



Organization of
American States



Inter-American Commission on Human Rights

**Application filed by the Inter-American Commission on Human
Rights with the Inter-American Court of Human Rights**

**in Case 12,459
Lysias Fleury and his family
against Haiti**

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I. INTRODUCTION

1. The Inter-American Commission (hereinafter "the Commission" or "the IACHR") presents before the Inter-American Court for Human Rights (hereinafter "the Inter-American Court" or "the Court") an application in case 12.459, Lysias Fleury and his family against the Republic of Haiti (hereinafter the "State of Haiti", "Haiti", or "the State") for its responsibility in the illegal detention and cruel, inhumane and degrading treatment of Lysias Fleury (hereinafter "the victim")¹ which occurred on June 24, 2002 in Port au Prince, and the ensuing lack of diligence in the investigation of acts, as well as the denial of justice with prejudice to him and his family members, as well as the violation of his family's personal integrity.

2. The Commission requests that the Honorable Court adjudge the international obligation of Haiti for failing to comply with its international obligations by its violation of the following articles of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"):

- Article 5(1) and 5(2) (personal integrity) of the American Convention, in conjunction with violations of Article 1(1) of that instrument, because of the assault perpetrated upon Mr. Fleury by State agents and its effects on his physical, moral and mental integrity.
- Article 5 (personal integrity) of the American Convention, in conjunction with violations of Article 1(1) of that instrument, against Mr. Fleury's immediate family due to the violations of their personal integrity.
- Article 7(2), 7(3), 7(4), and 7(5) (personal liberty) of the American Convention, in conjunction with violations of Article 1(1) thereof, because of Mr. Fleury's unlawful detention and arrest without charges.
- Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in conjunction with violations of Article 1(1) of the Convention, with prejudice to Mr. Fleury and his family members, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Fleury and to prosecute and punish those responsible.

3. The present case has been processed in accordance with the American Convention and is submitted to the Court pursuant to Article 34 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Court"). Affixed to this application as an appendix is a copy of the Report on the Merits No. 06/09, prepared pursuant to Article 50 of the Convention.²

4. The Commission considers of extreme importance the effects of a ruling from the Court in this case, in terms of its capacity to resolve the situation presented and thereby promote a broad institutional reform of the Haitian judicial system through a ruling that requires the state to guarantee the Rights protected by the American Convention. With respect to the particular rights in question, the Commission indicated in its 2005 study of the administration of

¹ As detailed below. Lysias Fleury's next of kin – his wife Rose Benoit Fleury, his daughters Rose M. and Flemingkow Fleury and his son Heulingher Fleury – are also victims in the case at hand. The Commission is aware of the amendment to the Court's Regulations whereby the term "victim's next-of-kin" is no longer to be used. Nevertheless, in this application the term "victim" shall be used solely to refer to Lysias Fleury, and "victim's next-of-kin" shall be used to refer to his wife and children.

² Report on the Merits 06/09 of March 16, 2009, Lysias Fleury and his family. Haiti. Appendix 1

justice in Haiti that the problem of arbitrary detentions and violations to due process have a long trajectory in Haiti.² As such, the Commission considers that another important matter in the case at hand relates to human Rights defenders in Haiti, reason for which, a ruling in the present case could help guide positive changes in judicial and political matters.

II. PURPOSE OF THE APPLICATION

5. The purpose of the present application is to petition the Court to adjudge and declare that Haiti is responsible for violation of the following articles:

- a) For the violation, with prejudice against Mr. Fleury, of his right to not be subject to torture and other inhumane treatment as per Article 5(1) and 5(2) of the American Convention, and in conjunction with violations of Article 1(1) of the same instrument, because of the assault perpetrated upon Mr. Fleury by State agents and its effects on his physical, moral and mental integrity.
- b) For the violation, with prejudice against Mr. Fleury's family members, of their right to personal integrity enshrined in Article 5 of the American Convention, in conjunction with violations of Article 1(1) of the same instrument.
- c) For the violation, with prejudice against Mr. Fleury's, of his right to personal liberty which is enshrined in Article 7(2), 7(3), 7(4), and 7(5) of the American Convention, in conjunction with violations of Article 1(1) of the same instrument, stemming from his unlawful detention and arrest without charges.
- d) For the violation, with prejudice against Mr. Fleury and his family members, of his right to the judicial guarantees and judicial protection contemplated in Articles 8 and 25 of the American Convention, in conjunction with violations of Article 1(1) of the same, for failing to undertake a prompt, effective, impartial and independent investigation of the human rights violations committed against Mr. Fleury or having prosecuted and punished those responsible.

6. In consideration of the above, the Inter-American Commission is asking the Court to order that the State:

- a) Grant Lysias Fleury an effective remedy, which includes carrying out a full, prompt, impartial and effective investigation within Haiti's ordinary criminal jurisdiction in order to establish the responsibility for the violations committed against Mr. Fleury and to prosecute and punish the perpetrators;
- b) Provide full reparation to Mr. Fleury and to his next-of-kin, inter alia the payment of just compensation;
- c) Adopt the measures necessary to prevent and punish illegal and arbitrary detentions in Haiti, pursuant to its internal legislation and to Article 7 of the American Convention
- d) Adopt the measures necessary to ensure the effective prohibition of torture and cruel, inhuman and degrading punishment or treatment in the Haitian domestic legal framework, and that the right under national law and Article 5 of the American Convention is given effect generally in Haiti.
- e) Specifically adopt such measures as may be necessary to prevent and punish future violations of the nature committed against Mr. Fleury, including training for members of Haitian security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, arbitrary arrest and detention, and undertaking appropriate reforms to the procedures for

investigating and prosecuting human rights violations committed by members of Haiti's security forces to ensure that they are thorough, prompt and impartial.

In this respect, the IACHR asks the Court to require that the State review and strengthen its accountability mechanisms such as the Office of the Inspector General of the Haitian National Police (hereinafter "the HNP") and the Parquet du Tribunal Civil as well as improved coordination between the State's judicial officials and judiciary in order to ensure effective and independent investigations of human rights abuses committed by members of the Haitian security forces.

- f) Adopt measures to prevent the repetition of acts similar to those contained in this application. Specifically, to adopt, as a matter of priority, a policy to protect and prevent violence against human rights defenders, and to adopt a public policy to fight against impunity for human rights violations against human rights defenders.

III. REPRESENTATION

7. In accordance with the provisions of articles 23 and 34 of the amended Rules of Court, the Commission has appointed Commissioner Sir Clare Kamau Roberts and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Mario López Garelli and Karla I. Quintana Osuna have been appointed to serve as legal advisers.

IV. JURISDICTION OF THE COURT

8. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases submitted to it regarding interpretation and application of the provisions of this Convention, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. The Court has jurisdiction to take up the present case. The Haitian State ratified the American Convention on September 27, 1977, and accepted the Court's binding jurisdiction on March 20, 1998.

V. PROCESS BEFORE THE INTER-AMERICAN COMMISSION

10. On October 11, 2002, the Commission received the complaint sent by the petitioner, which also included a request for precautionary measures, which were issued by the Commission on October 15, 2002.

11. From October 11, 2002, to March 10, 2003, the IACHR received additional information from the petitioner related to the State's failure to carry out the precautionary measures that were granted. During this process the Commission requested information from the State with respect to the precautionary measures. The State acknowledged receipt of the communications from the Commission. On March 13, 2003, the Commission presented a request for provisional measures to the Inter-American Court with respect to the Haitian State regarding Mr. Lysias Fleury, alleging inter alia that the State failed to carry out the precautionary measures granted by the IACHR. On March 18, 2003, the President of the Inter-American Court decided to order the State to adopt, without delay, the urgent measures needed to protect the petitioner's life and personal integrity. On June 25, 2003, the Commission received notification from the Court, dated June 20, 2003, of the order issued June 7 with respect to the provisional measures issued on behalf of the petitioner, which confirmed in its entirety the March 18, 2003 order by the Court's President.

12. The Court reiterated the aforementioned resolutions by way of its December 2, 2003 Resolution, in which it stated that:

Should the [lack of information by the State] persist, [it would] inform the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court of Human Rights, [about the] State's failure to comply with the decisions of the Inter-American Court of Human Rights.

13. After the urgent measures were issued by the President of the Inter-American Court, the Commission received additional information from the petitioner and the State as well as communications from the Court regarding the urgent measures, and, more recently, the provisional measures.

14. With respect to the petition itself, independent of the process of relating to the precautionary, urgent, and provisional measures, the Commission acknowledged receipt of the petition sent by Mr. Fleury, and proceeded to process the petition under number P 4692/02 on March 10, 2003. The IACHR transmitted to the Haitian State the pertinent parts of the petition and the subsequent communications from the petitioner, giving the government a period of two months from the date of transmittal to submit information.

15. On May 6, 2003, the Commission received a letter dated March 21, 2003, sent by the Ministry of Foreign Affairs of Haiti, which acknowledged receipt of the communication sent by the Commission on March 10, 2003, and, as mentioned in the communication of March 12, 2003, it was indicated that a meeting was held at the Ministry of Foreign Affairs between the petitioner and Mr. Gaspard, a Ministry official, to discuss implementation of the precautionary measures. The State also indicated that the Ministry of Foreign Affairs wanted to organize a working meeting among representatives of the National Police, the Ministry of Justice, and the Ministry of Interior, in order to ensure better monitoring of the matters pending between the Commission and the Government of Haiti.

16. On February 26, 2004, the Commission approved Admissibility Report No. 20/04³ in which it concluded that it had competence over the representatives' claims and decided, based on the arguments of fact and law and without prejudice over the merits, to declare as admissible the claim presented by the petitioners concerning the alleged violation of Articles 5, 7, 8, 11, 25 y 1(1) of the American Convention. On June 3, 2004, the IACHR notified the parties of the adoption of its finding of admissibility and, in accordance with what has been established by article 38.1 of the Rules of the Inter-American Commission of Human Rights (hereinafter "the Rules of the Commission" or "the Rules"), asked the petitioners to present the arguments on the merits they deemed relevant within a time period of two months. It took this opportunity to offer the parties assistance, as per what is stated in Article 38.2 of its Rules and Article 48.1(f) of the American Convention, in exploring the possibility of reaching an agreement by means of a friendly settlement.

17. On August 28, 2007, the IACHR received additional information from the petitioners relating to this case. On September 12, 2007, this was transmitted to the State with a request for observations within one month, and to provide specific documentation relating to the case.

18. On September 15, 2007, the IACHR received a communication from Mr. Fleury requesting to add the International Human Rights Clinic at American University Washington College of Law as his legal representatives in this case. On September 20, 2007, the Inter-American Commission informed Mr. Fleury that it was adding the Clinic as co-petitioner in his case and, on October 5, 2007, informed the State to this respect.

³ Admissibility Report 20/04. Lysias Fleury, Haiti, February 26, de 2004. Appendix 2

19. On January 18, 2008, the IACHR received a request from representatives to convene a hearing during the Inter-American Commission's 131st Period of Sessions in order to allow Mr. Fleury to present information on the merits of his case. On February 7, 2008, the IACHR informed the representatives that a hearing would be held on March 7, 2008.

