



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application before the Inter-American Court of Human Rights
in the case of Dismissed Congressional Employees
(Case 11.830)
against the State of Peru

DELEGATES:

José Zalaquett (Commissioner)
Santiago A. Canton (Executive Secretary)

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Washington, D.C. 20006

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PURPOSE OF THE APPLICATION	7
III. REPRESENTATION	7
IV. JURISDICTION OF THE COURT	8
V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION	8
VI. THE FACTS	10
VII. LEGAL ARGUMENTS	16
A. Right to Judicial Protection (Article 25(1)) and Right to Judicial Guarantees (Article 8(1))	16
B. Breach by the State of the obligations established in Articles 1(1) and 2 of the American Convention (Obligations to Respect the Rights and Duties and to Adopt Domestic Legal Provisions)	21
VIII. REPARATIONS AND COSTS	22
A. Obligation to make reparations	23
B. Measures of reparation	24
b.1. Measures of compensation	25
b.2. Measures of satisfaction and guarantees of non-repetition	27
C. The beneficiaries	28
D. Legal costs and expenses	28
IX. CONCLUSIONS	29
X. PETITION	29
XI. EVIDENCE	30
A. Documentary evidence	30
B. Expert evidence	32
XII. INFORMATION ON THE ORIGINAL COMPLAINANTS, THE VICTIM, AND THEIR FAMILY MEMBERS	33

**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF PERU**

**CASE 11.830
DISMISSED CONGRESSIONAL EMPLOYEES**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") the application in case 11,830 against the State of Peru (hereinafter the "Peruvian State," "the State," or "Peru") for the dismissal of 257 workers of the National Congress of the Republic of Peru (hereinafter "the victims," "the dismissed workers," or "the 257 dismissed congressional employees"), who are part of a group of 1,117 workers who were dismissed through resolutions of the Congress of December 31, 1992.

2. The Inter-American Commission asks that the Court establish the international responsibility of the Peruvian State, which has breached its international obligations, and in so doing has violated Articles 8(1) (right to a fair trial) and 25(1) (judicial protection), as well as breaching the provisions of Articles 1(1) (obligation to respect the rights) and 2 (duty to adopt provisions of domestic law) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

3. The aforementioned violations were to the detriment of the following victims¹:

- 1) Aguado Alfaro, José;
- 2) Aguilar Rojas, Félix;
- 3) Aguilar Rojas, Gisela;
- 4) Albornoz Alva, Luis Rodolfo;
- 5) Alcántara Ramos, Juana;
- 6) Aliaga Lama, Luis;
- 7) Alvarado Achicahuala, Juan;
- 8) Alvarado Galván, Eriberto Rodolfo;
- 9) Alvarado Suárez, Mónica Lourdes;
- 10) Álvarez Gutiérrez, Marleni;
- 11) Ampuero Ampuero, Víctor;
- 12) Ángeles Ponte, Nancy Violeta;
- 13) Antonio Chala, Sergio;
- 14) Araca Sosa, José Raúl;
- 15) Arcos Díaz, Cecilia;
- 16) Arévalo Torres, Rosa;
- 17) Arias Infantes, Guillermo;
- 18) Arnez Macedo, Daniel;
- 19) Atauje Montes, Máximo;
- 20) Ayala Palomino, Herlinda;
- 21) Ballarta Rueda, Alfredo;

¹ The list is the same as the list in the judgment of the Constitutional Court of November 24, 1997, part of case No. 338-96-AA/TC, which was brought in representation of the 257 dismissed workers of Congress in the domestic jurisdiction (Annex 13).

- 22) Barba Ureña, Telmo Jaime;
- 23) Barbarán Quispe, Jaime;
- 24) Bautista Apolaya, Max;
- 25) Begazo Salazar, Zoila Luz;
- 26) Belleza Cabanillas, Inés;
- 27) Bellido Orihuela, Augusto;
- 28) Beltrán Aguilar, Leoncio;
- 29) Bereche Riojas, Lidia;
- 30) Bonifacio Ramón, Valeriano Sebastián;
- 31) Bracamonte Chiringano, Juana;
- 32) Bravo Sarco, César Augusto;
- 33) Briones Rodríguez, Johel;
- 34) Burga Cardozo, Vilma;
- 35) Cabanillas Toro, Guadalupe;
- 36) Cabrera Enríquez, Alfredo;
- 37) Cajusol Bances, Juan;
- 38) Callirgos Tarazona, Ricardo;
- 39) Camargo Matencio, Henry;
- 40) Campos Alarcón, Dana;
- 41) Cánepa Campos, Rosa;
- 42) Cárdenas Pinto, Herver Víctor;
- 43) Carranza Rodríguez, Manuel;
- 44) Carrillo Quiñones, Elizabeth;
- 45) Castro Salvatierra, Teodoro;
- 46) Ccapali Atoccsa, Juana Irene;
- 47) Ccapali Atoccsa, Zenón;
- 48) Changanaqui Chávez, José;
- 49) Chara Pacheco, Luisa;
- 50) Chávez García, Bladimir;
- 51) Cherrez Córdova, Rosa;
- 52) Chino Villegas, Wilfredo;
- 53) Chipana Quispe, Tiburcio;
- 54) Chipana Rodríguez, Luis;
- 55) Cisneros Urbina, Esther;
- 56) Clerque Gonzáles, José;
- 57) Cobeñas Pariamache, Felix;
- 58) Colán Villegas, Laura;
- 59) Condezo Espinoza, Antonio;
- 60) Córdova Melgarejo, Antonieta Elizabeth;
- 61) Cornelio Dávila, Hipólito;
- 62) Cornelio Figueroa, Daysi;
- 63) Coronado Peña, José Raúl;
- 64) Cuadros Livelli, Manuel;
- 65) Cubas Vásquez, Lupo;
- 66) De la Cruz Paredes, Marcial;
- 67) De la Cruz Paredes, Walter;
- 68) Del Aguila Chamay, Dully;
- 69) Del Castillo Meza, Víctor;
- 70) Delgado Gómez, Juan Francisco;
- 71) Delgado Suárez, Raquel;
- 72) Dergán Alcántara, Gloria;
- 73) Dextre Cano, Edgar;
- 74) Dextre Ordóñez, Edison;

- 75) Díaz Campos, Flavio;
- 76) Díaz Céspedes, Nina;
- 77) Díaz López, Orlando;
- 78) Echevarría Flores, Gumercinda;
- 79) Echevarría Suárez de Peña, Ruth Cecilia;
- 80) Elera Molero, Luis;
- 81) Erquíñigo Ramón, Santiago;
- 82) Espinoza Fernández, Félix;
- 83) Eugenio Centeno, Virginia;
- 84) Fernández Saré, Adolfo;
- 85) Ferradas Nuñez, Pablo Jorge;
- 86) Flores Guillén, Lilia Carolina;
- 87) Flores Salinas, Javier;
- 88) Gallegos Ramírez, Luz;
- 89) Galvez Saldaña, Nélida;
- 90) Ganoza Rivera, Jorge;
- 91) García Hualpa, Ana María;
- 92) García Vergara, Segundo;
- 93) Gimeno Alemán, Cecilia Victoria;
- 94) Gonzáles Castillo, Ricardo;
- 95) Gonzáles Figueroa, Máximo;
- 96) Gonzáles Guillén, Jesús Gustavo;
- 97) Gonzáles Panuera, Luis;
- 98) Gonzáles Sánchez, Anabel Iris;
- 99) Grández Alvarado, César;
- 100) Guevara Gallo, Rodolfo;
- 101) Guzmán Reбата, Juan;
- 102) Hayasshi Bejarano, Folgges Luis;
- 103) Hernández Fernández, Ricardo;
- 104) Herrera Madueño, Caro;
- 105) Herrera Rojas, Lucas;
- 106) Herrera Valdez, Reynaldo;
- 107) Hijar Cerpa, Andrés;
- 108) Hinojosa Silva, Jesús;
- 109) Hinostroza Toro, Tito;
- 110) Huamán Cárdenas, Juan;
- 111) Huamán Trinidad, Wilfredo Emilio;
- 112) Huamantumba Vásquez, Felicita Meri;
- 113) Huaraca Vargas, Olimpio;
- 114) Huaranga Soto, María;
- 115) Hurtado Gutiérrez, Julio Miguel;
- 116) Ibáñez Ortiz, Sara;
- 117) Ibarra Ñato, Faustina Susana;
- 118) Inga Coronado, María;
- 119) Infantes Vásquez, Rosa María;
- 120) Jaimes Cano, Marco Antonio;
- 121) Kitano la Torre, Elsi Judith;
- 122) La Cruz Crespo, Carlos;
- 123) Loayza Arcos, Lucy;
- 124) Lozano Muñoz, Julio;
- 125) Luna Aragón, Elizabeth;
- 126) Magallan Galoc, Jakeline;
- 127) Malpartida Gutierrez, Héctor;

- 128) Marchena Alva, José Luis;
- 129) Marcelo Navarro, Delano;
- 130) Margarito Silva, Juan Manuel;
- 131) Marrugarra Neyra, Luis;
- 132) Medina Ramírez, Sergio Alejandro;
- 133) Meléndez Saavedra, Inés;
- 134) Menacho Salas, Aquilino;
- 135) Mendoza Michuy, Manuel;
- 136) Molina Ugarte, Nohemi;
- 137) Montalván Alvarado, César;
- 138) Montes Pacora, Hugo;
- 139) Montes Yacsahuache, Hugo;
- 140) Montoya Luna, Jaime Jhonny;
- 141) Moreno Gonzáles, Margarita;
- 142) Mujica Esquivel, Liz;
- 143) Muñoz Jesús, Berilda;
- 144) Murillo Orihuela de Díaz, Rosa Isabel;
- 145) Navarro Sánchez, Jorge;
- 146) Nizama Zelaya, Víctor;
- 147) Núñez Centeno, Víctor;
- 148) Núñez Morales, Carmen;
- 149) Ordoñez Quispe, Marco Antonio;
- 150) Ore León, Jorge;
- 151) Orrillo-Vásques Torres, Flavia;
- 152) Ortega Martell, Carlos;
- 153) Owada Amado, Oscar;
- 154) Pacheco Munayco, Jorge;
- 155) Paitán Mauricio, Catalina;
- 156) Pajares Godoy, Moisés;
- 157) Paredes Cubas, Carmen Rosa;
- 158) Paredes Cubas, Walter Roberto;
- 159) Páucar Dávila, Rebeca;
- 160) Pedreschi Santin de Berropi, Graciela;
- 161) Peredo Cavassa, Alicia;
- 162) Peredo Cavassa, Mario;
- 163) Pérez Guevara, César;
- 164) Pérez Polo, Rosalía;
- 165) Pereyra Salazar, Walter;
- 166) Pichilingue Romero, Teresa;
- 167) Pilco Guerra, Luisa;
- 168) Pizarro Sanchez, Consuelo;
- 169) Pohl Luna, Amelia Rosario;
- 170) Polo Castañeda, Agustín Miguel Arturo;
- 171) Purizaca Arámbulo, José;
- 172) Quineche Díaz, María Elena;
- 173) Quiñones Atalaya, Lira;
- 174) Quiñones Díaz, Manuel;
- 175) Quiñonez Seminario, Pedro;
- 176) Ramírez de Peña, Jacinta;
- 177) Ramírez Granados, Margarita;
- 178) Ramírez Rodríguez, Mónica Emperatriz;
- 179) Ramos de la Cruz, Elmi;
- 180) Ravello Velásquez, John;

