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INTER-AMERICAN COURT OF HUMAN RIGHTS



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Corte Interamericana
de Derechos Humanos
San José, Costa Rica

GENERAL SECRETARIAT
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I. ORIGIN, STRUCTURE AND JURISDICTION OF THE COURT

A. Creation of the Court

The Inter-American Court of Human Rights (hereinafter "the Court") was brought into being by the entry into force of the American Convention on Human Rights "Pact of San José, Costa Rica" (hereinafter "the Convention"), which occurred on July 18, 1978 upon the deposit of the eleventh instrument of ratification by a Member State of the Organization of American States. The Convention was adopted at the Inter-American Specialized Conference on Human Rights, which took place November 7-22, 1969 in San José, Costa Rica.

The two organs for the protection of human rights provided for under Article 33 of the Pact of San José, Costa Rica, are the Inter-American Commission on Human Rights (hereinafter "the Commission") and the Court. The function of these organs is to ensure the fulfillment of the commitments made by the States Parties to the Convention.

B. Organization of the Court

In accordance with the terms of its Statute, the Court is an autonomous judicial institution which has its seat in San José, Costa Rica and whose purpose is the application and interpretation of the Convention.

The Court consists of seven judges, nationals of the Member States of the OAS, who act in an individual capacity and are elected *from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the states of which they are nationals or the state that proposes them as candidates* (Article 52 of the Convention).

Article 8 of the Statute provides that the Secretary General of the OAS shall request the States Parties to the Convention to submit a list of their candidates for the position of judge of the Court. In accordance with Article 53(2) of the Convention, each State Party may propose up to three candidates.

The judges serve for a term of six years. They are elected by an absolute majority vote of the States Parties to the Convention. The election is by secret ballot in a General Assembly of the Organization.

The judicial term runs from January 1 of the year in which a judge assumes office until December 31 of the year in which he completes his term. However, the judges shall continue to hear the cases they have begun to hear and that are still pending (Article 5 of the Statute).

Election of judges takes place, insofar as possible, at the OAS General Assembly immediately prior to the expiration of the term of the judges. In the case of vacancies on the Court caused by death, permanent disability, resignation or dismissal, an election is held at the next General Assembly (Articles 6(1) and 6(2) of the Statute).

In order to preserve a quorum of the Court, interim judges may be appointed by the States Parties (Article 6(3) of the Statute).

In the event that one of the judges called upon to hear a case is the national of one of the States Parties to the case, the other States Parties to the case may appoint an *ad hoc* judge. If none of the States Parties to a case is represented on the Court, each may appoint an *ad hoc* judge (Article 10 of the Statute).

The judges are at the disposal of the Court and, pursuant to the Rules of Procedure, meet in two regular sessions a year and in special sessions when convoked by the President or at the request of a majority of the judges. Although the judges are not required to reside at the seat of the Court, the President renders his services on a permanent basis (Article 16 of the Statute and Articles 11 and 12 of the Rules of Procedure).

The President and Vice-President are elected by the judges for a period of two years and they may be reelected (Article 12 of the Statute).

There is a Permanent Commission composed of the President, Vice-President and a judge named by the President. The Court may appoint other commissions for special matters (Article 6 of the Rules of Procedure).

The Secretariat of the Court functions under the direction of the Secretary, who is elected by the Court.

C Composition of the Court

As of the date of this report, the Court is composed of the following judges, in order of precedence:

Héctor Fix-Zamudio (México), President
 Orlando Tovar-Tamayo (Venezuela), Vice-President
 Thomas Buergenthal (United States)
 Rafael Nieto-Navia (Colombia)
 Policarpo Callejas-Bonilla (Honduras)
 Sonia Picado-Sotela (Costa Rica)
 Julio A. Barberis (Argentina) (*)

The Secretary of the Court is Lic. Manuel E. Ventura-Robles.

(*) New judge elected by the States Parties to the Convention at the Twentieth Regular Session of the General Assembly of the OAS, held in Asunción, Paraguay, from June 4 to 9, 1990.

D. Jurisdiction of the Court

The Convention confers two distinct functions on the Court. One involves the power to adjudicate disputes relating to charges that a State Party has violated the Convention. The second function involves the power to interpret the Convention or other treaties concerning the protection of human rights in the American states at the request of the Member States of the Organization of American States. Within their spheres of competence, the organs listed in the OAS Charter may in like manner consult the Court.

1. The Court's Contentious Jurisdiction

The contentious jurisdiction of the Court is spelled out in Article 62 of the Convention, which reads as follows:

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

The Court's contentious jurisdiction is optional in the sense that any State may, when ratifying the Convention or at any time thereafter, accept that jurisdiction. Furthermore, it may be accepted unconditionally, on the condition of reciprocity, for all cases or for specific cases. Since States Parties are free to accept the Court's jurisdiction at any time, it is possible to invite a State to do so for a specific case.

Private parties have no standing to institute proceedings before the Court since, pursuant to Article 61(1) of the Convention, *only the States Parties and the Commission shall have the right to submit a case to the Court*. This does not mean that the Court will never hear cases arising out of individual complaints, for when a private party presents a case before the Commission, it may be referred to the Court either by a State Party or by the Commission.

Article 63(1) of the Convention contains the following stipulation relating to the judgments that the Court may render:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

This provision indicates that the Court must decide whether there has been a breach of the Convention and, if so, what rights the injured party should be accorded. Moreover, the Court may also determine the steps that should be taken to remedy the breach and the amount of damages to which the injured party is entitled.

Paragraph 2 of Article 68 exclusively concerns compensatory damages. It provides that *the part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state*.

In addition to regular judgments, the Court also has the power to grant what may be described as temporary injunctions. The power is spelled out in Article 63(2) of the Convention, which reads as follows:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

This extraordinary remedy is available in two distinct circumstances: the first consists of cases pending before the Court and the second involves complaints being dealt with by the Commission that have not yet been referred to the Court for adjudication.

In the first category of cases, the request for the temporary injunction can be made at any time during the proceedings before the Court, including simultaneously with the filing of the case. Of course, before the requested relief may be granted, the Court must determine if it has the necessary jurisdiction.

The judgment rendered by the Court in any dispute submitted to it is *final and not subject to appeal*. Nevertheless, *[i]n case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment*. Moreover, the States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties (Articles 67 and 68 of the Convention).

The failure of a state to comply with a judgment of the Court is a matter to be dealt with by the General Assembly of the Organization. The Court submits a report on its work to each regular session of the Assembly, specifying the cases in which a state has not complied with the judgments and making any pertinent recommendations (Article 65 of the Convention).

2. The Court's Advisory Jurisdiction

The jurisdiction of the Court to render advisory opinions is set forth in Article 64 of the Convention, which reads as follows:

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

It should be pointed out that standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention indeed, any OAS Member State may request such an opinion, as may any of the OAS organs, within their spheres of competence. Among the latter, the Commission deserves special mention. Secondly, the advisory opinion need not deal only with the interpretation of the Convention; it may also be founded on a request for the interpretation of any other treaty *concerning the protection of human rights in the American states*.

The Court's advisory jurisdiction power enhances the Organization's capacity to deal with complex legal issues arising under the Convention, for it enables the

organs of the OAS to consult the Court whenever there are doubts regarding the interpretation of that treaty.

Finally, Article 64(2) permits OAS Member States to seek an opinion from the Court on the extent to which their domestic laws are compatible with the Convention or with any other treaties concerning the protection of human rights in the American states (see I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4). Resort to this provision may contribute to the uniform application of the Convention by national tribunals.

3. Acceptance of the Jurisdiction of the Court

Twelve of the twenty-two States Parties to the Convention have now recognized the jurisdiction of the Court. They are Costa Rica, Perú, Venezuela, Honduras, Ecuador, Argentina, Uruguay, Colombia, Guatemala, Suriname, Panamá and Chile.

It should be pointed out that, according to the provisions of Article 62, any State Party to the Convention may accept the jurisdiction of the Court in a specific case without recognizing it for all cases. Cases may also be submitted to the Court by special agreement between States Parties to the Convention.

A table showing the status of ratifications of the American Convention may be found at the end of this report (Appendix XV).

E. Budget

The presentation of the budget of the Court is governed by Article 72 of the Convention which states that *the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.* Pursuant to Article 26 of its Statute, the Court administers its own budget.

The General Assembly of the Organization, at its Nineteenth Regular Session, approved a budget for the Court of US\$360,600 for 1990 and US\$369,900 for 1991.

F. Relations with Other Regional Organisms of the Same Kind

The Court has close institutional ties with its sister organ of the Convention, the

Commission. These ties have been solidified by a series of meetings between members of the two bodies. The Court also maintains cooperative relations with the Inter-American Institute of Human Rights, established under an agreement between the Government of Costa Rica and the Court which entered into force on November 17, 1980. The Institute is an autonomous international academic institution with a global, multidisciplinary approach to the teaching, research and promotion of human rights. Furthermore, the Court has established strong ties with the European Court of Human Rights, which was established by the Council of Europe and exercises functions within the framework of the organization comparable to those of the Court.

II. ACTIVITIES OF THE COURT

A. Elevation of the Vice-President to the Position of President on March 1, 1990

Upon the Court's acceptance of the resignation of Dr. Héctor Gros-Espiell from the positions of Judge and President of the Court and pursuant to Articles 12(3) of the Statute and 5(1) of the Rules of Procedure of the Court, the Vice-President, Judge Héctor Fix-Zamudio filled that vacancy for the period from March 1, 1990 to June 30, 1991, that is, until the expiration of the term to which the previous President had been appointed.

B. Joint Meeting of the Inter-American Court and Commission of Human Rights: May 3-4, 1990

As part of a series of meetings held between the two organs and in order to comply with operative paragraph 8 of General Assembly Resolution (AG/RES. 1041 [XX-O/90]), the Court and the Commission held a joint meeting at the seat of the Court in San José, Costa Rica, on May 3 and 4, 1990. The purpose of the meeting was to examine a proposal to harmonize the rules of procedure that govern the organizational and procedural aspects of both organs. That proposal was drafted by the former President of the Court, Dr. Pedro Nikken, and the former Executive Secretary of the Commission, Dr. Edmundo Vargas-Carreño.

The drafting of the above-mentioned proposal and the meeting were both funded by the Inter-American Institute of Human Rights.

It was decided at the meeting to proceed with the work and to retain the services of Dr. Pedro Nikken for that purpose.

C. Provisional Measures (Perú)

By Resolution No. 2/90 of May 16, 1990 and pursuant to Article 63(2) of the Convention, the Commission requested that the Court adopt provisional measures in the case of the assassination of journalist Hugo Bustíos-Saavedra (Perú), which occurred on November 24, 1988 in Erapata, Ayacucho (Appendix I). This request marks the first time that the Commission has had recourse to such powers in a case not yet submitted to the Court.

The President of the Court, Judge Héctor Fix-Zamudio, in consultation with the Permanent Commission and taking into consideration the aforementioned provision of the Convention and Article 23(4) of the Rules of Procedure, issued an order dated June 5, 1990, which was served that same day on the Government of Perú and on the Commission in Asunción, Paraguay, during the celebration of the Twentieth Regular Session of the OAS General Assembly (Appendix II).

D. Twentieth Regular Session of the OAS General Assembly

The Court was represented at the Twentieth Regular Session of the Organization's General Assembly, which was held June 4-9, 1990 in Asunción, Paraguay, by its President, Judge Héctor Fix-Zamudio, and by Judge Rafael Nieto-Navia. Also present was the Secretary, Lic. Manuel E. Ventura-Robles.

In his report to the Committee on Juridical and Political Affairs of the Assembly regarding the activities of the Court from August 1989 to February 1990, President Fix-Zamudio pointed out that *[t]he Pact of San José is of particular importance in that it specifies the conventional obligations of the States as regards their duty to respect the rights and freedoms recognized therein and to guarantee their free and full exercise. Equally important is the fact that it delimits the powers of the Commission with regard to the communications to which Articles 44 and 45 of the Convention apply. Moreover, it also provides for the existence and functioning of a judicial organ with the power to deliver compulsory final judgments not subject to appeal, that is, the Inter-American Court of Human Rights. The role that the Court performs is essential to the full and effective functioning of the inter-American system.*

The President also referred to matters still pending before the Court. In mentioning the requests for the interpretation of the two judgments fixing compensatory damages in the "Velásquez Rodríguez" and "Godínez Cruz" cases which were submitted by the Commission, he recalled that under Article 48 of the Rules of Procedure of the Court the presentation of requests for interpretation does not suspend the effect of a judgment and, consequently, the judgments subject to interpretation must be complied with while the process of interpretation is underway.

He also indicated that the Court continues to work in the midst of financial difficulties and asked that the budget of the Court not be cut or restricted in any way. The President requested that a Deputy Secretary be appointed to the Court as soon as possible, in order to assist the Secretary in his functions.

In its Resolution on the Annual Report of the Court, the Assembly resolved:

1. To express its satisfaction with the work carried out by the Inter-American Court of Human Rights, as reflected in its Annual Report, and the appreciation for that work.
2. To call upon the member states of the Organization that have not yet done so to ratify or accede to the American Convention on Human Rights.
3. To call upon the States Parties to the American Convention on Human Rights to ratify the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador."
4. To reaffirm to the States Parties to the Convention that they recognize the compulsory jurisdiction of the Court.
5. To express its satisfaction at the fact that the report of the Court indicates that it has been fully exercising its contentious and advisory jurisdictions.
6. To extend the necessary financial and functional support to the Inter-American Court of Human Rights to enable it to fulfill the lofty functions assigned to it by the American Convention on Human Rights.
7. To express its appreciation to His Excellency Héctor Gros-Espiell for his outstanding work on the Inter-American Court of Human Rights and to wish him the greatest success in the important duties he performs as Minister of Foreign Affairs of Uruguay.
8. To request that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights establish coordinating mechanisms conducive to mutual cooperation within their areas of competence for the further protection of human rights.

During this regular session of the OAS General Assembly, the States Parties to the Convention elected Dr. Julio A. Barberis of Argentina as Judge of the Court, to serve out the term of Judge Héctor Gros-Espiell. The term for which Judge Barberis was elected expires on December 31, 1991.

E. Twenty-Second Regular Session of the Court

All of the judges attended this session, which was held at the seat of the Court in San José, Costa Rica, August 6-10, 1990.

During the session, Judge Orlando Tovar-Tamayo was elected Vice-President of the Court to serve out the term to which the current President, Judge Héctor Fix-Zamudio, had been elected. Judge Fix-Zamudio assumed the Presidency of the Court as a result of the resignation of the incumbent President, Judge Héctor Gros-Espiell. The term for which Judge Tovar-Tamayo was elected expires June 30, 1991. Also sworn in was the new Judge, Julio A. Barberis, of Argentina. Consequently, the Court is composed as follows: Héctor Fix-Zamudio (México), President; Orlando Tovar-Tamayo (Venezuela), Vice-President; Thomas Buergenthal (United States); Rafael Nieto-Navia (Colombia); Policarpo Callejas-Bonilla (Honduras); Sonia Picado-Sotela (Costa Rica) and Julio A. Barberis (Argentina).

During this session, the work of the Court focused on the request for provisional measures relating to Perú presented by the Commission and on rendering the advisory opinion of August 10, 1990, also requested by the Commission.

In the matter of the provisional measures, after a public hearing held on August 7, 1990, at which the Agent of Perú, Ambassador Antonio Belaunde-Moreyra, and the representatives of the Commission, Drs. Leo Valladares-Lanza and Juan Méndez, presented their arguments, the Court issued an order on August 8, 1990, with regard to the assassination of journalist Hugo Bustíos-Saavedra on November 24, 1988, in Erapata, Ayacucho, Perú (Appendix III). This marks the first time that the Court applied Article 63(2) of the Convention and issued an order concerning this type of measure in a case not yet submitted to it. These provisional measures are intended to prevent irreparable damage to persons in cases of extreme gravity and urgency.

In this session the Court also rendered Advisory Opinion OC-11 of August 10, 1990, regarding the interpretation of Articles 46(1) and 46(2) of the Convention. In its opinion, the Court found that a complainant before the Commission cannot be required to exhaust domestic remedies whenever he has been prevented from invoking them to protect a right guaranteed by the Convention either because of indigency or because of a general fear in the legal community to represent him. In responding to the questions presented, the Court also ruled that if a State Party has proved that domestic remedies are available, the complainant must then demonstrate that the exceptions contemplated in Article 46(2) apply and that he was prevented from obtaining the legal counsel necessary for the protection of rights guaranteed by the Convention (Appendix IV).

F. Tenth Special Session of the Court

This special session was held August 13-17, 1990 at the seat of the Court in San José, Costa Rica. During this session and at the request of the Commission (Appendices V, VI and VII), the Court interpreted the compensatory damages judgments of July 21, 1989 in the "Velásquez Rodríguez" and "Godínez Cruz" cases.

The requests for interpretation were submitted by the Commission in order to have the Court set up systems or mechanisms to protect against inflation or possible devaluations of the lempira and thus preserve the purchasing power of the sums awarded in the compensatory damages judgments in favor of the minor children of the victims, until their twenty-fifth birthdays. The Court was also asked to provide for the payment of interest for the period from October 20, 1989, the date on which the damages fixed by the Court should have been paid, to the date of actual payment.

In accordance with Article 54(3) of the Convention, the Court which dealt with the requests for interpretation was composed as follows: Héctor Fix-Zamudio (México), President; Rodolfo Piza-Escalante (Costa Rica); Pedro Nikken (Venezuela); Rafael Nieto-Navia (Colombia) and Rigoberto Espinal-Irías (Honduras), *ad hoc* judge.

In both interpretation judgments, the Court found, essentially, that the real value of the amounts awarded in the judgments of July 21, 1989 in the "Velásquez Rodríguez" and "Godínez Cruz" cases must be preserved. Under the July 21 judgments, the Government of Honduras was ordered to pay compensation in the amount of seven hundred fifty thousand and six hundred fifty thousand lempiras, respectively, to the next-of-kin of the victims. In this regard the Court decided, first, that, because of its delay in paying these sums, the Government has an obligation to pay interest on the total amount past due. Furthermore, it ruled that the Government must also convert the amounts in question into one of the so-called "hard" currencies, since the value of the awards has been greatly reduced as a result of the devaluation of the lempira on the open exchange market. As for the amounts to be placed in trust for the benefit of the victims' minor children, the

Court found that the trustee has the power and the obligation to select the most favorable types of investment permitted by Honduran banking practices, in order to preserve and increase the value of the trust.

At a public hearing held on August 17, 1990, the Court read the interpretation judgments requested in the "Velásquez Rodríguez" and "Godínez Cruz" cases (Appendices VIII and IX).

G. Statement of the Government of the Republic of Honduras regarding the Judgments of the Court of August 17, 1990 in the "Velásquez Rodríguez" and "Godínez Cruz" cases and the reply of the President of the Court

In a communication dated October 17, 1990 concerning the "Velásquez Rodríguez" and "Godínez Cruz" cases, the Government of Honduras reaffirmed to the Court *its commitment to comply with the compensatory damages judgments of July 21, 1989, without any surcharges for the additional compensations specified in the judgments of August 17, 1990. In other words, the Government will strictly adhere*

to the payment of the original amounts of the awards in lempiras approved by the Court, which payment has been authorized by Decree No. 59-90 of the National Congress of the Republic, issued on July 10, 1990 (Appendix X).

In his reply dated November 12, 1990 and after consulting with the other judges who sat on the Court that handed down the interpretation judgments, the President of the Court asked the Government to comply with those judgments and reminded it that, pursuant to Article 65 of the Convention, *the Court shall, in its report to the General Assembly of the Organization, 'specify... the cases in which a state has not complied with its judgment,' and the resulting compensatory damages 'may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state'* (Art. 68(2)) (Appendix XI).

H. New Cases Submitted for Consideration by the Court

In the matter of Aloeboetoe *et al.* (Suriname) No. 10.150

This case was brought by the Commission on August 27, 1990. According to the complaint, Suriname is charged with violating Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7(1), 7(2) and 7(3) (Right to Personal Liberty), 25(1) and 25(2) (Right to Judicial Protection) of the Convention, to the detriment of Daison Aloeboetoe, Dedemanu Aloeboetoe, Mikuwendje Aloeboetoe, John Amoida, Richenel (alias Aside) Voola, Martin Indisie Banai and Beri Tiopo (Appendix XII).

The Commission appointed the following persons to represent it in this case: Oliver H. Jackman, Member; Edith Márquez-Rodríguez, Executive Secretary, and David J. Padilla, Assistant Executive Secretary.

The Government of Suriname appointed Lic. Carlos Vargas-Pizarro as its Agent, and Dr. Antonio A. Cançado Trindade (Brazil) to serve as its *ad hoc* judge.

In the matter of Gangaram Panday (Suriname) No. 10.274

This case was brought by the Commission on August 27, 1990. According to the complaint, Suriname is charged with violating Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7(1), 7(2) and 7(3) (Right to Personal Liberty), 25(1) and 25(2) (Right to Judicial Protection) of the Convention, to the detriment of Asok Gangaram Panday (Appendix XIII).

The Commission appointed the following persons to represent it in this case: Oliver H. Jackman, Member; Edith Márquez-Rodríguez, Executive Secretary, and David J. Padilla, Assistant Executive Secretary.

The Government of Suriname appointed Lic. Carlos Vargas-Pizarro as its Agent, and Dr. Antonio A. Cançado Trindade (Brazil) to serve as its *ad hoc* judge.

**In the matter of Neira Alegría *et al.* (Perú)
No. 10.078**

This case was brought to the Court by the Commission on October 10, 1990. According to the complaint, Perú is charged with violating Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar (Appendix XIV).

The Commission appointed the following persons to represent it in this case: Oscar Luján-Fappiano, Member; Edith Márquez-Rodríguez, Executive Secretary; David J. Padilla, Assistant Executive Secretary, and Osvaldo N. Kreimer, Specialist at the Executive Secretariat.

The Government of Perú appointed the Honorable Eduardo Barandiarán, Perú's Charge d'Affaires a.i. in Costa Rica, as its Agent, and Dr. Jorge Orihuela-Iberico (Perú) to serve as its *ad hoc* judge.

I. Meeting of the Permanent Commission of the Court, November 11-12, 1990

The Permanent Commission of the Court, composed of its President, Judge Héctor Fix-Zamudio; its Vice-President, Judge Orlando Tovar-Tamayo and Judge Rafael Nieto-Navia, met at the seat of the Court on November 11 and 12, 1990. The purpose of the meeting was to take up matters relating to the handling of the aforementioned cases and to discuss administrative aspects.

APPENDIX I

May 24, 1990

Mr. Secretary:

I have the pleasure to transmit to the Inter-American Court of Human Rights, through your good offices, Resolution 2/90 of the Commission, adopted during its 77th Session. That Resolution submits to the Court a request for provisional precautionary measures to protect the rights to life and to humane treatment of Eduardo Rojas-Arce, Margarita Patiño, Artemio Pacheco-Aguado, Teodosio Gálvez-Porras, Aurelia Onofre-Anaya, Florinda Morote-Cartagena and Paulina Escalante, the surviving victim and witnesses, respectively, of an armed attack carried out near Erapata, Ayacucho, Perú, on November 24, 1988, in which the journalist Hugo Bustíos-Saavedra was assassinated.

As stated in the attached text of the resolution, this request is made pursuant to the powers granted to the Commission under Articles 69(2) of the American Convention on Human Rights and 76 of the Regulations of the Commission. To this effect, please find enclosed the background material on the case that was submitted to the Commission by the petitioner.

I also wish to inform the Court that the relevant portions of the denunciation have been transmitted to the Government of Perú, in accordance with the Commission's standard procedure; such transmittal does not constitute a prejudgment with regard to the admissibility of the case. Furthermore, I must report that the petitioner has expressly authorized the disclosure of his identity.

Based on the foregoing, I would ask the Secretary to kindly transmit the above-mentioned resolution to the President of the Court for the stated purposes and to advise the Commission of the decision made and the measures taken in that regard.

Please accept the assurances of my highest consideration.

David J. Padilla
Assistant Executive Secretary

Lic. Manuel Ventura, Secretary
Inter-American Court of Human Rights
San José, Costa Rica

Encl.: 1

OEA/Ser.L/V/II.77
Doc. 22
16 May 1990
Original: Spanish

77th SESSION

**RESOLUTION Nº 2/90
CASE 10.548
PERU**

**Approved by the Inter-American Commission on Human Rights
at its 1062nd session held May 16, 1990**

RESOLUTION 2/90
CASE 10.548
REPUBLIC OF PERU
16 May 1990

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN:

1. The petition filed by the Comité de Protección a Periodistas (Committee for the Protection of Journalists) dated May 10, 1990, which includes a special request for urgent precautionary measures based on the following:
 - a) The attack carried out against journalists HUGO BUSTIOS-SAAVEDRA and EDUARDO ROJAS-ARCE at the entrance to the town of Erapata, Department of Ayacucho, at about midday on November 24, 1988. Bustíos-Saavedra lost his life in the attack, while Rojas-Arce was wounded but managed to escape his assailants.
 - b) The victims had been threatened by military personnel, who had detailed knowledge of the road the journalists would take; the attack occurred three hundred meters after an encounter with one military patrol and three hundred meters before the spot where another was posted on that same road.
 - c) Moments before the attack, eyewitnesses had observed the arrival of military personnel at an adjacent house. Some wore civilian clothes while others were in uniform; some of these individuals were personally known to the witnesses.
 - d) After the attack, military personnel went to the home of one of the witnesses and threatened to kill him because of his testimony. He was detained together with another witness, but both were released two days later without any charges being brought against them.
 - e) After interrogating the widow of Mr. Bustíos (the victim), the Technical Police likewise made threats on her life.
 - f) Despite the fact that he had petitioned the Attorney General to guarantee his safety, eyewitness ALEJANDRO ORTIZ-SERNA was killed along with two other persons a few days later.

- g) In spite of the time elapsed, the Provincial Attorney's Office has not identified the perpetrators, in part due to lack of cooperation in the investigation on the part of the military authorities. As a result, it has not instituted criminal proceedings.