20. On February 14, 2008, the Inter-American Commission received additional documents submitted by the representatives to support Mr. Fleury's allegations. On February 19, 2008, the IACHR transmitted to the State a copy of these documents and requested the State to respond with observations within one month. The Inter-American Commission did not receive a response or any additional documentation from the State before the scheduled hearing.

21. On March 7, 2008, the IACHR held a hearing in this case in which both parties were present and made submissions. The representatives presented oral testimony on the merits of the case, including testimony from Mr. Fleury and Father Jan Hanssens, Director of the Justice and Peace Commission.

22. By means of a November 25, 2008 Resolution, the Inter-American Court concluded that provisional measures in "in favor of Lysias Fleury, have become ineffective because he has left Haiti, without detriment to whatsoever the Inter-American Commission may consider pertinent while processing his case." That is, since March 18, 2003 and up to November 25, 2008, provisional measures ordered by the Inter-American Court were in force on behalf of Mr. Fleury. The measures were adopted as an urgent measure to protect Mr. Fleury's life and personal integrity.

23. On March 16, 2009, at its 134th regular session, the Commission adopted Report on Merits No. 06/09 in this case, developed in compliance with Article 50 of the American Convention. In that report, it concluded that:

Based on the foregoing considerations of fact and law and the State's admission of responsibility for violations of Mr. Fleury's rights, [the Inter-American Commission] concludes that the State is responsible for violating Mr. Fleury's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the American Convention, in conjunction with violations of Article 1(1) of that instrument, because of the assault perpetrated upon him by State agents and its effects on his physical, moral and mental integrity. The Inter-American Commission finds that this immediate family has also been the victim of violations of their personal integrity due to the lack of investigation or prosecution and the severe effects this has had on their lives.

The State is also responsible for violating Mr. Fleury's right to personal liberty under Article 7(2), 7(3), 7(4), and 7(5) of the American Convention, in conjunction with violations of Article 1(1) thereof, because of his unlawful detention and arrest without charges.

Finally, the IACHR concludes that the State is responsible for violating Mr. Fleury's rights to a fair trial and to judicial protection under Articles 8 and 25 of the American Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Fleury and to prosecute and sanction those responsible.

24. In the report on the merits, the Commission extended the following recommendations to Haiti:

1. Grant Lysias Fleury an effective remedy, which includes carrying out a full, prompt, impartial and effective investigation within the Haitian ordinary criminal jurisdiction in order to establish the responsibility for the violations committed against Mr. Fleury and to prosecute and punish the perpetrators;

2. Provide full reparation to Mr. Fleury and to his next-of-kin, inter alia the payment of just compensation;

3. Adopt the measures necessary to prevent and punish illegal and arbitrary detentions in Haiti, pursuant to its internal legislation in Haiti, pursuant to its internal legislation and to Article 7 of the American Convention.

4. Adopt the measures necessary to ensure the effective prohibition of torture and cruel, inhuman and degrading punishment or treatment in the Haitian domestic legal framework, and that the right under national law and Article 5 of the American Convention is given effect generally in Haiti

5. Specifically, adopt such measures as may be necessary to prevent future violations of the nature committed against Mr. Fleury, including training for members of Haitian security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, arbitrary arrest and detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting human rights violations committed by members of Haiti's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings of [...] the report. In this respect, the IACHR specifically recommends that the State review and strengthen its accountability mechanisms such as the Office of the Inspector General of the HNP and the Parquet du Tribunal Civil as well as improved coordination between the State's judicial officials and judiciary in order to ensure effective and independent investigations of human rights abuses committed by members of the Haitian security forces.

6. Adopt measures to prevent the repetition of acts similar to those contained in the [...] report, and specifically: to adopt, as a matter of priority, a policy to protect and prevent violence against human rights defenders; and to, adopt a public policy to fight against impunity for human rights violations against human rights defenders.

25. On May 5, 2009, the Commission forwarded its Merits Report to the State and gave it two months to adopt its recommendations. That same day, as per Article 43.3 of its Rules, the Commission notified the representatives of the victims of the adoption of the Merits Report and its transmission to the State. Similarly, it asked the State to state an opinion with respect to the submission of the case to the Inter-American Court.

26. On May 19, 2009, the IACHR forwarded the representatives pertinent parts of the Merits Report. On May 27, 2009, the representatives requested an extension to present their observations, which was granted by the Commission for June 12, 2009.

On May 12, 2009, the representatives submitted a letter in which they expressed their desire to submit this case to the Inter-American Court.

27. On July 17, 2009, the Commission decided to submit the present case to the jurisdiction of the Inter-American Court, in accordance with Articles 51.1 of the Convention and 44 of its Rules, given that the Haitian State did not present any information regarding the fulfillment of the recommendations put forth in the Merits Report.

VI. CONSIDERATIONS OF FACT

29. The Commission has established the facts argued in this case according to the adversarial principle, the documentary evidence that was transferred to the State in a timely manner without objections and the criteria established by the Tribunal relating to burden of proof. To this respect, the Commission notes that with the exception of the presentation the State made at the public hearing before the IACHR, Haiti has not presented evidence related to the merits of the present case.

30. In the first place, the IACHR considers the following facts as uncontested by the State: participation of police agents in the unlawful arrest and detention of Mr. Fleury; his ill treatment while in HNP custody; and the failure to hold perpetrators criminally liable for their actions. These facts are duly and sufficiently demonstrated by various pieces of testimonial and documentary evidence collected during the processing of the instant case before the IACHR.

Particularly, the State admits that it has not brought to justice the perpetrators of the acts against Mr. Fleury. Therefore, in application of Article 39 of its Rules of Procedure, the following section of the analysis will be dedicated to reviewing the other allegations of fact made by the petitioners --and not contested by the State-- in order to establish the findings of fact in this case.

1. Acts perpetrated against Mr. Fleury by State agents

31. Lysias Fleury was arrested at home without a judicial warrant on June 24, 2002, at approximately 7:00 p.m. Two uniformed police officers and three other men allegedly carrying arms arrived at his home while he was with his wife and children and claimed that they had been informed that Mr. Fleury had bought a stolen water pump. Lysias Fleury denied the accusation and invited the officers to search his home to identify the item. However, the police officers decided to take him to the police station. According to the petitioners, Mr. Fleury identified himself as an attorney and showed the police his identification card from his employer, the Episcopalian Justice and Peace Commission, which prompted the police officers to threaten him, specifically relating such threats to his work as a human rights defender. One of the armed civilians grabbed Lysias Fleury by the throat and forced him at gunpoint to board the back of a pick-up truck. During the arrest, Mr. Fleury was allegedly pistol-whipped by the police and sustained repeated blows to his head. This treatment lasted until Mr. Fleury arrived at the police station.⁴

32. Mr. Fleury was taken to the Bon Repos police station in Port-au-Prince, where he was detained for 17 hours. There, additional police officers mistreated him, causing serious physical injuries.⁵ More particularly, Mr. Fleury was forced to clean the excrement from his cell using his bare hands, while being held at the point of a gun. Mr. Fleury alleges that one of the officers said that "the one who claims he is a protector of human rights will be the one to clean the cell." While he was being abused, one of the police officers stated that had he encountered Mr. Fleury in the street, he would have killed him because he was a human rights activist.⁶

33. On June 25, 2002 Mr. Fleury was beaten on the head and was also clubbed and kicked by police officers at the Bon Repos station. The bruises he suffered were mostly on his back and leg,⁷ and he sustained bruises all over his body.⁸ In total, Mr. Fleury sustained 64 blows to the body and 15 slaps on both sides of the head at the same time;⁹ his left arm and leg were broken and his eardrum was perforated due to the beating. The victim identified Thimoté Dégranges as one of the officers who participated in the beating and his arrest.¹⁰ Mr. Fleury was also forced to sign a statement indicating that he was not mistreated by the police, but by members of the Council of Administration of Communal Sections (CASEC - *Conseil d'Administration des Sections Communales*). The officers allegedly offered to release him in exchange for money, H\$3000 or 15,000 Haitian gourdes.

⁴ Testimony of Lysias Fleury, June 24-25, 2002 and Testimony of Rose Lilienne Benoit on the acts against Lysias Fleury (hereinafter "Testimony of Rose Lilienne Benoit"), Annex 1.

⁵ For a more detailed description of the police officers and civilian who are alleged to have participated in the beatings, see Testimony of Lysias Fleury June 24-25, 2002. Annex 1.

⁶ Testimony of Lysias Fleury June 24-25, 2002. Annex 1.

⁷ IACHR Hearing N° 10, Case 12 459 - Lysias Fleury, March 7, 2008 (hereinafter "IACHR Hearing N° 10), Annex 2

⁸ Testimony of Lysias Fleury June 24-25, 2002. Annex 1; Supplementary Affidavit to the Facts in the Case of Lysias Fleury No. 12 459 (hereinafter « Supplementary Affidavit »). Annex 1.

⁹ Testimony of Lysias Fleury June 24-25, 2002; Affidavit of Salomon Senexant dated July 10, 2007. Annex 1

¹⁰ Testimony of Lysias Fleury June 24-25, 2002; Testimony of Dormeus Eddy; Affidavit of Salomon Senexant, Annex 1; Copy of Medical Certificate dated August 2, 2002 which states: "diagnostic provisoire: fracture fermée cubitus gauche; condition associée: otalgie, surdit  droite", Annex 3; Fleury indicates that D granges is the officer who broke his arm and perforated his ear; in addition the testimony as a whole suggests that Thimot  D granges was responsible for these specific injuries.

34. Mr. Fleury was released around 12:00 p.m. on June 25, 2002, at which time members of the Justice and Peace Commission, along with his wife, arrived to pick him up from the Bon Repos police station. They found him disfigured, with his arm inflamed, and barely able to stand. His wife and members of the Justice and Peace Commission entered the police station with Lysias Fleury, at which time he gave an account of the treatment he endured to the police officers in the presence of these witnesses.¹¹

35. Immediately after leaving the police station, Mr. Fleury was taken by his wife, Father Jan Hanssens, and other members of the Justice and Peace Commission to photograph the bruises on his body, and then to the State University Hospital of Haiti for a medical exam. As a result of the exam it was concluded that he had a closed fracture on his left forearm, as well as an earache and deafness in his right ear.¹² In addition, Lysias Fleury was diagnosed with an "important hematoma on his buttock and left thigh [determined to be] traumatized by aggression by an object."¹³ After his medical evaluation, Mr. Fleury was taken to the Villa Manrèse to rest and receive follow-up medical attention. Shortly thereafter, he stayed with Father Jan Hanssens for a few months.¹⁴ Lysias Fleury eventually was able to return to work. However, despite having been seen by a specialist, as of the date of the hearing on March 7, 2008 at the IACHR, Mr. Fleury continued to experience deafness in his right ear.¹⁵

2. Administrative and judicial investigation into the acts perpetrated against Mr. Fleury

36. On June 25, 2002 attorney Guerline Jean-Juste presented the Government's Deputy Commissioner a written communication requesting him to order Mr. Fleury's liberation given that he had been arrested without a warrant, which goes against the constitution.¹⁶ On August 1, 2002, Mr. Fleury presented a complaint to the Parquet du Tribunal Civil of Port-au-Prince reporting the events of June 24 and 25, 2002 and requested that the Public Ministry initiate a criminal action against the police officers of the Bon Repos police station.¹⁷ However, there was no follow-up to his complaint. On June 27, 2002, Father Jan Hanssens filed a complaint to the Inspector General of the HNP, requesting that an investigation be launched against the officers implicated in the acts of torture against Mr. Fleury.¹⁸ As of March 7, 2008, Father Hanssens had not received a response to this complaint.¹⁹

37. On February 22, 2003, Mr. Fleury met with Inspector John Prévost from the Office of the Inspector General of the HNP, where he was invited into a room in which the police who had arrested, detained and beaten him were introduced one by one as Erick Edris, Thimoté Dégranges, and Tevnord Joseph.²⁰ Mr. Fleury identified his alleged assailants in their presence. Despite the identification, the three officers were not held responsible for their actions. In a

¹¹ Testimony of Lysias Fleury June 24-25, 2002; Testimony of Rose Lilienne Benoit, Annex 1

¹² Copy of Medical Certificate dated August 2, 2002 which states: "diagnostic provisoire: fracture fermée cubitus gauche; condition associée: otalgie, surdité droite." Annex 3

¹³ Medical report dated 6/25/02. English translation. Annex 3; IACHR Hearing N° 10, Annex 2.

