INTER-AMERICAN COURT OF HUMAN RIGHTS

EL AMPARO CASE

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

JUDGMENT OF SEPTEMBER 14, 1996

In the El Amparo case,

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

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice-President
Alejandro Montiel-Argüello, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor Ml. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to the Court's judgment of January 18, 1995, and in application of Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), all of the above in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") enters the following judgment on reparations in the instant case brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Venezuela (hereinafter "Venezuela", "the State" or "the Government").

I

1. The instant case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court") by the Inter-American Commission by note of January 14, 1994, transmitting its Report No. 29/93 of October 12, 1993. It originated in Petition No. 10.602 against Venezuela, lodged with the Secretariat of the Commission on August 10, 1990.

2. In its application the Commission asserted that Venezuela had violated the following articles of the American Convention: 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial), 24 (Right to Equal Protection), 25 (Right to Judicial Protection) and 1(1) (Obligation to Respect Rights), with the deaths of José R. Araujo, Luis A. Berrío, Moisés A. Blanco, Julio P. Ceballos, Antonio Eregua, Rafael M. Moreno, José Indalecio Guerrero, Arín O. Maldonado, Justo Mercado, Pedro Mosquera, José Puerta, Marino Torrealba, José Torrealba and Marino Rivas, which occurred at the "La Colorada" Canal, Páez District in the State of Apure, Venezuela.

It also claimed in the application that Articles 5, 8(1), 24 and 25 of the Convention had been violated to the detriment of Wolmer Gregorio Pinilla and José Augusto Arias, sole survivors of the aforementioned events.

3. It further contended that the instant case referred to events that began on October 29, 1988. On that day sixteen fishermen from the village of "El Amparo," Venezuela, were on their way to the "La Colorada" canal along the Arauca river in Apure State on a *"fishing trip."* At approximately 11:20 a.m., when some of the fishermen were leaving the boat, members of the military and the police of the "José Antonio Páez Specific Command" (CEJAP), opened fire on them, killing fourteen of the sixteen fishermen.

4. On August 1, 1994, the State submitted its answer to the application and, by note of January 11, 1995, reaffirmed that Venezuela "*d*[id] *not contest the facts referred to in the complaint and accept*[ed] *the international responsibility of the State.*"

5. On January 18, 1995, the Court delivered a judgment in which it declared that it:

> 1. Takes note of the recognition of responsibility made by the Republic of Venezuela, and decides that the controversy concerning the facts that originated the instant case has ceased.
>
> 2. Decides that the Republic of Venezuela is liable for the payment of damages and to pay a fair indemnification to the surviving victims and the next of kin of the dead.
>
> 3. Decides that the reparations and the form and amount of the indemnification shall be determined between the Republic of Venezuela and the Inter-American Commission on Human Rights by mutual agreement within six months as of the notification of this judgment.
>
> 4. Reserves the right to review and approve the agreement, and in the event that an agreement is not reached, the Court shall determine the scope of the reparations and the amount of the indemnities, court costs and attorneys' fees, to which effect it retains the case on its docket. (*El Amparo Case*, Judgment of January 18, 1995. Series C No. 19, Operative part.)

II

6. Pursuant to Article 62 of the Convention, the Court is competent to rule on the payment of reparations, indemnities and costs in the instant case, inasmuch as Venezuela ratified the Convention on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981.

III

7. The time limit stipulated in operative paragraph 3 of the Court's judgment expired on July 18, 1995, but there has been no indication that an agreement has been reached. Consequently, pursuant to that judg-

ment, it is for the Court to determine the scope of the reparations and the amount of the indemnities and costs.

8. By Order of September 21, 1995, the Court decided to institute the proceedings for reparations, indemnities and costs and granted the Commission until November 3, 1995 to offer and present any evidence in its possession concerning the reparations, indemnities and costs in the instant case. The pertinent information was received on that date. The Court also granted the State until January 2, 1996 to submit its comments on the Commission's brief, and these were received on that date.