CONSIDERING:

1. That there have been numerous cases of journalists who have disappeared, been killed and/or threatened in recent years of practicing their profession in areas under states of emergency in general and the Ayacucho area in particular. In 1989, five journalists lost their lives in circumstances related to their work. It appears that several of them were victims of attacks by Sendero Luminoso, while others had received threats from military or police personnel.
2. That in recent years many deaths have occurred in the area of persons who had testified to violations of human rights presumably committed by military personnel.
3. That during an on-site visit to the area in May, 1989, the Commission was able to confirm the level of violence and the vulnerability of a large part of the civilian population in the areas under states of emergency as a result of their being caught between two fires, with the insurgent groups on one side and Government agents fighting against these groups on the other. According to reports in the Commission's possession, this situation does not appear to have changed since then.
4. That the States Parties to the American Convention on Human Rights are under the obligation not only to abstain from committing, through their agents, any acts that could constitute violations of the rights recognized thereunder, but also to provide the necessary guarantees to ensure the free and full exercise of those rights (Arts. 1 and 25).
5. That from the background material on the case there emerges prima facie a situation of present, grave and urgent danger to the rights to life and to humane treatment of the victims and witnesses in the case, specifically of the following Peruvian citizens:

EDUARDO ROJAS-ARCE, surviving victim of the attack,
MARGARITA PATIÑO, widow of the murdered victim, and the following
witnesses:
ARTEMIO PACHECO-AGUADO,
TEODOSIO GALVEZ-PORRAS,
AURELIA ONOFRE-ANAYA,

FLORINDA MOROTE-CARTAGENA, and
PAULINA ESCALANTE.

6. That in view of this danger, the denunciation and the information available to the Commission confirm prima facie that the normal guarantees in effect for the inhabitants of the emergency zones in Perú are not sufficient to ensure their rights to life and to humane treatment.

7. That the professional task of the journalist plays an essential role in ensuring the observance of human rights in all Governments actions to suppress crime in general, and in this case in particular, as part of its struggle against armed groups that rise up against the State and the population.

8. That the task of the journalist is fraught with unique and grave dangers, which must be guarded against with special care.

9. That, under Article 29 of its Regulations, the Commission is authorized to request states to take provisional measures in urgent cases.

10. That such precautionary measures may be requested even when the admissibility of a case has not yet been defined by the Commission pursuant to Article 46 of the Convention, since, by their very nature, provisional measures arise from a reasonable presumption of extreme and urgent risk of irreparable damage to persons.

11. That the request for precautionary measures by the Commission and by the Court, and their adoption by the state in question, do not prejudice the final decision (Art. 29(4) of the Regulations of the Commission) nor the admissibility of the complaint.

12. That Arts. 63(2) of the Convention, 19(c) of its Statute and 76 of its Regulations all authorize the Commission to request the Inter-American Court of Human Rights to adopt provisional precautionary measures and that Art. 23(2) of the Court's Rules of Procedure authorizes it to adopt such measures.

13. That the Republic of Perú is a Party to the Inter-American Convention on Human Rights and has accepted the compulsory jurisdiction of the aforementioned Court on matters relating to the interpretation and application thereof.

14. That it appears prima facie that there were unsuccessful attempts to resort to domestic remedies in order to secure provisional measures to protect the life and right to humane treatment of those involved in the case, as shown both by the case of the murdered witness and by the alleged lack of cooperation by

Government sectors in pursuing an investigation that could identify those responsible for the threats and attacks carried out.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS:

RESOLVES:

1. To request the Government of the Republic of Perú to adopt precautionary measures to protect the life and personal integrity of journalist EDUARDO ROJAS-ARCE, of MARGARITA PATIÑO, widow of the assassinated journalist HUGO BUSTIOS-SAAVEDRA, and of the witnesses in the case, especially ARTEMIO PACHECO-AGUADO, TEODOSIO GALVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE.

2. To address itself to the Inter-American Court of Human Rights to request precautionary provisional measures regarding the above-mentioned individuals, for which purpose it will send the requisite background information about the instant situation.

3. To demand of the Government of Perú that the provisional precautionary measures to protect the rights to life and to humane treatment of journalist EDUARDO ROJAS-ARCE be such as to protect him from the special risks to which he is exposed by the free, legal exercise of his profession.

4. To request the Government of Perú to report to the Commission on the provisional precautionary measures adopted in this situation.

APPENDIX II

ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 5, 1990

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS - (Perú)

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

WHEREAS:

1. On May 10, 1990, a petition was filed with the Inter-American Commission on Human Rights by the Committee to Protect Journalists, a non-governmental organization, as a result of the attack carried out against the journalists HUGO BUSTIOS-SAAVEDRA and EDUARDO ROJAS-ARCE at the entrance to the city of Erapata, Department of Ayacucho, Perú, on November 24, 1988, petition which contained a special request for provisional measures;

According to the petition, BUSTIOS-SAAVEDRA was killed in the aforementioned attack while ROJAS-ARCE, who managed to escape, was wounded. It appears that the journalists had received threats from military personnel and that eyewitnesses had observed the arrival of soldiers at an adjacent house moments before the attack;

After the attack, death threats were allegedly made against one of the witnesses. Another witness, ALEJANDRO ORTIZ-SERNA, was killed along with two other people, despite the fact that he had requested the Attorney General to guarantee his safety. The petition states that, to date, the Provincial

Attorney's Office has neither identified the perpetrators nor initiated any criminal proceedings due, among other factors, to lack of cooperation in the investigation on the part of the military authorities;

2. On May 16, 1990, the Inter-American Commission on Human Rights issued Resolution No. 2/90 during its 77th Session. This resolution was received by the Secretariat of the Court on May 30, together with the relevant

documentation. In it, the Commission requests the Government of the Republic of Perú to *adopt precautionary measures to protect the life and personal integrity of journalist EDUARDO ROJAS-ARCE, of MARGARITA PATIÑO, widow of the assassinated journalist HUGO BUSTIOS-SAAVEDRA, and of the witnesses in the case, especially ARTEMIO PACHECO-AGUADO, TEODOSIO GALVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE;*

3. In that same resolution, the Commission also decided to *address itself to the Inter-American Court of Human Rights to request precautionary provisional measures regarding the above-mentioned individuals, for which purpose it will send the requisite background information about the instant situation;*

CONSIDERING THAT:

1. Perú is a State Party to the American Convention on Human Rights and that Article 1(1) of that treaty spells out the obligations of the States Parties to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction,
2. On January 21, 1981, Perú deposited with the General Secretariat of the OAS the instrument recognizing the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the Convention,
3. Article 63(2) of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Inter-American Commission on Human Rights, adopt such provisional measures as it deems pertinent in matters not yet submitted to it,
4. Article 23(4) of the Rules of Procedure of the Court provide that:

If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission or with the judges, if possible, shall call upon the parties, whenever necessary, to act so as to permit any decision of the Court regarding the request for provisional measures to have its appropriate effect.
5. Perú has the obligation to adopt all necessary measures to protect the life and safety of all persons whose rights might be threatened,

NOW, THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

taking into consideration Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on him by Article 23(4) of the Rules of Procedure, in consultation with the Permanent Commission,

RESOLVES:

1. To enjoin the Government of Perú to adopt without delay whatever measures are deemed necessary to protect the right to life and the personal safety of EDUARDO ROJAS ARCE, of MARGARITA PATIÑO, and of the witnesses to the murder of HUGO BUSTIOS-SAAVEDRA, in particular ARTEMIO PACHECO-AGUADO, TEODOSIO GALVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.
2. To convene a session of the Inter-American Court of Human Rights from August 6 to 10, 1990, at its seat in San José, Costa Rica, in order to consider the request for provisional measures submitted by the Commission and the instant order.
3. To request the Government of Perú and the Inter-American Commission on Human Rights to send representatives to appear at a public hearing to consider the instant matter, to be held at the seat of the Court on August 7, 1990, at 10:00 a.m.

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX III

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 8, 1990PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS REGARDING PERU
(BUSTIOS - ROJAS CASE)

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

WHEREAS:

1. The petition filed May 10, 1990 with the Inter-American Commission on Human Rights by the Committee to Protect Journalists, a non-governmental organization, concerning the assault on journalists HUGO BUSTIOS-SAAVEDRA and EDUARDO ROJAS-ARCE, at the entrance to the city of Erapata, Department of Ayacucho, Perú on November 24, 1988;

According to the petition, in the assault mentioned above, BUSTIOS-SAAVEDRA was killed and ROJAS-ARCE was wounded. The journalists had received threats from military personnel, and eyewitnesses noticed the arrival of soldiers at a nearby house moments before the assault;

After the assault, death threats were made against the wife of the victim and one of the witnesses. Another witness, ALEJANDRO ORTIZ-SERNA, was killed along with two other people, even though he requested a guarantee of safety from the Attorney General. Until now, the Provincial District Attorney's office neither identified those responsible for the assault nor initiated criminal proceedings. Among the reasons for such inaction given in the claim was the lack of cooperation in the investigation on the part of military authorities;

2. On May 16, 1990, the Inter-American Commission on Human Rights issued resolution No. 2/90 in which it requested from the Government of the Republic of Perú *the adoption of precautionary measures to protect the life and personal integrity of journalist EDUARDO ROJAS-ARCE, of MARGARITA PATIÑO, widow of the assassinated journalist HUGO BUSTIOS-SAAVEDRA, and of the witnesses in the case, especially ARTEMIO PACHECO-AGUADO, TEODOSIO GALVEZ-*

PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE. This resolution was received in the Secretariat of the Court on May 30 together with the respective documentation;

3. In the same resolution, the Commission also resolved to *address itself to the Inter-American Court of Human Rights to request precautionary provisional measures regarding the above-mentioned individuals, for which purpose it will send the requisite background information about the instant situation;*

4. The President of the Inter-American Court of Human Rights, basing himself on Article 63(2) of the American Convention on Human Rights and on the authority conferred on him by Article 23(4) of the Rules of Procedure, after consulting with the Permanent Commission, issued on June 5, 1990 an Order whose dispositive part states:

1. To enjoin the Government of Perú to adopt without delay whatever measures are deemed necessary to protect the right to life and the personal safety of EDUARDO ROJAS ARCE, of MARGARITA PATIÑO, and of the witnesses to the murder of HUGO BUSTIOS-SAAVEDRA, in particular ARTEMIO PACHECO- AGUADO, TEODOSIO GALVEZ-PORRAS, AURELIA ONOFRE-ANAYA, FLORINDA MOROTE-CARTAGENA, and PAULINA ESCALANTE, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention.

2. To convene a session of the Inter-American Court of Human Rights from August 6 to 10, 1990, at its seat in San José, Costa Rica, in order to consider the request for provisional measures submitted by the Commission and the instant order.

3. To request the Government of Perú and the Inter-American Commission on Human Rights to send representatives to appear at a public hearing to consider the instant matter, to be held at the seat of the Court on August 7, 1990, at 10:00 a.m.

5. This Order was delivered on June 5, 1990 to the Government of Perú in Asunción, Paraguay, in the person of His Excellency Mr. Alfonso Rivero-Monsalve, Vice-Minister of Foreign Relations, and to Doctor Leo Valladares, President of the Inter-American Commission on Human Rights;

6. On July 23, 1990 the Charge d'Affaires ad interim of Perú in San José, Costa Rica filed a note with the President of the Court requesting the postponement of the hearing because of the lack of time given to the new Peruvian Government to prepare an adequate presentation for the Court. In that note, the Representative of Perú asserted that *the necessary precautionary measures have already been adopted for the protection of the individuals who have been threatened because of their involvement with the Bustíos case.*

The President of the Court, in consultation with its Permanent Commission, decided on July 26, 1990 to deny the request for an extension because of the urgent nature of the requested provisional measures;

7. On August 7, 1990 a public hearing was held at the seat of the Court at which Messrs. Leo Valladares and Juan Méndez, representing the Inter-American Commission on Human Rights, and Ambassador Antonio Belaunde-Moreyra, representing the Government of Perú, appeared;

8. In the hearing, the representatives of the Inter-American Commission on Human Rights reiterated the events described in their request for provisional measures and expounded the juridical principles under which the Court is competent to grant them. Thus, they requested that the Court ratify and confirm the Order of June 5, 1990 of their President and that furthermore it adopt other concrete measures.

The representatives of the Commission declared that the only notice they had that the Government of Perú had complied with the Order of June 5, 1990 was a summons, by radio, calling upon the threatened persons to appear at a military installation in order to coordinate the provisional measures. The Commission considers that this step was intimidatory in nature and hence did not constitute a protective measure;

9. The Representative of the Government of Perú explained the actual situation existing in the Andean zone and the regular attacks by guerrilla groups that have resulted in a considerable number of victims and costly material damages. Furthermore, he pointed out the problems his Government faces in the Andean zone in identifying the individuals who, according to the Inter-American Commission, have been threatened. The problem is compounded by the fact that it involves a region in which not all inhabitants speak Spanish. Finally, he emphasized the decision of the new Government of his country to respect human rights and in support of that proposition quoted statements made by President Fujimori.

In response to questions by the judges of the Court, the Representative of Perú declared that his Government, in principle, did not have any objections to the statement of the facts and the law provided by the Inter-American Commission. He also indicated that he did not have any knowledge of the measures that Perú had adopted to comply with the Order of June 5, 1990 of the President of the Court and recognized that the previous government of his country had been "somewhat negligent" in this regard. Finally, he affirmed that his government was disposed to respect the provisional measures the Court might adopt;

CONSIDERING THAT:

1. Perú is a State Party to the American Convention on Human Rights whose Article 1(1) indicates the obligation that the States Parties have to respect the rights and freedoms recognized in this treaty and to guarantee their free and full exercise to all persons subject to their jurisdiction,
2. On January 21, 1981 Perú deposited in the General Secretariat of the OAS the instrument by which it recognized the jurisdiction of this Court, pursuant to Article 62 of the Convention,
3. Article 63(2) of the Convention provides that:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.
4. Perú is obligated in all cases to preserve the life and integrity of those people whose rights might be threatened,
5. After more than two months have elapsed since they were notified of the provisional measures adopted by the President of the Court in its Order of June 5, 1990, the Representative of Perú could not indicate in the hearing whether his Government had complied with said measures and if so, the manner in which this had been done,
6. The adoption of the provisional measures indicated in the above-mentioned Order continues to be necessary,
7. These measures should be adopted immediately and their effective application should be verifiable by the Court at any time.

NOW, THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in reliance on the powers conferred on it by Article 63(2) of the American Convention on Human Rights,

RESOLVES:

1. To confirm and ratify the Order of the President of June 5, 1990.
2. To give the Government of Perú a period of 30 days from the date of this Order to comply with the requirements of number 1 of the Order of June 5, 1990 and to inform the President of the Court in writing of the measures adopted.
3. To require the Inter-American Commission on Human Rights to send to the Court all information at its disposal regarding Perú's compliance with this Order.
4. To authorize the President, in consultation with the Permanent Commission, to adopt any additional provisional measures it considers necessary to ensure the faithful fulfillment of this Order or any other measures it considers necessary to take in case of a failure to comply.
5. To entrust the Permanent Commission of the Court, as a special commission, to verify the execution of the instant Order and to inform the Court of any matter relating to this Order.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this eighth day of August, 1990.

(s) Héctor Fix-Zamudio
President

(s) Orlando Tovar-Tamayo

(s) Thomas Buergenthal

(s) Rafael Nieto-Navia

(s) Policarpo Callejas-Bonilla

(s) Sonia Picado-Sotela

(s) Julio A. Barberis

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX IV

INTER-AMERICAN COURT OF HUMAN RIGHTS

**ADVISORY OPINION OC-11/90
OF AUGUST 10, 1990**

**EXCEPTIONS TO THE EXHAUSTION OF DOMESTIC REMEDIES
(ART. 46(1), 46(2)(a) and 46(2)(b)
AMERICAN CONVENTION ON HUMAN RIGHTS)**

**REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

Present:

**Héctor Fix-Zamudio, President
Orlando Tovar-Tamayo, Vice-President
Thomas Buergenthal, Judge
Rafael Nieto-Navia, Judge
Policarpo Callejas-Bonilla, Judge
Sonia Picado-Sotela, Judge**

Also present:

Manuel E. Ventura-Robles, Secretary

THE COURT,

composed as above,

renders the following Advisory Opinion:

1. By note of January 31, 1989, the Inter-American Commission on Human Rights (hereinafter "the Commission"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court") an advisory opinion request regarding Article 46(1)(a) and 46(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The request for an advisory opinion poses the following questions:

1. Does the requirement of the exhaustion of internal legal remedies apply to an indigent, who because of economic circumstances is unable to avail himself of the legal remedies within a country?

2. In the event that this requirement is waived for indigents, what criteria should the Commission consider in making its determination of admissibility in such cases?

1. Does the requirement of the exhaustion of internal legal remedies apply to an individual complainant, who because he is unable to retain representation due to a general fear in the legal community cannot avail himself of the legal remedies provided by law in a country?

2. In the event that this requirement is waived for such persons, what criteria should the Commission consider in making its determination of admissibility in these cases?

3. In setting out the considerations that prompted the advisory opinion request, the Commission stated the following:

1. Indigency

The Commission has received certain petitions in which the victim alleges that he has not been able to comply with the requirement of the exhaustion of remedies set forth in the domestic legislation because he cannot afford legal assistance or, in some cases, the obligatory filing fees.

The Commission is aware that some states provide free legal assistance to

persons who qualify because of their economic status. However, this practice does not obtain in all of the countries and even in those countries where it exists, it often covers only highly urbanized areas.

When the legal remedies of a state are not in fact available to an alleged victim of a violation of human rights and should the Commission be obligated to dismiss his complaint for failure to meet the requirement of Article 46(1) (a), does this not bring into play the possibility of a discrimination based on "social condition" (Article 1(1) of the Convention)?

2. Lack of Counsel

Complainants have alleged to the Commission that they have been unable to retain counsel to represent them, thereby limiting their ability to effectively pursue the internal legal remedies putatively available at law. This situation has occurred where an atmosphere of fear prevails and lawyers do not accept cases which they believe could place their own lives and those of their families in jeopardy.

When, as a practical matter, such a situation occurs and an alleged victim of a human rights violation brings the matter to the attention of the Inter-American Commission on Human Rights, should the Commission admit such a complaint or dismiss it as inadmissible?

4. The Commission designated its Chairman and its first and second Vice-Chairmen to act jointly or separately as its delegates in all matters relating to the instant advisory opinion request.

5. In a note of February 9, 1989, the Secretariat, acting pursuant to Article 52 of the Rules of Procedure of the Court, requested written observations and other relevant documents on the issues involved in the instant advisory opinion request both from the member states of the Organization of American States (hereinafter "the OAS") and, through the Secretary General of that Organization, from all the organs listed in Chapter VIII of the OAS Charter.

6. The President of the Court directed that the written observations and other relevant documents be filed with the Secretariat before July 1, 1989.

7. Responses to the Secretariat's communication, were received from the governments of Argentina, Costa Rica, Dominican Republic, Jamaica, and Uruguay.(*)

8. The International Human Rights Law Group, a non-governmental organization, submitted an *amicus curiae* brief.

(*) These and all other important documents related to this Advisory Opinion will be published in the Court's Series B publications.

9. A public hearing was held on July 12, 1989 to enable the Court to hear the oral arguments of the member states and the OAS organs with regard to the issues raised in the request.

10. At this public hearing, the Court heard the following representatives:

For the Inter-American Commission on Human Rights:

Oliver H. Jackman, President and Delegate
David J. Padilla, Assistant Executive Secretary;

For the Government of Costa Rica:

Carlos Vargas-Pizarro, Agent and Director for Legal Affairs of the Ministry of Foreign Affairs.

Judge Héctor Gros-Espiell, the then President of the Court, presided over this hearing. However, he subsequently resigned from his position as Judge.

I

ADMISSIBILITY

11. The Commission has a clear and legitimate interest in seeking advisory opinions from the Court on questions regarding the promotion and protection of human rights in the Inter-American system (*The Effect of Reservations on the Entry into force of the American Convention on Human Rights (Arts. 74 and 75)*, Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paras. 14-16; *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 42 and *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 8).

12. No valid reasons exist for the Court to exercise its discretionary power to decline to render an advisory opinion even when formal requirements of admissibility are met (*"Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, paras. 30 and 31; *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, *supra* 11, para. 10; *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87 of

12. No valid reasons exist for the Court to exercise its discretionary power to decline to render an advisory opinion even when formal requirements of admissibility are met ("*Other Treaties*" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, paras. 30 and 31; *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), *supra* 11, para. 10; *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of

October 6, 1987. Series A No. 9, para. 16 and *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 27).

13. The Court, therefore, admits the request for advisory opinion and will now proceed to address it.

II

MERITS

14. The questions submitted by the Commission call for an interpretation by the Court of Article 46(1) (a) and 46(2) of the Convention, which read as follows:

Article 46

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

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

...

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

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

Commission, it is necessary *that the remedies under domestic law have been pursued and exhausted*, while sub-paragraph 2 considers the circumstances in which this requirement does not apply.

17. Article 46(2)(a) applies to situations in which the domestic law of a State Party does not provide appropriate remedies to protect rights that have been violated. Article 46(2)(b) is applicable to situations in which the domestic law does provide for remedies, but such remedies are either denied the affected individual or he is otherwise prevented from exhausting them. These provisions thus apply to situations where domestic remedies cannot be exhausted because they are not available either as a matter of law or as a matter of fact.

18. Article 46(2) makes no specific reference to indigents, the subject of the first question, nor to those situations in which a person has been unable to obtain legal representation because of a generalized fear in the legal community to take such cases, which the second question addresses.

19. The answers to the questions presented by the Commission thus depend on a determination whether a person's failure to exhaust domestic remedies in the circumstances posited falls under one or the other exception spelled out in Article 46(2). That is, whether or under what circumstances a person's indigency or inability to obtain legal representation because of a generalized fear among the legal community will exempt him from the requirement to exhaust domestic remedies.

20. In addressing the issue of indigency, the Court must emphasize that merely because a person is indigent does not, standing alone, mean that he does not have to exhaust domestic remedies, for the provision contained in Article 46(1) is of general nature. The language of Article 46(2) suggests that whether or not an indigent has to exhaust domestic remedies will depend on whether the law or the circumstances permit him to do so.

21. In analyzing these issues, the Court must bear in mind the provisions contained in Articles 1(1), 24 and the relevant parts of Article 8 of the Convention, which are closely related to the instant matter and read as follows:

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 8. Right to a Fair Trial

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 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:

...

- 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 counsels;
- 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;

...

22. The final section of Article 1(1) prohibits a state from discriminating on a variety of grounds, among them *economic status*. The meaning of the term *discrimination* employed by Article 24 must, then, be interpreted by reference to the list enumerated in Article 1(1). If a person who seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigency) prevents him from so doing because he cannot afford either the necessary legal counsel or the costs of the proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law.

23. *(P)rotection of the law* consists, fundamentally, of the remedies the law provides for the protection of the rights guaranteed by the Convention. The obligation to respect and guarantee such rights, which Article 1(1) imposes on the States Parties, implies, as the Court has already stated, *the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the*

free and full enjoyment of human rights (Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 166; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 175).

24. Insofar as the right to legal counsel is concerned, this duty to organize the governmental apparatus and to create the structures necessary to guarantee human rights is related to the provisions of Article 8 of the Convention. That article distinguishes between *accusation(s) of a criminal nature* and *procedures of a civil, labor, fiscal, or any other nature*. Although it provides that *(e)very person has the right to a hearing, with due guarantees ... by a ... tribunal* in both types of proceedings, it spells out in addition certain *minimum guarantees* for those accused of a criminal offense. Thus, the concept of a fair hearing in criminal proceedings also embraces, at the very least, those *minimum guarantees*. By labeling these guarantees as *minimum guarantees*, the Convention assumes that other, additional guarantees may be necessary in specific circumstances to ensure a fair hearing.

25. Sub-paragraphs (d) and (e) of Article 8(2) indicate that the accused has a right *to defend himself personally or to be assisted by legal counsel of his own choosing* and that, if he should choose not to do so, he has *the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides ...* Thus, a defendant may defend himself personally, but it is important to bear in mind that this would only be possible where permitted under domestic law. If a person refuses or is unable to defend himself personally, he has the right to be assisted by counsel of his own choosing. In cases where the accused neither defends himself nor engages his own counsel within the time period established by law, he has the right to be assisted by counsel provided by the state, paid or not as the domestic law provides. To that extent the Convention guarantees the right to counsel in criminal proceedings. But since it does not stipulate that legal counsel be provided free of charge when required, an indigent would suffer discrimination for reason of his *economic status* if, when in need of legal counsel, the state were not to provide it to him free of charge.

26. Article 8 must, then, be read to require legal counsel only when that is necessary for a fair hearing. Any state that does not provide indigents with such counsel free of charge cannot, therefore, later assert that appropriate remedies existed but were not exhausted.

27. Even in those cases in which the accused is forced to defend himself because he cannot afford legal counsel, a violation of Article 8 of the Convention could be said to exist if it can be proved that the lack of legal counsel affected the right to a fair hearing to which he is entitled under that article.

28. For cases which concern the determination of a person's *rights and*

obligations of a civil, labor, fiscal or any other nature, Article 8 does not specify any *minimum guarantees* similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for *due guarantees*; consequently, the individual here also has the right to the fair hearing provided for in criminal cases. It is important to note here that the circumstances of a particular case or proceeding--its significance, its legal character, and its context in a particular legal system-- are among the factors that bear on the determination of whether legal representation is or is not necessary for a fair hearing.

29. Lack of legal counsel is not, of course, the only factor that could prevent an indigent from exhausting domestic remedies. It could even happen that the state might provide legal counsel free of charge but neglect to cover the costs that might be required to ensure the fair hearing that Article 8 prescribes. In such cases, the exceptions to Article 46(1) would apply. Here again, the circumstances of each case and each particular legal system must be kept in mind.

30. In its advisory opinion requested, the Commission states that it *has received certain petitions in which the victim alleges that he has not been able to comply with the requirement of the exhaustion of remedies set forth in the domestic legislation because he cannot afford legal representation or, in some cases, the obligatory filing fees*. Upon applying the foregoing analysis to the examples set forth by the Commission, it must be concluded that if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized and a person is unable to obtain such services because of his indigency, then that person would be exempted from the requirement to exhaust domestic remedies. The same would be true of cases requiring the payment of a filing fee. That is to say, if it is impossible for an indigent to deposit such a fee, he cannot be required to exhaust domestic remedies unless the state provides some alternative mechanism.

31. Thus, the first question presented to the Court by the Commission is not whether the Convention guarantees the right to legal counsel as such or as a result of the prohibition of discrimination for reason of economic status (Art. 1(1)). Rather, the question is whether an indigent may appeal directly to the Commission to protect a right guaranteed in the Convention without first exhausting the applicable domestic remedies. The answer to this question given what has been said above, is that if it can be shown that an indigent needs legal counsel to effectively protect a right which the Convention guarantees and his indigency prevents him from obtaining such counsel, he does not have to exhaust the relevant domestic remedies. That is the meaning of the language of Article 46(2) read in conjunction with Articles 1(1), 24 and 8.

