock of the Miskito communities, justified by that government's arguing the need to deprive the armed groups operating in the area of resources, the Commission recommended that Miskitos whose property had been destroyed by government action be economically compensated. The government has not carried out this recommendation by the IACHR, arguing that the expenses incurred in providing housing, food, medical attention, land and farming implements to the communities located in the new settlements constituted adequate compensation.

i. Bearing in mind that one of the basic aspects of the conflict which has arisen between the Government of Nicaragua and the Miskito population is that which concerns the Miskitos' claims to their ancestral lands, arguing that the government is violating their rights to those lands and introducing changes detrimental to the system of tenure and exploitation of these lands by means of the Agrarian Reform, the Commission recommended that the government provide a fair solution to the problem of the ancestral lands claimed by the Miskito population. The Commission thus far has not seen a clear expression of the will of the Nicaraguan Government to carry out this recommendation.

j. In view of the Miskito claims that they are not participating adequately in the administration of the Atlantic zone, the Commission recommended that provisions be made for such participation by the people of that region. The government has not complied with this recommendation of the IACHR, although it has reported that it is taking steps to overcome this problem.

k. In view of the Nicaraguan Government's dissolution of the Misurasata organization, the arrest of its leaders and their

subsequent release and exile, the Commission recommended to the Nicaraguan Government that it authorize Misurasata or another institution which authentically represents the Miskito population to function, allowing the leaders of Misurasta to return to Nicaragua. The government has not carried out this recommendation, as it feels that the leaders of Misurasata are involved in activities which affect Nicaragua's domestic and international security. It has reported, however, that a new organization representative of the Nicaraguan Miskito population is in the process of formation, to which the government has guaranteed the right of association, and it has invited the Commission to witness the process whereby the new organization is being created.

l. As a result of the serious violations of the right to life committed by soldiers of the Sandinista Army, which occurred in the community of Leimus in December 1981, the Commission recommended that the Nicaraguan Government investigate the deaths which occurred in those places and punish those responsible. The government has not complied with this recommendation of the IACHR because, although those presumed to be responsible were brought to trial they were acquitted despite the fact that the Commission considers that there is sufficient evidence to convict them.

m. With a view to establishing a favorable climate for the friendly settlement of the problems existing between the Nicaraguan Government and the Miskito population, the Commission recommended that the government grant a broad amnesty to all Miskitos in detention. The government has complied with this recommendation of the IACHR by granting the amnesty requested on December 1, 1983, although a small number of Miskitos who are not covered by the amnesty in reference remain under arrest.

n. With a view to solving the problems which still subsist between the Government of Nicaragua and the Miskito population, many of which require detailed consideration and a cool dialogue between the parties, the Commission recommended that a conference be held which would allow broad participation on the part of the Miskito leadership, even including those accused of subversive activities. The Government of Nicaragua has consented, in principle, to the holding of this conference, but it has expressed the view that, given the existing climate of tension, it could not be held immediately; and the government has reiterated its refusal to talk with the leaders whom it considers to be involved in activities against the security of the State.

o. Bearing in mind that the existing climate of conflict in the region directly affects the observance of human rights, the

Commission recommended that the Nicaraguan Government seek a peaceful settlement of problems which have arisen with Honduras. Subsequently, this matter was included on the agenda of items to be negotiated within the framework of the Contadora Group's peace efforts.

8. Throughout the friendly settlement procedure significant advances were made toward the improvement of the observance of human rights, but important problems which must be resolved in the future remain pending. Among these, some of the problems, such as the matter of punishing those responsible for the deaths that occurred in Leimus, depend on the actual will of the Nicaraguan Government to overcome them. Other problems to be resolved concern matters which, despite the Nicaraguan Government's initial refusal, can yet be subject to reconsideration in the framework of imaginative solutions. These problems include the issue of economic compensation to the Miskitos who have lost their property as a result of the actions of government agents, because if this condition is not met, obstacles will arise that will thwart, in fact, the Nicaraguan Government's avowed will to allow the Miskitos to return to their places of origin once the emergency is over. Other problems remain open to discussion and the IACHR hopes that they will be resolved in the future. Such is the case of the ancestral lands and of the adequate participation of the Miskito population in the administration of the Nicaraguan Atlantic coast.

9. In view of the impossibility of reaching an agreement on the representatives of the Miskito community and of holding now a dialogue between the groups concerned, it is not possible to continue the friendly settlement procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. To bring to an end the friendly procedure pursued with respect to matters affecting the human rights of a segment of the Nicaraguan population of Miskito origin.
2. To state for the record that it has not been possible to achieve a friendly settlement, in part, due to circumstances beyond the control of the Nicaraguan Government.
3. To express its appreciation to the Government of Nicaragua for the necessary facilities provided to the Commission to enable it to carry out the functions of mediator in the friendly settlement procedure and for having complied with some of the recommendations made.

4. To express its decided willingness to continue cooperating with the Government of Nicaragua and with all the affected sectors in the search for a peaceful and lasting solution to the pending problems which still affect a considerable number of Nicaraguans of Miskito origin.

5. To accept the Nicaraguan Government's invitation to the Commission to observe the process by which the new organization, that will bring together the Miskitos living in that country, is formed.

6. To publish the Report on the Situation of Human Rights of a segment of the Nicaraguan population of Miskito origin, which was transmitted to the Government of Nicaragua on November 29, 1983.

7. To send this report, by means of the Secretary General of the Organization of American States, to the fourteenth regular session of the General Assembly, in accordance with Article 52, paragraph f) of the OAS Charter.