9. On January 27, 1996, the Court held a public hearing at its seat to allow the parties to voice their opinions on the reparations, indemnities and costs. The following persons attended the hearing:

For the Venezuelan State:

Asdrúbal Aguiar-Aranguren, Agent
Ildegar Pérez-Segnini, Alternate Agent
Guillermo Quintero, Advisor
Rodolfo Enrique Piza-Rocafort, Advisor
Raymond Aguiar, Observer;

For the Inter-American Commission:

Claudio Grossman, Delegate
Oscar Luján-Fappiano, Delegate
Milton Castillo, Attorney
Juan Méndez, Assistant
Ligia Bolívar, Assistant
Walter Márquez, Assistant.

10. At the public hearing on reparations, the Government provided the following documentary evidence: two notes pertaining to the human development indicators in the State of Apure, a pamphlet entitled "Poverty Estimates at 30/06/94," and a pamphlet entitled "Some social indicators by federal unit, period 1990-1994." At the hearing, the Commission supplied two legal authorizations of the powers granted by the victims' relatives; a brief containing the statement by the Venezuelan Government's representative before the Commission; various documents includ-

ing newspaper clippings, and others referring to meetings of the attorneys in the case with the next of kin and survivors; a book entitled "Comandos del crimen: la masacre de El Amparo" (Commandos of Crime: the El Amparo Massacre) and a brief addressed to the Secretary of the Court on the various steps of the proceedings.

11. Through a communication of April 29, 1996, the Secretariat, on instructions from the President of the Court, requested the Commission to clarify its position on a number of points relating to loss of earnings and Costs and Expenses (*daño emergente*) in the case. The Commission clarified its position, on receipt of the briefs from the victims' representatives of May 13 and 29, 1996. Inasmuch as these notes presented discrepancies vis-à-vis those previously submitted by the Commission and the victims' representatives, clarification was again sought from the Commission, which responded in a note of September 13, 1996 endorsing the observations contained in the brief from the victims' representatives on September 4, 1996 "*that it is therefore* [the Court] *that would ultimately rule.*"

IV

12. In order to take an informed decision on the amount of the indemnities, in a manner in keeping with the necessary technical considerations, the Court decided to avail itself of the professional services of an actuarial expert. To that end, *Licenciado* Eduardo Zumbado J., a consultant actuary in San José, Costa Rica, was engaged. The Secretariat of the Court received his report on August 5 and 9, 1996. The actuary simply made the arithmetical calculations on the basis of the data contained in the parties' briefs and the evidence presented in the docket.

V

13. Venezuela recognizes its responsibility in the instant case, which means that it accepts as accurate the facts described in the application of January 14, 1994, this being the interpretation of the Judgment delivered by the Court on January 18, 1995. Nonetheless, the parties disagree on the scope of the reparations and the amount of the indemnities and costs.

The Court will rule on that conflict of opinion in this Judgment.

14. The provision applicable to reparations is Article 63(1) of the American Convention, which reads as follows:

> 1. 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.

The provisions of this article contain one of the fundamental principles of international law, as has been recognized in case law (*Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, page 21, and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, page 29; *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, page 184). It has been applied thus by this Court [*Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) of the American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 7, para. 25; *Godínez Cruz Case, Compensatory Damages (Art. 63(1) of the American Convention on Human Rights)*, Judgment of July 21, 1989, Series C No. 8, para. 23; *Aloeboetoe* ***et al.*** *Case. Reparations (Art. 63(1) of the American Convention on Human Rights)*, Judgment of September 10, 1993, Series C No. 15, para. 43].

15. By virtue of the foregoing, the obligation to make reparation is governed by international law in all of its aspects, such as its scope, characteristics, beneficiaries, etc. which are not subject to modification or suspension by the respondent state through invocation of provisions of its own domestic law (*Aloeboetoe* ***et al.*** *Case. Reparations, supra* 14, para. 44).

16. Inasmuch as the rule of "*restitutio in integrum*" cannot be enforced in cases in which the right to life has been violated, reparation to the victims' next of kin and dependents must take alternative forms, such as pecuniary compensation. Such compensation refers primarily to actual damages inflicted which, as this Court has declared on a previous occa-

sion, comprise both material and moral damages (see *Aloeboetoe et al. Case. Reparations, supra* 14, paras. 47 and 49).