- 181) Retuerto Aranda, Rómulo Antonio;
- 182) Revelo Infante, Ronald Luciano;
- 183) Reyes Caballero, Rubén;
- 184) Ribotte Rodríguez, Lino Roberto;
- 185) Rigaid Arevalo, Julio Antonio;
- 186) Rivas Cappelletti, Carlos;
- 187) Rivas Chara, Jorge Martín;
- 188) Rivera Delgado, Bertha;
- 189) Rivera Loayza, Carmen;
- 190) Rivera Martinez, Nelly;
- 191) Rodas Romero, Julio;
- 192) Rodríguez Campos, Rommy Cecilia;
- 193) Rodríguez Espada, Eugenio;
- 194) Rodríguez Garcia, Elisa;
- 195) Rodríguez Reaño, Vicente Waldo;
- 196) Rojas Cortez, Víctor;
- 197) Rojas Figueroa, Luis;
- 198) Rojas Vega, Irma;
- 199) Roman Toro, Isaías;
- 200) Romero Chang, María;
- 201) Saavedra Ambrosio, José;
- 202) Saavedra Mego, Santos Violeta;
- 203) Saavedra Vega, Armando;
- 204) Salas Sobrino, Frida;
- 205) Salazar Caycho, Eduardo;
- 206) Salazar Venegas, María;
- 207) Salcedo Olivares, Liduvina;
- 208) Sánchez Alarcón, Reyna;
- 209) Sánchez Campos, Luz;
- 210) Sánchez Candia, Raúl;
- 211) Sánchez Lozano, Juan Carlos;
- 212) Santiváñez Velásquez, Oscar;
- 213) Santisteban Urmeneta, Ronald;
- 214) Sernaqué Vargas, César;
- 215) Silva Baca, Elieberto;
- 216) Silva Baca, Víctor;
- 217) Silva Delgado, Iván;
- 218) Sipán Guerra, Javier;
- 219) Solís Martell, Clemencia;
- 220) Solís Retuerto, Wilder;
- 221) Solís Roca, Eleuterio;
- 222) Soria Cañas, Lavinia Edith;
- 223) Sosa Alvarez, Carmen;
- 224) Soto Santana, Giovanna Elset;
- 225) Soto Santana, Walter;
- 226) Sotomayor Vargas, Rubén Javier;
- 227) Talledo Añazco, Luz Angélica;
- 228) Torres Hoyo, Lety;
- 229) Torres Martínez, Juan;
- 230) Torres Prieto, Rolando Alfonso;
- 231) Uchuya Chacaltana, Leoncio;
- 232) Ugarte Pierrend, Juana;
- 233) Unzueta Medina, Carlos;

- 234) Urquiza Alcántara, Ronald;
- 235) Urrunaga Linares, Víctor Manuel;
- 236) Valdez Rivera, Angela;
- 237) Valdez Tellez, Hilda;
- 238) Varias Trabanco, Freddy;
- 239) Vásquez Leguía, Oscar;
- 240) Vásquez Quezada, Juan;
- 241) Vásquez Quiñones, Soledad;
- 242) Vásquez Sánchez, Fidel;
- 243) Vega Díaz, Iván Alex;
- 244) Velásquez Machuca, Edgard;
- 245) Vereau Palma, Cita;
- 246) Vera Vitoriño, Visitación Elizabeth;
- 247) Vidal Vidal, Eva;
- 248) Villar Contreras, José;
- 249) Villareal Rodríguez, Hermelinda;
- 250) Villegas Guerra, Wilburt;
- 251) Vizcarra Zorrilla, Neida Eleonor;
- 252) Zapata Zapata, Rosario;
- 253) Zapata Espinoza, Elsa Silvia;
- 254) Zavaleta Saavedra, Carmen;
- 255) Zegarra Castro, David Orlando;
- 256) Zegarra Zevallos, Segundo y
- 257) Zumaeta Flores, Iván.

4. The present case, which originates in cases 11,830 and 12,038², has been processed in keeping with the provisions of the American Convention and is presented to the Court in keeping with Article 33 of its Rules of Procedure. In addition, attached to this application, as an annex, is a copy of Report 78/04, prepared pursuant to Article 50 of the Convention.³ This report was adopted by the Commission on October 19, 2004, and was transmitted to the State on November 4, 2004; the State was given two months to adopt the recommendations contained in it. After a 15-day extension, the State filed its answer on January 15, 2005. On February 3, 2005, the Inter-American Commission, having determined that the State had not adopted its recommendations in a satisfactory manner and as provided for by Articles 51(1) of the Convention and 44 of the Commission's Rules of Procedure, decided to refer the instant case to the jurisdiction of the Inter-American Court.

5. The importance of this case lies, in the first place, in the need to see that justice is done for the victims, and to obtain adequate reparation for them. In addition, it is important because of the opportunity it offers the inter-American system for the protection of human rights to develop its case-law on minimum procedural guarantees in an administrative proceeding, and on the right to an effective remedy in the face of acts of the public administration to the detriment of large numbers of victims.

² See *infra* para. 18.

³ IACHR, Report No. 78/04 (merits), Cases 11,830 and 12,038, Dismissed Congressional Employees, Peru, October 19, 2004. Annex 2.

II. PURPOSE OF THE APPLICATION

6. The purpose of this application is to request respectfully of the Court that it find and declare that:

- a. the Peruvian State is responsible for violating the judicial guarantees and judicial protection provided for at Articles 8(1) and 25(1) of the American Convention, to the detriment of the 257 dismissed congressional employees identified as victims in this application;
- b. the Peruvian State is responsible for breaching the obligation to respect and guarantee the rights enshrined in the American Convention imposed by Article 1(1) and the obligation to adopt provisions of domestic law established in Article 2, both of the Convention, to the detriment of the 257 dismissed congressional employees identified as victims in this application.

7. As a consequence of the foregoing, the Inter-American Commission asks the Court to order the State:

- a. to ensure the 257 dismissed congressional employees access to a simple, prompt, and effective remedy to have review of their demands relating to the separation from employment by the Administrative Committee (Comisión Administradora) of the Congress of the Republic by Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published December 31, 1992;
- b. to guarantee the 257 dismissed workers of Congress that said remedy enjoys the corresponding judicial guarantees and that it leads to a pronouncement on the merits of the demands presented by the workers domestically;
- c. to modify Article 9 of Decree-Law 25,640 of July 21, 1992 and Article 27 of Resolution No. 1239-A-92-CACL of October 13, 1992, to make them compatible with the American Convention;
- d. to adopt the measures necessary for the victims to receive adequate and timely reparation for the material and non-material injury suffered;
- e. to pay the legal costs and expenses incurred by the victims and their representatives in processing the instant case before the inter-American system, and
- f. to adopt the legal, administrative, and other measures as necessary to prevent similar events from recurring in the future, pursuant to the duties to prevent violations and to ensure the fundamental rights recognized by the American Convention.

III. REPRESENTATION

8. In keeping with Articles 22 and 33 of the Court's Rules of Procedure, the Commission has appointed Messrs. José Zalaquett, Commissioner, and Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Messrs. Ariel E. Dulitzky, Víctor H. Madrigal, and Pedro Díaz, and Ms. Lilly G. Ching, specialists of the Executive Secretariat of the IACHR, have been designated to act as its legal advisers.

IV. JURISDICTION OF THE COURT

9. Pursuant to Article 62(3) of the American Convention, the Inter-American Court has jurisdiction over any case relating to the interpretation and application of the provisions of the Convention that may be submitted to it, so long as the state party to the case has recognized or recognizes the Court's jurisdiction.

10. The Court has jurisdiction to hear the instant case. The State ratified the American Convention on July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

11. On October 18, 1997, the Commission received the complaint in case 11,830, which was originally submitted as a request for precautionary measures by five of the victims⁴, both in their own name and in the name of the other dismissed congressional employees.⁵

12. On November 10, 1997, the Commission opened the case, forwarded the pertinent parts of the complaint to the State, and requested that it provide information within 90 days, in keeping with the Regulations then in force. On January 26, 1998, Peru filed its answer to that communication by notes 7-5-M/029 and 7-5-M/028.

13. On February 13, 1998, the Commission communicated to the petitioners, *inter alia*, that in keeping with Article 29 of the Regulations of the IACHR, the situation described "[i]n principle ... [did] not constitute an urgent case in which it [was] necessary to request precautionary measures to prevent irreparable harm to persons."

14. On March 26, 1998, the petitioners presented to the Commission a complaint that reproduced the facts contained in the original request for precautionary measures, and they presented a copy of a judgment handed down by the Constitutional Court of November 24, 1997, published in the official daily "El Peruano" on January 12, 1998, in addition to various submissions that were part of the record in the domestic case.

15. On July 10, 1998, 20 former congressional employees⁶ submitted the complaint with respect to case 12,038, in their own name, and in the name of other dismissed congressional employees of Peru.

16. On August 4, 1998, the Commission opened case 12,038, forwarded the pertinent parts of the complaint to the Peruvian State, and requested information to be submitted within 90 days. Peru requested an extension for answering; the extension was granted, and Peru submitted the information requested on November 11, 1998.

17. On February 4, 1999, two additional former employees of the Congress⁷ requested that they be considered co-petitioners in case 11,830. In addition, on October 20, 1999, the

⁴ Identified at numbers 43, 84, 114, 184, and 236 of the list included in paragraph 3.

⁵ That request for precautionary measures was reiterated by the petitioners on November 10, 1997, and January 9, 1998.

⁶ Nineteen of them are identified as numbers 22, 25, 38, 40, 80, 88, 89, 90, 100, 115, 137, 154, 183, 207, 231, 237, 244, 245, and 257 in the list at paragraph 3.

⁷ Identified by numbers 27 and 175 in the list included in paragraph 3 of this application.