32. The Court will now turn to the second question. It concerns the exhaustion

of domestic remedies in situations where an individual is unable to obtain the necessary legal representation *due to a general fear in the legal community* of a given country. The Commission explains that, according to what some complainants have alleged *(t)his situation has occurred where an atmosphere of fear prevails and lawyers do not accept cases which they believe could place their own lives and those of their families in jeopardy.*

33. In general, the same basic principles govern this question as the Court has deemed applicable to the first question. That is to say, if a person, for a reason such as the one stated above, is prevented from availing himself of the domestic legal remedies necessary to assert a right which the Convention guarantees, he cannot be required to exhaust those remedies. The state's obligation to guarantee such remedies is, of course, unaffected by this conclusion.

34. Article 1 of the Convention provides not only that the States Parties have an obligation to *respect the rights and freedoms recognized (t)herein*, it also requires them to *ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms*. The Court has already had occasion to emphasize that this provision imposes an affirmative duty on the States. It is also important to note that the obligation to *ensure* requires the state to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently violation of Article 1(1) of the Convention. As the Court has stated

. . . when it is shown that remedies are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others ... resort to those remedies becomes a senseless formality. The exceptions of Article 46(2) would be fully applicable in those situations and would discharge the obligation to exhaust domestic remedies since they cannot fulfill their objective in that case (*Velásquez Rodríguez Case, supra 23, para. 68; Godínez Cruz Case, supra 23, para. 71 and Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989. Series C No. 6, para. 93*).

35. It follows therefrom that where an individual requires legal representation and a generalized fear in the legal community prevents him from obtaining such representation, the exception set out in Article 46(2)(b) is fully applicable and the individual is exempted from the requirement to exhaust domestic remedies.

36. The Court is of the opinion that, in the cases posited by the Commission, it is

the considerations outlined that render the remedies adequate and effective in accordance with generally recognized principles of international law to which Article 46(1) refers; namely, remedies *suitable to address an infringement of a legal right and capable of producing the result for which (they were) designed* (*Velásquez Rodríguez Case, supra 23, paras. 64 and 66; Godínez Cruz Case, supra 23, paras. 67 and 69 and Fairén Garbi and Solís Corrales Case, supra 34, paras. 88 and 91*).

37. The second part of both questions submitted relates to the standards the Commission should apply in determining the admissibility of the claims analyzed herein.

38. In addressing this issue it is clear that the test to be applied must be whether legal representation was necessary in order to exhaust the appropriate remedies and whether such representation was, in fact, available.

39. It is for the Commission to make this determination. It must be emphasized, nevertheless, that all determinations made by the Commission before the case was referred to the Court are fully reviewable by the latter (*Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, para. 29; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, para. 34 and Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, para. 32*).

40. The exhaustion of domestic remedies is a requirement for admissibility and the Commission must bear this in mind at the appropriate time and provide both the state and the complainant with the opportunity to present their respective positions on this issue.

41. Under Article 46(1)(a) of the Convention and in accordance with general principles of international law, it is for the state asserting non-exhaustion of domestic remedies to prove that such remedies in fact exist and that they have not been exhausted (*Velásquez Rodríguez Case, Preliminary Objections, supra 39, para. 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra 39, para. 87 and Godínez Cruz Case, Preliminary Objections, supra 39, para. 90*). Once a State Party has shown the existence of domestic remedies for the enforcement of a particular right guaranteed by the Convention, the burden of proof shifts to the complainant, who must then demonstrate that the exceptions provided for in Article 46(2) are applicable, whether as a result of indigency or because of a generalized fear to take the case among the legal community or any other applicable circumstance. Of course, it must also be shown that the rights in question are guaranteed in the Convention and that legal representation is necessary to assert or enjoy those rights.

42. For those reasons,

THE COURT,

IS OF THE OPINION

Unanimously

1. That if his indigency or a general fear in the legal community to represent him prevent a complainant before the Commission from invoking the domestic remedies necessary to protect a right guaranteed by the Convention, he is not required to exhaust such remedies.

Unanimously

2. That if a State Party has proved that domestic remedies are available, the complainant must then demonstrate that the exceptions contemplated in Article 46(2) apply and that he was prevented from obtaining the legal counsel necessary for the protection of rights guaranteed by the Convention.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this tenth day of August, 1990.

(s) Héctor Fix-Zamudio
President

(s) Orlando Tovar-Tamayo

(s) Thomas Buergenthal

(s) Rafael Nieto-Navia

(s) Policarpo Callejas-Bonilla

(s) Sonia Picado-Sotela

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX V

September 29, 1989

Mr. President:

The undersigned, Gilda M.C.M. Russomano and Edmundo Vargas-Carreño, being Delegates of the Inter-American Commission on Human Rights in the "VELASQUEZ RODRIGUEZ, MANFREDO" case pending before the Inter-American Court of Human Rights, have the honor to address you, Mr. President, in order to request an interpretation of the compensatory damages judgment delivered on July 21, 1989.

This motion is based upon Article 67 of the American Convention on Human Rights and Article 48 of the Rules of Procedure of the Inter-American Court, which refer to requests for interpretation of judgments of the Court.

This petition for clarification refers to the sum of money that is to be deposited in trust at the Central Bank of Honduras for the benefit of Héctor Ricardo, Nadia Waleska and Herling Lizzett Velásquez-Guzmán, the children of the victim, until they each reach the age of twenty-five years of age.

The judgment does not contemplate any protective mechanism to preserve the current purchasing power of the award in the face of inflation or possible devaluations of the lempira. As the Court is aware, and as we indicate below, that loss of purchasing power by units of currency has historically been high throughout Latin America, in some countries sometimes reaching catastrophic proportions.

Two fundamental reasons have persuaded the Commission to submit this petition:

First, if the meaning and scope of the judgment are not clarified with respect to the future value of the compensation placed in trust, irreparable damage could be

Dr. Héctor Gros-Espiell
President
Inter-American Court of Human Rights
San José, Costa Rica

caused to the injured parties. As we state below, that damage is neither hypothetical nor trivial, but predictable and could practically annul the very value of the Court's decision, as well as its compensatory intent.

Moreover, the Commission believes that such judgments in themselves hold a special, precedential legal value which goes well beyond the jurisdiction of the Inter-American Court and its case law, since by their very nature, content and effect they have deservedly earned universal attention and represent a milestone in the development of the international humanitarian legal order.

The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request.

In addressing the merits of the case, the Court will surely take into account the fact that the consumer price index (the indicator most relevant to this case) for the countries of Latin America taken as a whole increased by 721% in the five years from 1983 to 1988, that is, an average of 144% per annum. Without citing extreme cases of countries experiencing hyperinflation, Costa Rica, a country geographically close to Honduras, suffered an increase of 263% in its consumer price index over the last ten years. (Source: Report to the Inter-American Economic and Social Council CIES. OAS, September 1989).

In Honduras, such increases have been much milder. Nevertheless, even at the relatively low growth of the consumer price index in Honduras, if the trust in question had been set up 18 years ago (in 1971) in the amount of L.562,500, that sum would today be the equivalent of L.147,126, or approximately a quarter of its original value, given the changes experienced in the consumer price index of Honduras.

It could be argued that Honduras has maintained a stable 2 to 1 official rate of exchange between the lempira and the dollar (2 lempiras per dollar) for over fifty years. However, the real value of the lempira is also declining in relation to other so-called "strong" currencies, such as the dollar.

So much so, in fact, that the Government, aware of this fact, issues negotiable export payment certificates (known by their acronym, CETRA) through the Central Bank. These certificates are traded on the open market at approximately 3.6 lempiras per dollar and reflect the unofficial, free rate of exchange. It should be emphasized that, according to information obtained by the Commission from banking sources, these CETRAs, which are a valid indicator of the lempira's purchasing power, suffered a devaluation of 12 to 15% between March and August, 1989, moving from 3.20 lempiras to the dollar in March to 3.60 in August.

The Court will surely take into account the fact that even currencies like the dollar are subject to progressive devaluations which, though less acute, still have the effect of reducing their purchasing power to a third or a quarter of their original value over a period of 15 to 20 years.

Furthermore, the compensatory damages judgment provides that the beneficiaries shall receive interest "under the most favorable conditions permitted by Honduran banking practice" (paragraph 58, Section VIII). Such interest represents additional income, independent of the principal and a separate item that is their due under the judgment. It is the product of the capital, and the children possess title to it separately from their right to the capital, both of which they must receive in their entirety and without any rebates on their twenty-fifth birthdays.

The interpretation of the judgment should also protect that interest from a loss of purchasing power. To give an example, if the capital placed in trust were to experience a loss of 50% in its purchasing power, the same would be true of the interest, and so on. The Court's provision that the interest accrued should be applied to the children's support and education could be irreversibly nullified, no longer as a result of possible fluctuations in monetary policy, but simply due to the historical decline in purchasing power described above.

There are different ways of setting up a simple and clear protective mechanism that could be established by the Court in the clarification of judgment requested. None of them would offer complete protection to the beneficiaries, nor could they preserve absolutely the compensatory intent of the judgment, but at least they would to some degree counteract the current lack of protection and the expected loss of value.

The Commission is of the opinion that a suitable adjustment mechanism would be to estimate the real value of the capital placed in trust in United States dollars of October 20, 1989 and maintain it at that same value throughout the life of the trust. To achieve this, it should be adjusted to the amount of lempiras necessary to purchase that fixed amount of dollars initially arrived at on the free international exchange market. Thus, each interest payment would be calculated in lempiras on a principal, also in lempiras, readjusted on the basis of the mechanism described.

This would, to some extent, make it possible to protect the value of both the principal and the interest. Even so, the beneficiaries would be affected, as they would have to absorb the loss in purchasing power of the indicator currency, the dollar. But the loss and the uncertainty would both be attenuated, given the simplicity of the method.

It should be noted that this procedure would also have the effect of reducing the uncertainty of the State of Honduras in dealing with the compensatory damages. On the date of payment, all that the Honduran government would have to do

would be to set up a sum in dollars with the lempiras it must place in trust, and then calculate the interest on its market value in lempiras on a monthly basis. The Court is doubtless aware of the fact that the body of laws and banking practices of various Latin American countries have both established that monthly benefit payments, whether interest or some other type of payments, should be tied to some index that will protect their purchasing power.

The Commission also wishes to highlight that, as the Court pointed out in its judgment (paragraph 25 of Judgment of July 21, 1989), the compensation awarded stems from an international obligation. In this sense, the appropriate currency for compliance with the "fair compensation" provided for in the Article 63(1) of the American Convention must be a unit of measure possessing indemnifying value from an international point of view at a given moment.

Consequently, if the value of the compensation's indicator (the lempira) fluctuates, the amount should be adjusted to reflect its original value. Of course, since the judgment is to be carried out in Honduras, the adjustment should be made in a manner consistent with the domestic law of Honduras.

Moreover, the Commission would like to point out that this interpretation is in keeping with the case law of the European Court. In the "Ringeisen" case, for example, the Court ordered Austria to pay compensation in German marks because both the victim's domicile and his beneficiaries were located in Germany (E.C.H.R., Series A, vol. 15 (1972), p. 10).

For the foregoing reasons, the Inter-American Commission on Human Rights respectfully requests that the Honorable Court grant this motion for clarification of judgment and order that measures be taken to protect the purchasing power of the amounts (both principal and interest) involved in the trust to be set up on behalf of HECTOR RICARDO, NADIA WALESKA and HERLING LIZZETT VELASQUEZ-GUZMAN, by tying that portion of the damages to an index that will maintain its purchasing power. This should be done not only for each of the payments of interest thereon but also for the payment of principal when it becomes due and payable to the beneficiaries, that is, when they each reach the age of twenty-five.

Please accept, Mr. President, the expressions of our highest consideration.

(s) Gilda M.C.M. Russomano
Member of the Commission and Delegate

(s) Edmundo Vargas-Carreño
Executive Secretary and Delegate

APPENDIX VI

September 29, 1989

Mr. President:

The undersigned, Gilda M.C.M. Russomano and Edmundo Vargas-Carreño, being Delegates of the Inter-American Commission on Human Rights in the "GODINEZ CRUZ, SAUL" case pending before the Inter-American Court of Human Rights, have the honor to address you, Mr. President, in order to request an interpretation of the compensatory damages judgment delivered on July 21, 1989.

This motion is based upon Article 67 of the American Convention on Human Rights and Article 48 of the Rules of Procedure of the Inter-American Court, which refer to requests for interpretation of judgments of the Court.

This petition for clarification refers to the sum of money that is to be deposited in trust at the Central Bank of Honduras for the benefit of Emma Patricia Godínez-Cruz, daughter of the victim, until she reaches the age of twenty-five, that is, until May 3, 2007.

The judgment does not contemplate any protective mechanism to preserve the current purchasing power of the award in the face of inflation or possible devaluations of the lempira. As the Court is aware, and as we indicate below, that loss of purchasing power by units of currency has historically been high throughout Latin America, in some countries sometimes reaching catastrophic proportions.

Two fundamental reasons have persuaded the Commission to submit this petition:

First, if the meaning and scope of the judgment are not clarified with respect to the future value of the compensation placed in trust, irreparable damage could be caused to the injured parties. As we state below, that damage is neither hypothetical nor trivial, but predictable and could practically annul the very value of the Court's decision, as well as its compensatory intent.

Dr. Héctor Gros-Espiell
President
Inter-American Court of Human Rights
San José, Costa Rica

Moreover, the Commission believes that such judgments in themselves hold a special, precedential legal value which goes well beyond the jurisdiction of the Inter-American Court and its case law, since by their very nature, content and effect they have deservedly earned universal attention and represent a milestone in the development of the international humanitarian legal order.

The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request.

In addressing the merits of the case, the Court will surely take into account the fact that the consumer price index (the indicator most relevant to this case) for the countries of Latin America taken as a whole increased by 721% in the five years from 1983 to 1988, that is, an average of 144% per annum. Without citing extreme cases of countries experiencing hyperinflation, Costa Rica, a country geographically close to Honduras, suffered an increase of 263% in its consumer price index over the last ten years. (Source: Report to the Inter-American Economic and Social Council CIES. OAS, September 1989).

In Honduras, such increases have been much milder. Nevertheless, even at the relatively low growth of the consumer price index in Honduras, if the trust in question had been set up 18 years ago (in 1971) in the amount of L.487,500, that sum would today be the equivalent of L.127,510, or approximately a quarter of its original value, given the changes experienced in the consumer price index of Honduras.

It could be argued that Honduras has maintained a stable 2 to 1 official rate of exchange between the lempira and the dollar (2 lempiras per dollar) for over fifty years. However, the real value of the lempira is also declining in relation to other so-called "strong" currencies, such as the dollar.

So much so, in fact, that the Government, aware of this fact, issues negotiable export payment certificates (known by their acronym, CETRA) through the Central Bank. These certificates are traded on the open market at approximately 3.6 lempiras per dollar and reflect the unofficial, free rate of exchange. It should be emphasized that, according to information obtained by the Commission from banking sources, these CETRAs, which are a valid indicator of the lempira's purchasing power, suffered a devaluation of 12 to 15% between March and August, 1989, moving from 3.20 lempiras to the dollar in March to 3.60 in August.

The Court will surely take into account the fact that even currencies like the dollar are subject to progressive devaluations which, though less acute, still have the effect of reducing their purchasing power to a third or a quarter of their original value over a period of 15 to 20 years.

Furthermore, the compensatory damages judgment provides that the beneficiary shall receive interest "under the most favorable conditions permitted by Honduran banking practice" (paragraph 53, Section VII). Such interest represents additional income, independent of the principal and a separate item that is her due under the judgment. It is the product of the capital, and the child possesses title to it separately from her right to the capital, both of which she must receive in their entirety and without any rebates on her twenty-fifth birthday.

The interpretation of the judgment should also protect that interest from a loss of purchasing power. To give an example, if the capital placed in trust were to experience a loss of 50% in its purchasing power, the same would be true of the interest, and so on. The Court's provision that the interest accrued should be applied to the child's support and education could be irreversibly nullified, no longer as a result of possible fluctuations in monetary policy, but simply due to the historical decline in purchasing power described above.

There are different ways of setting up a simple and clear protective mechanism that could be established by the Court in the clarification of judgment requested. None of them would offer complete protection to the beneficiary, nor could they preserve absolutely the compensatory intent of the judgment, but at least they would to some degree counteract the current lack of protection and the expected loss of value.

The Commission is of the opinion that a suitable adjustment mechanism would be to estimate the real value of the capital placed in trust in United States dollars of October 20, 1989 and maintain it at that same value throughout the life of the trust. To achieve this, it should be adjusted to the amount of lempiras necessary to purchase that fixed amount of dollars initially arrived at on the free international exchange market. Thus, each interest payment would be calculated in lempiras on a principal, also in lempiras, readjusted on the basis of the mechanism described.

This would, to some extent, make it possible to protect the value of both the principal and the interest. Even so, the beneficiary would be affected, as she would have to absorb the loss in purchasing power of the indicator currency, the dollar. But the loss and the uncertainty would both be attenuated, given the simplicity of the method.

It should be noted that this procedure would also have the effect of reducing the uncertainty of the State of Honduras in dealing with the compensatory damages. On the date of payment, all that the Honduran government would have to do would be to set up a sum in dollars with the lempiras it must place in trust, and then calculate the interest on its market value in lempiras on a monthly basis. The Court is doubtless aware of the fact that the body of laws and banking practices of various Latin American countries have both established that monthly benefit

payments, whether interest or some other type of payment, should be tied to some index that will protect their purchasing power.

The Commission also wishes to highlight that, as the Court pointed out in its judgment (paragraph 23 of Judgment of July 21, 1989), the compensation awarded stems from an international obligation. In this sense, the appropriate currency for compliance with the "fair compensation" provided for in the Article 63(1) of the American Convention must be a unit of measure possessing indemnifying value from an international point of view at a given moment.

Consequently, if the value of the compensation's indicator (the lempira) fluctuates, the amount should be adjusted to reflect its original value. Of course, since the judgment is to be carried out in Honduras, the adjustment should be made in a manner consistent with the domestic law of Honduras.

Moreover, the Commission would like to point out that this interpretation is in keeping with the case law of the European Court. In the "Ringeisen" case, for example, the Court ordered Austria to pay compensation in German marks because both the victim's domicile and his beneficiaries were located in German (E.C.H.R., Series A, vol. 15 (1972), p. 10).

For the foregoing reasons, the Inter-American Commission on Human Rights respectfully requests that the Honorable Court grant this request for interpretation of judgment and order that measures be taken to protect the purchasing power of the amounts (both principal and interest) involved in the trust to be set up on behalf of EMMA PATRICIA GODINEZ-CRUZ, by tying that portion of the damages to an index that will maintain its purchasing power. This should be done not only for each of the payments of interest thereon but also for the payment of the principal when it becomes due and payable to the beneficiary on her twenty-fifth birthday, May 3, 2007.

Please accept, Mr. President, the expressions of our highest consideration.

(s) Gilda M.C.M. Russomano
Member of the Commission and Delegate

(s) Edmundo Vargas-Carreño
Executive Secretary and Delegate

APPENDIX VII

Mr. President:

The undersigned, GILDA M.C.M. DE RUSSOMANO, being a delegate of the Inter-American Commission on Human Rights in the "GODINEZ CRUZ" and "VELAZQUEZ RODRIGUEZ" cases pending before the Inter-American Court of Human Rights (as a party to such cases), has the honor to present to you, Mr. President, a request for amplification of the petition for clarification of the compensatory damages judgments delivered on July 21, 1989 in those cases.

This request for amplification is based on Articles 63(1) and 67 of the American Convention on Human Rights and their respective regulations. The request refers to the material consequences resulting from the Honduran governments failure to pay the damages stipulated in the judgments by the due date -- that is, before October 20, 1989.

As has been documented by the submissions of Honduras to the Honorable Court dated January 27 and March 5, 1990, the Honduran Government has acted at the domestic level in an effort to comply with the judgment. According to the Government of Honduras, the measures taken are those required under the law in order to obtain the necessary legal authority to process the payment to the injured parties. Nevertheless, eight months after the deadline set by the Court, the judgment has still not been complied with, resulting in various damages to the injured parties.

The damages stem from two sources: first, the time elapsed since October 20, 1989 without the injured parties having access to the use and enjoyment of the compensation due; and second, the devaluation of the lempira during that time, a devaluation legally introduced by the Government to reflect the real loss of purchasing power that had occurred during that period.

The Commission wishes to place on record its appreciation of the actions taken by Honduras, both in accepting the international obligations resulting from the Court's judgments and in setting in motion internal procedures to meet the payment of the compensatory damages.

Dr. Héctor Fix-Zamudio
President
Inter-American Court of Human Rights
San José, Costa Rica

Despite the above, the Commission nevertheless believes that both the gravity of the international proceedings and the respect that should be accorded a fair compensation as fixed by that Court, as well as the real loss of over 30 (thirty) per cent of the purchasing power resulting from the delay in payment, require that the Honorable Court declare, in the interpretation being sought, that the amount of damages fixed should be understood to be linked to the period of time specified. Consequently, the delay in compliance means that Honduras must at the same time and in addition to the amounts stipulated in the judgments of July 21, 1989, pay the following: a) interest accrued as a result of the delay, and b) an adjustment of the purchasing power of the unit of currency, in order to bring its real value at the time of payment in line with the value it had on the date it should have been paid.

The Commission believes that the fact that payment was not made when due has given rise to a new situation which requires, authorizes and justifies the instant request for amplification of the petition of clarification at this point in time.

The Commission is also of the opinion that calculation of the interest due as a result of the delay should be made in the same manner indicated by the Honorable Court for the amounts to be placed in trust, that is, "under the most favorable conditions permitted by Honduran banking practice" (paragraph 52, Section VII of the Judgments).

Reaffirming the tenor of its communication of September 20, 1989, for the foregoing reasons the Commission respectfully requests that the Honorable Court admit this request for amplification of the petition for clarification of the judgment and, furthermore, that payment of interest be ordered for the period from October 20, 1989 to the date of effective payment, plus a retroactive adjustment of the purchasing power of the compensation to that date, to make up for the lempira's devaluation over that same period.

Please accept, Mr. President, the expressions of my highest consideration.

(s) GILDA M.C.M. DE RUSSOMANO
Member of the Commission and Delegate

APPENDIX VIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

VELASQUEZ RODRIGUEZ CASE

INTERPRETATION OF THE
COMPENSATORY DAMAGES JUDGMENT

JUDGMENT OF AUGUST 17, 1990
(ART. 67 AMERICAN CONVENTION ON HUMAN RIGHTS)

In the Velásquez Rodríguez Case,

The Inter-American Court of Human Rights, in accordance with Article 54(3) of the American Convention on Human Rights composed of the following judges:

Héctor Fix-Zamudio, President
Rodolfo E. Piza E., Judge
Pedro Nikken, Judge
Rafael Nieto-Navia, Judge
Rigoberto Espinal-Irías, Judge *ad hoc*

Also present:

Manuel E. Ventura-Robles, Secretary

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 48 of its Rules of Procedure delivers the following judgment on the request of the Inter-American Commission on Human Rights (hereinafter "the Commission") for an interpretation of this Court's judgment of July 21, 1989 assessing compensatory damages against the State of Honduras (hereinafter "Honduras" or "the Government").

I

1. By note of September 29, 1989, received at the Inter-American Court of Human Rights (hereinafter "the Court") on October 2, the Commission asked for a clarification of the compensatory damages judgment delivered on July 21, 1989 in the Velásquez Rodríguez Case.
2. The Commission invoked Articles 67 of the Convention and 48 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").
3. In its request, the Commission asks the Court, *in order to protect the purchasing power of the amounts of principal and interest that will accrue in the trust to be established in favor of HECTOR RICARDO, NADIA WALESKA and HERLING LIZZETT VELASQUEZ-GUZMAN, to direct that said portion of the damages be indexed in such a way as to ensure the stability of its purchasing power.*
4. On October 25, 1989 the Secretariat, acting pursuant to Article 48(2) of the Rules of Procedure, communicated the Commission's request to the Government and invited it to submit its written observations within a period of thirty days.
5. In a communication dated November 21, 1989, the Government deemed the Commission's request inadmissible, expressing the opinion that the judgment is clear and requires no interpretation and that to accept such a request would involve an amendment to that judgment.
6. On July 6, 1990, the Commission submitted a *request for amplification of the petition for clarification of the judgment which refers to the material consequences resulting from the Honduran Government's failure to pay the damages stipulated in the judgment by the due date --that is, before October 20, 1989-- which has given rise to a new situation which requires, authorizes and justifies the instant request for amplification of the petition for clarification at this point in time.*
7. The Commission's communication was transmitted to the Government on July 11, 1990. The Government was also informed that the President had set August 10, 1990 as the deadline for receiving the Government's observations regarding that communication.
8. The Government submitted its observations within the time set by the President and asked the Court to reject the Commission's request.
9. On August 14, 1990, the Government presented a photocopy of Decree Number 59-90, published in the Republic of Honduras' *La Gaceta* of July 21, 1990, which authorized the payment of the damages decreed by the Court in its judgment of July 21, 1989. The cover letter stated that the amount in question *have not been delivered to the interested parties because they are awaiting the results of the public hearing to be held on this date.*

10. On that same date, the Court held a public hearing in order to hear the views of the parties regarding the Commission's request.

The following persons appeared before the Court:

a) for the Government of Honduras

Ambassador Edgardo Sevilla-Idiáquez, Agent

b) for the Inter-American Commission on Human Rights

Dr. Gilda M.C.M. de Russomano, Delegate and Member

Dr. Jorge Seall-Sasiain, Delegate.

II

11. On this occasion, the Court was composed of those judges who had decided the merits of the case as well as the corresponding claim for compensatory damages of July 21, 1989. It is the latter judgment whose interpretation the Commission now seeks.

12. The composition of the Court was as prescribed by Article 54(3) of the Convention, which states that the judges of the Court shall continue to participate in those cases that they have begun to hear and that are still at the judgment stage. That provision must also be applied to the decision regarding the interpretation of judgments to which Articles 67 of the Convention and 48 of the Rules of Procedure refer because, under general rules of procedural law, a contentious case cannot be deemed to have been concluded until the judgment has been fully complied with. By analogy, it follows that the judges shall continue to participate when the case is at the enforcement stage. This is so, in particular, because the Court decided in its judgment of July 21, 1989 that it would supervise compliance with the award of damages and that the case would not be deemed closed until compensation was paid in full.

