INTER-AMERICAN COURT OF HUMAN RIGHTS

CASTILLO PÁEZ CASE

REPARATIONS
(ART. 63(1) AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF NOVEMBER 27, 1998

In the Castillo Páez case,

the Inter-American Court of Human Rights, composed of the following judges:

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice-President
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge

Also present:

Manuel E. Ventura-Robles, Secretary and
Víctor M. Rodríguez-Rescia, Assistant Secretary *a.i.*

Pursuant to articles 29, 55 and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American

Convention") and in compliance with operative paragraph five of the judgment of November 3, 1997, enters the following judgment on reparations in this case, brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Peru (hereinafter "Peru" or "the State").

I
COMPETENCE

1. Under articles 62 and 63(1) of the Convention, the Court has jurisdiction to order reparations and costs in the instant case, inasmuch as Peru ratified the American Convention on July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

II
BACKGROUND

2. The Inter-American Commission brought the instant case to the Court in an application dated January 13, 1995, attached to which was Report No. 19/94 of September 26, 1994. It had originated with a complaint (No. 10.733) against Peru, received at the Secretariat of the Commission on November 16, 1990.

3. In the operative part of the judgment that the Court issued on November 3, 1997, it unanimously decided the following:

> ...
>
> 1. That the State of Peru violated the right to personal liberty recognized in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.
>
> ...
>
> 2. That the State of Peru violated the right to humane treatment recognized in Article 5 of the American Convention on Human

Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

...

3. That the State of Peru violated the right to life recognized in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

...

4. That the State of Peru violated the right to effective recourse to a competent national court or tribunal, recognized in Article 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez and his next of kin.

...

5. That the State of Peru is obliged to repair the consequences of those violations and compensate the victim's next of kin and reimburse them for any expenses they may have incurred in their representations to the Peruvian authorities in connection with this case, for which purpose the proceeding remains open.

III
PROCEEDINGS IN THE REPARATIONS STAGE

4. On December 10, 1997, the President of the Court (hereinafter "the President" decided the following:

1. To give the Inter-American Commission on Human Rights until February 10, 1998, to submit a brief and any evidence it may have in its possession for purposes of determining the compensation and costs in the instant case;

2. To give the next of kin of Mr. Ernesto Rafael Castillo-Páez, the victim in the instant case, or their representatives, until February 10, 1998 to submit a brief and any evidence they might have in its possession for purposes of determining the compensation and costs;

3. To give the State of Peru until April 10, 1998, to make its observations on the briefs that the Inter-American Commission on Human Rights and the victim's next of kin or their representatives submit pursuant to the preceding paragraphs.

5. On December 16, 1997, the Inter-American Commission informed the Court that it had named Mr. Domingo E. Acevedo, Mr. Carlos Ayala-Corao and Mr. Álvaro Tirado-Mejía as its delegates in the instant case. On June 18, 1998, Marcela Matamoros, who had been designated as the Commission's assistant for the public hearing on preliminary objections, advised the Court that she was withdrawing from the case.

6. On January 27, 1998, the Commission requested a thirty-day extension of the deadline set by the President in his order of December 10, 1997, in order to submit its brief on the compensation and costs in the instant case. On January 28 and 29, 1998, the President extended the deadlines set for the Commission and the victim's next of kin to February 25 of that year, and the State's deadline to May 11, 1998.

7. On February 25, 1998, the Commission and the victim's next of kin each submitted to the Court briefs on reparations, with the corresponding evidence, which were then forwarded to the State on March 12 of that year.

8. On March 9, 1998, the President sent a summons to the victim's next of kin, to the Inter-American Commission and to Peru, for a public hearing on reparations, which was to be held at the seat of the Court on June 9, 1998.

9. On March 11, 1998, the Secretary requested that the State submit the following documents: the 1991 sworn earnings statement of Mr.

Cronwell Pierre Castillo-Castillo, a copy of the report prepared by the Office of the Inspector General of Police concerning the operation in which Mr. Ernesto Rafael Castillo-Páez had been detained on orders from the Ministry of the Interior, and any other intelligence relative to the circumstances surrounding the disappearance of Ernesto Rafael Castillo-Páez and his whereabouts. By note of May 29, 1998, the State informed the Court that there was a legal impediment to supplying Mr. Cronwell Pierre Castillo-Castillo's sworn statement. The State also failed to supply the other documents that had been requested, despite the fact that the Secretariat had repeated the Court's request on July 21 and again on August 26, 1998.

10. On March 24, 1998, the State filed a brief wherein it argued that the case should be closed since inasmuch as it had not received the reparations briefs of either the victim's next of kin or of the Commission. The next day, the Secretariat informed the State that the reparations briefs had been submitted by the victim's next of kin and the Commission on February 25 of that year and had been forwarded to the State on March 12.

11. On April 20, 1998, the Secretariat requested that the victim's next of kin and the State indicate how many witnesses and experts they would call at the public hearing on June 9, 1998 (*supra* 8) and what the purpose of their testimony or expert testimony would be. Also, on instructions from the President, they were advised that "for the sake of procedural economy and speed, they [should] give particular consideration to the possibility of submitting some testimony and expert testimony in the form of sworn statements."

12. By note of April 29, 1998, the victim's next of kin petitioned the Court to extend the deadline they were given to submit the "definitive list of witnesses" and to establish a deadline for submitting the sworn statements from the parents of the victim and from his sister, as well as the corresponding expert testimony.

13. On May 5, 1998, the Secretariat sent a note to the victim's next of kin wherein it explained the criteria for introducing evidence at this stage

of the proceedings and reported that the President had denied their request seeking an extension of the deadline for submitting the definitive list of witnesses and experts. It also advised them that the date for submitting the sworn statements being offered in evidence would be set shortly. By Secretariat note dated May 19, 1998, the victim's next of kin were notified that the deadline for submitting the sworn statements would be June 5 of that year.

14. On May 11, 1998, Peru submitted its observations on the reparations briefs filed by the victim's next of kin and by the Commission and attached documentary evidence. It offered neither witnesses nor expert witnesses.

15. On June 4, 1998, the victim's next of kin submitted a power of attorney signed in Amsterdam, Kingdom of the Netherlands, on May 22, 1998; a statement made and signed in the presence of a notary by Cronwell Pierre Castillo-Castillo, Mónica Inés Castillo-Páez and Carmen Rosa Páez-Warton, and a technical report prepared by Dr. Carmen Wurst-Calle de Landazuri on the "psychological consequences of disappearances and political asylum" and the appendix thereto.

16. On June 4, 1998, Peru named Ana Reátegui-Napurí as its alternate agent in the instant case.

17. On June 9, 1998, the Court held the public hearing on reparations and compensatory damages.

Appearing before the Court:

for the victim's next of kin:

Ariel Dulitzky
Ronald Gamarra,

For the Inter-American Commission:

Domingo E. Acevedo, Delegate,

For the State of Peru:

Ana Reátegui-Napurí, Alternate Agent
Jennie Vizcarra-Alvizuri and
Walter Palomino-Cabezas.

18. On July 20, 1998, the State filed two briefs containing a number of objections to the affidavits signed in the presence of a notary, the expert report prepared by Dr. Carmen Wurst-Calle de Landazuri, and to the power of attorney submitted by the victim's next of kin on June 4, 1998 (*supra* 15). The State's contention was that the affidavits signed in the presence of a notary and submitted on June 23 of that year were extemporaneous. On August 22, 1998, the Secretariat replied that the case file showed that the statements in question were reported on June 11 of that year. On September 9, 1998, Peru petitioned the Court to inform it of the processing given to those objections; accordingly, on September 11, 1998, the Secretariat informed the State that the objections had been brought to the attention of both the Commission and the victim's next of kin and would be seen by the Court at its forthcoming session.

19. By notes of July 21, 1998, and pursuant to Article 44 of its Rules of Procedure, the Court requested the victim's next of kin, the Commission and the State to forward the following documents as evidence by August 21 of that year:

from the victim's next of kin:

a) Certifications of the salaries earned by Mr. Cronwell Pierre Castillo-Castillo and Ms. Carmen Rosa Páez-Warton between 1990 and the year in which they left for the Netherlands;

b) Certification of the proceedings conducted in the bankruptcy of Mr. Cronwell Pierre Castillo-Castillo;

c) Certification of the political-refugee status of Mónica Inés Castillo-Páez, in Sweden and in the Netherlands, and of her parents

Cronwell Pierre Castillo-Castillo and Carmen Rosa Páez-Warton in the Netherlands;

d) An itemization of the lost family earnings, presented in the brief on reparations they had filed the previous February;

e) Certification of the academic record of Mr. Ernesto Rafael Castillo-Páez, issued by the Pontificia Universidad Católica del Peru, during his years as a student, and

f) The sales contract for the home of the Castillo-Páez family and the official appraisal with the estimated price of the house.

From the Inter-American Commission:

a) Certifications of the salaries earned by Mr. Cronwell Pierre Castillo-Castillo and Ms. Carmen Rosa Páez-Warton between 1990 and the year in which they left for the Netherlands;

b) Certification of the proceedings conducted in the bankruptcy of Mr. Cronwell Pierre Castillo-Castillo;

c) Certification of the political refugee status of Mónica Inés Castillo-Páez in both Sweden and the Netherlands, and of her parents Cronwell Pierre Castillo-Castillo and Carmen Rosa Páez-Warton in the Netherlands, and

d) Certification of the academic records of Mr. Ernesto Rafael Castillo-Páez, issued by the Pontificia Universidad Católica del Peru, during his years as a student.

From the State:

a) Certification of the minimum salary a sociologist receives at the present time;

b) Life expectancy figures for Peru in 1990;

c) The official exchange rate of the United States dollar to the Peruvian currency, for the period from 1990 to 1998, issued by the Central Bank of Peru;

d) Peruvian legislation on the two annual job bonuses, which become a thirteenth monthly salary;

e) Peruvian legislation exempting petitions of *habeas corpus* and criminal proceedings from payment of court fees;

f) Law No. 26.926, of January 30, 1998, enacted on February 21, 1998, typifying genocide, forced disappearance and torture as crimes against humanity, even though there were precedents in the criminal code, and

g) Decree-Law No. 25.592, published July 2, 1992, which typifies the crime of forced disappearance.

In the same notes sent to the State, just as in an earlier note dated August 26, 1998, the Court reiterated the request it had made Peru on March 11, 1998, that it send the

> [r]eport prepared by the Office of the Inspector General of Police on the operation in which Ernesto Rafael Castillo-Páez was detained on orders from the Ministry of the Interior, as mentioned in official memorandum 2558/DMC-CA, and any other available intelligence relative to the circumstances of the disappearance of Ernesto Rafael Castillo-Páez.