Colegio de Abogados de Lima (Lima Bar Association) asked that it be considered a co-petitioner in the case and submitted a letter from 15 victims⁸ requesting that said institution represent them in case 11,830 before the IACHR.

18. On June 9, 2000, pursuant to Article 40(2) of its Regulations in force at that time, the Commission decided to combine cases 11,830 and 12,038, to process them together as case 11,830. At the same time, the IACHR notified Peru and all the petitioners of this circumstance.

19. On June 15, 2000, during its 107th special session, the IACHR adopted Admissibility Report No. 52/00⁹, by which it declared the case formally admissible in relation to possible violations of Articles 8 and 25 of the American Convention. The parties were given notice of that report on June 27, 2000.

20. By note of July 11, 2000, the IACHR made itself available to the parties for the purpose of pursuing a friendly settlement. On August 11, 2000, the petitioner Adolfo Fernández Saré requested an extension because of the meetings that were being held with the State "to find formulas that might allow us to reach a friendly settlement." On August 11 and October 1, 2000, the Peruvian State asked that the term granted for continuing to explore the possibility of pursuing a friendly settlement be extended.

21. On October 13, 2000, during its 108th session, the IACHR held a hearing on the case at its headquarters in the city of Washington, D.C., which was held strictly respecting the rules of adversarial procedure. On November 20, 2000, the Peruvian State presented arguments on the merits, stated that it was not interested in pursuing a friendly settlement, and asked that the case be archived. That brief was forwarded to the representatives of the petitioners, who by communications of February 5, 7, and 12, 2001, submitted their observations.

22. Pursuant to the request of the victims' representatives, and in keeping with Article 38(3) of the IACHR's Rules of Procedure, the Commission called the parties to a hearing at its 116th regular session. The hearing was held October 14, 2002.

23. By note of October 1, 2003, the Peruvian State reported that the Multisectoral Commission entrusted with preparing the final proposal to settle IACHR case 11,830, Dismissed Congressional Employees, ended its sessions on April 7, 2003, without having arrived at a friendly settlement.

24. During the processing of the case before the Commission, both the State and the victim's representatives presented additional information that was forwarded to the other party for observations.

25. On October 19, 2004, after analyzing the parties' positions, the Commission approved Report No. 78/04, pursuant to Article 50 of the American Convention and Article 42 of its Rules of Procedure. In that report, the IACHR concluded:

that the Peruvian State is responsible for the violation of the right to judicial protection under Article 25(1), the right to a fair trial under Article 8(1), and the duty to adopt domestic legal

⁸ Identified by numbers 10, 23, 25, 28, 38, 40, 83, 88, 89, 154, 163, 183, 231, 237, and 257 of the list included at paragraph 3 of this application.

⁹ IACHR, Report No. 52/00 (admissibility), Cases 11,830 and 12,038, Dismissed Congressional Employees, Peru, June 15, 2000. Annex 1, also at the website: <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Admisible/Peru11.830.htm>, as of February 2, 2005.

provisions under Article 2 of the American Convention, to the detriment of the 257 congressional employees, listed in the annex to this report. This also constituted a violation by the Peruvian State of its obligation under Article 1(1) to respect and ensure the rights enshrined in the Convention.

And it recommended:

a. To guarantee that the congressional employees identified and listed in the annex to this report, obtain a simple, prompt, and effective judicial remedy that ensures a review of their complaints concerning the dismissal to which they were subjected under Executive Decisions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992 of the Administrative Commission of the Congress of the Republic, published on December 31, 1992. This remedy should include all legal safeguards and should lead to a ruling on the merits of the complaints submitted.

b. To modify Article 9 of Decree-Law 25640 of July 21, 1992 and Article 27 of Executive Decision 1239-A-92-CACL of October 13, 1992, so as to bring them into compliance with the American Convention.

26. On November 4, 2004, the Inter-American Commission proceeded pursuant to Article 43(2) of its Rules of Procedure: it transmitted the report on the merits to the State and set a term of two months to report on the measures adopted to carry out the recommendations made in it.

27. Pursuant to Article 43(3) of its Rules of Procedure, on November 4 2004, the Commission notified the petitioners of the adoption of the report on the merits and its transmittal to the State, and asked that it express its position with respect to submission of the case to the Inter-American Court. On December 3 and 22, 2004, the petitioners stated their interest in seeing the case submitted to the Court.

28. By note No. 7-5-M/441 of December 24, 2004, received at the Secretariat of the IACHR on December 27, 2004, the State requested an extension for submitting its observations on the report on the merits. On December 28, 2004, the IACHR decided to grant an extension of 15 days to the term established pursuant to Article 43(2) of the Commission's Rules of Procedure -- originally set at two months -- from January 4, 2005 to January 19, 2005.

29. On January 19, 2005, Peru submitted note No. 7-5-M/038 by which it transmitted the considerations of the Peruvian State regarding the Commission's recommendations in its report on the merits.

30. On February 3, 2005, the Inter-American Commission decided to submit this case to the jurisdiction of the Inter-American Court, considering that the State had failed to adopt its recommendations in a satisfactory manner, and as provided for in Article 51(1) of the Convention and Article 44 of the IACHR's Rules of Procedure.

VI. THE FACTS

31. The facts of this application occurred in the context of the rupture of the institutional order in Peru, as of 1992, which was publicly and widely known. Even so, the Commission provides an account of the context, since it considers it extremely important that the facts receive judicial recognition, as they are the basis of the violations committed by the State, and establishing them in a judgment would constitute recognition of the truth.

The context

32. From 1980 to 1994 Peru suffered a serious social upheaval brought about by terrorist acts¹⁰ as well as a situation of extreme political violence, also conditioned by the influence of drug production and trafficking.¹¹

33. In that context, on July 28, 1990, Mr. Alberto Fujimori was re-elected President of Peru, pursuant to the 1979 Constitution, for a five-year term.¹²

34. On April 5, 1992, President Fujimori dissolved the Congress and the Court of Constitutional Guarantees (Tribunal de Garantías Constitucionales), intervened in the Judiciary, and removed numerous justices of the Supreme Court as well as the Attorney General of the Nation.¹³

35. Beginning April 5, 1992, the Government introduced a set of significant legal changes that resulted in substantial changes in the National Constitution, suspending the articles of the Constitution that were not compatible with the objectives of the Government. That situation was instituted through Decree-Law 25,418, called the *Law Laying the Bases of the Emergency and National Reconstruction Government (Ley de Bases del Gobierno de Emergencia y Reconstrucción Nacional)*.¹⁴

¹⁰ I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 88(1); I/A Court H.R., *Case of the Brothers Gómez Paquiyauri*. Judgment of July 8, 2004, Series C No. 110, para. 67(a) and I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 86(1), which cites: Declaration of Lima to Prevent, Combat and Eliminate Terrorism, approved at the Inter-American Specialized Conference on Terrorism held in Lima in April 1996; submission by the State of February 9, 1999; and final oral arguments of the Commission and the State, all related to the case of *Castillo Petruzzi et al.*

¹¹ IACHR, *Report on the Situation of Human Rights in Peru*. March 12, 1993. OEA/Ser.L/V/II.83, Doc. 31, para. 1, at the webpage: <http://www.cidh.org/countryrep/Peru93sp/indice.htm> as of February 2, 2005. Along the same lines, the report states that the information gathered by the Inter-American Commission indicates that from 1980 until July 1992, 24,250 persons had died due to political violence in Peru, 2,044 of whom belonged to the security forces, 10,171 civilians, 11,773 allegedly subversives, and 262 allegedly tied to drug-trafficking (para. 7). The Peruvian Truth and Reconciliation Commission also stated that "the internal armed conflict experienced by Peru from 1980 to 2000 has been the longest-lasting, with the more extensive impact on the national territory, and the one with the highest human and economic toll." See *Informe de la Comisión de la Verdad y Reconciliación del Perú*, Vol. I, p. 54, at the webpage: <http://www.cverdad.org.pe/ifinal/index.php>, as of February 2, 2005. That same report makes reference to the armed confrontation that unfolded in Peru as of 1980 and which had led to a large part of the national territory being under a state of emergency, which entailed suspending the exercise of some of the rights enshrined by the Peruvian legal order and the applicable international law (para. 8).

¹² I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 56(1).

¹³ See in this connection: I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 56(1). See also, *Informe de la Comisión de la Verdad y Reconciliación del Perú*, Vol. I, p. 73, at the webpage: <http://www.cverdad.org.pe/ifinal/index.php>, as of February 2, 2005, which establishes that:

On April 5, 1992, by the coup that ruptured the constitutional order, the Fujimori government promulgated a series of provisions that stiffened the anti-terrorist legislation (DL 25475, 25499, 25659, 25744) without considering respect for the minimum guarantees of due process. In addition, it undertook to extend, through the promulgation of various decree-laws, the military prerogatives, expanding their power in zones of emergency and in counterinsurgency activity. This expanded the discretion of the forces of order, in a clear reduction of democratic checks on their counterinsurgency actions. Simultaneously, the grave human rights violations perpetrated by several state agents continued....

¹⁴ See Decree-Law 25,418 of April 6, 1992, which enacted the Law to Lay the Bases for the Emergency and National Reconstruction Government, and instituted on a transitory basis the Emergency and National Reconstruction Government, Annex 5. Also at webpage: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/25418.pdf> as of February 2, 2005.

36. Article 2 of Decree-Law 25,418 established the objectives of the Government and the goals it proposed to attain. Article 4 of the same Decree-Law provided for the dissolution of the Congress until the approval of a new organizational structure for the Legislative branch. Article 5 of Decree-Law 25,418 established that the functions of the Legislative branch be exercised through decree-laws.¹⁵

37. The Permanent Council of the OAS called an *ad-hoc* meeting of Ministers of Foreign Relations¹⁶ to consider "the grave events" in Peru. The ad-hoc meeting was held April 13, 1992, in Washington, D.C., and resolved, *inter alia*, "to appeal for the immediate reestablishment of democratic institutional order in Peru, for an end to all actions that impair the observance of human rights, and for abstention from the adoption of any new measures that will further aggravate the situation."

38. The Ad Hoc Meeting also urged the Government of Peru "to make formal its invitation to the Inter-American Commission on Human Rights to investigate the human rights situation in Peru so that it may report thereon to the Permanent Council."¹⁷

39. On May 18, 1992, a new session of the Ad Hoc Meeting of Ministers of Foreign Affairs was held during which the President of Peru undertook to call a Constitutional Congress. The Meeting of Ministers asked the IACHR to continue observing the situation of human rights in Peru and to report thereon to the Permanent Council of the Organization.¹⁸

40. During April and May 1992, the Chairman of the Inter-American Commission and several members of its Executive Secretariat made visits to Peru. The activities undertaken and the aspects considered during this visit were included in the Report by the Chairman of the IACHR to the Ad Hoc Meeting of Foreign Ministers in Bahamas.

41. Finally, the Inter-American Commission issued a special country report in which it noted that it:

received numerous communications reporting measures of force adopted and employed by the new Government. Among these was the fact that the Legislative Palace and the Palace of Justice were taken over and closed. The chairmen of both houses of Congress were held under house arrest, as were other parliamentarians. Private homes were searched and well-known political leaders arrested[, mostly from the APRA party]. A journalist was arrested, as were other opposition political leaders. They were held for several days and their whereabouts went unreported ... [and] two news agencies were closed down and military personnel were sent to the offices of newspapers, magazines, and radio and television stations.¹⁹

¹⁵ As regards the dissolution of Congress, the IACHR mentioned in its special report that the Congress "had been helpful in shedding light on events that violated human rights." IACHR, *Report on the Situation of Human Rights in Peru*, *supra* note 6, paras. 52 and 53.

¹⁶ The meeting was called pursuant to Resolution AG/RES.1080 (XXI-O-91), at webpage: <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/documents.asp> as of January 2, 2005, and the Santiago Commitment to Democracy, at webpage: http://www.oas.org/xxxiiga/spanish/docs/agdoc4224_03rev3.pdf. as of February 2, 2005.

¹⁷ IACHR, *Report on the Situation of Human Rights in Peru*, *supra* note 6, paras. 43 and 44.

¹⁸ That request was made through Resolution 2/92. IACHR, *Report on the Situation of Human Rights in Peru*, *supra* note 6, paras. 46 and 47.

¹⁹ IACHR, *Report on the Situation of Human Rights in Peru*, *supra* note 6, para. 42.

The dismissal of the congressional employees

42. On April 16, 1992 the Emergency and National Reconstruction Government issued Decree-Law 25,438 by which it constituted the Administrative Committee of the Assets of the Legislature (hereinafter "Administrative Committee").

43. The Administrative Committee was entrusted with "adopting the administrative measures and issuing the personnel actions necessary."²⁰ That Committee was presided over by Peruvian (ret.) Army General Wilfredo Mori Orzo, and it was stripped of its functions by Decree-Law 25,477 of May 6, 1992.²¹

44. On July 21, 1992, by Decree-Law 25,640, execution of the process of streamlining the staff of the Congress of the Republic was authorized. That streamlining included a series of incentives for workers to resign voluntarily, re-locating situating the position in the official sector, or dismissal on grounds that they were surplus.

45. By Decree-Law 25,640 it was also determined that "no *amparo* action could be granted aimed at challenging directly or indirectly the application of the ... Decree Law" and that "any provisions opposed to ... Decree Law [25,640]" would be derogated or suspended, as the case may be.²²

46. In addition, Decree-Law 25,759 of October 1, 1992, provided that the process of streamlining would be concluded by November 6, 1992. By means of that decree-law, the Administrative Committee of the Assets the Legislature was assigned the task of performing an evaluation and selection of personnel by administering exams. Those staff members who did not achieve the scores required, or who did not come forward to participate in the competitive process, would be dismissed on the grounds that the Congress was being reorganized. In addition, Decree-Law 25,759 derogated Article 4 of Decree-Law 25,640.²³

47. Resolution No. 1239-A-92-CACL, issued October 13, 1992, by the President of the Administrative Committee of the Legislative Chambers²⁴, approved the new staff assignments, the requirements, and specifications and the regulations of the process of evaluating and selecting the personnel of the Congress of the Republic.

²⁰ Decree-Law 25,438 (art. 1). Annex 6. Also at webpage: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/25438.pdf> as of February 2, 2005.

²¹ Decree-Law 25,438 (art. 1), Annex 6 and Decree-Law No. 25,477 (art. 4), Annex 7. Also at webpage: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/25477.pdf> as of February 2, 2005.

²² Decree-Law No. 25,640 (arts. 9 and 10), Annex 8. Also at webpage: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/25640.pdf>, as of February 2, 2005.

²³ Decree-Law 25,759, Annex 9. Also at webpage: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/25759.pdf> as of February 2, 2005. Article 4 of Decree-Law 25,640, which was derogated by this statutory provision, provided: "Upon expiry of the term of 15 calendar days following the publication of the decree indicated in Article 2 of ... Decree-Law [25,640], the personnel who had not requested voluntary retirement and that is declared surplus, will be made available to the National Institute for Public Administration (Instituto Nacional de Administración Pública, INAP), for relocation in the public entities that need personnel. After 45 calendar days of having been made available to the INAP, the personnel not relocated will be terminated from the administrative career service, and will receive compensation only for the time of service and all other benefits provided by law."

²⁴ Decree-Law 25,477 (Annex 7), in its Article 1, also provided for the creation, on a transitory basis, of the Administrative Committee of the Legislative Chambers, presided over by the chairman of the Administrative Committee on the Assets of the Legislature.

48. Resolution No. 1239-A-92-CACL provided that “the Administrative Committee of the Assets of Legislature [would] not accept claims regarding the outcome of the exam.” (Article 27).

49. The Administrative Committee scheduled for October 18, 1992, the process of evaluation for the workers who did not avail themselves of the process of voluntary resignation and economic incentives. Nonetheless, the screening process had to be called again on October 24 and 25, 1992, due to the allegations of corruption in the exam originally held.²⁵

50. The process of evaluation took place on October 24 and 25, 1992, under the direction of Peruvian Army Colonel Carlos Novoa Tello, who adduced, then and there, that at that time he was in charge of the process, considering that Gen. Wilfredo Mori Orzo, Chairman of the Administrative Committee, was on leave to run as a candidate for Congress (*supra* 43).

51. Gen. Mori Orzo had indeed requested leave on October 22, 1992,²⁶ and was replaced by Col. Novoa Tello as of that date. Nonetheless, the Supreme Resolution that so ordered was not issued until November 5, 1992.²⁷

52. On November 6, 1992, Col. Novoa Tello, in his capacity as acting chairman of the Administrative Committee, issued Resolutions 1303-A-92-CACL and 1303-B-92-CACL, which were published on December 31, 1992. By those resolutions, a total of 1,117 workers and staff members of the Congress were dismissed; they had either decided not to sign up for the competitive screening process, or, having signed up, they did not show up, or showed up and did not pass.²⁸ Among the persons dismissed were the 257 workers who are party to complaints 11,830 and 12,038, which have been combined in this case.

Administrative initiatives

53. In 1993 and 1994, the victims of this case pursued several remedies vis-à-vis the directing bodies of the Congress of the Republic, with no results whatsoever. For example, in January 1993 they submitted to the President of the Democratic Constitutional Congress (hereinafter “CCD”) a motion for reconsideration of their dismissals, which was ignored.²⁹

54. Subsequently, the dismissed workers filed a motion for appeal that was also ignored. Because of that, they insisted once again, resulting in Resolution No. 1534-93-CCD/OGA-OPER and others, by which their means of challenge were declared inadmissible in a nonappealable ruling, with no judgment on the merits of those appeals.³⁰

²⁵ Article from the Diario La República of October 21, 1992, “Pruebas de evaluación del Congreso habrían sido vendidas en 500 dólares.” Annex 25.

²⁶ Supreme Resolution No. 498-92-PCM of October 22, 1992, Annex 10.

²⁷ Supreme Resolution No. 532-92-PCM of November 5, 1992, Annex 11.

²⁸ Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published in the official gazette El Peruano of December 31, 1992, Annex 12.

²⁹ See background in the Judgment of the Constitutional Court of November 24, 1997, in the record of case No. 338-96-AA/TC being processed in representation of the dismissed congressional employees in the domestic jurisdiction, Annex 13.

³⁰ *Id.*

55. Through a remedy filed September 18, 1994, the victims asked that the resolution by which they were dismissed be nullified. Nonetheless, Resolution No. 840-94-CCD/G.RRHH of September 26, 1994, declared those motions inadmissible.³¹

56. Finally, on December 15, 1994, the 257 dismissed congressional employees filed administrative appeals to reopen the matter, and, in keeping with Supreme Decree No. 002-94-JUS³², the 30 working days that the Democratic Constitutional Congress had to rule on the motions lapsed on January 26, 1995, without the victims obtaining any response. On that date, the prior administrative remedy was exhausted.³³

Judicial initiatives

57. On March 2, 1995, the petitioners filed a writ of *amparo*, before the 28th Specialized Civil Court of Lima. That Court declared the *amparo* well-founded, and found Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, not to apply, by judgment of June 26, 1995. In that judgment it ordered that the complainants be reinstated in the positions they held prior to the violation of the right.³⁴

58. On July 12, 1995, the Solicitor General (Procurador del Estado) appealed the judgment of first instance, and on February 21, 1996, the Fifth Civil Chamber of the Superior Court of Lima modified the judgment appealed, so as to declare unfounded the writ of *amparo* filed by the victims in this case.³⁵

59. On April 11, 1996, a group of dismissed workers from the Congress of the Republic filed a motion for cassation before the Constitutional Court of Peru.

60. On June 15 and 16, 1996, a new "autonomous and independent" Constitutional Court was established in Peru.³⁶ Nonetheless, that Court was subjected to a pressure campaign related to the presidential re-election in Peru that entailed many conflicts and instability within the collegial body.³⁷

61. The motion for cassation filed by the dismissed congressional employees before the Constitutional Court (*supra* 59) was resolved by judgment of November 24, 1997, when that Court was still in crisis due to the pressures and persecutions suffered by the Peruvian authorities. The

³¹ *Id.*

³² Supreme Decree No. 002-94-JUS, Annex 14.

³³ See background in the Judgment of the Constitutional Court of November 24, 1997, in the record of case No. 338-96-AA/TC being processed in representation of the dismissed congressional employees in the domestic jurisdiction, Annex 13.

³⁴ 28th Specialized Civil Court of Lima. Judgment of June 26, 1995, Annex 15.

³⁵ Superior Court of Justice of Lima. Fifth Civil Chamber. Judgment of February 21, 1996, Annex 16.

³⁶ The Court had seven members: Ricardo Nugent (President), Guillermo Rey Terry, Manuel Aguirre Roca, Luis Guillermo Díaz Valverde, Delia Revoredo Marsano, Francisco Javier Acosta Sánchez, and José García Marcelo. See: I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 56(3)).

³⁷ This led to the creation of an "Evaluation Subcommittee" within the re-established Peruvian Congress, which brought constitutional accusations against some judges in May 1997. In June 1997, those judges were removed, not to be replaced until a decision taken by Congress on November 17, 2000. See I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, facts proven, para. 56.

decision of the Constitutional Court affirmed the decision of the Superior Court of Lima, declaring the writ of amparo brought by the complainants to be unfounded.³⁸

62. In summary, the 257 dismissed workers who are the victims in the instant case exhausted all administrative remedies provided for under Peruvian law, without favorable results. Once administrative remedies were exhausted, they pursued all judicial remedies available to them.

Damages

63. The 257 dismissed congressional employees who are victims in the instant case suffered material and non-material damages due to the loss of employment, and, consequently, their incomes. In addition, they made expenditures in the domestic and international proceedings.

VII. LEGAL ARGUMENTS

A. Right to Judicial Protection (Article 25(1)) and Right to Judicial Guarantees (Article 8(1))

64. Article 25(1) of the American Convention establishes that:

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

65. In keeping with the case-law of the Court, this is a general provision that encompasses institutions such as *amparo* or *tutela*, which should be simple and brief procedures for protecting fundamental rights. In this regard, the Court has considered that

the writs of habeas corpus and of *amparo* are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by Article 27(2) [of the Convention] and that serve, moreover, to preserve legality in a democratic society.³⁹

66. In the Peruvian State, the *amparo* action is designed as a simple and brief procedure whose purpose is to protect the fundamental rights of persons.⁴⁰ The *amparo* in Peru – along with habeas corpus – is designed to be an action of constitutional guarantees⁴¹ aimed at “restoring things to the state prior to the violation or threat of violation of a constitutional right.”⁴²

³⁸ Judgment of the Constitutional Court of November 24, 1997, in the record of case No. 338-96-AA/TC being processed in representation of the 257 dismissed congressional employees in the domestic jurisdiction, Annex 13.

³⁹ I/A Court H.R., *Tibi Case*. Judgment of September 7, 2004. Series C No. 114, para. 128, which cites: I/A Court H.R., *Habeas Corpus in Emergency Situations*. Series A. Advisory Opinion OC-8/87 of January 30, 1987, para. 42; I/A Court H.R., *The Brothers Gómez Paquiyauri Case*. Judgment of July 8, 2004. Series C No. 110, para. 97; I/A Court H.R., *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para. 106; and I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 33.

⁴⁰ I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 91 and I/A Court H.R., *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30 1987, Series A No. 8, para. 32.

⁴¹ Political Constitution of Peru 1993, Title V: On Constitutional Guarantees, Art. 200.

⁴² Law 23,506 (Art. 1), Annex 18.

67. The suppression of any possibility of review and control of the administrative act that gave rise to the violation suffered by the victims (by means of Decree Law No. 25,640, Article 9 and Resolution 1239 A-92-CACL, Article 27), violated the right to a simple and prompt remedy, first, by removing an administrative act from administrative review and then from judicial scrutiny. In this regard, the existence of state acts that are not subject to review, either administrative or judicial, is incompatible with the provisions of the American Convention; it is understood that judicial review should not be merely formal.⁴³

68. The Court has understood that the broad terms of Article 25(1) of the American Convention imply

the obligation of the States to provide to all persons within their jurisdiction an effective judicial remedy to violations of their fundamental rights. It provides, moreover, for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws.⁴⁴

69. In the instant case, notwithstanding the prohibition of the legal provisions analyzed, contrary to the Convention, the congressional employees who considered that their labor rights were violated by the resolutions of the Administrative Committee, once they had exhausted their administrative remedies, filed a writ of *amparo* before the 28th Specialized Civil Court of Lima. That court studied the action and concluded that the public official who had signed those resolutions had no authority to do so, because of an irregularity in the publication of the administrative act by which he was designated to that position. The court of first instance analyzed the problem, by assessing the legality of the administrative act that designated the chairperson of the Commission entrusted with carrying out the process of evaluating the employees of the Congress; by its nature, that provision was subject to judicial review.⁴⁵

70. Since the decision was contrary to the State, the Solicitor General challenged it, and so it was heard by the Superior Court of Lima, which ruled by overturning the decision below on the whether the *amparo* action was well-founded, without analyzing the merits of the claim. That judgment was affirmed on the same grounds by the Constitutional Court, which is the court of last resort for appeals of rulings denying *amparos*.⁴⁶

⁴³ I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 121; I/A Court H.R., *Case of Mayagna (Sumo) Community of Awás Tingni*. Judgment of August 31, 2001. Series C No. 79, para. 112; and I/A Court H.R., *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, para. 135. See also, in this regard: I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, in which the victims had been tried for the crime of treason, for which a summary procedure was used, conducted by “faceless” judges, with respect to which no action to guarantee rights could be brought.

⁴⁴ I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 89 citing I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 y 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 23.

⁴⁵ In this respect, see: IACHR. Report 48/00. Peru. April 13, 1999. Case of Walter Humberto Vásquez, para. 91, a case that occurred in Peru at the same time as the facts in this application, while similar measures were being adopted by the government of President Alberto Fujimori, in which the government ordered the removal of thirteen judges of the Supreme Court, and declared that no *amparo* action could be brought to challenge the effects of the application of the Decree of Removal. Once the complaint was presented to the inter-American system, the IACHR considered that the only simple and prompt remedy to which the victims had access to challenge the effects of the Decree of Removal was the *amparo* remedy. The IACHR also concluded that eliminating the possibility of bringing this action, due to the failure to rule on the merits of the matter raised, constituted a violation, by the Peruvian State, of the right enshrined in Article 25 American Convention.

⁴⁶ Article 200 of Peru’s 1993 Constitution provides that: “The Constitutional Court shall: 1. Take cognizance, in first instance and without appeal, of actions of unconstitutionality. 2. Take cognizance, in the last and final instance, of rulings denying motions for habeas corpus, *amparo*, habeas data, and action for enforcement [acción de cumplimiento]. 3. Take cognizance of jurisdictional disputes, or of powers assigned by the Constitution, pursuant to the law.”

71. The decision of the Constitutional Court was based mainly on two arguments. The first, that the evaluation tests were not subject to any claim whatsoever, and as the administrative appeal was not regulated, it was unnecessary to recur to it. Accordingly, the term for exercising the writ of *amparo*, 60 days after the alleged violation – Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published December 31, 1992 – had expired. The Constitutional Court did not consider it necessary to analyze the argument that the failure to provide for review was contrary to the Convention. The second argument, explained by the Constitutional Court, was based on the notion that due to the new Constitution, promulgated December 29, 1993, which modified the structure of the Congress, the situation the *amparo* sought to address had become irreparable, since that institution had disappeared.

72. By conditioning the procedural soundness of the action on the scope of an administrative resolution – itself a violation of the American Convention – and by failing to rule on the merits based on the arguments and evidence put forth by the parties, this decision removed from the workers of Congress the possibility of judicial guarantee, a remedy necessary for verifying observance of rights protected by the American Convention, the Constitution, and the law of the State itself. That violation persists over time for a large number of persons, who to this day have not had any response to the substance of their claims.

73. The decision of the Constitutional Court in one way or another denied the congressional employees any possibility of judicial oversight or review of their claims. First, the Court determined that the facts that gave rise to the complainants' situation was irreparable with the advent of the new Constitution, therefore the constitutional action was not proper. Second, the regular court to which the Constitutional Court remanded the matter would be barred from considering it, as the statute of limitations had run on the victims' ability to bring a claim before the contentious-administrative jurisdiction.⁴⁷ The congressional employees were left, therefore, without protection from an arbitrary decision, by another arbitrary decision.

74. The Inter-American Court has stated that

the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.⁴⁸

75. Even if one were to interpret, hypothetically, that the congressional employees had free access to the jurisdiction through the development of the judicial remedy before the regular courts and the Constitutional Court, as stated, this would not be sufficient to guarantee the judicial protection imposed on the State by Article 25 of the American Convention. The mere formalities of a procedure are not tantamount to an effective remedy⁴⁹, which is considering means for attaining effective judicial protection of human rights that require a result.

⁴⁷ Law 27,584 Law that regulates the Contentious-Administrative Procedure. Articles 17 and 18.

⁴⁸ I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 185, which cites: I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

⁴⁹ I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 90; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 191; and I/A Court H.R., *Cesti Hurtado Case*. Judgment of September 29, 1999. Series C No. 56, para. 125.

76. In the instant case, the congressional employees had the right for the judicial authorities, including the highest-level court in the country, the Constitutional Court, to review the merits of their action, and to go to the merits to reach a decision that would either accept their arguments and restore their rights, or, to the contrary, dismiss their claims.

77. The situation to which the congressional employees have been exposed is not an isolated event nor does it correspond to the intent of the State to reorganize one of its institutions. The government of President Alberto Fujimori brought about a situation of legal and institutional instability with laws and decrees that sought to modify in one fell swoop the structure of the State to facilitate the establishment of the new regime without checks and balances. The consequence of those actions was the thwarting of the rule of law and limitations on the protection of human rights of individuals, who unsuccessfully demanded of the judiciary that their rights be restored, yet the judiciary's function as a check on the constitutionality of the acts of the other branches of government was diminished.⁵⁰

78. Article 8(1) of the Convention provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature ... or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

79. The Commission considers that in applying judicial guarantees, which exist to determine labor-related obligations protected by Article 8(1) of the American Convention, it is essential to examine, or re-examine, the legality of any decision that imposes on an individual an irreparable encumbrance, or an encumbrance that has a negative impact on fundamental rights or freedoms.⁵¹

80. The Inter-American Court has considered the scope of the right to due process:

In any subject matter, even in labour and administrative matters, the discretionality of the administration has boundaries that may not be surpassed, one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects. For instance, the administration may not dictate punitive administrative actions without granting the individuals sanctioned the guarantee of the due process.⁵²

81. As already indicated by the Inter-American Court, Article 8 of the Convention "is not strictly limited to judicial remedies, 'but rather the procedural requirements that should be observed

⁵⁰ Doing away with the separation of powers has resulted in a weakening of the remedies established to protect and guarantee the exercise of the rights of persons; this situation is worsened by the adoption of decree-laws whose provisions leave the observance of human rights in an extremely precarious situation. One result of this is a state of mounting uncertainty and insecurity for large sectors of the Peruvian population. The Commission is of the view that through this process the institutional and legal conditions are being put in place to justify arbitrary rule. IACHR. Report on the Situation of Human Rights in Peru. March 12, 1993. Para. 85.

⁵¹ See: IACHR. Report 119/99. Peru. October 6, 1999. Case of Susana Higuchi Miyagawa, para. 54, in which the IACHR considered that the decision that puts an end to a judicial proceeding must be formal, as it should go to bottom of the facts, and verify whether they occurred as alleged and proven. It should establish the responsibility of the person who caused by his or her conduct the violative act or omission, and then decide on the merits. If it fails to do so, the judicial remedy becomes inconclusive, in addition to ineffective, on not protecting the individual from the violation, nor providing adequate reparation.

⁵² I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 126.

in order to be able to speak of effective and appropriate judicial guarantees' so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights."⁵³ This provision establishes what is known in international human rights law as the right to due process which, like the provisions of Articles 7(6) and 25, cannot be suspended in states of emergency.⁵⁴

82. In the instant case, the resolution that denied administrative review of the exams excluded the victims from judicial protection, as it was put in place as a regulatory requirement for bringing an action for constitutional guarantees. Review of the case by the regular courts was time-barred⁵⁵; the victims were thus being left without any protection by an arbitrary decision. The admission of any of these interpretations by the inter-American system would be tantamount to suppressing enjoyment of the right to judicial protection and judicial guarantees of the petitioners, contrary to Article 29(a) of the Convention.⁵⁶

83. In light of Articles 8 and 25 of the Convention, the states party to it have undertaken to provide simple and prompt judicial remedies, by competent and independent courts, so that persons can demand the restoration of their rights when they consider they have been violated by state agents or organs. Such judicial remedies or procedural means are to be effective and, in combination with the rules of due process, guarantee the free and full exercise of the rights, protected by the Convention, the Constitution, or the domestic legislation of states, of the persons under their jurisdiction.⁵⁷

84. In its vast case-law on the subject, the Inter-American Court has established that safeguarding the person from the arbitrary exercise of public power is the essential purpose of the international protection of human rights.⁵⁸ In view of the foregoing, the non-existence – and moreover the prohibition – of effective domestic remedies placed the victims in the instant case in a defenseless situation, in breach of the American Convention.⁵⁹

85. In view of all the foregoing, the Commission finds, in light of the provisions of conventional norms and the case-law of the inter-American system – and it asks that the Court do likewise – that the State denied the victims their right to judicial protection and judicial guarantees, and thereby violated Articles 25(1) and 8(1) of the Convention, to the detriment of the 257 dismissed congressional employees who are party to the instant case.

⁵³ I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 69 citing I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

⁵⁴ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 30.

⁵⁵ Law 27,584 that regulates the Contentious-Administrative Procedure. Articles 17 and 18.

⁵⁶ IACHR. Report 105/99. Argentina. September 29, 1999. Narciso Palacios Case, para. 58. In a case against Argentina before the IACHR, the victim alleged that his contentious-administrative action was rejected for failure to exhaust administrative remedies, the Commission then considered that while it is true that the states establish admissibility requirements for domestic remedies, their vagueness and indetermination may also constitute a violation of the judicial protection demanded, when it is intended to close off access to the jurisdiction.

⁵⁷ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paras. 23-24.

⁵⁸ I/A Court H.R., *Tibi Case*. Judgment of September 7, 2004. Series C No. 114, para. 130; I/A Court H.R., *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C No. 98, para. 126 and I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, para. 89.

⁵⁹ I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6 1987. Serie A No. 9, para. 24.

B. Breach by the State of the obligations established in Articles 1(1) and 2 of the American Convention (Obligations to Respect the Rights and Duties and to Adopt Domestic Legal Provisions)

86. Article 1(1) of the Convention provides:

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

87. As a result of the violation of the rights enshrined in Articles 8(1) and 25(1) of the American Convention, the State breached its obligation to respect the rights and freedoms enshrined in it, and to ensure and guarantees the free and full exercise of those rights for all persons under its jurisdiction. In effect, the Peruvian State had the duty to organize the government apparatus and all the structures by which the exercise of public power was expressed, such that they would be capable of legally ensuring the free and full exercise of human rights. As the Court has indicated, this

obligation applies independently of whether those responsible for violation of said rights are agents of public authority, private individuals, or groups of individuals,⁶⁰ as according to the rules of international human rights law, action or omission by any public authority is an act attributable to the State, one that involves its responsibility under the terms set forth in that Convention.⁶¹

88. From the foregoing is also derived the obligation of the States to make diligent use of all the means available to them to perform a serious and effective investigation within a reasonable time, that could be the basis for prosecuting, clarifying the facts, placing on trial, and punishing the material and intellectual authors of every violation of the rights protected in the American Convention.

* * *

89. Article 2 of the Convention provides:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

90. In the instant case, Article 9 of Decree-Law 25,640 of July 21, 1992, and Article 27 of Resolution No. 1239-A-92-CACL of October 13, 1992, impeded the congressional employees

⁶⁰ I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 142; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 210; and I/A Court H.R., *Paniagua Morales et al. Case*. Judgment of March 8, 1998. Series C No. 37, para. 174.

⁶¹ I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 142; I/A Court H.R., *“Five Pensioners” Case*. Judgment of February 28, 2003. Series C No. 98, para. 163; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, para. 210; I/A Court H.R., *Case of the Mayagna (Sumo) Community of Awás Tingni*. Judgment of August 31, 2001. Series C No. 79, para. 154; and I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 178.

from enjoying the rights protected and guaranteed at Articles 25(1) and 8(1) of the American Convention.

91. With respect to Article 2 of the Convention, the Inter-American Court has stated that

[t]he general duty of Article 2 of the American Convention implies the adoption of measures in two ways. On the one hand, derogation of rules and practices of any kind that imply the violation of guarantees in the Convention. On the other hand, the issuance of rules and the development of practices leading to an effective enforcement of the said guarantees.⁶²

92. In addition, the Court has asked that the states party to the Convention not issue measures that violate the rights and freedoms recognized in it.⁶³ The Court has also affirmed that “a norm may be per se in violation of Article 2 of the Convention, independent of it having been applied in a specific case.”⁶⁴

93. From the foregoing, one infers that since the Peruvian State has not brought its legislation into line with the Convention, it has breached the obligation imposed on the states party by its Article 2, and, therefore, the IACHR finds – and requests that the Court does the same – that Peru breached the obligation established at Article 2 of the American Convention to the detriment of the victims in the instant case.

VIII. REPARATIONS AND COSTS

94. Based on the facts alleged in this application, and on the consistent case-law of the Inter-American Court, which establishes “that it is a principle of international law that any violation of an international obligation that has caused injury gives rise to an obligation to make adequate reparation for that injury,”⁶⁵ the IACHR presents to the Court its claims with respect to reparations and costs that the Peruvian State should grant as a result of its responsibility for the human rights violations committed to the detriment of the 257 dismissed congressional employees who are victims in the instant case.

95. The Inter-American Commission asks that the Court order the State to compensate the material and non-material injury caused the victims, in the terms indicated below. In addition, the Inter-American Commission asks the Court to order the State to pay the expenses and legal costs incurred by the victims and their representatives in processing this case domestically and those fees and costs that arise from the processing of the instant case before the inter-American system.

⁶² I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 219; I/A Court H.R., *Case of Children’s Rehabilitation*. Judgment of September 2, 2004. Series C No. 112, para. 206; and I/A Court H.R., *“Five Pensioners” Case*. Judgment of February 28, 2003. Series C No. 98, para. 165.

⁶³ I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 221; I/A Court H.R., *The Brothers Gómez Paquiyauri Case*. Judgment of July 8, 2004. Series C No. 110, para. 71 and I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 182.

⁶⁴ I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 221; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94, paras. 114 and 115 and I/A Court H.R., *“The Last Temptation of Christ” Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, para. 72.

⁶⁵ I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 230; I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 85; I/A Court H.R., *Caso De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 138.

A. Obligation to make reparations

96. One essential function of justice is to remedy the harm caused to the victim. This function should be expressed through rectification and restitution, and not only through compensation, which does not re-establish the moral balance or give back that which was taken.

97. Article 63(1) of the American Convention establishes 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 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.

98. In addition, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power enshrines broad guarantees for those who suffer economic losses, physical injury, or mental injury, and "substantial impairment of their fundamental rights" by act or omission, including the abuse of power. The victims or their next-of-kin have the right to seek reparation and to be informed of that right.⁶⁶

99. As the Court has indicated in its consistent case-law, "Article 63(1) of the American Convention codifies a customary norm that is one of the fundamental principles of contemporary international law on the responsibility of states. Accordingly, when an unlawful act occurs imputable to a state, it immediately becomes internationally responsible for the violation of an international norm, with the consequent duty of reparation to halt the consequences of the violation."⁶⁷

100. Reparation is crucial for guaranteeing that justice be done in an individual case, and constitutes the mechanism that elevates the Court's decision beyond the sphere of moral condemnation. Reparation consists of measures aimed at wiping out the effect of the violations committed. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation prior to the violation.

101. If full restitution is not possible, it is up to the Inter-American Court to order that a series of measures be adopted so that, in addition to ensuring respect for the rights violated, reparation can be made for the consequences produced by the violations, and that compensation be paid for the damages caused, as the case may be.⁶⁸ The key purpose of compensation in such cases is to make reparation for actual damages, both material and moral, suffered by the injured parties.⁶⁹ The damages suffered should necessarily be "proportional to the gravity of the violations and the

⁶⁶ U.N. A/RES/40/34 of November 29, 1985, paras. 1, 4 and 5.

⁶⁷ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 86; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 52; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 139.

⁶⁸ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 53; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 140.

⁶⁹ I/A Court H.R., *Bulacio Case*. Judgment of September 30, 2003, Series C No. 100, para. 70; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., *Paniagua Morales et al. Case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 80 and I/A Court H.R., *Castillo Páez Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998, Series C No. 43, para. 52.

harm suffered."⁷⁰ In addition, reparations have the addition – though no less fundamental – purpose of preventing and halting future violations.

102. The obligation to make reparation, which is regulated in every respect by international law (scope, nature, modalities, and determination of beneficiaries), cannot be modified or go unperformed by the State obligated by invoking domestic law provisions⁷¹, for "where there is a violation without sanction, or harm without reparation, the law enters into crisis, not only as an instrument to resolve a particular dispute, but as a method of resolving all of them, i.e., to ensure peace with justice."⁷²

103. In the instant case, the Inter-American Commission has shown that the State incurred international responsibility for violating, to the detriment of the victims established in paragraph 3 of the application, the rights to judicial guarantees and to judicial protection, and for having breached its obligation to respect the rights and its duty to adopt provisions of domestic law to uphold the rights in the American Convention.