13. Article 54(3) of the Convention is based on similar rules contained in the Statute of the International Court of Justice and in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms. Article 13(3) of that Statute provides, essentially, that after the judges of the International Court of Justice have been replaced, they shall nevertheless continue to hear the cases they had begun and see them through to their conclusion. Article 40(6) of the European Convention declares that, in the same circumstances, the judges of the European Court shall continue to hear the cases that have been entrusted to them. According to Article 56 of that Court's Rules of Procedure, *(t)he request for interpretation shall be*

considered by the Chamber which gave the judgment and which shall, as far as possible, be composed of the same judges...

14. The Court has jurisdiction to comply with the instant request for interpretation because Article 67 of the Convention provides that

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 48 of the Rules of Procedure, for its part, states the following:

Article 48. Request for an Interpretation of a Judgment

1. Requests for an interpretation allowed under the terms of Article 67 of the Convention shall be presented in twenty copies and shall indicate precisely the points in the operative provision of the judgment on which interpretation is requested. It shall be filed with the Secretary.

2. The Secretary shall communicate the request to any other party and, where appropriate, to the Commission, and shall invite them to submit, in twenty copies, any written comments within a period fixed by the President.

3. The nature of the proceedings shall be determined by the Court.

4. A request for interpretation shall not suspend the effect of the judgment.

The Commission is a party to this case and presented its request on October 2, 1989. Since the judgment was notified on July 21, 1989, the request was presented within the period stipulated by that Article.

15. In its brief of July 6, 1990, the Commission asked the Court to admit a *request for amplification of the petition for clarification of the judgment*, based on a *new fact* that was not known at the time of the first request, that is to say, the Government's delay in paying the damages. Since the Court will base its decision in the instant request on other grounds, it does not deem it necessary to address the possibility of extending a request beyond the specific period fixed by the Convention. The same reason makes it unnecessary for the Court to deal with the doctrine of "new facts" which is applied in other tribunals.

III

16. In its judgment of July 21, 1989, the Court

unanimously

1. Awards seven hundred and fifty thousand lempiras in compensatory damages to be paid to the family of Angel Manfredo Velásquez-Rodríguez by the State of Honduras.

unanimously

2. Decides that the amount of the award corresponding to the wife of Angel Manfredo Velásquez-Rodríguez shall be one hundred and eighty-seven thousand five hundred lempiras.

unanimously

3. Decides that the amount of the award corresponding to the children of Angel Manfredo Velásquez-Rodríguez shall be five hundred and sixty-two thousand five hundred lempiras.

unanimously

4. Orders that the form and means of payment of the indemnity shall be those specified in paragraphs 57 and 58 of this judgment.

unanimously

5. Decides that the Court shall supervise the indemnification ordered and shall close the file only when the compensation has been paid.

17. Paragraphs 57 and 58 of the judgment read as follows:

57. Payment of the seven hundred and fifty thousand lempiras awarded by the Court must be carried out within ninety days from the date of notification of the judgment, free from any tax that might eventually be considered applicable. Nevertheless, the Government may pay in six equal monthly installments, the first being payable within ninety days and the remainder in successive months. In this case, the balance shall be incremented by the appropriate interest, which shall be at the interest rates current at the moment in Honduras.

58. One-fourth of the indemnity is awarded to the wife who shall receive that sum directly. The remaining three-fourths shall be distributed among the children. With the funds from the award to the children, a trust fund shall be set up in the Central Bank of Honduras under the most favorable conditions permitted by Honduran banking practice. The children shall receive monthly payments from this trust fund, and at the age of twenty-five shall receive their proportionate part.

18. In its brief of September 29, 1989, the Commission justified its request in the following terms:

This petition for clarification refers to the sum of money that is to be deposited in trust at the Central Bank of Honduras for the benefit of Héctor Ricardo, Nadia Waleska and Herling Lizzett Velásquez-Guzmán, the children of the victim, until they each reach the age of twenty-five years of age.

The judgment does not contemplate any protective mechanism to preserve the current purchasing power of the award in the face of inflation or possible devaluations of the lempira. As the Court is aware, and as we indicate below, that loss of purchasing power by units of currency has historically been high throughout Latin America, in some countries sometimes reaching catastrophic proportions.

Two fundamental reasons have persuaded the Commission to submit this petition:

First, if the meaning and scope of the judgment are not clarified with respect to the future value of the compensation placed in trust, irreparable damage could be caused to the injured parties. As we state below, that damage is neither hypothetical nor trivial, but predictable and could practically annul the very value of the Court's decision, as well as its compensatory intent.

Moreover, the Commission believes that such judgments in themselves hold a special, precedential legal value which goes well beyond the jurisdiction of the Inter-American Court and its case law, since by their very nature, content and effect they have deservedly earned universal attention and represent a milestone in the development of the international humanitarian legal order.

The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request.

In addressing the merits of the case, the Court will surely take into account the fact that the consumer price index (the indicator most relevant to this case) for the countries of Latin America taken as a whole increased by 721% in the five years from 1983 to 1988, that is, an average of 144% per annum. Without citing extreme cases of countries experiencing hyperinflation, Costa Rica, a country geographically close to Honduras, suffered an increase of 263% in its consumer price index over the last ten years. (Source: Report to the Inter-American Economic and Social Council CIES. OAS, September 1989).

In Honduras, such increases have been much milder. Nevertheless, even at the relatively low growth of the consumer price index in Honduras, if the trust in question had been set up 18 years ago (in 1971) in the amount of L.562,500, that sum would today be the equivalent of L.147,126, or approximately a quarter of its original value, given the changes experienced in the consumer price index of Honduras.

19. The Commission asked the Court to admit its request in order that

measures be taken to protect the purchasing power of the amounts (both principal and interest) involved in the trust to be set up on behalf of HECTOR RICARDO, NADIA WALESKA and HERLING LIZZETT VELASQUEZ-GUZMAN by tying that portion of the damages to an index that will maintain its purchasing power. This should be done not only for each of the payments of interest thereon but also for the payment of the principal when it becomes due and payable to the beneficiaries, that is, when they each reach the age of twenty-five.

20. The Commission stated that

There are different ways of setting up a simple and clear protective mechanism

that could be established by the Court in the clarification of judgment requested. None of them would offer complete protection to the beneficiaries, nor could they preserve absolutely the compensatory intent of the judgment, but at least they would to some degree counteract the current lack of protection and the expected loss of value.

The Commission is of the opinion that a suitable adjustment mechanism would be to estimate the real value of the capital placed in trust in United States dollars of October 20, 1989 and maintain it at that same value throughout the life of the trust. To achieve this, it should be adjusted to the amount of lempiras necessary to purchase that fixed amount of dollars initially arrived at on the free international exchange market. Thus, each interest payment would be calculated in lempiras on a principal, also in lempiras, readjusted on the basis of the mechanism described.

21. In a brief dated November 21, 1989, the Government based its opposition to the Commission's request on the following arguments:

1. The compensatory damages judgment handed down by the Honorable Court on July 21, 1989 in the case of MANFREDO VELASQUEZ RODRIGUEZ is perfectly clear and precise both in its findings and in its operative parts and thus needs no clarification or interpretation, inasmuch as that judgment fixes unequivocally the amount of lempiras to be set up in trust at the Central Bank and the interest rate that the trust fund shall accrue annually in that same currency.
2. In fixing the total amount of compensatory damages and the form of payment thereof, as regards both the amount corresponding to the trust and any earnings thereon, the Court selected the currency of the country in which the judgment was to be executed, that is, Honduras, without taking into consideration, or conditioning the judgment to, any possible decrease in the purchasing power of the Honduran currency; in addition, the judgment did not contemplate any other monetary guideline to serve as an adjustment index for the maintenance of such purchasing power.
3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its judgment of July 21, 1989 by introducing new factors of a monetary nature to its operative parts, when it asks the Court to provide for some index against which the damages settlement should be adjusted in order to maintain its purchasing power unaltered. As already stated, this is something that the judgment does not address.

For the above reasons, the Government of Honduras respectfully requests that the Honorable Court reject the request presented by the Inter-American Commission of Human Rights.

22. The Commission stated the following in its brief of July 6, 1990:

. . . eight months after the deadline set by the Court, the judgment has still not been complied with, resulting in various damages to the injured parties.

The damages stem from two sources: first, the time elapsed since October 20, 1989 without the injured parties having access to the use and enjoyment of the

compensation due; and second, the devaluation of the lempira during that time, a devaluation legally introduced by the Government to reflect the real loss of purchasing power that had occurred during that period.

...

Despite the above, the Commission nevertheless understands that both the gravity of the international proceedings and the respect that should be accorded a fair compensation as fixed by that Court, as well as the real loss of over 30 (thirty) per cent of the purchasing power resulting from the delay in payment, require that the Honorable Court declare in the interpretation being sought, that the amount of damages fixed should be understood to be linked to the period of time specified.

23. For these reasons, the Commission

... respectfully requests that the Honorable Court admit this request for amplification of the petition for clarification of the judgment and, furthermore, that payment of interest be ordered for the period from October 20, 1989 to the date of effective payment, plus a retroactive adjustment of the purchasing power of the compensation to that date, to make up for the lempira's devaluation over that same period.

24. The Government's objection to this last request was expressed in the following terms:

1. The compensatory damages judgments issued by the Honorable Court on July 21, 1989 in the cases of ANGEL MANFREDO VELASQUEZ and SAUL GODINEZ CRUZ are perfectly clear, both in their findings and in their operative parts, and thus require no clarification, for they fix in precise terms the total amounts to be paid in lempiras, including the amounts to be set up as trusts in the Central Bank and the interest rate that the trust funds shall accrue annually in that same currency.

2. In fixing the total amount of the compensatory damages and the form of payment thereof in lempiras (both for the sums held in trust and for earning thereon) the Court acted without taking into consideration, or conditioning the judgments to, any possible decrease in the purchasing power of the Honduran currency. In addition, the judgment set no other monetary guidelines to serve as an adjustment index in order to preserve that purchasing power, nor did it order interest to be paid in the event of delays in meeting the compensation payment schedule.

3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its judgments of July 21, 1989 by introducing new factors of a monetary nature to its operative parts, when it asks the Court to declare that, because of its delay in paying the compensation due, the Government of Honduras should pay interest and adjust the purchasing power of the amounts of compensation to the value they had when payment became due. As already stated, these are factors that were not addressed in the above-mentioned judgments.

4. Since the judgments of the Inter-American Court of Human Rights are final and not subject to appeal, they have the effect of "res judicata." This prevents the parties from reopening a matter in order to obtain a second judgment from the Court, as would happen if the request of the Inter-American Commission on Human Rights were to be admitted and if, in addition, the judgments of July 21, 1989 were to be amended.

5. As has been established before that Honorable Court in the presentations made by the Government of Honduras on January 27 and March 5, 1990, during the period beginning July 21, 1989 my Government undertook all necessary steps to comply with the judgments. If there was a delay in the payment of compensatory damages, it was in no way due to negligence or lack of interest on its part, but, rather, to economic and budgetary constraints that, once overcome, gave rise to Decree No. 59-90, approved by the National Congress on July 2, 1990. In faithful compliance with the judgments of that Honorable Court, the Decree set aside a sum in the General Budget of Income and Expenditures of the Republic to cover the payment of compensation to the families of ANGEL MANFREDO VELASQUEZ RODRIGUEZ and SAUL GODINEZ CRUZ in the manner and under the conditions established in the respective judgments.

25. The public hearing established that, despite the stability of the lempira over a period of many years, by the time the Court issued its judgment on damages, its rate of exchange was exhibiting a tendency to fluctuate against strong currencies. This fluctuation has continued and increased to date, although the official rate of exchange has remained unchanged. It also appeared that the current provisions governing international exchange in Honduras permit private persons to freely acquire other currencies.

IV

26. The interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning and purpose, based on the considerations of the judgment. This has been the rule enunciated in the case law of international courts (see Eur. Court H.R., *Ringeisen case (Interpretation of the judgment of 22 June 1972)*, judgment of 23 June 1973, Series A, Vol. 16).

27. The compensation due victims or their families under Article 63(1) of the Convention must attempt to provide *restitutio in integrum* for the damages caused by the measure or situation that constituted a violation of human rights. The desired aim is full restitution for the injury suffered. This is something that is unfortunately often impossible to achieve, given the irreversible nature of the damages suffered, which is demonstrated in the instant case. Under such circumstances, it is appropriate to fix the payment of *fair compensation* in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.

28. Therefore, in fixing the measure of damages, the Court took into account loss of earnings, (b)ased upon a prudent estimate of the possible income of the victim for the rest of his probable life, as well as moral damages (*Velásquez Rodríguez Case, Compensatory Damages, Judgment of 21 July 1989, (Art. 63(1) American Convention on Human Rights)*. Series C No. 7, paras. 49 and 52).

29. The fact that the damages fixed comprise loss of earnings, calculated on the basis of probable life-span, indicates that the *restitutio in integrum* concept is linked

to the possibility of maintaining the real value of the damages stable over a relatively long period of time. One way of meeting this goal is so-called *indexing*, which makes it possible to make periodic adjustments to the sums payable in order to keep the real value constant. In general, however, that method is only applicable to cases where damages are to be paid in installments over relatively long periods of time. That is not true of the instant case. Here the Court ordered payment of the full amount of compensation in one single payment, or, at most, in six consecutive monthly installments.

30. Despite the foregoing, there is no reason why a case like the instant one should ignore the notion of preserving the real value of the amount fixed. After all, as has already been indicated, the compensation that was fixed for loss of earnings implies that notion to a certain degree. That is why the Court decided, in the operative paragraph of the judgment that refers to paragraph 58, to employ a method for preserving the sums of money owed to the minor children of Manfredo Velásquez, namely, the establishment of a trust fund with the Central Bank of Honduras *under the most favorable conditions permitted by Honduran banking practice*.

31. The Court interprets the expression *under the most favorable conditions* as referring to the fact that any act or measure by the trustee must ensure that the amount assigned maintains its purchasing power and generates sufficient earnings or dividends to increase it; the phrase *permitted by Honduran banking practice* indicates that the trustee must faithfully perform his task as would a good head of family and that he has the power and the obligation to select diverse types of investment, whether through deposits in strong currencies, such as the United States dollar or others, the purchase of mortgage bonds, real estate, guaranteed securities or any other investment recommended by Honduran banking practice, precisely as ordered by the Court.

32. The Court at a given moment shared the concern expressed by the Commission in its briefs and at the hearing, insofar as it wished to ensure that the amount payable to Manfredo Velásquez' minor children would maintain its purchasing power until they reached the age of twenty-five and even beyond that time. It was for this reason that the Court decided to place that sum in a trust fund, an institution that, unlike regular bank accounts, is designed to maintain and increase the real value of the assets.

33. The judgment orders that the compensation be paid either in one single payment or in six consecutive monthly installments. The Commission requests that the Government be obliged to periodically disburse additional sums in order to maintain constant the value of the original assets, for as long as the trust remains in effect. It is evident that this request, as presented, would impose on the Government an obligation that is not provided for in the judgment. Consequently, since the Commission's request thus exceeds the scope of a mere interpretation, the Court must reject it.

V

34. In its brief, received by the Court on July 6, 1990, the Commission expanded its request for interpretation of the judgment. The Commission emphasized that, despite the fact that eight months had elapsed since the damages became due and payable, the Government had still not complied with the judgment. It went on to request that, in order to compensate for the consequences of this delay, the Court order the payment of: *a) interest for such delay and b) the adjustment of the purchasing power of the unit of currency in order to bring its current value on a par with what it was worth at the time that the payment should have been made.*

35. With regard to this brief, the Court must determine, in the first place, whether it is empowered to admit the request as presented.

36. The Court notes that, according to Article 67 of the Convention, it is empowered to interpret its judgments whenever there is disagreement as to the *meaning or scope* thereof. In the Commission's brief now under consideration no mention is made of any aspects of the judgment of the Court whose *meaning or scope* are in doubt or controversial. On the contrary, the claim is that there has been non-performance of clearly stated terms of the judgment in question, such as the terms within which the compensation ordered by the Court should have been paid. Consequently, the Court cannot admit the Commission's petition in the guise of an *amplification* of the request for interpretation previously presented by them.

37. Nevertheless, since in the judgment the Court assumed the supervision of the payment of the damages fixed and indicated that the case would be deemed closed only after full payment was made (*Velásquez Rodríguez Case, Compensatory Damages, supra* 28, para. 60(5)), it retains jurisdiction over the instant case and is empowered to decide on the consequences of the Government's delay in paying the assessed damages.

38. In this connection, the Court must point out initially that the delay is due to a situation attributable to the State of Honduras that continues to hold today. Despite efforts by the Executive Power --to which the Government has attested, as well as to its goodwill, which the Court in no way questions-- the truth is that to date payment has not been effected. This is the responsibility of the State and the consequences of this inaction must be indemnified by it to ensure that the rights of the beneficiaries of the compensation are in no way diminished.

39. The Court must also note that the Government did not indicate at any time that it would avail itself of the option to pay the damages in six consecutive monthly installments (*Velásquez Rodríguez Case, Compensatory Damages, supra* 28, para. 57). It also did not pay any of those installments which, in any event, are all past due. The basis for calculating the damages caused by the delay must, therefore, be the entire amount of the capital owed on the date it became due and payable, namely, seven

hundred fifty thousand lempiras as of October 21, 1989. The statement by the Government that the amounts owed *have not been delivered to the interested parties because they are awaiting the results of the public hearing*, in no way affects the above conclusion, because, among other reasons, the publication of the decree authorizing payment appeared one year after the judgment ordering it and only a few days before the hearing in question.

40. It is appropriate, therefore, to demand the payment of interest on the entire amount of the capital due, at the regular banking rate in effect in Honduras on the date of payment. If such interest were to be set by the Court in the event that the Government opts to pay by means of six monthly installments, it shall apply, a fortiori, to the delay in compliance with the terms of the judgment.

41. There are, furthermore, other damages that must be compensated. These relate to the rights of the beneficiaries of the compensation and, where applicable, to the obligation of the trustee to take appropriate measures to preserve the real value of the sum received when it became due and payable, thus ensuring the fulfillment of the goal of *restitutio in integrum* for the injuries suffered.

42. In this connection, the Court remarks that one of the easiest and most readily accessible ways to achieve this goal, namely, the conversion of the amount received into one of the so-called hard currencies, has been severely impaired as a result of the lempira's loss of value against the United States dollar in the open exchange market since the date on which payment should have been effected. This real loss must be compensated by the Government, in addition to the current bank interest payable, by adding to the latter the value of the loss between the date on which the Government should have paid the damages by setting up the trust but neglected to do so, and the date on which it actually complies with its obligations.

43. Since the Government already has the required authorization to pay, as it has informed the Court, it must now immediately proceed to deliver to the beneficiaries of the compensation and the trust the amount fixed in Decree Number 59-90, applying it, as is customary practice, first to the above-mentioned compensation and to the interest, and subsequently to the capital. Any shortages of capital remaining after this payment shall be subject to the provisions of paragraph 42 *supra* until fully paid.

44. It follows, from all that has been said above, that there are two specific issues that the Court must rule on, namely:

1. The interpretation of the meaning, scope and purpose of the expression *under the most favorable conditions permitted by Honduran banking practice*, utilized in paragraph 58 of the judgment of July 21, 1989; and
2. The measures the Court must adopt in exercising the power it assumed under paragraph 5 of the operative part of that same judgment, that is, the

supervision of *compliance with the payment of the damages fixed* until full payment is made.

NOW THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

unanimously

1. To declare admissible the request for interpretation of the judgment of July 21, 1989, presented by the Inter-American Commission on Human Rights on October 2, 1989.

unanimously

2. To declare inadmissible the *request for amplification of the petition for clarification of the judgment* presented by the Inter-American Commission on Human Rights on July 6, 1990.

unanimously

3. To declare that the expression *under the most favorable conditions permitted by Honduran banking practice* must be interpreted in the manner stated in paragraph 31 *supra*.

unanimously

4. In the exercise of its power to supervise compliance with its judgment of July 21, 1989, that the Government of Honduras must compensate the injured parties for the delays in the payment of damages and in setting up the trust as ordered, under the conditions stipulated in paragraphs 40, 42 and 43, *supra*.

Done in Spanish and English, the Spanish text being authentic at the seat of the Court in San José, Costa Rica, on this seventeenth day of August, 1990.

(s) Héctor Fix-Zamudio
President

(s) Rodolfo E. Piza E.

(s) Pedro Nikken

(s) Rafael Nieto-Navia

(s) Rigoberto Espinal-Irías

(s) Manuel E. Ventura-Robles
Secretary

Judge Héctor Gros-Espiell did not participate in this judgment, having resigned his position as Judge of the Court. Judge Thomas Buergenthal also did not participate in this judgment, because he had not taken part in the judgment of July 21, 1989.

SEPARATE VOTE OF JUDGE PIZA-ESCALANTE

I have concurred with the unanimous vote of the Court and with the general lines of reasoning employed, but I must distance myself from the argument put forward in paragraphs 12, 14 and 15, inasmuch as they invoke the immediate --and not merely analogical-- applicability of Article 67 of the Convention, which governs requests for interpretation of judgments. In this connection, I must point out that such requests relate to that norm of the Convention only with respect to the judgment; that is to say, this obviously refers to the final judgment deciding the merits of the case, to which Articles 63(1) and 66 (among others) of that same Convention refer. It is only with respect to that final judgment that an express conventional provision becomes necessary, as well as the setting of a deadline within which to legitimately request it, because, according to universal principles of procedural law (whether domestic or international) only final judgments are irrevocable and they alone can acquire the authority of *res judicata*.

The remaining decisions, both those that pertain to the principal proceedings and those belonging to the enforcement stage, despite the fact that they are also called *judgments* whether out of habit or as a matter of fact, are interlocutory and always subject to others that, whether by means of remedies or simply through adversary jurisdiction, interpret, complement, clarify or add to or even modify or revoke them. This last, of course, in keeping with the respect due to the principle of estoppel and good faith.

The so-called *compensatory damages judgment* of July 21, 1989, is not the definitive judgment or ruling alluded to in Articles 63(1) and 66. Nor, consequently, is it subject to the kind of interpretation to which Article 67 of the Convention refers, although it is, of course, subject to any interpretation, complement, clarification or addition, or even modification or revocation, under the terms mentioned above.

In the instant case, the final judgment or ruling could only be that of July 29, 1988, which conclusively decided on the merits of the case. This sole definitive judgment required no interpretation under the terms of Article 67, nor was any requested. Insofar as compensatory damages were concerned, it did not go beyond condemning the Government of Honduras, in the abstract, to paying such damages to the successors of Manfredo Velásquez-Rodríguez, reserving the fixing of the amount and form of payment to what would obviously be a subsequent stage of the enforcement of judgment. Thus the Court availed itself of the customary procedural option of leaving for a later stage the settlement of certain general statements contained in the judgment itself, by means of decisions endowed with the same binding and enforceable force of the judgment itself (in this case, that of Articles 65 and 68 of the Convention) although lacking its nature and, as has been stated, lacking its definitiveness, that is, its irrevocability or intangibility. That is what the Court did in its decision of July 21, 1989: enforce the judgment. That is what it is

doing today and what it can and possibly should continue to do in the future, for as long as the case remains open because of noncompliance with the judgment.

By the foregoing I do not mean to imply either that the Court can continue indefinitely to modify its decision at the enforcement stage for as long as the familiar procedural justifications (such as, for example, nullities or a fundamental change in circumstances (*rebus sic stantibus*)) are not given to remove the principle of estoppel or that it is impossible to request a clarification or interpretation of the same, both by analogy, as indicated in the principal vote, and by the general principles mentioned, as confirmed by the very judgment of July 21, 1989 inasmuch as it decided to keep the case open until its fully complied with. However, that possibility is not the one contemplated in Article 67 of the Convention and, consequently, is not subject either to a petition by the parties, nor to time limits, but is maintained open for as long as necessary during the course of enforcing the definite judgment.

(s) Rodolfo E. Piza E.

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX IX

INTER-AMERICAN COURT OF HUMAN RIGHTS

GODINEZ CRUZ CASE

INTERPRETATION OF THE
COMPENSATORY DAMAGES JUDGMENTJUDGMENT OF AUGUST 17, 1990
(ART. 67 AMERICAN CONVENTION ON HUMAN RIGHTS)

In the Godínez Cruz Case,

The Inter-American Court of Human Rights, in accordance with Article 54(3) of the American Convention on Human Rights composed of the following judges:

Héctor Fix-Zamudio, President
Rodolfo E. Piza E., Judge
Pedro Nikken, Judge
Rafael Nieto-Navia, Judge
Rigoberto Espinal-Irías, Judge *ad hoc*

Also present:

Manuel E. Ventura-Robles, Secretary

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 48 of its Rules of Procedure delivers the following judgment on the request of the Inter-American Commission on Human Rights (hereinafter "the Commission") for an interpretation of this Court's judgment of July 21, 1989 assessing compensatory damages against the State of Honduras (hereinafter "Honduras" or "the Government").

I

1. By note of September 29, 1989, received at the Inter-American Court of Human Rights (hereinafter "the Court") on October 2, the Commission asked for a clarification of the compensatory damages judgment delivered on July 21, 1989 in the Godínez Cruz Case.
2. The Commission invoked Articles 67 of the Convention and 48 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").
3. In its request, the Commission asks the Court, *in order to protect the purchasing power of the amounts of principal and interest that will accrue in the trust to be established in favor of EMMA PATRICIA GODINEZ (CRUZ), to direct that said portion of the damages be indexed in such a way as to ensure the stability of its purchasing power.*
4. On October 18, 1989 the Secretariat, acting pursuant to Article 48(2) of the Rules of Procedure, communicated the Commission's request to the Government and invited it to submit its written observations within a period of thirty days.
5. In a communication dated November 16, 1989, the Government deemed the Commission's request inadmissible, expressing the opinion that the judgment is clear and requires no interpretation and that to accept such a request would involve an amendment to that judgment.
6. On July 6, 1990, the Commission submitted a *request for amplification of the petition for clarification of the judgment which refers to the material consequences resulting from the Honduran Government's failure to pay the damages stipulated in the judgment by the due date --that is, before October 20, 1989-- which has given rise to a new situation which requires, authorizes and justifies the instant request for amplification of the petition for clarification at this point in time.*
7. The Commission's communication was transmitted to the Government on July 11, 1990. The Government was also informed that the President had set August 10, 1990 as the deadline for receiving the Government's observations regarding that communication.
8. The Government submitted its observations within the time set by the President and asked the Court to reject the Commission's request.
9. On August 14, 1990, the Government presented a photocopy of Decree Number 59-90, published in the Republic of Honduras' *La Gaceta* of July 21, 1990, which authorized the payment of the damages decreed by the Court in its judgment of July 21, 1989. The cover letter stated that the amount in question *have not been delivered to the interested parties because they are awaiting the results of the public hearing to be held on this date.*

10. On that same date, the Court held a public hearing in order to hear the views of the parties regarding the Commission's request.