20. On July 27, 1998, the State requested another hearing to "elaborate upon the observations made [...] on the [r]eparations requested." On July 30, 1998, the Secretariat advised Peru that the President considered its request inadmissible.

21. On August 21 and 24, September 9, 11, 29 and 30, October 1, 9, 26 and 29, and November 2 and 11, all in 1998, the State forwarded some of the documents the Court had requested as additional, helpful evidence

(*infra* 32). By notes dated August 20 and 28, 1998, the victim's next of kin submitted some of the documents the Court had requested as helpful evidence for purposes of arriving at a more informed judgment (*infra* 28). The Inter-American Commission, for its part, did not respond to the Court's request for evidence.

22. On September 11, 1998, the State filed a brief with observations on the assessments made by the victim's next of kin, wherein it reserved its right to express its view on the English-language publication of "Human Rights Watch/Americas/Helsinki" (HRW), submitted by the victim's next of kin in their brief of August 20, 1998, until such time as a Spanish translation of that publication was made available to it. The State attached the following documents to its brief: a November 6, 1990 letter that the then Dean of the Pontificia Universidad Católica del Peru, Mr. Hugo Saravia-Swett, sent to the Minister of the Interior wherein reference was made to the disappearance of student Ernesto Rafael Castillo-Páez, and press clippings on bankruptcy proceedings that had occurred in Peru. On October 2, 1998, the victim's next of kin supplied a Spanish translation of the publication of "Human Rights Watch/Americas/Helsinki," which the Secretariat then forwarded to the State on October 5, 1998.

23. By a brief dated October 9, 1998, the State submitted its observations on the identification papers of Ernesto Rafael Castillo-Páez and the consequences of the fact that the victim did not have those identification papers in his possession on the day the events in question occurred. It also pointed out that although the voter registration booklet had been issued on July 14, 1986, "it does not show any record of the individual having voted in the municipal and general elections" held, respectively, in 1989 and 1990, so that Castillo-Páez had not exercised his political rights.

24. In a brief from the State dated October 26, 1998, a registration record was received for Ernesto Rafael Castillo-Páez, issued by the Chief of the Records Unit of the National Registry of Identification and Vital Statistics and a "certification issued by the Office of Remunerations and Benefits of the Office of Personnel of the Ministry of the Interior" regarding the salary that a sociologist at that agency receives.

IV
EVIDENCE

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DOCUMENTARY EVIDENCE SUBMITTED BY THE PARTIES

25. By briefs dated February 25 and June 4, 1998, the victim's next of kin offered the following documents as evidence:

a) The birth certificate and voter registration booklet of Mr. Ernesto Rafael Castillo-Páez;

b) The marriage license of Cronwell Pierre Castillo-Castillo and Carmen Rosa Páez-Warton;

c) The birth certificate of Ms. Mónica Inés Castillo;

d) The sworn testimony of Mr. Cronwell Pierre Castillo-Castillo during the Inter-American Court's proceedings into the merits;

e) An autopsy report on Abel Malpartida-Páez, cousin of the victim, who allegedly disappeared under similar circumstances;

f) A copy of the canceled payment voucher of Ernesto Rafael Castillo-Páez for the first semester of the 1990 at the Pontificia Universidad Católica del Peru;

g) The teaching contract of Ernesto Rafael Castillo-Páez with the Instituto Superior de Estudios Teológicos "Juan XXIII" [John XXIII Theological Studies Institute], signed September 6, 1988;

h) A salary pay slip of Ernesto Rafael Castillo-Páez for October 1990;

i) A sworn statement, dated February 19, 1998, and a pay slip dated January 21, 1998, both from sociologist Manuel Piqueras-Luna;

j) A copy of Mr. Cronwell Pierre Castillo-Castillo's "category four income tax withholding statement;"

k) A newspaper clipping titled *"Comandante-Bomba. Este es Juan Carlos Mejía, el hombre más explosivo de la policía"* [Commander Bomb. This is Juan Carlos Mejía, the most explosive man on the police force] in Revista Sí. No. 214, for the week of March 24 to 31, 1991, Lima, Peru, pp. 78-85;

l) A report by the office of the "Inspector General of Police on the operation in which Ernesto [Rafael] Castillo-Páez was detained on orders of the Ministry of the Interior;"

m) A statements signed in the presence of a notary in the Netherlands on May 25, 1998, by Cronwell Pierre Castillo-Castillo, Mónica Inés Castillo-Páez and Carmen Rosa Páez-Warton; and

n) The technical report prepared by Dr. Carmen Wurst-Calle de Landazuri on the "psychological consequences of disappearances and political asylum" in the case of the next of kin of victims of human rights violations, and the appendix thereto.

26. In a brief of May 11, 1998, the State objected to part of the documentary evidence submitted by the victim's next of kin. Concerning the certification of Manuel Piqueras, it stated that "under the austerity policy, and especially from 1990 onward, the government budget laws prohibited hiring, making the claim implausible." It also contested the statement made by the victim's next of kin concerning the income of a sociologist in the public sector, asserting that it "is false and we dismiss it outright: not only is it utterly unsubstantiated but also appears to suggest that the amount in question is a monthly salary, which is misleading since Mr. Piqueras, being an appointee, would have had a higher salary than career members of the civil service. The State also challenged the evidentiary

value of the autopsy report on Abel Malpartida-Páez, the victim's cousin, "because this documentation is immaterial to the issue under discussion at this reparations and compensation stage."

27. With its briefs of May 11 and 29, July 20, September 11, October 9 and 26, all in 1998, the State submitted the following documentary evidence:

a) Law No. 26.479, June 14, 1995, published in "El Peruano" on June 15, 1995, whereby "a general amnesty is granted to military, police and civilian personnel for various cases;"

b) Law No. 26.492, June 30, 1995, published in "El Peruano" on July 2, 1995, which explains the "interpretation and scope of the amnesty granted under Law No. 26.479";

c) Judgment of the [Peruvian] Constitutional Tribunal, dated April 28, 1997, published in "El Peruano" on May 9, 1997, which "dismisses the case alleging the unconstitutionality of several articles of Laws Nos. 26.479 and 26.492;"

d) A copy of the "certification attesting to the absence of any application for intestate succession," issued by the Office of the Registrar of Lima and Callao, on May 6, 1998, attesting to the fact that the Office of Declaration of Heirs had "no record of any judgment or request [concerning intestate succession to the estate of [Ernesto Rafael Castillo-Páez];"

e) Official memorandum No. 00249661-98, certification of registration from the Chief of the Records Unit of the National Registry of Identification and Vital Statistics;

f) Official memorandum No. 485-98.R1-1200 of May 18, 1998, reporting an impediment to supplying the 1991 sworn earnings statement of Mr. Cronwell Pierre Castillo-Castillo;

g) Official memorandum No. 66-58-98-IN-1601-UNICA, July 1, 1998, signed by the Inspector of Migrations, Héctor Huamán-

Maquiña, Deputy Director General of Migrations and Naturalization, Ministry of the Interior, concerning the "migration" of Mr. Cronwell Pierre Castillo-Castillo, Ms. Mónica Inés Castillo-Páez and Ms. Carmen Rosa Páez-Warton;

h) A letter from the rector of the Pontificia Universidad Católica del Peru, Mr. Hugo Saravia-Swett, to the Minister of the Interior, dated November 6, 1990;

i) Press clippings on bankruptcy proceedings in Peru; and

j) A copy of the voter registration booklet of state agent Mario Cavagnaro-Basile.

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EVIDENCE REQUESTED EX OFICIO

28. On August 20 and 28, 1998, pursuant to a request the Court had made on July 21 (*supra* 19), the victim's next of kin forwarded the following documents as additional helpful evidence:

a) The sworn income tax declaration of Mr. Cronwell Pierre Castillo-Castillo for the year 1991;

b) A copy of the cover and preface of the book "Cálculo Diferencial" (Differential Calculus) by Michel Helfgott and Tomás Núñez, containing an acknowledgment of the typing done by Ms. Carmen Rosa Páez-Warton;

c) A copy of the bankruptcy lawsuit of the APIS S.A. paper company, filed on August 13, 1998;

d) A copy of the certification issued by Swedish attorney Eva Ericson, attorney *ex oficio* for Mónica Inés Castillo-Páez, attesting to the political asylum proceedings conducted in Sweden;

e) A copy, in English, of the report from the publication by "Human Rights Watch/Americas/Helsinki" of September 1996, vol. 8, No. 14 (D), p. 29;

f) A copy of transcript No. 0002691 of the courses passed by Mr. Ernesto Rafael Castillo-Páez, issued on February 23, 1998 by the Pontificia Universidad Católica del Peru;

g) Request of August 19, 1998, to the Pontificia Universidad Católica del Peru to certify that Mr. Castillo-Páez was enrolled in the second semester;

h) A copy of the August 10, 1998 request for a certified transcript of the academic records of Mr. Ernesto Rafael Castillo-Páez;

i) A copy of the sales contract for the house of the Castillo-Páez family, dated July 18, 1997;

j) A copy of the Dutch identity papers that grant political refuge to Mónica Inés Castillo-Páez and Cronwell Pierre Castillo-Castillo, and humanitarian asylum to Carmen Rosa Páez-Warton;

k) A copy of the cancelled payment voucher in the name of Ernesto Rafael Castillo-Páez for the first semester of the 1990 academic year at the Pontificia Universidad Católica del Peru;

l) A copy of an uncancelled payment voucher in the name of Ernesto Rafael Castillo-Páez for the second semester of the 1990 academic year at the Pontificia Universidad Católica del Peru; and

m) Press clippings titled: "En la Corte Interamericana de Derechos Humanos está el caso Castillo Páez" (Castillo Páez case at the Inter-American Court of Human Rights) and "Policías asesinaron a estudiante" (Police killed student. ")

29. In its brief of September 11, 1998, the State challenged a number of the documents submitted by the victim's next of kin as evidence. It

pointed out that the costs alleged to represent the earnings lost by the parents due to the victim's disappearance "are merely unsubstantiated claims, with no evidence to prove them." It also indicated that "a typing acknowledgment in the prologue of a book [...] is hardly proof of gainful employment, much less permanent employment." Moreover, the State objected to the uncancelled payment voucher from the Pontificia Universidad Católica del Peru, arguing that "it has no validity inasmuch as it bears no cancellation mark."

30. The Court's request notwithstanding (*supra* 19), the victim's next of kin did not supply the following documents requested as evidence:

a) Certification of the salaries of Mr. Cronwell Pierre Castillo-Castillo for the years 1990, 1992, 1993, 1994, 1995, 1996, 1997, 1998, or any for Ms. Carmen Warton-Páez;

b) Certification of the academic records of Mr. Ernesto Rafael Castillo-Páez, issued by the Pontificia Universidad Católica del Peru for his years as a student; and

c) An official appraisal of the Castillo-Páez family home.