¹⁴ Testimony of Father Jan W. Hanssens. Annex 3

¹⁵ Testimony of Father Jan W. Hanssens. Annex 3; IACHR Hearing N° 10, Annex 2.

¹⁶ Complaint presented by attorney Guerline Jean-Juste on June 25, 2002, Annex 4.

¹⁷ Complaint from Mr. Fleury to Commissaire du Gouvernement Près le Parquet du Tribunal Civil, Annex 4.

¹⁸ Complaint from Commission Episcopale Nationale Justice et Paix to the Chief Inspector General of the HNP, Annex 4

¹⁹ IACHR Hearing N° 10, Annex 2.

²⁰ Testimony of Father Jan W. Hanssens, Annex 3; IACHR Hearing N° 10. Mr. Fleury said that Thimoté Dégranges is an officer; "Tiblan" is a civilian associated with the police; and the other three individuals implicated are: Tevnord Joseph, Erick Edris, and "Jeanty." All 5 men have been referred to as police officers and "para policiers" by Fleury (See IACHR Hearing N° 10, Case 12 459 – Lysias Fleury v. HAÏTI. 131st Regular Period of Sessions. March 7, 2008)

letter dated February 25, 2003, Mr. Fleury confirmed that one of his torturers, known as "Tiblanco,"²¹ was still acting in association with the police at Bon Repos station and that he had been informed by Inspector Prévost that no sanctions would be taken against Erick Edris and Thimoté Dégranges.²²

38. Following his detention, unidentified persons visited Mr. Fleury's neighborhood on a number of occasions asking where he was working or where he could be found, including two incidents in April 2003 and one in March 2006.²³ Mr. Fleury allegedly returned to his home in January 2004; at the time a police officer reportedly inquired with neighbors whether Mr. Fleury was back in town. Lysias Fleury returned to hiding once again, staying with priests and with a friend from January 2004 until December 2006 because he was afraid of returning home.²⁴

39. On October 1, 2007, an official from the Ministry of Foreign Affairs invited Mr. Fleury to attend a meeting to discuss his case. In this meeting, the Ministry representative informed Mr. Fleury that authorities were going to launch an investigation into the abuses perpetrated against him by members of the police force, and that he should not leave his residence after 6:00 p.m. in the evenings, as he could not be held responsible for his safety.²⁵ On October 22, 2007, after having arrived to the United States to participate in the IACHR hearing on his case, Mr. Fleury decided not return to Haiti because of the risk of danger to his life.²⁶

40. No administrative investigation was initiated or sanctions taken as a result of the complaint submitted on June 27, 2002 to the Chief Inspector General of the HNP.²⁷ The police officers in question and the civilians associated with the police who took part in the abuse against Mr. Fleury, continue to be employed by the HNP and particularly "Tiblanco," continues to work at the police station of Bon Repos.²⁸ No judicial investigation was initiated as a result of the complaint presented on August 1, 2002 to the Parquet du Tribunal Civil of Port-au-Prince, nor have the perpetrators been prosecuted and punished for their acts of abuse against Mr. Fleury.²⁹ More specifically, as of March 2008, neither Mr. Fleury nor the identified suspects had been summoned to court, nor had an investigating judge been assigned to the case, as required under Haitian law.³⁰

VII. CONSIDERATIONS OF LAW

1. The right to personal liberty

41. Article 7 of the American Convention recognizes and guarantees the right to personal liberty and includes the following requirements:

²¹ See IACHR Hearing N° 10, Annex 2; Affidavit of Salomon Senexant, Annex 1

²² Letter from Fleury to CIDH. February 25, 2003. Annex 5

²³ Testimony of Lysias Fleury. June 24-25, 2002; Affidavit of Rose Lilienne Benoit Fleury; Testimony of Father Jan Hanssens, Annex 1

²⁴ Testimony of Lysias Fleury. June 24-25, 2002; Testimony of Father Jan Hanssens. Annex 1

²⁵ IACHR Hearing N° 10, Annex 2

²⁶ Email dated October 22, 2007 from Lysias Fleury to the Commission. Annex 5; See also IACHR Hearing N° 10, Annex 2

²⁷ While the State has alleged that officers were relocated to another area of the HNP during the Hearing N° 10, this information has not been substantiated with evidence and has been contested by the Petitioners, particularly Mr. Fleury who has witnessed at least one of his perpetrators at the Bon Repos police station and another employed at the Inspector General's office of the HNP

²⁸ See IACHR Hearing N° 10, Annex 2; Affidavit from Salomon Senexant, Annex 1

²⁹ IACHR Hearing N° 10, Annex 2

³⁰ IACHR Hearing N° 10, Annex 2; See also Article 50 and 51 of the Criminal Procedure Code of Haiti, 31 July 1835, Annex 7

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. No one shall be subject to arbitrary arrest or imprisonment.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

42. Article 7 of the American Convention protects the fundamental human right to exercise personal liberty without arbitrary interference from the State,³¹ including protection against unlawful arrests. In this connection, paragraphs 7(2) and 7(3) make clear that any deprivation of liberty must be in strict accordance with procedures established by law.³² Both the IACHR and the Inter-American Court have previously emphasized that no one may be deprived of liberty except in cases or circumstances expressly provided by law, and that any deprivation of liberty must strictly adhere to the procedures defined hereunder.³³ This includes ensuring against arbitrary arrest and detention by strictly regulating the grounds and procedures for arrest and detention under law.³⁴ It also includes ensuring prompt and effective judicial oversight of instances of detention, in order to protect the well-being of detainees at a time when they are wholly within the control of the state and therefore particularly vulnerable to abuses of authority.³⁵

43. Accordingly, the Commission must determine, (1) whether Mr. Fleury's arrest and detention were in strict accordance with procedures established by law; (2) whether the arrest and imprisonment were arbitrary; (3) whether Mr. Fleury was informed of the reasons for his detention and whether he was promptly notified of the charge(s) against him; and finally, (4) whether Mr. Fleury was brought promptly before a judge or other officer authorized by law to exercise judicial power.

44. In this respect, the Constitution of Haiti protects the right to individual liberty and clearly states the following:³⁶

³¹ See, e.g., Case 11.543. Report N° 1/98, Rolando and Atanasio Hernandez Hernandez, Mexico. Annual Report of the IACHR 1998, para. 51; Case 12.418, Report N° 92/05. Michael Gayle v. Jamaica. Annual Report of the IACHR 2005, para. 73, Annex 6.

³² See Case 10.832, Report N° 35/96, Luis Lizardo Cabrera. Dominican Republic. Annual Report of the IACHR 1998, para. 65 and 66, Annex 6.

³³ See, e.g., IACHR. Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II 111 doc. 21 rev., 6 April 2001. Chapter VII, para. 37 [hereinafter IACHR Report on Guatemala (2001)], citing Case 11.245, Report N° 12/96, Jorge Alberto Giménez (Argentina), Annual Report of the IACHR 1995; Case 10.832. Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para. 65 and 66, Annex 6; I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997. Ser. C N° 35, para. 43, Annex 6.

³⁴ The Inter-American Court has indicated, for example, that unless it is demonstrated that an individual was apprehended *in flagrante delicto*, his or her arrest must be shown to have been effected with a warrant issued by a competent judicial authority. Suárez Rosero Case, *supra*, para. 44.

³⁵ Case 11.205. Report N° 2/97. Jorge Luis Bronstein and others (Argentina), Annual Report of the IACHR 1997, para. 11. See also, Case 12.069. Report N° 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paras. 37, 38, Annex 6.

³⁶ See Constitution of Haiti, available at: <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>. Annex

Article 24.1

No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes

Article 24.2

Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official

Article 24.3

For such an order to be carried out, the following requirements must be met:

- a. It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged
- b. Legal notice must be given and a copy of the order must be left with the accused at the time of its execution;
- c. The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment;
- d. Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.
- e. Responsibility for an offense is personal, and no one may be arrested in the place of another.

Article 25

Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden

Article 26

No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision;

45. In this case, police officers from the Haitian National Police proceeded to arrest Mr. Fleury without presenting him with an arrest warrant or stating the charges, even though they did not find him in the act of committing a crime (*flagrante delicto*) as prescribed by the Haitian Constitution. Further, the arrest occurred at 7:00 p.m., outside of the designated time frame stipulated by the Constitution. In this connection, the arrest and imprisonment of Mr. Fleury was illegal and arbitrary in that none of the stipulated legal procedures were respected by police authorities. Further, the officers exercised unnecessary, abusive force against Mr. Fleury at the time of arrest, without justification, in clear violation of Article 25 of the Haitian Constitution governing arrest procedures. At the time of arrest, the officers indicated that they had received information that Mr. Fleury had bought a stolen water pump which they were trying to locate; however, he was not promptly notified of the charge(s) against him. Upon bringing him into custody, the officers did not take any measures to inform Mr. Fleury of charges against him. Based on these facts, the Commission considers that Mr. Fleury was arrested and detained in violation of Article 7(2), 7(3) and 7(4) of the American Convention.

46. As to whether Mr. Fleury was brought promptly before a judge or other officer authorized by law to exercise judicial power, Haitian law stipulates that no one may be kept under arrest more than 48 hours unless he has appeared before a judge asked to rule on the

legality of the arrest and the judge has confirmed the arrest by a well-founded decision. In this case, Mr. Fleury was detained for 17 hours in police custody and the evidence available shows that no attempt was made by relevant police or judicial authorities to bring him promptly before a judge or other officer authorized by law to exercise judicial power. In this connection, it is necessary to consider the individual circumstances of Mr. Fleury's case. In particular, it must be noted that Mr. Fleury was arbitrarily arrested and detained by State agents, in violation of Haitian law and the American Convention. Further, he had not been informed of the charges against him, neither at the time of his arrest, nor upon bringing him to the police station. The particular circumstances of Mr. Fleury's arrest and detention, which was characterized by multiple incidents of the use of force against the victim in this case, including physical beating and kicking without justification or provocation, which caused him serious physical injuries. Given the circumstances of Mr. Fleury's arrest and detention, the State failed to respect Mr. Fleury's right to be brought promptly before a judge pursuant to Article 7(5) of the American Convention.