VI

17. As far as material damages are concerned, in its written communications of November 3, 1995 and May 29, 1996 and at the public hearing on reparations of January 27, 1996, the Commission referred to Cost and Expenses and considered them to include the expenses incurred by the victims' families in their attempts to obtain information about them, and those incurred in their attempts to locate the corpses and in their dealings with the Venezuelan authorities.

18. The total amount requested by the Commission "*is US$240,000.00 to be equally divided among the fourteen families and the two survivors.*" In its brief of November 3, 1995, and at the public hearing, the Commision pointed out that the victims' representatives had said that "[t]*he State of Venezuela recognized this sum as appropriate and expressly renounced the possibility of demanding proof;*" however, it presented no evidence of such a statement. On the contrary, at the public hearing held before this Court, the State described the sum as "*astronomical*" and "*disproportionate.*"

19. In its brief of May 29, 1996, the Commission claimed that "[t]*he living conditions of the victims and their families preclude the preservation of the pertinent documentary proof; hence the need for estimates to be made.*"

20. The State, in its brief of January 2, 1996, after studying the amounts requested by the Commission, declared that "*documentary proof of the expenses actually incurred in obtaining information about the victims*" had not been produced, that the amount was clearly "*disproportionate,*" and that it bore no relation to reality.

21. Although no proof of the expenses incurred has been presented, the Court considers it fair to grant an indemnity of US$2,000.00 to each of the families of the deceased victims and to each of the survivors, as compensation for the expenses they incurred in their various representations to the national authorities.

VII

22. In arriving at an appropriate amount for the remainder of the material damages suffered by the victims, the Commission bore in mind

> the minimum rural wage on the date on which the events occurred (October 1988), incorporating the adjustments for general wage increases during the period, as well as the corresponding inflation indexing. Life expectancy is estimated at 69 years.

The Commission arrived at a figure of approximately US$5,500.00 for each victim and US$2,800.00 for the two survivors.

23. The State, for its part, declared in its brief of January 2, 1996 that there was no

> evidence to support the claim of each of the persons proposed as successors-in-title, except for the victims themselves, and certainly not for the amount sought for each of them. [It added that the amounts requested] were out of all proportion to the actual living conditions of the victims and their families, to the conditions prevailing in their geographic location, and to the general economic and social conditions in the Republic of Venezuela.

24. At the public hearing on January 27, 1996, the Delegate of the Commission said that "[w]*e consider the amount we are seeking, approximately $5,000.00 for each of the victims or their next of kin, to be a reasonable sum for the time that has elapsed.*" At the same hearing, one of the victims' representatives said that the figures arrived at by the Commission were very modest, that a conservative estimate had been made of the victims' earning capacity, and that an error had also been made in the calculation, which was why the actuarial study had been requested.

25. On April 29, 1996 the President requested the Commission to clarify some data on the subject. This information was furnished by way of briefs submitted on May 13 and 29, 1996. Moreover, in the first of the briefs, the Commission also indicated that "*a factual error had been made in calculating the victims' loss of earnings*" and changed the requested amount to a figure ranging between US$67,000.00 and US$197,000.00 for each of the victims, and approximately US$5,000.00 for each of the survivors. The

Commission also stated that the basic rural wage for the month of October 1988 was "*1,700.00 Bolívares,* [and that] *the exchange rate at that time was 37.14 Bs/US$.*"

26. By communication of June 14, 1996, the Government presented its observations on the Commission's aforementioned briefs of May 13 and 29, and alleged that:

> it was not a simple factual error, but a new calculation that exceeded by more than 1,000 percent the calculations presented at the relevant stage of the proceedings by the victims' attorneys themselves and supported by the Delegates of the Commission, [and that the Government had in good faith] accepted the amount formally requested for loss of earnings at the hearing held on last January 27. [Only months later,] the calculations [were] being radically altered ... and astronomical figures [were] now being proposed.

27. The representatives of the victims and their next of kin subsequently provided this Court with information on the victims' age and life expectancy, and the rural basic wage. They also estimated each person's personal expenses at 20 percent of their total earnings.