104. Finally, considering the provisions of the Court's Rules of Procedure that grant autonomous representation to the individual, the Inter-American Commission will only develop in this application the general criteria on reparations and costs that it considers should be applied by the Court in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to specify their claims, in keeping with Article 63 of the American Convention and Article 23, among others, of the Court's Rules of Procedure. In the event that the victims do not make use of this right, the Court is asked to give the IACHR a procedural opportunity to quantify the relevant claims. In addition, the Inter-American Commission takes the opportunity to indicate that it will inform the Court in timely fashion whether it has any observations regarding the quantification of the claims by the victims or their representatives.

B. Measures of reparation

105. In the instant case, the Inter-American Commission has shown that the State became internationally responsible for violating the human rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the 257 dismissed congressional employees.

106. The Court has indicated that measures of reparation are aimed at wiping out the effects of the violations committed.⁷³ These measures include the different ways in which a State

⁷⁰ United Nations, *Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law*, E/CN.4/Sub.2/1996/17, para. 7. See also, I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 89; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 141; *Cantoral Benavides Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001, Series C No. 88, para. 42 and *Cesti Hurtado Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001, Series C No. 78, para. 36.

⁷¹ I/A Court H.R., *Lori Berenson Mejía Case*. Judgment of November 25, 2004. Series C No. 119, para. 231; I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 53.

⁷² SERGIO GARCÍA RAMÍREZ, LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS, paper presented at the Seminar "The inter-American system of human rights at the threshold of the 21st century," San José, Costa Rica, November 1999.

⁷³ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 89; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 141; I/A Court H.R., *The Brothers Gómez Paquiyauri Case*. Judgment of July 8, 2004. Series C No. 110, para. 190.

may own up to its international responsibility, which under international law includes measures of restitution, compensation, rehabilitation, and satisfaction, and measures of non-repetition.⁷⁴

107. In addition, the United Nations Commission on Human Rights has found 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.⁷⁵

108. Pursuant to the foregoing, the Inter-American Commission asks that the Court order comprehensive reparations; this requires that judicial and administrative mechanisms be established and strengthened, as necessary, so as to enable the victims to obtain reparation through *sua sponte* procedures that are expeditious, fair, low-cost, and accessible.

109. In keeping with the evidentiary elements presented in this application, and in light of the criteria established by the Court in its case-law, the Inter-American Commission presents its conclusions and claims with respect to the measures of reparation for material and non-material injury, and other forms of reparation and satisfaction called for in the case of the 257 dismissed congressional employees.

b.1. Measures of compensation

110. The Court has established the special criteria that should guide fair compensation aimed at compensating economically, in an adequate and effective manner, the injuries suffered as a result of the violations of human rights. In addition, the Court has established that monetary compensation is merely compensatory, and that it will be granted in the amount and to the extent sufficient to compensate for the material and non-material injury caused.⁷⁶

b.1.i. Material damages

111. The Court in its case-law on reparations has been consistent in establishing that material damages include consequential damages and lost earnings, as well as non-material or moral injury to both the victim and his or her next-of-kin in certain cases.⁷⁷

⁷⁴ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law*, E/CN.4/Sub2/1990/10, 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.

⁷⁵ 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 series of principles and guidelines on the right of the victims of gross violations of human rights and humanitarian law to obtain reparation*, prepared by Mr. Theo Van Boven, in keeping with decision 1995/117 of the Sub-Commission, May 24, 1996, para. 7.

⁷⁶ I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., *Garrido and Baigorria Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, para. 41.

⁷⁷ I/A Court H.R., *Tibi Case. Judgment* of September 7, 2004. Series C No. 114, para. 237; I/A Court H.R., *Caracazo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002, Series C No. 95; and I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*. Judgment of June 21, 2002. Series C No. 94.

112. Consequential damages (*daño emergente*) has been understood as the direct and immediate economic consequences of the facts. This concept covers the negative economic impact derived immediately and directly from the facts in relation to the expenditures made by the victims to try to have recourse to an effective judicial remedy in relation to their dismissal.⁷⁸ As the Court may be able to establish directly, the dismissed workers of the Peruvian Congress not only stopped receiving their salaries, but they also made very considerable economic efforts to try to obtain judicial protection and judicial guarantees in the face of the administrative act that provided for their dismissal.

113. Lost earnings are understood as the loss of economic income or benefits no longer obtained as the result of a given event, and which can be quantified based on certain measurable and objective indicators.⁷⁹

114. Without prejudice to the claims that the victims' representatives may make at the appropriate point in the procedure, the IACHR asks the Court to set in equity the amount of compensation corresponding to consequential damages and lost earnings, in the use of its broad powers in this area.

b.1.2. Non-material damages

115. On non-material harm, the Court has established that:

... Non-pecuniary damages can include the suffering and affliction caused to the direct victims and their relatives, detriment to values that are very significant for individuals, as well as non-monetary alterations in the conditions of existence of the victim or the victim's family. As it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for purposes of integral reparation to the victims all that can be done is for them to receive compensation, and this in two ways. First, by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity. Secondly, by carrying out acts or public works whose scope or public repercussion have an effect in terms of the remembrance of the victims, recovery of their dignity, consolation to their relatives or issuing a message of official reproval of the violations of human rights involved and of commitment to avoid their repetition.⁸⁰

116. In addition, the Court has suggested the existence of a presumption in terms of the non-material harm suffered by the victims of human rights violations, on saying that the moral or non-material harm inflicted on the victims is apparent, as it is part of human nature that every person subjected to attacks and abuses of their human rights endures moral suffering, and that "no evidence is needed to reach that conclusion."⁸¹

⁷⁸ I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 147; and I/A Court H.R., *Aloeboetoe et al. Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 50.

⁷⁹ See, for example, I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, paras. 105 ff.; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, paras. 151 and 152.

⁸⁰ I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 80; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 155; see also, I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 117.

⁸¹ I/A Court H.R., *The Brothers Gómez Paquiyauri Case*. Judgment of July 8, 2004. Series C No. 110, para. 217; I/A Court H.R., *"19 Merchants" Case*. Judgment of July 5, 2004. Series C No. 109, para. 248.

117. In the instant case, the Commission argues the importance of recognizing the non-material harm caused the victims of the present case, who were subjected not only to their sudden dismissal, which is grounds for anguish, if one considers that their job was the main source of income for the families of the vast majority of the victims, but also given the impossibility of appealing those decisions to any organ with authority.

b.2. Measures of satisfaction and guarantees of non-repetition

118. Satisfaction has been understood as any measure that the perpetrator of a violation must adopt in keeping with international instruments or customary law, the purpose of which is to acknowledge that an unlawful act has been committed.⁸² Satisfaction takes place when three acts are carried out, generally cumulatively: apologies, or any other gesture that show recognition of having perpetrated the act in question; the prosecution and punishment of the individuals responsible; and taking measures to prevent repetition of the harm.⁸³

119. 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 Power⁸⁴, according to which victims "are entitled to access to the mechanisms of justice and to prompt redress ... for the harm that they have suffered" and that requires 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."

120. In the European sphere, in contrast, the European Convention on the Compensation of Victims of Violent Crime was drafted in 1983. In essence it addresses the situation of victims who have suffered bodily harm or detriment to their health, and the dependents of those who die as a result of these crimes, but it also makes reference to the obligation to protect victims and grant them certain rights to participate in the criminal proceeding.⁸⁵

121. The IACHR shall now set forth its position regarding the measures of satisfaction and guarantees of non-repetition required in the instant case, without prejudice to subsequently expanding on its arguments in relation to this issue.

⁸² Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

⁸³ *Id.*

⁸⁴ 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."

⁸⁵ European Convention of November 24, 1983, on the Compensation of Victims of Violent Crime. The Council of Europe has also issued norms and recommendations regarding the rights of crime victims.

122. First, the Court has indicated repeatedly that each individual, and society as a whole, has the right to be informed of what has happened with respect to human rights violations.⁸⁶ Similarly, the United Nations Commission on Human Rights in a recent resolution has recognized that for the victims of human rights violations, public recognition of their suffering and of the truth as to the perpetrators and their accomplices are essential steps towards rehabilitation and reconciliation. Accordingly, it has urged the governments to step up their efforts to provide the victims of human rights violations a fair and equitable process by which such violations may be investigated; and it has encouraged the victims to participate in those proceedings.⁸⁷

123. In keeping with the case law of the Court, and given the particular seriousness of the human rights violations in the present case, comprehensive reparation requires that the State guarantee the 257 dismissed congressional employees access to a simple, prompt, and effective remedy, to have their demands reviewed in relation to the separation to which they were subjected by the Administrative Committee of the Congress of the Republic, by Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published December 31, 1992. In order to be consistent with the American Convention, such a remedy must enjoy the corresponding judicial guarantees and lead to a ruling on the merits of the demands presented by the workers domestically.

124. In addition, the State is obligated to prevent the recurrence of human rights violations such as those present in this case; accordingly, the Commission asks the Court to order the State to modify Article 9 of Decree-Law 25,640, of July 21, 1992⁸⁸ and Article 27 of Resolution No. 1239-A-92-CACL of October 13, 1992⁸⁹, to bring them into line with the American Convention, and to adopt the legal, administrative, and other measures necessary to prevent similar events from recurring, carrying out the duty to prevent violations, and the duty to ensure the fundamental rights recognized by the Convention.

C. The beneficiaries

125. Article 63(1) of the American Convention requires reparation of the consequences of a violation and "that fair compensation be paid to the injured party." The persons who have a right to such compensation are generally those who are directly injured by the violation in question.

126. Considering the nature of the instant case, the beneficiaries of the reparations that the Court orders as a consequence of the human rights violations perpetrated against them by the Peruvian State are the complainants listed in paragraph 3 of this application.

D. Legal costs and expenses

127. According to the consistent case-law of the Court, legal costs and attorney's fees should be included within the concept of reparation enshrined in Article 63(1) of the American Convention, considering that the activity undertaken by an injured party, his or her successors, or his or her representatives to accede to international justice entails economic outlays and

⁸⁶ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, para. 128; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 96; I/A Court H.R., *"19 Merchants" Case*. Judgment of July 5, 2004. Series C No. 109, para. 81.

⁸⁷ E/CN.4/RES/2001/70.

⁸⁸ Annex 8.

⁸⁹ Annex 24.

commitments that must be compensated.⁹⁰ In addition, the Court has considered that the costs to which Article 55(1)(h) of the Court's Rules of Procedure refer include the necessary and reasonable expenditures for acceding to the supervisory organs of the American Convention, including the fees of those who provide legal assistance.

128. In the instant case, the Inter-American Commission requests the Court, once it has heard from the victims' representatives, to order the Peruvian State to pay the legal costs and attorney's fees duly proven by them, taking into consideration the special characteristics of this case in its processing both before the inter-American system and inside Peru.

IX. CONCLUSIONS

129. In view of the foregoing, the Commission finds that the Peruvian State is responsible for violating the judicial guarantees and judicial protection provided for at Articles 8(1) and 25 of the American Convention, to the detriment of the 257 dismissed congressional employees identified as victims in the present application; and for breaching the obligation to respect and ensure the rights enshrined in the American Convention imposed by Article 1(1) and the duty to adopt provisions of domestic law established in Article 2, both of the Convention, to the detriment of the 257 dismissed congressional employees identified as victims in this application.

X. PETITION

130. As a result of the foregoing, the Inter-American Commission requests the Court to order the State:

- a. to ensure for the 257 dismissed congressional employees access to a simple, prompt, and effective remedy, so that their demands can be reviewed in relation to their dismissal by the Administrative Committee of the Congress, by Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published December 31, 1992;
- b. to ensure the 257 dismissed congressional employees that said remedy enjoy the corresponding judicial guarantees and that it lead to a ruling on the merits of the demands presented by the workers in Peru;
- g. to amend Article 9 of Decree-Law Ley 25,640 of July 21, 1992 and Article 27 of Resolution 1239-A-92-CACL of October 13, 1992, to bring them into line with the American Convention;
- h. to adopt the measures necessary for the victims to receive adequate and timely reparation for the material and non-material injury suffered;
- i. to pay the legal costs and attorney's fees incurred by the victims and their representatives in processing the case in Peru, and those that arise from processing this case before the inter-American system; and

⁹⁰ I/A Court H.R., *Carpio Nicolle et al. Case*. Judgment of November 22, 2004. Series C No. 117, parr. 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.

- j. to adopt the legal, administrative, and other measures as necessary to prevent similar events from recurring, in keeping with the duty to prevent violations and to ensure the fundamental rights recognized by the American Convention.

XI. EVIDENCE

A. Documentary evidence

131. The IACHR offers the following documentary evidence:
1. IACHR, Report No. 52/00 (admissibility), Cases 11,830 and 12,038, Dismissed Congressional Employees, Peru, June 15, 2000.
 2. IACHR, Report No. 78/04 (merits), Cases 11,830 and 12,038, Dismissed Congressional Employees, Peru, October 19, 2004.
 3. The victims' documents.
 4. The file before the Commission.
 5. Decree-Law 25,418 of April 6, 1992 (published the next day) (*Law Laying the Bases of the Emergency and National Reconstruction Government*).
 6. Decree-Law 25,438 of April 16, 1992 (published April 20, 1992) (Constituting a Committee to administer the assets of the Congress).
 7. Decree-Law 25,477 of May 6, 1992 (published the next day) (Creating on a transitory basis the Specifications of the Administrative Committee of the Legislative Chambers).
 8. Decree-Law 25,640 of June 21, 1992 (published July 24, 1992) (Authorizing the Administrative Committee on the Assets of the Legislature to carry out a process of streamlining personnel in the Congress).
 9. Decree-Law 25,759, of October 1, 1992 (published October 8, 1992) (Setting the date for concluding the process of streamlining the personnel of the Congress).
 10. Supreme Resolution No. 498-92-PCM of October 22, 1992 (Granting leave to the Advisor of the PCM and the Chairman of the Administrative Committee of the Assets of the Legislature).
 11. Supreme Resolution No. 532-92-PCM of November 5, 1992 (Entrusting the Chairmanship of the Administrative Committee of the Congress).
 12. Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, published in the official gazette El Peruano on December 31, 1992.
 13. Judgment of the Constitutional Court of November 24, 1997, which is in the record of case No. 338-96-AA/TC, brought in representation of the 257 dismissed congressional employees in the domestic jurisdiction.
 14. Supreme Decree N°002-94-JUS of January 31, 1994 (Approving the Single Ordered Text of the Law on General Rules for Administrative Procedures).

15. Judgment of June 26, 1995 of the 28th Specialized Civil Court of Lima, which ruled favorably on the *amparo* of the petitioners, and, therefore, determined that Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992, were inapplicable.
16. Judgment of February 21, 1996 of the Superior Court of Lima Fifth Civil Chamber, which modified the judgment of June 26, 1995, to find the *amparo* filed by the victims of the case to be unfounded.
17. Resolution No. 1303-92-CACL of November 6, 1992 (Approving the Table of Merits for the Process of Evaluating and Selecting Personnel of the Congress of the Republic).
18. Law 23,506 of December 7, 1982 (published the next day) (The Government promulgated the Law on Habeas Corpus and *Amparo*).
19. Open letter to the President of the Constitutional Court of January 9, 1998.
20. Parts of the record in case 338-96-AA/TC that the Commission has:
 - a) Brief forwarding new case-law of the Constitutional Court of March 14, 1997;
 - b) Brief No. 002 in the record in case 338-96-AA/TC of September 8, 1997;
 - c) Brief forwarding case-law on Similar Cases from the Case to the Constitutional Court. (Forwarding case-law of the Constitutional Law Chamber of the Supreme Court, of September 19 and 26, 1996, ordering the reinstatement of two congressional employees, on finding null the Resolutions by which the petitioners were dismissed, and which are the subject matter of this judicial proceeding), October 22, 1997;
 - d) Brief that requests a Judgment Based on Fact, Law, and Case-law from the Constitutional Court, October 28, 1997;
 - e) Oral Report presented by brief to the Constitutional Court, November 24, 1997;
 - f) Brief that Forwards Report of the Colegio de Abogados of Lima that determined that the Termination Resolutions were null as they were time-barred, December 1, 1997;
 - g) Writing that reiterates a Request for Final Judgment and Compulsory Observance of the Evidence Submitted through Legal Motions, December 11, 1997;
 - h) Brief that reiterates request for a final judgment and observance of the motions of the respondent that does not provide full evidence, December 15, 1997;
 - i) Brief that reiterates request for judgment and refers to new case-law of the Constitutional Court and the Public Law Chamber of the Superior Court of Lima, January 1998, and
 - j) Notarial letters (2).
21. Parts of the record in case 1146-95 that the Commission has:
 - a) Statement of Injuries and Request for affirmation of the Judgment appealed by the Solicitor General, August 15, 1995;
 - b) Opinion 830-95, Public Ministry on Writ of *Amparo*, December 12, 1995;

- c) Brief by which a new date and time are requested for oral report, January 31, 1996;
 - d) Judgment of the Fifth Civil Chamber of Lima declaring INADMISSIBLE in all respects the writ of amparo filed on February 21, 1996;
 - e) Motion for Cassation against the judgment of February 21, 1996, which ruled to OVERTURN the judgment favorable to the petitioners, April 9, 1996;
 - f) Reiterates Motion for Cassation or Annulment, April 29, 1996, and
 - g) Reiterates day and time for the hearing of the case, August 28, 1996.
22. Part of the record in case 1577-95 that the Commission has:
- a) Writ of Amparo against the Congress of the Republic before the 28th Civil Court of Lima, January 10, 1995;
 - b) Writ of Amparo against the Congress of the Republic before the 28th Civil Court of Lima, March, 1995;
 - c) Writ of Amparo against the Congress of the Republic before the 28th Civil Court of Lima, March 27, 1995;
 - d) Answer by the Office of the Solicitor General to the Complaint, April 5, 1995;
 - e) Request for Judgment in view of the existing case-law, April 11, 1995;
 - f) Answer to the Accession of the complaint of the Office of the Solicitor General, April 21, 1995;
 - g) Reiterates Request for the judgment to be issued, and submitting new evidence to the Writ of Amparo, April 20, 1995;
 - h) Final argument of May 10, 1995;
 - i) Answer to the access of the complaint, May 30, 1995;
 - j) 28th Civil Court of Lima Rules Favorably on Writ of Amparo and ordered the Reinstatement of the 234 workers, June 26, 1995, and
 - k) Motion for Appeal filed by the Solicitor General of July 12, 1995.
23. Constitutional accusation against the Judges of the Constitutional Court for violation of the Constitution and the offense of prevarication.
24. Resolution 1239 A-92-CACL of October 22, 1992.
25. Article in the Diario La República, October 21, 1992, "Pruebas de evaluación del Congreso habrían sido vendidas en 500 dólares."
26. Powers of attorney executed by the victims to their representatives.
27. Law 27,584, which regulates the contentious-administrative procedure.
28. Résumé of the expert proposed.

B. Expert evidence

132. Mr. Samuel Abad Yupanqui. Deputy Ombudsperson for Constitutional Matters. The Commission presents this expert to the Court to testify as to the effects of the issuance of Decree-Law 25,640 of July 21, 1992 and Resolution No. 1239-A-92-CACL, the Peruvian social and legal context, and its social, economic, and labor-related impacts, among other aspects relating to the object and purpose of this application. Address: Jr. Ucayali No. 388, Lima 1, Peru. Tel: 051 (1) 426 78 89.

XII. INFORMATION ON THE ORIGINAL COMPLAINANTS, THE VICTIM, AND THEIR FAMILY MEMBERS

133. As established in Article 33 of the Honorable Court's Rules of Procedure, the names of the original complainants are indicated:

- 1) In case 11,830: Adolfo Fernández Saré, Angela Valdéz Rivera, Roberto Ribotte Rodríguez, María Huaranga Soto, and Manuel Carranza Rodríguez.
- 2) In case 12,038: Zoila Luz Begazo Salazar, Jorge Luis Pacheco Munayco, Julio Callirgos Tarazona, Dana Rossana Campos Alarcón, Luis Alberto Elera Molera, Luz Guillermina Gallegos Ramírez, Nélica Galvez Saldaña, Jorge Luis Ganoza Rivera, Rodolfo Eduardo Guevara Gallo, César Augusto Montalván Alvarado, Jorge Luis Pacheco Munayco, Rubén Manuel Reyes Caballero, Liduvina Salcedo Olivares, Gustavo Alberto Sierra Ortiz⁹¹, Hilda Orfa Valdez Tellez, Edgar Humberto Velásquez Machuca, Ivan Zumaeta Flores, Cita Amparo Vereau Palma, Leoncio Constantino Uchuya Chacaltana, Julio Miguel Hurtado Gutiérrez, and Telmo Jaime Barba Ureña

134. The Commission indicates to the Court that the victims have executed a power of attorney to different representatives with the following addresses, to which correspondence from the Court may be sent. The victims have executed different powers of attorney for their representation.⁹² Accordingly, the Commission respectfully asks the Court to require the petitioners to indicate directly the single address to which any notices may be sent.

135. The Commission provides the Court the available addresses of the various representatives that appear the respective powers of attorney.

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⁹¹ Mr. Sierra Ortiz is not included in the list of victims in paragraph 3 of this application.

⁹² Annex 26. Powers of attorney of the representatives.

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