47. Therefore, Mr. Fleury's detention was carried out without a warrant issued by a competent authority and without fulfillment of the procedures set forth in domestic law. Consequently, the Inter-American Commission concludes that the State is responsible for the violation of Mr. Fleury's right to personal liberty enshrined in Article 7(2), 7(3), 7(4) and 7(5) of the American Convention, in conjunction with Article 1(1) of the same.

2. The right to humane treatment

48. The American Convention establishes in the first two paragraphs of Article 5 that "every person has the right to have his physical, mental, and moral integrity respected"; that "no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment" and that "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".

49. In this connection, Article 2 of Inter-American Convention to Prevent and Punish Torture defines torture as "any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose". The treaty establishes that "torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish". Haiti signed this convention on June 13, 1986, but has not yet ratified this instrument; therefore, the State's duty is limited to an obligation to refrain from acting so as to defeat its objective.

50. The European Commission of Human Rights has affirmed that "inhuman treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable" and that "treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience."³⁷ The Inter-American Court has similarly specified that the degrading aspect of treatment is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking the victim's physical and moral resistance.³⁸

³⁷ See Case 10 832, Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para. 77, fn. 13 citing Yearbook of the European Convention on Human Rights, The Greek Case, Chapter 4, page 186 1969, Annex 6.

³⁸ See I/A Court H.R. *Loayza Tamayo Case*, Judgment of September 19, 1997, Series C No 33. See I/A Court H.R. *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No 103; See Case 10 832, Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para. 77, fn. 13 citing Yearbook of the European Convention on Human Rights, The Greek Case, Chapter 4, page 186 1969; Case 12 418, Report N° 92/05, Michael Gayle v. Jamaica, Annual Report of the IACHR 2005, para. 61, Annex 6.

51. For its part, the European Court of Human Rights has indicated that a treatment must attain a minimum level of severity in order to be considered inhuman or degrading and, in the extreme, torture. The evaluation of this minimum level is relative and depends on the circumstances of each case, such as the duration of the treatment, and its physical and mental effects.³⁹

52. With regard to the conceptual difference between the term "torture" and "inhuman or degrading treatment," the European Commission on Human Rights has indicated that the term "torture" includes "inhuman treatment," that the concept of "inhuman treatment" includes that of "degrading treatment,"⁴⁰ and that torture is "inhuman treatment" with a purpose, which is to obtain information or confessions, or to inflict punishment, and is generally an aggravated form of inhuman treatment."⁴¹

53. It is important to note that the nature of the prohibition against torture and cruel, inhuman and degrading treatment is absolute and well established in treaty and international customary law, further constituting a *ius cogens* or peremptory norm from which no derogation is permitted due to its fundamental nature. On this point, the International Criminal Tribunal for the Former Yugoslavia (ICTY) stated in *Prosecutor v. Furundžija* that the prohibition against torture is a norm of *ius cogens* and held that every State is entitled "to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction."⁴² For its part, the Inter-American Court has concluded that there is a universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment, independent of any codification or declaration, since all these practices constitute a violation of peremptory norms of international law.⁴³ Specifically, the Inter-American Court has held that:

[] torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The prohibition of torture and cruel, inhuman or degrading punishment or treatment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes.⁴⁴

54. Recent jurisprudence from the Inter-American Court further provides that the elements of the concept of torture established in Article 2 of the Inter-American Convention against Torture include methods to obliterate the personality of the victim in order to attain certain objectives, such as obtaining information from a person; or intimidation or punishment, which may be inflicted through physical violence or through acts that produce severe mental or moral suffering in the victim.⁴⁵

55. When analyzing allegations of violations of Article 5 of the American Convention in the context of persons in detention, the Inter-American Court has held that states are in a

³⁹ See I/A Court H.R. *Caesar v. Trinidad and Tobago*, Judgment of March 11, 2005, Series C No 123, para 67.

⁴⁰ See Case 10.832, Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para 79, fn. 15, citing Yearbook of the European Convention on Human Rights No. 12, year 1969, page 186 Greek Case, Annex 6.

⁴¹ See Case 10.832, Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para. 79, fn. 16, citing Yearbook of the European Convention on Human Rights No. 12, year 1969, page 186 Greek Case, Annex 6.

⁴² *Prosecutor v. Furundžija*, International Criminal Tribunal for the Former Yugoslavia, 2002, 121 *International Law Reports* 213 (2002).

⁴³ See I/A Court H.R. *Caesar v. Trinidad and Tobago*, Judgment of 11 March 2005, Series C No 123, para 70.

⁴⁴ See, e.g., I/A Court H.R., *Case of Caesar v. Trinidad and Tobago*, Series C No. para 59, citing *Case of Lori Berenson-Mejia*, *supra* note 10, para 100; *Case of De la Cruz-Flores*, Judgment of November 18, 2004, Series C No 115, para 125; and *Case of Tibi*, Judgment of September 7, 2004, Series C No 114, para 143.

⁴⁵ I/A Court H.R., *Case of Maritza Urrutia*, Judgment of 27 November 2003, Series C No 103, para 91.

special position of guarantor; given that at all times penitentiary authorities exercise firm control and authority over persons under their custody. According to the Court, this creates a special interrelationship between persons deprived of their liberty and the state, characterized by the high degree of control that the state exercises in regulating the rights and obligations of detainees and the corresponding inability of detainees to satisfy for themselves numerous basic necessities that are essential for the maintenance of a dignified life.⁴⁶ The Inter-American Court has also acknowledged that in light of this special relationship of subjugation between detainees and the state, the state must assume a series of particular responsibilities and take diverse initiatives in order to guarantee to the detainees conditions necessary to maintain their dignity and to ensure the effective enjoyment of rights that cannot be restricted under any circumstances or whose restriction is not derived necessarily from the deprivation of liberty and therefore is not permissible, including the right to life, the right to personal integrity, and the right to due process.⁴⁷

56. The IACHR has held that states' obligations under Article 5 of the American Convention relating to persons in detention should be considered in light of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which are based on general consensus and "set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions".⁴⁸ In past cases the IACHR has made specific reference⁴⁹ to the Rules as prescribing basic benchmarks against which to evaluate whether the treatment of prisoners satisfies the standards of humanity under the inter-American instruments in areas including punishment and strictly prohibiting corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments.⁵⁰

57. The obligation of States to protect persons under their jurisdiction from violations of the right to humane treatment is particularly important in the case of persons who are imprisoned or otherwise detained as such persons are wholly dependent upon the State for their living conditions and personal security. In this respect, and in light of the serious consequences for detainees of excessive or inappropriate uses of force or other threats to their security, the IACHR has held that states are subject to a particularly strict duty to conduct proper and thorough investigation of allegations that detainees have been subjected to mistreatment and, if those allegations are determined to be well-founded, to take appropriate remedial measures.⁵¹ Further, with respect to the issue of security, both the IACHR and the Inter-American Court have emphasized that states are obliged to ensure that persons held in detention are protected from violence and other threats to their personal security that may be posed. The Tribunal has stated in respect of persons in detention that "[a]ny use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on the dignity of the person [...] in violation of Article 5 of the American Convention."⁵² Further, the Inter-American Court has indicated that in order to effectively guarantee the rights under the American Convention, a

⁴⁶ See, e.g., I/A Court H.R. *Case of the Gomez Paquiyauri Brothers*, Ser. C No. para. 98; I/A Court H.R. *Case of Children's Rehabilitation v. Paraguay*, Judgment of September 2, 2004, Ser. C No. 112, para. 152; I/A Court H.R. *Case of the Urso Blanco Prison*, Ser. C No. Consideration 6.

⁴⁷ See, e.g., I/A Court H.R. *Children's Rehabilitation v. Paraguay*, Judgment of September 2, 2004, Ser. C No. 112, paras. 153-155.

⁴⁸ See Standard Minimum Rules for the Treatment of Prisoners, (hereinafter, "Rules") adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); para. 1, Annex B.

⁴⁹ See, e.g., Case 11 743, Report N° 38/00, Rudolph Baptiste (Grenada), Annual Report of the IACHR (2000), paras. 136 and following. See also I/A Court H.R., Hilaire, *Constantine and Benjamin et al.* Case, Judgment of 21 June 2002, Series C No. 94, Separate Concurring Opinion of Judge Sergio García Ramírez, para. 19, Annex 6.

⁵⁰ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 27-34.

⁵¹ See Case 12 069, Report N° 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paras. 38, Annex 6.

⁵² I/A Court H.R. *Loayza Tamayo Case*, Judgment of September 17, 1997, Ser. C No. 3, para. 57.

state party must protect all persons under its jurisdiction not only in relation to the power of the State but also in relation to the actions of third parties, including --in the case of detainees-- violations committed by other detainees.⁵³

58. In the present application, the Commission determines whether the actions against Mr. Fleury constitute torture and/or cruel, inhuman and degrading treatment, by evaluating whether (i) the treatment deliberately caused severe mental or psychological suffering, which, given the particular situation; and (ii) the treatment or punishment involved severe humiliation in front of others or he was compelled to act against his wishes or conscience. Further, the Commission should consider whether the treatment was characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance. Consistent with the view of the European Court of Human Rights, the Commission considers that such classification should be done on a case-by-case basis, taking into account the particularities thereof, the duration of the suffering, the physical and mental effects on each specific victim, and the circumstances of the victim.⁵⁴

59. As established in the section on the facts of this case, Mr. Fleury was subjected to several acts of abuse while he was in the custody of State agents on June 24 and 25. These included being grabbed by the throat and forced to board the back of a pick-up truck by police officers and civilians associated with the HNP, and being pistol-whipped by the police and sustaining repeated blows to the head while he was in custody. This treatment continued during the drive from the place of arrest to the police station, during which time the officers had their guns pointed at him.

60. It is also established in this case that, on the morning of June 25, 2002, Mr. Fleury was beaten on the head, clubbed and kicked, with each blow given to knock him down, totaling approximately 64 blows with a club and 15 slaps on both sides of his face. After the beating, Mr. Fleury was disfigured, his arm was swollen, and he could barely stand up. Mr. Fleury suffered a broken arm and damages to his right eardrum, which caused an earache and deafness in his right ear; he was diagnosed with an "significant hematoma on his buttock and left thigh that was determined to be traumatized by aggression by an object." Lysias Fleury was detained by his captors for a total of 17 hours.

61. The facts also show that Mr. Fleury endured particularly harsh treatment by State agents due to his position as a human rights defender. One of the police officers is quoted as saying that if the officer found him in the street he would have killed Lysias Fleury for his human rights work. For that same reason, the victim in this case was forced to clean excrement from the cell with his bare hands.

62. Consistent with the provisions in the American Convention, the above related acts committed against Mr. Fleury meet the criteria of torture and cruel, inhuman and degrading treatment.