The following persons appeared before the Court:

a) for the Government of Honduras

Ambassador Edgardo Sevilla-Idiáquez, Agent

b) for the Inter-American Commission on Human Rights

Dr. Gilda M.C.M. de Russomano, Delegate and Member

Dr. Jorge Seall-Sasiain, Delegate.

II

11. On this occasion, the Court was composed of those judges who had decided the merits of the case as well as the corresponding claim for compensatory damages of July 21, 1989. It is the latter judgment whose interpretation the Commission now seeks.

12. The composition of the Court was as prescribed by Article 54(3) of the Convention, which states that the judges of the Court shall continue to participate in those cases that they have begun to hear and that are still at the judgment stage. That provision must also be applied to the decision regarding the interpretation of judgments to which Articles 67 of the Convention and 48 of the Rules of Procedure refer because, under general rules of procedural law, a contentious case cannot be deemed to have been concluded until the judgment has been fully complied with. By analogy, it follows that the judges shall continue to participate when the case is at the enforcement stage. This is so, in particular, because the Court decided in its judgment of July 21, 1989 that it would supervise compliance with the award of damages and that the case would not be deemed closed until compensation was paid in full.

13. Article 54(3) of the Convention is based on similar rules contained in the Statute of the International Court of Justice and in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms. Article 13(3) of that Statute provides, essentially, that after the judges of the International Court of Justice have been replaced, they shall nevertheless continue to hear the cases they had begun and see them through to their conclusion. Article 40(6) of the European Convention declares that, in the same circumstances, the judges of the European Court shall continue to hear the cases that have been entrusted to them. According to Article 56 of that Court's Rules of Procedure, *(t)he request for interpretation shall be*

considered by the Chamber which gave the judgment and which shall, as far as possible, be composed of the same judges...

14. The Court has jurisdiction to comply with the instant request for interpretation because Article 67 of the Convention provides that

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 48 of the Rules of Procedure, for its part, states the following:

Article 48. Request for an Interpretation of a Judgment

1. Requests for an interpretation allowed under the terms of Article 67 of the Convention shall be presented in twenty copies and shall indicate precisely the points in the operative provision of the judgment on which interpretation is requested. It shall be filed with the Secretary.

2. The Secretary shall communicate the request to any other party and, where appropriate, to the Commission, and shall invite them to submit, in twenty copies, any written comments within a period fixed by the President.

3. The nature of the proceedings shall be determined by the Court.

4. A request for interpretation shall not suspend the effect of the judgment.

The Commission is a party to this case and presented its request on October 2, 1989. Since the judgment was notified on July 21, 1989, the request was presented within the period stipulated by that Article.

15. In its brief of July 6, 1990, the Commission asked the Court to admit a *request for amplification of the petition for clarification of the judgment*, based on a *new fact* that was not known at the time of the first request, that is to say, the Government's delay in paying the damages. Since the Court will base its decision in the instant request on other grounds, it does not deem it necessary to address the possibility of extending a request beyond the specific period fixed by the Convention. The same reason makes it unnecessary for the Court to deal with the doctrine of "new facts" which is applied in other tribunals.

III

16. In its judgment of July 21, 1989, the Court

unanimously

1. Awards six hundred and fifty thousand lempiras in compensatory damages to be paid to the family of Saul Godínez-Cruz by the State of Honduras.

unanimously

2. Decides that the amount of the award corresponding to the wife of Saúl Godínez-Cruz shall be one hundred and sixty-two thousand and five hundred lempiras.

unanimously

3. Decides that the amount of the award corresponding to the daughter of Saúl Godínez-Cruz shall be four hundred and eighty-seven thousand five hundred lempiras.

unanimously

4. Orders that the form and means of payment of the indemnity shall be those specified in paragraphs 52 and 53 of this judgment.

unanimously

5. Decides that the Court shall supervise the indemnification ordered and shall close the file only when the compensation has been paid.

17. Paragraphs 52 and 53 of the judgment read as follows:

52. Payment of the six hundred and fifty thousand lempiras awarded by the Court must be carried out within ninety days from the date of notification of the judgment, free from any tax that might eventually be considered applicable. Nevertheless, the Government may pay in six equal monthly installments, the first being payable within ninety days and the remainder in successive months. In this case, the balance shall be incremented by the appropriate interest, which shall be at the interest rates current at the moment in Honduras.

53. One-fourth of the indemnity is awarded to the wife who shall receive that sum directly. The remaining three-fourths shall be for the daughter. With the funds from the award to the daughter, a trust fund shall be set up in the Central Bank of Honduras under the most favorable conditions permitted by Honduran banking practice. The daughter shall receive monthly payments from this trust fund, and at the age of twenty-five shall receive the totality of the capital.

18. In its brief, dated September 29, 1989, the Commission justified its request in the following terms:

This petition for clarification refers to the sum of money that is to be deposited in trust at the Central Bank of Honduras for the benefit of Emma Patricia Godínez (Cruz), daughter of the victim, until she reaches the age of twenty-five, that is, until May 3, 2007.

The judgment does not contemplate any protective mechanism to preserve the current purchasing power of the award in the face of inflation or possible devaluations of

the lempira. As the Court is aware, and as we indicate below, that loss of purchasing power by units of currency has historically been high throughout Latin America, in some countries sometimes reaching catastrophic proportions.

Two fundamental reasons have persuaded the Commission to submit this petition:

First, if the meaning and scope of the judgment are not clarified with respect to the future value of the compensation placed in trust, irreparable damage could be caused to the injured parties. As we state below, that damage is neither hypothetical nor trivial, but predictable and could practically annul the very value of the Court's decision, as well as its compensatory intent.

Moreover, the Commission believes that such judgments in themselves hold a special, precedential legal value which goes well beyond the jurisdiction of the Inter-American Court and its case law, since by their very nature, content and effect they have deservedly earned universal attention and represent a milestone in the development of the international humanitarian legal order.

The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request.

In addressing the merits of the case, the Court will surely take into account the fact that the consumer price index (the indicator most relevant to this case) for the countries of Latin America taken as a whole increased by 721% in the five years from 1983 to 1988, that is, an average of 144% per annum. Without citing extreme cases of countries experiencing hyperinflation, Costa Rica, a country geographically close to Honduras, suffered an increase of 263% in its consumer price index over the last ten years. (Source: Report to the Inter-American Economic and Social Council CIES. OAS, September 1989).

In Honduras, such increases have been much milder. Nevertheless, even at the relatively low growth of the consumer price index in Honduras, if the trust in question had been set up 18 years ago (in 1971) in the amount of L.487.500, that sum would today be the equivalent of L.127.510, or approximately a quarter of its original value, given the changes experienced in the consumer price index of Honduras.

19. The Commission asked the Court to admit its request in order that

measures be taken to protect the purchasing power of the amounts (both principal and interest) involved in the trust to be set up on behalf of EMMA PATRICIA GODINEZ (CRUZ) by tying that portion of the damages to an index that will maintain its purchasing power. This should be done not only for each of the payments of interest thereon but also for the payment of the principal when it becomes due and payable to the beneficiary on her twenty-five birthday, May 3, 2007.

20. The Commission stated that

There are different ways of setting up a simple and clear protective mechanism that could be established by the Court in the clarification of judgment requested. None

of them would offer complete protection to the beneficiaries, nor could they preserve absolutely the compensatory intent of the judgment, but at least they would to some degree counteract the current lack of protection and the expected loss of value.

The Commission is of the opinion that a suitable adjustment mechanism would be to estimate the real value of the capital placed in trust in United States dollars of October 20, 1989 and maintain it at that same value throughout the life of the trust. To achieve this, it should be adjusted to the amount of lempiras necessary to purchase that fixed amount of dollars initially arrived at on the free international exchange market. Thus, each interest payment would be calculated in lempiras on a principal, also in lempiras, readjusted on the basis of the mechanism described.

21. In a brief dated November 16, 1989, the Government based its opposition to the Commission's request on the following arguments:

1. The compensatory damages judgment handed down by the Honorable Court on July 21, 1989 in the case of SAUL GODINEZ CRUZ is perfectly clear and precise both in its findings and in its operative parts and thus needs no clarification or interpretation, inasmuch as that judgment fixes unequivocally the amount of lempiras to be set up in trust at the Central Bank and the interest rate that the trust fund shall accrue annually in that same currency.
2. In fixing the total amount of compensatory damages and the form of payment thereof, as regards both the amount corresponding to the trust and any earnings thereon, the Court selected the currency of the country in which the judgment was to be executed, that is, Honduras, without taking into consideration, or conditioning the judgment to, any possible decrease in the purchasing power of the Honduran currency; in addition, the judgment did not contemplate any other monetary guideline to serve as an adjustment index for the maintenance of such purchasing power.
3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its judgment of July 21, 1989 by introducing new factors of a monetary nature to its operative parts, when it asks the Court to provide for some index against which the damages settlement should be adjusted in order to maintain its purchasing power unaltered. As already stated, this is something that the judgment does not address.

For the above reasons, the Government of Honduras respectfully requests that the Honorable Court reject the request presented by the Inter-American Commission of Human Rights.

22. The Commission stated the following in its brief of July 6, 1990:

... eight months after the deadline set by the Court, the judgment has still not been complied with, resulting in various damages to the injured parties.

The damages stem from two sources: first, the time elapsed since October 20, 1989 without the injured parties having access to the use and enjoyment of the compensation due; and second, the devaluation of the lempira during that time, a

devaluation legally introduced by the Government to reflect the real loss of purchasing power that had occurred during that period.

...

Despite the above, the Commission nevertheless understands that both the gravity of the international proceedings and the respect that should be accorded a fair compensation as fixed by that Court, as well as the real loss of over 30 (thirty) per cent of the purchasing power resulting from the delay in payment, require that the Honorable Court declare in the interpretation being sought, that the amount of damages fixed should be understood to be linked to the period of time specified.

23. For these reasons, the Commission

... respectfully requests that the Honorable Court admit this request for amplification of the petition for clarification of the judgment and, furthermore, that payment of interest be ordered for the period from October 20, 1989 to the date of effective payment, plus a retroactive adjustment of the purchasing power of the compensation to that date, to make up for the lempira's devaluation over that same period.

24. The Government's objection to this last request was expressed in the following terms:

1. The compensatory damages judgments issued by the Honorable Court on July 21, 1989 in the cases of ANGEL MANFREDO VELASQUEZ and SAUL GODINEZ CRUZ are perfectly clear, both in their findings and in their operative parts, and thus require no clarification, for they fix in precise terms the total amounts to be paid in lempiras, including the amounts to be set up as trusts in the Central Bank and the interest rate that the trust funds shall accrue annually in that same currency.

2. In fixing the total amount of the compensatory damages and the form of payment thereof in lempiras (both for the sums held in trust and for earning thereon) the Court acted without taking into consideration, or conditioning the judgments to, any possible decrease in the purchasing power of the Honduran currency. In addition, the judgment set no other monetary guidelines to serve as an adjustment index in order to preserve that purchasing power, nor did it order interest to be paid in the event of delays in meeting the compensation payment schedule.

3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its judgments of July 21, 1989 by introducing new factors of a monetary nature to its operative parts, when it asks the Court to declare that, because of its delay in paying the compensation due, the Government of Honduras should pay interest and adjust the purchasing power of the amounts of compensation to the value they had when payment became due. As already stated, these are factors that were not addressed in the above-mentioned judgments.

4. Since the judgments of the Inter-American Court of Human Rights are final and not subject to appeal, they have the effect of "res judicata." This prevents the parties from reopening a matter in order to obtain a second judgment from the Court, as would happen if the request of the Inter-American Commission on Human Rights were to be admitted and if, in addition, the judgments of July 21, 1989 were to be amended.

5. As has been established before that Honorable Court in the presentations made by the Government of Honduras on January 27 and March 5, 1990, during the period beginning July 21, 1989 my Government undertook all necessary steps to comply with the judgments. If there was a delay in the payment of compensatory damages, it was in no way due to negligence or lack of interest on its part, but, rather, to economic and budgetary constraints that, once overcome, gave rise to Decree No. 59-90, approved by the National Congress on July 2, 1990. In faithful compliance with the judgments of that Honorable Court, the Decree set aside a sum in the General Budget of Income and Expenditures of the Republic to cover the payment of compensation to the families of ANGEL MANFREDO VELASQUEZ RODRIGUEZ and SAUL GODINEZ CRUZ in the manner and under the conditions established in the respective judgments.

25. The public hearing established that, despite the stability of the lempira over a period of many years, by the time the Court issued its judgment on damages, its rate of exchange was exhibiting a tendency to fluctuate against strong currencies. This fluctuation has continued and increased to date, although the official rate of exchange has remained unchanged. It also appeared that the current provisions governing international exchange in Honduras permit private persons to freely acquire other currencies.

IV

26. The interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning and purpose, based on the considerations of the judgments. This has been the rule enunciated in the case law of international courts (see Eur. Court H.R., *Ringeisen case (Interpretation of the judgment of 22 June 1972)*, judgment of 23 June 1973, Series A, Vol. 16).

27. The compensation due victims or their families under Article 63(1) of the Convention must attempt to provide *restitutio in integrum* for the damages caused by the measure or situation that constituted a violation of human rights. The desired aim is full restitution for the injury suffered. This is something that is unfortunately often impossible to achieve, given the irreversible nature of the damages suffered, which is demonstrated in the instant case. Under such circumstances, it is appropriate to fix the payment of *fair compensation* in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.

28. Therefore, in fixing the measure of damages, the Court took into account loss of earnings, (based upon a prudent estimate of the possible income of the victim for the rest of his probable life, as well as moral damages (*Godínez Cruz Case, Compensatory Damages, Judgment of 21 July 1989, (Art. 63(1) American Convention on Human Rights)*. Series C No. 8, paras. 47 and 50).

29. The fact that the damages fixed comprise loss of earnings, calculated on the

basis of probable life-span, indicates that the *restitutio in integrum* concept is linked to the possibility of maintaining the real value of the damages stable over a relatively long period of time. One way of meeting this goal is so-called *indexing*, which makes it possible to make periodic adjustments to the sums payable in order to keep the real value constant. In general, however, that method is only applicable to cases where damages are to be paid in installments over relatively long periods of time. That is not true of the instant case. Here the Court ordered payment of the full amount of compensation in one single payment, or, at most, in six consecutive monthly installments.

30. Despite the foregoing, there is no reason why a case like the instant one should ignore the notion of preserving the real value of the amount fixed. After all, as has already been stated, the compensation that was fixed for loss of earnings implies that notion to a certain degree. That is why the Court decided, in the operative paragraph of the judgment that refers to paragraph 53, to employ a method for preserving the sums of money owed to the minor daughter of Saúl Godínez Cruz, namely, the establishment of a trust fund with the Central Bank of Honduras *under the most favorable conditions permitted by Honduran banking practice*.

31. The Court interprets the expression *under the most favorable conditions* as referring to the fact that any act or measure by the trustee must ensure that the amount assigned maintains its purchasing power and generates sufficient earnings or dividends to increase it; the phrase *permitted by Honduran banking practice* indicates that the trustee must faithfully perform his task as would a good head of family and that he has the power and the obligation to select diverse types of investment, whether through deposits in strong currencies, such as the United States dollar or others, the purchase of mortgage bonds, real estate, guaranteed securities or any other investment recommended by Honduran banking practice, precisely as ordered by the Court.

32. The Court at a given moment shared the concern expressed by the Commission in its briefs and at the hearing, insofar as it wished to ensure that the amount payable to Saúl Godínez-Cruz' minor daughter would maintain its purchasing power until she reached the age of twenty-five and even beyond that. It was for this reason that the Court decided to place that sum in a trust fund, an institution that, unlike regular bank accounts, is designed to maintain and increase the real value of its assets.

33. The judgment orders that the compensation be paid either in one single payment or in six consecutive monthly installments. The Commission requests that the Government be obliged to periodically disburse additional sums in order to maintain constant the value of the original assets, for as long as the trust remains in effect. It is evident that this request, as presented, would impose on the Government an obligation that is not provided for in the judgment. Consequently, since the Commission's request thus exceeds the scope of a mere interpretation, the Court must reject it.

V

34. In its brief, received by the Court on July 6, 1990, the Commission expanded its request for interpretation of the judgment. The Commission emphasized that, despite the fact that eight months had elapsed since the damages became due and payable, the Government had still not complied with the judgment. It went on to request that, in order to compensate for the consequences of this delay, the Court order the payment of: *a) interest for such delay and b) the adjustment of the purchasing power of the unit of currency in order to bring its current value on a par with what it was worth at the time that the payment should have been made.*

35. With regard to this brief, the Court must determine, in the first place, whether it is empowered to admit the request as presented.

36. The Court notes that, according to Article 67 of the Convention, it is empowered to interpret its judgments whenever there is disagreement as to the *meaning or scope* thereof. In the Commission's brief now under consideration no mention is made of any aspects of the judgment of the Court whose *meaning or scope* are in doubt or controversial. On the contrary, the claim is that there has been non-performance of clearly stated terms of the judgment in question, such as the terms within which the compensation ordered by the Court should have been paid. Consequently, the Court cannot admit the Commission's petition in the guise of an *amplification* of the request for interpretation previously presented by them.

37. Nevertheless, since in the judgment the Court assumed the supervision of the payment of the damages fixed and indicated that the case would be deemed closed only after full payment was made (*Godínez Cruz Case, Compensatory Damages, supra* 28, para. 55(5)), it retains jurisdiction over the instant case and is empowered to decide on the consequences of the Government's delay in paying the assessed damages.

38. In this connection, the Court must point out initially that the delay is due to a situation attributable to the State of Honduras that continues to hold today. Despite efforts by the Executive Power --to which the Government has attested, as well as to its goodwill, which the Court in no way questions-- the truth is that to date payment has not been effected. This is the responsibility of the State and the consequences of this inaction must be indemnified by it to ensure that the rights of the beneficiaries of the compensation are in no way diminished.

39. The Court must also note that the Government did not indicate at any time that it would avail itself of the option to pay the damages in six consecutive monthly installments (*Godínez Cruz Case, Compensatory Damages, supra* 28, para. 52). It also did not pay any of those installments which, in any event, are all past due. The basis for calculating the damages caused by the delay must, therefore, be the entire amount of the capital owed on the date it became due and payable, namely, six hundred fifty thousand lempiras as of October 21, 1989. The statement by the

Government that the amounts owed *have not been delivered to the interested parties because they are awaiting the results of the public hearing*, in no way affects the above conclusion, because, among other reasons, the publication of the decree authorizing payment appeared one year after the judgment ordering it and only a few days before the hearing in question.

40. It is appropriate, therefore, to demand the payment of interest on the entire amount of the capital due, at the regular banking rate in effect in Honduras on the date of payment. If such interest were to be set by the Court in the event that the Government opts to pay by means of six monthly installments, it shall apply, a fortiori, to the delay in compliance with the terms of the judgment.

41. There are, furthermore, other damages that must be compensated. These relate to the rights of the beneficiaries of the compensation and, where applicable, to the obligation of the trustee to take appropriate measures to preserve the real value of the sum received when it became due and payable, thus ensuring the fulfillment of the goal of *restitutio in integrum* for the injuries suffered.

42. In this connection, the Court remarks that one of the easiest and most readily accessible ways to achieve this goal, namely, the conversion of the amount received into one of the so-called hard currencies, has been severely impaired as a result of the lempira's loss of value against the United States dollar in the open exchange market since the date on which payment should have been effected. This real loss must be compensated by the Government, in addition to the current bank interest payable, by adding to the latter the value of the loss between the date on which the Government should have paid the damages by setting up the trust but neglected to do so, and the date on which it actually complies with its obligations.

43. Since the Government already has the required authorization to pay, as it has informed the Court, it must now immediately proceed to deliver to the beneficiaries of the compensation and the trust the amount fixed in Decree Number 59-90, applying it, as is customary practice, first to the above-mentioned compensation and to the interest, and subsequently to the capital. Any shortages of capital remaining after this payment shall be subject to the provisions of paragraph 42 *supra* until fully paid.

44. It follows, from all that has been said above, that there are two specific issues that the Court must rule on, namely:

1. The interpretation of the meaning, scope and purpose of the expression *under the most favorable conditions permitted by Honduran banking practice*, utilized in paragraph 53 of the judgment of July 21, 1989; and

2. The measures the Court must adopt in exercising the power it assumed under paragraph 5 of the operative part of that same judgment, that is, the

supervision of *compliance with the payment of the damages fixed* until full payment is made.

NOW THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

unanimously

1. To declare admissible the request for interpretation of the judgment of July 21, 1989, presented by the Inter-American Commission on Human Rights on October 2, 1989.

unanimously

2. To declare inadmissible the *request for amplification of the petition for clarification of the judgment* presented by the Inter-American Commission on Human Rights on July 6, 1990.

unanimously

3. To declare that the expression *under the most favorable conditions permitted by Honduran banking practice* must be interpreted in the manner stated in paragraph 31 *supra*.

unanimously

4. In the exercise of its power to supervise compliance with its judgment of July 21, 1989, that the Government of Honduras must compensate the injured parties for the delays in the payment of damages and in setting up the trust as ordered, under the conditions stipulated in paragraphs 40, 42 and 43, *supra*.

Done in Spanish and English, the Spanish text being authentic. Read at the public hearing at the seat of the Court in San José, Costa Rica on this seventeenth day of August, 1990.

(s) Héctor Fix-Zamudio
President

(s) Rodolfo E. Piza E.

(s) Pedro Nikken

(s) Rafael Nieto-Navia

(s) Rigoberto Espinal-Irías

(s) Manuel E. Ventura-Robles
Secretary

Judge Héctor Gros-Espiell did not participate in this judgment, having resigned his position as Judge of the Court. Judge Thomas Buergenthal also did not participate in this judgment, because he had not taken part in the judgment of July 21, 1989.

SEPARATE VOTE OF JUDGE PIZA-ESCALANTE

I have concurred with the unanimous vote of the Court and with the general lines of reasoning employed, but I must distance myself from the argument put forward in paragraphs 12, 14 and 15, inasmuch as they invoke the immediate --and not merely analogical-- applicability of Article 67 of the Convention, which governs requests for interpretation of judgments. In this connection, I must point out that such requests relate to that norm of the Convention only with respect to the judgment; that is to say, this obviously refers to the final judgment deciding the merits of the case, to which Articles 63(1) and 66 (among others) of that same Convention refer. It is only with respect to that final judgment that an express conventional provision becomes necessary, as well as the setting of a deadline within which to legitimately request it, because, according to universal principles of procedural law (whether domestic or international) only final judgments are irrevocable and they alone can acquire the authority of *res judicata*.

The remaining decisions, both those that pertain to the principal proceedings and those belonging to the enforcement stage, despite the fact that they are also called *judgments* whether out of habit or as a matter of fact, are interlocutory and always subject to others that, whether by means of remedies or simply through adversary jurisdiction, interpret, complement, clarify or add to or even modify or revoke them. This last, of course, in keeping with the respect due to the principle of estoppel and good faith.

The so-called *compensatory damages judgment* of July 21, 1989, is not the definitive judgment or ruling alluded to in Articles 63(1) and 66. Nor, consequently, is it subject to the kind of interpretation to which Article 67 of the Convention refers, although it is, of course, subject to any interpretation, complement, clarification or addition, or even modification or revocation, under the terms mentioned above.

In the instant case, the final judgment or ruling could only be that of January 20, 1989, which conclusively decided on the merits of the case. This sole definitive judgment required no interpretation under the terms of Article 67, nor was any requested. Insofar as compensatory damages were concerned, it did not go beyond condemning the Government of Honduras, in the abstract, to paying such damages to the successors of Saúl Godínez-Cruz, reserving the fixing of the amount and form of payment to what would obviously be a subsequent stage of the enforcement of judgment. Thus the Court availed itself of the customary procedural option of leaving for a later stage the settlement of certain general statements contained in the judgment itself, by means of decisions endowed with the same binding and enforceable force of the judgment itself (in this case, that of Articles 65 and 68 of the Convention) although lacking its nature and, as has been stated, lacking its definitiveness, that is, its irrevocability or intangibility. That is what the Court did in its decision of July 21, 1989: enforce the judgment. That is what it is doing today and

what it can and possibly should continue to do in the future, for as long as the case remains open because of noncompliance with the judgment.

By the foregoing I do not mean to imply either that the Court can continue indefinitely to modify its decision at the enforcement stage for as long as the familiar procedural justifications (such as, for example, nullities or a fundamental change in circumstances (*rebus sic stantibus*)) are not given to remove the principle of estoppel; or that it is impossible to request a clarification or interpretation of the same, both by analogy, as indicated in the principal vote, and by the general principles mentioned, as confirmed by the very judgment of July 21, 1989 inasmuch as it decided to keep the case open until it fully complied with. However, that possibility is not the one contemplated in Article 67 of the Convention and, consequently, is not subject either to a petition by the parties, nor to time limits, but is maintained open for as long as necessary during the course of enforcing the definite judgment.

(s) Rodolfo E. Piza E.

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX X

EH.CIDH.008-90
October 17, 1990

Lic. MANUEL VENTURA-ROBLES, SECRETARY
Inter-American Court of Human Rights
San José

Mr. Secretary:

Acting on instructions of my Government, I have the honor to submit to you the STATEMENT OF THE GOVERNMENT OF THE REPUBLIC OF HONDURAS TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS, REGARDING THE JUDGMENTS OF THE COURT OF AUGUST 17, 1990.

The Government of the Republic of Honduras has received with surprise the judgments delivered by the Inter-American Court of Human Rights on August 17, 1990 on the interpretation and performance of the compensatory damages judgments in the Velásquez Rodríguez and Godínez Cruz cases. These judgments fully addressed the concerns and complaints presented to the Court by the Inter-American Commission on Human Rights in the latter's "request (for) an interpretation of ... judgment" of September 29, 1989. In communications dated November 16 and 21, 1989, the Government of Honduras rejected the Commission's concerns and complaints on the grounds cited in paragraphs 5 and 21 of the aforementioned interpretation judgments.

The Government of Honduras presents this statement to the Inter-American Court of Human Rights as evidence of its disconformity with the premises and resolutions of the operative part of the aforementioned judgments. The Government is convinced that those judgments in effect modify the compensatory damages judgments delivered in the cases listed above, inasmuch as, under the guise of rendering a broad interpretation of the general conditions that should govern the trusts to be set up under those judgments, they increase the amount of the compensatory damages to be paid by the State of Honduras to the beneficiaries in each of the cases.

