



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application filed with the Inter-American Court of Human Rights
in the case of Heliodoro Portugal
(Case 12.408)
against the Republic of Panama

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**APPLICATION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE REPUBLIC OF PANAMA**

**CASE 12.408
HELIODORO PORTUGAL**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission” or “the Commission”) hereby submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” or “the Court”) this application in Case 12.408, *Heliodoro Portugal*, against the Republic of Panama, (hereinafter “the State,” “the Panamanian State,” or “Panama”) for its responsibility in the forced disappearance and extrajudicial killing of Mr. Heliodoro Portugal (hereinafter “the victim”),¹ its failure to investigate the incident and to punish the guilty, and its failure to provide his next-of-kin with proper redress.

2. The Commission requests that the Court rule that the Panamanian State failed to abide by its international obligations by violating Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with the general obligation of respecting and ensuring human rights set out in Article 1(1) thereof; the obligation of criminalizing forced disappearance, stipulated in Article III of the Inter-American Convention on Forced Disappearance of Persons; and the obligation of investigating and punishing torture, established by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

3. This case has been processed in accordance with the American Convention and is submitted to the Court in compliance with Article 33 of its Rules of Procedure. Attached hereto, in the annexes, is a copy of report No. 103/05, drawn up under Article 50 of the Convention.²

4. The Commission believes it is justified in referring this case to the Court because of the need to ensure justice and to secure redress for the victim’s next-of-kin. Additionally, the Commission believes that the case reflects the persecutions and human rights violations suffered by opposition leaders under the military dictatorship that took power in the country in October 1968, and the pattern of concealment and impunity that exists in Panama with respect to those violations.

II. PURPOSE OF THE APPLICATION

5. The purpose of this application is to respectfully request that the Court conclude and declare that:

- (a) the Panamanian State is responsible for violating Mr. Heliodoro Portugal’s right to life, to humane treatment, and to personal liberty, as set out in Articles 4, 5, and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;

¹ As detailed below, Mr. Portugal’s next-of-kin are also victims in this case. However, the term “victim” is used solely to refer to him, and the term “victim’s next-of-kin” to refer to the members of his family.

² IACHR, Report No. 103/05 (merits), Case 12.408, *Heliodoro Portugal*, (Panama), October 27, 2005; Appendix 1.

- (b) the Panamanian State is responsible for violating the right to humane treatment of Messrs. Graciela de León, Patria Portugal, and Franklin Portugal (the victim's next-of-kin), as set forth in Article 5 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof; and,
- (c) the Panamanian State is responsible for violating the right to a fair trial and to judicial protection of Mr. Heliodoro Portugal's next-of-kin, as set forth in Articles 8(1) and 25 of the American Convention; for noncompliance with its obligation of respecting and ensuring the rights contained in the Convention, in compliance with Article 1(1) thereof; for noncompliance with the obligation of criminalizing the forced disappearance of persons, contained in Article III of the Inter-American Convention on Forced Disappearance of Persons; for noncompliance with the obligation of investigating and punishing torture, established by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and for the failure to provide due redress for those violations.

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

- (a) conduct a complete, impartial, and effective investigation, in order to identify and punish the masterminds and physical perpetrators of, and other participants in, the illegal arrest, torture, forced disappearance, and extrajudicial killing of Mr. Heliodoro Portugal;
- (b) conduct a complete, impartial, and effective investigation, in order to identify and punish those individuals who, through their active participation or omissions, assisted in concealing and ensuring the impunity of the incident by hindering and delaying the investigations and proceedings previously pursued in connection with the human rights violations suffered by Mr. Heliodoro Portugal;
- (c) adopt measures to provide the victims in this case with due redress. These measures shall necessarily include forms of psychological and medical rehabilitation;
- (d) reclaim the memory of Mr. Heliodoro Portugal and of his next-of-kin by means of a public recognition of the State's responsibility for the grave violations that occurred and the harm that was inflicted. The actions to be taken must include an official homage, to be published in the country's leading media outlets, and an act of public remembrance consisting of applying the victim's name to a street, school, or other public place located in a significant, high-traffic area. All of this is to be carried out following consultations and agreement with the surviving members of his family;
- (e) as a guarantee of nonrepetition, take the legislative and other steps necessary to criminalize the offense of forced disappearance of persons; pursue the proper investigation and punishment of violations similar to those described in this application; and,
- (f) indemnify Messrs. Graciela de León de Rodríguez, Patria Portugal, and Franklin Portugal (common-law wife and children of Mr. Heliodoro Portugal) for the human rights violations committed, covering both the moral and material aspects, and cover the legal costs and expenses incurred in pursuing this case at the national level, as well as those arising from the processing of this case before the inter-American system.

III. REPRESENTATION

7. In accordance with the provisions of Articles 22 and 33 of the Court's Rules of Procedure, the Commission has appointed Commissioner Freddy Gutiérrez Trejo and Executive Secretary Santiago A. Canton to serve as its delegates in this case. The attorneys Ariel E. Dulitzky, Elizabeth Abi-Mershed, Christina M. Cerna, and Juan Pablo Albán Alencastro, specialists with the Executive Secretariat of the Commission, have been appointed to serve as legal advisors.

IV. JURISDICTION OF THE COURT

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

9. The Court has jurisdiction to hear this case. The State ratified the American Convention on June 22, 1978; it accepted the Court's contentious jurisdiction on May 9, 1990; it ratified the Inter-American Convention to Prevent and Punish Torture on August 28, 1991; and it ratified the Inter-American Convention on Forced Disappearance of Persons on February 28, 1996.

10. Additionally, although the commencement of the facts of this case took place prior to Panama's ratification of the American Convention, the Court has maintained since the earliest cases of disappearances were brought before it that:

The forced disappearance of human beings is a multiple and **continuous** violation of many rights under the Convention that the States Parties are obligated to respect and guarantee... The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, more over, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention.³ (*emphasis added*)

11. In a later case, the Court stated that:

forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, **and that the effects of such infringements – even though some may have been completed, as in the instant case – may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.**⁴ (*emphasis added*)

12. In consideration whereof, since the fate or whereabouts of Mr. Heliodoro Portugal remained unknown until August 22, 2000, with the genetic identification of the remains found on September 22, 1999, – that is, after the date on which Panama submitted itself to the Court's contentious jurisdiction – the Court is competent to hear the violations described by the Commission in this application, with respect to those actions and their effects.

³ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraphs 155 and 158; I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraphs 163 and 166.

⁴ I/A Court H. R., *Blake Case, Preliminary Objections*, Judgment of July 2, 1996, Series C No. 27, paragraph 39. See also: I/A Court H. R., *Case of Trujillo Oroza*, Reparations (Art. 63.1 of the American Convention on Human Rights), Judgment of February 27, 2002, Series C No. 92, Explanation of Vote by Judge Sergio García Ramírez, paragraph 10.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION⁵

13. On May 31, 2001, the Center for Justice and International Law (CEJIL) and Ms. Patria Portugal lodged a complaint with the Commission in connection with the facts of this case.

14. The IACHR recorded the petition as No. P357/01 and, pursuant to Article 30 of its Rules of Procedure, forwarded the relevant parts of the complaint to the State on July 19, 2001, and gave it a period of two months in which to submit its comments.

15. The Panamanian State submitted its comments on the complaint on August 23, 2001, and those comments were conveyed to the petitioners for them to make such observations as they deemed relevant.

16. The petitioners sent their reply to the State's comments on September 27, 2001, and this was forwarded to the State, along with a period of time in which to present additional information.

17. On October 23, 2001, the State requested a 30-day extension of the deadline for replying to the petitioners' comments.

18. On November 21, 2001, the petitioners submitted additional information related to the case, regarding which the State sent its comments on November 26, 2001.

19. On December 18, 2001, the petitioners sent their reply on the State's comments, which was conveyed to the State for its observations.

20. On January 3, 2002, the State sent the IACHR its reply to the petitioners' filing described in the previous paragraph.

21. In turn, the complainants challenged the statements made by Panama in its written submission of February 7, 2002, to which the State replied on March 14, 2002.

22. The Commission formally ruled this case admissible on October 24, 2002.⁶

23. On November 7, 2002, the Commission forwarded the Admissibility Report to the parties. In that same communication, in accordance with Article 48(1)(f) of the Convention, the Commission made itself available to the parties with a view to reaching a friendly settlement of the matter, to which end it asked them to express their interest in such an arrangement as soon as possible.

24. On June 29, 2003, the State told the Commission that it did not believe a friendly settlement of the case could be reached.

25. On April 1, 2004, the organization "Servicios Interamericanos de Abogados en derechos humanos" submitted an *amicus curiae* brief, regarding which both the petitioners and the State submitted comments.

⁵ The formalities described in this section are set out in the case proceedings before the Commission. Appendix 3.

⁶ See: IACHR, Report No. 72/02 (admissibility), Case 12.408, *Heliodoro Portugal*, Panama, October 24, 2002; Appendix 2.

26. On October 21, 2004, at the IACHR's 121st regular session, a meeting on the instant case was held and was attended by both parties. At that hearing, the parties offered oral arguments regarding the merits of the case.

27. In a submission dated March 14, 2005, the petitioners sent their final claims regarding the case's merits. The Panamanian State did the same in a written submission dated September 6, 2005.

28. At its 123rd session on October 27, 2005, the Commission adopted Report on Merits 103/05, drawn up in compliance with Article 50 of the Convention. In that report, it concluded that:

In light of the facts described in the proceedings, which are not disputed, and of the actions of the State as analyzed, [...] the Panamanian State has violated, with respect to Mr. Heliodoro Portugal and his next-of-kin, the rights enshrined in Articles I, XXV, and XXVI of the American Declaration; Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with a violation of Article 1(1) thereof; Articles II and III of the Convention on Forced Disappearance; and Articles 1, 2, 6, and 8 of the Convention against Torture.

29. In that Report on the Merits, the Commission served the following recommendations on the Panamanian State:

1. Conduct a complete, impartial, effective, and immediate investigation of the incident, in order to establish responsibility for the arbitrary and illegal arrest, torture, forced disappearance, and execution of Mr. Heliodoro Portugal, to identify those individuals who participated in those actions at the different levels of decision and implementation, to bring them to trial in proceedings that ensure all due guarantees, and to impose on them the applicable punishments;
2. Conduct a complete, impartial, and effective investigation of the individuals who participated in the failed investigations and proceedings previously pursued in connection with the homicide of Mr. Heliodoro Portugal, in order to identify responsibilities for the lack of results and for the impunity surrounding the incident;
3. Provide adequate redress to Ms. Graciela de León de Rodríguez (his common-law wife and the mother of his children), Patria Portugal (daughter), and Franklin Portugal, (son): in their capacity as Mr. Heliodoro Portugal's heirs and for the violations he suffered; and in their capacity as direct victims, including both moral and material aspects, for the violations of their human rights. Thus, the victim's next-of-kin must be given the facilities necessary for specialized and professional rehabilitative care. In addition, each victim must be able to select the professional who is to provide him or her with attention, and to specify the particular form of support chosen.
4. Reclaim the memory of the victim and of his next-of-kin by means of a public recognition of the State's responsibility for the harm inflicted and for the grave violations that occurred. The actions to be taken must include an official homage, to be covered in the country's leading media outlets, and an act of public remembering consisting of applying the victim's name to a street, school, or other public place located in a significant, high-traffic area. All of this is to be carried out following consultations and agreement with the surviving members of his family.
5. Pursue the legislative and other reforms necessary to ensure the proper investigation and punishment of violations similar to those described in this report.

30. The Report on the Merits was conveyed to the State on November 23, 2005, together with a deadline of two months for it to report back on the steps taken toward

implementing its recommendations, in compliance with Article 43(2) of the Commission's Rules of Procedure.

31. On November 28, 2005, pursuant to the terms of Article 43(3) of its Rules of Procedure, the Commission informed the petitioners that a Report on the Merits had been adopted and had been conveyed to the State; it also asked them to state their position, within the following two months, regarding the possible referral of the case to the Inter-American Court.

32. On January 23, 2006, the State sent the Commission a copy of note A. J. No. 235 of January 23, 2006, from the Directorate of Legal Affairs and Treaties of the Ministry of Foreign Affairs, with which it enclosed the report on the measures adopted by the Panamanian Government in implementing the recommendations made by the Commission in the instant case.

33. On February 8, 2006, the State requested a delay, until April 23, 2006, in the deadline set under Article 51(1) of the American Convention on Human Rights for complying with the recommendations issued in Report No 103/05 of October 27, 2005. On that occasion the State said that it recognized that if the extension was granted, the deadline set by Article 51(1) of the American Convention would be suspended. Consequently, should the case be referred to the Inter-American Court of Human Rights, the Republic of Panama would expressly renounce the possibility of filing preliminary objections regarding compliance with the deadline set by that article.

34. In a communication of February 15, 2006, the Commission granted the requested extension.

35. On April 12, 2006, the State sent the IACHR a second request for a three-month extension of the deadline set under Article 51(1) for compliance with the recommendations contained in Report on the Merits, recognizing once again that granting the extension would suspend the deadline for referring the case to the Court and renouncing the right to lodge preliminary objections based on that deadline.

36. The Commission granted the requested extension on April 20, 2006, requiring the State to submit, by June 23, 2006, a report on the measures adopted to comply with the Commission's recommendations and to resolve the situation described in the Report on the Merits.

37. On April 11, 2006, the Government of Panama invited Commissioner Freddy Gutiérrez to conduct a working visit on June 12–14, 2006. During that visit, various state officials consistently and repeatedly expressed their interest in cooperating with the Commission on resolving the cases of disappearances reported during the administration of Omar Torrijos.

38. During that same visit, Commissioner Gutiérrez also met with Ms. Patria Portugal, the victim's daughter, who appeared willing to accept the possible granting of a final three-month extension for the chance of seeing her father's case resolved.

39. On June 20, 2006, by means of note PANA-OEA-3-325-06, the State informed the Commission of the government's decision to enter into direct talks with the family and reach specific agreements for the effective and prompt resolution of this case and other cases involving disappearances.

40. On July 10, 2006, in note PANA-OEA-3-368-06, the State requested a third additional three-month extension of the deadline set under Article 51(1) of the American Convention, due to expire on July 23, 2006, in order to comply with the recommendations made in the Report on the Merits, stating once again that it understood that the awarding of an extension

would suspend the deadline for submitting the case to the Court and renouncing the right to file preliminary objections based on any alleged noncompliance with the deadline set in the Convention.

41. On July 13, 2006, the CEJIL organization, co-petitioner in the case, speaking on behalf of Mr. Portugal's next-of-kin, expressed their opposition to any further deferral of the deadline for implementing the recommendations served on the State by the IACHR, in light of the previous actions of the State which, in their opinion, suggested a lack of commitment. This communication was forwarded to the State on July 18, 2006.

42. At its 125th special session, held in Guatemala on July 19, 2006, the plenary of the Commission resolved to award the Panamanian State a further three-month extension, and requested that it submit a final report on its implementation of the recommendations set out in Report 103/05 no later than September 23, 2006. This decision was communicated to the parties by means of notes dated July 20, 2006.

43. On September 22, 2006, the State presented the Commission with a new report on its progress with implementing the recommendations; this document was then conveyed to the petitioners on September 27, 2006, with a period of 15 days in which to submit their comments.

44. On October 9, 2006, the petitioners replied to the State's report of September 22, 2006, giving the reasons for which they believed there had been no compliance with the recommendations issued by the Commission in Report 103/05.

45. In a communication dated October 16, 2006, the State asked the Commission for a fourth extension of the deadline for meeting the recommendations contained in Report 103/05, accepting once again that, if granted, the deadline set under Article 51(1) of the American Convention for taking the case to the Inter-American Court of Human Rights would be suspended and expressly renouncing the right to offer admissibility arguments based on that deadline in any future application placed before the Court.

46. That same October 16, 2006, at its 126th regular session, the IACHR decided to grant the State a fourth extension, to January 23, 2007, requesting that no later than December 23, 2006, it should submit a report on the measures adopted, to comply with the Commission's recommendations and to resolve the situation described in Report 103/05.

47. On December 8, 2006, the petitioners noted their disagreement with the extensions granted by the Commission, arguing that "during the time that has passed, the State has taken no real steps toward effectively implementing the Inter-American Commission's Recommendations."

48. In a note of December 21, 2006, the Panamanian State sent a new report to the IACHR, saying that the State "embraced" the recommendations contained in the Report on the Merits and that it had "has expressed its intent and interest in meeting them."

49. In a filing dated January 8, 2007, the petitioners confirmed "the concerns stated [in their letter of] December 8." They pointed out that the State of Panama "has specified no redress, neither moral nor material; on the contrary, it has expressly refused to recognize any. For example, at the meeting with the foreign ministry in December last year, the family said they demanded economic redress; however, the representatives of the State said that the Commission had never mentioned any such reparations."

50. Noting the concern expressed by the petitioners in the filing described in the previous paragraph, regarding the failure to provide moral and material redress in this case, the Commission again communicated with the Panamanian State on January 11, 2007, referring to the

third recommendation in the Report on the Merits and requesting a report “within a period of five days following the date of this letter, dealing with the compensatory redress that is to be awarded to Mr. Portugal’s next-of-kin for the violations detected, in compliance with recommendation No. 3.”

51. In note PANA-OEA-3-020-07 of January 17, 2007, the State submitted note No. A. J. No. 126, of January 16, 2006, (*sic*) from the Directorate of Legal Affairs and Treaties of the Ministry of Foreign Affairs, regarding the measures adopted in implementing the recommendations contained in Report No. 103/05, and in which it failed to mention the issue about which the Commission had asked in its note of January 11, 2007. In that same communication, the State reported that under Municipal Agreement No. 169 of December 27, 2006, Calle C in Santa Ana district had been renamed Heliodoro Portugal Street. The change of the street’s name to that of Heliodoro Portugal came into effect with its enactment on December 27, 2006.

52. After studying the State’s reports on the implementation of the recommendations contained in the Report on the Merits, and the lack of substantial progress in effectively complying with them, on January 22, 2007, the Commission resolved to refer the case to the Inter-American Court.

VI. CONSIDERATIONS OF FACT

A. Appraisal of the evidence

53. In the case at hand there are direct and indirect indications of the facts and of the participation therein of state agents. This is in addition to the direct evidence, which includes testimony from eye witnesses. The Commission notes the investigation and report of Panama’s Truth Commission and the fact that the State has not challenged the IACHR’s conclusions regarding the circumstances in which the facts took place.

54. From the time of its very first cases, the Court has set guidelines for appraising different forms of evidence that are less formal than those that exist in domestic law. Thus, it has invariably maintained that a rigid determination as to the amount of evidence needed to support a judgment cannot be sustained, bearing in mind that international courts have the authority to assess and evaluate the evidence according to rules of sound criticism in determining the international responsibility of a State for violating a person’s rights and that they enjoy great latitude in appraising the evidence brought before them in connection with the relevant facts, in accordance with the principles of logic and on the basis of experience.⁷

55. Of particular importance in the case at hand is the appraisal and scope of the set of assumptions that arise from the facts and that, according to past experience, are valid and logical even though there is no direct proof of them. In forced disappearance cases, which are intended to eliminate all material traces of the crime, the Court has used “circumstantial or indirect evidence, or both, or logical inference” to determine a violation.⁸ In such cases, the Court has ruled that persons

⁷ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004, Series C No. 110, paragraph 41, quoting I/A Court H. R., *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, paragraph 48; I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003, Series C No. 101, paragraph 120; I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, paragraph 42; I/A Court H. R., *Case of Juan Humberto Sánchez*, Interpretation of the Judgment of Preliminary Objections, Merits and Reparations (Art. 67 American Convention on Human Rights), Judgment of November 26, 2003, Series C No. 102, paragraph 42.

⁸ See: I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 131, on the importance of circumstantial or presumptive evidence.

disappearing in a context of violence may be assumed dead.⁹ Similarly, since the early forced disappearance cases of *Velásquez Rodríguez* and *Godínez Cruz*, the Court has deduced that torture would have taken place prior to death during detentions that were prolonged and lacked all mechanisms of judicial control.¹⁰

56. In addition, determining that a case is framed by a pattern of human rights violations also has consequences for the evidence. This Court has ruled that if it is proven that a specific case obeys an alleged pattern of human rights violations, "it is reasonable to assume and conclude that there is an international responsibility of the State."¹¹ Hence, "if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven."¹²

57. The Court's jurisprudence has placed significant weight on press cuttings as a form of evidence, particularly in forced disappearance cases,¹³ bearing in mind that such cases are characterized by the efforts made to avoid leaving traces or evidence of the action, in order to hinder the investigation.

58. The Final Report of the Truth Commission of Panama¹⁴ (hereinafter, "Report of the Truth Commission"), published in 2002 by Panama's Office of the People's Defender,¹⁵ is of particular importance in that it assisted the clarification of the serious human rights violations that took place in Panama under the military dictatorships that ruled the country from 1968 to 1989. The method used to investigate incidents, determine patterns of human rights violations, quantify and identify the victims, prepare a map of the violence, and other tasks meant gathering data and evidence, and this will enable the victims and Panamanian society in general to understand what happened, recuperate historical memory, and establish the truth.

⁹ I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 173, quoting I/A Court H. R., *Castillo Páez Case*, Judgment of November 3, 1997, Series C No. 34, paragraphs 71-72; I/A Court H. R., *Neira Alegría et al. Case*, Judgment of January 19, 1995, Series C No. 20, paragraph 76; I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraph 198; I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 188.

¹⁰ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 156; I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraph 164.

¹¹ I/A Court H. R., *Case of Juan Humberto Sánchez*, Interpretation of the Judgment of Preliminary Objections, Merits and Reparations (Art. 67 American Convention on Human Rights), Judgment of November 26, 2003, Series C No. 102, paragraph 108. I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraphs 130-131; I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paragraphs 47-48. I/A Court H. R., *Blake Case*, Judgment of January 24, 1998, Series C No. 36, paragraphs 47, 49, and 51.

¹² I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 130.

¹³ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 56, quoting *Cantos Case*, Judgment of November 28, 2002, Series C No. 97, paragraph 39; *Baena Ricardo et al. Case*, Judgment of February 2, 2001, Series C No. 72, paragraph 78; *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Series C No. 66, paragraph 94. See also: *Velásquez Rodríguez Case*, *supra*, paragraph 146.

¹⁴ The Truth Commission of Panama (hereinafter, "Truth Commission" or the Spanish acronym "CVP") was set up by Executive Decree No. 2 of January 18, 2001, with the mandate of producing an panorama of the violations of the right to life, including disappearances, committed during the military regime of 1968 to 1989. The CVP gathered enough evidence to identify more than a hundred victims of either murder or forced disappearance. Among the Truth Commission's recommendations were to seek justice for the victims' families by reopening the investigations into those cases; to provide appropriate moral and material redress; to appoint a Special Prosecutor to investigate those human rights violations; to ensure that responsibility for law and order was in the hands of civilian authorities; and for the Republic of Panama to fully meet its international obligations in order to ensure full respect for human rights in that country.

¹⁵ Truth Commission of Panama, *Final Report*, April 18, 2002.

B. Background and historical context

59. The historical context of Heliodoro Portugal's forced disappearance, and of the lack of due diligence in the investigation of the incident, were described by the Inter-American Commission in its *Report on the Situation of Human Rights in Panama* (1978),¹⁶ at a time when the Panamanian Government still denied its responsibility for Mr. Portugal's death ("Portugal, described by the government as 'an important member of the Communist Party of Panama,' 'was not being investigated, had no record, and his whereabouts were unknown,' according to the official reply.") This context was also described in the Truth Commission's Report.

60. In the following paragraphs, the Commission will briefly describe the political background against which the incident took place:

61. On October 11, 1968, a group of Panamanian National Guard officers, led by Lieutenant Colonel Omar Torrijos and Major Boris Martínez, organized a coup d'état against the three-times democratically elected constitutional president Arnulfo Arias Madrid, who had taken office only a few days previously.¹⁷

62. From that time and until December 20, 1989, when the country was invaded by the United States, Panama was ruled by military regimes led by Omar Torrijos, Manuel Antonio Noriega, and General Rubén Darío Paredes, and by civilian presidents elected in disputed elections, who acted under the close surveillance of the National Guard's high command.¹⁸

63. After the 1968 coup d'état, the National Guard high command suspended individual guarantees, dissolved the National Assembly, and appointed a military-led Provisional Government Junta. The general staff of the National Guard was transformed into a collegiate body, with legislative and executive functions, while the judiciary was totally subordinated to it.¹⁹

64. The military regime ruled by means of Cabinet Decrees, through which it suspended several articles of the Constitution. It also censored the media, controlled public order by means of force, suspended the right of free assembly, restricted freedom of movement within the nation's borders, imposed curfews, invaded properties, and carried out a series of arrests and detentions.²⁰

65. The suppression of political activities was accompanied by the violent repression of all mass demonstrations, and by the occupation and closure of the University of Panama and the National Institute. The military regime used its power to neutralize the opposition. Towards the end of the 1980s, all political activity was suppressed and the regime set about the systematic persecution and arbitrary arrest of its opponents, whom it labeled "revolutionaries" or "communists." Many of these opponents disappeared or were executed.²¹

¹⁶ IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, Doc. 38, rev. 1, June 22, 1978.

¹⁷ Truth Commission of Panama, *Final Report*, April 18, 2002, pp. 22 *et seq.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.* See also: IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, Doc. 38, rev. 1, June 22, 1978

²¹ See: statements by Graciela de León de Rodríguez (June 21, 1990, Annex 3), Marcos Tulio Pérez Herrera (July 16, 1990, Annex 4), Antonia Portugal García (July 26, 1990, Annex 5), Gustavo Antonio Pino Llerena (September 26, 1990, Annex 6), Pedro Antonio Vázquez Cocío (October 24, 1990, Annex 8), Rubén Darío Sousa Batista (May 13, 1991, Annex 11), and others. See also: decision of the Second Superior Court of Justice of the First Judicial District, March 13, 1991, Annex 10, first paragraph.

66. According to the CVP, "the victims [...] were opponents of the regime or individuals with a commitment to social struggle and betterment: in other words, idealists, supporters of the struggles taking place at that time in the entire world"; "in general, the victims were students, campesinos, workers, and small traders,"²² who "came from poorer sectors of society, and whose family, social, and community relations, of essential importance to their subsistence, were seriously affected."²³

67. These victims were called "terrorists, criminals, and communists,"²⁴ which is relevant since, as occurred in other similar conflicts and situations, efforts were made to justify the repression in terms of a struggle against subversives.²⁵

68. The victims of the military repression mostly disappeared or were executed in conditions of defenselessness and clear disadvantage vis-à-vis the perpetrators. In the words of the CVP, "the simple fact that the bodies were hidden and that the government did not perform forensic testing to determine the cause of death [...] are an element in convincing the Commission that the identified victims were murdered execution style."²⁶

69. "The deaths and disappearances left several children orphaned, made widows of various women, and increased poverty levels for families whose main or sole provider was taken from them."²⁷

70. As perceptively noted by the CVP in its final report, "the nation has an outstanding debt with respect to the memory of the victims and the pain of their relatives. Also pending is redress for the national memory of the Panamanian people, who have every right to know about their past."²⁸

1. The victim in the instant case

71. Mr. Heliodoro Portugal was born in Calobre district, in the province of Veraguas, Republic of Panama.²⁹ At the time of his disappearance he was 36 years old, by trade a typesetter, and was permanently cohabiting with Ms. Graciela de León Rodríguez, with whom he had two children, Patria and Franklin Portugal.³⁰

72. Mr. Portugal was a student leader and, later, a supporter and proponent of the Movimiento de Unidad Revolucionaria ("Revolutionary Unity Movement"), led by Mr. Floyd Britton. Because of his opposition to the military regime, he was the target of threats and

²² Truth Commission of Panama, *Final Report*, April 18, 2002, p. 65.

²³ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 66.

²⁴ *Ibid.*

²⁵ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 68.

²⁶ *Ibid.*

²⁷ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 66.

²⁸ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 13.

²⁹ Birth certificate of Heliodoro Portugal, Annex 7.

³⁰ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101; statement by Graciela de León de Rodríguez (June 21, 1990, Annex 3); and sworn statement by Donaldo Portugal, given to the Third Superior Prosecutor of the First Judicial District of Panama on December 26, 2000 (Annex 28).

harassment; in 1968 he was arrested by the National Guard for the first time, and was freed in 1969.³¹

2. Torture and forced disappearance as practices in Panama at the time of the incident

73. At the time of Heliodoro Portugal's illegal arrest, forced disappearances were a regular practice of the Panamanian State, carried out chiefly by agents of the security forces; in connection with this, "the Truth Commission of Panama gathered enough information to identify more than a hundred victims who were either killed or disappeared at different times under the military regime across the entire territory of the nation."³²

74. The report also states that it was able to document at least 40 cases of persons who were disappeared, detained by state agents on the orders or under the protection of their superiors, denied their freedom, and, in most instances, beaten and tortured prior to being executed.³³

75. The CVP also determined that "many others also died while in the custody of the National Guard; these were frequently described as having been killed in clashes with the security forces."³⁴

76. In addition, the CVP found that:

In wielding power, the military regime often made use of torture and of cruel, inhuman, and degrading treatment. The Truth Commission gathered together anguish-laden statements and forensic reports, carried out scientific tests to detect the presence of blood at alleged torture sites, and took other similar steps in order to document the chapter that records these crimes against humanity in our country – atrocities that were not punished and thus enjoyed unwarranted impunity.³⁵

77. The IACHR, in its 1978 Report on the Situation of Human Rights in Panama, also stated that:

The IACHR has received allegations of torture and other physical mistreatment of both political and non-political prisoners. Among the methods of torture cited were beatings with fists and rubber hoses, electrical shocks to sensitive parts of the body, simulated executions, and sexual abuse in the case of female prisoners. Most of the incidents denounced to the Commission indicate that any torture or physical abuse is generally limited to the period of interrogation following an arrest.

[...]

The Special Commission investigated these allegations in the cities of Panama and David. In the latter city, members of the Special Commission interviewed the head of DENI and one of

³¹ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101; statements by Graciela de León de Rodríguez (June 21, 1990, Annex 3), José Gumersindo (October 11, 2000, Annex 25), and Almengor Borbúa Alcedo (October 5, 2000, Annex 14).

³² Truth Commission of Panama, *Final Report*, April 18, 2002, p. 264 (Conclusion 3).

³³ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 9.

³⁴ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 30.

³⁵ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 264 (Conclusion 5).

the persons accused of torture by inmates in the local jail. As a result of these inquiries the Commission concludes that the above charges are substantiated.³⁶

C. The disappearance of Heliodoro Portugal

78. On May 14, 1970, at approximately 3:00 pm, Mr. Heliodoro Portugal was at the Coca-Cola Café in Santa Ana Park, Panama City. He was approached by a group of individuals in civilian clothing, who forced him into the red taxi they were traveling in and took him away to an undisclosed location.³⁷

79. According to the victim's next-of-kin, approximately one month after his disappearance, "a police officer visited their home, saying that the victim wanted to tell them not to worry, that he was at Tocumén [barracks] and would soon be out."³⁸

80. The Truth Commission's report states that in December 1999, a witness told a journalist that he had been held, along with Heliodoro Portugal, in a house; he did not know the address, but suspected that it was close to Miraflores.³⁹

81. This witness claims that he heard the prisoner being held in the room next to his say, during his interrogations, that his name was Heliodoro Portugal, and that he was interrogated and tortured, being asked if he knew Floyd Britton.⁴⁰

82. The witness also reported that from the Miraflores House – a clandestine interrogation and torture center used during the early years of the dictatorship – they were taken, blindfold, to a meeting room in the Tocumén barracks at some time around October 9 or 10, 1970. The next day he saw Heliodoro Portugal, who was asking for his family to be contacted. The witness was then transferred to La Chorrera prison, and heard nothing further about the victim.⁴¹

83. Mr. Portugal was held at the Los Pumas barracks in Tocumén on the orders of agents of the disbanded Defense Forces until at least May 14, 1971, when he was seen by the witness Daniel Zúñiga.⁴²

84. At that facility, date unknown, he was killed and, later, his remains were hidden.

85. Mr. Portugal's remains were found at the Los Pumas barracks in Tocumén on September 22, 1999. Genetic testing was performed, the results of which were communicated to

³⁶ IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, Doc. 38, rev. 1, June 22, 1978, "Chapter II: The Right to Life, Liberty, and Personal Security."

³⁷ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101.