63. First, the Commission considers that the acts were intentional, as the perpetrators employed violence against Mr. Fleury, when he was grabbed by the throat during his arrest and forced to board the police truck; when he was forced to clean the excrement from his cell under the point of a gun; when he was clubbed and kicked 64 times all over his body and when he sustained 15 "gifles marassa"; and finally, when he was forced to sign a statement absolving the perpetrators of responsibility.

⁵³ See, e.g. I/A Court H R , *Case of the Penitentiary in Mendoza v Argentina*, Provisional Measures Order of November 22, 2004. "Considerations, para 12 I/A Court H R . *Villagran Morales. et al. v. Guatemala*. Judgment of November 19, 1999. Ser C No 63

⁵⁴ See Case 10 832. Report N° 35/96. *Luis Lizardo Cabrera v. Dominican Republic*. Annual Report of the IACHR 1998. para 83; see also para 78 which provides that: "On the same subject, the European Human Rights Court has indicated that for treatment to be "inhuman or degrading" it has to attain a minimum level of severity. The evaluation of this "minimum level is relative and depends on the circumstances in each case, such as the duration of the treatment, its physical and mental effects, and, in some cases, the sex, age, and health of the victim." Annex 6

64. Second, the Commission considers that these acts inflicted physical and mental pain on Mr. Fleury, as evidenced by the photographs depicting the bruises on his body and the medical certificate diagnosing his injuries. Mr. Fleury also testified that being forced to pick up excrement with his bare hands had a "profound traumatizing" effect on him.

65. Third, the Commission considers that these acts were inflicted on Fleury as a personal punishment. Mr. Fleury indicates that while he was being abused, one of the police officers stated that had he encountered Mr. Fleury in the street, he would have ended his life because Fleury is a human rights activist. Also, according to Mr. Fleury's testimony, the police officers specifically selected him for the degrading treatment when they said: "he who claims to be the human rights activist is the one who must clean the cell."

66. Fourth, the acts were perpetrated by state agents, namely two police officers identified by Fleury and additional officers at the Bon Repos police station who instigated, induced, and/or directly committed torture and failed to prevent these acts.

67. Finally, Mr. Fleury's treatment was degrading because he was severely humiliated in front of others, as evidenced by the testimony of his cell mate, Eddy Dormeus, who indicated that Mr. Fleury started to cry when he was forced to clean the cell in the presence of his cell mates and the police officers. Lastly, the actions of the State agents illustrate a lack of respect for Mr. Fleury's inherent dignity, also protected under Article 5(2) of the Convention.

68. In this connection, the Commission considers it pertinent to note the impact of the arrest, detention and the acts of torture and cruel, inhuman and degrading treatment against Mr. Fleury on his immediate family. The facts show that Mr. Fleury's wife and two children witnessed his arrest.⁵⁵ Mrs. Fleury went to the Bon Repos police station that same evening and waited for her husband but was turned away. She returned the next morning, and met him upon his release from detention. She witnessed his injuries and accompanied him to the hospital to seek treatment. Immediately following his release, Mrs. Fleury and her children left Port-au-Prince in fear for their security and stayed in the town of Les Cayes until the start of the school year. Mrs. Fleury testified that the events of June 24 and 25 against her husband provoked fear and anxiety in her and her children.⁵⁶ The fear of being pursued by their aggressors led the family to go into hiding and forced them to be separated for long periods of time.⁵⁷

69. The facts and the evidence in the case demonstrate the anguish and fear experienced by Mr. Fleury's family having witnessed the acts of abuse by State agents. Further, the family members were forced to live separately for an extended period of time due to fear of reprisals from the perpetrators. Based on these facts and the evidence available to it, the Inter-American Commission considers that Mr. Fleury's family members were also victims of the actions by State agents. The Inter-American Commission finds that Mr. Fleury's wife and children suffered serious distress, fear and anxiety thereby violating their right to respect for physical, mental and moral integrity protected under Article 5 of the American Convention. Accordingly, the IACHR finds that there is sufficient evidence to show that Mr. Fleury's wife and children are also victims of a violation of Article 5 of the American Convention.

70. There is no dispute between the parties with respect to the participation of State agents in the acts of torture and cruel, inhuman and degrading treatment of Mr. Fleury while in HNP custody. The Inter-American Court has previously held that, unlike domestic criminal law, it is not necessary to determine the perpetrator's culpability or intentionality in order to establish that a right under the Convention has been violated, since "the sole requirement is to

⁵⁵ See Testimony of Rose Lilienne Benoit Fleury; See also Testimony of Father Jan Hanssens. Annex 1

⁵⁶ *Ibid.*

⁵⁷ See also Testimony of Father Jan Hanssens. Annex 1

demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention."⁵⁸

71. In the instant case, the State is responsible for the actions of State agents, as well as for the acts perpetrated by the individuals who, through its complicity, were able to carry out acts of torture and cruel, inhuman and degrading treatment against Mr. Fleury and his family in violation of his right to humane treatment.⁵⁹ Accordingly, the IACHR concludes that the State is responsible for the violation of Mr. Fleury and his family's right to respect for his physical, mental and moral integrity under Article 5(1) and their right not to be subjected to cruel, inhuman or degrading treatment under Article 5(2) of that international instrument, in conjunction with Article 1(1) of the same.

3. THE RIGHT TO FAIR TRIAL AND TO JUDICIAL PROTECTION

72. The Commission will first determine whether the State duly respected Mr. Fleury's right to judicial protection under Article 25 of the American Convention. Article 25 of the American Convention imposes on States Parties an obligation to provide everyone in their jurisdiction with access to effective mechanisms to protect them from violations of their rights, in the form of: 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 when such violations may have been committed by persons acting in the course of their official duties.

73. The Inter-American Court has determined that State Parties to the American Convention are obliged to provide effective judicial recourse to the victims of human rights violations (Article 25), recourses that should be substantiated pursuant the rules of the due process of law (Article 8.1), all within the general obligation of guaranteeing the free and full exercise of the rights recognized in the Convention for all persons subject to their jurisdiction (Article 1.1).⁶⁰ Furthermore, the Court has asserted that the main purpose of international human rights law is to protect persons against the arbitrary exercise of power by the State. In this sense, "the lack of effective domestic remedies renders the victim defenseless."⁶¹ Therefore, the absence of an effective judicial remedy to make reparations to the victims of rights protected by the Convention is a separate violation.⁶² Moreover, the Inter-American Court has repeatedly stated that the guarantee of an effective judicial remedy "constitutes one of the basic pillars, not only of the American Convention, but also the rule of law itself in a democratic society, in the terms of the Convention."⁶³

74. Under Article 25 of the American Convention, the Haitian State has the obligation to provide an effective judicial remedy against violations of the fundamental rights it contains. An effective legal remedy requires an investigation that meets the due process standards set down in Articles 8 and 25 of the American Convention. Taken together, Articles 8 and 25 create a positive obligation "to provide access to justice with guarantees of legality, independence, and impartiality, within a reasonable period of time, as well as the general obligation to provide effective judicial recourse against acts that violate fundamental rights."⁶⁴

⁵⁸ Case 11 335. IACHR Report 78/02 Guy Malary (Haiti) Annual Report of the IACHR 2002. para 51, Annex 6

⁵⁹ *Ibid.*, para 52

⁶⁰ I/A Court H R. *Case Palamara-Iribarne*, para. 163; *Case of the Moiwana Community*, para. 142; and *Case of the Serrano-Cruz Sisters*, para. 76

⁶¹ I/A Court H R. *Case of the Constitutional Court (Aguirre Roca. Rey Ferry and Revoredo Marsano vs Peru)* Series C. N° 71. Judgment of January 31, 2001, para. 89.

⁶² *Ibid*

⁶³ *Ibid*, para. 90

⁶⁴ Case 11 335. IACHR Report 78/02 Guy Malary (Haiti) Annual Report of the IACHR 2002. para 82. Annex 6

The Court refers to this Article when it finds that "those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness."⁶⁵

75. The Inter-American Court has ruled that "if the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."⁶⁶ In the instant case, acts of torture and degrading treatment against Mr. Fleury remains unpunished to date, without responsibilities established or punishment imposed, in spite of strong evidence in the possession of the State.

76. In the instant case, the facts show that not only was Mr. Fleury a victim of the State's failure to respect his rights, but that his wife and children were also victims of the Haiti's inability to provide effective recourse with respect to the violations of Mr. Fleury's fundamental rights. On this point, since the date upon which the acts, perpetrated against Mr. Fleury and his family, were committed, the State has failed to provide simple, prompt or other effective recourse to a competent court or tribunal for the protection against the arbitrary arrest and detention and acts of torture against him. In fact, the State has failed to show that an investigation by judicial authorities has ever been launched into Mr. Fleury's case. As a result, during the months and years following Mr. Fleury's detention, the family lived in fear of reprisal attacks by the perpetrators.⁶⁷ Over this period, Mr. Fleury encountered his perpetrators on numerous occasions, in certain of these instances they addressed him directly inquiring about his efforts to pursue justice against them, and on other occasions they responded with menacing gestures towards him.⁶⁸ These facts further demonstrate the failure of the State to take prompt measures to bring the perpetrators to justice, given that the key suspects in the acts of torture against Mr. Fleury were still circulating freely in the city. Accordingly, the Commission finds that the failure of the State to provide Mr. Fleury and his family with simple and prompt recourse to a competent court or tribunal to secure a remedy for the acts perpetrated against him violated the right of Mr. Fleury and his family to effective recourse as stipulated in Article 25 of the American Convention.⁶⁹

77. Based on the above factual and legal arguments, the Commission concludes that the State has breached its obligation to provide Mr. Fleury and his family with an effective recourse in accordance with the standards provided in Article 25 of the American Convention.

78. On the other hand, with respect to the right to the judicial guarantees consecrated by Article 8 of given International instrument, in the proceedings before the IACHR the representatives of the victims argued that the State had not afforded Mr. Fleury an effective recourse since it neither effectuated an full, prompt, impartial and effective investigation of the abuses committed against him nor established the responsibility of the actors involved.

79. Among the facts of this case it was established that on June 25, 2002 attorney Guerline Jean-Juste presented the Government's Deputy Commissioner a written communication requesting him to order Mr. Fleury's liberation given that he had been arrested without a warrant, unconstitutionally.⁷⁰ On June 27, 2002, Father Jan Hanssens, the Director of the Justice and Peace Commission, presented a complaint to the Inspector General of the HNP, requesting that an investigation be launched against the officers implicated in the acts of abuse

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ See Testimony of Father Jan Hanssens, Annex 1

⁶⁸ See Testimony of Lysias Fleury, June 24-25, 2002, Annex 1

⁶⁹ See Testimony of Lysias Fleury, June 24-25, 2002; see also Testimony of Rose Lilienne Benoit Fleury, Annex 1

⁷⁰ Complaint presented by attorney Guerline Jean-Juste on June 25, 2002, Annex 4

against Mr. Fleury.⁷¹ Further, on August 1, 2002, Mr. Fleury presented a complaint to the Parquet du Tribunal Civil of Port-au-Prince reporting the events of June 24 and 25, 2002 and requested that the Public Ministry initiate an investigation into the acts against him by the police officers of the Bon Repos police station.⁷² In this connection, on February 22, 2003, Mr. Fleury met with an inspector from the Office of the Inspector General of the HNP, where he was invited into a room in which the police who had tortured him were introduced one by one and Mr. Fleury identified them in their presence. Despite the identification, the inspector informed Mr. Fleury that no sanctions would be taken against the officers.⁷³

80. On October 1, 2007, an official from the Ministry of Foreign Affairs invited Mr. Fleury to attend a meeting to discuss his case. In this meeting, the Ministry representative informed Mr. Fleury that authorities were going to launch an investigation into the abuses perpetrated against him by members of the police force.