Under the Court's interpretation judgments, the nominal value of the compensatory damages awarded in the two cases is increased by over one hundred per cent, for they stipulate that the Government must compensate the beneficiaries for the loss in real value suffered by the lempira with respect to the United States dollar in the open exchange market, as of the date on which the damages should have been paid but were not, as well as for the ordinary banking interest that such

outstanding payments would have accrued. The Government of Honduras deems the Court's resolutions unacceptable, since the judgments of July 21, 1989 fixed the amount of compensation in the official currency of Honduras, that is, the lempira, without making any reference either to its value with respect to the dollar or to any eventual adjustments to be made in relation with that currency or any other foreign currency in the event of devaluation or loss of purchasing power.

It should be pointed out in this connection that the Court's judgments did not arise out of any prior disagreement between the parties as regards the scope and meaning of the compensatory damages judgments of July 21, 1989. Rather, they were delivered in response to concerns expressed by the Inter-American Commission on Human Rights to the Court in its notes dated September 29, 1989 requesting a clarification of the compensatory damages judgments, despite the fact that their operative parts are sufficiently clear and precise.

Nevertheless, in paragraph 32 of the interpretation judgments to which this statement refers, the Court declares that it "shared the concern expressed by the Commission," apparently before delivering its judgments of July 21, 1989. One must wonder why the judgments made no attempt to address this concern but preferred to say nothing, thus making it possible for the Inter-American Commission on Human Rights to resort to a request for interpretation of the judgments, a request that should in any event have been deemed inadmissible inasmuch as it did not comply with the requirements of Article 48(1) of the Rules of Procedure of the Court, which governs requests for interpretation of judgments.

What the preceding paragraph affirms about the notes of the Commission is corroborated by the Commission's own assertion that the compensatory damages judgments did not contemplate any protective mechanism "to preserve the current purchasing power of the award(s) in the face of inflation or possible devaluations of the lempira," that is, the official currency of Honduras, which was the currency chosen by the Court in fixing the amount of the compensations. The specific request to the Court contained in those communications, that is, that measures be taken to protect the purchasing power of the "amounts (both principal and interest) involved in the trust(s)" to be set up under the judgments by "tying (them) to an index", reiterates that concern.

Despite the fact that the above-mentioned communications by the Commission did not, either in form or substance, comply with the requirements contained in Article 48(1) of the Rules of Procedure of the Court, the Government of Honduras notes that in order to satisfy the demands of the Inter-American Commission on Human Rights, the Court's judgments of August 17, 1990 resort to an interpretation of the fiduciary role of the trust fund, linking that role to a mechanism to maintain "the real value of the damages stable over a relatively long period of time," that is, a means of avoiding a loss of purchasing power by the lempira in relation to the dollar as a result of inflation or devaluation.

The Government of Honduras is of the opinion that an interpretation of the fiduciary role of a trust fund that associates it with the expression "under the most favorable conditions permitted by Honduran banking practice" is an exaggeration, for it equates a trust with a secure business for the preservation of the real value of the compensations against a possible loss of purchasing power by the lempira in relation to the dollar brought about by inflation or devaluation. The Court's judgments subordinate that interpretation to the responsibility for managing the trust, which it incorrectly attributes to the beneficiaries of the compensation awards, that is, to the fideicommissary, who is in no way involved in the administration of the trust. Under the legislation in force on the subject, that function --the management of the trust-- corresponds to the fiduciary agent, that is, to the banking institution where the trust has been set up. In any event, the Government of Honduras finds the Court's interpretation unacceptable.

As regards the delay by the State of Honduras in complying with the compensatory damages judgments pointed out by the Court, the Government wishes to state that the ninety-day term fixed by the judgments for that purpose was set by the Court in response to an express request by the Inter-American Commission on Human Rights, without taking into consideration the fact that such a term would be insufficient to allow for all the legal actions and decisions required of the Government of Honduras in order to comply with its domestic laws. The most important of these is the decision relating to the allocation and approval of the appropriations required for the payment of the awards, a function that pertains to the State's Executive and Legislative Powers and that, as a general rule, can only be taken if the obligation has been included in the nation's annual budget of income and expenditures. In the present case, the obligations in question had not been included in the budget, since the judgments were delivered by the Court when the budget for the 1989 fiscal year was already in its third quarter of execution. For this reason, it was impossible to comply with these obligations within the term specified. Nor was it possible to do so in the remaining months of 1989 by resorting to a budget increase and the approval of a special allocation, due to the fact that fiscal revenues throughout the year had followed a downward trend as a result of the economic crisis faced by the country.

With regard to the compensatory damages and interpretation judgments in the cases to which this statement refers, the Government of Honduras notes that the treatment accorded the State of Honduras by the Inter-American Court of Human Rights is without precedent among similar judgments delivered by the European Court of Human Rights insofar as the amount of the awards, the terms of execution and the interpretation thereof are concerned. This assertion is corroborated by the compensatory damages and interpretation judgments handed down by the European Court of Human Rights in the RINGEISEN Case on June 22, 1972 and June 23, 1973, respectively. In these judgments, the amount of the damages assessed against the Austrian government was not significant, nor was a term specified for such payment.

On the other hand, the Government of Honduras is surprised that the Court, in paragraphs 40 to 43 of its interpretation judgments (which relate to operative point 4 regarding compliance of the judgments of July 21, 1989) should refer to additional compensation that the State of Honduras must pay, over and above the amount due for compensatory damages. The Court uses reasoning analogous to that put forward by the Inter-American Commission on Human Rights in its communications of July 6, 1990, which the Court itself declared inadmissible in its operative point 3 of the judgments of August 17, 1990.

It should also be pointed out that the Commission, in the above-mentioned communications of July 6, 1990, expressed its "appreciation" of the actions taken by Honduras both in accepting the international obligations resulting from the Court's judgments and in setting in motion internal procedures to meet the payment of the compensatory damages. As has already been explained in this statement, those procedures and actions did not produce the desired results in 1989, due to the fiscal and economic crisis being faced by the country, a crisis that has seriously affected and continues to affect the Honduran people.

For the foregoing reasons, the Government of Honduras hereby reaffirms its commitment to comply with the compensatory damages judgments of July 21, 1989, without any surcharges for the additional compensations specified in the judgments of August 17, 1990. In other words, the Government will strictly adhere to the payment of the original amounts of the awards in lempiras approved by the Court, which payment has been authorized by Decree No. 59-90 of the National Congress of the Republic, issued on July 10, 1990.

Please accept, Mr. Secretary, the expressions of my highest consideration.

(s) EDGARDO SEVILLA IDIAQUEZ
Ambassador
Agent of the Government of Honduras

APPENDIX XI

November 12, 1990
REF.: CDH/626-729

Dear Mr. Ambassador:

I refer to the *Statement of the Government of the Republic of Honduras to the Inter-American Court of Human Rights, regarding the Judgments of the Court of August 17, 1989, dated October 17, 1990*, in which the Government of Honduras reaffirms its decision to comply with the compensatory damages judgments of July 21, 1989, without any surcharges for the additional compensations specified in the judgments of August 17, 1990. In this connection, and after receiving the opinions of my fellow judges, I wish to state the following:

- a. The judgments of July 21, 1989 ordered the payment of certain compensatory damages by the State of Honduras, under terms and conditions that were interpreted by this Court in its judgments of August 17, 1990.
- b. In its interpretation, the Court was of the opinion that the expression *under the most favorable conditions permitted by Honduran banking practices* means that the trustee must faithfully perform his task as would a good head of family, so as to ensure that the amount assigned maintains its purchasing power and generates sufficient earnings or dividends to increase it (para. 31). This provision cannot be deemed to be an *exaggeration* unless it is believed that the fiduciary agent, the Central Bank of Honduras, is not qualified to carry out its functions *under the most favorable conditions permitted by Honduran banking practices*. If such were the case, in the exercise of the power to *supervise* compliance with its judgments which the Court assumed and continues to enjoy, the Court would have to look into the matter.
- c. According to your communication, the Court's decision to the effect that the Government's delay in complying with the original judgments should be borne by it, rather than by the beneficiaries of the awards (the next-of-kin of the victims) increases *the nominal value...by over one hundred per cent*. This argument serves to confirm the Court's reasons for reaching that decision, for a judgment, just like any legal provision, must be interpreted in a way that will produce an effect rather than the obverse. For it is evident that if the Government were permitted to pay without answering for the damages caused by delays in payment, and such considerable

Ambassador Edgardo Sevilla Idiáquez
Agent of the Government of Honduras
San José, Costa Rica

losses in nominal value have been seen to result over a period of barely one year, by the time payment is eventually made the amount could be merely symbolic. The effect sought by the judgment would thus be lost.

- d. In its judgments of August 17, the Court ordered delivery of the sum approved by Decree No. 59-90. We have no official confirmation that this has been done, a fact that would be detrimental to the beneficiaries of the awards. Any resulting damages would be the responsibility of the State of Honduras, which could not then resort to the explanations given for the original delay, since the internal procedures have now been completed.
- e. Under the terms of Article 26 of the Vienna Convention on the Law of Treaties, States must comply *in good faith* with treaties in effect. Under the terms of Article 68(1) of the American Convention on Human Rights, *(t)he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.*
- f. Under Article 65 of the Convention, the Court shall, in its report to the General Assembly of the Organization, *specify...the cases in which a state has not complied with its judgment, and the resulting compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state (Art. 68(2)).*

I wish to express the sincere hope that Honduras, in keeping with its tradition, will in good faith respect the decisions of this Court. To do otherwise would impact upon the inter-American system for the protection of human rights and on the very rule of *Pacta sunt servanda*, a norm essential to the survival of the international community that has followed the development of these cases with special interest.

Please accept, Mr. Agent, the expressions of my highest consideration.

(s) Judge Héctor Fix-Zamudio
President

APPENDIX XII

August 27, 1990

Ref.: Case No. 10.150

The Honorable President of the Inter-American Court of Human Rights:

On instructions from Leo Valladares Lanza, Chairman of the Inter-American Commission on Human Rights (hereinafter, the "Commission"), I respectfully submit to the Inter-American Court of Human Rights (hereinafter, the "Court") the following case concerning the Republic of Suriname based on the facts and law expounded hereafter.

In the course of its 77th Regular Meeting the Commission decided to submit Case 10.150 (Suriname) to the Court by way of its report 03/90 dated May 15, 1990, in keeping with Articles 51 and 61 of the American Convention on Human Rights, hereinafter, the "Convention," and Article 50 of the Commission's Regulations.

Pursuant to Article 73 of the Commission's Regulations, the parties which shall intervene in the proceedings before the Court shall be the Government of the Republic of Suriname and the Commission. In addition, in accordance with Articles 21 and 25 of the Court's Rules of Procedure, the Commission designated as its delegates for the purposes of representing it in this matter Oliver H. Jackman, member; Edith Márquez-Rodríguez, Executive Secretary; and, David J. Padilla, Assistant Executive Secretary. The Commission reserves for itself the right to designate other delegates for this case should the need arise.

For purposes of all legal correspondence related to this matter, the Commission's address is: 1889 F Street, N.W., 8th floor, Washington, D.C. 20006, United States of America. I request that all communications, notifications, etc. in connection with this case be sent to the the seat of the Commission. The domicile of the Commission's delegates shall be the same as the address of the seat of the Commission.

Dr. Héctor Fix-Zamudio
President, Inter-American Court
of Human Rights
San José, Costa Rica

A summary of this case is set forth in report 03/90 which is annexed to and forms an integral part of this submission.

For the Court's information, we also send you the records of the proceeding before the Commission.

The Government of Suriname ratified the American Convention on Human Rights on November 12, 1987, and at the same time accepted the jurisdiction of the Inter-American Court of Human Rights.

The Commission has found violations of Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights by the Government of Suriname.

The object of this submission is to respectfully request the Court to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin.

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

(s) Edith Márquez Rodríguez
Executive Secretary

Encs.

OEA/Ser.L/V/II.77
Doc. 23
15 May 1990
Original: English

77th SESSION

**REPORT N° 03/90
CASE 10.150
SURINAME**

Approved by the Commission at its 1059 session
held May 15, 1990

REPORT N° 03/90 *
CASE 10.150
SURINAME
May 15, 1990

1. The Inter-American Commission on Human Rights received the following petition dated January 15, 1988:

The occurrences mentioned in this report took place on December 31, 1987 at Atjoni (landing stage of the village of Pokigron in the district of Sipaliwini) and the Tjongalangapasi (off Kilometer 30 in the district of Brókopondo).

More than 20 Maroons (Bushnegroes) were severely beaten and tortured at Atjoni. They were all men and unarmed but suspected by the military to belong to the Jungle Commando. The victims were hit with gun-butts, some seriously stabbed and wounded with bayonet and knife. They had to lie flat on the ground. Military stepped on their backs and urinated on them. All of this happened in the presence of many people (about 50) including aged persons, youngsters, men and women. Almost all of the victims and the bystanders arrived from Paramaribo, where some had just collected their old-age pension. They used the cease fire and post-election "peace" to purchase food supplies in the capital. On the way back to their village, they had to travel via Atjoni, since that is the end stop for bus, truck and other car transportation to the interior. From there the journey can be continued by canoe. Some people present were professional boatmen providing transportation facilities on the river.

As mentioned earlier, those beaten up and tortured were considered to belong to the Jungle Commando. This assumption was, however, categorically denied by the victims as well as by bystanders, including the village captain of Gujaba. He explicitly told the Commander Leeftang of the army that he was dealing with civilians of the village of Gujaba and not with members of the Jungle Commando. The Commander dismissed this intervention of the village captain. The victims came from villages in the district of Sipaliwini, such as: Gujaba, Grantatai, Pikin Slee, Baikutu, Cayana.

* This report constitutes the report referred to in Article 50 of the American Convention of Human Rights.

After the ill-treatment and torture at Atjoni, some victims were left alone to proceed their way. Seven were, however, blindfolded and dragged into a military vehicle. Before they left, a military said that they would celebrate the ending of the year with them. So they went on the Tjongalangapasi heading for Paramaribo. Amongst the seven there was a fifteen-year-old boy. The names of those taken in the military car are:

1. Aloeboetoe, Daison, from Gujaba, born June 7, 1960
2. Aloeboetoe, Dedemanu, from Gujaba
3. Aloeboetoe, Mikuwendje, from Gujaba, born February 4, 1973
4. Amoida, John, from Asindonhopo (he lives in Gujaba)
5. Voola, Richenel, alias Aside, Ameikanbuka, from Grantatai (found alive)
6. Banai, Martin Indisie, from Gujaba, born June 3, 1955.
7. Tiopo, Beri, from Gujaba.

At Kilometer 30, the vehicle stopped. The military ordered or dragged the victims out of the car. They were given a spade. A short distance off the road they were ordered to start digging. On the questions of one of the victims for what purpose they had to dig a military replied that they were going to plant sugar cane. Another military repeated that they were going to celebrate the end of the year with them. Aside did not wait to be killed and tried to escape. They shot at him and hit him. They did not go after him, thinking that he was seriously wounded and would die. A short while thereafter, came the volleys and screaming. The remaining six, including the fifteen-year-old boy were killed.

Victims and witnesses at Atjoni who continued their journey spread the word about the occurrences. Men from Gujaba and Grantatai left on Saturday, January 2nd, 1988 for Paramaribo to demand information from the authorities about the seven victims. Off Kilometer 30 on the Tjongalangapasi they were confronted with many vultures and an unbearable stench. In Paramaribo no one could inform them about the whereabouts of the victims. They visited Mr. Orna Albitrouw (Coordinator of the Interior at Volksmobilisatie) and the Military Police at Fort Zeelandia. At the Military Police they tried to see Vaandrig Achong, Head of S-2 at Fort Zeelandia.

Monday morning, January 4th, they returned to search in the Tjongalanga area. Maroons from the Brownsveg area joined the search party. They arrived at Kilometer 30 at 19.00 hrs. They searched the environment with flashlights and made the horrible discovery. One man was found still alive (Aside). He was seriously injured and in critical condition. The search party discovered the corpses of the other victims. They took Aside away and hid him. Vultures had already devoured parts of the bodies of the other victims. Aside indicated that he was the only

one who survived the massacre. He was shot at his thigh above the right knee. The large wound was full with maggots. A large X/sign was cut on his right shoulder blade. The military at Atjoni used his own pen-knife for that.

The group returned to Paramaribo headed by village captain Tontobuka Kadosu of the village of Makambi. Members of the search party reported their experiences to me and requested me to establish communication with the International Red Cross. The representative of the I.R.C. acquired permission to evacuate Aside after 24 hours of negotiation with the authorities. Aside was admitted at the Academic Hospital in Paramaribo on the night of January 6th. Since the discovery of the bodies, members of the search party including relatives of the victims and the village leaders, have been requesting permission to bury those killed. Up till now, no such permission has been granted.

From Friday, January 8th, Military Police stand guard in the hospital in front of the room of Aside. From Friday to Saturday the guard even refused relatives to visit Aside. The latest information indicates, however, that this restriction has been lifted.

Information in this report has been acquired from more than fifteen people among whom those who witnessed the occurrences at Atjoni, and those who took part in the search, and from the victim Aside himself. I spoke twice with Aside about the occurrences and his story coincides with the reports of others.

(Signed)
Stanley Rensch

2. On January 28, 1988, representing the Inter-American Commission, Dr. David Padilla, Assistant Executive Secretary, received oral testimony from the victim, Mr. Aside himself, who at the time was interned in the University Hospital. Mr. Aside confirmed the complaint cited above, explaining that he had fled the scene of the killings, had been shot on the run and left for dead. He indicated that he witnessed the summary executions of the other six victims.
3. On February 1, 1988, the Commission transmitted to the Government of Suriname the pertinent parts of the above mentioned communication, thereby opening case 10.150. The Commission requested that the Government supply, within the Regulations' 90 day period, information regarding this case and whether, in its view, the internal legal remedies and procedures had been exhausted.
4. On February 8, 1988, the Inter-American Commission sent the following communication to the Minister of Foreign Affairs in Paramaribo, Suriname:

On February 1, 1988 the pertinent parts of a human rights complaint were sent to your Excellency's Government, alleging, inter alia, a violation of the right to life of six Bushnegroes.

The events in question, according to the complaint, took place on December 31, 1987 near Pokigron in Suriname.

With respect to these allegations the Inter-American Commission on Human Rights wishes to formulate and place before your Excellency's Government the following queries:

- 1) Has Richenel Voola, alias Aside, allegedly the only survivor of the executions, been interviewed by the lawful authorities of the Government of Suriname at the Academic Hospital where he is currently recuperating from his wounds?
- 2) If Mr. Voola's testimony has yet to be taken, who will depose him and when?
- 3) Have the other witnesses to the detention of the six deceased persons and Mr. Voola been duly interviewed?
- 4) If not, who will depose them and when?
- 5) Have the bodies of the six deceased persons been turned over to their respective families? In this connection, were steps taken to assure proper identification of the cadavers?

In addition to responses to these questions, Excellency, the Inter-American Commission on Human Rights respectfully requests the following information:

- 1) Copies of the depositions alluded to above.
- 2) Copies of the autopsies/postmortems performed on the six deceased persons.
- 3) A copy of a medical report on the situation of Mr. Voola.

Given the gravity of the allegations in this case, and since the events referred to date from the end of last year and because the Inter-American Commission will be sitting at its 72nd Regular Meeting beginning on March 14 of this year, the Commission would be most grateful if your Excellency's Government could provide the answers and other documentary proof referred to in this letter by no later than March

5. On July 20, 1988 the Inter-American Commission, having received no response to the February 8 letter, reiterated its request to the Government of Suriname for information within the next 30 days.
6. On August 19, 1988, the Permanent Representative of Suriname informed the Commission of the following:

The Permanent Representative of the Republic of Suriname to the Organization of American States presents his compliments to the Executive Secretary of the Inter-American Commission on Human Rights and with reference to latter's Note dated February 8, 1988 concerning case 10.150, has the honour, upon instructions received from the Government of Suriname, to inform the Inter-American Commission on Human Rights of the following:

Mr. Aside was interrogated by the Military Police and of this interrogation an official report has been filed. While being hospitalized aforementioned Aside passed away. According to the post-mortem examination, Aside presumably died of shortage of oxygen in the blood.

The Permanent Representative wishes to state furthermore that the initial investigation into the death of the alleged 6 persons at Pokigron was performed by the Military Police. As a consequence of that examination 7 soldiers were taken into custody for interrogation. Since the outcome of that interrogation provided no grounds for further detention, the soldiers in question were released.

With regard to the post-mortem examination of the alleged 6 victims referred to above, the Permanent Representative wishes to inform that it was not possible for the competent authorities to produce post-mortem reports, since the condition of the corpses that were submitted didn't permit a reliable and conclusive examination, also with respect to the identity of those corpses.

At that stage the investigation of case 10.150 was declared closed by the Military Prosecutor.

In the meantime the examination of this case has been re-opened by the Civilian Police, because of information that became available. A smooth proceeding of this examination is being hampered, however, due to failure so far of the witnesses to show up, despite repeated subpoena as well as to the continuation of hostilities in the area where the incidents occurred.

The Permanent Representative of the Republic of Suriname to the Organization of American States avails himself of this opportunity to

renew to the Executive Secretary of the Inter-American Commission on Human Rights the assurances of his highest consideration.

7. On August 29, 1988, the Commission transmitted to the petitioner the pertinent parts of the observations of the Government of Suriname, requesting that petitioner send any new or additional information within the next 45 days.

8. Petitioner, by telephone, informed the Secretariat of the Commission that his observations on the Government's response would be presented to the Commission during its forthcoming on-site visit to Suriname in the form of additional corroborating testimony from an eyewitness.

9. On December 1988, during an on-site visit to Suriname, the IACHR interviewed Mr. Aside's brother, who witnessed the arrest of the victims in this case, and later discovered his brother, still alive, and transported him to the University Hospital in Paramaribo. Mr. Aside's videotaped testimony corroborates the original complaint made in this case.

10. On February 8, 1989, the Commission informed the Government of Suriname that, having carried out the procedures in Article 48 of the American Convention on Human Rights, to which the Government of Suriname is a party, the Commission placed itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter in terms of possible reparations. The Commission proposed that the meeting be held during its 75th period of sessions.

11. At its 75th Regular Session (April 11, 1989), the Commission met again. At that time, Professor Claudio Grossman, lawyer for the victims' families, assisted by law students Cora Tekach and W. Clinton Sterling, presented the petitioners' case. The Government of Suriname failed to attend and, the same day, sent a fax informing the Commission as follows:

The Permanent Mission for the Republic of Suriname to the Organization of American States presents its compliments to the Executive Secretary of the Inter-American Commission on Human Rights and upon instructions received from the Government of Suriname has the honour to inform the Inter-American Commission on Human Rights with reference to its letter dated February 8th 1989, concerning case 10.150, the following:

The Government of Suriname is in the process of submitting a draft Amnesty Act to the National Assembly.

According to this Act, general pardon shall be granted to persons having committed certain criminal offenses as of a given date until the date of its coming into force.

The Government has taken cognizance of the proposal for a friendly settlement as laid down in above mentioned letter. According to the latter's view, however, this proposal is aiming at a solution of an isolated case out of a series of occurrences entailed in the acts of war.

For this reason, the Government of Suriname requests the Inter-American Commission on Human Rights to reconsider the case at issue in the perspective of the above mentioned Amnesty Act.

12. On April 20, 1989, the Commission informed the Government of Suriname of the following:

On behalf of the Inter-American Commission on Human Rights, I have the honor of acknowledging receipt of your Government's note of April 11, 1989, regarding the above referenced case.

The note of your Excellency's Government arrived while the Commission was in session at its 75th regular meeting and was duly brought to the Commission's attention. The matter will be taken up again at the Commission's forthcoming 76th regular meeting in September of this year.

In the meantime, the note will be made available to the attorneys for the complainants in this case in order that they might formulate their position regarding the Government's announced intention of adopting a general, retroactive amnesty law that would comprehend those involved in this case.

As you are aware, Excellency, the Commission held a hearing on Case No. 10.150 during its recent meeting and requested that the attorneys for the complainants present their demands for compensation in writing for the Commission's consideration. This demand could constitute a basis for a friendly settlement as provided for under Article 48(f) of the American Convention of Human Rights as proposed to your Excellency's Government and the complainants in the Commission's note of February 8, 1989.

Of course, once such a demand by the complainants is communicated to the Commission, it will be duly presented to the Government of the Republic of Suriname for its consideration.

13. At the Commission's 76th Session (September 26, 1989), Professor Claudio Grossman, attorney for complainants, assisted by law students Cora Tekach and W. Clinton Sterling, made an oral presentation of which the pertinent parts were the following:

1. The Government of Suriname, which ratified the American Convention, violated Article 1 of that instrument (obligating States to respect and promote the rights established by the Convention).
 2. The Government of Suriname violated Articles 4 and 5 of the Convention (respectively, the right to life and to humane treatment).
 3. Under Article 27 of the Convention, the rights in Articles 4 and 5 are non-derogable.
 4. The Government of Suriname violated Article 25 of the Convention (right to judicial protection) by not providing adequate remedies of compensation to the victims and punishment of the perpetrators.
 5. That, in light of the Amnesty Law, the Government of Suriname is still responsible for its obligations under International Law and the American Convention. Also, the "state of war" claimed by Suriname does not relieve the State of its International obligations.
 6. Since the defense of a lack of exhaustion of domestic remedies is the State's burden, the Government of Suriname has implicitly waived this defense by not raising it and by its Amnesty Law which denies responsibility in this case.
14. The Representative of the Government of Suriname did not object to the facts or the Commission's authority. The Commission considered the Representative's request for time to consult with the Government of Suriname and decided to grant a reasonable time required for Suriname to provide its position.
15. In November of 1989, Professor Claudio Grossman met with Dr. E. J. Sedoc, Minister of Foreign Affairs for Suriname, to discuss a friendly settlement of case 10.150.
16. On May 11, 1990 the Government of Suriname submitted the following note to the Commission:

During the hearing which took place last year, the Attorney of the surviving relatives of the victims in above-mentioned case 10.150 presented his claim, in response to which the Government of the Republic of Suriname wishes to state the following:

Although the Government which took office on January 26th 1988 is not to be blamed for the occurrences at issue, namely violation of the right to life and inhumane treatment of civilians, it has nevertheless done its utmost to take appropriate measures to deal with the case.

The Government is aware of the situation in which not only the claimants find themselves, but also the other innocent victims of the armed conflict who had to abandon their homes and leave all their belongings behind.

Most of the people who were living peacefully in their villages in the affected area were forced to seek sanctuary in Paramaribo and neighboring French Guyana.

The Government is mindful of its special responsibility towards its nationals, wherever they might be.

It is this responsibility that obliges the Government to re-establish the environment for a successful voluntary repatriation of its uprooted people, that is to say an environment where their safety is guaranteed and which is conducive to a speedy development of the interior, to the benefit of the entire community.

The Government intends to assist the people involved in every way possible to reconstruct their villages and has for this reason requested assistance from abroad, since it is not in a position to carry this financial burden by itself.

In this respect an amount of Sf. 25 million guilders has been allocated in the framework of the agreement for development cooperation with The Netherlands.

The activities to re-establish the environment for a successful voluntary repatriation are being carried out in close cooperation with UNHCR and the Government of France.

As a party to the Convention, the Government recognizes the right of every individual to file a complaint.

The Government furthermore recognizes its responsibility, even in cases for which it carries no blame, since they occurred prior to its taking office.

However, the Government is of the opinion, that in considering the events which took place, account should also be taken of the fact that the state of emergency was still in effect and the actual internal armed conflict was still continuing when they occurred.

With regard to the event at Tjongalangapasi, the Government wishes to deny the allegation that the examination into the case had been closed.

living victim has been recorded and is available at the Public Prosecutor's Office.

The National Institute for Human Rights, which keeps close track of the developments, acknowledges that there is no tangible progress. The Government deplors that the peace process has been deadlocked for the time being and that the eagerly desired peace still seems to be far away.

In passing, the Government wonders if it can be held responsible for that.

It is the Government's contention, therefore, that the casualties and losses suffered in the case under consideration, are the consequence of what might be termed "acts of war."

These "acts of war" which had been going on for almost three years, have meanwhile left the country in a dire financial situation, which has been further aggravated by recent development. The Government -- notwithstanding the precarious economic situation of the country and the financial burden of its efforts to create the conditions for a safe and permanent repatriation of its uprooted citizens-- is not inclined to pay no attention to reasonable requests for compensation of losses, as a result of act for which it could be held liable and of which the amount, veracity and verifiability can be assessed, in a credible and acceptable way.

It can be judged from the preceding point of view that the Government is not unfavorably disposed towards a friendly settlement, but it wishes to make perfectly clear that individual compensation for the surviving relatives of the victims can only be granted if the above-mentioned conditions are met.

17. On the same day, Professor Claudio Grossman accompanied by Cora Tekach, appeared before the Inter-American Commission to reiterate his request that this case be sent to the Inter-American Court of Human Rights as a contentious case for

purposes of litigation. Mr. Grossman appeared as counsel for the International Human Rights Law Group which has been appointed as legal representative in this case by the petitioner.

CONSIDERING:

1. That the Government of Suriname is a party to the American Convention on Human Rights;

2. That the Government of Suriname has submitted itself to the compulsory jurisdiction of the Inter-American Court;

3. That the complaint was submitted to the Inter-American Commission on Human Rights within the time limits established by Article 46(1)(b);

4. That the petitioner has exhausted all of Suriname's domestic remedies insofar as the Government has not acted ex officio to prosecute this case nor has it apparently taken action based on the complaint in this case which it has had since January, 1988;

5. That the complaint and answer procedures of the Commission as required by Articles 48(1)(d) and 48(1)(e) have been exhausted, whereby the Government of Suriname has not provided the Commission with specific information regarding incidents of the case;

6. That all attempts to reach a friendly settlement, as provided for in Article 48(1)(f) of the American Convention on Human Rights and in Article 45 of the Commission's Regulations, have proven fruitless;

7. That the evidence provided by the victim Aside himself, as well as other witnesses to the events, proves the complaint;

8. That the American Convention on Human Rights inter alia provides:

Article 1(1). The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 1(2). For the purposes of this Convention "person" means every human being.

Article 2. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the

States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms .

Article 4(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.

Article 5(1). Every person has the right to have his physical, mental, and moral integrity respected.

Article 5(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.

Article 7(1). Every person has the right to personal liberty and security.

Article 7(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.

Article 7(3). No one shall be subject to arbitrary arrest or imprisonment.

Article 25(1). Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Article 25(2). The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

9. That, pursuant to the provisions of Article 50 of the American Convention, the Commission has to give its opinion and conclusions on the issue submitted to it for consideration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. To admit the present case.
2. To declare that the parties have been unable to achieve a friendly settlement.
3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.
4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.
5. To recommend to the Government of Suriname that it take the following measures;
 - a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the right contained therein;
 - b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;
 - c. Take necessary measures to avoid their reoccurrence;
 - d. Pay a just compensation to the victims' next of kin.
6. To transmit this resolution to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this resolution is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47.6 of the Commission's Regulations.
7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

APPENDIX XIII

August 27, 1990

Ref.: Case No. 10.274

The Honorable President of the Inter-American Court of Human Rights:

On instructions from Leo Valladares Lanza, Chairman of the Inter-American Commission on Human Rights (hereinafter, the "Commission"), I respectfully submit to the Inter-American Court of Human Rights (hereinafter, the "Court") the following case concerning the Republic of Suriname based on the facts and law expounded hereafter.

In the course of its 77th Regular Meeting the Commission decided to submit Case 10.274 (Suriname) to the Court by way of its report 04/90 dated May 15, 1990, in keeping with Articles 51 and 61 of the American Convention on Human Rights, hereinafter, the "Convention," and Article 50 of the Commission's Regulations.

Pursuant to Article 73 of the Commission's Regulations, the parties which shall intervene in the proceedings before the Court shall be the Government of the Republic of Suriname and the Commission. In addition, in accordance with Articles 21 and 25 of the Court's Rules of Procedure, the Commission designates as its delegates for the purposes of representing it in this matter Oliver H. Jackman, member; Edith Márquez Rodríguez, Executive Secretary; and, David J. Padilla, Assistant Executive Secretary. The Commission reserves for itself the right to designate other delegates for this case should the need arise.

For purposes of all legal correspondence related to this matter, the Commission's address is: 1889 F Street, N.W., 8th floor, Washington, D.C. 20006, United States of America. I request that all communications, notifications, etc. in connection with this case be sent to the the seat of the Commission. The domicile of the Commission's delegates shall be the same as the address of the seat of the Commission.

Dr. Héctor Fix-Zamudio
President, Inter-American Court
of Human Rights
San José, Costa Rica

A summary of this case is set forth in report 04/90 which is annexed to and forms an integral part of this submission.

For the Court's information, we also send you the records of the proceeding before the Commission.

The Government of Suriname ratified the American Convention on Human Rights on November 12, 1987, and at the same time accepted the jurisdiction of the Inter-American Court of Human Rights.

The Commission has found violations of Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights by the Government of Suriname.

The object of this submission is to respectfully request the Court to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin.

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

(s) Edith Márquez Rodríguez
Executive Secretary

Encs.

OEA/Ser.L/V/II.77
Doc. 23
15 May 1990
Original: English

77th SESSION

REPORT N° 04/90
CASE 10.274
SURINAME

Approved by the Commission at its 1059 session
held May 15, 1990

REPORT N° 04/90 *
CASE 10.274
SURINAME
May 15, 1990

The facts:

1. The Inter-American Commission on Human Rights received a petition in a communication dated December 17, 1988, concerning the detention and subsequent death of Asok Gangaram Panday in Suriname. The petition was received in Paramaribo, Suriname during an on-site visit to that country by the Inter-American Commission on Human Rights.

L. Gangaram Panday, brother of the deceased Asok Gangaram Panday, complained to David Padilla, Assistant Executive Secretary of the Commission that:

Asok Gangaram Panday, my brother, was detained by the Military Police upon his arrival at Zanderij Airport on Saturday, November 5, at 8:00 PM. I saw him being taken by the Military Police to a room. His wife, Dropati, also was with me and saw him in the custody of the police. He appeared to be in normal health. At about 10:30 I asked the police about him. We were concerned. The police said to wait. I continued to ask about my brother until about 4:00 AM when he came out of the room in which he was being detained. He appeared to be very upset. He saw me. I approached him. He said "I have problems." Then a policeman grabbed him and shook him and took him away to the other side of the airport. I went home.

The next day, Sunday, at 7:30 AM I phoned the military police at the airport. They told me to call at 4:30 because the Commander would be there at that time. I phoned at 4:30. The Commander told me that they had finished the investigation. My brother was to be transferred to Fort Zeelandia that night. I asked why he had been arrested. The Commander said it was because he had been expelled from Holland.

* This report constitutes the report referred to in Article 50 of the American Convention of Human Rights.

During the next two days I continually called the Military Police at Zanderij and at Ft. Zeelandia. They kept telling me to call later or elsewhere. Finally on Tuesday, at 8:00 AM, the Lieutenant of the Military Police at Ft. Zeelandia told me he was sorry to inform me by phone that my brother had hanged himself. The Lieutenant's name is PAURONADI.

I went to my lawyer, GEETA GANGARAM PANDAY. Together we went to Attorney General Reeder who knew nothing of the matter. With my lawyer, the Attorney General, and Mr. Freitas, the military auditor, we went to the morgue.

I saw my brother's body. He was nude except for the underpants. He had bruises on his chest and stomach and a hole in his back. One eye was black and his lip was cut. The bruises were large.

To date they have not given us the clothing of my brother. When I saw him he had a short belt around his neck. I said it was too short to have hanged himself. I was told that the Military Police had cut the belt and the Attorney General had the missing piece. I was not allowed to see the room where my brother was said to have killed himself.

The first autopsy said he had committed suicide. The second said he died of asphyxiation but responsibility could not be assigned. The third autopsy said death by violence.

I obtained a copy of the third autopsy and will send it to the Commission.

I also took a videotape of my brother's corpse in the morgue before cremation, when we were given the cadaver for washing. I provide this tape to the Commission. The video notes the day it was taken.

When we removed my brother's underpants we saw that his testicles had been crushed.

My brother was a working man. He hadn't seen his wife and children for a year. He returned to surprise them because it was a religious holiday. Originally he planned to return in December. He voluntarily returned to Suriname having sent his car, a 1981 Toyota Corolla, so that he could work as a taxi driver.

He told the Dutch authorities that he wanted to return to Suriname in order to get compensation for his trip. My brother was a sober man, hard working and religious and never would have committed suicide.

The Attorney General orally told my lawyer that this was a case of suicide. No written official report has been provided to the family. My lawyer said I should not pursue the matter further with the Surinamese authorities because it is dangerous.

My brother was not a political man, nor am I.

2. In rendering this complaint, petitioner at the same time appointed the International Human Rights Law Group as his legal representative. Professor Claudio Grossman serves as the attorney for the Law Group in this case.

3. On December 21, 1988, the Commission sent the following note to Dr. E. J. Sedoc, Minister of Foreign Relations of Suriname, requesting information concerning the circumstances of the death of Asok Gangaram Panday:

When the Special Commission of the Inter-American Commission on Human Rights was in Suriname last week conducting its on-site visit, it received a complaint alleging that Mr. Asok Gangaram Panday had been deprived of his right to life when he was unlawfully detained, brutalized and later was killed by the Military Police upon his arrival at Zanderij Airport on November 5, 1988. The details of this complaint are appended to this letter.

The Inter-American Commission on Human Rights respectfully requests that your Excellency's Government provide the pertinent information on this case within the next 90 days.

Inter alia, the Commission wishes to receive copies of all autopsies, post mortem and pathological reports done in this connection. It is the Commission's understanding that these were done by the coroner, Dr. Vrede.

You should be aware Excellency that the Commission was provided with a video tape which ostensibly show the preparations made of the victim's body for cremation. A viewing of the semi-nude cadaver indicates bruising about the body as well as a roughly one inch wound in the lower back.

Of course, the film will have to be subject to expert analysis; nevertheless, I believe it is important to bring these details to your attention.

4. On February 6, 1989, a full text of the complaint made by L. Gangaram Panday was sent by the Commission to the Government of Suriname.

5. On July 5, 1989, the Commission received a reply to its communication from

the Government of Suriname dated May 2, 1989. The pertinent parts of the reply are as follows:

The deceased ASOK GANGARAM PANDAY indeed was put up by the Military Police in a building for evicted persons at the Zanderij Airport on Thursday, November 5, 1988.

The Attorney General, however, wishes to comment on some inaccuracies made by Mr. Padilla in his letter:

That after the Lawyer Gangaram Panday, brother of the deceased, informed about what had happened, the Attorney General gave the order for an autopsy and the Judge Advocate together with the Lawyer Gangaram Panday were given the opportunity to visit the mortuary for an autopsy of the dead body.

That it is not correct, that the Attorney General has accompanied them (see page 1, third paragraph of the letter) as the Attorney General personally inspected the building --no cell-- where ASOK GANGARAM PANDAY was put up, and at the same time investigated the circumstances and the reasons for his detention.

That other family members of the deceased did not contact the Attorney General nor the Judge-Advocate.

That an autopsy report was made and the Pathologist Anatomist had concluded that this was a case of suicide, which fact was reported to the brother of the deceased, the Lawyer Gangaram Panday.

That no copy of the autopsy report was requested.

That abundant to the above-mentioned, a report was also made by the Technical Criminal Investigation Department and the Identifying Department, regarding the possibility that ASOK GANGARAM PANDAY might have hanged himself with his belt, which fact was confirmed by the Investigation Officer. That the Attorney General had considered it necessary to investigate whether the Military Police Officer during the arrestation of GANGARAM PANDAY was guilty of unpermitted deprivation or unlawful detention.

That the Judge Advocate has been ordered to subpoena the Military Police Officer at the Martial Court.

6. On September 14, 1989, a request for a hearing by the Commission was made by Prof. Claudio Grossman, attorney for the petitioner.

7. A hearing was held during the Commission's 76th regular session in September 1989. During the hearing Professor Grossman reiterated the nature of his client's complaint and indicated his willingness to consider a friendly settlement of the matter.

8. In November, 1989, a meeting was held between Prof. Grossman and the Foreign Minister of Suriname, in the presence of David Padilla, for the purpose of discussing the prospects for a friendly settlement. Possible monetary reparations were proposed by petitioner's counsel.

9. In a letter to the Commission, dated January 29, 1990, L. Gangaram Panday disputed the May 2, 1989, communication by the Government of Suriname. A summary of the letter is as follows:

- a. His memory about the Attorney General's presence at the mortuary may be faulty. He was told by a military officer that the Attorney General was present.
- b. The autopsy was not performed in his presence. He was told that the autopsy was to be performed at 11:00 AM but when he, the public prosecutor, and Geeta Gangaram Panday arrived they were informed that the autopsy had been performed at 8:00 AM in the presence of 4-6 soldiers. There are witnesses to this fact.
- c. The family has indeed contacted the Government. Geeta Gangaram Panday has personally spoken to the public prosecutor, Mr. de Freitas. As of January 29, 1990, no one from the military police has summoned L. Gangaram Panday or given him any information.
- d. L. Gangaram Panday knows some members of the Military Police who claim that Asok was tortured at Ft. Zeelandia, not Zanderij. Those people are afraid to testify.
- e. He also knows some people at the mortuary who say that Asok died earlier than was officially told.
- f. He has sent a copy of the third autopsy, signed by the Pathologist Anatomist. There are no copies of the other two, although they were referred to in the press. He has copies of the pertinent newspapers.
- g. Professor Claudio Grossman was appointed lawyer by the petitioner in 1989. All communications from Professor Grossman by mail have been delayed two months and have been opened, apparently by Government authorities.

10. Professor Claudio Grossman sent the videotape of the washing of Asok's

corpse to be analyzed by doctor Richard Baltero, Ph.D., M.D., of the National Institute of Health. A letter to Prof. Grossman, dated February 4, 1990, contains his professional evaluation of the tape. While in Dr. Baltero's view the quality of the tape is unsatisfactory, he states inter alia that "The bruises on the right chest and abdomen require explanation. They are likely to have been produced by blunt force during the person's life. The lesion on the left back is likely to be a laceration or tear that does not appear to follow the body's natural lines of cleavage and would also require explanation. This injury could be consistent with sharp trauma, which may have occurred post-mortem for I do not see any bleeding. I do not believe that it was caused by a gun shot wound. Unfortunately, the tape quality makes a precise diagnosis difficult." He also concludes that: "The manner of death is not natural. The cause of death is asphyxia by hanging. I would conclude from the evidence given to me, the cause of death is hanging but the manner of death could not be determined as to accident, suicide or homicide. From the evidence given to me, I would sign a death certificate as 'undetermined,' if I had to but would prefer to investigate the case more extensively."

11. On March 20, 1990, Prof. Grossman sent a copy of Dr. Baltero's report to the Commission.

12. A copy of the autopsy report, in Dutch, dated November 14, 1988, was sent to the Commission by Prof. Grossman on March 21, 1990. The autopsy was performed by Dr. M. A. Vrede, the Pathologist-Anatomist of the Anatomic Hospital in Paramaribo. Dr. Vrede certified that Asok Gangaram Panday died by "violence" and did not commit suicide.

13. On March 23, 1990, the pertinent parts of petitioner's letter along with Dr. Baltero's evaluation and a copy of Dr. Vrede's post-mortem were sent to the Government of Suriname as additional information, requesting the Government's observations within 30 days.

14. On May 11, 1990 the Government submitted the following note and enclosure to the Inter-American Commission on Human Rights:

With regard to above-mentioned case the Government of Suriname wishes to refer to the results of the investigation contained in the note of the Embassy dated May 2nd, 1989 to the Executive Secretary.

For sake of completeness the Government of Suriname hereby submits a copy of the autopsy report.

15. On the same day another hearing was held before the Commission on this matter. At that time Professor Grossman explained that he had been unable to achieve a friendly settlement of the matter and therefore demanded that the Commission remit it to the Inter-American Court of Human Rights as a contentious case for purposes of litigation.

16. Domestic remedies have been ineffective. The problems remaining to be resolved are as follows:

a. The Government has offered no explanation for Asok's detention nor how and why he came to allegedly kill himself while in the custody of the Military Police.

b. The Government has not confirmed where the death took place, whether at Zanderij Airport or at Ft. Zeelandia.

c. The Government does not directly address the question of torture, evidence of which can be found on the videotape and Dr. Baltero's analysis, and in the autopsy report by Dr. Vrede, the Pathologist-Anatomist in the Anatomic Hospital in Paramaribo.

d. The Government has not admitted that three different autopsy reports were made and therefore offers no explanation for the discrepancies between them.

e. There is no reply to questions about the belt Asok allegedly used to hang himself.

f. There are direct denials by the Government of L. Gangaram Panday's assertion of the facts.

g. Although the Government claimed to initiate an investigation there is no evidence that it has indeed done so. Even if it has conducted an investigation no conclusions have been offered.

WHEREAS:

1. Suriname is a party to the American Convention on Human Rights;
2. Suriname has accepted the compulsory jurisdiction of the Inter-American Court of Human Rights;
3. There has been a complaint;
4. The complaint was made within the time limits established in Article 46 (1)(b) of the American Convention;
5. There has been an exhaustion of domestic remedies (Article 46(1)(a)) in that the Government has failed to investigate and prosecute this case notwithstanding the evidence available to it; rather it has enacted an Amnesty decree freeing those responsible of all criminal liability;
6. The attempt at friendly settlement was ineffective (Article 49);

7. The procedures of the Commission have been exhausted (Article 50(1)).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. To admit the present case.
2. To declare that the parties have been unable to achieve a friendly settlement.
3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.
4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.
5. To recommend to the Government of Suriname that it take the following measures:
 - a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;
 - b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;
 - c. Take necessary measures to avoid their reoccurrence;
 - d. Pay a just compensation to the victims' next of kin.
6. To transmit this resolution to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this resolution is sent. During the 90 days in question the Government may not publish this resolution, in keeping with Article 47.6 of the Commission's Regulations.
7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

APPENDIX XIV

October 10, 1990

Ref.: CASE No. 10.078

The Honorable President of the Inter-American Court of Human Rights:

On instructions from Leo Valladares Lanza, Chairman of the Inter-American Commission on Human Rights (hereinafter, the "Commission"), I respectfully submit to the Inter-American Court of Human Rights (hereinafter, the "Court") the following case concerning the Republic of Perú based on the facts and law expounded hereafter.

In the course of its 77th Regular Meeting the Commission decided to submit Case 10.078 (Perú) to the Court by way of its report 43/90 dated May 14, 1990, in keeping with Articles 51 and 61 of the American Convention on Human Rights, hereinafter, the "Convention," and Article 50 of the Commission's Regulations.

Pursuant to Article 73 of the Commission's Regulations, the parties which shall intervene in the proceedings before the Court shall be the Government of the Republic of Perú and the Commission. In addition, in accordance with Articles 21 and 25 of the Court's Rules of Procedure, the Commission designates as its delegates for the purposes of representing it in this matter Oscar Luján Fappiano, member; Edith Márquez Rodríguez, Executive Secretary; David J. Padilla, Assistant Executive Secretary, and Oswaldo Kreimer, legal staff specialist for the Secretariat. The Commission reserves for itself the right to designate other delegates for this case should the need arise.

For purposes of all legal correspondence related to this matter, the Commission's address is: 1889 F Street, N.W., 8th floor, Washington, D.C. 20006, United States of America. I request that all communications, notifications, etc. in connection with this case be sent to the seat of the Commission. The domicile of the Commission's delegates shall be the same as the address of the seat of the Commission.

Dr. Héctor Fix-Zamudio
President
Inter-American Court of Human Rights
San José, Costa Rica

After the report 43/90 was sent to the Government of Perú, it requested on August 15 of this year, a 30 day postponement in order to follow the recommendations of the Commission, and ordered that a report be made on the steps that have already been taken in such a case. The Commission granted the additional postponement of 30 days from September 11, 1990. On September 25, 1990, the Commission received the aforementioned report from the Government of Perú, which consists of a presentation and three annexes, that are a part of this presentation. The Commission, during its 78^o period of sessions considered the contents of such an answer and decided to confirm its decision to send the present case to be submitted to this Honorable Court.

The facts of this case are set forth in Report 43/90 which is annexed to and forms an integral part of this submission.

For the Court's information, we also send you the records of the proceeding before the Commission.

The Government of Perú ratified the American Convention on Human Rights on July 28, 1978, and accepted the jurisdiction of the Inter-American Court of Human Rights on January 21, 1981.

The Commission has found violations of Articles 1, 2, 4, 7, 8, and 25 of the American Convention on Human Rights by the Government of Perú.

The object of this submission is to respectfully request the Court to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin.

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

(s) Edith Márquez Rodríguez
Executive Secretary

Encs.

OEA/Ser.L/V/II.77
Doc. 84
7 June 1990
Original: Spanish

77th SESSION

**REPORT N° 43/90
CASE 10.078
PERU**

Approved by the Commission at its 1057 session
held May 14, 1990

REPORT No. 43/90
CASE 10.078
PERU
14 May, 1990

BACKGROUND:

1. On August 1, 1987, the following report of human rights violations was presented to the Inter-American Commission on Human Rights:

A. FACTS

A.1 On June 18, 1986, Víctor Neira Alegría, Edgar Zenteno Escobar, and William Zenteno Escobar were being held at the "San Juan Bautista" prison, also known as "El Frontón," under indictment for the crime of terrorism.

A.2 As a consequence of the mutiny that occurred at that prison on the stated date, the Peruvian government, through Supreme Decree number 006-86-JUS, delegated the control of penal institutions to the Joint Command of the Armed Forces, and San Juan Bautista prison was declared a "restricted military zone," within the jurisdiction and subject to the authority of the military.

A.3 Since the date on which the armed forces proceeded to put down the mutinies, these individuals have been missing, their relatives have neither seen them nor had any news of them since that time and therefore they are assumed to have been kidnapped; since the possibility that they are still alive has not yet been ruled out, there is concern for their safety and well-being. That same day June 18, it was convincingly proven that the 152 people who remained inside the "San Juan Bautista" prison (including the three individuals in question) were alive, according to the signed statement issued that day by the officers of the National Penitentiary Institute, when they relinquished control of the prison in compliance with the Supreme Decree number 006-86-JUS. (The report "Los sobrevivientes desaparecidos no reconocidos por el Gobierno," or "The missing survivors not acknowledged by the government," is attached as Annex No. 1).

B. PETITION FILED UNDER DOMESTIC LAW

B.1 The Petition

On July 16, 1986, the complainants lodged a petition for habeas corpus with the Twenty-first Investigative Court of Lima against the Chairman of the Joint Command of the Armed Forces, and against the Commander General of the

Command of the Armed Forces, and against the Commander General of the

Navy, under paragraph 20 of article 2 of the Political Constitution of Perú, which establishes the right to personal freedom and security, and paragraphs 7, 13, and 14 of article 12 of Law 23506 on habeas corpus, which specify the following three cases of deprivation of or threat to personal liberty, whose relevance makes proper to act, as follows:

paragraph 7, kidnapping;

paragraph 13, solitary confinement, save when necessary for the investigation of a crime and in the manner and for the time prescribed by law, in which case the authorities are obligated to report without delay the place where the person is being held in custody;

paragraph 14, violation of the right to legal counsel from the time the person is summoned or taken in custody by the authorities. The judicial authorities were requested to summon the Chairman of the Joint Command of the Armed Forces and the General Commander of the Navy of Perú to report on the situation of the missing Víctor Neira Alegría, Edgar Zenteno Escobar, and William Zenteno Escobar. On that occasion it was also requested that, if the violation of rights charged by the complainants in their action had become irreparable, which could only happen if the persons in question were dead, the military authorities be required to identify the place of burial of the bodies and to provide death certificates for them.

B.2 The Court's Decisions

On July 17, 1986, the Court issued its decision finding the petition contrary to law.

B.3 The Appeal

On August 1, 1986, the Eleventh Correctional Court of Lima upheld the decision appealed against by majority vote. However, Judge Quiroz Anaya issued a separate opinion that the decision in question should be vacated.

B.4 The Appeal for Annulment to the Supreme Court of Perú

On August 1, 1986, an appeal for annulment was filed with the Criminal Section of the Supreme Court of Justice; on August 25, that Court found "no invalidity" in the appealed decision and found the petition for habeas corpus to be contrary to law.

B.5 The Proceeding for Review by a Higher Court

On September 12, 1986, the complainants appealed to the Court of Constitutional Guarantees to review the decision of the Supreme Court of Justice.

Under the Peruvian Constitution, the Court of Guarantees is the control organ of the Constitution and has competence to take cognizance by cassation of the resolutions rejecting actions for guarantees when judicial remedies are exhausted. On December 5, 1986, the Court of Constitutional Guarantees confined itself to finding that the judgment of the Supreme Court of Justice was irreversible. When the case was put to a vote, four judges, Nicanor Oliva Salgado, Oscar Rodríguez Mantilla, Alberto Eguren Bresani, and Carlos Basombrío Porras voted for annulment, but were unable to reverse the judgment of the Supreme Court because article 8 of Law number 23385, the organic law governing the Court of Constitutional Guarantees, establishes that a minimum of five votes for or against are decisive in appeals for annulment, thereby exhausting the remedies of domestic law.

The decision was published in "El Peruano" the official gazette, on January 14, 1987. (The report "Exposición y análisis de la discusión judicial en los tribunales Peruanos y de las gestiones y procesos realizados ante las autoridades nacionales," or "Presentation and analysis of judicial debate in the Peruvian courts and of actions and proceedings brought before the national authorities," appendix 2).

C. VIOLATED RIGHTS THAT ARE RECOGNIZED BY THE AMERICAN CONVENTION ON HUMAN RIGHTS OF SAN JOSE, COSTA RICA

C.1 On the basis of the provisions of the American Convention on Human Rights (Article 44), of the Statute of the Inter-American Commission on Human Rights (Articles 19.a and 20.b), and of its Regulations (Article 23.1), which establish the general competence of the Inter-American Commission on Human Rights to receive and act on petitions addressed it by any person or group of persons, or any nongovernmental entity legally recognized in any American state, alleging violations of human rights recognized in the Convention, we demand protection of the fundamental rights of Víctor Neira Alegría, Edgar Zenteno Escobar, and William Zenteno Escobar not to be kidnapped, held incommunicado, or denied legal counsel as a jurisdictional complement to the action for habeas corpus previously pursued and exhausted in the Peruvian courts. It is clear, however, that our principal purpose in them is to defend the irrevocable rights to life (Article 4), humane treatment (Article 5), and personal liberty and security, (Article 7), all values enshrined in the Pact of San José.

In cases (such as that of Perú) in which a member state's laws provide recourse against the threat of deprivation of liberty, Article 7.6 of the Convention prohibits the restriction or abolition of this remedy.

This is the principal human right denied by the very fact of forced or involuntary disappearance.

C.2 Inherent Rights to Membership in Society

The right to recognition as a person before the law, Article 3 of the Convention and Article XVII of the Declaration.

C.3 Judicial Rights

a. The right to recourse, i.e., to simple and prompt protection of fundamental rights when those rights are violated by a government authority, Article 25 of the Convention and Article XVIII of the Declaration.

b. The right of petition, which safeguards the right to submit petitions to any competent authority and to receive prompt disposition.

C.4. Fundamental Rights and Suspension of Guarantees

Under Article 27 of the Convention, neither the right to humane treatment nor the judicial guarantees essential for the protection of that right may be included in any suspension of guarantees.

Because the said rights are among those that may be neither suspended nor abrogated under any circumstances, we may conclude that the forced or involuntary disappearance of persons, as in this case, is by any reckoning an offense to human dignity, respect for which (of the rights there in implied) is inseparable from the principles that shape the inter-American system.

In this spirit of strengthening that system of rights that can never be suspended for any reason or in any circumstances, the Second Inter-American Specialized Conference (Rio de Janeiro) of November 29, 1969 adopted resolution XXII, requesting the Commission to pay particular attention to observance of the rights set forth in the American Declaration of the Rights and Duties of Man in Article I (right to life, liberty, and personal security), Article XVIII (right to a fair trial), Article XXV (right of protection from arbitrary arrest), and Article XXVI (right to due process of law), in a call for emphasis on those rights and more painstaking efforts by the Commission in regard to the fundamental rights most frequently violated in the hemisphere.

THEREFORE:

Mr. Executive Secretary, our petition for an investigation and justice is based not only on provisions of law but on fundamental ethical principles and on the aspirations of the national and inter-American community to build a society of

peace and democracy on the basis of respect for the individual human being. The existence of the forced disappearance of persons in our hemisphere, "the most comprehensive denial of human rights in our time," appeals to the conscience of the peoples of the hemisphere (U.N. Commission on Human Rights document E/CN.4/1985/15, paragraph 291, and OAS/AG/RES. 443 (IX-O/79), respectively), and is incompatible with the conduct of democratic institutions and with the constitutional state.

In this petition we endorse the demands voiced by the United Nations General Assembly and the OAS urging the international community to "undertake speedy and impartial investigations" wherever this practice exists, to determine the "legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances" (UN, General Assembly Resolution 33/173 of 20-XII-78) and to "determine the status of persons whose disappearance has been reported" (OAS resolution AG/RES. 510 (X-O/80)).

Under Article 41 of Law No. 23506 on habeas corpus of Perú, it is for the Supreme Court of Justice to transmit to international organizations the documents they request for a more accurate assessment of the problems presented for their consideration. Hence, we request that the Commission ask the Chief Justice of the Supreme Court of Justice of Perú to transmit a copy of the file on this court case and any other official document that may be required for that purpose.

2. Through a note of September 8, 1987, the Commission addressed itself to the case and, in accordance with Article 34 of its Regulations requested information from the Government of Perú within 90 days from the date of its request.

3. On January 11 and June 7, 1988, the Commission repeated its request to the Government for information, stating that if such information was not received within 30 days, the Commission would begin to consider applying article 42 of its Regulations, which states:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

4. On September 19, 1988, the complainant requested that the Commission give effect to the presumption of truth called for in Article 42 of its Regulations and presume true the facts related in the petition, since the Government had not provided the information within the time required by the Commission's Regulations.

5. On February 23, 1989, the Commission again repeated its request to the Government of Perú for information.

6. In a note of May 31, 1989, the complainant repeated his request that the Commission implement Article 42 of its Regulations, the gravity of the violation committed by the Peruvian State and to the need for the Commission to take a decision that would permit the identification and/or punishment of those responsible for the reported disappearances, since the action had been initiated in August 1987 and up to the time of the note no resolution had been issued, even though these were cases of disappeared persons.

7. The Commission made its fourth request for information to the Government of Perú on June 9, 1989, pursuant to article 42 of its Regulations.

8. In a note of June 26, 1989, the Government of Perú responded to the Commission's request for information, indicating that the following measures had been taken:

In Official Letters Nos. 041-88 and 039-88-MP-FN-OGDH-D of January 21, 1988 and January 19, 1988, respectively, the National Penitentiary Institute was asked to report whether the citizens in question were confined in any penal institution in the Republic or if they had been in the past; no answer has been received to date.

In Official Letter No. 011-88-MP-FN-OGDH-D of January 19, 1988 the 39th Provincial Criminal Prosecutor's Office of Lima was asked for information on the events that took place at the San Juan Bautista Penal Prison.

Official Letter No. 14-88-39°FPPL of February 25, 1988 was received stating that the information requested could not be provided because it fell within the competence of another jurisdiction: the Callao Judicial District.

In Official Letter No. 137-89-MP-FN-OGDH-D of March 21, 1989, information was requested from the Senior Chief Prosecutor (Fiscal Superior Decano) of Callao Judicial District, who is responsible for the present status of the investigation, but no response has been received to date.

9. In a note of July 20, 1989, the Commission transmitted to the complainant the relevant parts of the information provided by the Government of Perú and asked him to submit his observations or comments within 45 days.

10. On September 25, 1989, during its 76° session, the Commission heard the complainant's legal representative, who referred to the facts that prompted the complaint, who stated that when the mutiny took place in the prison of Lima, there had been a greatly disproportionate relationships between the rebellion and the military, who attacked with rockets, plastic explosives, dynamite, artillery and

machine guns, and that, according to witnesses the prisoners were shot even though they had surrendered.

The complainant's legal representative also pointed out that the petition for habeas corpus was rejected by every authority. He finally asked the Commission to issue a resolution condemning the Government of Perú and that the case be submitted to the Inter-American Court of Human Rights.

During the hearing, the Chairman of the Commission gave the floor to the Representative of the Government who stated that he would not make any comments.

11. In its note No. 7-5-M/119 of September 29, 1989, the Government of Perú advised the Commission as follows:

With respect to case No. 10.078, it is public knowledge that it is the subject of a judicial proceeding in the military judicial system of Perú in accordance with the laws in effect. It should be pointed out that the remedies of the domestic jurisdiction of the State have not been exhausted and, therefore, it would be advisable for the IACHR to await until they are before issuing a final judgment on the case.

12. That letter was transmitted by the Commission to the complainant on October 10, 1989, with the request that he send in his observations on the Government's reply within 30 days so that they could be considered by the Commission at its next regular session.

13. On September 13, 1989, the complainant presented his observations on the Government's reply, referred to in section 8, above. Those observations are as follows:

a) In its reply, the Peruvian Government reports on the actions it has taken to determine the whereabouts of wronged parties. It should be noted that that action was taken by the General Human Rights Office of the National Public Prosecutor, which is apparent from the acronyms at the top of those letters.

b) That office, which is part of the Public Prosecutor's office, an autonomous agency, receives and processes complaints and charges in cases of violations of fundamental human rights; it has no jurisdictional authority, but only an administrative function.

c) After analyzing that letter, we can state specifically as follows:

The official letters sent to the National Penitentiary Institute on

January 19 and 21, 1988 are irrelevant because on July 10 and 19, 1986, that Institute sent to the Trial Judge of the 21st Investigative Court of Lima the list of surviving inmates of the "San Juan Bautista" (El Frontón) prison who at that point were being held in other prisons or laid up at medical facilities because of the injuries they sustained during the events at that prison.

Those letters include the records of the wronged parties, which show that they were inmates of the prison which was demolished during the events of June 18, 1986. We should point out that this letter was known to the Provincial Prosecutor's Office of Lima and to the National Public Prosecutor.

We should note that this information is attached in the habeas corpus record which serves as the basis for this (international) proceeding.

The official letters transmitted to the 39th Provincial Prosecutor's Office of Lima, the official letter of response, and the official letter the Office of the Senior Chief Prosecutor of the Province of Callao were sent in the knowledge that, on that date, the 3rd Provincial Prosecutor's Office of Callao had refrained from filing any formal complaint to the Judiciary concerning the events at the "El Frontón" prison, and had referred what had been done to the Office of the Senior Chief Prosecutor of Callao, to which the letter referred to in the Government's reply was addressed. On November 16, 1986, the Senior Chief Prosecutor of Callao forwarded the report to the First Chief Prosecutor's Office of that city in official letter No. 185-86, which bears the number 74-86. It was subsequently sent on to the General Directorate of Complaints and charges of the Public Prosecutor's Office in official letter No.202-87-MP/IFSPC of September 4, 1987. To date that General Directorate, which belongs to the Public Prosecutor's Offices has not acted on the complaint.

d) We have now learned that in the Special Court of Military Justice there exists a judicial proceeding on the events that befell the "San Juan Bautista" (El Frontón) prison. We have been denied access to that proceeding and have good reason to assume that the case has been closed without anyone being identified as responsible and no punishment imposed.

On the basis of all the foregoing, we must conclude that it has been convincingly demonstrated that all remedies at every instance under domestic law have been exhausted with respect to the petition for habeas corpus which provides the basis for this international proceeding.

That such action as the Peruvian Government may have taken to locate the victims has proven ineffective and, moreover, the Government offers no assurance that the investigation will be pressed or any punitive measures taken against the culprits if discovered, and hence the provisions of Art. 46.2.c of the American Convention on Human Rights apply in keeping with Arts. 37.2.c and 37.3 of the Commission's Regulations.

To argue today --that is, more than three years after the events at El Frontón prison-- that the investigation continues only reinforces the existence of "unwarranted delay."

Lastly, we request that the observations in the reply made by the Peruvian Government be taken as made so that they may be discussed in the meeting referred to in your communication.

First petition: We request that, pursuant to Art. 42 of the Commission's Regulations, the facts reported in the petition be presumed true inasmuch as the Peruvian Government has not complied with the requirement of providing the information requested within 120 days as prescribed in that article.

Second petition: We request that, when the Commission has formed its opinion of it, this case be brought before the Inter-American Court of Human Rights so that it may proceed in accordance with its functions.

14. In a note of October 13, 1989, the Commission transmitted to the Government of Perú the observations of the complainant with the request that it provide all reports deemed relevant to this case within 30 days.

15. On October 30, 1989, the complainant requested that the Commission extend the time in which he was required to send his observations on the Government's reply of September 29, 1989, because the note transmitted by the Commission contained a partial transcription of the reply. This request was granted, the complainant being given a term of 60 days.

16. In a note of February 9, 1990, the Commission asked the Government of Perú for the following information:

1. Whether the remedies of Perú's domestic jurisdiction had been exhausted and, if not, which authorities remained to be appealed to.
2. The date on which the trial began in the military court and its current procedural status.
3. Whether it had been possible to determine the whereabouts of

Víctor Neira Alegría, Edgar Zenteno Escobar and William Zenteno Escobar.

17. In its note, the Commission advised the Government that its information was needed within 30 days so that it could be considered in the next meeting; but long after this term has expired no information whatever has been received.

18. On February 15, 1990, the complainant sent his observations on the Government's reply, reviewed in paragraph 11, above. These observations are as follows:

1. DOMESTIC REMEDIES

a) It is inaccurate to say that judicial action is publicly known to be in process on the events in the San Juan Bautista (Frontón) prison. Neither the relatives, the National Public Prosecutor, nor any civilian person whatever has had any word of the opening of an investigation into those events: in any case, it is for the State to show that public notice has been given of that proceeding.

b) The domestic remedies pursued must necessarily possess the quality of PROPRIETY. The facts charged are based on the exhaustion of the domestic remedies, in the form of habeas corpus --the DOMESTIC REMEDY par excellence-- which was invoked in the wake of the events at the San Juan Bautista prison.

This protective remedy was exhausted with the ruling handed down by the Court of Constitutional Guarantees of Perú, the highest and final arbiter of issues of domestic law, which said that:

"... the Tribunal of Constitutional Guarantees confines itself to the finding that the ruling of the Supreme Court of Justice appealed against is irreversible."

c) Therefore, under Art. 305 of the Political Constitution of Perú and Art. 39 of Law 23506 on Habeas Corpus and Amparo, we appealed to the Inter-American Commission on Human Rights as the channel for access to the international body of jurisdiction: THE INTER-AMERICAN COURT OF HUMAN RIGHTS.

Another possible domestic remedy was an investigation by the Office of the Government Attorney of the events that befell that prison. As the Commission was advised at the time, that the investigation revealed an "unwarranted delay," and on September 4, 1987, a complaint was filed against the Prosecutor for not having brought a formal criminal charge.

2. MILITARY COURT

a) Under domestic law the military courts have competence in the following cases:

a.1 Offenses described in the Code of Military Justice.

a.2 In cases of common crimes, when both the accused and the victim are members of the armed forces.

a.3 The facts charged took place in a foreign war.

b) The foregoing circumstances must obtain for a military court to assume competence, or otherwise there would occur a violation of another of the principles of DUE PROCESS, which, therefore, makes inappropriate the "available domestic remedy" advocated by the respondent State.

c) Moreover, it is for the Peruvian Government to show that that process has been launched and is in motion. This it has not done, especially if the requisite verification has been made impossible by denial to us of formal access to the process, so that we had to ask the National Public Prosecutor to request a report. If that process does exist, neither has access to it been granted nor has any notice of it ever been given, which violates the internationally established right to an effective remedy.

d) Lastly, the rule on which the Military Justice System (DS. 006-86-JUS) relied to justify its trying the case contains a defect that makes it unconstitutional and, besides, violates the American Convention on Human Rights, in pronouncing the prison in question a "restricted military area" and therefore beyond any civilian jurisdiction.

IN VIEW OF ALL THE FOREGOING,

Having demonstrated that the arguments presented by the Peruvian Government are devoid of any real or legal basis,

The Inter-American Commission and Court of Human Rights both having competence *ratione loci* by virtue of the fact that Perú is a party to the Convention and has recognized the competence of the two supranational organs and, moreover, the acts considered violate fundamental rights spelled out in the Convention.

WE REQUEST

That the observations on the responses of the Government be taken as made and that, the procedure having been exhausted, the present case be submitted to the competence in contentious matters of the Inter-American Court of Human Rights, to which end we ratify our initial complaint in every particular.

Lastly, we enclose copies of the rulings handed down in the habeas corpus proceeding.

19. In a note of February 20, 1990, the Commission transmitted the complainant's observations to the Government with the request for a reply within 30 days, which at this writing has not been received.

CONSIDERING:

1. That the petition in case 10.078 meets the formal requirements for admissibility established in Art. 46 of the American Convention on Human Rights, to which Perú is a party, and Art. 32 of the Commission's Regulations.

2. That the processing of the petition in the Commission and the terms established in Art. 34 of the Regulations have been completed.

3. That, as provided in Art. 44 of the Convention, the Commission is competent to examine the materials of the case, which involves presumed violations of rights stipulated in the Convention: Art. 4, the right to life; Art. 7, the right to personal liberty, and Art. 25, the right to judicial protection.

4. That the petitioner has pursued and exhausted the remedies under domestic law in accordance with generally recognized principles of international law, as required in Art. 46.1.a of the Convention and Art. 37.1 of the Commission's Regulations. In this regard, as stated in the present report, the petitioner took the following judicial steps:

i) On July 16, 1986, the complainant petitioned for a writ of habeas corpus for the forced disappearance of Víctor Neira Alegría, Edgar Zenteno Escobar and William Zenteno Escobar in the wake of the quelling by the Armed Forces of a mutiny that took place on June 18, 1986, in the San Juan Bautista prison. He based this petition on paragraphs 7, 13 and 14 in Art. 12 of Law N 23056 on Habeas Corpus, which states that kidnapping, solitary confinement, and denial of the right to legal counsel violate or threaten individual liberty.

ii) On July 17, 1986, the Twenty-first Court of Investigation of Lima, which was hearing the case, pronounced the petition inadmissible.

iii) The petitioner appealed against this judgment to the Eleventh Court of Appeals of Lima, which upheld the appealed judgment by majority on August 1 of the same year.

iv) Afterwards an appeal for a declaration of nullity was filed with the Supreme Court of Criminal Justice, which on August 25 ruled that "there is no nullity in the decision on the petition for habeas corpus."

v) Finally, the petitioner filed an appeal for annulment with the Supreme Court of Justice, which on December 5, 1986, ruled that "the judgment remained unalterable."

5. That, in the judgment of the Commission, the complainant has demonstrated that he has pursued the remedies of domestic jurisdiction through all stages as prescribed by the laws of Perú, and the Commission has stated on different occasions that in cases of disappearance the petition for habeas corpus is sufficient basis for taking all domestic remedies as exhausted if the disappeared persons remain unfound, for this is the appropriate remedy for such cases (Cf. the Velásquez Rodríguez case). The Inter-American Court of Human Rights has come to the same conclusion, holding that habeas corpus is the appropriate judicial instrument for establishing the legality of depriving a person of his liberty, and is essential "...to oversee respect for life and physical integrity, to prevent his disappearance or the impossibility of determining the place in which he is being held, and to protect him against torture or other cruel, inhuman or degrading treatment or punishment."¹ Moreover, the Commission accepts the arguments of the complainant inasmuch as this particular appeal was not contested by the Government of Perú in the international proceeding.

6. It may further be noted that the obligation of the States Parties to the Convention to make judicial resources available to victims of violations of human rights must not be viewed as a mere formality, and the possibility of obtaining a remedy must be examined in each case. In Art. 25.1 the Convention states that "every person has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal ..." In the present case the complainant showed that he had exhausted the appropriate recourse of habeas corpus, but this failed to yield the result for which it was created, since the whereabouts of the victims is unknown. Habeas corpus has proven to be insufficient in this case, and because of this we must conclude that the victim has no other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the State or by this Convention. Moreover, the establishment of the Permanent Court of Instruction of the NAVY ("Tribunal Permanente de Instrucción de la Marina") does violate article 8.1 (natural judge) of the Convention.

¹ Advisory Opinion of the Inter-American Court of Human Rights, OC-8/87, par. No. 35.

7. Regarding the Government's reply stating that the domestic jurisdiction has not been exhausted, the following may be said:

i) That the Government, as shown in the preceding paragraphs, responded to the Commission's requests for information beyond the time within which it had been asked to do so, and the information provided was not responsive to the Commission's questions.

ii) In its reply of June 26, 1989, the Government referred only to inquiries requesting information from different authorities, and mentioned also that the Office of the Senior Chief Prosecutor of Callao Judicial District, in charge of the investigation, had not replied.

iii) In its second reply, the Government referred to domestic remedies in general, confining itself to the remark that it was public knowledge that a judicial proceeding was in progress in the military judicial system and that, therefore, the domestic remedies had not been exhausted, though without saying which domestic remedies remained to be exhausted, nor the date on which that proceeding had been started or the stage it had now reached, or whether anybody had been charged. From which we can infer that the requirement of Article 25.1 of the Convention has not been fulfilled, because the process indicated neither represents by itself the effective recourse required by the article, nor allows the victims to participate actively in that process to defend their rights. This communications seems to be a evasive response with only purpose of avoiding a decision by the Commission. Considering, that the process must be dealt with in a governmental institutions, the government can not refer to it vaguely without attacking the principle of good faith that must be protected in every procedure, including an international one.

8. That the complainant presented his observations on the Peruvian Government's second reply in writing on February 15, 1990, and in them reiterated the basis for exhaustion of the domestic remedies to his initial complaint and objected that "it is inaccurate to say that the existence of a judicial process in connection with the events at the San Juan Bautista prison is a matter of public knowledge" for "notice of the opening of an investigation into the said events has not been given either to the relatives or to the National Public Prosecutor, or to any civilian who might have initiated an investigation of the mentioned acts," and "in any case the burden of showing that Public notice of the proceeding has been given would lie on the State complained against." The Commission considers that it is for the defendant Government that alleges the exception to show that remedies in its domestic legal system remain unexhausted,¹ and the existence of a proceeding is in progress, pursuant to paragraph 2, Art. 37 of the Commission's Regulations.

¹ Such was the ruling of the Inter-American Court of Human Rights in its judgment of June 26, 1987, in the Velázquez Rodríguez case. Cf. Preliminary exceptions, par. 88.

9. That the measures taken by the Government of Perú have proved insufficient inasmuch as, almost four years after the disappearance of Víctor Neira Alegría, Edgar Zenteno Escobar and William Zenteno Escobar, it has not been possible to establish their whereabouts or the perpetrators of the violation. This gives the Commission grounds for concluding that there has been an unwarranted delay in the administration of justice and that the Government has failed in its obligation to investigate properly every situation in which human rights protected by the Convention are violated.

10. The Commission does not judge the validity of the complainant's observations about the competence of the Military Court to officiate in the proceeding referred to by the Government or the unconstitutionality of Decree DS.006-86-JUS declaring the San Juan Bautista prison a "restricted military area" because they are not needed for consideration of the violations charged in the initial complaint. However, it cannot help but note that the restriction of certain rights and liberties during states of emergency does not mean "...that the suspension of guarantees includes temporary suspension of the Rule of Law or authorizes those in power to stray in their actions from the legality to which they are at all times bound."¹ No right may be suspended or restricted except in the presence of the strict conditions referred to in Art. 27 of the Convention ("...war, public danger, or other emergency that threatens the independence or security of a State..."), and even supposing the presence of these conditions, there is a category of rights that can never be suspended, which are, among others, the right to life, the right to personal integrity, and the judicial guarantees needed for the protection of those rights.

11. That the facts that actuated the complaint are not such as to lend themselves to friendly settlement, nor have the parties requested this procedure, provided for in Art. 48.1.f of the Convention and Art. 45 of the Commission's Regulations.

12. That, in view of the inapplicability of the friendly settlement procedure, the Commission must give effect to the provisions of Art. 51.1 and set forth its opinion and conclusions on the question submitted for its consideration.

13. That the Government of Perú deposited its instrument recognizing the competence of the Inter-American Court of Human Rights, pursuant to Art. 62 of the Convention, on January 21, 1981,

¹ Cf. Advisory Opinion, Inter-American Court of Human Rights OC-8/87, par. 24.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To declare that the complaint of the present case is admissible.
2. To declare that a friendly solution to the present case is inappropriate.
3. To declare that the government of Perú has not fulfilled its obligations with respect to human rights and the guarantee imposed by articles 1 and 2 of the Convention.
4. To declare that the government of Perú has violated the right to life recognized in article 4, the right to personal liberty enshrined in article 7, the judicial guarantees of article 8, and the right of judicial protection found in article 25, all from the American Convention of Human Rights, as a consequence of the acts which occurred in the San Juan Bautista Prison, in Lima, on June 18, 1986, that led to the disappearance of Víctor Neira Alegría, Edgar Zenteno Escobar, and William Zenteno Escobar.
5. To formulate the following recommendations for the government of Perú (Convention article 50.3 and article 47 of the Inter-American Commission on Human Rights' Regulations):
 - a. Perú must fulfill articles 1 and 2 of the Convention adopting an effective recourse that guarantees the fundamental rights in the cases of forced or involuntary disappearance of individuals;
 - b. Conduct a thorough, impartial investigation into the facts object of the complaint, so that those responsible may be identified, brought to justice and receive the punishment prescribed for such heinous acts, and determine the situation of the individuals whose disappearance has been denounced;
 - c. Adopt the necessary measures to prevent similar acts from occurring in the future;
 - d. Make necessary reparations for the violations of rights previously indicated and pay just indemnity to the victims' families.

6. To transmit the present report to the Government of Perú so that the latter may make any observations it deems appropriate within ninety days from the date it is sent. Pursuant to Art. 47.6 of the Commission's Regulations, the parties are not authorized to publish the present report.

7. To submit the present case to the Inter-American Court of Human Rights unless the Government of Perú solves the matter within the 3 months allotted in the previous paragraph.

CDH/3697-I

**ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON
HUMAN RIGHTS IN THE AREA OF ECONOMIC
SOCIAL AND CULTURAL RIGHTS
"PROTOCOL OF SAN SALVADOR"**

Signed at San Salvador, El Salvador, on November 17, 1988, at
the Eighteenth Regular Session of the General Assembly

ENTRY INTO FORCE: When eleven States have deposited their respective instruments of ratification or accession.

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications).

TEXT: OAS Treaty Series, No. 69.

UN REGISTRATION:

SIGNATORY COUNTRIES

DEPOSIT OF RATIFICATION

Argentina.....	
Bolivia.....	
Costa Rica.....	
Dominican Republic.....	
Ecuador.....	
El Salvador.....	
Guatemala.....	
Haití.....	
México.....	
Nicaragua.....	
Panamá.....	
Paraguay.....	
Perú.....	
Uruguay.....	
1/ Venezuela.....	

All of the States on the above list signed the Protocol on November 17, 1988, with the exception of the ones pointed out by notes.

1/ Venezuela:
Signed on January 27, 1989, at the General Secretariat of the OAS.