28. On the basis of the information received, and of the calculations made by the actuary designated *ad effectum*, the Court calculated that the indemnity to be granted to each of the victims or their next of kin depended on their age at the time of death and the years remaining before they would have reached the age at which normal life expectancy is estimated in Venezuela, or the time during which the two survivors remained unemployed. In its calculations, the Court used as the base salary an amount not less than the cost of the basic food basket, which is higher than the minimum rural wage at the time of the events. Once the calculation was made, 25 percent was deducted for personal expenses, as in other cases. To this amount was added the interest accruing from the date of the events up to the present.

29. On that basis, the Court considers that each of the deceased victims' families should receive the following amounts as indemnities:

NAME	**US$ DOLLARS**
Julio Pastor Ceballos	23,953.79
Moisés A. Blanco	28,303.94

José I. Guerrero	23,139.44
Marino E. Vivas	26,838.00
José G. Torrealba	28,535.66
José Mariano Torrealba	23,139.44
José Ramón Puerta	27,416.52
Arín Ovadía-Maldonado	23,558.79
Rigo J. Araujo	26,145.70
Pedro I. Mosquera	27,235.10
Luis A. Berrío	25,006.34
Rafael Magín Moreno	23,139.44
Carlos A. Eregua	28,641.52
Justo Mercado	26,145.70

30. The Court decides to award an indemnity of US$4,566.41 to each of the two survivors, Wolmer Gregorio Pinilla and José Augusto Arias, as compensation for the two years during which they were unfit to work.

VIII

31. In its brief of November 3, 1995, the Commission cited, as its basis for moral damages, paragraph 87 of the Judgment on reparations in the Aloeboetoe *et al.* case, and paragraphs 40 *et seq.* of the Judgment on compensatory damages in the Velásquez Rodríguez case, observing that in the instant case

> the estimated amount for moral damages is US$125,000.00 per family -based on the Velásquez and Godínez judgments- to be equitably distributed among the families, depending on the number of family members. The amount awarded to the survivors is half that amount (US$62,500.00). The total figure is US$1,875,000.00.

At the public hearing, the Delegate claimed that the moral damages should not be linked to actual damages. He maintained that moral damages "*to a victim cannot be a direct function of the victim's social status or economic situation.*"

32. In its brief of January 2, 1996 the State, for its part, cited this Court and the European Court of Human Rights, to the effect that "*the Tribu-*

nal's very recognition that a right has been violated normally constitutes just reparation for the damage inflicted;" all the more so in the instant case, inasmuch as the State itself has unilaterally recognized its responsibility. The State deemed the compensatory award for moral damages sought by the Commission to be "*excessive and quite disproportionate to the material damages and the general conditions of the instant case and the victims.*"

33. The Court observes that while the Commission did rely for its calculation of moral damages on the Court's opinions in the Velásquez Rodríguez and Godínez Cruz cases in Judgments of July 21, 1989, it is also a fact that different awards were made in the Judgment on reparations in the Aloeboetoe *et al.* case (US$29,070.00 for each of six families and US$38,155.00 for the seventh, in addition to other obligations to be discharged by the State).

34. The Court is of the opinion that, while case law may establish precedents, it cannot be invoked as a criterion to be universally applied; instead, each case needs to be examined individually. It should also be noted that in the present case, as in that of Aloeboetoe *et al.*, and unlike the Velásquez Rodríguez and Godínez Cruz cases, the State has acknowledged the facts and accepted responsibility.

35. This having been said, there are numerous cases in which other international tribunals have decided that a condemnatory judgment *per se* constitutes adequate reparation for moral damages, as amply demonstrated by the case law of, among others, the European Court of Human Rights (*arrêt Kruslin du 24 avril 1990, série A No. 176-A*, p. 24 par. 39; *arrêt McCallum du 30 août 1990, série A No. 183*, p. 27 par. 37; *arrêt Wassink du 27 septembre 1990, série A No. 185-A*, p. 15 par. 41; *arrêt Koendjbiharie du 25 octobre 1990, série A No. 185-B*, p.42 par. 35; *arrêt Darby du 23 octobre 1990, série A No. 187*, p. 14 par. 40; *arrêt Lala c. Pays-Bas du 22 septembre 1994, série A No. 297-A*, p. 15 par. 38; *arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A No. 297-B*, p. 36, par. 44; *arrêt Kroon et al. c. Pays-Bas du 27 octobre 1994, série A No. 297-C*, p. 59 par. 45; *arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A No. 300-B*, p. 76, par. 46; *arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A No. 303-A*, p. 13, par. 33; *arrêt B. contre Autriche du 28 mars 1990, série A No. 175*, p. 20, par. 59). However, it is the view of this Court that while a condemnatory judgment may in itself constitute a form of reparation

and moral satisfaction, whether or not there has been recognition on the part of the state, it would not suffice in the instant case, given the extreme gravity of the violation of the right to life and of the moral suffering inflicted on the victims and their next of kin, who should be compensated on an equitable basis.