³⁸ *Ibid.*

³⁹ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 51. See also: Statement of Daniel Elías Zúñiga to the Truth Commission of Panama (May 16, 2001, Annex 41), and statement of Mozart Lee González to the Truth Commission of Panama (May 16, 2001, Annex 42).

⁴⁰ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 51. See also: Statement of Daniel Elías Zúñiga to the Truth Commission of Panama (May 16, 2001, Annex 41).

⁴¹ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101.

⁴² See: Judgment of the Supreme Court of Justice, March 2, 2004, Annex 35.

his family and published on August 22, 2000; thus, his forced disappearance, as a continuous phenomenon, lasted until that date, when certainty was established regarding his death.⁴³

D. Involvement of state agents in the incident

86. There is direct evidence of the participation of state agents in the illegal arrest and subsequent disappearance and execution of Heliodoro Portugal. Additionally, there are also adequate evidentiary grounds for assuming that his disappearance was carried out within the framework of the practice described in section VI(B)(2) of this application.

87. Numerous witnesses saw his abduction on May 14, 1970.⁴⁴ He was later seen and heard by other witnesses, both at the "Miraflores House"⁴⁵ and at the Los Pumas barracks in Tocumén,⁴⁶ both of which were State-run facilities.⁴⁷ Finally, in September 1999, his remains were found at the latter military facility.

88. In consideration of the above, it may reasonably be assumed that the violations were perpetrated by state agents, whose actions, in accordance with the principles of international law, give rise to the international responsibility of the State.⁴⁸

E. Subsequent events: The lack of due diligence in the investigation

89. Under the military dictatorship, the domestic authorities could not be approached in order to lodge complaints of human rights violations or to investigate the whereabouts of a person.⁴⁹ In spite of their fears, the victim's next-of-kin attempted to locate him at the headquarters of the National Guard in Panama City, where they were denied all information regarding his whereabouts.⁵⁰ The Supreme Court of Justice expressly acknowledged that "at the time of Heliodoro Portugal's forced disappearance, a regime that prevented free access to justice was in power."⁵¹

⁴³ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 4.

⁴⁴ See: Judgment of the Supreme Court of Justice of March 2, 2004, (Annex 35), where it says: "the case documents indicate that Portugal was abducted in May 1970 by agents of the National Guard at the Coca Cola Café, located in Santa Ana, and that the witnesses Almengor Borbua Alcedo, José Barragán, Guillermo Rivera, and Alejandro Lu Soto have given sworn testimony of that fact (p. 2634)." See also: Statement by Guillermo Rivera Perigault to the Third Superior Prosecutor of the First Judicial District of Panama (October 11, 2000, Annex 27).

⁴⁵ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 51. See also: Statement of Daniel Elías Zúñiga to the Truth Commission of Panama (May 16, 2001, Annex 41), and statement of Mozart Lee González to the Truth Commission of Panama (May 16, 2001, Annex 42).

⁴⁶ See: Judgment of the Supreme Court of Justice of March 2, 2004, (Annex 35), where it says: "the summary indicates that Portugal was detained on the orders of agents of the disbanded Defense Forces at the Los Pumas Barracks in Tocumén on May 14, 1971, when he was seen by Daniel Zúñiga (p. 2635)." See also: Statement of Daniel Elías Zúñiga Vargas to the Third Superior Prosecutor of the First Judicial District of Panama (January 30, 2001, Annex 29).

⁴⁷ See: Truth Commission of Panama, *Final Report*, April 18, 2002, pp. 44 and 48.

⁴⁸ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 170.

⁴⁹ See: IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, Doc. 38, rev. 1, June 22, 1978, Chapters III and IV; Request for ruling on the expiration of statutory limits for criminal prosecution of the Third Superior Prosecutor of the First Judicial District, January 15, 1991, Annex 9, p. 5. See also: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 3.

⁵⁰ See: Statement by Antonia Portugal García (July 26, 1990, Annex 5).

⁵¹ See: Judgment of the Supreme Court of Justice, March 2, 2004, Annex 35.

90. On May 10, 1990, after democracy had been reestablished, Ms. Patria Portugal, daughter of Mr. Portugal, lodged a complaint regarding her father's disappearance with the Third Superior Prosecutor of the First Judicial District.⁵²

91. On November 8, 1991, the judicial authorities ordered a provisional dismissal of the case on the grounds that "no enmity was established between the ideas of Mr. Portugal and those of the government in power at the time."⁵³

92. On September 22, 1999, almost thirty years after Mr. Portugal's disappearance, reports emerged about a site where the remains of some disappearance victims had been buried. This led to a series of excavations, as a result of which Heliodoro Portugal's remains were found; this was a determining factor in the creation of the Truth Commission. For that reason, the introduction to that Commission's final report describes the way in which those remains were located:

On September 22, 1999, the judicial authorities, accompanied by the Catholic Church, exhumed a set of human remains at the former Los Pumas Barracks in Tocumén. At first they were believed to belong to the priest Héctor Gallego; however, almost one year later, the body was identified as being that of Heliodoro Portugal. On September 25, 1999, the media revealed that a second set of remains had been found in the close vicinity of the first. On October 22, 1999, it was reported that DNA testing had shown that the first body found was not that of Héctor Gallego. On July 11, 2000, the public was told that the results of a new DNA test, requested by the Catholic Church, indicated that these were not Héctor Gallego's remains. On August 21, 2000, it was announced that DNA testing had revealed that the first set of remains, found in September 1999, belonged to Heliodoro Portugal.⁵⁴

93. On September 22, 1999 the Attorney General's Office ordered the start of excavations at the aforementioned site, a plot of land that had at one time belonged to the barracks of the Los Pumas Infantry Company in Tocumén.⁵⁵

94. The remains found at the former barracks of Los Pumas were submitted to forensic and DNA testing at the facilities of Reliagene Technologies and the Armed Forces DNA Identification Laboratories (AFDIL); conducted at the request of the Truth Commission, this testing was privately funded. The report on the genetic testing of August 21, 2000, indicated that the remains did not belong to Father Héctor Gallegos as was originally believed, but to Mr. Portugal.⁵⁶

⁵² Complaint filed by Patria Portugal with the Third Superior Prosecutor of the First Judicial District of Panama, May 10, 1990, Annex 1.

⁵³ Resolution of the Second Superior Court of Justice of the First Judicial District temporarily dismissing the proceedings, November 8, 1991, Annex 13.

⁵⁴ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 4. See also: Report on excavations at the Los Pumas barracks in Tocumén, Truth Commission of Panama, May 9, 2001, Annex 40; Transcription of the inspection procedure conducted at the Los Pumas barracks in Tocumén, September 22, 1999, Annex 21; Transcription of the procedure to exhume human remains at the Los Pumas barracks in Tocumén, September 22, 1999, Annex 22.

⁵⁵ Updated copy as of April 2001 of the case file of the investigation conducted by the Third Superior Prosecutor of the First Judicial District of Panama following the complaint lodged by Patria Portugal on May 10, 1990, Annex 46.

⁵⁶ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 4. It should be noted that the relatives of several persons who disappeared during the dictatorship provided comparative samples for conducting genetic tests on the remains found, in the event that they were identified as not belonging to Father Gallego.

95. On August 30, 2000, the Public Prosecution Service asked the judicial authorities to reopen the case and the remains were handed over to the Portugal family, who buried them on September 6, 2000, thus bringing their long search to an end.⁵⁷

96. On September 3, 2001, the Public Prosecution Service informed the Portugal family of the findings of other DNA tests conducted by Fairfax Identity Laboratories (FIL), which had concluded that the remains were not those of Mr. Portugal.⁵⁸ In light of the two contradicting sets of genetic test results, the Truth Commission sought a third opinion from Dr. Terry Melton, an expert in mitochondrial DNA testing from the laboratories of Mitotyping Technologies, in order to evaluate the two tests already performed. The expert concluded that test effected by AFDIL was “good quality, with no evidence of mixing,” whereas the testing done by FIL showed strong evidence of contamination. Consequently, the examined remains were indeed those of Mr. Heliodoro Portugal.⁵⁹

97. On October 31, 2002, the Third Superior Prosecutor of the First Judicial District of Panama requested the indictment of Ricardo Garibaldo, one of the individuals suspected of committing the violations of Heliodoro Portugal’s human rights, and the dismissal of the charges against the other accused (nine persons). In that document, the Public Prosecution Service recommended that the court rule on the inapplicability of statutory limitations to the case, in accordance with the terms of Inter-American Convention on Forced Disappearance of Persons.⁶⁰

98. During the proceedings taken against Abel Cornejo Cornejo, Rafael Castro Ibarra, Moisés Correa Alba, Heliodoro Villamil, Melbourne Walker, Pedro del Cid, Aquilino Sieiro, Pablo Garrido, Lucinio Miranda, and Ricardo Garibaldo Figueroa, all members of the National Guard, for the murder of Heliodoro Portugal, the Second Superior Court of Justice of the First Judicial Circuit, in deed No. 167 of June 13, 2003, resolved to definitively dismiss the charges against nine of the accused under application of the statute of limitations. At the same time it also dismissed the criminal action against Abel Cornejo Cornejo, on account of his being deceased.⁶¹

99. The Third Superior Prosecutor of the First Judicial District filed an appeal against that decision with the Second Criminal Chamber of the Supreme Court of Justice.⁶² That court, in a judgment of March 2, 2004,⁶³ overturned Deed No. 167, ordered an expansion of the investigation into the homicide of Heliodoro Portugal, and ruled that criminal action had not prescribed under statutory limitations. The expansion of the proceedings focused on securing a sworn statement from General Manuel Antonio Noriega, who refused to comply.⁶⁴

⁵⁷ Request for reopening of investigation of the Third Superior Prosecutor of the First Judicial District, January 30, 2000, Annex 15.

⁵⁸ Report from Fairfax Identity Laboratory, August 30, 2001, Annex 30.

⁵⁹ See: Report of Dr. Terry Melton, forensic anthropologist from the laboratories of Mitotyping Technologies, LLC, October 30, 2001 (document in English). See also: News report titled “Identity confirmed in remains of H. Portugal,” published in the daily *La Prensa*, edition of November 8, 2001, available at as of January 21, 2007, at http://ediciones.prensa.com/mensual/contenido/2001/11/08/hoy/cover_page/326429.html, Annex 47.

⁶⁰ Prosecutorial brief No. 74 of the Third Superior Prosecutor of the First Judicial District of Panama, October 31, 2002, Annex 32.

⁶¹ Deed No. 167 of the Second Superior Court of Justice of the First Judicial Circuit, June 13, 2003, Annex 33.

⁶² Appeal by the Third Superior Prosecutor of the First Judicial District of Panama, July 30, 2003, Annex 34.

⁶³ Judgment of the Supreme Court of Justice, March 2, 2004, Annex 35.

⁶⁴ See: State’s submission of May 3, 2004, IACHR case file, Appendix 3.

100. The Third Superior Prosecutor of the First Judicial District, after the failed attempt to secure the expansion ordered by the Supreme Court, conveyed his prosecutorial brief to the Second Superior Court of Justice,⁶⁵ recommending the criminal prosecution of Ricardo Garibaldo Figueroa who, at the time of the incident, was barracks chief for the 2nd Company of Fusiliers, Pumas of Tocumén.⁶⁶

101. The Second Superior Court of Justice, by means of Deed No. 192 of December 17, 2004, instituted criminal proceedings against Ricardo Garibaldo Figueroa. It also definitively dismissed the charges against Rafael Castro and Abel Cornejo and provisionally dismissed those against Moisés Correa, Melbourne Walter, Pedro Del Cid, Aquilino Sieiro, Pablo Garrido, and Licinio Mirando. The decision did not resolve the legal situation of Heliodoro Villamil. In addition, the Court ordered that Garibaldo Figueroa be immediately placed in preventive custody and set an oral judgment hearing for June 7, 2006.⁶⁷

102. In spite of this, the proceedings never reached the sentencing stage, on account of the death of Mr. Garibaldo on July 8, 2006.⁶⁸

103. On December 6, 2006, the Third Superior Prosecutor of the First Judicial District asked the magistrates of the Superior Court of Justice to reopen the proceedings in light of the “new evidence that had been gathered” indicating the involvement of G-2 units from the disbanded National Guard in these violations.⁶⁹

VII. CONSIDERATIONS OF LAW

A. General considerations

104. Since its earliest cases, the Court has spoken of the practice of forced disappearances in the following terms:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next-of-kin of the disappeared person’s whereabouts and to make reparations where appropriate.⁷⁰

105. The Court has subsequently said that the forced disappearance of persons is an illicit act that constitutes a multiple and continuous violation of several rights protected by the

⁶⁵ Prosecutorial brief No. 74 of the Third Superior Prosecutor of the First Judicial District of Panama, October 31, 2002, Annex 32.

⁶⁶ Deed No. 1639 of the Third Superior Prosecutor of the First Judicial District of Panama, September 30, 2004, Annex 36.

⁶⁷ Deed No. 192 of the Second Superior Court of Justice of the First Judicial Circuit, December 17, 2004, Annex 37.

⁶⁸ See: news report titled “Death of Lieutenant Colonel (ret) Ricardo Garibaldo,” published in the daily *La Prensa*, edition of July 8, 2006, available as of January 21, 2007, at <http://mensual.prensa.com/mensual/contenido/2006/07/08/hoy/panorama/663140.html>, Annex 48.

⁶⁹ Document from the Third Superior Prosecutor of the First Judicial District of Panama, December 6, 2006, Annex 38.

⁷⁰ I/A Court H. R., *Blake Case*, Judgment of January 24, 1998, Series C No. 36, paragraph 66.

Convention. It also evinces a disregard of the duty to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention.⁷¹ By carrying out or tolerating actions intended to lead to forced or involuntary disappearances, by failing to properly investigate them, and by not punishing, when appropriate, the perpetrators, the State violates the duty of respecting the rights protected by the American Convention and of ensuring their free and full exercise.⁷²

106. Forced disappearance, as the Court has stated, is also a crime against humanity.⁷³ The Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, defined such actions in those terms when they constitute a systematic practice. That same instrument also sets out the basic elements that differentiate forced disappearance from other forms of crime, such as abductions, illegal arrests, or abuses of authority. Article II states:

Forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.⁷⁴

107. Under Article I of the Inter-American Convention on Forced Disappearance of Persons, the states parties thereto assume the following international obligation:

- b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; [...]
- d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.⁷⁵

108. Similarly, Article III of the Convention in question provides that:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

109. Although these articles reaffirm obligations that the Panamanian State had already assumed as a state party to the American Convention, their importance in the instant case lies in the specific mention that the first one of them makes regarding the State's obligation of

⁷¹ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, Judgment of July 5, 2004, Series C No. 109, paragraph 142, quoting I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraphs 128 and 129; I/A Court H. R., *Blake Case*, Judgment of January 24, 1998, Series C No. 36, paragraph 65; and I/A Court H. R., *Fairén Garbi and Solís Corrales Case*, Judgment of March 15, 1989, Series C No. 6, paragraphs 147 and 152.

⁷² I/A Court H. R., *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Series C No. 37, paragraph 90; I/A Court H. R., *Fairén Garbi and Solís Corrales Case*, Judgment of March 15, 1989, Series C No. 6, paragraph 152; I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraphs 168-191; and I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraphs 159-181.

⁷³ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 142.

⁷⁴ Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil, on June 9, 1994, at the 24th regular session of the OAS General Assembly, and in force as of March 28, 1996, Article II.

⁷⁵ *Ibid.*, Article I, paragraphs (b) and (d).

investigating forced disappearances, and in the emphasis that the second places on the need for an appropriate definition of the offense, as discussed below.

110. It is also important to bear in mind that the way in which the victim's forced disappearance took place obeyed a systematic pattern of human rights violations that existed in Panama at the time (*supra* 73 *et seq.*)

111. In the case at hand, the disappearance of the victim continued until August 21, 2000, the date when the remains found on September 22, 1999, at the Los Pumas barracks in Tocumén were identified and when Mr. Heliodoro Portugal's family were finally able to learn what had been his fate.

112. In this regard, the Court has in the past maintained that:

The effects of such infringements – even though some may have been completed, as in the instant case – may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.⁷⁶

B. Violation of the right to personal liberty

113. Article 7 of the American Convention on Human Rights enshrines the right to personal liberty. The article provides as follows:

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

114. First of all, it must be recalled that the power wielded by the State in pursuit of its obligation of guaranteeing security and maintaining law and order is not unlimited. On the contrary,

⁷⁶ I/A Court H. R., *Blake Case, Preliminary Objections*, Judgment of July 2, 1996, Series C No. 27, paragraph 39. See also: I/A Court H. R., *Case of Trujillo Oroza*, Reparations (Art. 63.1 of the American Convention on Human Rights), Judgment of February 27, 2002, Series C No. 92, Explanation of Vote by Judge Sergio García Ramírez, paragraph 10.

the State has the duty of applying procedures that are in accordance with the law and that respect the fundamental rights of all individuals under its jurisdiction.⁷⁷

115. In the case at hand it has been fully established that Heliodoro Portugal was illegally and arbitrarily arrested at a café called "The Coca-Cola," located in Panama City's Santa Ana Park, by agents of the National Guard, presumably for his support of the Revolutionary Unity Movement; that he was taken to the Los Pumas barracks in Tocumén and, later, to a clandestine detention and torture center known as the Miraflores House; and that finally he was returned to the Los Pumas barracks, where he was last seen alive by witnesses who gave statements to the Truth Commission.⁷⁸ His remains – which showed signs of torture – were exhumed at that same location in September 1999.

116. The Criminal Chamber of the Panamanian Supreme Court, in its judgment of March 2, 2004, stated that "the case documents indicate that Portugal was abducted in May 1970 by agents of the National Guard at the Coca Cola Café, located in Santa Ana, and that the witnesses Almengor Barbuja Alcedo, José Barragán, Guillermo Rivera, and Alejandro Lu Soto have given sworn testimony of that fact (p. 2634)."⁷⁹

117. The agencies of the inter-American system have developed clear guidelines to determine whether a detention is compatible with of Article 7, sections 2 and 3, of the Convention.

118. The Inter-American Court has ruled that sections (2) and (3) of Article 7 place limits on state power that expressly prohibit both illegal and arbitrary arrests. In this regard, the Inter-American Court has stated that:

Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.⁸⁰

119. In turn, the Commission has ruled that the analysis of whether an arrest is compatible with Article 7, sections 2 and 3, of the American Convention must be carried out in three stages:

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.⁸¹

⁷⁷ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 86.

⁷⁸ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101.

⁷⁹ See: Judgment of the Supreme Court of Justice, March 2, 2004, Annex 35.

⁸⁰ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 78; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 83.

⁸¹ IACHR, Report No. 53/01, Case 11.565, *Ana, Beatriz, and Celia González Pérez*, Mexico, April 4, 2001, paragraph 23.

120. In the case at hand, the Commission believes that the State did violate Article 7(2) of the Convention, since, as has been seen in the facts, Heliodoro Portugal was illegally deprived of his freedom, ignoring the justifications and conditions set out in Panamanian law. Given the circumstances of his arrest, it is clear that the authorities were not proceeding in accordance with any specific suspicion that he had committed a crime. Furthermore, there is no indication whatsoever that, at the time he was taken into custody, the victim was committing any crime *in flagrante*. Neither is there any evidence that he was shown a warrant issued by a competent authority. The soldiers detained him without offering any explanation at all.

121. With reference to his detention by members of the military, the Inter-American Commission has repeatedly held that arrests must be carried out by the competent authority described in a State's domestic law and that a failure to abide by that requirement and by the procedures demanded by international law for performing an arrest create a situation in which "arrests lose their status as such and become mere kidnappings."⁸²

122. Regarding the arbitrary nature of the arrest, on previous occasions the IACHR has said that the term "arbitrary" is synonymous with "irregular, abusive, contrary to law," and that a detention is arbitrary when it takes place: (a) for reasons or according to procedures other than those prescribed by the law, or (b) pursuant to a law the basic purpose of which is incompatible with respect for the individual's right to liberty and security."⁸³

123. Similarly, the United Nations Human Rights Committee has said that the notion of "arbitrariness" must be not only be equated with "against the law," but that it must also be interpreted more broadly in order to include such elements as appropriateness and justice. Moreover, remanding a person in custody may be considered arbitrary if it is not necessary in the circumstances of a particular case ("necessary" would mean to prevent flight or interference with evidence).⁸⁴

124. The Commission is of the opinion that the State of Panama has violated Article 7(3) of the Convention in that, analyzing the detention of Heliodoro Portugal in light of its own doctrine and that of the Inter-American Court, it emerges that both the reasons that could have motivated the arrest and the methods used by the military to deprive him of his freedom were incompatible with respecting the basic rights of an individual. Members of the National Guard surrounded him in a café, forced him into their vehicle, and took him to an undisclosed location, without explaining the reasons why he was being taken into custody. These actions indicate a clear abuse of power that was unreasonable, unpredictable, and disproportionate. That it was disproportionate becomes increasingly obvious if the arrest is analyzed in conjunction with the fact that the victim was defenseless and unarmed.

125. The Commission also believes that Article 7(4) of the Convention was violated by the State. The Inter-American Court has ruled that this section of Article 7 "is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee."⁸⁵ In the case at hand, neither Mr. Heliodoro Portugal or his next-of-kin were informed of the reasons for his detention. Neither was Mr. Heliodoro Portugal informed of his rights, but instead was simply taken away by state agents with no further

⁸² See: IACHR, *Report on the Situation of Human Rights in Chile*, 1985, OEA/Ser.L/V/II.66, Doc. 17, p. 138.

⁸³ IACHR, Report 35/96, Case 10.832, *Luis Lizardo Cabrera*, Dominican Republic, April 7, 1998, paragraph 66.

⁸⁴ HRC, Communication No. 560/1993, *A v. Australia*, April 30, 1997, section 9.2.

⁸⁵ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 82.

explanation or justification, with the inherent uncertainty that such practices provoke for victims and their families.

126. With specific reference to forced disappearance cases, the Inter-American Court has consistently maintained that such practices represent a phenomenon of “arbitrary deprivation of liberty, an infringement of a detainee’s right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention.”⁸⁶

127. As regards Article 7(5) of the Convention, the Inter-American Court has ruled that:

Article 7.5 of the Convention requires that the arrest of a person be submitted promptly to judicial review, as an appropriate means of control to prevent arbitrary and illegal arrests. All persons deprived of their liberty without a court order must be released or immediately brought before a judge.⁸⁷

128. Heliodoro Portugal was abusively denied the protection of the authority before which he should have been brought in order to promptly resolve the question of his freedom. Heliodoro Portugal’s detention was not carried out with the aim of bringing him before a judge or other official authorized by the law to decide on the legality of his arrest, but rather in order to interrogate, mistreat, intimidate, and, finally, eliminate him. If the agents of the State had legal justification for denying Heliodoro Portugal his freedom, their obligation was to bring him before the appropriate authority, which they did not do; on the contrary, according to the evidence hereby placed before the Inter-American Court, the only grounds for the victim’s arrest and disappearance was his ideology and political alignment. The Commission therefore holds that the State of Panama did not proceed in compliance with Article 7(5) of the Convention.

129. Finally, the Commission holds that the State violated Article 7(6) of the Convention by denying Heliodoro Portugal the possibility of filing for a prompt and effective remedy that would have determined the legality of his arrest, and by holding him in a place other than an official detention center or other place equipped for that purpose, absent all institutional controls such as records or registers for establishing the date, form, and conditions of the victim’s detention.

130. In spite of repeated claims made by the family and the formalities they pursued with various state authorities,⁸⁸ Heliodoro Portugal was neither released nor brought before any competent judicial authority, in violation of Article 7(6) of the Convention.

131. In sum, sections 4, 5, and 6 of Article 7 of the American Convention establish positive obligations that impose specific requirements both on the agents of the State and on third parties acting with their tolerance or consent.⁸⁹

132. The Commission holds that the State failed to abide by those requirements. The absence of these mechanisms of minimal legal protection – a fact not disputed by the State in the

⁸⁶ I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 142; I/A Court H. R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, paragraphs 163 and 193; I/A Court H. R., *Fairén Garbí and Solís Corrales Case*, Judgment of March 15, 1989, Series C No. 6, paragraphs 155 and 186.

⁸⁷ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 95.

⁸⁸ See: Statement by Antonia Portugal García (July 26, 1990, Annex 5).

⁸⁹ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 81.

case at hand – also coincides with a pattern of other similar violations that took place at the time that the victim’s arrest and subsequent disappearance occurred.⁹⁰

133. That situation has also been observed by the IACHR in the monitoring of the human rights situation in the country that it carries out as a part of its mandate. As early as its visit in 1977, the Commission stated its concern about the lack of formalities with which state agents conducted arrests.⁹¹ Thus, according to complaints received by the Commission, numerous arrests were made without informing the detainees of the charges against them, without their knowing the identity of the persons making the arrest (who on occasions, as in Mr. Portugal’s case, were dressed in a fashion that prevented them from being recognized), without specifying the location where the detainees were being taken, and without the detainees being informed of the rights to which they were entitled. Many of these arrests took place in remote locations, and often large groups of individuals were taken into custody. The lack of formalities with which these arrests were made was directly related to forced disappearances and extrajudicial killings, constituting the first step in such offenses.

134. Respect for the provisions of Article 7 of the Convention serves to uphold not only the right to personal liberty, but also the right to humane treatment and the right to life.

135. In consideration of all the above, the Commission asks that the Court rule that the Panamanian State did violate, with respect to Heliodoro Portugal, Article 7(1), 7(2), 7(3), 7(4), 7(5), and 7(6) of the American Convention, in conjunction with Article 1(1) thereof.

C. Violation of the right to humane treatment

136. The relevant parts of Article 5 of the Convention provide as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

137. The State has not disputed the fact that Mr. Heliodoro Portugal was illegally and arbitrarily arrested at the Coca Cola Café in Panama City’s Santa Ana Park by members of the National Guard on May 14, 1970.

138. It is therefore important to recall that an illegal and arbitrary arrest, in and of itself, places the victim in a situation of vulnerability, creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated.⁹²

⁹⁰ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 9.

⁹¹ See: IACHR, *Report on the Situation of Human Rights in Panama*, OEA/Ser.L/V/II.44, Doc. 38 rev. 1, June 22, 1978.

⁹² I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 96, quoting I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 150; I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paragraph 90; I/A Court H. R., *The “Street Children” Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 166. In this regard, see also: ECHR, *Case of Ireland v. the United Kingdom*, Judgment of January 18, 1978, Series A No. 25, paragraph 167.

139. Furthermore, as the guarantor of the rights enshrined in the Convention, the State is responsible for upholding the right to humane treatment of all individuals under its jurisdiction.⁹³ The State is responsible for the torture and cruel, inhumane, and degrading treatment suffered by a person who has been in the custody of state agents, if the authorities fail to conduct a serious investigation of the facts followed by the prosecution of those identified as the perpetrators.⁹⁴ It falls to the State to provide a satisfactory and convincing explanation of what happened and to disprove the claims alleging its responsibility through appropriate forms of evidence.⁹⁵

140. With reference to detainees, Article 5(2) of the Convention stipulates that they shall be treated with respect for the inherent dignity of the human person. Under Article 27(2) of the Convention, that right forms part of a irrevocable core of rights that cannot be suspended in times of war, public danger, or other threats to the independence or security of states parties.⁹⁶

141. Taken together, the illegal and arbitrary arrest of the victim, his forced transfer and concealment, the nature of the crime in question, and the existence of a pattern of serious human rights violations at the time of the incident support the conclusion that Heliodoro Portugal was subjected to physical and moral aggression during the duration of his custody with the Panamanian National Guard.

142. As was claimed by the petitioners and accepted by the State in the Report of the Truth Commission, the victim was detained by state security agents and, at the time of his disappearance, was in their custody.

143. The Commission is therefore of the opinion that the State of Panama did violate Article 5(1) and 5(2) of the Convention by failing to respect the physical, mental, and moral integrity of Mr. Heliodoro Portugal and by failing to treat him with respect for the inherent dignity of the human person.

144. The circumstances of Heliodoro Portugal's arrest, in and of themselves, constitute an affront to his mental and moral integrity. It has been established that the victim's detention was a military operation characterized by violence and terror in which members of the National Guard burst into the café where he was, forced him into their vehicle, and took him to an undisclosed location, without explaining the reasons for the arrest.⁹⁷

145. Heliodoro Portugal's mental and moral integrity was affected by his subsequent arbitrary and forced conveyance, without his family knowing where he was; and by his being kept incommunicado in locations that were not detention centers.

⁹³ I/A Court H. R., *Case of Ximenes Lopes*, Judgment of July 4, 2006, Series C No. 149, paragraph 138; I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 120; and I/A Court H. R., *Case of López Álvarez*, Judgment of February 1, 2006, Series C No. 141, paragraphs 104 to 106.

⁹⁴ I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 120; and I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 170. Also: ECHR, *Yavuz v. Turkey*, Judgment of January 10, 2006, App. No. 67137/01, paragraph 38; ECHR, *Aksoy v. Turkey*, Judgment of December 18, 1996, App. No. 100/1995/606/694, paragraphs 61 and 62; and ECHR *Tomasi v. France*, Judgment of August 27, 1992, Series A No. 241-A, paragraphs 108-111.

⁹⁵ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 273; I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraph 120.

⁹⁶ I/A Court H. R., *Case of Montero Aranguren et al. (Retén de Catía)*, Judgment of July 5, 2006, Series C No. 150, paragraph 85; and I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 119.

⁹⁷ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 101.

146. With regard to that last point, in its first contentious case the Inter-American Court ruled that incommunicado detention was in and of itself a form of cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of all detainees to respect for their inherent dignity as human beings, and, as such, a violation of Article 5 of the Convention.⁹⁸ The Court has also determined that even in cases in which the deprivation of freedom is legitimate, “one of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any person [and] places him in a particularly vulnerable position.”⁹⁹ Such suffering has been clearly demonstrated in the case at hand.

147. In turn, the Inter-American Commission has on previous occasions held that “abuse of this exceptional measure [incommunicado detention] renders the individual unnecessarily vulnerable, and itself may constitute a form of mistreatment.”¹⁰⁰ In the case at hand, the absence of communication between Heliodoro Portugal and his family kept them from knowing his physical and emotional state.

148. The circumstances surrounding the detention, transfer, and concealment of Heliodoro Portugal, together with his vulnerability and the uncertainty regarding the outcome of his arrest in light of the systematic practice of extrajudicial killings current at the time, allow it to be reasonably assumed that the victim experienced fear and anguish during the period he spent in custody.

149. In this regard, the Inter-American Court has ruled that “it is inherent in human nature that any person subjected to violence and ill-treatment [...] (unlawful detention, cruel, inhuman and degrading treatment, and death) experiences corporal pain and deep suffering and anguish.”¹⁰¹

150. As regards the duration of the victim’s detention, while there is no evidence to indicate accurately how long he was kept in custody before he was executed and his remains concealed, the Commission believes a period of detention of no more than a few instants is enough to constitute a violation of his mental and moral integrity.¹⁰² In the case at hand there are indications that Mr. Portugal remained in clandestine custody for at least one year.

151. The Commission believes that in this case there is evidence and testimony to suggest that the victim was subjected to torture: the forensic pathologist’s report and the transcription of the exhumation procedure indicate that Mr. Heliodoro Portugal was brutally mistreated during the time he was in custody. As the forensic report notes, “the way in which the adhesive tape was placed around the head, together with the fragmentation of the osseous material

⁹⁸ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 156.

⁹⁹ I/A Court H. R., *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No. 35, paragraph 90.

¹⁰⁰ See: IACHR, “Right to Humane Treatment,” in *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc.10, rev.1, 1997. Amnesty International has also pointed out that “Torture most often occurs during a detainee’s first days in custody. Those vulnerable hours are usually spent incommunicado, when the security forces maintain total control over the fate of the detainee, denying access to relatives, lawyer or independent doctor.” Amnesty International, *Torture in the Eighties*, 110 (1984).

¹⁰¹ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 248.

¹⁰² I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 108; and I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 98; I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paragraphs 83, 84, and 89.

of the cranial vault, suggest the possibility of blunt trauma";¹⁰³ it adds that "the body appears to have been dumped at the site after probable medical treatment, since the cranium shows remnants of transparent adhesive tape of a kind used in surgery, and that part of the body also presents fractures – indicating that the person was severely beaten in that area. In addition, as noted by the forensic expert, on the bones of the left leg it can be seen that the individual suffered blows and fractures in that area, since there is evidence that the bone was broken; probably, from the injuries observed on the remains, the individual died from trauma."¹⁰⁴

152. The case file dealing with the internal legal proceedings also contains statements indicating that Mr. Portugal received medical attention at a military hospital for various injuries inflicted by beatings. This evidence states that Mr. Portugal was badly wounded and he was hospitalized at the military health ward of the Santo Tomás Hospital.¹⁰⁵

153. In addition, the CVP documented the existence of various clandestine detention and torture centers, including one identified as the "Miraflores House," at the premises of which it found human remains and bloodstains on the walls and floors.¹⁰⁶

154. The CVP also stated in its final report that:

In December 1999, a witness told a journalist that he had been held, along with Heliodoro Portugal, in a house; he did not know the address, but suspected that it was close to Miraflores.

[...]

[quoting the witness's statement] From there I was taken, blindfold, to a house that years later I was able to locate and identify as a residence in the Los Maestros district of Miraflores, where I have already taken the Third Superior Prosecutor; they made me lay down on a box-spring, tied my arms and legs, and there I was interrogated by Walter and Luis Del Cid. In the room next to mine was another prisoner; I know, because I heard him say his name, that it was Heliodoro Portugal, and they interrogated and tortured him, asking him if he knew Floyd Britton.¹⁰⁷

155. As regards the victim's next-of-kin, the Inter-American Court has ruled that the persons closest to the victim can be considered, in turn, as victims in cases that violate such basic rights as the right to life and to human treatment.

156. Among the elements to be taken into account in attributing victim status, the Court cites the closeness of the family relationship, the particular circumstances of the relationship with the victim, the degree to which the family member was a witness of the events related to the

¹⁰³ Report on the legal medical forensic analysis of the remains found at the Los Pumas barracks in Tocumén on September 22, 1999, dated September 24, 1999, Annex 19.

¹⁰⁴ Report on the legal medical forensic analysis of the remains found at the Los Pumas barracks in Tocumén on September 22, 1999, dated September 24, 1999.

¹⁰⁵ Updated copy as of April 2001 of the case file of the investigation conducted by the Third Superior Prosecutor of the First Judicial District of Panama following the complaint lodged by Patria Portugal on May 10, 1990, Annex 46.

¹⁰⁶ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 48.

¹⁰⁷ See: Truth Commission of Panama, *Final Report*, April 18, 2002, p. 51; See also: Statement of Daniel Elías Zúñiga to the Truth Commission of Panama (May 16, 2001, Annex 41).

disappearance, the involvement of the family member in attempts to obtain information about the victim's disappearance, and the State's response to the steps taken.¹⁰⁸

157. The IACHR holds that the mental and moral integrity of the victim's common-law wife, Graciela de León, and of their children, Patria and Franklin, was affected as a direct consequence of the illegal and arbitrary denial of Heliodoro Portugal's freedom, of his whereabouts being unknown, and of the failure to investigate the incident. Thus, the suffering they felt following his disappearance, the powerlessness and anguish they faced for years in the face of the authorities' failure to clear up the incident and punish the perpetrators, the condition of the remains and the evidence of torture, and the traumatic episode when doubts were raised about the identity of the remains – all these factors constitute reasons why they should be considered victims of cruel, inhuman, and degrading treatment.¹⁰⁹

158. In this regard, the Court has previously stated that it is reasonable to conclude that the suffering of a victim extends to the closest members of his or her family, particularly those who had strong ties of affection with the victim.¹¹⁰

159. In another case, the Court further ruled that:

The frustration at not receiving help and assistance from the state authorities in determining the fate of [the victims] and, if applicable, in punishing the guilty, and in identifying their whereabouts and reuniting the family, has had serious consequences for the physical and psychological integrity of the next-of-kin.¹¹¹

160. In sum, the Inter-American Commission asks the Court to rule that the Panamanian State did violate, with respect to Heliodoro Portugal as well as to his common-law wife and children, Article 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) thereof.

D. Violation of the right to life

161. Article 4(1) of the American Convention on Human Rights stipulates that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

162. The Court has ruled that:

The right to life plays a fundamental role in the American Convention as it is the essential corollary for the exercise of the other rights.¹¹² When the right to life is not respected, all the

¹⁰⁸ I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraphs 162 and 163.

¹⁰⁹ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 101. See also: I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 118.

¹¹⁰ I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 160; I/A Court H. R., *Case of the "Juvenile Reeducation Institute,"* Judgment of September 2, 2004, Series C No. 112, paragraph 191; I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 249; I/A Court H. R., *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, paragraph 162; I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, paragraph 98.

¹¹¹ I/A Court H. R., *Case of the Serrano Cruz Sisters*, Judgment of March 1, 2005, Series C No. 120, paragraph 114.

¹¹² I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153.

other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.¹¹³ Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation),¹¹⁴ under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.¹¹⁵ This active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must safeguard security, whether they are the police forces or the armed forces.¹¹⁶ Therefore, States must adopt all necessary measures, not only to prevent, try and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.¹¹⁷

The practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.¹¹⁸

163. The State has not disputed the fact that Mr. Heliodoro Portugal was last seen alive at a military barracks located near Tocumén. The discovery of his remains in September 1999 helped confirm that he had been executed at that facility while he was being held by state agents, although the date of his execution is still unknown.

164. The Inter-American Court has ruled that:

When a pattern of human rights violations exists [...] that is fostered or tolerated by the State, contrary to *jus cogens*, a climate develops that is incompatible with the effective protection of the right to life. When the right to life is not respected, all other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.¹¹⁹

¹¹³ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 153, quoting United Nations Human Rights Committee, General Comment 6/1982, paragraph 3, in: *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 6 (1994); United Nations Human Rights Committee, General Comment 14/1984, paragraph 1, in: *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 18 (1994); See: *Case of Myrna Mack Chang*, *supra*, paragraph 152; *Case of Juan Humberto Sánchez*, *supra*, paragraph 110; and *The "Street Children" Case (Villagrán Morales et al.)*, *supra*, paragraph 144.

¹¹⁴ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, *supra*, paragraph 153, quoting *Case of Myrna Mack Chang*, *supra*, paragraph 153; *Case of Bulacio*, *supra*, paragraph 111; and *Case of Juan Humberto Sánchez*, *supra*, paragraph 110.

¹¹⁵ *Ibid.*

¹¹⁶ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, *supra*, paragraph 153, quoting U.N.Doc.CCPR/C/SR.443, paragraph 55.

¹¹⁷ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, *supra*, paragraph 153, quoting *Case of Myrna Mack Chang*, *supra*, paragraph 153; *Case of Juan Humberto Sánchez*, *supra*, paragraph 110; *Bámaca Velásquez Case*, *supra*, paragraph 172; United Nations Human Rights Committee, General Comment No. 6 (16th session, 1982), paragraph 3, *supra*; and United Nations Human Rights Committee, *María Fanny Suárez de Guerrero v. Colombia*, Communication No. R.11/45 (February 5, 1979), U.N.Doc. Supp. No. 40 (A/37/40) en 137 (1982), p. 137.

¹¹⁸ I/A Court H. R., *Case of the 19 Merchants v. Colombia*, *supra*, paragraph 154, quoting *Bámaca Velásquez Case*, *supra*, paragraph 130; *Castillo Páez Case*, *supra*, paragraph 73; and *Godínez Cruz Case*, *supra*, paragraph 165.

¹¹⁹ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 128; See also: I/A Court H. R., *Case of the "Juvenile Reeducation Institute,"* Judgment of September 2, 2004, Series C No. 112, paragraph 156.

165. The Commission has demonstrated that at the time of the incident, a pattern of violations of the right to life existed in Panama; the State itself, through the Truth Commission, has acknowledged its responsibility for the existence of a policy of exterminating those who opposed the military regime.

166. In that regard, the Report of the Truth Commission stated that “the [disappearance] victims were opponents of the regime or individuals with a commitment to social struggle and betterment: in other words, idealists, supporters of the struggles taking place at that time in the entire world.”¹²⁰

167. The CVP speaks about three separate periods of military repression,¹²¹ which are homogeneous in terms of the profile of the victims and the circumstances and conditions of their disappearances. The first of these periods, which covers Mr. Portugal’s disappearance (October 1968 to October 1972),¹²² was identified as being the most violent. Some 50% of the 110 cases documented by the Truth Commission took place between those dates.¹²³

168. Consequently, it can be logically concluded that the disappearance of Heliodoro Portugal was not an isolated incident, but rather an action carried out by members of the military as part of a pattern of disappearances that existed at that time.

169. Furthermore, the IACHR holds that the Panamanian State did violate Article 4 of the American Convention, in conjunction with Article 1(1) thereof, through the actions of the state agents responsible for executing the victim.

170. In connection with this positive obligation of the State, the Inter-American Court has also stated that:

Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.¹²⁴

171. With reference to the individuals and institutions involved in this obligation, the Inter-American Court has established that:

This active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must safeguard security, whether they are the police forces or the armed forces. Therefore, States must adopt all necessary measures, not only to prevent, try and punish the deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.¹²⁵

¹²⁰ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 65.

¹²¹ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 9.

¹²² Truth Commission of Panama, *Final Report*, April 18, 2002, p. 67.

¹²³ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 9.

¹²⁴ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 129; I/A Court H. R., *Case of the “Juvenile Reeducation Institute,”* Judgment of September 2, 2004, Series C No. 112, paragraph 158.

¹²⁵ I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 129.

172. The Commission would like to emphasize that the purpose of domestic proceedings is to determine individual responsibility for violations of basic rights, be they committed by agents of the state or by other persons, while the purpose of international proceedings is to determine whether or not the State is internationally responsible for violating human rights that are protected by treaties and other international instruments. Thus, whereas in domestic proceedings it is essential that the perpetrator of a violation be identified in order to bring him or her to justice, in international proceedings it is not necessary that the identity of the state agent who committed the human rights violation be known. It is enough to establish that the violation was committed by an state agent, even if the identity of that agent remains unknown, for the State to incur in international responsibility. Similarly, even when the individual perpetrator of a violation has not been identified, the State has the obligation of making redress to the victim, or to the next-of-kin, if the violation was committed by one of its agents. In addition, the Commission would like to note that the jurisprudence of the Inter-American Court has ruled that “the State must respect the right to life of all persons under its jurisdiction, enshrined in Article 4 of the American Convention [...] The role of the State as guarantor with respect to this right carries with it the obligation to prevent situations that might lead, by action or omission, to negatively affect it. [If an individual] was detained in good health and subsequently died, the State is under the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, by supplying valid evidence. In its role as guarantor, the State does in fact have the responsibility to guarantee the rights of individuals under its custody as well as that of supplying information and evidence pertaining to what has happened to the detainee.”¹²⁶ Similarly, the United Nations Human Rights Committee has said that “[...] the essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life.”¹²⁷

173. Although the genetic identification of Mr. Portugal’s remains on August 21, 2000, made it clear that he was executed while in the custody of the State, uncertainty still surrounds the date, form, place, and perpetrators of that execution and of the those responsible for concealing the body.

174. To guarantee the permanent effects of the incident and to ensure its impunity, the victims’ bodies were concealed; in connection with this, the CVP’s report states that “the simple fact that the bodies were hidden and that the government did not perform forensic testing to determine the cause of death [...] are an element in convincing the Commission that the identified victims were murdered execution style.”¹²⁸

175. In light of the evidence cited above, the Commission believes that due observance of the guarantees of the American Convention requires the Court to declare that the Panamanian State did violate Heliodoro Portugal’s right to life, as enshrined in Article 4 of the Convention, in conjunction with Article 1(1) thereof, through his forced disappearance and subsequent execution while in the custody of state agents.

¹²⁶ I/A Court H. R., *Case of Bulacio*, Judgment of September 30, 2003, Series C No. 100, paragraph 138. See also: I/A Court H. R., *Urso Branco Prisons Case*, Provisional Measures, Order of the Court of April 22, 2004, consideration paragraph 6.

¹²⁷ UN doc. CCPR/C/74/D/763/1997, *Lantsov v. Russian Federation*, April 15, 2002, paragraph 9.2.

¹²⁸ *Ibid.*

E. Violation of the right to a fair trial and judicial protection under the American Convention, and noncompliance with the obligation of investigating and punishing torture pursuant to the Inter-American Convention to Prevent and Punish Torture

176. The Inter-American Commission holds that the Panamanian State failed to meet its obligation of effectively and appropriately investigating Mr. Heliodoro Portugal's illegal arrest and disappearance, in violation of Articles 8, 25, and 1(1) of the American Convention.

177. Article 8 of the Convention provides as follows:

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

178. In turn, Article 25 of the Convention provides 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.

179. Article 1(1) of the American Convention, in turn, reads:

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.

180. Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture state that:

The State Parties undertake to prevent and punish torture in accordance with the terms of [the Inter-American] Convention [to Prevent and Punish Torture].

[...]

In accordance with the terms of Article 1 [of the Torture Convention], the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

[...]

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

181. Under the terms of Article 1(1) of the American Convention, the states parties to the inter-American human rights system are subject to the obligation of investigating human rights violations, punishing the perpetrators thereof, and, when applicable, of making redress to the victims of those violations or to their next-of-kin. In connection with the provisions transcribed above, the Court has explained that:

Article 25, read in conjunction with Article 1(1), requires the State to guarantee to all persons access to the administration of justice and, in particular, to prompt and simple recourse for having the persons responsible for human rights violations judged, and to obtain reparations for the harm suffered. As the Court has said, "Article 25 is one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention."¹²⁹

182. Thus, the content of Article 25 is closely related to that of Article 8(1), which sets out the right of all persons to be heard, with all due guarantees and within a reasonable time, by an independent and impartial tribunal or judge, and ensures the victim that violations of rights protected by the American Convention shall be investigated effectively by the authorities, that the guilty shall be prosecuted, that the relevant punishments shall be imposed, and that due redress shall be made for the harm suffered.¹³⁰

183. In this regard, inter-American jurisprudence has established that once a publicly prosecutable crime has been committed, the State is obliged to pursue and promote the criminal proceedings to their final consequences¹³¹ and that, in such cases, this is the best way to clear up incidents, prosecute the guilty, and impose the applicable punishments, in addition to enabling other forms of redress.

184. The arrest and disappearance of Mr. Heliodoro Portugal at the hands of state agents required the authorities to make every effort to conduct an immediate search, with the urgent inquiries required; this, however, did not take place, in spite of the claims made by the victim's wife and mother from the earliest hours of his disappearance. The State failed to duly investigate the circumstances of the incident from those first moments.¹³²

185. The obligation of investigating and punishing human rights violations must be assumed by the State with all seriousness. In this regard, the Court has said that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.¹³³

¹²⁹ I/A Court H. R., *The Mayagna (Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001, Series C No. 79, paragraph 52; and I/A Court H. R., *Ivcher Bronstein Case*, Judgment of February 6, 2001, Series C No. 74, paragraph 135.

¹³⁰ I/A Court H. R., *Case of the Moiwana Community*, Judgment of June 15, 2005, Series C No. 124, paragraph 205; I/A Court H. R., *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, paragraph 130.

¹³¹ I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140; See also: Report No. 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997.

¹³² See: Statement by Antonia Portugal García (July 26, 1990, Annex 5).

¹³³ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 177. In turn, the Constitutional Court of Colombia has stated that: "International law has said that for the effective protection of human rights, it is insufficient for the victims and injured parties to be solely given indemnification for the damages suffered; this is

186. Now, a breach of the State's obligation of investigating does not occur simply because no one was convicted or because, in spite of the efforts made, it was impossible to establish the facts. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive, serious, and impartial investigation.¹³⁴

187. The "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions," adopted by the Economic and Social Council of the United Nations in Resolution 1989/65, provides the basic elements necessary in a case involving a suspicious death.¹³⁵ This investigation must determine the cause, form, and time of death, the individuals responsible, and the practices and procedures that could have led to it. Additionally, the authorities must perform a proper autopsy (or, in situations like the case at hand, at least an exhaustive forensic and anthropological analysis of the remains found), compile and study all the material and documentary evidence available, and take the corresponding witness statements.

188. The obligation of investigating and punishing all actions that constitute violations of Convention-protected rights requires that punishment be meted out not only to the physical perpetrators of human rights violations, but also the individuals who mastermind such offenses.¹³⁶ In the case at hand, neither the former nor the latter have even been properly investigated.

189. With reference to procedural guarantees, the Court has ruled that:

For true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that "are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof."¹³⁷

190. With specific reference to forced disappearances, the Inter-American Court has stated that:

...continuation

because truth and justice are necessary if a society is to avoid repeating those situations that lead to grave human rights violations, and in addition, because recognizing the inherent dignity and equal and inalienable rights of all human beings requires that the judicial remedies designed by states be geared toward comprehensive redress for victims and injured parties, including economic indemnification and access to justice to establish the truth about what happened and to seek, through institutional channels, the just punishment of the guilty." Judgment C-228/02 of April 3, 2002.

¹³⁴ IACHR, Annual Report 1997, Report No. 55/97, Case 11.137 (Juan Carlos Abella *et al.*), Argentina, paragraph 412. On this same point, see also: IACHR, Report Annual 1997, Report No. 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, paragraphs 96 and 97.

¹³⁵ These principles have been cited, *inter alia*, in: IACHR, Report No. 10/95, Case 10.580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, paragraphs 32 to 34; Report No. 55/97, Case 11.137 *Juan Carlos Abella et al.*, Argentina, paragraphs 413 to 424; and Report No. 48/97, Case 11.411, *Ejido Morelia*, Mexico, Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. 7, rev., April 13, 1996, paragraphs 109 to 112.

¹³⁶ The Court has said, for example, that "the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H. R., *Constitutional Court Case*, Judgment of September 29, 1999, Series C No. 71, paragraph 123. See also: I/A Court H. R., *Case of Myrna Mack Chang*, Judgment of November 25, 2003, Series C No. 101, paragraph 275; *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 186; *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, paragraph 65.

¹³⁷ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 124.

This phenomenon also entails neglecting the duty of organizing the governmental apparatus to ensure the rights enshrined in the Convention; as a result of this, by carrying out or tolerating actions intended to lead to forced or involuntary disappearances, by failing to properly investigate them, and by not punishing, when appropriate, the perpetrators, the State violates the duty of respecting the rights protected by the Convention and of ensuring their free and full exercise, with respect to both the victim and his relatives, for identifying his whereabouts.¹³⁸

191. Indeed, Article I(b) of the Inter-American Convention on Forced Disappearance of Persons stipulates that:

The States Parties to this Convention undertake:

(b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.

192. In the case at hand, the forced disappearance of Heliodoro Portugal was neither duly investigated nor punished. The claims and remedies filed by the victim's next-of-kin with administrative, military, and judicial authorities¹³⁹ were not effective, and this was acknowledged by the State itself in the Report of the Truth Commission¹⁴⁰ and in a ruling by the Supreme Court of Justice in the context of this case, which expressly stated that "at the time of Heliodoro Portugal's forced disappearance, a regime that prevented free access to justice was in power."¹⁴¹ The existence of a pattern of forced disappearances at the hands of the State, and the inclusion of the instant case as a part of that pattern, are facts acknowledged by both the Truth Commission and the State; this acknowledgement, however, has not been translated into an adequate response from the judiciary.

193. Even under the democratic regime, due legal process was undermined by the ineffectiveness of the domestic remedies and by the violation of the principle of reasonable promptness in the administration of justice in this particular case, leading to the impunity that still exists today.

194. On November 8, 1991, the judicial authorities ordered a provisional dismissal of the case on the grounds that "no enmity was established between the ideas of Mr. Portugal and those of the government in power at the time."¹⁴²

195. For nine years following that date, until Heliodoro Portugal's remains were identified in August 2000, there was no procedural activity at all in the case.

196. On June 13, 2003, in the trial of National Guard members Abel Cornejo Cornejo, Rafael Castro Ibarra, Moisés Correa Alba, Heliodoro Villamil, Melbourne Walker, Pedro del Cid, Aquilino Sieiro, Pablo Garrido, Lucinio Miranda, and Ricardo Garibaldo Figueroa for the murder of Heliodoro Portugal, the Second Superior Court of Justice of the First Judicial Circuit, in Deed No. 167, resolved to definitively dismiss the charges against nine of the ten accused because the

¹³⁸ I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 129.

¹³⁹ Updated copy as of April 2001 of the case file of the investigation conducted by the Third Superior Prosecutor of the First Judicial District of Panama following the complaint lodged by Patria Portugal on May 10, 1990, Annex 46.

¹⁴⁰ Truth Commission of Panama, *Final Report*, April 18, 2002, pp. 34 to 40.

¹⁴¹ See: Judgment of the Supreme Court of Justice, March 2, 2004, Annex 35.

¹⁴² Resolution of the Second Superior Court of Justice of the First Judicial District, temporarily dismissing the proceedings, November 8, 1991, Annex 13.

statute of limitations had expired. At the same time it also dismissed the criminal action against Abel Cornejo Cornejo, on account of his being deceased.¹⁴³

197. The Second Superior Court of Justice, by means of Deed No. 192 of December 17, 2004, definitively dismissed the charges against Rafael Castro and Abel Cornejo, and provisionally dismissed those against Moisés Correa, Melbourne Walter, Pedro Del Cid, Aquilino Sieiro, Pablo Garrido, and Licinio Mirando. That decision did not resolve the legal situation of Heliodoro Villamil. The Second Superior Court does not explain in its decision why it dismissed the compelling evidence that several of the accused had been involved in the incident.

198. Although a first adjudication hearing in the case at hand was heard against Ricardo Garibaldo on June 7, 2006, the proceedings did not reach the judgment phase on account of the accused's death on July 8, 2006, one day before the expiration of the legal deadline for issuing the verdict.¹⁴⁴

199. After the death of Mr. Garibaldo the investigation has not advanced at all: in spite of the ample evidence and witness statements regarding the involvement of various state agents in the different planning and execution phases of the incident, to date not all the possible guilty parties have been indicted, the charges against others have been dismissed without reason, and the statement from one of the main suspects, Manuel Antonio Noriega, commanding officer of G-2 and of Los Pumas at the time of the events, has not even been taken.

200. The Inter-American Court has ruled that states are legally obliged to offer effective domestic remedies. Thus, the Court ruled 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.¹⁴⁵

201. Article 25 of the Convention incorporates the generally recognized principle of international human rights law regarding the effectiveness of proceedings intended to guarantee protected rights.¹⁴⁶ Consequently, the Court has ruled that a remedy which proves illusory in the particular circumstances of a given case cannot be considered effective.¹⁴⁷

202. Similarly, the European Court of Human Rights has ruled that:

The notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable

¹⁴³ Deed No. 167 of the Second Superior Court of Justice of the First Judicial Circuit, June 13, 2003, Annex 33.

¹⁴⁴ See: news report titled "Death of Lieutenant Colonel (ret) Ricardo Garibaldo," published in the daily *La Prensa*, edition of July 8, 2006, available at <http://mensual.prensa.com/mensual/contenido/2006/07/08/hoy/panorama/663140.html> as of January 21, 2007, Annex 48.

¹⁴⁵ I/A Court H. R., *Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 24.

¹⁴⁶ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 138.

¹⁴⁷ I/A Court H. R., *Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 24.

of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.¹⁴⁸ (*emphasis added*)

203. In addition, as the Court has done, it should be emphasized that the right of access to justice is not exhausted by the processing of domestic proceedings, but it must also ensure that the duration thereof bears a direct relationship to the results obtained.

204. An analysis of the effectiveness and duration of the domestic remedies in the case at hand indicated that all reasonable limits have been surpassed: more than 36 years after the victim disappeared, 28 after Panama's obligations under the Convention came into effect, and 16 after a complaint was filed with the Third Prosecutor, no one has been punished, the investigation has not concluded, and there are still many lines of inquiry to be probed, as indicated by the various statements given to both the Third Prosecutor and the Truth Commission.

205. In its judgment in the *Case of the 19 Merchants v. Colombia*, the Court ruled that the State must explain and prove why it has required more time that would be reasonable, in principle, to deliver final judgment in a specific case, according to the aforesaid criteria.¹⁴⁹ It must be stressed that in cases such as this, the authorities have to act on an ex officio basis and pursue the investigation, and the burden of initiative must not be allowed to fall onto the next-of-kin.¹⁵⁰

206. The fact that the investigation was slow and inadequate and the fact that the State provided insufficient information represent serious violations of the family's right to prompt and efficient judicial remedies. The delays in and shortcomings of all the State's efforts to investigate the serious allegations made by the next-of-kin before the domestic courts have denied them their right to justice and their right to know the truth about the fate of Heliodoro Portugal.

207. On several occasions the Court has ruled that all individuals, including the relatives of the victims of serious human rights violations, have the right to truth. Consequently, the victims' relatives and society as a whole must be informed about all aspects of those violations.¹⁵¹

208. With respect to the conventional status of the right to truth in a forced disappearance case, the Inter-American Court has said that:

The right to the truth is subsumed in the right of the victim or his next-of-kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from

¹⁴⁸ ECHR, *Case of Kaya v. Turkey*, Series A No. 65 (19.2.98), paragraph 107. The full citation reads as follows: In the instant case the applicant is complaining that he and the next-of-kin have been denied an "effective" remedy which would have brought to light the true circumstances surrounding the killing of Abdulmenaf Kaya. In the view of the Court the nature of the right which the authorities are alleged to have violated in the instant case, one of the most fundamental in the scheme of the Convention, must have implications for the nature of the remedies which must be guaranteed for the benefit of the relatives of the victim. where those relatives have an arguable claim that the victim has been unlawfully killed by agents of the State, the notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure.") (*see, mutatis mutandis*, the above-mentioned *Aksoy v Turkey* and *Aydin v Turkey*, Series A, No 50, 25.9.97) judgments at parr. 98 and 103, respectively). Seen in these terms the requirements of Article 13 are broader than a Contracting State's procedural obligation under Article 2 to conduct an effective investigation.)

¹⁴⁹ I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 191.

¹⁵⁰ I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003, Series C No. 99, paragraph 132.

¹⁵¹ I/A Court H. R., *Case of Carpio Nicolle Case et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 128; I/A Court H. R., *Case of the Plan de Sánchez Massacre*, Judgment of November 19, 2004, Series C No. 116, paragraph 97; I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 257.

the competent State organs, through the investigation and prosecution established in Articles 8, 25, and 1(1) of the Convention.¹⁵²

209. More than 36 years after the fact, 28 after the obligations under the Convention came into effect for the respondent State, and 16 after the office of the Third Prosecutor began its investigation, Panamanian society still does not know the truth about Heliodoro Portugal's fate. Neither the family nor Panamanian society learned the truth about the location of the victim's remains until 1999, and they are still not certain about who was responsible for the incident. Each and every one of those who participated in Heliodoro Portugal's forced disappearance are covered by a blanket of impunity.

210. Thus, the Commission notes that in spite of the State's recognition of the gravity of the facts surrounding Mr. Portugal's forced disappearance and execution, and despite the formalities pursued by the Third Superior Prosecutor of the First Judicial District of Panama, the courts have not assigned responsibilities or imposed criminal sanctions on a single one of those who perpetrated and planned the incident.

211. The Commission interprets the negligence of the Panamanian judicial authorities as a form of obstruction, in breach of the State's international obligation of investigating, prosecuting, and punishing the guilty. To date, the harm caused by Heliodoro Portugal's forced disappearance has not been remedied.

212. Thus, the IACHR concurs with the conclusions reached by the Truth Commission:

The judicial apparatus was incapable of responding to their concerns; statutory limitations were applied, charges were dismissed, pardons were given, cases were shelved, attempts to punish breaches of the law were met with contempt or a lack of interest, and all this served to prevent the investigations that the dead and the disappeared deserved.¹⁵³

[...]

The performance of the administration of justice during this critical period for the Republic has not been of the standard needed to combat impunity.¹⁵⁴

213. To summarize, the breaches of Articles 1, 8, and 25 took place when the Panamanian State failed to pursue internal investigations and procedures of sufficient rigor as to counteract the concealment, ignored lines of inquiry and possible participants indicated by multiple witnesses who gave statements to the Third Prosecutor and the Truth Commission, excessively and unjustifiably delayed the launch of an investigation into the facts of the case, halted all procedural activity for a period of nine years, terminated the proceedings on repeated occasions, and, on each occasion that it was reopened, failed to process the formalities with due diligence and timeliness.

214. With reference to the work of the Truth Commission which was set up by the democratic government of Panama and charged with investigating human rights violations committed between 1968 and 1989, the IACHR would like to state that while it made laudable efforts in gathering information on human rights violations and in taking steps toward making redress, its work did not allow the investigation of criminal acts committed by state agents or the identification and punishment of the guilty – it was not a judicial body, and its mandate was limited

¹⁵² I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, paragraph 201.

¹⁵³ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 3.

¹⁵⁴ Truth Commission of Panama, *Final Report*, April 18, 2002, p. 40.

to establishing the identity of the victims of violations of the right to life. Given the nature of its task, the CVP was not authorized to publish the names of those who committed crimes, nor to impose any form of punishment on them. Consequently, in spite of its importance in establishing the facts and ordering redress, the CVP cannot be considered an appropriate substitute for judicial proceedings. In this regard, Pedro Nikken, former President of the Inter-American Court, has said that:

The establishment of a truth commission is a plausible means, within a political negotiation, to reach peace in an internal conflict, as a first step and perhaps the most tangible contribution that can be made within that scenario to combat impunity. [Nonetheless,] the establishment of the truth should not inhibit the judicial organs from judging and punishing the persons responsible, but outside the context of a political negotiation.

Impunity for crimes committed by state agents or under the cover of the state does not entail only the failure to punish the persons responsible for those crimes. An inseparable component of such impunity is the failure to carry out any investigation, the cover-up, and even the falsification of the facts to protect the persons responsible. There is no doubt that the discovery of the truth, which is the responsibility of independent persons, destroys that element which, while not useful in itself for eradicating impunity, fulfills at least a dual function. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis. And second, it contributes to creating a collective conscience as to the need to impede the repetition of similar acts and shows those who are capable of doing so that even if they may escape the action of justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human beings. In this regard, even though these do not constitute punitive mechanisms, they may perform a preventive function that is highly useful in a process of building peace and the transition to democracy.¹⁵⁵

215. Finally, under the general obligation of states parties to respect and ensure the rights of all individuals subject to their jurisdiction, set out in Article 1(1) of the American Convention, the State has the duty of starting, immediately and on its own initiative, an effective investigation to identify, prosecute, and punish the guilty when a complaint has been made or good reason exists to believe that an act of torture has been committed in violation of Article 5 of the American Convention. In the case at hand, it is clear that the State did not act in accordance with those precepts. Mr. Heliodoro Portugal's remains evinced injuries compatible with acts of torture, which should have constituted adequate justification for the competent authorities to initiate, on an *ex officio* basis, an investigation into the incident. These steps are specifically regulated by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, which oblige states parties to take all effective measures in connection with acts of torture occurring under their jurisdiction.¹⁵⁶ Ever since the Inter-American Convention to Prevent and Punish Torture came into force for Panama (August 28, 1991), the State has been required to abide by the obligations set out therein. It has been seen that, since the positive identification of Mr. Heliodoro Portugal's remains, the State has not investigated, prosecuted, or punished the perpetrators of the torture suffered by the victim. In addition to being a violation of Article 5 of the American Convention, in conjunction with Article 1(1) thereof, this represents noncompliance with the obligations contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.¹⁵⁷

¹⁵⁵ Pedro Nikken, "Handling the Past and the Question of Impunity in Resolving the Armed Conflicts in El Salvador and Guatemala," published in *LIBER AMICORUM – HÉCTOR FIX-ZAMUDIO*, vol. I, Secretariat of the Inter-American Court of Human Rights, San José, Costa Rica, 1998, pp. 167-8.

¹⁵⁶ I/A Court H. R., *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, paragraph 95.

¹⁵⁷ See, in this regard: I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, paragraphs 156 *et seq.*; and I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, paragraph 159.

216. In consideration of all the foregoing, the Commission believes that the actions of the state authorities, taken together, assisted the failure to investigate, pursue, arrest, prosecute, and convict those persons responsible for Heliodoro Portugal's forced disappearance, which represents a violation of Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof.¹⁵⁸ In consideration of the Court's declaration that:

The State party to the American Convention has the duty to investigate human rights violations and to punish those responsible and the accessories after the fact. And all persons who consider themselves to be victims of said violations, as well as their next-of-kin, have the right to resort to justice to ensure that this duty of the State is fulfilled, for their benefit and that of society as a whole,¹⁵⁹

the IACHR asks the Court to declare that the Republic of Panama is responsible for violating the rights protected by the provisions in question, and for noncompliance with its obligations under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, because the public and complete disclosure of the truth is the first requirement of justice.¹⁶⁰

F. Noncompliance with the obligation of adopting legislative measures to criminalize the forced disappearance of persons pursuant to the Inter-American Convention on Forced Disappearance of Persons

217. Article III of the Inter-American Convention on Forced Disappearance provides as follows:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

218. In the case at hand, although on September 15, 2005, the Office of the Attorney General of the Nation presented the National Assembly with a bill to criminalize the forced disappearance of persons,¹⁶¹ to date there has been no legislative debate on the proposal, nor is any such discussion likely to take place in the near future.

219. At the same time, in spite of the ruling issued by the Supreme Court of Justice of Panama in the domestic investigation into Heliodoro Portugal's disappearance, stipulating that the statute of limitations does not apply to crimes of the kind involved, in recent months other judicial authorities have used statutory limitations to dismiss various judicial proceedings, ensuring the impunity of the guilty.

¹⁵⁸ In this regard, the IACHR invokes the established doctrine of the Court: for example, in the case of *Villagrán Morales*, it stated that "in order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the [Inter-American] Court may have to examine the respective domestic proceedings," and that "to this end, in view of the characteristics of the case and the nature of the violations alleged by the Commission, the [Inter-American] Court must examine all the domestic judicial proceedings in order to obtain an integrated vision of these acts and establish whether or not it is evident that they violated the norms on the obligation to investigate, and the right to be heard and to an effective recourse, which arise from Articles 1.1, 8 and 25 of the Convention." I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraphs 222 and 224.

¹⁵⁹ I/A Court H. R., *Case of Bulacio*, Judgment of September 30, 2003, Series C No. 100, paragraph 110.

¹⁶⁰ See, in this regard: E/CN.4/Sub.2/1993/8.

¹⁶¹ Draft law criminalizing the forced disappearance of persons, Annex 49.

220. The Commission therefore asks the Court to rule that the State of Panama did fail to comply with the obligation set out in Article III of the Inter-American Convention on Forced Disappearance of Persons to adopt the legislative measures needed to define the forced disappearance of persons as an offense, to impose on it an appropriate punishment commensurate with its extreme gravity, and to consider it a continuous or permanent crime as long as the fate or whereabouts of the victim has not been determined.

VIII. REPARATIONS AND COSTS

221. In consideration of the claims made in this application and of the consistent jurisprudence of the Inter-American Court holding “that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation,”¹⁶² the IACHR presents the Honorable Court with its preliminary claims regarding the reparations and costs that the Panamanian State must grant as a consequence of its responsibility in the human rights violations committed with respect to Heliodoro Portugal and his family.

222. The Inter-American Commission asks the Court to order the State to indemnify the material and nonmaterial harm inflicted on Heliodoro Portugal and his next-of-kin in the terms indicated below. The Inter-American Commission also asks the Court to order the State to reimburse the legal costs and expenses incurred by the victim’s relatives in processing this case before the domestic courts, and those arising from the processing of this case by the inter-American system.

A. Obligation of making reparations

223. One essential function of justice is to remedy the harm inflicted on the victim. This function must be expressed through rectification or restitution, and not only through compensation, which does not reset the moral balance nor return what was taken.

224. Article 63(1) of the American Convention provides as follows:

If the Court finds that there has been a violation of a right or freedom protected by [the] 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.

225. Similarly, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of the United Nations sets out broad guarantees for those who suffer economic losses, physical or mental injury, and “substantial impairment of their fundamental rights,” through acts or omissions, including abuses of power. The victims or their next-of-kin have the right to seek redress and to be informed of that right.¹⁶³

226. As the Court has consistently maintained in its jurisprudence: “Article 63(1) of the American Convention contains a common-law provision that constitutes one of the fundamental

¹⁶² I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 199; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 413; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)* Judgment of Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 141.

¹⁶³ U.N. A/RES/40/34 of November 29, 1985, paragraphs 1, 4, and 5.

principles of contemporary international law regarding the responsibility of States. According to it, when an illegal act attributable to the State takes place, the latter immediately incurs a responsibility for the violation of the international provision involved, with the attendant duty of providing reparations and of making the consequences of said violation cease."¹⁶⁴

227. Reparations are crucial in ensuring that justice is done in a given case, and they are the mechanism whereby the Court's decisions move beyond the realm of mere moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear. Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred.

228. If full restitution is not possible, as in the instant case, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.¹⁶⁵ The chief aim of indemnifications in such cases is to repair the actual damage, both material and nonmaterial, suffered by the injured parties.¹⁶⁶ Its calculation shall be proportionate "to the gravity of the violations and the resulting damage."¹⁶⁷ Likewise, reparations have the additional – albeit no less essential – goal of preventing and halting future violations.

229. A respondent state may not invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by international law¹⁶⁸ since "where there are unpunished violations or unrepaired damages, law enters into crisis: not only as an instrument for resolving a specific litigation, but as a method for resolving them all – in other words, for ensuring peace with justice."¹⁶⁹

¹⁶⁴ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 414; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 116.

¹⁶⁵ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 201; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

¹⁶⁶ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Bulacio*, Judgment of September 30, 2003, Series C No. 100, paragraph 70; I/A Court H. R., *Case of Hilaire, Constantine, and Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 204.

¹⁶⁷ United Nations, Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1996/17, paragraph 7. See also: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 89; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraph 141; *Cantoral Benavides Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of December 3, 2001, Series C No. 88, paragraph 42; and *Cesti Hurtado Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of May 31, 2001, Series C No. 78, paragraph 36.

¹⁶⁸ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 143.

¹⁶⁹ Sergio García Ramírez, "Reparations in the inter-American system for the protection of human rights," paper presented at the seminar "The inter-American system for the protection of human rights on the threshold of the 21st century," San José, Costa Rica (November 1999).

230. In the case at hand, the Inter-American Commission has shown that the State incurred in international responsibility by violating Heliodoro Portugal's right to life, to humane treatment, and to personal liberty; and by violating the right of his next-of-kin to a fair trial and to effective remedies, on account of the absolute impunity that has surrounded the incident. More than 36 years after Heliodoro Portugal's disappearance and 28 years after Panama's obligations under the Convention came into effect, his family feels the natural sensation of injustice and despair that arises from vainly waiting for the State to complete its investigation, prosecute and punish the guilty, and indemnify them for the human rights violations they suffered.

231. Finally, and pursuant to the Court's Rules of Procedure whereby individuals can be granted autonomous representation, the Inter-American Commission will merely present the general guidelines for reparations and costs that it believes the Court should follow in the case at hand. The Inter-American Commission understands that it falls to the victim's next-of-kin and their representatives to specify their claims, in accordance with Article 63 of the American Convention and Article 23 and related provisions of the Court's Rules of Procedure. Should the victim's next-of-kin choose not to exercise this right, the IACHR would ask the Court to grant it an opportunity during the proceedings to quantify the appropriate claims. The Inter-American Commission also notes that it will promptly inform the Court if it has any comments on the amount claimed by the victim's next-of-kin or their representatives.

B. Reparation measures

232. Some writers hold that in cases such as the one at hand, to remedy the victim's situation and/or that of his next-of-kin, the State must meet the following obligations: "obligation of investigating and disclosing the facts that can be reliably established (truth); obligation of prosecuting and punishing the guilty (justice); obligation of making comprehensive reparations for the moral and material injuries inflicted (redress); and obligation of removing from the security forces all individuals known to have committed, ordered, or tolerated such abuses (creation of security forces worthy of a democratic state). These obligations are neither mutual alternatives nor optional; the responsible state must comply with each of them to the extent that it can and in good faith."¹⁷⁰

233. Similarly, the United Nations Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.¹⁷¹ In the opinion of the United Nations Special Rapporteur on the impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations, verification of the facts and full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim, an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations, the prevention of further violations, etc.

¹⁷⁰ Juan E. Méndez, "The Right to Truth in Serious Human Rights Violations," article in *The Application of Human Rights Treaties by National Courts*, CELS, 1997, p. 517.

¹⁷¹ Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Dr. Theodore Van Boven pursuant to Sub-Commission decision 1995/117. E/CN.4/sub.2/1996/17.

234. Similarly, the Court has said that reparations tend to eliminate the effects of the violations committed.¹⁷² These measures cover the different ways in which a state can meet the international responsibility in which it incurred and, in accordance with international law, can be measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.¹⁷³

235. The United Nations Commission on Human Rights has also ruled 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.¹⁷⁴

236. In light of the above remarks, the Inter-American Commission seeks for the Court to order comprehensive measures of reparation; these would, in turn, send a message against the impunity that surrounds the vast majority of human rights violations in the member countries of the Organization of American States. This requires the establishment and, when necessary, the strengthening of judicial and administrative mechanisms to allow victims to obtain redress through formalized procedures that are swift, fair, inexpensive, and accessible.

237. In accordance with the evidence presented in this application and in consideration of the guidelines set by the Court in its jurisprudence, the Inter-American Commission submits its conclusions and claims regarding measures to make amends for the material and nonmaterial harm and other forms of redress and satisfaction applicable in the case of Heliodoro Portugal and the members of his family.

1. Measures of compensation

238. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for the harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory in nature, and that it is to be granted in volume and fashion sufficient to repair both the material and the nonmaterial harm inflicted.¹⁷⁵

¹⁷² I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 202; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 416; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 144.

¹⁷³ See: United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the Right to Reparation to 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, paragraph 31; I/A Court H. R., *Suárez Rosero Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, paragraph 41.

¹⁷⁴ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, paragraph 7.

¹⁷⁵ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 210; I/A Court H. R., *Case of Hilaire, Constantine, and Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, paragraph 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, paragraph 41.

1.1. Material damages

239. In its jurisprudence on reparations, the Court has been consistent in maintaining that material damages include consequential damages and future losses, together with nonmaterial and moral damages, for both the victims and, in certain cases, their immediate families.¹⁷⁶

240. Consequential damages have been defined as the direct and immediate effect of the incident on property. This notion includes the economic impact derived immediately and directly from the incident in connection with the expenses occurred by the Heliodoro Portugal's family in their attempts to secure justice.¹⁷⁷ As the Court will be able to see from the evidence submitted in this case, the victims made significant economic efforts to obtain justice domestically and to overcome the physical, psychological, and moral trauma that the actions of the Panamanian State caused them.

241. In contrast, future losses are understood as the loss of economic income or benefits not accrued on account of a given circumstance, which can be quantified using certain measurable and objective indicators.¹⁷⁸

242. Notwithstanding the claims that the representatives of the victim and his next-of-kin may submit at the appropriate point in proceedings, the IACHR asks the Court to set an equitably determined sum of money as indemnification for the consequential damages and future losses, in exercise of its broad powers in this regard.

1.2. Nonmaterial damages

243. With respect to nonmaterial damages, the Court has stated that:

Non-pecuniary damage may include the suffering and affliction caused to the direct victims and to their next-of-kin and the impairment of values that are very significant for a person, together with changes, of a non-pecuniary nature, in the living conditions of victims or their next-of-kin. 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

¹⁷⁶ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraphs 213 and 214; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 423; I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114.

¹⁷⁷ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 215; 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, paragraph 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, paragraph 50.

¹⁷⁸ See, for example: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraphs 105 *et seq*; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, paragraphs 151 and 152.

their relatives or issuing a message of official reproval of the violations of human rights involved and of commitment to avoid their repetition.¹⁷⁹

244. In addition, the Court has suggested the existence of an assumption regarding the nonmaterial damage inflicted on the victims of human rights violations by stating that moral or nonmaterial harm imposed on the victims is evident, since it is inherent in human nature for all individuals whose human rights are affronted or undermined to suffer nonmaterial moral harm and that “no proof is required to reach the aforesaid conclusion.”¹⁸⁰

245. In the case at hand, Heliodoro Portugal’s family have been victims of intense psychological suffering, anguish, uncertainty, sorrow, and alterations to their lifestyle on account of the lack of justice in the disappearance and death of their loved one. More than 36 years after the victim’s disappearance and 28 years after Panama’s obligations under the Convention came into effect, his family has had to resign itself to the inability of domestic investigations to establish the historical truth of the incident and to punish the guilty.

246. In the instant case, the suffering faced by the victim’s next of kin because of the failure to conduct a diligent investigation of the incident and to then punish the guilty, along with other affronts, justify the Commission’s asking the Court, in light of the nature of the case, to set an equitably determined sum compensation for nonmaterial damages.

2. Measures of cessation and satisfaction and guarantees of nonrepetition

247. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.¹⁸¹ Satisfaction takes place when three events occur, generally one after the other: apologies, or any other gesture showing acknowledgement of responsibility for the act in question; prosecution and punishment of the guilty; and the adoption of measures to prevent the harm from recurring.¹⁸²

248. On November 29, 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,¹⁸³ according to

¹⁷⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 216; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 430; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 383; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, paragraph 254.

¹⁸⁰ See, *inter alia*: I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 150; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, paragraph 384; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, paragraph 217; I/A Court H. R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, paragraph 248.

¹⁸¹ Brownlie, *State Responsibility*, Part 1, Clarendon Press, Oxford, 1983, p. 208.

¹⁸² *Ibid.*

¹⁸³ 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,

which victims “are entitled to access to the mechanisms of justice and to prompt redress,” for which purpose “the views and concerns of victims [must] 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.”

249. Under European jurisdiction, in contrast, the European Convention on the Compensation of Victims of Violent Crimes was drawn up in 1983. In essence, this instrument addresses the situation of victims who have suffered bodily harm or diminished health, and of the dependents of persons killed as a result of such offenses; however, it also deals with the obligation of protecting victims and of granting them certain rights of participation in criminal proceedings.¹⁸⁴

250. In the following paragraphs the IACHR will set out its position regarding the cessation and satisfaction measures and guarantees of nonrepetition required in the case at hand, reserving the right to expand, at a later time, its arguments on this point.

251. First of all, the Court has stated on repeated occasions that all individuals, and society as a whole, have the right to be informed about incidents involving human rights violations.¹⁸⁵ Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators and their accomplices are essential steps towards rehabilitation and reconciliation; it has also urged states to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated, and it has encouraged victims to participate in that process.¹⁸⁶

252. To summarize, as the Inter-American Court has said on previous occasions:

The State must also remove all *de facto* and legal mechanisms and obstacles that maintain impunity in the instant case; it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and victims, and use all means available to it so as to expedite the proceeding.¹⁸⁷

253. The fundamental opinion of the Commission is that, until an impartial and effective investigation into the illegal arrest, torture, and disappearance of Heliodoro Portugal is completed, a permanent violation of the right to efficient and effective justice remains ongoing.

...continuation

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.”

¹⁸⁴ European Convention on the Compensation of Victims of Violent Crimes, November 24, 1983. The Council of Europe has also issued regulations and recommendations regarding the rights of crime victims.

¹⁸⁵ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 347; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paragraph 139; I/A Court H. R., *Case of Ximenes Lopes*, Judgment of July 4, 2006, Series C No. 149, paragraph 245.

¹⁸⁶ E/CN.4/RES/2001/70.

¹⁸⁷ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 226; I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 134. See also: I/A Court H. R., *Case of Almonacid Arellano*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of September 26, 2006, Series C No. 154, paragraph 156.

254. In accordance with the Court's jurisprudence, and in light of the particularly serious nature of the human rights violations involved in the instant case, comprehensive redress requires the State to investigate the incident with all due diligence in order to identify, prosecute, and punish those persons responsible for the illegal arrest, torture, and disappearance of Heliodoro Portugal. To this end, it must take all the judicial and administrative steps necessary to complete the investigation, locate, prosecute, and punish the perpetrators and planners of the incident, and to report on the results thereof. The State is also obliged to investigate and punish those responsible for the impunity, obstructions of justice, and concealments that have characterized this case. The victim's next-of-kin must be given full access and authority to appear at all phases and stages of those investigations, in accordance with domestic law and the provisions of the American Convention. The State must also ensure effective compliance with the decisions adopted by the domestic courts under this obligation. The result of this process must be made public, to make Panamanian society aware of the truth.¹⁸⁸

255. Secondly, Panama must adopt rehabilitation measures for the victim's next-of-kin. These measures shall necessarily include forms of psychological and medical rehabilitation.

256. In third place, the gravity and nature of the facts in this case demand that the State take steps intended to dignify the victim's memory. In that connection, the Commission asks the Court to order, *inter alia*:

- The publication, in a national newspaper, of whatever judgment the Court may hand down;
- An act of public recognition of the State's responsibility for the harm inflicted and for the grave violations that occurred; and,
- In consultation with the victim's next-of-kin, the establishment of a street, school, monument, or memorial to the memory of the victim.

257. In addition, the Commission believes that the State is obliged to prevent the recurrence of human rights violations such as those of the instant case; consequently, it asks the Court to order the Panamanian State to adopt, on a priority basis, the legislative amendments and other reforms needed to criminalize the forced disappearance of persons, and to pursue the proper investigation and punishment of violations similar to those described in this application.

258. Finally, Panama must take effective steps to prevent similar events from occurring in future, in accordance with the duty to prevent and guarantee the fundamental rights recognized in the American Convention.

C. Beneficiaries

259. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that "fair compensation be paid to the injured party." The persons entitled to this compensation are generally those who suffered direct harm as a result of the violation in question.

¹⁸⁸ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 228; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 441; I/A Court H. R., *Case of Almonacid Arellano*, Judgment on preliminary objections, merits, reparations, and costs, Judgment of September 26, 2006, Series C No. 154, paragraph 157. I/A Court H.R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, paragraph 128.

260. In accordance with the nature of this case, the redress ordered by the Court as a result of the human rights violations perpetrated by the Panamanian State shall accrue to the following beneficiaries: Graciela de León Rodríguez (common-law wife of the victim) and Patria and Franklin Portugal (children of the victim), because they had close emotional ties had the victim and because they were deeply affected by the incident.

D. Costs and expenses

261. In accordance with the Court's consistent jurisprudence, costs and expenses must be included within the reparations described in Article 63(1) of the American Convention. This is because the activities pursued by the injured parties, their heirs, or their representatives in securing access to international justice imply expenditures and financial commitments that must be compensated.¹⁸⁹ In addition, the Court has also ruled that costs referred to in Article 55(1)(h) of its Rules of Procedure include the necessary and reasonable expenses incurred in securing access to the American Convention's supervisory bodies, with those expenses including the fees charged by those providing them with legal assistance.

262. In the case at hand, the Inter-American Commission asks the Court, after hearing the representatives of the victim and his next-of-kin, to order the reimbursement of such costs and expenses as they duly evidence, taking into consideration the special characteristics of this case.

IX. CONCLUSION

263. The forced disappearance of Heliodoro Portugal, the subsequent failure to conduct a diligent, timely, and thorough investigation of the facts and to punish the guilty, and the denial of justice and of appropriate redress suffered by the victim's next-of-kin constitute violations of the rights protected by Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights, all in conjunction with the general obligation of respecting and ensuring human rights set out in Article 1(1) thereof, noncompliance with the obligation established in Article III of the Inter-American Convention on Forced Disappearance of Persons to adopt the measures needed to define the forced disappearance of persons as a continuous or permanent offense, and noncompliance with the obligation of investigating and punishing torture established by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

X. DEMANDS

264. Based on the considerations of fact and law set forth above, the Inter-American Commission on Human Rights asks the Court to conclude and declare that:

- (a) the Panamanian State is responsible for violating Mr. Heliodoro Portugal's right to life, to humane treatment, and to personal liberty, as set out in Articles 4, 5, and 7 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof;

¹⁸⁹ I/A Court H. R., *Case of La Cantuta*, Judgment on merits, reparations, and costs, Judgment of November 29, 2006, Series C No. 162, paragraph 243; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, paragraph 455; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)* Judgment on preliminary objections, merits, reparations, and costs, Judgment of November 24, 2006, Series C No. 158, paragraph 152.

- (b) the Panamanian State is responsible for violating the right to humane treatment of Messrs. Graciela de León, Patria Portugal, and Franklin Portugal (the victim's next-of-kin), as set forth in Article 5 of the American Convention, in conjunction with the general obligation of respecting and ensuring human rights enshrined in Article 1(1) thereof; and,
- (c) the Panamanian State is responsible for violating the right to a fair trial and to judicial protection of the next-of-kin of Mr. Heliodoro Portugal, as set forth in Articles 8(1) and 25 of the American Convention; for noncompliance with its obligation of respecting and ensuring the rights contained in the Convention, in compliance with Article 1(1) thereof; for noncompliance with the obligation of criminalizing the forced disappearance of persons, contained in Article III of the Inter-American Convention on Forced Disappearance of Persons; for noncompliance with the obligation of investigating and punishing torture, established by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and for the failure to provide due redress for those violations.

And, consequently, to order the State to:

- (a) conduct a complete, impartial, and effective investigation, in order to identify and punish the masterminds of, physical perpetrators of, and other participants in the illegal arrest, torture, forced disappearance, and extrajudicial killing of Mr. Heliodoro Portugal;
- (b) conduct a complete, impartial, and effective investigation, in order to identify and punish those individuals who, through their active participation or omissions, assisted in concealing and ensuring the impunity of the incident by hindering and delaying the investigations and procedures previously pursued in connection with the human rights violations suffered by Mr. Heliodoro Portugal;
- (c) adopt measures to provide the victims in this case with due redress, said measures to necessarily include forms of psychological and medical rehabilitation;
- (d) reclaim the memory of Mr. Heliodoro Portugal and of his next-of-kin by means of a public recognition of the State's responsibility for the grave violations that occurred and the harm that was inflicted. The actions to be taken must include an official homage, to be published in the country's leading media outlets, and an act of public remembrance consisting of applying the victim's name to a street, school, or other public place located in a significant, high-traffic area. All of this is to be carried out following consultations and agreement with the surviving members of his family;
- (e) as a guarantee of nonrepetition, take the legislative and other steps necessary to criminalize the offense of forced disappearance of persons; pursue the proper investigation and punishment of violations similar to those described in this application; and,
- (f) indemnify Messrs. Graciela de León de Rodríguez, Patria Portugal, and Franklin Portugal (common-law wife and children of Mr. Heliodoro Portugal) for the human rights violations committed, including both the moral and material aspects, and cover the legal costs and expenses incurred in pursuing this case at the national level, as well as those arising from the processing of this case before the inter-American system.

XI. EVIDENCE

A. Documentary evidence

265. The documentary evidence available at this time is listed below:

- APPENDIX 1.** IACHR, Report No. 103/05 (merits), Case 12.408, *Heliodoro Portugal*, (Panama), October 27, 2005.
- APPENDIX 2.** IACHR, Report No. 72/02 (admissibility), Case 12.408, *Heliodoro Portugal*, Panama, October 24, 2002.
- APPENDIX 3.** Case file from the Inter-American Commission on Human Rights.
- ANNEX 1:** Complaint filed by Patria Portugal with the Third Superior Prosecutor of the First Judicial District of Panama, May 10, 1990.
- ANNEX 2:** Expanded complaint, signed by Patria Portugal, June 1, 1990.
- ANNEX 3:** Statement given by Graciela de León de Rodríguez to the Third Superior Prosecutor of the First Judicial District of Panama, June 21, 1990.
- ANNEX 4:** Statement given by Marcos Tulio Pérez Herrera to the Third Superior Prosecutor of the First Judicial District of Panama, July 16, 1990.
- ANNEX 5:** Statement given by Antonia Portugal García to the Third Superior Prosecutor of the First Judicial District of Panama, July 26, 1990.
- ANNEX 6:** Statement given by Gustavo Antonio Pino Llerena to the Third Superior Prosecutor of the First Judicial District of Panama, September 26, 1990.
- ANNEX 7:** Birth certificate of Heliodoro Portugal.
- ANNEX 8:** Statement given by Pedro Antonio Vázquez Cocio to the Third Superior Prosecutor of the First Judicial District of Panama, October 24, 1990.
- ANNEX 9:** Request for ruling on the expiration of statutory limits for criminal prosecution of the Third Superior Prosecutor of the First Judicial District, January 15, 1991.
- ANNEX 10:** Resolution of the Second Superior Court of Justice of the First Judicial District ordering an expansion of proceedings, March 13, 1991.
- ANNEX 11:** Statement given by Rubén Darío Sousa Batista to the Third Superior Prosecutor of the First Judicial District of Panama, May 13, 1991.
- ANNEX 12:** Request for provisional and impersonal dismissal of the Third Superior Prosecutor of First Judicial District, May 27, 1991.
- ANNEX 13:** Resolution of the Second Superior Court of Justice of the First Judicial District, temporarily dismissing the proceedings, November 8, 1991.
- ANNEX 14:** Statement given by Almengor Borbúa Alcedo to the Third Superior Prosecutor of the First Judicial District of Panama, October 5, 2000.
- ANNEX 15:** Request for reopening of investigation of the Third Superior Prosecutor of the First Judicial District, August 30, 2000.
- ANNEX 16:** Statement given by Patria Portugal to the Third Superior Prosecutor of the First Judicial District of Panama, August 24, 2000.

- ANNEX 17:** Report from the Reliagene genetic laboratory, August 22, 2000 (in English). Spanish translation of the report of the Reliagene genetic laboratory, August 22, 2000 (last page of the document is missing).
- ANNEX 18:** Transcription of the procedure whereby Mr. Heliodoro Portugal's remains were handed over to his daughter, Patria Portugal, on August 24, 2000.
- ANNEX 19:** Report on the legal medical forensic analysis of the remains found at the Los Pumas barracks in Tocumén on September 22, 1999, dated September 24, 1999.
- ANNEX 20:** Resolution of the Second Superior Court of Justice of the First Judicial District ordering the reopening of the investigation, September 11, 2000.
- ANNEX 21:** Transcription of the inspection procedure conducted at the Los Pumas barracks in Tocumén, September 22, 1999.
- ANNEX 22:** Transcription of the procedure to exhume human remains at the Los Pumas barracks in Tocumén, September 22, 1999.
- ANNEX 23:** Expansion of the statement given by Patria Portugal to the Third Superior Prosecutor of the First Judicial District, October 2, 2000.
- ANNEX 24:** Statement given by Nelson Barria de Gracia to the Third Superior Prosecutor of the First Judicial District of Panama, October 9, 2000.
- ANNEX 25:** Statement given by José Gumersindo to the Third Superior Prosecutor of the First Judicial District of Panama, October 11, 2000.
- ANNEX 26:** Statement given by Arístides Flores Arias to the Third Superior Prosecutor of the First Judicial District of Panama, October 11, 2000.
- ANNEX 27:** Statement given by Guillermo Rivera Perigault to the Third Superior Prosecutor of the First Judicial District of Panama, October 11, 2000.
- ANNEX 28:** Statement given by Antonia Portugal García to the Third Superior Prosecutor of the First Judicial District of Panama, December 26, 2000.
- ANNEX 29:** Statement given by Daniel Elías Zúñiga Vargas to the Third Superior Prosecutor of the First Judicial District of Panama, January 30, 2001.
- ANNEX 30:** Report from the Fairfax Identity laboratory, August 30, 2001 (in English). Spanish translation of the Fairfax Identity laboratory report, August 30, 2001.
- ANNEX 31:** Report by the Forensic Medicine Institute on the remains found at the Los Pumas barracks in Tocumén in September 1999, dated September 4, 2001.
- ANNEX 32:** Prosecutorial brief No. 74 of the Third Superior Prosecutor of the First Judicial District of Panama, October 31, 2002.
- ANNEX 33:** Deed No. 167 of the Second Superior Court of Justice of the First Judicial Circuit, June 13, 2003.
- ANNEX 34:** Appeal by the Third Superior Prosecutor of the First Judicial District of Panama, July 30, 2003.
- ANNEX 35:** Judgment of the Supreme Court of Justice, March 2, 2004.
- ANNEX 36:** Deed No. 1639 of the Third Superior Prosecutor of the First Judicial District of Panama, September 30, 2004.
- ANNEX 37:** Deed No. 192 of the Second Superior Court of Justice of the First Judicial Circuit, December 17, 2004.

- ANNEX 38:** Document from the Third Superior Prosecutor of the First Judicial District of Panama, December 6, 2006.
- ANNEX 39:** Report of Dr. Terry Melton, forensic anthropologist from the laboratories of Mitotyping Technologies, LLC, October 30, 2001 (document in English).
- ANNEX 40:** Report on excavations at the Los Pumas barracks in Tocumén, Truth Commission of Panama, May 9, 2001.
- ANNEX 41:** Statement of Daniel Elías Zúñiga to the Truth Commission of Panama, May 16, 2001.
- ANNEX 42:** Statement of Mozart Lee González to the Truth Commission of Panama, May 16, 2001.
- ANNEX 43:** Statement of Patria Portugal to the Truth Commission of Panama, May 16, 2001; and transcription of the interview between the team of investigators from the Truth Commission of Panama and Patria Portugal, September 7, 2001.
- ANNEX 44:** Transcription of the interview between the team of investigators from the Truth Commission of Panama and Ricardo Garibaldo, undated.
- ANNEX 45:** Transcription of the interview between the team of investigators from the Truth Commission of Panama and Elías Castillo, undated.
- ANNEX 46:** Updated copy as of April 2001 of the case file of the investigation conducted by the Third Superior Prosecutor of the First Judicial District of Panama following the complaint lodged by Patria Portugal on May 10, 1990.
- Note: the Commission points out that the copy of the case file submitted to the Court is the best one it has and the best that it has been able to obtain. Some pages are missing, and others are incomplete or partially illegible.
- Consequently, the Commission asks the Court to request that the illustrious State of Panama submit certified copies of all the documents related to the investigations carried out under domestic jurisdiction in connection with this incident, together with authenticated copies of the applicable legislation and regulatory provisions.
- ANNEX 47:** Newspaper report titled “Identity confirmed in remains of H. Portugal,” published in the daily *La Prensa*, edition of November 8, 2001, available as of January 21, 2007, at <http://ediciones.prensa.com/mensual/contenido/2001/11/08/hoy/portada/326429.html>.
- ANNEX 48:** Newspaper report titled “Death of Lieutenant Colonel (ret) Ricardo Garibaldo,” published in the daily *La Prensa*, edition of July 8, 2006, available as of January 21, 2007, at <http://mensual.prensa.com/mensual/contenido/2006/07/08/hoy/panorama/663140.html>.
- ANNEX 49:** Draft law criminalizing the forced disappearance of persons.
- ANNEX 50:** Copy of the Power of Attorney granted on December 9, 2005, to the Center for Justice and International Law (CEJIL) by Patria Portugal de León.

B. Witness evidence

266. The Commission asks the Court to take statements from the following witnesses:

- Graciela de León Rodríguez, to give testimony on the various formalities pursued by the victim's family immediately following his disappearance and on the response of the authorities then in power; on the obstacles encountered by the victim's family in seeking to ensure justice in the case; on the impact on her personal life and on her family of the human rights violations suffered by her husband, Heliodoro Portugal; and on other issues of relevance to the purpose and scope of this application.
- Patria Portugal, to give testimony on the obstacles encountered by the victim's family in seeking to ensure justice in the case; on the discovery and identification of the victim's remains; on the impact on her personal life and on her family of the human rights violations suffered by her father, Heliodoro Portugal; and on other issues of relevance to the purpose and scope of this application.
- Franklin Portugal, to give testimony on the impact on his personal life and on his family of the human rights violations suffered by his father, Heliodoro Portugal; and on other issues of relevance to the purpose and scope of this application.
- Belice Wald, an officer of the Truth Commission of Panama, to give testimony on the investigations carried out by that body in regards to the case of Mr. Heliodoro Portugal and on how the Panamanian authorities treated the situation; and on other issues of relevance to the purpose and scope of this application.
- Terry Melton, a forensic anthropologist, to give testimony on the process whereby the victim's remains were identified; and on other issues of relevance to the purpose and scope of this application.

XII. INFORMATION ABOUT THE ORIGINAL PETITIONERS AND THE VICTIMS

267. In compliance with Article 33 of the Honorable Court's Rules of Procedure, the Inter-American Commission submits the following information: the original complaint was lodged by Ms. Patria Portugal and the Center for Justice and International Law (CEJIL).

268. Messrs. Graciela de León Rodríguez, Patria Portugal, and Franklin Portugal, the victim's next-of-kin, have authorized the Center for Justice and International Law (CEJIL) to represent them in the judicial phase of the case's processing by the system, as witnessed by the copies of the documents attached hereto.¹⁹⁰ The address of the designated representative is [REDACTED].

Washington, D.C.
January 23, 2007

¹⁹⁰ Annex 50, copy of the power of attorney extended to CEJIL.