31. As the case file shows, thus far none of the documents that the Court requested of the Commission as evidence to help the former arrive at a more informed judgment has been received (*supra* 19).

32. In response to the Secretariat's notes of July 21, August 26, September 11 and 21, October 2 and 21, 1998, the State, through submissions dated August 21 and 24, September 9, 11, 29 and 30, October 1, 9, 26 and 29, and November 2 and 11, 1998, sent the following documents as evidence to help the Court arrive at a more informed judgment:

a) Law No. 26,926 of February 19, 1998, published in "El Peruano", February 21, 1998, which "amends several articles of the Penal Code and introduces Title XIV-A, concerning crimes against humanity;"

b) Decree-Law No. 25,592, dated June 26, 1992, published in "El Peruano", July 2, 1992, establishing "a penalty of incarceration for public officials or civil servants who deny any person his freedom by ordering or executing actions that result in said person's disappearance;"

c) A copy of Law No. 25,139 dated December 14, 1989, on the annual Independence Day and Christmas Day bonuses;

d) Supreme Decree No. 061-98-EF, dated July 6, 1998, published in "El Peruano" on July 7, 1998, whereby "government pensioners, officials and civil servants are granted the National Holidays (Fiestas Patrias");

e) Report No. 0053-98-GAFSP-GG-PJ for an extra month's pay, in accordance with Legislative Decree No. 728;

f) A photostat copy of Legislative Decree No. 276, "Statute of Government Service and Public Sector Remuneration", dated March 6, 1984, published in "El Peruano" on March 24, 1984;

g) A photostat copy of the Initial Implementing Legislation for Legislative Decree No. 276, Supreme Decree No. 018-85-PCM of February 28, 1985;

h) Law No. 26,894, of December 10, 1997, "1998 Public Sector Budget Law", published in "El Peruano" on December 11, 1997;

i) Emergency Decree No. 107-97, dated December 5, 1997, published in "El Peruano" on December 6, 1997, whereby "a Christmas bonus is granted to government pensioners, officials and civil servants, armed forces and national police personnel;"

j) Law No. 23,506 "*Habeas Corpus* and *Amparo Law*", dated December 7, 1982, published in "El Peruano" on December 8, 1982.

k) Law No. 25,398, "Law supplementing the provisions of Law No. 23,506 on the matter of *Habeas Corpus* and *Amparo*", of February 6, 1992, published in "El Peruano" on February 9, 1992;

l) Law No. 26.846, of July 23, 1997, published in "El Peruano" on July 27, 1997, which "establishes principles that are the basis for payment of court fees and that amends the Civil Code and Judiciary Statute";

m) Judiciary Statute of July 23, 1997, published in "El Peruano" on July 27, 1997;

n) A photostat copy of Article 24 of the Judiciary Statute;

o) Official memorandum No. 7220-98, dated September 3, 1998, on the official exchange rate between the Peruvian currency and the United States dollar from January 1990 to June 1998, issued by the head of the Department of Economic Statistics and Studies of the Office of the Superintendent of Banking and Insurance;

p) Supreme Decree No. 069-85-PCM, dated July 26, 1985, published in "El Peruano" on July 27, 1985;

q) A photostat copy of Decree-Law No. 22,482 of March 27, 1979, on the "maternity and nursing subsidies currently in effect";

r) A photostat copy of Decree-Law No. 18.846, dated April 28, 1971, on "Job-related Accidents";

s) Law No. 24.993, of January 19, 1989, published in "El Peruano" on January 21, 1989, whereby the "Peruvian Sociologists Association is created";

t) Life expectancy chart for the 1990-1995 five-year period, broken down by sex, published in the document titled "Proyecciones de Población del Peru 1995-2025" (Peruvian population forecasts 1995-2025), official memorandum No. 199-98-INEI/DTDES,

dated August 18, 1998, from the head of the National Institute of Statistics and Informatics;

u) Certification issued by the Office of Remunerations and Benefits of the Office of Personnel of the "Ministry of the Interior" on a sociologist's salary at that agency as of September 1998; and

v) Urgent Decree 074-97, dated July 31, 1997, published in "El Peruano" on August 3, 1997, on the minimum lifetime remuneration of workers in the private sector in Peru.

33. The Commission and the victim's next of kin made no objections to the documents submitted by the State.

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OTHER EVIDENCE

34. On April 29, 1998, the victim's next of kin reported that given the request made by the President (*supra* 11) and "the limited means they had to produce the evidence, " the victim's next of kin would not be deposed before the Court and would instead submit sworn affidavits and expert psychological reports prepared in Peru and in the Netherlands. The victim's next of kin submitted those documents on June 4, 1998 (*supra* 15).

35. On July 20, 1998, the State filed two briefs objecting to the sworn affidavits submitted by the victim's next of kin and the report prepared by the psychological expert (*supra* 18). It argued that submission of the documents in question was in violation of articles 46 and 47 of the Rules of Procedure, as it left "our side ... unable to avail itself of remedies that the procedural system affords, such as interrogation of the professional who prepared the expert report; nor was there any oath or solemn declaration pledging to tell the truth, and so on..." The State argued that the expert report was "extemporaneous evidence, as it was not furnished with the original application" filed by the next of kin and was "put

together and drafted in Lima, although the subjects of the report [the Castillo-Páez family] were not in Peru at the time it was issued." To support its argument, the State supplied evidence in the form of a record of the Castillo-Páez family's emigration. It also noted that the appendix to the expert report was unsigned. The State claimed to have had no knowledge of the sworn affidavits and expert report until the June 9, 1998 public hearing. However, it later corrected itself, stating that the affidavits had been sent to the State by note of June 6, 1998. The Secretariat clarified that the case file showed that the "sworn affidavits" made by the victim's next of kin had been sent to the State on June 11, 1998.

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GENERAL OBSERVATIONS ON EVIDENCE

36. Under Article 43 of the Court's Rules of Procedure:

> Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [...] Should any of the Parties allege *force majeure,* serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right of defense.

37. It must be understood that with the justified exceptions indicated above, at the first opportunity they have to make their case during the reparations stage of the proceedings the parties are to indicate what evidence they will offer. Under Article 44 of its Rules of Procedure, the Court has discretionary authority to request from the parties certain additional evidence that it deems helpful, relevant, or useful. However, this does not mean that the parties will have another opportunity to expand upon or add to their reparations arguments, unless the Court so permits. In the instant case, the procedural opportunity for submission of evi-

dence and arguments was specified in the President's orders of January 28 and 29, 1998 (*supra* 6).

38. The Court has always held that proceedings before the Inter-American Court have their own unique characteristics that distinguish them from domestic legal proceedings, without detriment to the principles of legal certainty and the procedural equality of the parties (cf. *Cayara Case, Preliminary Objections*, Judgment of February 3, 1993. Series C No. 14, para. 42; *Caballero Delgado and Santana Case, Preliminary Objections*, Judgment of January 21, 1994. Series C No. 17, para. 44, and *Loayza Tamayo Case, Reparations*, Judgment of November 27, 1998. Series C No. 42, para. 38. Given that fact, this Court has always been flexible with the standard of proof it applies for receiving evidence. International jurisprudence has recognized the power of the courts to weigh the evidence freely, but has consistently avoided a rigid rule regarding the amount of proof necessary to support a judgment (cf. *Corfu Channel, Merits*, Judgment, I.C.J. Reports 1949, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits,* Judgment, I.C.J. Reports 1986, paras. 29-30 and 59-60; *Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 127; *Godínez Cruz Case,* Judgment of January 20, 1989. Series C No. 5, para. 133, and *Fairén Garbi and Solís Corrales Case*, Judgment of March 15, 1989. Series C No. 6, para. 130).

39. In the instant case, the Court accepts the evidentiary value of the documents submitted by the victim's next of kin and by the State that were neither contested nor objected to, and whose authenticity was not challenged; hence, the Court regards them as valid (*Suárez Rosero Case*, Judgment of November 12, 1997. Series C. No. 35, para. 29, and cf. *Loayza Tamayo Case, Reparations, supra* 38, para. 53).

40. The State objected to the offer of testimony by Cronwell Pierre Castillo-Castillo, Carmen Rosa Páez-Warton and Mónica Inés Castillo-Páez, made in the reparations brief, arguing that "it is improper and irregular for the interested party to intervene as a witness." It also objected to the declaration signed in the presence of a notary and to the expert report prepared by Dr. Carmen Wurst-Calle de Landazuri (*supra* 35). The Court notes that while the victim's next of kin did not testify (*supra* 34),

the affidavits they signed in the presence of a notary had been suggested by the President of the Court for the sake of procedural economy and speed. This was to ensure that the oral proceedings in the instant case would be as expeditious as possible, without infringing the right of the victim's next of kin, of the Commission and of the State to offer whatever testimony they believed should be heard directly by the Court. The Court confirms the President's decision, which helped advance the proceedings, and so orders that the affidavits be added to the body of evidence in the instant case. The Court has discretionary authority to weigh the declarations or statements submitted to it, both in writing and by other means. As with any tribunal, the Court may use the rule of "sound criticism" to weigh the evidence properly, thus enabling the judges to arrive at a decision as to the truth of the alleged acts while taking into account the object and purpose of the American Convention (cf. *Paniagua Morales et al. Case,* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Loayza Tamayo Case, Reparations, supra* 38, para. 57).

41. Peru has stated that it left in a defenseless position because the affidavits signed in the presence of a notary were not brought to its attention in advance of the public hearing. The Court observes that the document in which those statements appear was received by the Court on June 4, 1998, only a few days before the hearing in question and that it was therefore unable to forward them to the State as far in advance as it might have preferred. The Court further notes that in observance of the principle of the procedural equality of the parties and to guarantee the transparency of the proceedings, the Secretariat notifies each party of every communication the other party sends, so that the former has an opportunity to refute or comment on what the latter has stated. There are no specific rules establishing a deadline or timeframe within which the Court must act. However, the understanding is that it must do so in such a way as to enable the other party to properly exercise its right of self-defense within the context of the proceedings. In the instant case, the State had an opportunity to exercise that right and did so, since it explained its position on the matter in briefs dated July 20 and September 9, 1998. The Court forwarded those briefs to the victim's next of kin and to the Commission, following the guidelines described herein, and in this Judgment will weigh the arguments of all parties concerning the state-

ments made in the presence of the notary and the briefs filed by the State according to the principles set forth herein (*supra* 40).