36. As this Court has held in the past,

> [i]t is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion. (*Aloeboetoe et al. Case. Reparations, supra* 14, para. 52.)

37. In the light of the above, the Court, taking all the special circumstances of the case into account, concludes that it is fair to award an indemnity of US$20,000.00 to each of the families of the deceased and to each of the survivors.

IX

38. The Court has ruled in previous cases that the indemnity which should be paid for the arbitrary deprivation of a person's life is a right to which those directly injured by that fact are entitled.

39. At the Court's request, the Commission, on the basis of data provided by the victims' various representatives, presented a series of lists containing the names of the persons who it claims to be the victims' offspring, parents and spouses. For that reason, it has not been possible for the Court to establish an exact list of the victims' successors at the time of their deaths, owing to the contradictions and inaccuracies found in the information supplied. Consequently, in drawing up the list that appears in paragraph 42 below, the Court has been obliged to collate the various lists produced by the Commission and the victims' representatives.

40. As the Court has also declared on previous occasions, it is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the

spouse inheritance rights along with the children (*Aloeboetoe et al. Case. Reparations, supra* 14, para. 62). However, the Court notes that one of the victims, Julio Pastor Ceballos, had a female companion as well as a wife, and had fathered children with both. As far as they are concerned, the Court deems it just to divide the indemnity between the two.

X

41. As regards the distribution of the amounts fixed for the various types of compensation, the Court considers that it would be equitable to apply the following criteria which are in keeping with previous decisions (*Aloeboetoe et al. Case. Reparations, supra* 14, para. 97):

a. Reparations for material damages shall be divided as follows: one third to the wife and two thirds to the children, to be divided among them in equal parts.

b. Reparations for moral damages shall be awarded as follows: one half to the children, one quarter to the wife, and the remaining quarter to the parents.

c. If there is no wife, but a female companion, the portion that would have gone to the former shall be awarded to the latter.

d. As far as reparations for material damages are concerned, if there is neither wife nor female companion, that portion shall be awarded to the parents. In the case of moral damages, if there is neither wife nor female companion, that part shall be added to the share of the children.

e. If there are no parents, their portion shall be awarded to the children of the victims; if there is only one surviving parent, that parent shall receive the entire amount of that share.

f. The expenses shall be reimbursed to the wife or female companion.

g. The two surviving victims shall receive the entire amount of the compensation awarded to them.

42. On the basis of the information contained in the docket, the Court has prepared the following list of beneficiaries entitled to compensation:

1) **Julio Pastor Ceballos**

PARENTS
Mercedes Durán de Ceballos
Ramón A. Ceballos (appears as the father on one of the lists of the victims' representatives)

WIFE:
Emperatriz Vargas (does not appear on one of the lists supplied by the victims' representatives)

COMPANION:
Florinda Velandia[1] (does not appear on one of the lists supplied by the victims' representatives)

CHILDREN:
Carmen Ceballos
Yris Ceballos
Zulma Ceballos
Julio R. Ceballos
Dedora Ceballos
María Aurelia Ceballos
Jorge Luis Ceballos*
Zaida Ceballos*
Xiomara Ceballos*
Luz Ceballos*

2) **Moisés A. Blanco**

MOTHER:
María Isabel Blanco

CHILDREN:
Moisés Blanco (does not appear on one of the lists supplied by the victims' representatives)
Jasmir Blanco (does not appear on one of the lists supplied by the victims' representatives)