81. Despite the denunciations made by Mr. Fleury and other persons on his behalf to the competent authorities, no sanctions were taken by the HNP against the officers.⁷⁴ The police officers in question and the civilians associated with the police who took part in the abuse against Mr. Fleury continue to be employed by the HNP.⁷⁵ Finally, no criminal investigation was initiated as a result of the complaint presented to the Parquet du Tribunal Civil of Port-au-Prince; nor have the perpetrators been prosecuted and punished for their acts of abuse against Mr. Fleury.⁷⁶ More specifically, as of the filing of this application, neither Mr. Fleury nor the presumed perpetrators had been summoned to court, nor had an investigating judge been assigned to the case, as required under Haitian law.⁷⁷

82. Article 8(1) guarantees the right of every person 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. This provision specifically mentions the obligation of the States to provide judicial proceedings within a "reasonable time" to avoid undue delays that lead to deprivation or denial of justice. In order to determine what constitutes a reasonable time, the Inter-American Court has applied the concept of "global analysis of the proceeding", according to which, to determine its reasonableness, it is necessary to include the delays at the various stages of the proceedings as a whole.⁷⁸ According to the jurisprudence of the Inter-American Court of Human Rights, three elements must be taken into account in determining a reasonable time within which the trial must be conducted: a) the complexity of the matter; b) the judicial activity of the interested party and c) the behavior of the judicial authorities.⁷⁹

83. On this matter, the IACHR has held that a breach of duty to investigate does not arise merely because the investigation conducted does not lead to a satisfactory result, however, it must be demonstrated that the investigation carried out was thorough, prompt and

⁷¹ Complaint from Commission Episcopale Nationale Justice et Paix to the Chief Inspector General of the HNP, Annex 4

⁷² Complaint from Lysias Fleury to Commissaire du Gouvernement Près le Parquet du Tribunal Civil. Annex 4

⁷³ Letter from Lysias Fleury to the IACHR, February 25, 2003. Annex 5

⁷⁴ While the State has alleged that officers were relocated to another area of the HNP, during the hearing on this case before the IACHR on March 7, 2008, this information has not been substantiated with evidence and has been contested by the petitioners, particularly Mr. Fleury who has witnessed at least one of his perpetrators at the Bon Repos police station and another employed at the Inspector General's office of the HNP

⁷⁵ Letter from Mr. Fleury to the IACHR, February 25, 2003. Annex 5.

⁷⁶ IACHR Hearing N° 10. Annex 2

⁷⁷ *Ibid*

⁷⁸ I/A Court H R , *Case of 19 Comerciantes*, Judgment of July 5, 2004. Series C No 109, para. 204.

⁷⁹ *Idem*

impartial, such that any failure to produce sufficient evidence to lay criminal charges "was not the product of mechanical implementation of certain procedural formalities without the State genuinely seeking the truth."⁸⁰

84. In the present case, the State has failed to guarantee Mr. Fleury his right to a full, prompt and impartial investigation into the human rights abuses perpetrated against him or to bring the perpetrators to justice. In this respect, the State failed to initiate a criminal investigation or proceedings into the acts of torture perpetrated against Mr. Fleury, despite the fact that the victim and his representatives made several attempts to seek justice and despite the fact that Mr. Fleury identified his perpetrators to HNP authorities with the expectation that sanctions would be adopted. On this point, in the IACHR hearing on the present case in March 2008, the State indicated that a criminal investigation and proceedings had not been initiated because the complaint could not be located.⁸¹ On this point, the Commission emphasizes that the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention.⁸²

85. With respect to the behavior of judicial authorities, relevant police and judicial authorities were informed of the human rights abuses committed against Mr. Fleury but no corresponding criminal investigation or proceedings have followed. In this case, the acts of torture and cruel and degrading treatment remain in absolute impunity due to the inaction on the part of the state to initiate an investigation, proceedings and bring the perpetrators to justice.

86. Thus, in the instant case, the IACHR finds the State responsible for its failure to take steps to investigate and establish who is responsible for the acts of torture and degrading treatment against Mr. Fleury. As a state party to the American Convention, Haiti has the obligation to carry out investigations, impose punishment, and as necessary, grant reparations.⁸³ That is, States parties to the American Convention are under the obligation to organize their judicial systems so that their courts can ensure the right of each person to obtain a final decision on their rights and obligations within a reasonable time. Therefore, the elapsed period of more than seven years between the acts of torture against Mr. Fleury in June 2002 and the date of this application, without conducting an investigation exceeds the limits of reasonableness provided by Article 8(1) of the American Convention.

87. In relation to the duty of the State to protect human rights defenders, the Inter-American Commission has observed in its regional report on the Situation of Human Rights Defenders that public authorities are under an obligation to adopt the measures needed to create the conditions that make it possible for persons who so wish to freely exercise activities aimed at promoting and protecting internationally recognized human rights.⁸⁴ This obligation requires that States guarantee that they will not obstruct, in any guise, the work carried out by human rights defenders. The States must provide the utmost collaboration with the initiatives of society to promote and protect human rights, including those aimed at monitoring the conduct of public affairs at every level.

⁸⁰ Case 12 418, Report No 92/05, Michael Gayle v. Jamaica. Annual Report of the IACHR 2005, para 83 citing Case 11. 137. Report No 55/97 Juan Carlos Abella v Argentina, Annual Report of the IACHR 1997. para 412, Annex 6

⁸¹ IACHR Hearing N° 10, , Annex 2.

⁸² I/A Court H.R. *Gutiérrez Soler v. Colombia*. Judgment of September 12. 2005. (Ser. C) No 132 (2005) para 54

⁸³ Case 11 335, IACHR Report 78/02 Guy Malaré (Haiti) Annual Report of the IACHR 2002. para 93, citing Article 1(1) of the American Convention. Annex 6

⁸⁴ IACHR Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser L/V/II 124, Doc 5 rev 1. March 7. 2006 para 31. Annex 6.

88. In this connection, the Inter-American Commission has established that the promotion and protection of human rights involves three important dimensions that should be protected by the States. The first dimension is individual and is developed through the exercise of universally recognized human rights that are realized in each of the persons who have committed their lives to the defense of human rights.⁸⁵ States must guarantee that human rights defenders, like all individuals under their jurisdiction, not suffer violations of their rights or the unlawful curtailment of their fundamental freedoms. The second dimension is collective, constituting a matter of public interest, and generally includes the participation of various persons associated with one another.⁸⁶ The third dimension is social, which refers to the intention of human rights protection and protection initiatives to seek positive changes in the attainment of the rights for society in general.⁸⁷

89. Based upon the foregoing analysis, the IACHR concludes that the State failed to undertake a thorough, prompt, and impartial investigation into the acts of abuse against Mr. Fleury, and has not prosecuted and punished those responsible. The State is therefore responsible for violations of Mr. Fleury and his family's right to a fair trial under Article 8 of the American Convention, and to his and his family's right to judicial protection under Article 25 of the American Convention, in conjunction with Article 1(1) of the same.

A. Considerations concerning the obligation to respect and ensure

90. The Inter-American Commission considers it essential to analyze the present case in the broader context of the problem of impunity for human rights abuses in Haiti and existing deficiencies in the criminal justice system on the whole. As noted above, the information presented to the IACHR indicates that despite the numerous human rights violations that have been perpetrated by Haitian security forces, these incidents rarely result in the prosecution or conviction of the officers involved.⁸⁸ This has led to the perception in Haiti that the police are above the law and has adversely affected the relationship of trust that should exist between the population and the forces responsible for protecting them. On this point, the Inter-American Commission has previously expressed concern over the pervasive problem of impunity for human rights abuses in Haiti and the lack of an effective accountability mechanism to investigate and prosecute these abuses.⁸⁹ Specifically, the IACHR found that:

[t]he justice system in Haiti lacks the capacity to undertake accurate and effective measures to monitor compliance with human rights protections and to investigate, prosecute, and punish violations of those protections. Neither the police nor the courts have sufficient resources or training to fulfill these obligations. In addition, the failure to successfully prosecute crimes begins at the very outset of the process, as inadequacies in initial investigations frequently result in the dismissal of charges due to insufficient information. These systemic deficiencies, coupled with the lack of political will on the part of the Haitian authorities to conduct such investigations, perpetuate the cycle of impunity

91. Based on the foregoing observations, the IACHR recalls the recommendations issued to the State in its report "Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community,"⁹⁰ which requested the State to adopt an ensemble of administrative, legal, judicial, policy and institutional measures regarding functioning of the

⁸⁵ *Ibid.*, para 32

⁸⁶ *Ibid.*, para 33

⁸⁷ *Ibid.*, para 34

⁸⁸ IACHR Report, "Haiti: Failed Justice or the Rule of Law: Challenges Ahead for Haiti and the International Community," OEA/Ser L/V/II 123 doc.6 rev 1, October 26, 2005, para 177-181, Annex 6.

⁸⁹ IACHR Report, "Haiti: Failed Justice or the Rule of Law: Challenges Ahead for Haiti and the International Community," OEA/Ser L/V/II 123 doc 6 rev 1, October 26, 2005, para 177-181, Annex 6

⁹⁰ *Ibid.*, para 220-240.

police, courts and detention facilities in Haiti, which in large part, would seek to enhance the State's capacity to conduct fair and effective procedures and to guarantee all persons the right to be heard by a competent, independent and impartial tribunal without discrimination of any kind.

92. Related to this, the Inter-American Commission has observed on many occasions that impunity for violations of fundamental rights, including the right to personal liberty and personal integrity, constitutes the principle obstacle to the effectiveness of the rule of law. The circumstances of Mr. Fleury's experience of torture and cruel and degrading treatment illustrate the dangers that arise when states fail on a systematic basis to ensure strict accountability on the part of its own agents for serious human rights violations, and particularly when the victims are human rights defenders. On this point, the Inter-American Commission reiterates the obligation of the State to guarantee that persons are able to promote and protect any or all human rights, including both those whose acceptance is unquestioned, and new rights or components of rights whose formulation is still a matter of debate.⁹¹ The IACHR therefore asks the Court to require Haiti to take all of the measures necessary to ensure that the experience surrounding Mr. Fleury's experience of torture and degrading treatment is not repeated.

VIII. REPARATIONS AND COSTS

93. The *jurisprudence constante* of the Inter-American Court is that "it is a principle of international law that any violation of an international obligation that has caused damage creates a new obligation, which is to adequately redress the wrong done."⁹² Given the facts alleged in the present application, and in application of that jurisprudence, the Commission is submitting to the Court its claims as to the reparations and costs that the Haitian State must pay as a consequence of its responsibility for the human rights violations committed against the victims.

94. The Inter-American Commission is asking the Court to order the State to *inter alia*, Grant Lysias Fleury an effective recourse that includes a full, prompt, impartial and effective investigation within its ordinary criminal jurisdiction, and to adopt the measures necessary to, on the one hand, prevent and sanction the illegal and arbitrary detentions in Haiti, and on the other hand, effectively ensure the prohibition of torture and other cruel, inhumane or degrading punishment or treatment within the national legal framework. Finally, the Commission is asking the Court to order the State to pay the pecuniary and non-pecuniary damages caused to the, as well the legal fees and costs that the victims incurred in pursuing their case at the national level, and those resulting from the litigation of the present case before the Inter-American system.

95. Pursuant to the Rules of Court, which give the individual autonomous standing in its proceedings, in these submissions the Commission will confine itself to elaborating upon the general standards that the Court should apply in the matter of reparations and costs in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and articles 23 and 34 of the Rules of Court.

A. Obligation to make reparations

96. Article 63(1) of the American Convention provides that:

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

⁹¹ IACHR Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser L/V/II 124, Doc 5 rev 1, March 7, 2006. para 36. Annex 6

⁹² I/A Court H R., *Case of Lori Berenson Mejía* Judgment of November 25, 2004 Series C No 119, para. 230; I/A Court H R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004 Series C No 117, para. 85; I/A Court H R., *Case of De la Cruz Flores* Judgment of November 18, 2004 Series C No 115, para 138

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.

97. As this Court has previously held,

Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation and putting an end to the consequences of the violation.⁹³

98. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the Court's judgments are carried beyond the realm of moral condemnation. Reparations are the measures that will cause the effect of the violations committed to disappear. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to restore the situation as it was prior to the violation.

99. Where full restitution is not possible, as is true in the instant case, it is up to the Inter-American Court to order a series of measures that will not only ensure that the violated rights are respected but also redress the consequences that the violations caused and ensure payment of indemnification as compensation for the damage caused in that case.⁹⁴ In such cases, the compensation is, first of all, for the damages –material and moral- suffered by the injured parties.⁹⁵ "Reparations shall be proportionate to the gravity of the violations and the resulting damage."⁹⁶ Furthermore, reparations have another, no less important purpose, which is to deter and put a stop to future violations.

100. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.⁹⁷ "Whenever a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for

⁹³ I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 86; I/A Court H.R., *Case of the Plan de Sánchez Massacre* Judgment of November 19, 2004. Series C No. 116, para. 52; I/A Court H.R., *Case of De la Cruz Flores* Judgment of November 18, 2004. Series C No. 115, para. 139.

⁹⁴ I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre* Judgment of November 19, 2004. Series C No. 116, para. 53; I/A Court H.R., *Case of De la Cruz Flores* Judgment of November 18, 2004. Series C No. 115, para. 140.

⁹⁵ I/A Court H.R., *Case of Bulacio* Judgment of September 30, 2003, Series C No. 100, para. 70; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., *The "White Panel Truck" Case (Paniagua Morales et al.) Reparations* (Art. 63(1) American Convention on Human Rights) Judgment of May 25, 2001. Series C No. 76, para. 80, and I/A Court H.R., *Case of Castillo Páez Reparations* (Art. 63(1) American Convention on Human Rights) Judgment of November 27, 1998, Series C No. 43, para. 52.

⁹⁶ United Nations, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law* prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117. E/CN.4/Sub.2/1996/17 para. 7. See also I/A Court H.R., *Case Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 89; I/A Court H.R., *Case of De La Cruz Flores* Judgment of November 18, 2004, Series C No. 115, para. 141; *Case of Cantoral Benavides. Reparations* (Art. 63(1) American Convention on Human Rights) Judgment of December 3, 2001, Series C No. 88, para. 42, and *Case of Cesti Hurtado. Reparations* (Art. 63(1) American Convention on Human Rights) Judgment of May 31, 2001, Series C No. 78, para. 36.

⁹⁷ I/A Court H.R., *Case of Lori Berenson Mejía* Judgment of November 25, 2004. Series C No. 119, para. 231; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre* Judgment of November 19, 2004. Series C No. 116, para. 53.

settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."⁹⁸

B. Measures of reparations

101. The Court has held that measures of reparation tend to remove or redress the consequences of the violations committed.⁹⁹ Those measures include the various ways in which a State can compensate for the international responsibility it has incurred. Under international law, those measures may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰⁰

102. The United Nations Special Rapporteur on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law has divided the forms of reparation into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.¹⁰¹

103. Accordingly, the United Nations Commission on Human Rights has determined that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁰²

104. In the instant case, the Commission has shown that the State incurred international responsibility for violation of a number of rights recognized in the American Convention, to the detriment of Lysias Fleury and his family. The State of Haiti has incurred international responsibility by denying a serious and effective investigation relating to the illegal and arbitrary detention as well as the cruel, inhumane and degrading treatment against Mr. Fleury.

105. Based on the evidence presented in the present application and given the criteria the Court has established in its case law, the Inter-American Commission is submitting its

⁹⁸ SERGIO GARCÍA RAMÍREZ, *LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS*, paper presented at the seminar titled "The inter-American system for the protection of human rights on the threshold of the XXI century." San José, Costa Rica, November 1999.

⁹⁹ I/A Court H.R., *Case of La Cantuta*, Merits, Reparations and Costs, Judgment of November 29, 2006, Series C No. 162, para. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C No. 158, para. 144.

¹⁰⁰ See United Nations, *Preliminary Report* submitted by Theo Van Boven, Special Rapporteur, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub.1/1990/10, July 26, 1990. See also I/A Court H.R., *Blake Case Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, para. 31; *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, para. 41.

¹⁰¹ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, document prepared by Dr. Theo Van Boven pursuant to Sub-Commission decision 1995/117, E/CN.4/Sub.2/1996/17.

¹⁰² United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees. Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, May 24, 1996, para. 7.

conclusions and claims concerning the measures of reparation for the pecuniary and non-pecuniary damages and other forms of reparation and satisfaction owed in the instant case.

1. Measures of cessation, satisfaction and guarantees of non-repetition

106. Satisfaction has been defined as "any measure which the author of a breach of duty is bound to take under customary law or under an agreement by the parties to a dispute, apart from restitution or compensation ... seeking a token of regret and acknowledgment of wrongdoing."¹⁰³ Satisfaction involves measures of three kinds, generally taken cumulatively: apologies or any other gesture acknowledging authorship; prosecution and punishment of the individuals involved, and measures taken to prevent a repetition of the wrong done¹⁰⁴

107. On November 29, 1985, the United Nations General Assembly approved by consensus the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁰⁵ which holds that victims "are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered." Accordingly, the needs of the victims must be addressed by allowing "the views and concerns of victims to be presented and considered at appropriate states of the proceedings where they personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."

108. In that sense, the IACHR considers that among the reparations measures, the Haitian State should conduct a full, prompt, impartial and effective investigation within its ordinary criminal jurisdiction relating to the illegal and arbitrary detention of Mr. Fleury, as well as the torture to which he was subjected. As such, the State should adopt the measures necessary to, on the one hand, prevent and sanction illegal and arbitrary detentions in Haiti, and on the other hand, effectively ensure the prohibition against torture and cruel, inhumane and degrading punishment or treatment, within its national legal framework. Furthermore, the State should adopt the measures necessary to prevent future violations of the kind committed against Mr. Fleury.

2. Measures of compensation

109. The Court has established the fundamental criteria for establishing just indemnification calculated to be adequate and effective financial compensation for the harm caused by the human rights violations. The Court has held that the indemnification is merely compensatory in nature, and is to be awarded to the extent and in an amount sufficient to redress the pecuniary and non-pecuniary damages caused.¹⁰⁶

Pecuniary damages

¹⁰³ Brownlie, *State Responsibility Part 1* Clarendon Press, Oxford, 1983, p. 208

¹⁰⁴ *Idem*.

¹⁰⁵ A/RES/40/34, Access to justice and fair treatment. "4 Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5 Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6 The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

¹⁰⁶ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., *Case of Garrido and Baigorria* Reparations (Art. 63(1) American Convention on Human Rights) Judgment of August 27, 1998, Series C No. 39, para. 41.

110. In its jurisprudence on reparations, the Court has been consistent by establishing that pecuniary damages include consequential damages and loss of profit as well as non-pecuniary or moral damages, just as much for the victims as for their family nucleus.¹⁰⁷

111. Consequential damages have been understood as pertaining to the direct and immediate consequence of the acts. In this sense, the effects on patrimony derived immediately and directly from the acts are considered in relation to costs incurred by the affected party to obtain justice,¹⁰⁸ in this case, relating to the efforts taken to free Mr. Fleury. On the other hand, the loss of profits is understood as the loss of income or benefits that have not been obtained because Mr. Fleury had to leave his job and can be quantified based on measurable and objective indicators.¹⁰⁹

112. Without prejudice to what the representatives present in the proper procedural moment, the IACHR requests that the Court equitably determine the amount of compensation that corresponds to consequential damages and loss of profits, using its ample knowledge of such matters.

Non-Pecuniary damages

113. Regarding the non-pecuniary damages, the Court has established:

[] can include the suffering and hardship caused to the direct victims and to their next of kin. the harm of objects of value that are very significant to the individual. and also changes. of a non-pecuniary nature, in the living conditions of the victims. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again.¹¹⁰

114. In the present case, the non-pecuniary damages are evident based on the detention and torture of Mr. Lysias Fleury, as well as the subsequent denial of justice. Similarly, his family has endured intense psychological suffering, anxiety, humiliation, and they have had their life projects altered due to the State's actions and the lack of justice.

C. The persons entitled to the right to receive reparations

115. Article 63(1) of the American Convention requires reparation of the consequences of a breach of a right or freedom and that fair compensation be paid to the injured party. The persons entitled to that compensation are, as a rule, those directly harmed by the facts of the violation in question.¹¹¹

¹⁰⁷ I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 237; I/A Court H.R., *Case of Caracazo Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95; and I/A Court H.R., *Case of Hilaire, Constantine, Benjamin and others*. Judgment of June 21, 2002. Series C No. 94.

¹⁰⁸ Corte I.D.H., *Caso Loayza Tamayo. Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos). Sentencia de 27 de noviembre de 1998. Serie C N° 42, párr. 147; *Caso Aloeboetoe y otros. Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos). Sentencia de 10 de septiembre de 1993. Serie C N° 15, párr. 50.

¹⁰⁹ *Ibidem*.

¹¹⁰ I/A Court H.R., *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and Costs*. Judgment of November 19, 2004. Series C No. 116, para. 80; I/A Court H.R., *Case of De la Cruz-Flores v. Peru. Merits, Reparations and Costs*. Judgment of November 18, 2004. Series C No. 115, para. 155; See also, I/A Court H.R., *Case of Carpio-Nicolle et al. v. Guatemala. Merits. Reparations and Costs*. Judgment of November 22, 2004. Series C No. 117, para. 117.

¹¹¹ I/A Court H.R., *Case of Villagrán Morales (The "Street Children" Case). Reparations*. Judgment of May 26, 2001. para. 107 and 108.

116. In the present case, the *entitled* to the right to receive compensation are Lysias Fleury, his wife Rose Benoit Fleury, his daughters Rose M. y Flemingkow Felury, and his son Heulingher Fleury.

D. Costs and expenses

117. The *jurisprudence constante* of the Court is that costs and expenses should be understood to be included within the concept of reparation established in Article 63(1) of the American Convention because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.¹¹² The Court has also held that the costs to which Article 59(1)(h) (former article 55(1)(h)) of its Rules refers also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.¹¹³

118. In the present case, the Commission is asking the Court, once it has heard the representatives of the victims, to order the Paraguayan State to pay the costs incurred in bringing their case to the domestic courts, and the costs that they incurred in bringing the case to the Commission and those resulting from the filing of the present application with the Court and that have been duly proven by the representatives.

IX. CONCLUSIONS

119. Based on the considerations in the present application, the Commission concludes that Haiti is responsible for violation of the following articles:

- a) For the violation, with prejudice against Mr. Fleury, of his right to not be subject to torture and other inhumane treatment as per Article 5(1) and 5(2) of the American Convention, and in conjunction with violations of Article 1(1) of the same instrument, because of the assault perpetrated upon Mr. Fleury by State agents and its effects on his physical, moral and mental integrity.
- b) For the violation, with prejudice against Mr. Fleury's family members, of their right to personal integrity enshrined in Article 5 of the American Convention, in conjunction with violations of Article 1(1) of the same instrument.
- c) For the violation, with prejudice against Mr. Fleury's, of his right to personal liberty which is enshrined in Article 7(2), 7(3), 7(4), and 7(5) of the American Convention, in conjunction with violations of Article 1(1) of the same instrument, stemming from his unlawful detention and arrest without charges.
- d) For the violation, with prejudice against Mr. Fleury, of his right to the judicial guarantees and judicial protection contemplated in Articles 8 and 25 of the American Convention, in conjunction with violations of Article 1(1) of the same, for failing to undertake a prompt, effective, impartial and independent investigation of the human rights violations committed against Mr. Fleury or having prosecuted and punished those responsible.

120. As a consequence, the Commission is asking the Honorable Court to order the State to:

¹¹² I/A Court H.R., *Case of Carpio Nicolle et al Case*, Judgment of November 22, 2004 Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case* Judgment of November 19, 2004 Series C No. 116, para. 115; I/A Court H.R., *De la Cruz Flores Case* Judgment of November 18, 2004 Series C No. 115, para. 177.

¹¹³ I/A Court H.R., *Case of the "White Van" (Paniagua Morales et al.)*, Reparations, Judgment of May 25, 2001, para. 212.

- a) Grant Lysias Fleury an effective remedy, which includes carrying out a full, prompt, impartial and effective investigation within Haiti's ordinary criminal jurisdiction in order to establish the responsibility for the violations committed against Mr. Fleury and to prosecute and punish the perpetrators;
- b) Provide full reparation to Mr. Fleury and to his next-of-kin, inter alia the payment of just compensation;
- c) Adopt the measures necessary to prevent and punish illegal and arbitrary detentions in Haiti, pursuant to its internal legislation and to Article 7 of the American Convention.
- d) Adopt the measures necessary to ensure the effective prohibition of torture and cruel, inhuman and degrading punishment or treatment in the Haitian domestic legal framework, and that the right under national law and Article 5 of the American Convention is given effect generally in Haiti.
- e) Specifically adopt such measures as may be necessary to prevent and punish future violations of the nature committed against Mr. Fleury, including training for members of Haitian security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, arbitrary arrest and detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting human rights violations committed by members of Haiti's security forces to ensure that they are thorough, prompt and impartial.

In this respect, the IACHR asks the Court to require that the State review and strengthen its accountability mechanisms such as the Office of the Inspector General of the Haitian National Police (hereinafter "the HNP") and the Parquet du Tribunal Civil as well as improved coordination between the State's judicial officials and judiciary in order to ensure effective and independent investigations of human rights abuses committed by members of the Haitian security forces.

- f) Adopt measures to prevent the repetition of acts similar to those contained in this application. Specifically, to adopt, as a matter of priority, a policy to protect and prevent violence against human rights defenders, and to adopt a public policy to fight against impunity for human rights violations against human rights defenders.

X. EVIDENTIARY SUPPORTS

A. DOCUMENTARY EVIDENCE

121. The documentary evidence available at this time is listed below

APPENDIX 1 Report on the Merits 06/09 of March 16, 2009, Lysias Fleury and his family, Haiti.

APPENDIX 2 Admissibility Report 20/04, Lysias Fleury, Haiti, February 26, de 2004

APPENDIX 3 File of the case with the IACHR.

ANNEX 1. Testimonies and affidavits

- Testimony of Lysias Fleury, June 24-25, 2002 (in Creole and French).

- Supplementary Affidavit on the facts in the case of Lysias Fleury, N° 12.459, dated February 3, 2008 (in French).
- Affidavit of Salomon Senexant (in French).
- Testimony of Dormeus Eddy (In French).
- Testimony of Rose Lilienne Benoit Fleury (In French).
- Testimony of Father Jan W. Hanssens (in French).

ANNEX 2 IACHR Hearing N° 10, Case 12.459 – Lysias Fleury v. Haiti, 131st ordinary period of sessions, March 7, 2008 (in French).

ANNEX 3 Medical Certificates

- Copy of the Medical Certificate dated August 2, 2002.
- Medical report dated June 25, 2002, English translation.

ANNEX 4 Complaints filed

- Complaint from Lysias Fleury to Commissaire du Gouvernement Près le Parquet du Tribunal Civil (In French).
- Complaint from Commission Episcopale Nationale Justice et Paix to the Chief Inspector General of the HNP (In Creole and French).
- Letter presented by attorney Guerdine Jean-Juste on June 25, 2002 (in French).

ANNEX 5 Letters and e-mails

- Letter from Mr Fleury to the IACHR, February 25, 2003 (In French)
- Email dated October 22, 2007 from Fleury to the Commission (In French).

ANNEX 6 IACHR documents

- Case 11.543, Report N° 1/98, Rolando and Atanasio Hernandez Hernandez, Mexico, Annual Report of the IACHR 1998, para. 51 (In English).
- Case 12.418, Report No 92/05, Michael Gayle v. Jamaica, Annual Report of the IACHR 2005, para. 61, 73 and 83 (In English).
- Case 10.832, Report N° 35/96, Luis Lizardo Cabrera v. Dominican Republic, Annual Report of the IACHR 1998, para. 65, 66, 77, 78, 79 and 83 (In English).
- IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 doc. 21 rev., 6 April 2001, Chapter VII, para. 37 (In English).
- Case 11.245, Report N° 12/96, Jorge Alberto Giménez (Argentina), Annual Report of the IACHR 1995(In English).
- Case 11.205, Report N° 2/97, Jorge Luis Bronstein and others (Argentina), Annual Report of the IACHR 1997, para. 11 (In English).
- Case 12.069, Report N° 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paras. 37 and 38 (In English)

- Case 11.743, Report N° 38/00, Rudolph Baptiste (Grenada), Annual Report of the IACHR (2000), paras. 136 and following (In English).
- Case 11.335, IACHR Report 78/02 Guy Malary (Haiti) Annual Report of the IACHR 2002, para. 51, 82 and 93 (In French).
- IACHR Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006, para. 31 and 36 (In English).
- IACHR Report, "Haiti: Failed Justice or the Rule of Law: Challenges Ahead for Haiti and the International Community," OEA/Ser.L/V/II.123 doc.6 rev.1, 26 October 2005, para.177-181 (In French).

ANNEX 7 Legislation

- Pertinent parts of the Constitution of Haiti, available at: <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html> (In French).
- Pertinent parts of the Code of Criminal Procedures of Haiti, July 31, 1835 (In French).

ANNEX 8 International instruments

Standard Minimum Rules for the Treatment of Prisoners, (hereinafter, "Rules") adopted Aug 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res 663C, 24 U.N. ESCOR Supp. (No.1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No.1) at 35, U.N. Doc. E/5988 (1977); para 1. Rules 27-34.

ANNEX 9. Power of attorney.

ANNEX 10 Lizbeth Cullity and Mario Joseph's resume, Expert witnesses presented by the Commission.

122. The Commission asks to the Court to require the State to present certified copies of the documents related to the complaints presented and the judicial processes undertaken on a national level in relation to the present case, as well as the laws and rules applicable to the matter.

B. STATEMENTS BY VICTIMS, WITNESSES, AND EXPERTS

1. VICTIMS

123. In compliance with Article 50 of the Court's amended Rules of Procedure, the Commission asks that it hear statements from the following victims:

- Lysias Fleury, who will testify about the way in which he was detained and the acts against him undertaken by state agents during his detention, as well as about the efforts undertaken after the fact. Moreover, he will testify about the persecution and fragmentation that he and his family have suffered, as well as the consequences of all these situations, among other aspects related to the purpose and goal of the present law suit.
- Rose Lilienne Benoit Fleury, who will testify about the way in which her husband, Lysias Fleury, was detained and the state in which she found him hours later, as well as about the efforts undertaken after the fact. Moreover, she will testify about the persecution and fragmentation that the Fleury family has suffered, as

well as the consequences of all these situations, among other aspects related to the purpose and goal of the present law suit.

2. WITNESSES

124. The Commission asks the Court to hear the testimony of the following witness:
- Father Jan Hanssens, Director of the Commission on Justice and Peace, who will testify about Mr. Fleury's work as a human Rights defender. Moreover, he will testify about the conditions in which he found Mr. Fleury on March 25, 2003 and about the efforts undertaken by him in the search for justice, among other aspects related to the purpose and goal of the present law suit.

3. EXPERTS

125. The Commission is asking the Honorable Court to hear the opinions of the following experts:

- **Lizbeth Cullity**, Head of the Human Rights Section of the United Nations Mission to the Stabilization of Haiti (MINUSTAH). The Commission presents this expert so that she may bring expertise on the context of Haiti during the facts of the case, the impunity involved in relation to the judicial and administrative system, as well as on the general situation of human rights defenders in Haiti at the time of the facts of the case, among other aspects related to the objectives and goals of presenting the current application.
- **Mario Joseph**, attorney. The Commission presents this expert so that she may bring expertise on the deficiencies in the Haitian penal system, as well as on the lack of investigation of facts in cases involving state agents, among other aspects related to the objectives and goals of presenting the current application.

XI. INFORMATION ON THE REPRESENTATIVES

126. In compliance with Article 34 of the Court's amended Rules of Procedure, the Inter-American Commission submits the following information:

127. Lysias Fleury granted a power of attorney to the International Human Rights Clinic at *American University*, to represent him before the Inter-American Court of Human Rights.

128. The representatives of the victims have given their address as: International Human Rights Clinic at *American University, Washington College of Law*, [REDACTED]
[REDACTED]