42. The State objected to the "sworn affidavits" and other documents, such as the powers of attorney granted by the victim's next of kin, by alluding to a number of formalities, especially those under its domestic legal system. This argument is unacceptable in an International Court of Human Rights whose proceedings are not bound by the formalities present in domestic legal systems. This is the position this Court has consistently taken in its case law, wherein it has upheld flexibility on the matter of receiving evidence (*Gangaram Panday Case, Preliminary Objections*, Judgment of December 4, 1991. Series C No. 12, para. 18; *Cayara Case, Preliminary Objections, supra* 38, para. 42; *Caballero Delgado and Santana Case, Preliminary Objections, supra* 38, para. 44 and *Loayza Tamayo Case, Reparations, supra* 38, para. 38). The Court has already declared that in this area, international law does not require any particular formalities to make an act valid; under the law of nations, even oral statements are valid (cf. *Legal Status of Eastern Greenland,* Judgment, 1933, P.C.I.J., Series A/B, No. 53, p. 71; *Garrido and Baigorria Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of August 27, 1998. Series C No. 39, para. 55).

43. As for the objection to the expert report prepared by Dr. Carmen Wurst-Calle de Landazuri (*supra* 35), the Court considers that the document was not filed extemporaneously since it is related to the offer of evidence made in the reparations brief submitted by the victim's next of kin (*supra* 7). The Court further notes that the State's objection to the effect that the report was prepared in Peru and that the victim's next of kin were not present, is inadmissible since the document in question is not an expert analysis done of those individuals in particular, but rather a study on the general psychological consequences of disappearances and political asylum, as its name and content indicate.

44. As for the State's objection to the fact that the appendix to the expert report was not signed, the Court's consistent practice has been that an appendix that is a supplement to the main body of a document does not have to be signed.

45. Therefore, the Court orders that the sworn statements signed in the presence of a notary by the parents of the victim and his sister, and the expert report prepared by Dr. Carmen Wurst-Calle de Landazuri and its appendix are to be added to the body of evidence.

V
OBLIGATION TO MAKE REPARATION

46. In operative paragraph 5 of the Judgment of November 3, 1997, the Court decided that the State of Peru "is obliged to repair the consequences of those violations [of articles 7 (the right to personal liberty), 5 (the right to humane treatment), 4 (the right to life) and 25 (the right to judicial protection), all in relation to Article 1(1) of the American Convention] and compensate the victim's next of kin and reimburse them for any expenses they may have incurred in their representations to the Peruvian authorities in connection with this case, for which purpose the proceeding remains open."

47. The applicable law in the matter of reparations is Article 63(1) of the American Convention, which states that:

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

48. Reparations is a generic term that covers all of the various ways a State can redress the international responsibility it has incurred (*restitutio in integrum,* indemnization, satisfaction, assurances of guarantees that the violations will not be repeated, and others).

49. The obligation to make reparation established by international courts is governed, as has been universally accepted, by international law in all its aspects: scope, nature, modality and determination of beneficia-

ries, none of which the respondent State may alter by invoking its domestic law (*Garrido and Baigorria Case, Reparations, supra* 42, para. 42).

50. As the Court has indicated (*Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 43), Article 63(1) of the American Convention codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law and a responsibility of the States (cf. *Factory at Chorzów, Jurisdiction,* Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21 and *Factory at Chorzów, Merits,* Judgment No. 13, 1928, P.C.I.J., Series A, no. 17, p. 29; Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 184). This is the sense in which this Court has applied that provision (in, *inter alia,* the *El Amparo Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 14, 1996. Series C No. 28, para. 14; *Neira Alegría et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 19, 1996. Series C No. 29, para. 36; *Caballero Delgado and Santana Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of January 29, 1997. Series C No. 31, para. 15; *Garrido and Baigorria Case, Reparations, supra* 42, para. 40, and *Loayza Tamayo Case, Reparations, supra* 38, para. 84). When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation.

51. The reparations established in this Judgment must be proportionate to the violations of articles 7, 5, 4 and 25, in relation to Article 1(1) of the American Convention, violations whose occurrence was established in the Judgment of November 3, 1997.

52. In cases involving violation of the right to life, such as the instant case, given the nature of that which was affected reparation is generally in the form of a pecuniary compensation, according to international case law, and assurances of guarantees that the wrongful act will not be repeated (*Garrido and Baigorria Case, Reparations, supra* 42, para. 41).

53. As the name implies, reparations are intended to wipe out the effects of the violation. Their quality and amount will depend upon the

damage caused at both the material and moral levels. Reparation is not to imply either enrichment or impoverishment for the victim or his heirs (cf. *Garrido and Baigorria Case, Reparations, supra* 42, para. 43; the *Delagoa Bay Case,* LA FONTAINE, Pasicrisie internationale, Berne, 1902, p. 406).

VI
BENEFICIARIES

54. The Court will now determine the person or persons who, in the instant case, constitute the "injured party" to whom Article 63(1) of the American Convention refers. Inasmuch as Ernesto Rafael Castillo-Páez was the victim of most of the violations of the American Convention established by the Court in its Judgment of November 3, 1997, the Court will have to ascertain which of the reparations ordered in his favor can convey to his next of kin by succession and to which of those next of kin. In the case of reparations for violation of Article 25 in relation to Article 1(1) of the American Convention, the Court must determine which of the victim's next of kin are entitled in their own right to reparations, as victims of the breach of Article 25 established in operative paragraph 4 of the Judgment on the merits.

55. The Commission and the victim's next of kin named the following members of the victim's family as the beneficiaries or successors in title of the reparations: the victim's father, Mr. Cronwell Pierre Castillo-Castillo; his mother, Ms. Carmen Rosa Páez-Warton; and his sister, Ms. Mónica Inés Castillo-Páez. During the reparations hearing, the victim's next of kin asserted that the kinship of the sister of victim Ernesto Rafael Castillo-Páez had been proven, as had the injury and consequences she suffered as a result of her brother's disappearance.

56. Concerning this matter, Article 23 of the Court's Rules of Procedure provide that:

> At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence.

This provision gives the injured party *locus standi,* i.e., the right to appear directly before the Court during the reparations stage and safeguard his own interests during the proceedings.

57. Peru argued that for reparations purposes, heirs "must prove their claim of inheritance in accordance with the provisions of Peruvian law." On May 11, 1998, the State supplied the "certification attesting to the absence of any application for intestate succession" which, it asserted, showed that the procedures required under Peruvian law to allow intestate succession had not been carried out.

58. During the public hearing (*supra* 17), the victim's next of kin asserted that given the State's argument that the succession procedures required under Peruvian law had not been followed, Peru was demanding the observance of the formalities of its own domestic legal system, whereas "in the *Velásquez Rodríguez Case* and subsequent judgments, the Court had ruled that one need only prove kinship"; this had already been done with submission of the birth certificates and marriage certificate of the parents of the victim.

59. The Court has held, and now reiterates, that the right to compensation for damages suffered by victims up to the time of their death conveys to their heirs by succession. On the other hand, the victim's death may entitle his next of kin or injured third parties to seek damages in their own right (cf. *Aloeboetoe et al. Case, Reparations, supra* 50, para. 54; *El Amparo Case, Reparations, supra* 50, paras. 43 and 46; *Neira Alegría et al. Case, Reparations, supra* 50, paras. 63 and 65; *Caballero and Santana Case, Reparations, supra* 50, paras. 60 and 61 and *Garrido and Baigorria Case, Reparations, supra* 42, para. 50). In operative paragraph four of the Judgment of November 3, 1997, this Court recognized Ernesto Rafael Castillo-Páez' next of kin as victims.

60. Therefore, this Court considers the beneficiaries to be Mr. Cronwell Pierre Castillo-Castillo, Ms. Carmen Rosa Warton-Páez, and Ms. Mónica Inés Castillo-Páez.

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REPRESENTATION

61. On February 25, 1998, the parents of Ernesto Rafael Castillo-Páez submitted a power of attorney granted on February 19, 1998, to the Center for Justice and International Law (CEJIL) and the Instituto de Defensa Legal (IDL). In its brief of observations of May 11, 1998, the State argued that that power of attorney was invalid, since it was a letter that had been neither "certified or legalized by an authority of the Kingdom of the Netherlands, where it was apparently draft[ed."] The State further argued that inasmuch as the members of the Castillo-Páez family were Peruvian citizens, they were "obliged to comply with the requirements of Peruvian law when conferring their representation by way of a power of attorney." Peru also stated that if the people in question were living in the Netherlands, they should have used the "identification documents that the Netherlands provides to aliens living within its territory." Finally, it pointed out that Ms. Mónica Inés Castillo-Páez had not signed the power of attorney to be represented in this stage of the proceeding, nor was representation given to "Human Rights Watch/Americas" (HRW).

62. On June 4, 1998, the victim's next of kin submitted another power of attorney, this one made by the parents and sister of the victim on May 22, 1998, and signed in the presence of a notary public in the Netherlands.

63. On July 20, 1998, the State objected to that power of attorney using the same arguments that it had used against the power of attorney of February 19, 1998. The State's contention was that the representatives were not authorized to make representations on behalf of the next of kin of Ernest Rafael Castillo-Páez at the time the reparations petition was made through the brief of February 25, 1998, since the "confirmation" "that the power of attorney of May 22, 1998 was meant to be did not validate the February power of attorney or have any effect at all." It argued further that in that "confirmation" Mónica Inés Castillo-Páez appeared "as if she had been a party to the first power of attorney, which is flatly inconsistent and lacking in legal efficacy. "

64. In this case, the Court must weigh the two powers of attorney given by the victim's next of kin at different times: the first, given by the parents of the victim on February 19, 1998, in Utrecht, the Netherlands, to Viviana Krsticevic of the Center for Justice and International Law (CEJIL) and to Ronald Gamarra of the Instituto de Defensa Legal (IDL); and the second, given on May 22, 1998 in the Netherlands, whereby the parents and the sister of the victim as well "confirm" the power of broad representation *vis-à-vis* the Court given to the following institutions: the Center for Justice and International Law (CEJIL), the Instituto de Defensa Legal (IDL) and Human Rights Watch/Americas (HRW).

65. The practice of this Court with regard to the rules of representation has always been flexible vis-à-vis States, the Inter-American Commission and, during the reparations stage, the victims. A clear manifestation of the will of the victim's next of kin in the powers of attorney submitted suffices to constitute sufficient evidentiary material in this international jurisdiction. Thus, regardless of what it is called -power of attorney, letter of attorney, authorization, or any other term-, any document wherein the persons granting the power of attorney express their desire to be represented is sufficient to be legitimate for this Court, which need not conform to the formalities required by domestic laws. Those formalities are not exigible in an international court of human rights (*supra* 42).