1 All the names marked with an asterisk are children of Julio Pastor Ceballos and Florinda Velandia.

3) **José I. Guerrero**

MOTHER:
María Concepción Guerrero

CHILDREN:
Virginia Carrillo (does not appear on one of the lists supplied by the victims' representatives)
Soraida Guerrero
Ana L. Guerrero (does not appear on one of the lists supplied by the victims' representatives)
María Concepción Guerrero B. (appears on one of the lists supplied by the victims' representatives as an additional daughter)

4) **Marino E. Vivas**

MOTHER:
Leticia Vivas

WIFE:
Noira Modesta López (does not appear on one of the lists supplied by the victims' representatives)

CHILDREN:
Betty X. Vivas
Rafael Vivas (appears as an additional son on one of the lists supplied by the victims' representatives)

5) **José G. Torrealba**

PARENTS:
María Felipa Bello de Torrealba
José Mariano Torrealba (appears as the father on one of the lists supplied by the victims' representatives)

6) **José Mariano Torrealba**

WIFE:
María Felipa Bello de Torrealba (appears on the lists as beneficiary of two different victims, José G. Torrealba and José Mariano Torrealba)

CHILDREN:
José Enrique Torrealba
María Adelaida Torrealba
José Omar Torrealba
José Jasmín Torrealba
Rosa Candelaria Torrealba
Bladimir José Torrealba (appears on one of the lists supplied by the victims' representatives as another son)

7) **José Ramón Puerta**

PARENTS:
Ana Cristina Ascanio
José Melquíades Puerta

8) **Arín Ovadia Maldonado**

MOTHER:
María A. Maldonado

9) **Rigo J. Araujo**

MOTHER:
Claudia A. Araujo (the mother's name appears as Ana Gregoria on one of the lists supplied by the victims' representatives)

10) **Pedro I. Mosquera**

MOTHER:
Carmen Mosquera

WIFE:
Ana E. Cedeño (does not appear on one of the lists supplied by the victims' representatives)

SON:
Pedro I. Mosquera
William Mosquera (appears as an additional son on the lists supplied by the victims' representatives, but not on that of the Inter-American Commission)

11) **Luis A. Berrío**

PARENTS:
Wana Matilda de Berrío
Pedro Vicente Bravo (appears as the father on one of the lists supplied by the victims' representatives and the Court also noted that he has a different surname)

WIFE:
Teresa Pérez

CHILDREN:
María E. Berrío
Mercedes Berrío
Luisa Berrío
Consuelo Berrío (does not appear on one of the lists supplied by the victim's representatives)
Nelson Berrío
José Berrío
Carmen Berrío
Elluz Berrío

12) **Rafael Magín Moreno**

MOTHER:
Victoria Moreno

COMPANION:
Rosa T. Eregua (does not appear on one of the lists supplied by the victims' representatives; appears on another list as the beneficiary of two different victims: Rafael Magín Moreno and Carlos A. Eregua).

CHILDREN:
Magín Moreno
Roger Eregua (does not appear on one of the lists supplied by the victims' representatives)
Rafael Moreno (does not appear on one of the lists supplied by the victims' representatives)

13) **Carlos A. Eregua**

MOTHER:
Rosa T. Eregua

14) **Justo Mercado**

COMPANION:
Doris Salazar

CHILDREN
José Salazar
María Salazar (does not appear on one of the lists supplied by the victims' representatives)
Geraldo Salazar (does not appear on one of the lists supplied by the victims' representatives)
Juan Salazar (does not appear on one of the lists supplied by the victims' representatives)
Petra Salazar

15) **Wolmer Gregorio Pinilla** (Survivor)

16) **José Augusto Arias** (Survivor)

In the case of the discrepancies noted above, the right to the corresponding indemnities shall be subject to the presentation of supporting documents to the Government of Venezuela by the interested parties.

XI

43. This judgment is to be executed in the following manner: the State shall pay the indemnities awarded to the adult relatives and the survivors within six months of the date of notification. Should any of them die before the payment is made, the sum shall be payable to his or her heirs.

44. In its briefs and at the public hearing of January 27, 1996, the Commission always calculated the compensation in United States dollars. In its communication of June 14, 1996, the Government reiterated that the calculations "*should be made in Bolívares, which is the local currency of the Republic of Venezuela, where the successors-in-title reside.*"

45. In respect of the above, the Court decides that the State may fulfill this obligation through payments in dollars of the United States or of the equivalent amount in the local currency of Venezuela. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Venezuelan Bolívar quoted on the New York market on the day before the date of the payment.

46. For payment of the compensation to the minor children, the Government shall set up, within six months, trust funds in a solvent and sound Venezuelan banking institution, on the most favorable terms permitted by banking laws and practice, for each of the minor children, who shall receive the interest accrued on a monthly basis. Once the children become of age or marry, they shall receive the total owing to them. In the event of their death, their rights shall pass to their heirs.

47. In the event that any of the adults fail to claim payment of the compensation to which they are entitled, the State shall deposit the sum due in a trust fund on the terms set forth in the previous paragraph, and shall make every effort to locate that person. If ten years from the establishment of the trust fund the indemnity has not been claimed by the person or his or her heirs, it shall be returned to the State and this judgment shall be deemed to have been fulfilled with regard to that person. The foregoing shall also apply to the trust funds set up for the minor children.

48. The compensation paid shall be exempt from any tax currently in force or any that may be decreed in the future.

49. Should the Government be in arrears with its payments, it shall pay interest on the total of the capital owing at the current bank rate on the date of the payment.

XII

50. In regard to the non-pecuniary reparations and costs, the Commission in its brief of November 3, 1995 requested the Venezuelan State to call a press conference and subsequently inform the public, through the major national daily newspapers, that the events that occurred at "El Amparo" on October 29, 1988 were the responsibility of the State. This

must be accompanied by "[t]*he declaration that never will acts such as those perpetrated in this case be tolerated and by the establishment of a foundation for the purpose of promoting and disseminating international human rights law throughout the region where the events occurred.*" It did not, however, support the requests by the victims' representatives for "*publication in the major international newspapers.*"

51. In its brief of January 3, 1996 the State declared that the non-pecuniary reparations sought by the Commission were not consistent with "*either international case law in general, or with the case law of the Inter-American Court in particular.*" The State considered that the satisfaction sought by the Commission on behalf of the victims had been covered in the claim for moral damages, and claimed that "[t]*he honor and reputation of the victims and their next of kin have been fully restored with the Court's judgment on the merits ... and with the recognition of responsibility -prior and subsequent- by the Republic of Venezuela for the events that took place.*"

52. In the aforementioned brief of November 3, 1995, the Commission requested the reform of the Military Code of Justice, specifically Article 54(2) and (3), and of any military regulations and instructions that are incompatible with the Convention. That article states in its operative part that:

> [t]he President of the Republic, as a functionary of military justice, is empowered ... 2) To order that a military trial not be held in certain cases, when he deems it in the national interest. 3) To order the discontinuance of military trials, when he deems it advisable, in any circumstances.

53. In the same brief the Commission called for an investigation and "*effective punishment of the physical and intellectual authors, of the accomplices and of those who sought to cover up the events that gave rise to the instant case.*"

54. In its aforementioned brief of January 3, 1996, the State claimed that the Commission's request bore no relation to the events and to the State's responsibility, inasmuch as redress necessitates restoring the situation that existed prior to the events that gave rise to its responsibility. It maintained that "[n]*othing that the Commission seeks in this regard can represent this type of restoration. The Code of Military Justice is not,* ***per se****, incompatible with the American Convention on Human Rights.*"

55. With regard to the investigation and effective punishment of the perpetrators of the acts, the State argued that

> it is clear that the Judgment of the Inter-American Court can do more than order the appropriate indemnities without infringing the rights of those allegedly implicated. Compensation of the victims and their next of kin, recognition of the international responsibility of the Venezuelan State, and the condemnatory judgment of the Inter-American Court of Human Rights are the ideal means of making reparation -as far as possible- for the damages caused to the victims and their next of kin.

56. In short, the Commission defines the non-pecuniary reparations as: reform of the Code of Military Justice and those military regulations and instructions that are incompatible with the Convention; investigation and effective punishment of the physical and intellectual authors, of their accomplices and of those who sought to cover up the acts that gave rise to the instant case; satisfaction of the victims by restoring their honor and reputation, and the unequivocal establishment of the facts; satisfaction of the international community through the declaration that acts such as those that occurred in this case will not be tolerated; and the creation of a foundation for the promotion and dissemination of international human rights law in the region in which the events occurred.