66. The latitude in accepting the representation instruments has, however, certain limits dictated by the use to which the representation will be put. First, the instruments must clearly identify the party bestowing the power of attorney and reflect a lucid and unambiguous manifestation of will. It must also name the person to whom the power of attorney is being given and, finally, indicate in very specific terms the purpose of the representation. In the opinion of this Court, instruments that meet these requirements are valid and have full effect once submitted to the Court.

67. This Court considers that the powers granted on February 19 and May 22, 1998, are valid. The first became effective when the Center for Justice and International Law (CEJIL) and the Instituto de Defense Legal (IDL) represented the victim's parents and filed the reparations brief.

The second power of attorney also became valid inasmuch as the parents ratified everything done under the first power of attorney and because another member of the victim's family, his sister, Mónica Inés Castillo-Páez, was named as one of the parties granting power of attorney. In this second power of attorney, the three parties granting it named the Center for Justice and International Law (CEJIL), the Instituto de Defensa Legal (IDL), and "Human Rights Watch/Americas" (HRW) as their representatives. Consequently, Human Rights Watch/Americas has been co-representing the victim's next of kin since May 22, 1998.

VII
FACTS PROVEN DURING THE REPARATIONS STAGE

68. To determine the reparations called for in the instant case, the Court will rely primarily upon the facts established in the Judgment of November 3, 1997. During this stage of the proceeding, the parties introduced new evidence to demonstrate the existence of certain additional or supervening facts relevant to a determination of reparations. The Court has examined the arguments of the parties and the corresponding evidence and considers the following facts proven:

A) Concerning Ernesto Rafael Castillo-Páez:

a) He was 22 years old at the time of his detention and subsequent disappearance

(cf. the birth certificate of Ernesto Rafael Castillo-Páez);

b) At the time of his disappearance, he was living with his parents and sister

(Cf. birth certificate and voter registration booklet of Mr. Ernesto Rafael Castillio-Páez; marriage certificate of Cronwell Pierre Castillo-Castillo and Carmen Rosa Páez-Warton; birth certificate of Ms. Mónica Inés Castillo-Páez; testimony given before the Court by Mr. Cronwell Pierre Castillo-Castillo during in the merits stage of the proceedings; statements signed in the presence of a notary in the Netherlands, May 25, 1998, by Cronwell Pierre

Castillo-Castillo, Mónica Inés Castillo-Páez and Carmen Rosa Páez-Warton; the Castillo Páez Case, Judgment of November 3, 1997);

c) He was a sociology student at the Pontificia Universidad Católica del Peru, between the first semester of 1985 and the first semester of 1990

(Cf. letter from the rector of the Pontificia Universidad Católica del Peru, Mr. Hugo Saravia Swett, to the Minister of the Interior, dated November 6, 1990; copy of transcript No. 0002691 listing the courses passed by Ernesto Rafael Castillo-Páez, issued on February 23, 1998 by the Pontificia Universidad Católica del Peru; a copy of the cancelled payment voucher for the first semester of 1990 at the Pontificia Universidad Católica del Peru; a copy of an uncancelled payment voucher for the second semester of 1990 at the Pontificia Universidad Católica del Peru; press clippings titled: "En la Corte Interamericana de Derechos Humanos está el case Castillo-Páez" and "Policías asesinaron a estudiante" (Police killed student); and

d) At the time of his detention, he was a mathematics teacher at the "Juan XXIII" Institute of Theological Studies, teaching twelve hours of classes per month, and drew a monthly salary of 13,200.000 intis, which at that time was the equivalent of approximately US$30.00 (thirty United States dollars).

(Cf. teaching contract of Ernesto Rafael Castillo-Páez with the "Juan XXIII" Institute of Theological Studies, signed on September 6, 1988, and salary pay slip of Ernesto Rafael Castillo-Páez for October 1990);

B) Concerning the victim's next of kin:

a) The victim's known next of kin are Cronwell Pierre Castillo-Castillo, father, Carmen Rosa Páez-Warton, mother, and Mónica Inés Castillo-Páez, sister

(cf. birth certificate and voter registration booklet of Ernesto Rafael Castillo-Páez; marriage certificate of Cronwell Pierre Castillo-Castillo and Carmen Rosa Páez-Warton; birth certificate of Ms. Mónica Inés Castillo-Páez);

b) Said next of kin suffered material and moral damages as a consequence of the disappearance of Ernesto Rafael Castillo-Páez

(cf. sworn income tax declaration of Mr. Cronwell Pierre Castillo-Castillo for 1991; a copy of a "category four income tax withholding statement" for Mr. Cronwell Pierre Castillo-Castillo; a copy of the cover and preface of the book "Cálculo Diferencial" [Differential Calculus] by Michel Helfgott and Tomás Núñez, which contains an acknowledgment of the typing services of Ms. Carmen Rosa Páez-Warton; a copy of the sales contract for the Castillo-Páez family home, July 18, 1997; a copy of the certificate issued by Swedish attorney Eva Ericson, attorney ex oficio for Mónica Inés Castillo-Páez, which certifies the political asylum proceedings conducted in Sweden; a copy of the English-language report from the publication of "Human Rights Watch/Americas/Helsinki" for September 1996, volume 8, No. 14 (D), p. 29; a copy of the identification papers that grant political refuge to Cronwell Pierre Castillo-Castillo and Mónica Inés Castillo-Páez and "humanitarian asylum" to Carmen Rosa Páez in the Netherlands; official memorandum No. 66-58-98-IN-UNICA, July 1, 1998, signed by the Inspector of Migrations, Héctor Huamán-Maquiña, Deputy Director General of Migrations and Naturalization of the Ministry of the Interior, concerning the emigration of Mr. Cronwell Pierre Castillo-Castillo, Ms. Carmen Rosa Páez-Warton and Ms. Mónica Inés Castillo-Páez; statements signed in the presence of a notary in the Netherlands, May 25, 1998, by Cronwell Pierre Castillo-Castillo, Mónica Inés Castillo-Páez and Carmen Rosa Páez-Warton; expert report of Dr. Carmen Wurst-Calle de Landazuri on the "psychological consequences of disappearances and political asylum" relating to the next of kin of victims of human rights violations, and its appendix);

c) The parents of Ernesto Rafael Castillo-Páez began their search in a number of police stations and took the appropriate judicial steps, in accordance with domestic law, to locate him; they then turned to the inter-American system. All this necessitated various expenditures

(cf. testimony of Cronwell Pierre Castillo-Castillo, Judge Minaya-Calle and Augusto Zúñiga-Paz, given during the proceedings on the merits; statements signed in the presence of a notary in the Netherlands, May 25, 1998, by

Cronwell Pierre Castillo-Castillo, Mónica Inés Castillo-Páez and Carmen Rosa Páez-Warton); and

d) At the present time the three named family members of Ernesto Rafael Castillo-Páez are living off of funds provided to them by the Dutch social security system.

(cf. copy of the identification papers granting political refuge to Cronwell (Pierre Castillo-Castillo and Mónica Inés Castillo-Páez, and humanitarian asylum to Carmen Rosa Páez-Warton in the Netherlands; official memorandum No. 66-58-98-IN-UNICA, dated July 1, 1998, signed by the Inspector of Migrations, Héctor Huamán-Maquiña, Deputy Director General of Migrations and Naturalization of the Ministry of the Interior, concerning the "emigration" of Mr. Cronwell Pierre Castillo-Castillo, Ms. Carmen Rosa Páez-Warton and Ms. Mónica Inés Castillo-Páez; a copy of the report from the publication of "Human Rights Watch/Americas/Helsinki", September 1996, volume 8, No. 14 (D), p. 29); and

C) Concerning the facts:

a) In 1990, the life expectancy of a 22-year old male in Peru was 71

(cf. life expectancy chart for the 1990-1995 five-year period, by sex, published in the document "Proyecciones de Población del Peru 1995-2025" [Peruvian population forecasts 1990-2025], official memorandum No. 199-98-INEI/DTDES, dated August 18, 1998, from the head of the National Institute of Statistics and Informatics);

b) The minimum wage of workers in Peru's private sector as of September 1, 1997, was 345 soles

(cf. Emergency Decree 074-97, July 31, 1997, published in "El Peruano" on August 3, 1997, on the minimum wage of private workers in Peru);

c) The exchange rate of Peruvian currency to the United States dollar as of September 1, 1997, was S/2.65

(cf. official memorandum No. 7220-98, of September 3, 1998, on the official exchange rate of Peru's currency to the United States dollar from January of 1990 to June of 1998, the document issued by the head of the Department of Economic Statistics and Studies of the Office of Superintendent of Banking and Insurance);

d) In Peru, a number of laws govern work bonuses within the public and private sectors; of these, the one most favorable to the worker is Law No. 25.139, of December 4, 1989, which grants two annual bonuses, each one equal to "the basic wage a worker is receiving at the time the benefit is granted"

(cf. Law No. 25,139 of December 14, 1989, on annual National Holidays and Christmas bonuses; Supreme Decree No. 061-98-EF of July 6, 1998, published in "El Peruano" on July 7, 1998, which "grants government pensioners, officials and civil servants an National Holiday"; Reform No. 0053-98-GAF-SP-GG-PJ on payment of a bonus in accordance with Legislative Decree No. 728; a photostat copy of Legislative Decree 276 – Statute on the Civil Service and Remuneration in the National Public Sector, of March 6, 1984, published in "El Peruano" on March 24, 1984; a photostat copy of the initial implementing legislation for Legislative Decree No. 276, supreme Decree No. 018-85-PCM, February 28, 1985; Law No. 26.894, "1998 Public Sector Budget Law", of December 10, 1997, published in "El Peruano" on December 11, 1997; Urgent Decree No. 107-97 of December 5, 1997, published in "El Peruano" on December 6, 1997, which "grants government pensioners, officials, civil servants, and armed forces and national police personnel a Christmas bonus"; Supreme Decree No. 069-85-PCM of July 26, 1985, published in "El Peruano" on July 27, 1985; a photostat copy of Decree-Law No. 22.482, of March 27, 1979; on the "maternity and nursing subsidies currently in effect"; a photostat copy of Decree-Law No. 18.846 of April 28, 1971, on "Job-related Accidents");

e) Amnesty Law No. 26.479 and Law No. 26.492, which interprets the Amnesty Law, are currently in force in Peru

(cf. Law No. 26.479 of June 14, 1995, published in "El Peruano" on June 15, 1995, which "grants a general amnesty to military, police and civilian per-

sonnel for various cases"; Law No. 26,492 of June 30, 1995, published in "El Peruano" on July 2, 1995, which "specifies the interpretation and scope of the amnesty granted by Law No. 26,479"; Judgment of the [Peruvian] Constitutional Court of April 28, 1997, published in "El Peruano" on May 9, 1997, which "dismisses the suit challenging the constitutionality of various articles of Laws Nos. 26.479 and 26.492);

f) Also in force in Peru is Law No. 26.926, which typifies crimes against humanity, among them genocide, forced disappearance and torture

(cf. Law No. 26,926 of February 19, 1998, published in "El Peruano," February 21, 1998, which "amends several articles of the Penal Code and introduces Title XIV-A, concerning crimes against humanity", and Decree-Law No. 25,592, dated June 26, 1992, published in "El Peruano" on July 2, 1992, establishing "a penalty of incarceration for public officials or civil servants who deny any person his freedom by ordering or executing actions that result in said person's disappearance").

VII
REPARATIONS

69. While the rule of *restitutio in integrum* is one form of reparation for an international wrongful act (*cf. Factory at Chorzów, Merits, supra* 50, p. 48), it is not the only form of reparation. There may be cases in which *restitutio in integrum* is impossible, insufficient, and inadequate, as in the instant case. This necessitates recourse to other forms of reparation for the victim's next of kin. Compensation is, first of all, for the damages suffered by victim and includes, as this case has held previously, both material and moral damages (*Garrido and Baigorria Case, Reparations, supra* 42, para. 41); (*cf. Chemin de Fer de la Baie de Delagoa, sentence, 29, mars 1900*, Martens, Nouveau Recueil Général de Traités, 2eme série, t. 30, p. 402; *Case of Cape Horn Pigeon,* November 29, 1902, Papers relating to the Foreign Relations of the United States, Washington, D.C.: Government Printing Office, 1902, Appendix I, p. 470; *Traité of Neuilly, Article 179, Annex, Paragraph 4 (Interprétation)*, Arrêt No. 3, 1924, P.C.I.J., series A, No. 3, p. 9; *Maal Case,* 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732

and 733, and *Campbell Case*, 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158).

70. The consequences of the violation of Article 25 of the American Convention were detrimental to Ernesto Rafael Castillo-Páez' next of kin because the remedy of *habeas corpus* was ineffective in securing his release and perhaps saving his life (cf. *Castillo Páez Case*, Judgment of November 3, 1997. Series C No. 34, paras. 81-84). Accordingly, the Court considers that effective investigation and punishment of those responsible for the events that prompted the instant Case (*infra* 107), as ordered by this Court in its Judgment of November 3, 1997 (*infra* 103), is one reparation measure that those next of kin are due.

IX
MATERIAL DAMAGES

71. The victim's next of kin listed three items under the generic heading of "material damages":

a) The lost earnings include the lost earnings of Ernesto Rafael Castillo-Páez for three years as a mathematics professor and for 42 years (from age 25 to 67) as a sociologist, less 25 percent for personal expenditures. This gives a total of US$687,132.00 (six hundred eighty-seven thousand, one hundred thirty-two United States dollars);

b) The indirect or consequential damages include representations before the Peruvian authorities, medical expenses and expenses incurred for Mónica Inés Castillo-Páez' exile in the Netherlands and in Sweden, for a total of US$56,300.00 (fifty-six thousand three hundred United States dollars); and

c) The nuclear family's patrimonial damages occasioned by the victim's disappearance include various lost assets (a decline in family income, bankruptcy of the family business, the sale of the home occupied by the family at a very reduced cost, and family expenses occasioned by their current residence), for a total of US$200,000.00 (two hundred thousand United States dollars).

The "material damages" being claimed, therefore, total US$943,432.00 (nine hundred forty-three thousand, four hundred thirty-two United States dollars).

72. The Commission argued that when computing the "lost earnings" and "indirect or consequential damages," it was imperative that they be "updated for monetary depreciation or devaluation and interest accruing from the date on which the victim's unlawful detention and disappearance occurred...."

73. For its part, the State objected to the assertions and figures presented by the Commission and Ernesto Rafael Castillo-Páez' next of kin, arguing, *inter alia*, the following:

a) Concerning lost earnings: Ernesto Rafael Castillo-Páez' academic performance was so poor that there was no guarantee that he would promptly and satisfactorily complete his sociology studies; the calculation made of his future earnings from the practice of his profession was, therefore, baseless;

b) Concerning the indirect or consequential damages: the figure given for the expenses incurred by the victim's next of kin to investigate the facts was inflated, unsupported by evidence, and included expenses that were negligible (court costs); it argued that indirect or consequential damages should be limited to expenses incurred in proceedings before Peruvian authorities; and

c) Concerning the nuclear family's patrimonial damages: the alleged income of the victim's next of kin was not properly substantiated; no causal nexus was established between the alleged human rights violations and the loss or sale of the family assets; the family's move to another country was its own decision, but not because of persecution by Peruvian authorities.

74. Concerning the suggestion to the Court that a lump-sum compensation be awarded on the premise that an improvement in the victim's future income was a "probable certainty", the Court considers that com-

pensation must be calculated on the basis of a definite injury that is sufficiently substantiated to find that the injury likely occurred. Given the circumstances of the instant case, the evidence is not sufficient to prove the loss of opportunity in the terms requested.

75. An equitable point of departure to use to compute the lost earnings is the minimum monthly wage in Peru at the present time. Under Urgent Decree No. 074-97, of July 31, 1997, published in "El Peruano" on August 3, 1997, the minimum monthly wage is S./345,00, which must then be figured in dollars at an average exchange rate of between S./2.652 and 2.659 to the dollar, according to the exchange table applied (*supra* 68.C.c). The computation was done using 12-month annual salaries, plus an additional bonus of two months' salary per year, in keeping with the Peruvian law *(supra* 68.C.d). most advantageous to workers (cf. *Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 7, para. 46, and *Godínez Cruz Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 8, para. 44). This figure was then multiplied by 49 years, the number of years between the victim's age at the time of his disappearance and the end of the life expectancy of a Peruvian male in the 1990-1995 period, which is 71 years (*supra* 68.C.a).. From this amount, 25 percent must be deducted for personal expenses, and then the current interest added. Consequently, the amount at the present value as of the date of this judgment for this item is US$35,021.80 (thirty-five thousand and twenty-one United States dollars and eighty cents).

76. Compensation of the "nuclear family's patrimonial damages" has also been requested because of the material damages that its members sustained by virtue of the consequences of Ernest Rafael Castillo-Páez' disappearances which were detrimental to the family group's employment or business activities. The State did not directly oppose this item, but it objected to the figure (*supra* 14 and 22). The Court recognizes the difficulty of determining the damages caused under this category and the amount they represent, especially inasmuch as it is impossible to establish the causal nexus between the fact and the consequences alleged to have followed from it and to which this part of the claim refers: the bankrupt-

cy of the business of the victim's father, sale of the family home at less than its market value, and other aspects mentioned (*supra* 71.c). Elsewhere the Court has held that "To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible, since that action caused effects that multiplied to a degree that cannot be measured" (*Aloeboetoe et al. Case, Reparations, supra* 50, para. 48). However, the Court considers that in practice, a general patrimonial injury was done to the family group by the disappearance of one of its members, for reasons imputable to the State. The disappearance caused economic and other types of problems for the family that must be redressed based on principles of equity. The Court sets the reparations for this category of damages at US$25,000.00 (twenty-five thousand United States dollars).

77. Also being sought is reimbursement of the expenses incurred by the next of kin of Ernesto Rafael Castillo-Páez in their search for him. These expenses included outlays for travel, communications, administrative inquiries, visits to jails, hospitals and public institutions, for medical treatment to recover from the disappearance of a son and brother, and for the family's move to the Netherlands, where its members have been granted humanitarian refuge and political asylum (*supra* 71.b). However, the evidence submitted to support the figure is not neither sufficient nor conclusive. Therefore, based on principles of equity, the Court considers the sum of US$25,000.00 (twenty-five thousand United States dollars) to be appropriate compensation for the items mentioned under this category.

X
MORAL DAMAGES

78. In their brief on reparations, the victim's next of kin requested that the compensation for moral damages be fixed at a total of US$500,000.00 (five hundred thousand United States dollars) "to be divided equitably among the family: parents and sister of the victim". They also requested the creation of a fund of US$5,000.00 (five thousand United States dollars) for needed rehabilitation, to cover medical and psychological care for the next of kin.

79. The Commission asserted that the moral damage inflicted was, first of all, the pain and suffering suffering that Ernesto Rafael Castillo-Páez' next of kin experienced with his disappearance. One immediate consequence of his disappearance, the Commission argued, was that the victim's sister received threats and had to "abruptly leave her country." The Commission maintained that the second moral damage inflicted was the suffering caused to the victim by the violent circumstances under which the events occurred. The victim's next of kin as well claimed the moral damage inflicted upon the victim, asserting that "Ernesto Rafael Castillo-Páez suffered directly by the aggression and abuse to which he was subjected during the course of his detention, as the Court established."

80. The Commission requested that compensation for moral damages be set at a total of US$125,000.00 (one hundred twenty-five thousand United States dollars) "to be divided equitably among the three members of the victim's family"; in support of this argument, it cited the precedents established by the Court in the *Velásquez Rodríquez, Godínez Cruz and Aloeboetoe et al.* cases.

81. The victim's next of kin supplied three statements signed in the presence of a notary (*supra* 15), wherein they narrated the various suffering that the disappearance of Ernesto Rafael Castillo-Páez had caused them. Those statements underscored the pain over the loss of the victim, Ms. Mónica Inés Castillo-Páez' move to Sweden and then to the Netherlands, the break-up of the family nucleus and its eventual reunion in the Netherlands after almost eight years of separation. In support of these damages, they submitted the Expert Report that explained the general psychological consequences that forced disappearance and asylum have.

82. The State stated that it was not in agreement with any of the sums requested by the Commission and by the victim's next of kin and called the Court's attention to the "disproportionate claims submitted by the next of kin, who are seeking US$500,000.00 (five hundred thousand United States dollars) in moral damages, US$5,000.00 (five thousand United States dollars) for the medical and psychological rehabilitation of family members, and US$100,000.00 (one hundred thousand United States dollars) for violation of Ernesto Rafael Castillo-Páez' right to life.

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83. The Court is of the opinion that while case law may establish precedents in this regard, it cannot be invoked as an absolute criterion, as each case must be examined individually (*Neira Alegría et al. Case, Reparations, supra* 50, para. 55).

84. As for moral damages, the Court has previously held that there are numerous cases in which other international tribunals have decided that a judgment of condemnation constitutes per se adequate reparation for moral damages, as demonstrated by the case law of, among others, the European Court of Human Rights (*Cour eur. D. H. arrêt Kruslin 24 du avril 1990, série A no. 176-A*, p. 25, párr. 39; *Cour eur. D. H., arrêt McCallun du 30 août 1990, série A no. 183*, p. 17, párr. 37; *Cour eur. D. H., arrêt Wassink du 27 septembre 1990, série A no. 185-A*, p. 15, párr. 41; *Cour eur. D. H., arrêt Koendjbiharie du 25 octobre 1990, série A no. 185-B*, p. 42, párr. 34; *Cour eur. D. H., arrêt Darby du 23 octobre 1990, série A no. 187*, p. 14, párr. 40; *Cour eur. D. H., arrêt Lala c. Pays-Bas du 22 Septembre 1994, série A No. 297-A*, p. 15, párr. 38; *Cour eur. D. H., arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A no. 297-B*, p. 26, párr. 44; *Cour eur. D. H., arrêt Kroon et autres c. Pays-Bas du 27 octobre 1994, série A no. 297-C*, p. 59, párr. 45; *Cour eur. D.H., arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A no. 300-B*, p. 76, párr. 46; *Cour eur. D. H. arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A no. 303-A*, p. 13, párr. 33). However, it is the view of this Court that a condemnatory judgment does not suffice when the right to life is concerned, and the reparation for the moral suffering caused to the victim and to the family must take an alternative form, such as pecuniary compensation. Such cases require this category of reparation. The pecuniary compensation should be determined on the basis of equity and by a prudent assessment of the moral damages, which cannot be measured by any absolute rule (cf. *El Amparo Case, Reparations, supra* 50, para. 35). This same principle was established by the European Court, which pointed out that moral damages do not lend themselves to precise evaluation (*Cour eur. D. H., arrêt Wiesinger du 30 octobre 1991, série A no. 213*, p. 29, para. 85; *Cour eur. D. H., arrêt Kenmache c. France (article 50) du 2 novembre 1993, série A no. 270-B*, p. 16, para. 11; *Cour eur. D. H., arrêt Mats Jacobsson du 28 juin 1990, série A*

no. 180-A, p. 16, para. 44 y *Cour eur. D.H., arrêt Ferraro du 19 février 1991, série A no. 197-A*, p. 10, para. 21).

85. The Court has held that in the case of moral damages, "indemnity may be awarded under international law and, in particular, in the case of human rights violations" (*Velásquez Rodríguez Case, Compensatory Damages, supra* 75, para. 27 and *Godínez Cruz Case, Compensatory Damages, supra* 75, para. 24).

86. In the instant case, the moral damage inflicted upon the victim is obvious, for it is characteristic of human nature that anyone subjected to aggression and abuse of the kind committed against him (unlawful detention, cruel and inhuman treatment, disappearance and death) will experience terrible moral suffering (cf. *Traité de Neuilly*, article 179, annexe, paragraphe 4 (interpretation) arrêt No. 3, 1924, C. P. J. I, série A No. 3, p. 9, the Arbitrary Tribunals, Maal case, 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732 and 733, and the *Campbell Case,* 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158; cf. *supra* 69. The Court is of the opinion that no evidence or proof is needed to arrive at this conclusion (*Aloeboetoe et al. Case, Reparations, supra* 50, para. 52). As it is impossible to award compensation for moral damages to the victim himself, the principles of succession rights must be applied. As the Court has held, in some circumstances the immediate family members can be presumed to be successors for purposes of the corresponding compensation (cf. *Aloeboetoe et al. Case, Reparatons, supra* 50, para. 76 and *Garrido and Baigorria Case, supra* 42, para. 50).

87. The Court is of the opinion, moreover, that the anguish and uncertainty that the disappearance and lack of information about the victim caused to his next of kin constitute moral damages for them.

88. In the case of the victim's parents, the moral damages need not be shown, as they can be presumed. As the Court has held, "it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child" (*Aloeboetoe et al. Case, Reparations, supra* 50, para. 76; *Garrido and Baigorria Case, Reparations, supra* 42, para. 62).

This position was reinforced by the Court's recent case law, wherein it held that the circumstances of the forced disappearance "generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate" (*Blake Case*, Judgment of January 24, 1998. Series C No. 36, para. 114).

89. As for the sister of Ernesto Rafael Castillo-Páez, the Court is of the view that it has been established that she suffered painful psychological consequences as a result of her brother's disappearance and death, because he was her only brother and they lived under the same roof, and because she experienced, together with her parents, the uncertainty of the victim's whereabouts and was forced to move to Europe, where she has lived as a refugee in the Netherlands. All of this is grounds for direct compensation for moral damages (cf. European Court of Human Rights, Mori Judgment, 19 February 1991, Series A No. 197-C, p.38, para. 20; similarly, European Court of Human Rights cases, *Tusa v. Italy*, February 1992. Series A No. 231-D, p. 42, para. 21; European Court of Human Rights, *Beldjoudi v. France*, 26 March 1992, Series A No. 234-A, p.30, para. 86; and European Court of Human Rights, *Kemmache v. France (Article 50)*, 2 November 1993, Series A No. 270-B, p. 16, para. 11).

90. Based on the foregoing and the principles of equity, the Court sets the moral damages suffered by the victim at the sum of US$30,000.00 (thirty thousand United States dollars), which is to be divided between the parents and sister in equal parts, as they requested. It also deems it equitable to award direct compensation for moral damages of US$50,000.00 (fifty thousand United States dollars) to each parent of Ernesto Rafael Castillo-Páez, and US$30,000.00 (thirty thousand United States dollars) to his sister.

XI
OTHER FORMS OF REPARATION

91. The victim's next of kin asserted that "there is a value that can be attached to every individual's life that transcends his earning potential, since every individual is an essential and unique part of his family, his community, his nation and humanity." On that basis, they are seeking

compensation of US$100,000.00 (one hundred thousand United States dollars). During the public hearing, the victim's next of kin clarified that this was a "separate item of reparation, an economic assessment of the cost of the violation of the right to life."

92. The State expressed general opposition to this item in its references to moral damages (*supra* 82).

93. The Court is of the opinion that the statements made by the immediate family of the victim can be interpreted broadly as allusions to the right of a nation, a community and a family not to be denied the life of one of its members (cf. Article 32(1) of the American Convention). With issues of this kind, the Court has previously held that every individual, in addition to being a member of a family and a citizen of a State, also generally belongs to intermediate communities. However, this Court has not held that the moral damages caused by an individual's death extend to such communities, and even less to the nation as a whole. If in some exceptional case such compensation has ever been granted, it would have been to specific communities that have suffered proven moral damages (cf. *Aloeboetoe et al. Case, Reparations, supra* 50, para. 83).

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94. The victim's next of kin are requesting publication of the Judgment in the Official Gazette of the Peruvian State and that the latter issue a press communiqué transcribing

> the proven facts and the operative part of the Judgment, as well as an apology to the family and a commitment from the Peruvian government that events and acts such as those that occurred will never be repeated in that country. The press releases are to be published in five of the country's major newspapers and in prestigious newspapers in the international community.

They also request that the victim's good name be restored, that the plaza where he disappeared "bear his name and that a plaque be placed there in [his] memory."

95. In its brief of May 11, 1998, the State asserted that these claims

> are an insult not just to the Government of Peru but also and primarily to the Peruvian people, since such claims would make the Peruvian people into accomplices, of sorts, in these acts, although it has never been proven that the Peruvian State was responsible for those acts, even though the judgment might say otherwise.

It pointed out that in the Honduran cases, this Court defined the expression "fair compensation" as compensatory and not punitive, and noted that "Although some domestic courts, particularly the Anglo-American, award damages in amounts meant to deter or to serve as an example, this principle is not applicable in international law at this time."

96. Concerning the foregoing and in keeping with ample international case law, the Court notes that the possibility that the victims of human rights violations or their families may file suit against a State in an international court and participate in the proceedings directly or through their representatives is in itself a form of satisfaction (cfr. *Cour eur. D. H. arrêt Kruslin 24 du avril 1990, série A no. 176-A*, p. 25, párr. 39; *Cour eur. D. H., arrêt McCallun du 30 août 1990, série A no. 183*, p. 17, párr. 37; *Cour eur. D. H., arrêt Wassink du 27 septembre 1990, série A no. 185-A*, p. 15, párr. 41; *Cour eur. D. H., arrêt Koendjbiharie du 25 octobre 1990, série A no. 185-B*, p. 42, párr. 34; *Cour eur. D. H., arrêt Darby du 23 octobre 1990, série A no. 187*, p. 14, párr 40); *Cour eur. D. H., arrêt Lala c. Pays-Bas du 22 Septembre 1994, série A No. 297-A*, p. 15, párr. 38; *Cour eur. D. H., arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A no. 297-B*, p. 26, párr. 44; *Cour eur. D. H., arrêt Kroon et autres c. Pays-Bas du 27 octobre 1994, série A no. 297-C*, p. 59, párr. 45; *Cour eur. D.H., arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A no. 300-B*, p. 76, párr. 46; *Cour eur. D. H. arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A no. 303-A*, p. 13, párr. 33), especially if the proceedings result in a condemnatory judgment, as in the instant case, which demonstrated the death and disappearance of Ernesto Rafael Castillo-Páez and declared that Peru had violated articles 4, 5, 7 and 25, in relation to Article 1(1) of the American Convention (*Velásquez Rodríguez Case, Compensatory Damages, supra* 75, para. 36; *Aloeboetoe et al. Case, Reparations, supra* 50, para. 31; *El Amparo Case, Reparations, supra* 50, para 62, and

Caballero Delgado and Santana Case, Reparations, supra 50, para. 58). It is important to note here that the Court has suitable mechanisms for publicizing its judgments, which is another form of reparation.

97. Finally, the Court considers it pertinent to point out that on several occasions, Peru has stated in writing that it is not responsible for the events that this Tribunal considers to have been proven in its Judgment. For example, in its brief of May 11, 1998, it stated that

> the State does not accept that decision [the declaration of the violation of the right-to-life of Ernest Rafael Castillo-Páez] to be valid, because the proceedings failed to demonstrate deprivation of life to the detriment of Ernesto Rafael [Castillo Péz] and less still that the State was the party allegedly responsible [...]

This assertion constitutes an additional source of pain for the victim's next of kin and reflects an attitude contrary to the provisions of Article 68 of the American Convention.

XII
THE DUTY TO TAKE DOMESTIC MEASURES

98. Based on the Judgment on the merits in the instant case (*Castillo Páez Case, supra* 70, para. 90), the Commission and the victim's next of kin requested that the events be investigated and that those responsible for the crimes perpetrated against Ernesto Rafael Castillo-Páez be punished. They also requested that the next of kin be informed of the victim's fate and that his remains be located since, for "his parents and sister, receiving Ernesto's remains is an essential step toward bringing closure to the torment they suffer from the uncertainty surrounding his fate." They also submitted a report on the internal investigation conducted by the Office of the Inspector General of the Police, ordered by the Ministry of the Interior, where mention is made of vehicles and personnel who, according to the representatives of the next of kin, were directly involved in the detention and subsequent disappearance of Ernest Rafael Castillo-Páez. They also reported that in dossier No. 610-91, 14th Criminal Court of Lima, one Carlos Mejía-León is named as the person who headed up the

operation; according to unofficial versions, Mejía-León was responsible for taking "Ernesto [Rafael Castillo-Páez] from the San Juan de Miraflores police station for questioning." During the public hearing on reparations, the Commission and the victim's next of kin added that "the Government seems to be operating on the notion that the Court cannot order an investigation into the victim's disappearance because of the two amnesty laws in effect in Peru," which in their judgment constitute "an obstacle to fulfillment of the State's international obligations." They therefore requested that the Court rule on the incompatibility of the amnesty laws with the State's international obligations, since otherwise the crimes would go unpunished, as the Court held in the *Paniagua Morales et al. Case.*

99. The State asserted that forced disappearance had been typified through Decree Law No. 25.592, published on July 2, 1992. At the public hearing, Peru stated that its concern was "to comply with the requirements of international organizations; the renewed effort to normalize laws that the Peruvian State was forced to change to save itself as a nation and as a state, demonstrates and confirms the Peruvian Government's concern." Finally, in its brief of August 24, 1998, the State pointed out that Law No. 26.926 was enacted this year, which typifies genocide, forced disappearance and torture as crimes against humanity, and establishes severe penalties for them. Peru also pointed out that it had signed and ratified the Inter-American Convention to Prevent and Punish Torture.

100. At the public hearing, the Inter-American Commission argued that according to the State's own argument concerning the amnesty laws, Law No. 26.926 was not applicable in the instant Case. It further argued that under Article 6 of Law No. 26,479, an amnesty was granted to all persons responsible for crimes committed as a consequence of the fight against terrorism, whether or not they had been named, prosecuted, tried, or investigated. The Commission pointed out that it had, on a number of occasions, rendered findings on amnesty laws. Such laws, it argued, violate the international obligation that States have under Article 1(1) of the Convention and lead to impunity. The Commission pointed out that this was the position upheld by the Court and was explained in the report presented to the United Nations Commission on Human Rights on

October 2, 1997, by the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the question of the impunity of perpetrators of human rights violations (civil and political rights). It pointed out that in that study, "42 principles were adopted, calculated to protect and promote human rights through measures to combat impunity." The Commission argued that the applicable principle in the instant case is No. 18, [which] concerns the "duties of States with regard to the administration of justice." When it elaborated, the Commission maintained that "impunity arises from a failure by States to meet their obligations to investigate violations, to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that they are prosecuted, tried and duly punished."

101. In its submission of May 11, 1998, the State pointed out that amnesty laws Nos. 26.479 and 26.492 were approved in Peru; and that a suit challenging their constitutionality was dismissed. It asserted that in view of the foregoing "a petition seeking the prosecution and punishment of the individuals responsible, if in fact anyone is responsible, is out of order [since such] individuals are not be subject to court or administrative questioning under the provisions of those two laws." Those laws grant

> a general amnesty to any military, police and civilian personnel, whatever their military or police rank or function, who have been indicted, investigated, charged, tried, prosecuted or convicted for common or military crimes involving acts deriving or originating from, on occasion or as a consequence of, the fight against terrorism and that they may have committed either individually or as a group between May of 1980 and the date of their enactment.

102. At the public hearing, Peru explained that these laws were adopted because of the difficult situation prevailing in the country at the time. However, it underscored that "the amnesty laws are no impediment to the victim's right to compensation, as a ruling of the Constitutional Court has held."

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103. In its Judgment of November 3, 1997, the Court established that one of the obligations of the State was to investigate the facts under the following terms:

> In connection with the above-mentioned violations of the American Convention [Articles 7, 4, 5 and 25, in relation to Art. 1(1)], the Court considers that the Peruvian State is obliged to investigate the events that produced them. Moreover, on the assumption that internal difficulties might prevent the identification of the individuals responsible for crimes of this kind, the victim's finally still have the right to know what happened to him and, if appropriate, where his remains are located. It is therefore incumbent on the State to use all the means at its disposal to satisfy these reasonable expectations. In addition to this duty to investigate, there is also the duty to prevent the commission of forced disappearances and to sanction those responsible for them. These obligations on Peru shall remain in force until such time as they have been fully performed (underlining added) (*Castillo Páez Case, supra* 70, para. 90).

104. The obligation to investigate is expressly invoked by the victim's next of kin when requesting that the Court "require the Peruvian State to remove any legal obstacle that would prevent it from conducting that investigation and eventually punishing those responsible."

105. The Court reconfirms what it held in paragraph 90 of the Judgment on the merits (*supra* 103) and is persuaded that the Amnesty Law enacted by Peru (*supra* 68.C.e) is one of the "internal difficulties that might prevent the identification of the individuals responsible for crimes of this kind", since it obstructs investigation and access to the courts and prevents the victim's next of kin from learning the truth and receiving the reparations to which they are entitled.

106. As this Court has held on repeated occasions, Article 25 in relation to Article 1(1) of the American Convention requires the State to guarantee to all persons access to the courts, and, in particular, to a simple and rapid recourse so that, among other things, those responsible for the

human rights violations may be tried and reparations obtained for the damages suffered. As this Court has said, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention" (*Castillo Páez Case, supra* 70, paras. 82 and 83; *Suárez Rosero Case, supra* 39, para. 65; *Paniagua Morales et al. Case, supra* 40, para. 164, and *Loayza Tamayo Case, Reparations, supra* 38, para.169). That article is closely linked to Article 8(1) of the American Convention which upholds every person's right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal for the determination of his rights of any nature.

107. Consequently, the State has a duty to investigate the human rights violations and prosecute those responsible and thus avoid impunity. The Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention" and has held that

> [...] the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives (*Paniagua Morales et al. Case, supra* 40, para. 173).

108. Furthermore, the Court is of the opinion that, in principle, the Peruvian legislation typifying the crime of forced disappearance to be laudable.

XIII
COSTS AND EXPENSES

109. Invoking Article 23 of the Court's Rules of Procedure, the victim's next of kin requested that they be awarded approximately US$4,000.00 (four thousand United States dollars) to cover their room-and-board and related expenses during the reparations stage. At the public hearing, the representatives of the victim's next of kin requested payment of legal fees since, unless such fees were recognized, the "Inter-American system will

only be available to those who have economic means." The amount being claimed was not specified in that brief.

110. The State objected to the claims seeking reimbursement of the family's hotel expenses at the time of the public hearing, since the victim's next of kin "are being represented in these proceedings and their presence at the seat of the Court is pointless." It further argued that under Article 45 of the Court's Rules of Procedure, the party requesting the production of evidence shall defray the cost thereof.

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* *

111. As for the expenses for attending the public hearing, the Court considers that any finding on this claim would be pointless, inasmuch as the victim's next of kin were not present for the hearing.

112. It is up to the Court to make a prudent assessment of the specific scope of the costs to which the condemnatory judgment refers, taking into account the verification of those costs, the circumstances of the specific case, to which end the Court shall determine, on the basis of reason and equity, a reasonable sum for the costs incurred by the victim or his representatives and attorneys in proceedings with Peru (cf. *Garrido and Baigorria Case, Reparations, supra* 42, para. 82).

113. Based on the foregoing, the Court fixes the costs for judicial proceedings in Peru at the sum of US$2,000.00 (two thousand United States dollars).

XIV
MODE OF COMPLIANCE

114. To be in compliance with this Judgment, within six months from the date of its notification the State is to pay the compensation ordered in favor of the victim's next of kin, either as next of kin or as victims themselves, as appropriate. If any has died, the compensation shall convey to his heirs. The State may fulfill its obligations through payments in cash,

either in United States dollars or its equivalent in Peru's local currency. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the local currency of Peru quoted on the New York market on the day prior to the date of the payment.

115. If for any reason it is not possible for the beneficiaries of the compensation to receive it within that six-month period, the State is to place the amounts in question in an account or a certificate of deposit in the beneficiary's name, with a solvent and secure financial institution, either in United States dollars or its equivalent in Peru's local currency, under the most favorable financial terms that banking law and practice permit. If at the end of ten years the compensation is not claimed, the sum shall be returned, with interest, to the State.

116. The compensation specified in this Judgment shall be exempt from any existing or future national, provincial or municipal tax or duty.

117. Should the State be in arrears with its payments, it shall pay interest on the amount owed, at the interest rate in effect in Peru.

118. Now therefore,

THE COURT

DECIDES:

unanimously,

1. To set the reparations that the State shall pay to the next of kin of Ernesto Rafael Castillo-Páez at US$245,021.80 (two hundred forty-five thousand twenty-one United States dollars and eighty cents) or its equivalent in local currency. The State is to make these payments in the proportion and under the conditions set forth in paragraphs 75, 76, 77, 90, 114, 115, 116 and 117 of this Judgment.

2. That the State of Peru shall investigate the facts in the instant Case, identify and punish those responsible and adopt the necessary domestic legal measures to ensure that this obligation is fulfilled.

3. That the payments indicated in operative paragraphs 1 and 5 shall be made within six months from the date of notification of this Judgment.

4. That any payment ordered in this Judgment shall be exempt from any existing or future tax or duty.

5. To set the amount the State shall pay to the victim's next of kin to reimburse them for costs incurred in domestic legal proceedings at US$2,000.00 (two thousand United States dollars) or its equivalent in the local currency of Peru.

6. That it shall oversee fulfillment of this Judgment.

The Judges Cancado Trindade and Abreu-Burelli advise the Court of their Concurring Opinion, and Judge García-Ramírez of his Explanation of Vote, which are attached to this Judgment.

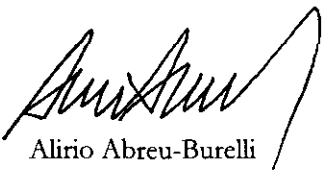
Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, this twenty-seventh day of November, 1998.

Hernán Salgado-Pesántes
President

Antônio A. Cançado Trindade

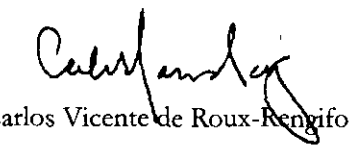
Máximo Pacheco-Gómez

Oliver Jackman



Alirio Abreu-Burelli

Sergio García-Ramírez



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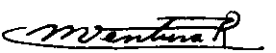
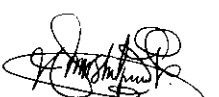
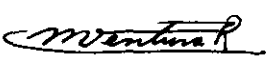


Manuel E. Ventura-Robles
Secretary

So ordered,



Hernán Salgado-Pesantes
President



Manuel E. Ventura-Robles
Secretary