57. The State, for its part, contends that the impugned articles of the Code of Military Justice were not enforced in the instant case and merely constitute a prerogative of the President of the Republic; that the victims have received satisfaction through Venezuela's acceptance of responsibility, and that the non-pecuniary reparations are inconsistent with international jurisprudence in general, and with that of this Court in particular.

58. In connection with the foregoing, the Court considers that, in effect, Article 54 of the aforementioned Code, which grants the President of the Republic the power to order that a military trial not be held in specific cases when he deems it in the national interest and to order the discontinuance of military trials at any stage, has not been enforced in the instant case. The military authorities charged and prosecuted those responsible for the El Amparo case, and the President of the Republic never ordered the cessation, or any discontinuance, of the trial.

59. In Advisory Opinion OC14/94, this Court stipulated:

> The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions. There is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention. As has already been noted, the Commission has that power and, in exercising it, would fulfill its main function of promoting respect for and defense of human rights. The Court also could do so in the exercise of its advisory jurisdiction, pursuant to Article 64(2) of the Convention. [*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2, American Convention on Human Rights)* Advisory Opinion OC 14/94 of December 9, 1994. Series A No. 14, para. 49.]

60. The Court, pursuant to the above Advisory Opinion, abstains from making a pronouncement in the abstract on the compatibility of Venezuela's Code of Military Justice, and its regulations and instructions, with the American Convention, and therefore does not deem it appropriate to order the Venezuelan State to undertake the reforms sought by the Commission.

61. Continuation of the process for investigating the acts and punishing those responsible is an obligation incumbent upon the state whenever there has been a violation of human rights, an obligation that must be discharged seriously and not as a mere formality.

62. As far as the other non-pecuniary reparations requested by the Commission are concerned, the Court considers that Venezuela's recognition of its responsibility, the January 18, 1995 judgment on the merits of this case (see *El Amparo Case, supra* 5) and the present judgment rendered by this Court constitute adequate reparation in themselves.

XIII

63. With reference to the Commission's request to be awarded costs, the Court has stated on previous occasions that the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs (*Aloeboetoe* ***et al.*** *Case. Reparations, supra* 14, paras. 110 - 115).

XIV

64. **NOW, THEREFORE:**

THE COURT,

Unanimously,

1. Sets the total reparations at US$722,332.20 to be paid to the next of kin and the surviving victims referred to in the instant case. This payment shall be made by the State of Venezuela within six months of the date of notification of the present judgment, and in the form and conditions set out in the preceding paragraphs.

Unanimously,

2. Orders the creation of the trust funds in the terms set forth in paragraphs 46 and 47 of this judgment.

Unanimously,

3. Decides that the State of Venezuela may not impose any tax on the indemnities paid.

Unanimously,

4. Decides that the State of Venezuela shall be obliged to continue investigations into the events referred to in the instant case, and to punish those responsible.

By four votes to one,

5. Declares that it is inappropriate to order non-pecuniary reparations or to rule on the compatibility with the American Convention on Human Rights of the Code of Military Justice and the military regulations and instructions,

Judge Cançado Trindade dissenting.

Unanimously,

6. Decides that it shall supervise compliance with this Judgment and that only when it has been executed will the case be considered closed.

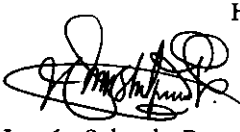
Unanimously,

7. Rules that payment of costs shall not be ordered.

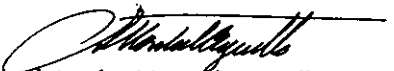
Judge Cançado Trindade informed the Court of his dissenting opinion, which shall be attached to this judgment.

Done in Spanish and English, the Spanish text being authentic; in San José, Costa Rica, on this fourteenth day of September, 1996.

Héctor Fix-Zamudio
President



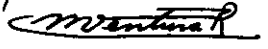
Hernán Salgado-Pesantes



Alejandro Montiel-Argüello

Alirio Abreu-Burelli

Antônio A. Cançado Trindade



Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on September 20, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary