

Inter-American Court of Human Rights

Case of Loayza-Tamayo v. Peru

Judgment of November 27, 1998 (Reparations and Costs)

In the Loayza Tamayo 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, Deputy Secretary *ad interim*,

pursuant to articles 29, 55 and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") and in compliance with the Judgment of September 17, 1997, enters the following judgment on reparations in the 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 JURISDICTION

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

II BACKGROUND

2. The Inter-American Commission on Human Rights brought the instant Case to the Court by application dated January 12, 1995, attached to which was Report No. 20/94 of September 26, 1994. The Case originated with a complaint (No. 11,154) against Perú, received at the Secretariat of the Commission on May 6, 1993.

3. On September 17, 1997, the Court passed Judgment on the merits of the Case, the operative part of which declares that:

[...]

1. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the Right to Personal Liberty recognized in Article 7 of the American Convention on Human Rights, in relation to Articles 25 and 1(1) thereof.

[...]

2. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the Right to Humane Treatment recognized in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof.

[...]

3. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the judicial guarantees established in Article 8(1) and (2) of the American Convention on Human Rights, in relation to Articles 25 and 1(1) thereof, on the terms set forth in this Judgment.

[...]

4. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the Judicial Guarantees established in Article 8(4) of the American Convention on Human Rights, in relation to Article 1(1) thereof.

[...]

5. To order the State of Peru to release María Elena Loayza-Tamayo within a reasonable time, on the terms set forth in paragraph 84 of this Judgment.

[...]

6. That the State of Peru is obliged to pay fair compensation to the victim and her next of kin and to reimburse them for any expenses they may have incurred in their representations before the Peruvian authorities in connection with this process, for which purpose the corresponding proceeding remains open.

4. On October 20, 1997, Peru reported that on October 16 of that year it had released Ms. María Elena Loayza-Tamayo (hereinafter "the victim"), in compliance with the Judgment issued by the Court on September 17, 1997. The victim appeared before the Court, in person, at a public hearing held on June 9, 1998 and with that confirmed the fact that she had been released by the State.

III PROCEEDINGS AT THE REPARATIONS STAGE

5. In compliance with the Judgment entered on September 17 of that year, on November 11, 1997 the Inter-American Court decided as follows:

1. To grant the Inter-American Commission on Human Rights until January 12, 1998 to submit a brief and whatever evidence it might have in its possession for purposes of determining the compensation and costs in the instant case.
 2. To grant Ms. María Elena Loayza-Tamayo, the victim in the instant case, and her next of kin or their representatives, until January 12, 1998, to submit a brief and any evidence they may have for purposes of determining the compensation and costs.
 3. To give the State of Peru until March 16, 1998, to present its observations on the briefs submitted by the Inter-American Commission on Human Rights, the victim, her next of kin or their representatives, referred to in the preceding paragraphs.
6. On December 16, 1997, the Inter-American Commission informed the Court that Mr. Domingo E. Acevedo had been designated as a delegate in the instant Case, to serve with delegate Oscar Luján-Fappiano. On February 27, 1998, the Commission withdrew the appointment of attorney Verónica Gómez as its assistant.
7. On December 24, 1997, the Commission petitioned the Court seeking an extension of the deadline given to file its brief on reparations in the instant Case. By an order of that same date, the President of the Court (hereinafter "the President") extended until January 31, 1998, the deadline established for the victim, her next of kin or their representatives and the Inter-American Commission to file their briefs on reparations. The President also extended the deadline given to the State to present its brief in this matter until April 6, 1998. On January 21, 1998, the Court confirmed the President's order.
8. On January 30, 1998, the Inter-American Commission submitted its brief on reparations in the instant Case. The victim submitted her reparations brief that same day, and indicated that the attachments thereto would be forwarded to the Court later. On February 5, 1998, the victim sent those attachments to the Court, which were then forwarded to the Commission and to the State on February 9, 1998. The only exception was a videotape, corresponding to Appendix IV; copies of that tape were made and then sent to the Commission and to Peru on February 16, 1998.
9. On February 5, 1998, the victim informed the Court that in the instant proceedings, she would be represented by Ms. Carolina Loayza-Tamayo, and by Mr. Ariel Dulitzky, Ms. Viviana Krsticevic and Ms. Marcela Matamoros, members of the Center for Justice and International Law (CEJIL), and by Mr. José Miguel Vivanco, member of Human Rights Watch/Americas. On June 18, 1998, Ms. Marcela Matamoros informed the Court that she had resigned as representative of the victim.
10. On March 9, 1998, the President summoned the victim and her next of kin or their representatives, the Inter-American Commission and Peru to a public hearing on reparations, to be held at the seat of the Court on June 9, 1998.
11. On March 24, 1998, the State requested that the Court clarify which of the briefs on reparations, presented by the victim and by the Commission was to be regarded as the "official petition" in these proceedings. On March 25, 1998, the Secretariat informed Peru that:

pursuant to the article [23 of the Rules of Procedure], the Inter-American Commission of Human Rights and the victim and her representatives presented their briefs on reparations independently of each other. Hence, the State of Peru may respond to those briefs and the arguments they contain however it sees fit.

12. On March 31, 1998, the State requested that the President extend the deadline set for its observations on the briefs on reparations and make the new deadline June 6, 1998. On April 2, 1998, the Secretariat informed Peru that the deadline for its brief had been extended to May 12, 1998.

13. On April 20, 1998, the Secretariat asked the victim, the Commission and the State to specify how many witnesses and experts they would call at the public hearing that the Court was to hold on reparations at its seat on June 9, 1998, and what the purpose of their testimony or expert testimony would be. Further likewise, following instructions from the President, the Secretariat requested that, for the sake of procedural speed and economy, particular consideration be given to the possibility of presenting some testimonial and expert evidence in the form of sworn affidavits.

14. On April 28, 1998, the victim presented observations on the testimonial and expert evidence. She also offered herself as a witness and explained the purpose of her testimony. She added that she would submit sworn affidavits from the following persons: Julio Loayza-Sudario, Adelina Tamayo de Loayza, Gisselle Elena Zambrano-Loayza, Paul Abelardo Zambrano-Loayza, and Delia Haydée, Carolina Maida, Julio William, Olga Adelina, Rubén Edilberto and Giovanna Elizabeth, all by the surname Loayza-Tamayo, and the expert opinion of an unnamed member of the "Fundación de Ayuda Social de Fieles de las Iglesias Cristianas" (hereinafter "FASIC"). In her brief, the victim also requested that:

- a) The government's brief of reply, the deadline for which [was set to] expire on May 12, be forwarded to her so that she might present [her] observations and offer any documentary, testimonial and expert evidence deemed necessary and pertinent.
 - b) The deadline for submitting the final list of witnesses and the sworn affidavits be extended until the content of the Peruvian government's reply [was] known by her.
15. On May 5, 1998, the Secretariat informed the victim that:

- a) In keeping with the Court's customary practice, the State's brief on reparations [would] be sent to the Inter-American Commission and to the victim as soon as it [was] presented at this Secretariat. However, no provision is made for rebuttals and rejoinders at the reparations stage of the proceedings.
- b) Under the Court's established rules and Article 43 of its Rules of Procedure, any evidence the Parties tender is to be set forth in the original brief each party submits for each stage of the proceeding. In the instant case, the victim properly tendered evidence in her brief on reparations.
- c) The note from the Secretariat, dated April 20, 1998, was intended to clarify certain discrepancies in the evidence tendered by the victim. Accordingly, it does not constitute another tender of evidence, as its sole purpose was to clarify the evidence tendered with the original brief.
- d) When any party believes there is just cause to tender an item of evidence at a time other than that already established, the circumstances must fit those set forth in Article 43 of the Court's Rules of Procedure.

For these reasons, the President has denied your request for an extension of the deadline for presenting the final list of witnesses and experts. As for your request that a deadline be set for filing the sworn affidavits that were offered, the President will determine that deadline and you will be notified accordingly.

16. On May 4, 1998, the Commission named the victim as a witness and specified the purpose of her testimony.

17. On May 7, 1998, the State presented its observations on the reparations briefs, and attached documentary evidence thereto.

18. On May 12, 1998, the President summoned the victim to testify during the public hearing that was scheduled to be held at the seat of the Court and informed the victim that the "sworn affidavits" and expert report offered in her brief of April 28, 1998 (supra 14) were to be submitted by no later than May 29, 1998.

19. On May 28, 1998, the victim submitted affidavits that Gisselle Elena Zambrano-Loayza, Paul Abelardo Zambrano-Loayza, Adelina Tamayo de Loayza, Julio Loayza-Sudario, Olga Adelina Loayza-Tamayo, Elizabeth Giovanna Loayza-Tamayo and Carolina Loayza-Tamayo had made under oath and signed in the presence of a notary. She also presented a second power of attorney and a number of additional documents, invoking articles 43 and 44 of the Court's Rules of Procedure (hereinafter "the Rules") for her submissions.

20. On June 8, 1998, Peru presented its observations on the brief submitted by the victim on April 28 of that year, wherein it reiterated some issues raised in her reparations brief and objected to some of the documents.

21. On June 9, 1998, the State objected to the plan to take the victim's testimony. At a meeting held prior to the public hearing the Court was to hold later that same day, the President heard arguments from the State, the victim and the Commission, then dismissed the State's objection and decided that the Court would hear the testimony in question.

22. That same day, the Court held the public hearing on reparations.

There appeared before the Court:

the victim, María Elena Loayza-Tamayo, who also testified, and her representatives:

Carolina Loayza-Tamayo and
Ariel E. Dulitzky;

for the Inter-American Commission:

Oscar Luján-Fappiano, delegate, and
Domingo E. Acevedo, delegate;

for the State:

Jennie Vizcarra-Alvizuri, alternate agent,
Ana Reátegui-Napurí, advisor and
Walter Palomino-Cabezas, advisor.

23. In the course of her testimony, the victim turned over a newspaper article titled "*Niegan Billete a María Elena Loayza-Tamayo*", published in the May 12, 1998 issue of the Lima newspaper "*Ojo*".

24. On June 11, 1998, the victim sent the Court several documents concerning her state of health, receipts for medical expenses and an estimate for dental work, invoking Article 43 or Article 44, as appropriate, of the Court's Rules of Procedure.

25. On July 14, 1998, the State filed an objection to the documentation that the victim had submitted on June 11 of that year, arguing that the documentation in question had been submitted extemporaneously.

26. As evidence to help it arrive at a more informed judgment, on July 23, 1998 the Secretariat requested that Peru submit the official exchange rate between the local currency of Peru and the United States dollar for the period from 1993 to 1998, as quoted by the Banco Central del Perú. It also requested Peru's legislation on the matter of salaries and work bonuses. Via notes dated August 21 and September 11, 29 and 30, 1998, the State complied with the Court's request.

27. On July 30, 1998, Peru petitioned the Court to convene another public hearing to "elaborate upon the arguments given in support of its observations [...] concerning the reparations requested in these proceedings." In notes dated July 29 and 30, 1998, the victim and the Commission objected to the request. On July 30, the Secretariat informed the State that its request had been denied.

28. On August 29, 1998, the Court decided the following:

1. As evidence to help the Court arrive at a more informed judgment, to request the "Colegio Médico de Chile" to commission one or more of its members to issue a medical report on the physical and psychiatric condition of Ms. María Elena Loayza-Tamayo.

2. As evidence to help the Court arrive at a more informed judgment, to request the "Colegio Médico del Perú" to commission one or more of its members to issue a medical report on the psychiatric condition of Gisselle Elena Zambrano-Loayza and Paul Abelardo Zambrano-Loayza.

[...]

7. To instruct the Secretariat of the Court that once received, the reports be forwarded to the victim, the Inter-American Commission on Human Rights and to the State of Peru.

8. To grant the victim, the Inter-American Commission on Human Rights and the State of Peru a period of one month to present such observations as they deem necessary regarding those reports.

[...]

29. On September 11, 1998, Gisselle Elena and Paul Abelardo Zambrano-Loayza reported that they had contacted the "Colegio Médico de Perú" in connection with preparation of the report on their psychiatric condition. They also informed the Court that Ms. Carolina Loayza-Tamayo would be representing them in the proceedings before the Court.

30. On October 2, 1998, the "Colegio Médico de Chile" reported that it had commissioned Dr. Roberto von Bennewitz and Dr. Martín Cordero-Allary to do the physical and psychiatric evaluation of the victim.

31. On October 2, 1998, the "Colegio Médico del Perú" reported that it had commissioned Dr. René Flores-Agreda, psychiatrist, to evaluate the psychiatric condition of Gisselle Elena and Paul Abelardo Zambrano-Loayza.

32. On October 7 and 9, 1998, the "Colegio Médico de Chile" presented the expert report submitted by Dr. Roberto von Bennewitz, a forensic physician, and the psychiatric report prepared by Dr. Martín Cordero-Allary on the victim's state of health. On October 13 of that year, the "Colegio Médico del Perú" presented the reports prepared by Dr. René Flores-Agreda on the health condition of Gisselle Elena and Paul Abelardo Zambrano-Loayza. That same day, the reports were forwarded to the victim, to the Commission and to the State, who were told that under the Court order, any observations they deemed appropriate were to be submitted by no later than November 13, 1998.

33. On November 13, 1998, Peru submitted its observations on the reports in question and challenged their probative value. It also requested that the Court appoint suitable experts for the opinions ordered by the Court in its decision of August 29, 1998.

34. Neither the victim nor the Commission presented any observations on the expert reports submitted.

IV PRELIMINARY CONSIDERATIONS

35. The State alleged an irregularity in connection with the filing of the victim's brief on reparations, because:

how could it be that a 32-page brief was sent by fax from Washington, D.C., in the United States, to San José, Republic of Costa Rica, seat of the Honorable Court, at the same hour (21:55 or 19:53, January 30, 1998)? The Government of Peru wants and demands a reasonable explanation of this irregularity and of why the Court did not reject *in limine* the extemporaneous filing of [the] evidentiary materials.

36. The Court does not consider it necessary to address this argument at length. The Court's Secretariat has stated that the document in question was submitted on January 30, which is sufficient for the Court to flatly dismiss the State's contention of a purported irregularity with this filing.

V GENERAL CONSIDERATIONS ON THE EVIDENCE

37. Article 43 of the Rules of Procedure of the Court provides that:

[i]tems 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.

38. The Court has previously held that its proceedings are not bound by the same formalities that bind domestic courts in their proceedings. It has been the consistent case law of the Court that some latitude is permissible in receiving evidence and that when certain elements are added to the body of evidence, particular attention must

be given to the circumstances of the case in question, with due regard for the conditions necessary to preserve the principle of legal certainty and the balanced procedural rights of the parties.

39. This practice also applies to the briefs containing the reparations claims and to the State's brief commenting on the reparations brief, which are the principal documents at this stage and that in general are subject to the same formalities as the application and reply on the merits insofar as evidence is concerned. Here it is important to recall the Court's finding that:

the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved (*Cayara Case, Preliminary Objections*, Judgment of February 3, 1993. Series C No. 14, para. 42).

40. Therefore, the Court will address the evidentiary aspects of the instant case within the legal framework thus described.

DOCUMENTARY EVIDENCE

41. At the time she submitted her reparations brief, the victim stated that its appendices would be forthcoming. On February 5, 1998, she presented the following documents as evidence:

a) Documents pertaining to the victim's domicile

(cf. certification of domicile issued by the Banco de la Nación; certification of domicile issued by the National Police Ministry of the Interior of Perú, and made out in the name of María Elena Loayza-Tamayo, Appendix I);

b) Birth certificates of the victim, her children and her siblings, and her parent's marriage certificate

(cf. birth certificates for Gisselle Elena Zambrano-Loayza, Paul Abelardo Zambrano-Loayza and María Elena Loayza-Tamayo, Appendix II; civil marriage certificate for Julio Loayza-Sudario and Adelina Tamayo-Trujillo; birth certificates for Delia Haydée Loayza-Tamayo, Carolina Maida Loayza-Tamayo, William Julio Loayza-Tamayo, Olga Adelina Loayza-Tamayo, Elizabeth Giovanna Loayza-Tamayo and Rubén Edilberto Loayza-Tamayo, Appendix III);

c) Curriculum vitae and personal background of the victim

(cf. curriculum vitae of María Elena Loayza-Tamayo; certificate attesting to the good character of María Elena Loayza-Tamayo, issued by the Director, Office of the Deputy Director, OBE Advisory Services, Asociación de Padres de Familia [Parents' Association] of the Colegio "José Gabriel Condorcanqui" [José Gabriel Condorcanqui High School], November 23, 1993; certification of employment and good character in the name of María Elena Loayza-Tamayo, issued by the Director of the "C.E. José Gabriel Condorcanqui", U.S.E. 07-Rimac, November 24, 1993; certification issued by the Director of the National School of Dramatic Arts, December 15, 1993; memorandum from the head of the Humanities Department to María Elena Loayza-Tamayo, dated June 2, 1988; certification issued by the Director of the Universidad de San Martín de Porres concerning María Elena Loayza-Tamayo, April 24, 1989; note from the Universidad de San Martín de Porres, addressed to María Elena Loayza-Tamayo, January 14, 1990; circular RNC. 271-91-DEA-FCA-USMP, from the Director of the School of Management to María Elena Loayza-Tamayo, dated December 11, 1991; Decision No. 058-92-FCS-SMP of the Universidad de San Martín de Porres, August 12, 1992; certification issued by the Office of the University Personnel Management Office, for María Elena Loayza-Tamayo, January 3, 1994; certification of María Elena Loayza-Tamayo's employment, issued by the Chief of the Office of Personnel and Services of the

University of San Martín de Porres, January 5, 1994; certification issued by the Director of the Chorrillos Maximum Security Women's Prison, September 11, 1997; degree of "Licenciada" in Education in Social Historical Sciences, awarded to María Elena Loayza-Tamayo, March 26, 1985; degree of "Licenciada" in Social Work, awarded to María Elena Loayza-Tamayo, July 11, 1991; certification from the National Center of Health-Related Educational Technology concerning María Elena Loayza-Tamayo, Seminar Workshop on "Didactics as Applied to Instruction in Health Sciences", April 15, 1988; certification from the Ministry of Health concerning María Elena Loayza-Tamayo, May 7, 1987, Seminar Workshop on "Public Health-Sex Education and Family Planning;" record of the Ministry of Health for María Elena Loayza-Tamayo, April 22, 1987. Participation in the "First Aid Training Program" course; certification issued by the Office of the Director of the Lima-South Departmental Health Unit for María Elena Loayza-Tamayo, May 7, 1987; letter from Data Processing, Health, Medicine and Agriculture Projects, addressed to María Elena Loayza-Tamayo, September 4, 1987; degree of "Bachiller" in Social Work, awarded to María Elena Loayza-Tamayo by the Universidad de San Martín de Porres on June 22, 1990; and degree of "Bachiller" in Education, awarded to María Elena Loayza-Tamayo by the Universidad de San Martín de Porres, September 6, 1982, Appendix XXIV; certification issued by the Academic Director of the School of Law of the Universidad Mayor de San Marcos concerning María Elena Loayza-Tamayo, December 17, 1997; and registration reports for María Elena Loayza-Tamayo at the Universidad Nacional Mayor de San Marcos, School of Law, December 16, 1997, Appendix XXV);

d) Documents pertaining to the victim's employment history

(cf. listing of employment records for María Elena Loayza-Tamayo as of February 6, 1996; certification issued by the Director of the Colegio Nacional "José Gabriel Condorcanqui", November 19, 1997; certification issued by the Director of the National School of Dramatic Arts, February 15, 1993; certification issued by the head of the Academic Department of the School of Administrative Sciences of the Universidad de San Martín de Porres, March 3, 1993, and certification issued by the Academic Dean of Education and Humanities of the Universidad de San Martín de Porres, February 24, 1993, Appendix XIV);

e) Documents pertaining to the victim's earnings

(cf. earnings statement for María Elena Loayza-Tamayo, January 25, 1993; earnings statement for María Elena Loayza-Tamayo, November 13, 1997, Appendix XII; tabulation of earnings of María Elena Loayza-Tamayo as of the date of her detention, February 6, 1993; vouchers from the Ministry of Education made out in the name of María Elena Loayza-Tamayo, from January 1993, September 1992, December 1992; a monthly pay slip from the Universidad de San Martín de Porres made out in the name of María Elena Loayza-Tamayo, February 1, 1993; and a certification from the Instituto Nacional de Cultura [National Institute of Culture], dated December 19, 1997, Appendix XIII);

f) Documents pertaining to the victim's current employment status

(cf. resolution No. 0805, July 10, 1996, from the Office of the Director of the Educational Services Unit USE 07 -- Rimac, Appendix VII; official memorandum No. 314-97/DCN"JGC", dated November 10, 1997, from Aquiles L. Reynoso Lázaro, CH "José Condorcanqui", to Francisco Javier Herrera Tuesta, Director of the Section II Program of the U.S.E.02; request to the Director of the Educational Services Unit U.S.E. 02-Rimac, from María Elena Loayza-Tamayo, dated November 21, 1997; and Resolution No. 2273 from the Office of the Director of the Educational Services Unit No. 02 Rimac-Independencia-San Martín de Porres, December 17, 1997, Appendix XXVI; request for reinstatement at the "José Gabriel Condorcanqui" Educational Center, dated October 27, 1997, addressed to the Director of the Educational Services Unit 02 Rimac; request for reinstatement on the teaching staff of the School of Dramatic Arts, dated November 27, 1997; request for reinstatement on the teaching staff of the Universidad de San Martín de Porres, dated December 3, 1998; request for reinstatement on the teaching staff of the School of Management of the Universidad de San Martín de Porres, November 26, 1997, Appendix VIII; and request for reinstatement on the teaching staff of the School of Education of the Universidad de San Martín de Porres, dated November 27, 1997, Appendix IX);

g) Documents concerning the victim's physical and psychological condition from 1993 to 1997

(cf. listing of medical reports for María Elena Loayza-Tamayo from 1993 to 1997, issued by physicians at the Chorrillos Maximum Security Women's Prison; official memorandum no. 718-D-EP-msm/CH, dated December 7, 1993, addressed to Carolina Loayza-Tamayo; medical report no. 024-93-USP-EPRCEMCH, dated November 30, 1993, addressed to the Director of the Chorrillos Maximum Security Women's Prison; official memorandum No. 374-D-EP-MSM/CH, dated July 31, 1996, to Carolina Loayza-Tamayo; official memorandum No. 194-USP-EPMSMCH-96, dated July 25, 1996, to the Director of the Chorrillos Maximum Security Women's Prison; official memorandum No. 418-D-EP-MSM/CH dated September 16, 1996, to Carolina Loayza-Tamayo; official memorandum No. 247-96-USP-EPMAMCH, dated September 9, 1996, to Peruvian National Police Colonel Enrique Castillo León, Director of the Chorrillos Maximum Security Women's Prison; report No. 02-97-EPMSMCH.- Serv.Ps., to Peruvian National Police Colonel Enrique Castillo León; December 17, 1997 request from María Elena Loayza-Tamayo to the Director of the "Arzobispo Loayza" National General Hospital; copy of a hospital services card for the "Arzobispo Loayza" National General Hospital, in the name of María Elena Loayza-Tamayo; certification of medical attention received, for the date on which María Elena Loayza-Tamayo was examined at the "Arzobispo Loayza" National General Hospital; medical report of the "Arzobispo Loayza" National General Hospital, dated January 5, 1998, on the clinical history of María Elena Loayza-Tamayo, Appendix X; note dated January 9, 1998, from María Elena Loayza-Tamayo to the Director of the National Institute of Prisons; August 28, 1997 request from Carolina Loayza-Tamayo to the Director of the National Institute of Prisons; and a note from Carolina Loayza-Tamayo dated June 10, 1997, to the Director of the National Institute of Prisons, Appendix XI);

h) Documents pertaining to the victim's present state of health

(cf. medical-psychiatric evaluation of María Elena Loayza-Tamayo, prepared by Dr. Shirley Lilliana Llerena Mora, January 24, 1998, Appendix XXXVIII; letter No. 671-97-D-CMP, dated December 22, 1997, from the "Colegio Médico del Perú" to Carolina Loayza-Tamayo, and letter No. 101-97-CDDHH, dated December 19, 1997, from the "Colegio Médico del Perú", Human Rights Committee, to Francisco Sánchez Moreno-Ramos, Appendix XXXVI);

i) Documents pertaining to expenses incurred for food, toiletries and articles of personal hygiene, materials for handicrafts, medicines, and clothing for the victim during her incarceration

(cf. chart of monthly expenses for groceries delivered to María Elena Loayza-Tamayo at the Chorrillos Maximum Security Women's Prison and receipts from various establishments, Appendix XV; chart of toiletries and articles of personal hygiene delivered monthly to María Elena Loayza-Tamayo at the Chorrillos Maximum Security Women's Prison, Appendix XVI; photographs of some of the handicrafts made by María Elena Loayza-Tamayo, Appendix XVII; chart depicting the quarterly expenditures and table of one-time outlays for materials that María Elena Loayza-Tamayo used for the handicrafts she made at the Chorrillos Maximum Security Women's Prison, and receipts from various establishments where the materials for the handicrafts done by María Elena Loayza-Tamayo were purchased, Appendix XVIII; chart of medications prescribed for María Elena Loayza-Tamayo while she was at the Chorrillos Maximum Security Women's Prison; medical prescriptions and receipts for medications purchased for María Elena Loayza-Tamayo from 1996 to 1997, Appendix XIX; chart illustrating annual expenditures for clothing, sleepwear, bedding, shoes and the like, for María Elena Loayza-Tamayo while she was at the Chorrillos Maximum Security Women's Prison, and receipts for articles of clothing purchased for María Elena Loayza-Tamayo, Appendix XX);

j) Chart of transportation expenses incurred by the victim's next of kin to visit her and deliver groceries to her at the Chorrillos Maximum Security Women's Prison

(cf. chart of transportation expenses to visit and deliver supplies to María Elena Loayza-Tamayo and a photocopy of the June 25, 1997 issue of the "El Peruano" official journal containing Supreme Decree No. 005-97-JUS, headlined "Regulations governing the living arrangements and gradual rehabilitation system for inmates prosecuted for and/or convicted of the crime of terrorism and/or treason);

k) A video

(cf. video, Appendix IV);

l) Documents pertaining to the construction of the victim's residence

(cf. repayment voucher No. 0551-93, Banco de Materiales loan contract No. 024612/342430, dated May 19, 1992, Appendix XXVII);

m) Documents related to the educational and medical expenses of the victim's children

(cf. list of expenses for the education of Paul Zambrano-Loayza, from 1993 to 1997, and document from the "San Basilio" Coeducational Private School certifying the courses taken by Paul Zambrano-Loayza, Appendix V; chart of expenses for the education of Gisselle Elena Loayza-Tamayo from 1994 to 1997; receipts from the Universidad de Lima made out to Gisselle Elena Zambrano-Loayza and dated April 30, May 30, and September 28, 1994; certificate from the Universidad de Lima, made out to Gisselle Elena Zambrano-Loayza; five receipts from the Universidad de Lima; a letter from Carolina Loayza-Tamayo to the Director of Personnel of the Universidad de Lima, September 23, 1995, and the high school record of Gisselle Zambrano-Loayza, Appendix VI; chart of medical expenses of the children of María Elena Loayza-Tamayo and receipts from Gisselle Zambrano-Loayza and Paul Zambrano-Loayza for medical expenses);

n) Documents pertaining to the representations before the Peruvian authorities and the inter-American system on the victim's behalf

(cf. chart of remedies filed with the Peruvian judicial and non-judicial authorities, with the inter-American system and with other international organizations recognized by Peru; photocopy of Supreme Decree No. 135-96 EF, titled "Substitution of Several Articles of the Regulations Governing the Special Income Tax System," published in the December 31, 1996 issue of the "El Peruano" official journal, Appendix XXVIII; Chart of Minimum Representation Fees suggested by the Lima Bar Association and receipt for Carolina Loayza-Tamayo's purchase of the table, December 11, 1997, Appendix XXIX; expenses for photocopying documents that Carolina Loayza-Tamayo presented on the victim's behalf in various proceedings, and photocopying receipts, Appendix XXX; chart of expenditures for telephone calls and telephone bills received from the Compañía Peruana de Teléfonos, S.A., and from Telefonía del Perú, Appendix XXXI; chart of expenses incurred for mailing correspondence and postage receipts, Appendix XXXII; chart of expenses for sending the petition and application for the Loayza Tamayo Case by fax and receipts for fax transmission of the petition and application in the Loayza Tamayo Case, Appendix XXXIII; costs of the courier services to send the correspondence involved in processing the petition and application in the Loayza Tamayo Case and receipts for courier-sent correspondence for processing the petition and application in the Loayza Tamayo case, Appendix XXXIV; and invoices for airfares for travel by Carolina Loayza-Tamayo, Appendix XXXV);

o) Documents pertaining to the work of Ms. Carolina Loayza-Tamayo

(cf. letter from Dr. Oscar de la Puente-Raygada, Chairman of the Cabinet and Minister of Foreign Affairs, dated October 1, 1992, addressed to the Public Prosecutor; letter from Dr. Oscar de la Puente-Raygada, Chairman of the Cabinet and Minister of Foreign Affairs, dated February 2, 1993, addressed to the Minister of State in the Office of Economics and Finance, Appendix XXII; a resolution dated January 25, 1993, from the Ministry of Foreign Affairs; Supreme Resolution No. 148-92-JUS, September 25, 1992; memorandum dated February 2, 1993, from Carolina Loayza-Tamayo to the Minister's Office, and a memorandum from Carolina Loayza-Tamayo, dated January 25, 1993, to the Minister, Appendix XXIII); and

p) Documents pertaining to the exchange rate between the local currency of Peru and the United States dollar

(*cf. information comparing the exchange rate (new soles per United States dollar, Appendix XXVII).*)

42. The State objected to the inclusion of the appendices filed by the victim using arguments that concerned admissibility and probative value. In the case of the admissibility arguments, it alleged that the appendices to the victim's reparations brief were not presented within the time limit established by the Court, which had expired on January 31, 1998; this, it argued, "[would] vitiate their merit or value as evidence. "

43. The Court notes that its practice has always been to allow the initial submission of applications to be done by fax or telex (Article 26 of the Rules of Procedure), with the original documents and their appendices submitted within a reasonable time period thereafter. The Court decides what constitutes a reasonable time period on a case-by-case basis (*Paniagua Morales et al. Case, Preliminary Objections*, Judgment of January 25, 1996. Series C No. 23, para. 34).

44. The victim submitted the appendices six days after the body of the brief, and five days after the specified deadline. In keeping with the spirit and purpose of the American Convention, this five-day delay could not possibly invalidate information pertinent to determining what the reparations should be, especially when one considers that particular care was taken to ensure procedural balance. At the time the extension was granted on March 31, 1998, the President specified that the victim and the Commission had two months and 25 calendar days in which to present their arguments and evidence, and granted the State the same amount of time to present its observations and evidence.

45. Thus, Peru had the same amount of time to conduct a study and prepare its arguments on the reparations briefs and their appendices. Hence, the argument made by the State that the delay in filing the appendices to the victim's brief was prejudicial to the State is inadmissible.

46. Given the foregoing, the Court is admitting the appendices to the victim's reparations brief.

47. The State also questioned the evidentiary value of some of the receipts presented by the victim, which did not show the names and surnames of the persons who incurred the respective expenses. Here, Perú alluded specifically to appendices XV, XVI, XVIII, XIX (slips no. 09119, 4275, 09402 and 117748), XX, XXI, XXX, XXXII, XXXIII and the chart contained in appendix XXVIII.

48. When it examined the appendices being contested, the Court found that in some cases the victim had presented charts of estimated costs (*cf. appendices XV, XVI, XVIII, XIX, XX, XXI, XXX, XXXII and XXXIII*), apparently prepared as a reference aid. In some cases, the figures given were supported by receipts and vouchers; in other cases the amounts shown were described by the victim herself as "estimates" and approximate figures for certain undocumented outlays. Moreover, the charts submitted as Appendix XXVIII are an organized layout of representations alleged to have been made by victim's counsel before Peruvian and international authorities, including the organs of the inter-American system.

49. The Court finds that the charts in question do not constitute evidence. They are documents that illustrate the victim's claims and supplement the reparations

brief. For that reason they will not be added to the body of evidence in the instant Case.

50. The Court is compelled to point out that certain discrepancies noted detract from the value of these tables, even as reference aids. For example, there are mathematical errors in the figures shown on some of the chart

(cf. list of expenses for the education of Paul Zambrano-Loayza, Appendix V; chart of expenses for the education of Gisselle Zambrano-Loayza, Appendix VI; chart of toiletries and articles of personal hygiene delivered monthly to the Chorrillos Maximum Security Women's Prison for María Elena Loayza, Appendix XVI; chart of one-time outlays for materials that María Elena Loayza used for the handicrafts she made at the Chorrillos Maximum Security Women's Prison, Appendix XVIII; chart of medications prescribed for María Elena Loayza-Tamayo while she was at the Chorrillos Maximum Security Women's Prison, Appendix XIX; chart of expenses for photocopying documents that Carolina Loayza-Tamayo, the victim's sister and attorney, presented on the victim's behalf in various proceedings, Appendix XXX; chart of expenses for international telephone calls made from the telephone installed in the home of the victim's attorney and sister, Appendix XXXI; list of expenses for mailed correspondence, Appendix XXXII; chart of fax-transmission expenses for sending the petition and application in the Loayza Tamayo Case, Appendix XXXIII);

moreover, when the figures given in the appendices and in the body of the reparations brief are compared, it is found that the amounts claimed for the same items are expressed in a given number of soles in the chart, but in an equal number of United States dollars in the body of the reparations brief, as if there were parity between the two currencies

(cf. chart of monthly expenses for groceries vs. the brief; chart of expenses for toiletries and articles of personal hygiene vs. the brief; chart illustrating annual expenditures for clothing vs. the brief).

The Court will take these factors into account when it examines the corresponding forms of reparations.

51. The other documents challenged by the State were receipts for assorted purchases of materials, medications, wearing apparel, photocopies and correspondence (*cf. appendices XV, XVIII, XIX (slips no. 09119, 4275, 09402 and 117748), XX, XXX, XXXII and XXXIII*). The Court notes that these documents did not name the author of the respective transaction, which makes them less credible. Consequently, their specific weight as evidence will be gauged by a standard often invoked by the Court, to the effect that:

[i]n the exercise of its judicial functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions as regards the facts of the case... (*Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 49).

*
* * *

52. As its documentary evidence, the State tendered a court ruling, three official memoranda and four articles

(cf. Judgment of the Constitutional Court published in the May 9, 1997 issue of "El Peruano" official journal, whereby "the case alleging the unconstitutionality of several articles of Laws Nos. 26,479 and 26,492 is dismissed"; official memorandum No. 1009-97-IN-011204000000, to Mr. Luis Reyes Morales, Chairman of the Committee Evaluating the Ley de Arrepentimiento [Repentance Law], dated October 29,

1997; articles titled "Premios a la Resistencia," "Comandante EP Pedro Rejas, El Colorado del Rescate," "Manuel Aguirre Roca, Defensa Constitucional" and "Carolina Loayza, Abogada y Hermana," published in "Ilustración Peruana Careta," December 26, 1997, No. 1497; official memorandum No. 224-98-INPE/CR.SE. to Mr. Mario Federico Cavagnaro-Basile, Public Prosecutor, dated April 27, 1998, and official memorandum No. 082-98-D-EPMSM/CH-PNP, to Peruvian National Police General Rodolfo Angeles Varillas, Executive Secretary of the INPE Executive Commission, dated April 21, 1998).

53. As the documents presented by the State were neither contested nor challenged, nor was their authenticity questioned, the Court accepts them as valid and orders that they be added to the body of evidence in the instant Case.

* * *

54. On May 28, 1998, the victim presented seven declarations signed in the presence of a notary and six documents; as legal grounds for adding the latter to the body of evidence, she cited articles 43 and 44 of the Rules of Procedure.

(*cf. Declarations signed in the presence of a notary by Gisselle Elena and Paul Abelardo Zambrano-Loayza; Julio Loayza-Sudario, Adelina Tamayo de Loayza and Olga Adelina, Elizabeth Giovanna and Carolina, all by the surname Loayza-Tamayo; certification of the court or criminal record of María Elena Loayza-Tamayo, issued on May 8, 1998, by the Supreme Council of Military Justice; a copy of a letter dated April 27, 1998, from María Elena Loayza-Tamayo to her sister Carolina; a preliminary report on the situation of Ms. María Elena Loayza-Tamayo, prepared by the Fundación de Ayuda Social de las Iglesias Cristianas [Christian Churches' Social Aid Foundation]; certification of payment for the schooling of Gisselle Elena and Paul Abelardo Zambrano-Loayza, and the curriculum vitae of Dr. Shirley Elena Lilliana Mora, psychiatrist*).

55. In its brief of June 8, 1998, Peru objected to the declarations signed in the presence of a notary, arguing that their admission into evidence would vitiate the proceedings and violate the provisions of articles 46 and 47 of the Rules of Procedure. Peru further stated that the declarations signed in the presence of a notary appeared to have been drafted by the same person and the purpose of the questioning was not indicated when the statements were offered up as evidence.

56. For the sake of procedural speed and economy, the President had requested that both the victim and the State give "particular consideration [...] to the possibility of presenting some testimonial and expert evidence in the form of sworn affidavits" (*supra* 13). This would help ensure that the oral proceedings at this stage of the proceedings would be dispatched as swiftly as possible, without limiting the right of the victim, of the Commission and of the State to offer any testimony that, in their opinion, the Court should hear directly.

57. Accordingly, the declarations signed in the presence of a notary and presented by the victim should be admitted into evidence. The Court has the discretionary authority to weigh the declarations or statements presented to it, both written and otherwise. Like any court, it can properly weigh the evidence, applying the rule of "sound criticism" that enables judges to arrive at a decision as to the truth of the facts alleged, while bearing in mind the object and purpose of the American Convention (*Paniagua Morales et al. Case*, Judgment of March 8, 1998. Series C No. 37, para. 76).

58. One of the documents challenged by the State was the "Preliminary Report." Peru's argument was that the report had not been signed by the individual responsible for issuing it. However, the Court has seen the original document submitted by the victim, which bears the signature of Ms. Eliana Horvitz, psychiatrist

with the Mental Health Team, and is written on letterhead paper of the "Fundación de Ayuda Social de Fieles de las Iglesias Cristianas."

59. The Court notes that while the report submitted does concern matters bearing upon the victim's physical and psychiatric condition, the necessary formalities were not followed to prepare it. Those formalities require the appointment of experts by the Court (Articles 43 et seq of the Rules of Procedure). Therefore, for reasons other than those alleged by the State, the Court cannot regard this document as expert evidence and, hence, it will be admitted as documentary evidence in the instant Case.

60. Inasmuch as the other documents presented by the victim were neither objected to nor challenged, the proper procedure is to add them to the body of evidence in the instant Case.

* * *

61. On June 11, 1998, after the normal deadline for introducing evidence had passed, the victim sent eight documents concerning medical expenses and references, citing the provisions of Article 43 of the Rules of Procedure

(cf. medical references extended by "Centros Integrales de Salud," April 29, 1998; estimate for dental work, issued by the "Santiago Lion's Club," May 18, 1998; receipt No. 14570 for laboratory tests issued by "Ginelab Limited," June 1, 1998; diagnosis of breast examination issued by "Ginelab," June 1, 1998; medical reference issued by "Ginelab," June 1, 1998; ultrasound report issued by "Ginelab," June 1, 1998; and receipt No. 14580 for laboratory tests, issued by "Ginelab Limited," June 3, 1998).

62. On July 14, 1998, the State objected to the documents in question, noting that in the Court's Judgment, the only expenses for which reimbursement had been ordered were those incurred in representations before the Peruvian authorities. The State argued that the documents submitted did not fall within the scope of that Judgment and were also filed extemporaneously.

63. The rule contained in Article 43 of the Rules of Procedure (*supra* 37) makes provision for the Court to admit evidence after the deadline in exceptional cases. The exception applies only when the party alleges *force majeure*, serious impediment or the emergence of supervening events. In the case of the documents submitted by the victim on June 11, 1998, the Court has established that they were all issued subsequent to the deadline for presentation of evidence and that the facts that they corroborate cannot be regarded as supervening events. Hence, their inclusion in the body of evidence must be denied.

* * *

64. As evidence to help the Court arrive at a more informed judgment, on July 29, 1998, the President requested information from the State concerning the official exchange rate between the local currency of Peru and the United States dollar for the period from 1993 to 1998. It also asked the State to furnish Peru's legislation on salaries and work bonuses.

65. On September 11, 29 and 30, 1998, the State submitted eight legal texts, one report and exchange rate quotations for Peru's local currency

(cf. Law 25139 of December 14, 1989, on bonuses; Legislative Decree 276 – Statute on the Civil Service and Remuneration in the National Public Sector; Law 26894 of November 28, 1997, on the 1998 Public Sector Budget; Supreme Decree 061-98-EF of July 6, 1998, which “grants government pensioners, officials and civil servants an National Festivities bonus of an extra month’s pay”; Urgent Decree No. 107-97, of December 5, 1997, which “grants government pensioners, officials, civil servants, and armed forces and national police personnel a Christmas bonus of an extra month’s pay”; Supreme Decree No. 70-85 PCM, of July 26, 1985, which establishes “the procedure of bilateral negotiation for local governments to settle on cost-of-living salary adjustments and contracts with their officials and civil servants”; Decree-Law No. 22482 of March 27, 1979, Maternity and Nursing Subsidies; Decree-Law No. 18846, of April 28, 1971, on S.S.O. It will assume responsibility for job-related accidents; report No. 0053-98-GAF-SP-GG-PJ, dated July 9, 1998, and quotations on the exchange rate for the Peruvian currency to the United States dollar from January 1990 to June 1998, issued by the Chief of the Department of Economic Statistics and Studies, Office of the Superintendent of Banking and Insurance).

66. No objection or challenge was made to the documents submitted by the State, nor was their authenticity called into question; hence, the Court accepted them as valid and ordered that they be added to the body of evidence in the instant case.

TESTIMONIAL EVIDENCE

67. The victim offered to testify before the Court at a public hearing. In its reparations brief, the Commission, too, proposed that her testimony be admitted.

68. The State did not offer witnesses.

69. On May 12, 1998, the President summoned the victim to testify at a public hearing that was to be held at the seat of the Court.

70. On June 9, 1998, the State presented a note wherein it objected to the victim’s testifying. At a meeting held prior to the public hearing scheduled for later that same day, the President heard arguments from the State, the victim and the Commission and then dismissed the State’s objection and ordered that the Court would hear the testimony in question.

71. At a public hearing held on June 9, 1998, the Court heard testimony from the victim in the instant case. Summarizing, she testified to the following:

She currently resides in Santiago, Chile, and is 43 years old. At the time of her detention, she was 36. A university professor with degrees in education and social work, the victim is also a second-year law student. During her detention and incarceration, she suffered various forms of abuse. She was raped and an attempt was made to drown her in the ocean. She was exhibited on television in the uniform of a prison inmate. During the proceedings before the military courts, she was not permitted to be represented by her counsel and was tried by a “faceless” court for the crime of treason. The prosecutor threatened her and forced her to incriminate herself. When she was convicted, she had a nervous breakdown and was unconscious for two days. She was incarcerated in the Chorrillos Maximum Security Prison. Conditions there were very bad: there was little to eat or drink, the medical attention was poor and she was not permitted to communicate with anyone. She remained confined to her cell, sometimes with as many as six other inmates, for 23 _ hours each day. She was incarcerated under those circumstances for four years and eight months. She suffered many health problems. As a consequence of her confinement, she

suffered premature menopause and many physical ailments. The vast majority of the medications that she needed was supplied by her family; only a few were supplied by the prison facility. Her family also supplied her with food, supplies for personal hygiene, clothing and material with which to sew. She was given no type of rehabilitation while in prison; quite the contrary, for the first three years, she was in cellblock "A" where she was allowed to participate in one workshop and take two hours of sun each day. Thereafter, once her case was brought to the Inter-American Court, she was transferred to cellblock "C" as punishment. There the system was one of absolute confinement. She was released on October 17, 1997, thanks to the Judgment delivered the Court. By that time she had come to believe that she would never be released, as she was subjected to constant harassment for being a professional, for refusing to have sexual relations with the guards, and for maintaining good conduct. Once she was out of prison, she was unable to be reinstated in her former positions. She is not working and is receiving psychological and psychiatric treatment in Santiago, Chile, paid by "FASIC". She feels very estranged from her children, who by now have grown up. The communication between them is no longer the same. She lost the opportunity to be with them during the most important phase of their growth and development. She had never seen her granddaughter until she was released from prison. While she was incarcerated, her family paid for her children's educational expenses and necessities. The expenses of the Court proceedings in Peru and with the Inter-American Commission were paid by her sister Carolina Loayza, who, with Ariel Dulitzky, is her attorney.

72. Because Ms. Loayza-Tamayo is the victim in the instant Case and has an immediate interest in it, her testimony cannot be weighed separately; instead, it must be weighed with the full body of evidence in this case. However, it is important to recall that the facts in the instant Case were already established during the merits phase. At this stage of the proceedings, the Court will determine the nature and amount of the "fair compensation" and the expenses that the State will be required to reimburse to the victim and her next of kin, pursuant to operative paragraph 6 of the Court's judgment.

73. In this sense, the victim's testimony has unique import, as she is the one who can provide the most information concerning the consequences of the wrongful acts of which she was the victim. That being the case, the testimony in question will be added to the body of evidence in the instant case, and will be later weighed.

EXPERT EVIDENCE

74. As evidence to help it arrive at a more informed judgment, on August 29, 1998, the Court requested that the Colegio Médico de Chile issue a report on the victim's physical and psychiatric condition and that the Colegio Médico del Perú issue one on her children's psychiatric condition.

75. On October 7, 1998, the Court received the forensic medical expert's report on the victim's health, prepared by Dr. Roberto von Bennewitz on instructions from the "Colegio Médico de Chile". Dr. von Bennewitz wrote down his observations of the victim's physical and psychiatric injuries and included a section on the correlation between the injuries present and the specific means of torture to which the victim would have been subjected and her "prognosis from the injury". The Court transcribes below the pertinent part of the expert's findings:

[T]he physical injuries and psychiatric damage evinced by Ms. María Elena Loayza-Tamayo are the direct aftereffects -consequences or results- of the various tortures used on her during her detention and incarceration. The psychiatric disorders, which manifested themselves subsequent to her release and compound those caused by the prison torture, are, of course, an indirect consequence of that torture.

Finally, the expert's diagnosis was that while some of the pain that the victim suffers may eventually be relieved through prolonged therapy, some may be irreversible.

76. On October 9, 1998, the Court received the report on the victim's psychiatric evaluation, prepared by Dr. Martín Cordero-Allary on instructions from the "Colegio Médico de Chile". Dr. Cordero-Allary wrote down his observations and described his examination of the victim. His diagnosis was that she suffers from "post-traumatic stress syndrome as a consequence of systematic torture and rape. "

77. On October 13, 1998, the Court received the psychiatric medical evaluations of Gisselle Elena and Paul Abelardo Zambrano-Loayza, prepared by Dr. René Flores-Agreda on instructions from the "Colegio Médico del Perú". Dr. Flores-Agreda's reports included the family and personal background of the young people he examined, and a description of their current problem and mental examination. Dr. Flores-Agreda's findings and recommendations were as follows:

a) In the case of Gisselle Elena Zambrano-Loayza, he concluded that "she is suffering from DEEP DEPRESSION and CHRONIC POST-TRAUMATIC STRESS DISORDER" and therefore is in need of urgent psychiatric treatment to help her overcome her present poor mental and emotional condition; " and

b) In the case of Paul Abelardo Zambrano-Loayza, he concluded that "he is suffering from CHRONIC POST-TRAUMATIC STRESS DISORDER, with strong feelings of insecurity", and that "he must receive urgent psychiatric treatment to help him deal with the traumatic experience he has had, overcome the anxiety and depression he manifests, and, given his youth, prevent undesirable personality traits from becoming permanently entrenched. "

78. On November 13, 1998, Peru presented its observations on the medical reports, which it challenged based on the following arguments:

a) The time the experts had was not sufficient to conduct the kind of tests that the Court had ordered;

b) The reports were not prepared according to the standards set by the World Health Organization's International Classification of Diseases (Tenth Revision) (ICD-10) -Mental and Behavioral Disorders- clinical descriptions and diagnostic guidelines, and by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV);

c) The report submitted by expert Cordero-Allary is incomplete, not objective and not serious; and

d) When Dr. Robert von Bennewitz included psychological and psychiatric evaluations in his report, he exceeded his sphere of competence, as he is not a specialist in this area and was not commissioned by the "Colegio Médico de Chile" for an opinion of that nature. Peru further argued that in the body of

his report, Dr. von Bennewitz cited from the physical and mental evaluations done of the victim by Dr. Laura Moya-Díaz and Dr. Eliana Horwitz, neither of whom was accredited "under the terms established in the Court's order of August 29, 1998. "

79. Neither the victim nor the Commission presented observations on the reports in question.

80. The State did not offer any basis for its allegations concerning the seriousness of the medical reports. Moreover, it did not tender any evidence that would raise doubts as to the competence and responsibility of the "Colegios Médicos" of Chile and Peru or whether the two organizations had acted properly in commissioning the physicians to prepare the medical reports.

81. As for the allegation that the reports did not conform to some of the guidelines established by the World Health Organization, the Court does not consider this a pre-requisite for their admissibility. In keeping with Court practice, the reports are to be prepared by professionals who are competent in their field and include, in proper form, the information that the Court requires. As noted, the State furnished no evidence that would cause the Court to question the professional qualifications of the experts. Moreover, the required information was included in the reports in a manner that the Court considers appropriate.

82. As for the report presented by Dr. von Bennewitz, the Court notes that the case file shows that he was designated by the "Colegio Médico de Chile" to perform a "clinical and psychiatric" evaluation of the victim, as requested by the Court. For this reason, the Court believes that his report was not solely confined to matters pertaining to the physical health of the victim and so orders that the reports in question be added to the evidence in the instant case.

VI DUTY TO MAKE REPARATIONS

83. Under operative paragraph six of the Judgment of September 17, 1997, the Court decided that Peru was "obliged to pay fair compensation to the victim and her next of kin and to reimburse them for any expenses they may have incurred in their representations before the Peruvian authorities in connection with this process, for which purpose the corresponding proceeding remains open. "

84. The applicable law in the matter of reparations is Article 63(1) of the American Convention, which articulates one of the fundamental principles of general international law, repeatedly elaborated upon by the jurisprudence (*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). This Court has applied this principle (in, among others, the *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 (Art. 63(1) American Convention on Human Rights)*, Judgment of August 27, 1998. Series C No. 39, para. 40). When

an unlawful act imputable to a State occurs, that State becomes responsible in law for violation of an international norm, with the consequent duty to make reparations.

85. Reparations is a generic term that covers the various ways a State may make amends for the international responsibility it has incurred (*restitutio in integrum*, payment of compensation, satisfaction, guarantees of non-repetitions among others).

86. It is a universally recognized principle that the obligation to make reparations ordered by international courts is governed by international law in all of its aspects: its scope, nature, modality, and the determination of beneficiaries, none of which may be altered by the State required to make reparations by invoking provisions of its domestic law (among others, *Neira Alegría et al. Case, Reparations, supra* 84, para 37; *Caballero Delgado and Santana Case, Reparations, supra* 84, para. 16 and *Garrido and Baigorria Case, Reparations, supra* 84, para. 42).

87. The reparations ordered in this Judgment must be proportionate to the violations of articles 1(1), 5, 7, 8(1), 8(2), 8(4) and 25, violations whose commission was established in the Judgment of September 17, 1997.

VII BENEFICIARIES

88. It is obvious that in the instant Case the victim is Ms. María Elena Loayza-Tamayo. In its Judgment of September 17, 1997, the Court found that the State had violated, to her detriment, a number of rights upheld in the Convention. Hence, she is entitled to the payment of the compensation ordered by the Court in her favor.

89. In keeping with the language used in the Judgment on the merits and in Article 63 of the Convention, it is also up to the Court to determine which of the victim's "next of kin" are, in the instant case, "injured parties. "

90. Both the victim and the Commission made the point that the Court's interpretation of kinship has been broad and flexible, a practice consistent with that of other international bodies. They added that in an "anthropological sense, the victim's next of kin is not the very narrowly-defined nuclear family. Rather, it is the extended family, which is a broader concept defined by parameters such as permanence within the family circle and the frequency with which the members interact with each other." Given the foregoing, they argued, the Court should order reparations for the victim's children, Gisselle Elena and Paul Abelardo Zambrano-Loayza; her parents Julio Loayza-Sudario and Adelina Tamayo-Trujillo de Loayza; and her siblings Delia Haydée, Carolina Maida, Julio William, Olga Adelina, Rubén Edilberto and Giovanna Elizabeth, all by the surname Loayza-Tamayo, since they were injured parties who suffered as a direct consequence of the victim's absence during her incarceration.

91. The State said it was opposed to granting any compensation to the victim's next of kin, since they did not appear before the Court to assert their claims. The Court will decide these objections later in this judgment (*infra* 103, 104 and 105) and will concern itself, at this point, solely with matters pertaining to the designation of beneficiaries.

92. The Court considers that the expression "next of kin" of the victim should be interpreted in a broad sense to include all persons related by close kinship. Hence, the victim's children, Gisselle Elena and Paul Abelardo Zambrano-Loayza; her parents, Julio Loayza-Sudario and Adelina Tamayo-Trujillo de Loayza, and her siblings, Delia Haydée, Carolina Maida, Julio William, Olga Adelina, Rubén Edilberto and Giovanna Elizabeth, all by the surname of Loayza-Tamayo, are considered her next of kin. As such, they could be entitled to receive compensation if they meet the tests established in the jurisprudence of this Court (*Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 71 and *Garrido and Baigorria Case, Reparations, supra* 84, para. 52).

REPRESENTATIONS

93. On February 5, 1998, the victim submitted a power of attorney dated January 30, 1998, granted to Ms. Carolina Loayza-Tamayo and to Mr. Ariel Dulitzky, Ms. Viviana Krsticevic and Ms. Marcela Matamoros, members of the Center for Justice in International Law (CEJIL) and Mr. José Miguel Vivanco, a member of Human Rights Watch/Americas. It authorized them to serve as her representative in the reparations proceedings (*supra* 9).

94. Peru argued that neither the victim nor Carolina Loayza-Tamayo had signed the reparations brief. It added that the power of attorney that the victim had granted on January 30, 1998, had "absolutely no juridical value" inasmuch as it does not meet the requirements prescribed under Peruvian law. These included the requirement that the power of attorney be done in the presence of a notary and that it follow the formalities established under Notary Law No. 26,002. Using these arguments, the State's contention was that the "supposed" representatives of the victim signed the reparations brief unlawfully. Finally, it argued that the individuals in question were not empowered to represent the parents, children and siblings of the victim, as none had granted them power of attorney.

95. On May 28, 1998, the victim presented, along with other documents, a second power of attorney granted in the presence of a notary public on February 9 of that year to Carolina Loayza-Tamayo, Ariel Dulitzky, Viviana Krsticevic, Marcela Matamoros and José Miguel Vivanco (*supra* 19). She cited articles 43 and 44 of the Rules of Procedure when presenting that second power of attorney.

96. On June 8, 1998, the State made reference to the second power of attorney, alleging that the document confirmed the fact that the individuals who signed the reparations brief did not do so as her representatives. Further, it pointed out that the first power of attorney submitted was granted to the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas, while the second was granted to the representatives by name and in a personal capacity. Hence, the State alleged, that "the attempted confirmation is unlawful." Finally, Peru argued that the second power of attorney ought to have been granted in accordance with Peruvian law.

97. The State objected to the powers that the victim granted, alluding to a series of formalities under Peruvian domestic law (*supra* 96). This argument is not acceptable in an international court for the protection of human rights, whose proceedings are not bound by the same formal rules that bind domestic courts, as the Court has held in its *jurisprudence constante* (*Gangaram Panday Case,*

Preliminary Objections, Judgment of December 4, 1991, Series C No. 12, para. 18; *Cayara Case, Preliminary Objections*, *supra* 39, para. 42; and *Caballero Delgado and Santana Case, Preliminary Objections*, Judgment of January 21, 1994. Series C No. 17, para. 44). The Court has already declared that one distinctive feature of international law is that no special formalities are required to lend validity to an act. Even oral statements are valid under the law of nations (*cf. Legal Status of Eastern Greenland*, Judgment, 1933, P.C.I.J., Series A/B, No. 53, page 71; *Garrido and Baigorria Case, Reparations*, *supra* 84, para. 55 and *Castillo Petruzzi et al. Case, Preliminary Objections*, Judgment of September 4, 1998. Series C No. 41, para. 77).

98. Furthermore, the acts and instruments brought to bear in proceedings before the Court are not bound by the formalities required under the domestic laws of the respondent State. The consistent practice of this Court with regard to representation rules has been guided by these principles. Hence, the latitude the Court has allowed in matters of representation has been applied equally to States, to the Inter-American Commission and, during the reparations phase, to the victims or their next of kin.

99. This latitude in accepting instruments granting representation is not without certain limits, however; limits dictated by the practical purpose that the representation itself is intended to serve. First, such instruments are to clearly identify the person granting the power of attorney and include an error-free statement of intent. They must also clearly name the party to whom the power of attorney is granted and, finally, specify the purpose of the representation. In the opinion of this Court, instruments that meet these requirements are valid and take full effect upon presentation to the Court.

100. In the case of the first power of attorney granted by the victim, the Court notes that the person being represented and her representatives were clearly identified, and the purpose of the representation was stated. That instrument, therefore, must be regarded as valid. In the case of the second instrument, the same requirements were met. Moreover, during the public hearing convened by the Court on June 9, 1998, the victim stated that her attorneys were Mr. Ariel E. Dulitzky and Ms. Carolina Loayza-Tamayo and endorsed everything they had done in their representations before the Court. Given these facts, the Court cannot ignore the will of the victim, on whose behalf the reparations proceeding is conceived; hence, it accepts as valid the procedures to which the State objects.

* * *

101. As for the victim's next of kin, the State argued that while the Court's September 17, 1997 Judgment had ordered payment of compensation to the victim's next of kin, those individuals had to appear before the Court to claim their rights. It further stated that in the instant Case, the children, parents and siblings of the victim had not intervened in any phase of the proceedings, had not filed any claim, and were therefore not entitled to any compensation. According to the State, by failing to appear, the victim's next of kin had tacitly waived their right to compensation, especially inasmuch as the deadline set by the Court for making the respective claims has already expired.

102. In this regard, Article 23 of the Rules of Procedure provides that:

[a]t the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence.

103. Although the injured parties' direct participation in the reparations stage is important for the Court, their nonappearance, as in the instant Case, does not relieve either the Commission or the Court of their duty as organs of the inter-American system for the protection of human rights. That duty is to ensure that those rights are effectively protected, which includes matters related to the duty to make reparations.

104. Inasmuch as the Court has held that reparations for the victim's next of kin are in order, it must now determine their nature and amount. Lacking claims or allegations from certain family members, the Court will act on the basis of the information at hand.

105. For the reasons explained and contrary to what the State alleged, the fact that the victim's next of kin did not appear before the Court does not prevent the latter from ordering reparations on their behalf.

VIII FACTS PROVEN DURING THE REPARATIONS

106. To determine the appropriate reparations in the instant Case, the Court will have the facts established in the September 17, 1998 Judgment as a reference base. However, during this stage of the proceedings, the parties have added evidence to the case file to establish other facts relevant to determining the reparations. The Court has examined the arguments of the parties and the respective evidence, and declares the following facts to have been proven.

A) concerning the victim:

a) She has degrees in education and in social work. Prior to her detention, she was a law student and had taken a number of academic courses and seminars

(cf. curriculum vitae of María Elena Loayza-Tamayo; degree of "Licenciada" in Education in Social Historical Sciences, awarded to María Elena Loayza-Tamayo, March 26, 1985; degree of "Licenciada" in Social Work, awarded to María Elena Loayza-Tamayo, July 11, 1991; certification issued by the Academic Director of the School of Law of the Universidad Mayor de San Marcos concerning María Elena Loayza-Tamayo, December 17, 1997; registration reports for María Elena Loayza-Tamayo at the Universidad Nacional Mayor de San Marcos, School of Law, December 16, 1997, Appendix XXV; certification from the National Center of Health-Related Educational Technology concerning María Elena Loayza-Tamayo, Seminar Workshop on "Didactics as Applied to Instruction in Health Sciences," April 15, 1988; certification from the Ministry of Health concerning María Elena Loayza-Tamayo, May 7, 1987, Seminar Workshop on "Public Health-Sex Education and Family Planning"; record of the Ministry of Health for María Elena Loayza-Tamayo, April 22, 1987, participation in the "First Aid Training Program" course; certification issued by the Office of the Director of the Lima-South Departmental Health Unit for María Elena Loayza-Tamayo, May 7, 1987; letter from Data Processing, Health, Medicine and Agriculture Projects, addressed to María Elena Loayza-Tamayo, September 4, 1987, and statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

b) She was 36 years old at the time of her detention

(cf. María Elena Loayza-Tamayo's birth certificate and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

c) At the time of her detention on February 6, 1993, she was living with her children, Gisselle Elena and Paul Abelardo Zambrano-Loayza, at the home of her parents, Julio Loayza-Sudario and Adelina Tamayo-Trujillo, in Altillo, Block A, Lot 17, City and Countryside, Rímac District. Her siblings are Delia Haydée, Carolina Maida, William Julio, Olga Adelina, Elizabeth Giovanna and Rubén Edilberto, all by the surname Loayza-Tamayo

(cf. certification of domicile issued by the National Police Ministry of Interior of Perú, made out in the name of María Elena Loayza-Tamayo; birth certificates of Gisselle Elena Zambrano-Loayza, Paul Abelardo Zambrano-Loayza, Appendix II; civil marriage certificate of Julio Loayza-Sudario and Adelina Tamayo-Trujillo; birth certificates of Delia Haydée Loayza-Tamayo, Carolina Maida Loayza-Tamayo, William Julio Loayza-Tamayo, Olga Adelina Loayza-Tamayo, Elizabeth Giovanna Loayza-Tamayo, Rubén Edilberto Loayza-Tamayo, Appendix III; and statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

d) At the time of her detention, she was working at José Gabriel Condorcanqui High School, where her area of specialization was history. Her monthly salary was S184.84 (one hundred eighty-four and eighty-four/one hundredths soles). She was definitively removed from her post on May 29, 1993, on the grounds that she had abandoned her post without just cause

(cf. resolution No. 0805, July 10, 1996, from the Office of the Director of the Educational Services Unit USE 07-Rímac, Appendix VII; certification issued by the Director of the Colegio Nacional "José Gabriel Condorcanqui," November 19, 1997; certificate attesting to the good character of María Elena Loayza-Tamayo, issued by the Director, Office of the Deputy Director, OBE Advisory Services, Asociación de Padres de Familia [Parents Association] of the "José Gabriel Condorcanqui" High School, November 23, 1993; certification of employment and good character for María Elena Loayza-Tamayo, issued by the Director of the "C.E. José Gabriel Condorcanqui", U.S.E. 07-Rímac, November 24, 1993; voucher from the Ministry of Education made out in the name of María Elena Loayza-Tamayo, January 1993; request for reinstatement at the "José Gabriel Condorcanqui" Educational Center, dated October 27, 1997, addressed to the director of the Educational Services Unit 02 Rímac; official memorandum No. 314-97/DCN"JGC", dated November 10, 1997, from Aquiles L. Reynoso-Lázaro, CH "José Condorcanqui", to Francisco Javier Herrera-Tuesta, Director of the Section II Program of the U.S.E. 02, and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

e) At the time of her detention, she was working at the National School of Dramatic Arts, where her area of specialization was drama coaching and her monthly salary was S66.26 (sixty-six and twenty-six/one hundredths soles)

(cf. certification issued by the Director of the National School of Dramatic Arts, February 15, 1993; certificate issued by the Director of the National School of Dramatic Art, December 15, 1993; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights)

f) At the time of her detention, she was working at the School of Management of the Universidad de San Martín de Porres. Her monthly salary was S345.51 (three hundred forty-five and fifty-one/one hundredths soles). Although she stated that she also was working at the School of Education in that university, there is information in the case file to the effect that that association ended on January 30, 1993

(cf. certification of María Elena Loayza-Tamayo's employment, issued by the Chief of the Office of Personnel and Services of the University of San Martín de Porres, January 5, 1994; certification issued by the Academic Dean of Education and Humanities of Universidad de San Martín de Porres, February 24, 1993, Appendix XIV; a monthly pay slip from the Universidad San Martín de

Porres, in the name of María Elena Loayza-Tamayo, February 1, 1993; request for reinstatement on the teaching staff of the Universidad de San Martín de Porres, dated December 3, 1997; request for reinstatement on the teaching staff of the School of Management of the Universidad de San Martín de Porres, November 26, 1997, Appendix VIII; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

g) At the time she was detained she was in the process of building a house on a piece of property she owned on Mitobamba Street, Block D, Lot 18, Los Naranjos Development, Los Olivos District, Lima, Peru

(cf. repayment voucher No. 0551-93, Banco de Materiales loan contract No. 024612/342430, May 19, 1992, Appendix XXVII; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

h) During her detention and up to the present, she has received a monthly pension from the Ministry of Health

(cf. earnings statement of María Elena Loayza-Tamayo, January 25, 1993, issued by the Ministry of Health; earnings statement of María Elena Loayza-Tamayo, November 13, 1997, issued by the Ministry of Health, and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

i) During her incarceration, and as a consequence of the cruel, inhuman and degrading punishment to which she was subjected, she suffered serious health problems, treatment of which necessitated outlays of an unspecified amount, all paid by her next of kin

(cf. Judgment of the Inter-American Court of Human Rights of September 17, 1997; official memorandum no. 718-D-EP-msm/CH, dated December 7, 1993, to Carolina Loayza-Tamayo; medical report No. 024-93-USP-EPRCEMCH, dated November 30, 1993, addressed to the Director of the Chorrillos Maximum Security Women's Prison; official memorandum No. 194-USP-EPMSMCH-96, dated July 25, 1996, to the Director of the Chorrillos Maximum Security Women's Prison; official memorandum No. 247-96-USP-EPMSMCH, dated September 9, 1996, to Peruvian National Police Colonel Enrique Castillo-León, Director of the Chorrillos Maximum Security Women's Prison; report No. 02-97-EPMSMCH- Serv. Ps., to Peruvian National Police Colonel Enrique Castillo-León; certification of medical attention received, for the date on which María Elena Loayza-Tamayo was treated at the "Arzobispo Loayza" National General Hospital; medical report from the "Arzobispo Loayza" National General Hospital, dated January 5, 1998, on the clinical history of María Elena Loayza-Tamayo, Appendix X; prescriptions and receipts for medications purchased for María Elena Loayza-Tamayo from 1996 to 1997, Appendix XIX; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

j) Her confinement brought on severe physical and psychological health disorders; some may be relieved with prolonged therapy, although others may be irreversible

(cf. medical report issued by Dr. Robert von Bennewitz-Gotschlich, October 1998; medical report issued by Dr. Martín Cordero-Allary, October 7, 1998; preliminary report on the condition of Ms. María Elena Loayza-Tamayo, prepared by the Fundación de Ayuda Social de las Iglesias Cristianas [Social Aid Foundation of Christian Churches]; medical-psychiatric evaluation of María Elena Loayza-Tamayo, prepared by Dr. Shirley Lilliana Llerena-Mora, January 24, 1998, and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

k) She was released on October 16, 1997

(cf. information received from the State, dated October 20, 1997; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

l) She filed a several of requests to be reinstated in her former posts. She requested reinstatement in her post at José Gabriel Condorcanqui High School on October 27, 1997. She was ordered reinstated at another educational institution effective March 1, 1998. On November 27, 1997, she requested reinstatement in her post at the National School of Dramatic Arts; on November 26 and 27 and December 3, 1997, she requested reinstatement at the Universidad de San Martín de Porres. The outcome of these requests is unknown

(cf. request for reinstatement at the "José Gabriel Condorcanqui" Educational Center, October 27, 1997, addressed to the Director of the Educational Services Unit 02 Rimac; official memorandum No. 314-97/DCN"JGC", November 10, 1997, from Aquiles L. Reynoso-Lázaro, CH "José Condorcanqui", to Francisco Javier Herrera-Tuesta, Director of the Section II Program of the U.S.E.02; request from María Elena Loayza-Tamayo, dated November 21, 1997, addressed to the Director of the Educational Services Unit U.S.E. 02-Rimac, and Resolution No. 2273 from the Office of the Director of the Educational Services Unit No. 02 Rimac-Independencia-San Martín de Porres, December 17, 1997, Appendix XXVI; request for reinstatement on the teaching staff of the School of Dramatic Arts, November 27, 1997; request for reinstatement on the teaching staff of the Universidad de San Martín de Porres, December 3, 1997; and request for reinstatement on the teaching staff of the School of Management of the Universidad de San Martín de Porres, November 26, 1997, Appendix IX; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights); and

m) She now resides in the city of Santiago, Chile, is not working, and is undergoing medical treatment financed by "FASIC"

(cf. statement given by María Elena Loayza-Tamayo before the Inter-American Court; medical-psychiatric evaluation prepared by Dr. Shirley Lilliana Llerena-Mora, January 24, 1998; preliminary report on the condition of Ms. María Elena Loayza-Tamayo, prepared by the Fundación de Ayuda Social de las Iglesias Cristianas [Social Aid Foundation of Christian Churches], and letter from María Elena Loayza-Tamayo, dated April 27, 1998, to Carolina Loayza-Tamayo.)

B) concerning the victim's children: Paul Abelardo and Gisselle Elena Zambrano-Loayza:

a) They continued their secondary and university studies during their mother's incarceration. Records of educational expenses totaling S21,290.60 (twenty-one thousand two hundred ninety and sixty hundredths soles) and records of health expenses totaling S95.00 (ninety-five soles) have been presented. Those expenses were paid by the victim's family

(cf. document from the "San Basilio" Co-educational Private School certifying the courses taken by Paul Zambrano-Loayza, Appendix V; receipts from the Universidad de Lima made out to Gisselle Elena Zambrano-Loayza, dated April 30, May 30, and September 28, 1994; certificate from the Universidad de Lima, made out to Gisselle Elena Zambrano-Loayza; five receipts from the Universidad de Lima; a letter from Carolina Loayza-Tamayo to the Director of Personnel of the Universidad de Lima and high school record of Gisselle Elena Zambrano-Loayza, Appendix VI; and receipts from Gisselle Elena Zambrano-Loayza and Paul Zambrano-Loayza for medical expenses, Appendix XXII);

b) They visited their mother during her incarceration, under the conditions allowed by Peruvian prison law

(cf. official memorandum No. 82-98-D-EPMSM/CH-PNP, addressed to Peruvian National Police General Rodolfo Angeles Varillas, Executive Secretary of the INPE Commission, April 21, 1998; statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights; a statement made in the presence of a notary by Gisselle Elena Zambrano-Loayza and a statement made in the presence of a notary by Paul Abelardo Zambrano-Loayza); and

- c) Their mother's incarceration caused them serious mental health disorders for which they urgently require proper medical care

(cf. medical reports issued by Dr. René Flores-Agreda, October 6, 1998; statement made in the presence of a notary by Gisselle Elena Zambrano-Loayza and statement made in the presence of a notary by Paul Abelardo Zambrano-Loayza).

C) concerning the victim's other next of kin:

- a) They paid the medical expenses resulting from the victim's health disorders during her incarceration

(cf. Certification of medical attention received, for the date on which María Elena Loayza-Tamayo was treated at the "Arzobispo Loayza" National General Hospital; medical report from the "Arzobispo Loayza" National General Hospital, January 5, 1998, on the clinical history of María Elena Loayza-Tamayo, Appendix X; prescriptions and receipts for medications purchased for María Elena Loayza-Tamayo from 1996 to 1997, Appendix XIX; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

- b) They incurred other expenses to purchase her groceries, toiletries and articles of personal hygiene and wearing apparel, and transportation expenses to get these supplies to the victim. An exact figure for the total expenses was not determined

(cf. receipts from various establishments for purchases of groceries, Appendix XV; receipts for the purchase of articles of clothing for María Elena Loayza-Tamayo, Appendix XX; official memorandum No. 082-98-D-EPMSM/CH-PNP to Peruvian National Police General Rodolfo Angeles Varillas, Executive Secretary of the INPE Executive Commission, April 21, 1998; statement made in the presence of a notary by Olga Adelina Loayza-Tamayo, and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

- c) They paid the medical expenses of the victim's children

(cf. receipts from Gisselle Elena and Paul Zambrano-Loayza for medical expenses; statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights, and a statement made in the presence of a notary by Carolina Loayza-Tamayo); and

- d) The parents of the victim and two of her sisters, Delia Haydée and Elizabeth Giovanna, visited her under the conditions established in Peruvian prison law

(cf. official memorandum No. 082-98-D-EPMSM/CH-PNP, to Peruvian National Police General Rodolfo Angeles Varillas, Executive Secretary of the INPE Executive Commission, April 21, 1998; statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights; the statement made in the presence of a notary by Adelina Tamayo-Trujillo de Loayza; the statement made in the presence of a notary by Olga Adelina Loayza-Tamayo, and the statement made in the presence of a notary by Elizabeth Giovanna Loayza-Tamayo).

D) concerning representation of the victim and certain representation costs:

- a) Attorney Carolina Maida Loayza-Tamayo undertook representation of the victim vis-à-vis the Peruvian authorities and paid certain representation-related costs

(cf. the statement made in the presence of a notary by Carolina Maida Loayza-Tamayo and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights);

b) Attorneys Carolina Loayza-Tamayo, Ariel E. Dulitzky, Juan Méndez, José Miguel Vivanco, Viviana Krsticevic and Verónica Gómez represented the victim in the process before the Inter-American Commission on Human Rights. They also represented the victim during the Court's proceedings on the merits of the Case; the one exception was Mr. Méndez, who resigned as the plaintiff representative on September 16, 1997. During these stages of the proceedings, certain expenses involved in the victim's representations were paid by attorney Carolina Loayza-Tamayo

(cf. Judgment of September 17, 1997, para. 5; telephone bills from the Compañía Peruana de Teléfonos and Telefonía del Peru, Appendix XXXI; receipts for postal correspondence, Appendix XXXII; receipts for fax transmission of the petition and application in the Loayza Tamayo Case, Appendix XXXIII; receipts for correspondence sent by courier to process the petition and application in the Loayza Tamayo Case, Appendix XXXIV; airfare invoices in the name of Carolina Loayza-Tamayo, Appendix XXXV; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights); and

c) Attorneys Carolina Loayza-Tamayo, Ariel Dulitzky, Viviana Krsticevic, Marcela Matamoros and José Miguel Vivanco represented the victim during the reparations proceedings before this Court. On June 18, 1998, Ms. Marcela Matamoros advised the Court her withdrawal as legal representative in the instant Case. Attorney Carolina Loayza-Tamayo paid some of the expenses associated with the victim's representation

(cf. airfare invoices in the name of Carolina Loayza-Tamayo, Appendix XXXV; and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights).

E) In general:

a) At the time of the victim's detention, the official exchange between the sol, Peru's local currency, and the United States dollar, was a buying rate of 1.74 to 1 and a selling rate of 1.75 to 1

(cf. information on exchange rate (new soles per United States dollar), Appendix XXXVII; quotations on the exchange rate between the local currency of Peru and the United States dollar from January 1990 to June 1998 issued by the Chief of the Department of Economic Statistics and Studies of the Office of Superintendent of Banking and Insurance); and

b) In Peru, there are a number of laws on work bonuses within the public and private sectors. Of these, the one most favorable to the worker is Law No. 25,139, of December 14, 1989, which provides for two bonuses each year, each one equal to "the worker's basic monthly salary at the time the bonus is paid"

(cf. statements by the State, dated August 21, 1998, Law 25139 of December 14, 1989, on bonuses; Legislative Decree 276 – Statute of the Civil Service and Remuneration in the Public Sector; Law 26894 of November 28, 1997, on the 1998 Public Sector Budget; Supreme Decree 061-98-EF, July 6, 1998, granting government pensioners, officials and civil servants a National Festivities bonus of an extra month's pay; Urgent Decree No. 107-97 of December 5, 1997, granting government pensioners, officials and civil servants, and armed forces and national police personnel a Christmas bonus of an extra month's pay; Supreme Decree 070-85-PCM; Decree-

Laws 22482 and 18846; report No. 0053-98-GAF-SP-GG-PJ, July 9, 1998, and the statement given by María Elena Loayza-Tamayo before the Inter-American Court of Human Rights.)

IX REPARATIONS

107. The Commission petitioned the Court to instruct the State that it was to "expressly recognize that the freedom it gave to the victims is permanent, unqualified and unrestricted."

108. The State argued that such a claim "is irrelevant to the principle that informs the right to compensation and reparation that the Judgment establishes. " It added that the Commission's petition "reveals an impermissible punitive intent [and that no] government can guarantee that an individual's freedom will be without restriction or condition of any kind, since that depends entirely upon the conduct of the individual in question. "

109. In its Judgment on the merits, the Court ordered Peru to release the victim. In that Judgment, it is clear that the freedom so ordered is definitive and final, unconditional and unqualified. Hence, the Court understands that the State's release of the victim on October 16, 1997, is the kind inferred from the Judgment and therefore believes it need not accede to the Commission's request.

*
* * *

110. The victim requested that the Court order Peru to reinstate her in all public teaching positions she held and to use its good offices to have her reinstated in her previous positions within the private sector.

111. For its part, the Commission petitioned the Court to order the State to:

- a) Reinstatement the victim "in all her previous positions of employment, at the level and rank she had prior to being unlawfully deprived of her freedom";
- b) Prevail upon the National School of Dramatic Arts and the Universidad de San Martín de Porres to reinstate the victim as a teacher in her areas of specialization; failing that, pay the victim a sum equivalent to the lost pay up to her retirement age;
- c) Give the victim the category and grade she would have had, had she not been detained and incarcerated or, failing that, pay her a sum equivalent to the remuneration that she will fail to receive on that account; and
- d) Re-enter the victim's name in the records of the respective retirement plan retroactive to the date of her detention.

112. The State argued that the petition seeking the victim's reinstatement in her public teaching positions was "not necessary" since, as shown by the December 17, 1997 Directorial Resolution 2273 -which the victim herself had offered in evidence-, she had already been reinstated in the teaching service as a professor teaching 24 hours of history and geography at the Rimac National Girl's High School. The State

argued that the victim should direct her other petitions to the School of Dramatic Arts and the Universidad de San Martín de Porres, which would evaluate the merit of her request. It added that Peruvian law did not guarantee civil servants a job until retirement.

113. It is the view of this Court that the State does have an obligation to make every effort within its power to have the victim reinstated in the teaching positions she held in public institutions at the time of her detention. Her salaries and other benefits should be equal to the full amount she was receiving for teaching in the public and private sectors at the time of her detention, adjusted to its value as of the date of this Judgment. The Court has had before it a resolution ordering the victim's reinstatement in the teaching service, so that Peru has already partially complied with this obligation.

114. The Court further considers that the State is under the obligation to re-enter the victim's name on the proper retirement records, retroactive to the date on which she was removed from those records, and to ensure that she enjoys the same retirement rights to which she was entitled prior to her detention.

115. However, judging from the evidence, particularly the medical reports on the victim's health (*supra* 75 and 76) and the victim's own statement, circumstances are such that, for the present, it would be difficult for her to fully re-immers herself in her former jobs.

116. The State, therefore, has an obligation to do everything necessary to ensure that the victim receives her salaries, social security and employment benefits as of the date of issuance of this Judgment and until such time as she is able to effectively re-join the teaching service. The Court believes the prudent course of action would be to use the domestic mechanisms that apply in cases of employment disability or any other suitable means that will ensure that this obligation is honored.

117. The Court believes that strictly speaking, the victim's claims regarding her career prospects and promotion would not be measures of restitution; it will, therefore, examine them when it evaluates the damages the victim is claiming to her "life plan" [proyecto de vida] (*infra* 144 *et seq*).

* * *

118. In their reparations briefs, both the victim and the Commission petitioned the Court to order Peru to take the measures necessary to expunge the victim's criminal, court and prison records.

119. The Commission also petitioned the Court to instruct Peru to vacate the proceedings and judgments delivered in the regular courts, provide the victim with the proper court records, and report the nullification of the proceedings and the victim's release in the "*El Peruano*" official journal wherein the decisions of the judicial branch of government are reported.

120. Peru argued that the petitions were irrelevant and immaterial and constituted interference in the jurisdiction of Peruvian authorities, inasmuch as the September 17, 1997 Judgment had confined itself to ordering release of the victim, who now

enjoys "absolute and complete freedom." The State further noted that its judicial branch was still considering a petition that the victim herself had filed seeking to have her police or criminal records expunged.

121. The Court has had before it one document issued by the Registry of Records and Convictions of the Supreme Court of Military Justice (*supra* 54) that concerns the first proceeding to which the victim was subjected. However, the Court does not have sufficient information in its possession to determine whether there are other records in which the victim figures.

122. Under Article 68 of the American Convention, the States Parties "undertake to comply with the judgment of the Court in any case to which they are parties. " Consequently, Peru is obligated to adopt all domestic legal measures that follow from the Court's finding that the second trial to which the victim was subjected constituted a breach of the Convention. Hence, no conviction handed down in that second trial can have any legal effect, which is why all the respective proceedings and records are null and void.

* * *

123. The State's release of the victim is not sufficient to fully redress the consequences of the human rights violations perpetrated against her, given the length of time that she remained in prison, the suffering she endured as a result of the cruel, inhuman and degrading treatment to which she was subjected, and the fact that she was held incommunicado during her incarceration, paraded in prison uniform before the mass media, held in solitary confinement in a small, unventilated cell with no natural light, beaten and subjected to other forms of abuse such as threatened drowning, intimidation with threats of further violence, and restricted prison privileges (*Loayza Tamayo Case*, Judgment of September 17, 1997. Series C No. 33, para. 58). The consequences of that treatment cannot be fully redressed or compensated.

124. Alternative forms of reparation have to be found, such as pecuniary compensation for the victim and, where appropriate, her next of kin. This compensation is mainly for injuries suffered and, as this Court has ruled previously, includes pecuniary as well as moral damages (*Garrido and Baigorria Case, Reparations, supra*, para. 43).

X PECUNIARY DAMAGES

125. In the case of pecuniary damages, in their reparations briefs both the victim and the Inter-American Commission requested that the Court order Peru to pay the following amounts:

- a) US\$29,724 (twenty-nine thousand seven hundred twenty-four United States dollars) plus the legal interest on that amount, representing the income that the victim ceased to receive because of the events that resulted in her incarceration.

On this matter, the State argued that for the duration of her detention, the victim had received a pension from the State as a former employee of the

Ministry of Health. Hence, she was not left destitute. It could not be inferred, the State maintained, that had the victim not been detained, she would have continued to work at the same educational institutions where she was teaching at the time of her detention;

- b) US\$13,912.56 (thirteen thousand nine hundred twelve United States dollars and fifty-six cents) for groceries;
- c) US\$3,864.60 (three thousand eight hundred sixty-four United States dollars and sixty cents) for articles of personal hygiene;
- d) US\$3,508.92 (three thousand five hundred eight United States dollars and ninety-two cents) for materials for making handmade goods;
- e) US\$1,140.00 (one thousand one hundred forty United States dollars) for purchase of medications;
- f) US\$3,168.00 (three thousand one hundred sixty-eight United States dollars) for wearing apparel and shoes;
- g) S/2,500 (two thousand five hundred soles) in travel expenses incurred by next of kin to visit her at the Chorrillos Maximum Security Women's Prison to take groceries and other supplies to the victim;
- h) S/23,158.30 (twenty-three thousand one hundred fifty-eight and thirty/one hundredths soles) for the medical and educational expenses of Paul Abelardo and Gisselle Elena Zambrano-Loayza, expenses that were paid by Olga Adelina and Carolina Loayza-Tamayo.

The State argued that education was a parental obligation and the amount spent on a child's education was for the parents to decide, in accordance with the provisions of the Civil Code and the Child and Adolescent Code. The State, therefore, was not obligated to pay those expenses. It added that under the Civil Code and the Child and Adolescent Code, in the absence of the parents it was the duty of the children's grandparents, uncles and aunts to see to their education.

- i) US\$12,000.00 (twelve thousand United States dollars) for the income that Ms. Carolina Loayza-Tamayo ceased to receive when she undertook the victim's defense and resigned her position at the Ministry of Foreign Affairs;

Moreover, both the victim and the Commission petitioned the Court to instruct the State to pay certain estimated amounts for the following items:

- j) A prudent amount for "lost earnings" and expenses incurred by the victim's next of kin to visit her at the prison;
- k) A prudent amount for "lost earnings" and expenses incurred by her sister and attorney to visit the victim at the prison for the duration of her detention (some two hundred visits); and

l) Estimated sums of US\$18,000.00 (eighteen thousand United States dollars) and US\$14,400 (fourteen thousand four hundred United States dollars) for the future costs of the rehabilitation of the victim and her next of kin, respectively.

On this point, the State argued that the physical and mental condition of the victim and her next of kin prior to her detention had not been shown, so that this form of reparation would be absurd. It added that the current state of physical and mental health of those persons had also not been shown. Finally, it stated that this claim did not fit into the reparations ordered in the Judgment on the merits.

126. Peru also pointed out that the figures for the pecuniary damages claimed by the victim were given in dollars and not in Peru's local currency. It argued that under its Budget Law, payment of remuneration in foreign currency is strictly prohibited. It also objected to the rate of exchange used to make the calculations, since the Peruvian "sol" had not remained fixed since 1993, the date on which the victim was detained, and was currently fluctuating between S/2.80 and S/2.82 to the dollar. Peru maintained, therefore, that the amount claimed, when expressed in dollars, would be less than the amount indicated in the victim's brief.

127. As for the State's objection to the currency in which the victim's pecuniary claims were expressed, the Court notes that one effect of the reparations measures must be to preserve the real value of the amount received, so that it can achieve its compensatory intent. The Court previously held that "one of the easiest and most readily accessible ways to achieve this goal [is] the conversion of the amount received into one of the so-called hard currencies" (*Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment (Art. 67 American Convention on Human Rights)*, Judgment of August 17, 1990. Series C No. 9, para. 42). In its case law, the reiterated practice of the Court has been to use the United States dollar as the "hard" currency in which the compensatory damages are figured and has found that this safeguard protects the purchasing power of the amounts ordered. Hence, the practice of quoting the amounts in that currency -amounts which may then be paid in the local currency of the respondent state at the exchange rate on the day prior to payment- is consistent with the Court's customary practice, one that it confirms in the instant Case. However, in some instances the same expenditures are quoted in *soles* in the charts of estimated costs that the victim submitted as a reference aid, and then quoted in an equal number of United States dollars in the body of the victim's reparations brief, as if parity existed between the two currencies (*supra* 50). In these cases, the Court used the amounts shown on receipts and in other credible documents to arrive at the figures shown in the section on proven facts.

128. In the case of pecuniary damages for survivors of human rights violations, the Court has held that the compensation to be awarded depends on a number of factors, one of which is the time during which the victim remained unemployed (*El Amparo Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of September 14, 1996. Series C No. 28, para. 28). That criterion applies here as well, inasmuch as the victim in the instant Case is alive.

129. Based on the information received, its own case law and the facts proven, the Court determines that the compensation for pecuniary damages in the instant case shall include the following:

a) A sum corresponding to the salaries that the victim ceased to receive between the time she was detained and the date of the present Judgment. To compute the amount in question, the Court finds that at the time of her detention, the victim was receiving a combined salary of S/592.61 (five hundred ninety-two and sixty-one/one hundredths soles), which when calculated on the basis of the average of the selling and buying exchange rates in effect as of that date, yields a total of US\$339.60 (three hundred and thirty-nine United States dollars and sixty cents). The calculation will be made on the basis of 12-monthly salaries per year, plus a bonus of two months' salary for each year. The interest accruing up to the date of this Judgment will be added and, as the victim requested, no deduction whatever will be made for personal expenses, since, as the victim is alive, it must be concluded that either she or members of her family paid for those expenses for the period in question using other means. Consequently, the total for this item is US\$32,690.30 (thirty-two thousand six hundred ninety United States dollars and thirty cents);

b) A sum for the victim's medical expenses during her incarceration, since the Court considers that there is sufficient evidence to show that the corresponding ailments began during her confinement, a fact not refuted by the State. The evidence presented to support the figure given by the victim for this item is not conclusive and, for the sake of equity, the Court considers the proper course of action to be to award the sum of US\$1,000.00 (one thousand United States dollars) for medical expenses;

c) A sum corresponding to the travel expenses incurred by the next of kin to visit the victim during her incarceration. For equity's sake, the Court believes US\$500.00 (five hundred United States dollars) is an appropriate award for these expenses; and

d) An amount corresponding to the future medical expenses of the victim and her children, since the Court finds there is sufficient evidence to show that her ailments began during the victim's confinement, a fact not disproved by the State. For the sake of equity the Court considers US\$15,000.00 (fifteen thousand United States dollars) a fitting sum for the victim, and US\$5,000.00 (five thousand United States dollars) for each of her children.

130. On the other hand, the Court is dismissing the victim's claims for compensation of expenses to purchase groceries, articles of personal hygiene and toiletries, materials with which to do hand work, clothing, shoes, and the education of her children, expenses that were said to have been defrayed, at least in part, by some members of her family. The Court finds that it has been shown that prior to her incarceration, the victim was paying those expenses with her own funds and would have had to pay those expenses even if she had not been incarcerated. Therefore, the reparation ordered for lost earnings also implicitly includes the expenses herein described.

131. The Court is also denying the claim seeking payment of an amount for the income that Ms. Carolina Loayza-Tamayo was alleged to have lost by being forced to

give up the contract she had with the Ministry of Foreign Affairs, and another that she was about to conclude with the same Ministry, in order to devote herself to the victim's defense. The Court finds that there is no proof to support either of these claims or their causal nexus to the wrongful acts perpetrated against the victim in the instant case.

132. The Court finds that the "lost income" and visits of Ms. Carolina Loayza-Tamayo to the prison were representation-related expenses and will, therefore, examine their relevance when it deals with costs and expenses (*infra* 172).

133. Accordingly, the Court has decided to award US\$49,190.30 (forty-nine thousand one hundred ninety United States dollars and thirty cents) to Ms. María Elena Loayza-Tamayo as compensation for material damages, and US\$5,000.00 (five thousand United States dollars) to each of her children for medical expenses.

XI MORAL DAMAGES

134. In her reparations brief, the victim argued that moral damages were incurred by reason of her deprivation of freedom under subhuman conditions; separation from her children, parents and siblings; the inhumane, humiliating and degrading treatment she suffered during her detention and isolation, and when she was exhibited to the press as a "terrorist criminal." The victim maintained that the pain inflicted during the period of her incarceration endures in the form of the psychological consequences. She added that her children and other next of kin were directly affected by the abuse she suffered and were socially stigmatized. She added that her sister, Carolina Loayza-Tamayo, suffered this injury directly as she became the target of the State's intimidation tactics and false accusations and was included on a list of attorneys under investigation.

135. The victim therefore requested that the Court order the State to pay the following compensation for moral damages: US\$50,000.00 (fifty thousand United States dollars) to her; US\$20,000.00 (twenty thousand United States dollars) to her parents; US\$15,000.00 (fifteen thousand United States dollars) to each of her children, and a lump sum of US\$35,000.00 (thirty-five thousand United States dollars) for her siblings.

136. For its part, the Commission petitioned the Court to instruct Peru to pay fair compensation to the victim and to her next of kin, based on the amount indicated by the victim in her reparations brief.

137. The State maintained that to substantiate her claims for moral damages, the victim had used the same arguments she used to substantiate her claims for other heads of damages. It argued that in the proceedings into the merits, it was never proven that the victim had in fact been raped during her incarceration, or that she had been coerced into making self-incriminating statements, or that Peru had violated articles 8(2)(g) and 8(3) of the Convention. The State further maintained that in its Judgment on the merits, the Court had refrained from any pronouncement concerning the lack of independence and impartiality of the military courts. For these reasons, the State argued, the "alleged 'moral damages' being sought [...] do not fit the facts"; and it maintained that this was even truer in the case of the damages being claimed for the victim's next of kin.

138. It is obvious to the Court that the victim suffered moral damages, for it is characteristic of human nature that anyone subjected to the kind of aggression and abuse proven in the instant Case will experience moral suffering. No evidence is required to arrive at this finding.

139. Taking into account the particular circumstances of the case, the Court considers the sum of US\$50,000.00 (fifty thousand United States dollars) to be fair compensation for the victim for the moral damages she suffered.

140. It has been shown that the victim's children were approximately 12 and 16 years old when she was detained. Since at the time, the victim was supporting them and paying for their health care and education, the children were dependent upon their mother. The Court has also established that grievous violations were committed against the victim and must presume that they had an impact on her children, who were kept apart from her and were aware of and shared her suffering. Since, in the Court's opinion, the State has not disproved these presumptions, Gisselle Elena and Paul Abelardo Zambrano-Loayza are entitled to receive the "fair compensation" referred to in operative paragraph six of the Judgment on the merits.

141. Accordingly, it is fair to award each of the victim's children the sum of US\$10,000.00 (ten thousand United States dollars) in moral damages.

142. The Court can reasonably presume that Mr. Julio Loayza-Sudario and Ms. Adelina Tamayo-Trujillo de Loayza suffered moral damages because of what happened to the victim, as it is human nature that any individual should experience pain at his or her child's torment. The State did not disprove this presumption. The Court considers, therefore, that each of the victim's parent is entitled to the sum of US\$10,000.00 (ten thousand United States dollars) as fair compensation for moral damages.

143. The same considerations apply to the victim's siblings, who as members of a close family could not have been indifferent to Ms. Loayza-Tamayo's terrible suffering, a presumption not disproved by the State. It is proper, therefore, to name the victim's siblings as beneficiaries of the fair compensation referred to in operative paragraph six of the Judgment on the merits. The Court considers that fair compensation for moral damages would be US\$3,000.00 (three thousand United States dollars) for each sibling.

XII LIFE PLAN

144. The victim petitioned the Court for a ruling on the compensation, which might be due to her in the form of damage to her "life plan" and enumerated a number of factors that, in her judgment, should be taken into account to establish the scope of this head of damages and measure its consequences.

145. The State alleged that the request for compensation for damages to a life plan was inadmissible and noted that compensation of that nature was implicit in the other categories for which damages were sought, such as the "indirect or consequential damages" and "lost earnings". It pointed out that the victim had already been re-instated as a history and geography teacher at the Rímac National womens' High School (*supra* 106.A.I) and that she was free to apply to have her place in the Law School saved; it maintained that reinstatement at the San Martín de

Porres Private University was a decision that only the organs of that institution could make. The State further argued that both the victim and the Commission had attributed the alleged damages caused to Ms. Loayza-Tamayo to her detention. Its contention was, however, that the State could not be held liable for those damages inasmuch as the authorities that intervened in the case in question did so in the legitimate exercise of their authority under the laws in force at that time.

146. The State's argument that the authorities acted in the legitimate exercise of their authority is inadmissible. The Court itself has established that the acts of which Ms. Loayza-Tamayo was victim were violations of provisions of the American Convention.

147. The head of damages to a victim's "life plan" has been examined both in recent doctrine and case law. This notion is different from the notions of special damages and loss of earnings. It is definitely not the same as the immediate and direct harm to a victim's assets, as in the case of "indirect or consequential damages." The concept of lost earnings refers solely to the loss of future economic earnings that can be quantified by certain measurable and objective indicators. The so-called "life plan," deals with the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals.

148. The concept of a "life plan" is akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard.

149. In the case under study, while the outcome was neither certain nor inevitable, it was a plausible situation --not merely possible-- within the likelihood given the subject's natural and foreseeable development, a development that was disrupted and upset by events that violated her human rights. Those events radically alter the course in which life was on, introduce new and hostile circumstances, and upset the kinds of plans and projects that a person makes based on the everyday circumstances in which one's life unfolds and on one's own aptitudes to carry out those plans with a likelihood of success.

150. It is reasonable to maintain, therefore, that acts that violate rights seriously obstruct and impair the accomplishment of an anticipated and expected result and thereby substantially alter the individual's development. In other words, the damage to the "life plan", understood as an expectation that is both reasonable and attainable in practice, implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a persons prospects of self-development. Thus, a person's life is altered by factors that, although extraneous to him, are unfairly and arbitrarily thrust upon him, in violation of laws in effect and in a breach of the trust that the person had in government organs duty-bound to protect him and to provide him with the security needed to exercise his rights and to satisfy his legitimate interests.

151. For all these reasons, the claim seeking reparation, to the extent possible and by appropriate means, for the loss of options that the wrongful acts caused to the victim is entirely admissible. The reparation is thus closer to what it should be in order to satisfy the exigencies of justice: complete redress of the wrongful injury. In other words, it more closely approximates the ideal of *restitutio in integrum*.

152. It is obvious that the violations committed against the victim in the instant Case prevented her from achieving her goals for personal and professional growth, goals that would have been feasible under normal circumstances. Those violations caused irreparable damage to her life, forcing her to interrupt her studies and to take up life in a foreign country far from the context in which her life had been evolving, in a state of solitude, poverty, and severe physical and psychological distress. Obviously this combination of circumstances, directly attributable to the violations that this Court examined, has seriously and probably irreparably altered the life of Ms. Loayza-Tamayo, and has prevented her from achieving the personal, family and professional goals that she had reasonably set for herself.

153. The Court recognizes the existence of grave damage to the "life plan" of Ms. María Elena Loayza-Tamayo, caused by violations of her human rights. Nevertheless, neither case law nor doctrine has evolved to the point where acknowledgment of damage to a life plan can be translated into economic terms. Hence, the Court is refraining from quantifying it. It notes, however, that the victim's recourse to international tribunals and issuance of the corresponding judgment constitute some measure of satisfaction for damages of these kinds.

154. The condemnation represented by the material and moral damages ordered on other points of this Judgment should be some compensation for the victim for the suffering these violations have caused her; still, it would be difficult to restore or offer back to her the options for personal fulfillment of which she has been unjustly deprived.

XIII OTHER FORMS OF REPARATION

155. In her reparations brief, the victim petitioned the Court to order

- a) That the State publicly apologize to her and to her next of kin by publishing press releases in the five major Peruvian newspapers, the "official journal" among them, and in newspapers with an international circulation;
- b) That the State guarantee that her honor and the honor of her next of kin is restored and that it acknowledge, to the Peruvian public and to the international community, that it is responsible for the events of which she was the victim, and that it give public and mass circulation to the Judgment delivered on September 17, 1997.

156. The Commission did not raise this issue in its reparations brief.

157. The State indicated that when the victim was released, the mass media gave her release wide national coverage; the public was, therefore, informed of the facts and the publicity objective achieved. The State noted that the victim had herself submitted a video containing information about the news reports of her release order.

158. The Court considers that this Judgment, coupled with Judgment on the merits which found Peru responsible for human rights violations, constitute adequate reparation.

* * *

159. The victim requested that the Court instruct Peru to amend Decree-Law No. 25,475 (Terrorism) and Decree-Law No. 25,659 (Treason), as necessary.

160. For its part, the Commission petitioned the Court to order that Peru amend the pertinent provisions of those Decree-Laws and, in general, adopt the domestic legal measures necessary to avoid a repetition of violations of the kind proven in the instant case.

161. The State argued that amendment of Decree-Laws No. 25,475 and No. 25,659 would have no compensatory value. It maintained that it had introduced positive changes in its terrorism-related laws, including elimination of the practice of trial before "faceless" judges, creation of an *ad hoc* commission empowered to grant pardons, the possibility of executive clemency for persons tried for and convicted of the crimes of terrorism and treason, and commutation of sentence for those who avail themselves of the Repentance Law.

162. In the Judgment on the merits of the instant Case, delivered on September 17, 1997 (*Loayza Tamayo Case, supra* 123, para. 68), the Court's finding was that Decree-Laws 25,474 and 25,659 were incompatible with Article 8(4) of the Convention. The case law of this Court is that States Parties to the Convention may not order measures that violate rights and freedoms recognized therein (*Suárez Rosero Case, Judgment of November 12, 1997. Series C No. 35, para. 97*).

163. The Decree-Laws in question refer to actions not strictly defined (*Loayza Tamayo Case, supra* 123, para. 68), were invoked in the military court and regular court proceedings, and caused the victim injury.

164. Consequently, with respect to Decree-Laws 25,475 and 25,659, the Court finds that the State must comply with its obligations under Article 2 of the Convention, which stipulates that:

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

XIV THE DUTY TO TAKE DOMESTIC MEASURES

165. In her reparations brief, the victim petitioned the Court to request Peru to have proceedings instituted before the competent courts for the purpose of investigating, identifying and punishing the material and intellectual authors of the events that gave rise to the instant case and the accessories after the fact.

166. In its reparations brief, the Commission requested that the Court order that judicial proceedings be instituted and administrative measures taken to investigate

the facts and ascertain the identity of those responsible for the inhumane, degrading and humiliating treatment suffered by the victim.

167. The State argued that Decree-Laws Nos. 26,479 and 26,492, ordered as part of the pacification process, granted a general amnesty to military, police and civilian personnel; hence, the request made by the victim and the Commission is inadmissible. According to the State, even if the individuals who detained and prosecuted the victim had incurred some administrative, civil or criminal responsibility, those Decree-Laws precluded their prosecution at the present time, either judicially or administratively.

168. Under the American Convention, every person subject to the jurisdiction of a State Party is guaranteed the right to recourse to a competent court for the protection of his fundamental rights. States, therefore, have the obligation to prevent human rights violations, investigate them, identify and punish their intellectual authors and accessories after the fact, and may not invoke existing provisions of domestic law, such as the Amnesty Law in this case, to avoid complying with their obligations under international law. In the Court's judgment, the Amnesty Law enacted by Peru precludes the obligation to investigate and prevents access to justice. For these reasons, Peru's argument that it cannot comply with the duty to investigate the facts that gave rise to the present Case must be rejected.

169. As this Court has held on repeated occasion, Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, 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*, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83; *Suárez Rosero Case*, *supra* 162, para. 65; and *Paniagua Morales et al. Case*, *supra* 57, para. 164). That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.

170. Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity. The Court has defined impunity as the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention and has further stated 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 defenseless of victims and their relatives (*Paniagua Morales et al. Case*, *supra* 57, para. 173).

171. The State has an obligation to investigate the facts in the instant Case, to identify those responsible, to punish them, and to adopt the internal legal measures necessary to ensure compliance with this obligation (Article 2 of the American Convention).

COSTS AND EXPENSES

172. In her reparations brief, the victim pointed out that Ms. Carolina Loayza-Tamayo, her sister and attorney, was her defense lawyer in her representations before Peruvian authorities and administrative bodies during the domestic proceedings. She estimated her fees at US\$15,000.00 (fifteen thousand United States dollars). The victim also estimated that her attorney had visited her approximately 200 times during her incarceration.

173. The victim added that her attorney also represented her before the Commission; that the latter had accredited her as an assistant in the proceedings before the Court; and that her sister had used her own funds to pay the expenses involved in the proceedings before those two bodies of the inter-American system, including her airfare and the costs of the telephone, mail, fax and courier services. Given the foregoing, the victim requested the sum of US\$5,000.00 (five thousand United States dollars) for reimbursement of those expenses.

174. The Commission petitioned the Court to order payment of the expenses that Carolina Loayza-Tamayo had incurred in her legal representation of the victim *vis-à-vis* the Peruvian courts and the organs of the inter-American system; the itemization and calculations submitted by the victim in her brief were forwarded to the Court.

175. Peru pointed out that in its Judgment of September 17, 1997, the Court had decided that Peru was to reimburse the victim's next of kin for any expenses they may have incurred in their representations. The State argued that inasmuch as the Commission did not name Ms. Carolina Loayza-Tamayo as a victim, any request on her behalf was irrelevant and immaterial. Using this reasoning, Peru argued that the victim's claims at this stage of the proceedings were inadmissible. It further contended that the Judgment had ordered reimbursement of expenses incurred in representations before the Peruvian authorities, but not payment of professional fees.

176. Concerning these arguments, the Court considers that in the instant case, the costs must be examined in light of subparagraph (h) of Article 55(1) of its Rules of Procedure. Costs are an element of the reparations of which Article 63(1) of the Convention speaks, as they are a natural consequence of actions taken by the victim, her heirs or her representatives to obtain a Court resolution recognizing the violation committed and establishing its legal consequences. In other words, the activity in which they engaged to have recourse to an international court involves or can involve financial outlays and commitments for which the victim must be compensated when a judgment of condemnation is delivered.

177. In keeping with the applicable provisions, the Court considers that the costs to which Article 55(1) of its Rules of Procedure refers include the various outlays that the victim makes or pledges to make to accede to the inter-American system for the protection of human rights, and include the fees that are routinely paid to those who provide them with legal assistance. Obviously, these expenses refer solely to those that are necessary and reasonable, according to the particularities of the case, and that are effectively made or pledged to be made by the victim or her representatives (*Garrido and Baigorria Case, Reparations, supra* 84, para. 80).

178. It is important to point out that under Article 23 of the Rules of Procedure, the representatives of the victims or of their next of kin may independently submit

their own arguments and evidence at the reparations stage. This recognition of their *locus standi* opens up the possibility of expenses associated with that representation. In practice, the legal assistance provided to the victim begins not at the reparations stage, but in proceedings before domestic judicial bodies, and then continues in the successive proceedings before the two bodies of the inter-American system for the protection of human rights, namely the Commission and the Court. Hence, the concept of costs being examined here also includes the costs involved in proceedings before the domestic courts (*Garrido and Baigorria Case, Reparations, supra* 84, para. 81) and those seeking justice on an international plane, before two bodies: the Commission and the Court.

179. In exercise of this jurisdictional power, it is up to the Court to make a prudent assessment of the specific scope of the costs to which the judgment of condemnation refers, taking into account timely verification thereof, the circumstances of the specific case, the nature of the jurisdiction for the protection of human rights, and the characteristics of the respective proceedings, which are unique and different from those of other proceedings, both domestic and international. A reasonable amount of the costs incurred by the victim or her representatives and attorneys *vis-à-vis* Perú, the Inter-American Commission and this Court will be determined on the basis of equity (*Garrido and Baigorria Case, Reparations, supra* 84, para. 82).

180. Based on the foregoing, the Court is setting costs and fees at the sum of US\$20,000.00 (twenty thousand United States dollars), of which US\$15,000.00 (fifteen thousand United States dollars) are the fees of attorney Carolina Loayza Tamayo.

XVI MANNER OF COMPLIANCE

181. The victim requested that:

- a) The compensation ordered in her favor be paid in cash;
- b) The compensation ordered for her daughter, her parents and her siblings be paid in cash;
- c) The compensation ordered for her son be deposited in a trust fund until he has reached the age of 21;
- d) Payment of the amounts ordered by the Court be made within ninety days of notification of this Judgment and be tax-exempt and, where appropriate, that interest be paid on the final amounts of the compensation, calculated from the date of the Judgment to the date of actual payment, using the bank interest rate in effect in Peru at the time the Judgment is delivered; and
- e) The Court oversee fulfillment of the reparations ordered and payment of the compensation, and order the instant Case closed only when full compliance has been established.

182. The State made no observations on these points.

183. The Court considers the victim's claims to be reasonable, save for those relating to the deadline for payment and the method of payment to the victim's son. As regards the deadline, the jurisprudence of the Court has consistently been to give States a period of six months in which to comply with the obligations established in reparations judgments.

184. As for the payment owed to Paul Abelardo Zambrano-Loayza, the latter is so close to majority age that the formalities required to set up a trust fund are unwarranted and could even obstruct execution of the Judgment and thus be contrary to the interests of justice. For this reason, the Court is ordering that the amount awarded to Paul Abelardo Zambrano-Loayza be deposited in a solvent banking institution of recognized standing, in an interest-bearing, fixed-term certificate of deposit, at the most favorable terms under banking practice in Peru. That certificate of deposit should mature on the date Mr. Paul Abelardo Zambrano-Loayza attains his majority.

185. To comply with this Judgment, the State shall execute the measures of restitution, pay compensatory damages, reimburse fees and costs and take the other measures ordered within the six-month period following the date of notification of this Judgment.

186. In the case of the compensatory damages, they shall be paid directly to the victim and to her adult next of kin; if any has died, payment shall be made to his or her heirs.

187. If within one year following the date of notification of this Judgment or maturity of the certificate of deposit described in paragraph 184, a beneficiary fails to appear to receive the payment he or she is due, the State shall put the amount owed, in United States dollars, in a trust fund in said individual's name, with a banking institution of recognized solvency in Peru and under the most favorable banking terms. If ten years after the trust fund's establishment said person or his or her have has not claimed the funds, the sum shall be returned to the State and this Judgment shall be considered honored.

188. The State may fulfill these obligations through payments in United States dollars or in an equivalent cash amount in the local currency of Peru. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Peruvian currency quoted on the New York market on the day prior to the date of the payment.

189. The compensations paid shall be exempt from all taxes currently in existence or that may be enacted in the future.

190. Should the State be delinquent on any payment, it shall pay interest on the amount owed at the interest rate in effect in Peru's banking system for cases of delinquency.

191. In keeping with its consistent practice and its obligations under the American Convention, the Court will oversee compliance with this judgment.

XVII
OPERATIVE PARAGRAPHS

192. Now therefore,

THE COURT

DECIDES:

AS RESTITUTION MEASURES,

Unanimously

1. That the State of Peru shall take all measures necessary to re-instate Ms. María Elena Loayza-Tamayo in the teaching service in public institutions, on the understanding that the amount of her salaries and other benefits shall be equal to the pay she was receiving for her teaching services in the public and private sectors at the time of her detention, appreciated to reflect its value as of the date of this Judgment.

Unanimously

2. That the State of Peru shall guarantee to Ms. María Elena Loayza-Tamayo her full retirement benefits, including those owed for the period transpired since the time of her detention.

Unanimously

3. That the State shall take all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Ms. María Elena Loayza-Tamayo in the civil courts has any legal effect whatever.

AS COMPENSATORY DAMAGES,

By a vote of six to one

4. That the State of Peru shall pay, under the conditions and in the manner described in paragraphs 183 to 190 of this judgment, a total of US\$167,190.30 (one hundred sixty-seven thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, distributed as follows:
 - a. US\$99,190.30 (ninety-nine thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, to Ms. María Elena Loayza-Tamayo;
 - b. US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency to Gisselle Elena Zambrano-Loayza, and US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency to Paul Abelardo Zambrano-Loayza;
 - c. US\$10,000.00 (ten thousand United States dollars) or its equivalent in Peruvian currency to Ms. Adelina Tamayo-Trujillo de Loayza, and US\$10,000.00 (ten thousand United States dollars) or its equivalent in Peruvian currency to Mr. Julio Loayza-Sudario; and

- d. US\$18,000.00 (eighteen thousand United States dollars) or its equivalent in Peruvian currency, to Carolina Maida Loayza-Tamayo, Delia Haydée Loayza-Tamayo, Olga Adelina Loayza-Tamayo, Giovanna Elizabeth Loayza-Tamayo, Rubén Edilberto Loayza-Tamayo and Julio William Loayza-Tamayo, with each receiving US\$3,000.00 (three thousand United States dollars) or its equivalent in Peruvian currency.

Judge de Roux-Rengifo partially dissenting.

AS OTHER FORMS OF REPARATION,

Unanimously

5. That the State of Peru shall adopt the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention on Human Rights.

WITH RESPECT TO THE DUTY TO TAKE DOMESTIC MEASURES,

Unanimously

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

CONCERNING FEES AND COSTS,

Unanimously

7. That the State of Peru shall pay, in the form of fees and costs and under the terms and in the manner described in paragraphs 183 to 190 of this Judgment, the sum of US\$20,000.00 (twenty thousand United States dollars) or its equivalent in Peruvian currency, to Ms. Carolina Maida Loayza-Tamayo.

FURTHER, THE COURT,

DECIDES:

Unanimously

8. That the restitution measures ordered in operative paragraphs 1, 2, and 3, the payment of compensatory damages ordered under operative paragraph 4, the reimbursement of fees and costs ordered in operative paragraph 7, the adoption of other forms of reparation ordered under operative paragraph 5, and the measures to fulfill the duty to take domestic measures, ordered under operative paragraph 6, shall be executed within six months of the date of notification of this Judgment.

Unanimously

9. That any payment ordered in the present Judgment shall be exempt from existing or future taxes or levies.

Unanimously

10. That it shall oversee fulfillment of this judgment.

Judge de Roux-Rengifo informed the Court of his Partially Dissenting Opinion; Judges Cançado Trindade and Abreu-Burelli of their Joint Concurring Opinion Judge Jackman of his Separate Concurring Opinion; and Judge García-Ramírez of his Concurring Opinion, all of which shall be attached to this Judgment.

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

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary

**PARTIALLY DISSENTING OPINION OF
JUDGE CARLOS VICENTE DE ROUX-RENGIFO**

I am in disagreement with the court's decision on the amount of compensatory damages to be paid to María Elena Loayza-Tamayo. In my view, the amount should have been greater, as it should have also included a sum of money specifically intended to redress the damage to her life plan. Based on equity considerations, that amount could have been set at 25,000 united states dollars.

The court has taken an important step forward by regarding damage to one's life plan as a head of damages to be considered in certain cases of human rights violations and has built a good theoretical base to support it. However, it has refrained from using that theoretical platform to make a specific condemnation in the Case before us, a decision with which I am in disagreement.

As the judgment states, the concept of compensation for damage to an individual's life plan is not yet firmly established in either case law or doctrine. However, it is not an altogether alien concept either, as courts of various kinds, in various parts of the world, have regarded the aggravation of an individual's circumstances as the kind of injury that must be redressed and have, in one way or another, weighed those circumstances from an evolutionary perspective that factors in the injured party's plans and prospects.

Adverse changes of circumstance may be caused by very different facts and events: the death of a loved one, physical disability in oneself or an immediate relative, disruption of one's professional career... In terms of specific categories of damages, such changes have nothing to do with the subjective suffering or affliction of the victim, who is being compensated, as in the case of moral damages, by recognizing a *precium doloris*. Changes to a victim's life plan are changes in his objective surroundings and his relationship with those surroundings, changes that tend to have an effect that goes far beyond the point at which the affliction or distress caused by the injury ceases and that rob the injured party of the affection, satisfaction or pleasure that makes life enjoyable or meaningful. Strictly speaking, damage to an individual's life plan, although a non-material injury, is not the same as moral damages (which is why, in the instant Case, the court correctly dealt with the damage to the victim's life plan separately from material damages and moral damages).

Some general provisos, however, are in order.

Not every change in an individual's circumstances merits indemnification. To warrant compensation, they must be very substantial changes that, for example, profoundly alter the affective and spiritual milieu in which the life of the family unfolds, or cuts short a professional career into which great effort and dedication have been poured.

When determining the degree to which an individual's circumstances have changed and, more specifically, the damage to his personal life plan, certain extremes have to be avoided, such as believing that the victim will remain forever entrapped in inertia or desperation, or depicting his condition as a kind of eternal tragedy. particular care must be taken to weigh this aspect of the issue when establishing, based on principles of equity, the amount of the respective compensation.

Given the specifics of this Case, in my judgment the circumstances of María Elena Loayza-Tamayo and her life plan were profoundly altered, for which she deserves to be compensated under the terms suggested above.

Consequently, I believe that subparagraph a of operative paragraph four of the judgment should have read as follows:

[...]

4. [...]

a. us\$124,190.30 (one hundred twenty-four thousand one hundred and ninety united states dollars and thirty cents) or its equivalent in peruvian currency, to ms. maría elena loayza tamayo;

[...]

I join with the majority on the remaining subparagraphs of operative paragraph four of the judgment and with the other operative paragraphs thereof.

Carlos Vicente De Roux-Rengifo
Judge

Manuel E. Ventura-Robles
Secretary

JOINT CONCURRING OPINION OF JUDGES

A.A. CANÇADO TRINDADE AND A. ABREU-BURELLI

1. In voting in favour of the present Judgment on reparations delivered by the Inter-American Court of Human Rights in the *Loayza Tamayo versus Peru* case, we feel obliged to express our thoughts on the matter, given our belief in the need for greater jurisprudential development in the matter of reparations for violations of human rights. Contemporary doctrine seems to recognize this need, in beginning to provide its first contributions towards greater precision to the scope of reparations in the ambit of the International Law of Human Rights.

2. Thus, contemporary doctrine on the matter has established the relationship between the right to reparation, the right to truth and the right to justice (which starts with the access to justice). The realization of those rights is hindered by measures of domestic law, such as the so-called self-proclaimed amnesties pertaining to violations of human rights, which lead to a situation of impunity¹.

3. Those measures are incompatible with the duty of States to investigate those violations, rendering it impossible the vindication of the rights to truth and to the realization of justice, as well as, consequently, of the right to obtain reparation. One cannot thereby deny the close link between the persistence of impunity and the hindering of the very duties of investigation and of reparation, as well as of the guarantee of non-repetition of the harmful facts.

4. The aforementioned measures are, moreover, incompatible with the general obligation of States to respect and to secure respect for the protected human rights, guaranteeing the free and full exercise of these latter (in the terms of Article 1(1) of the American Convention on Human Rights). States are under the duty to eliminate those measures (which constitute obstacles to the realization of human rights), in conformity with the other general obligation to harmonize their domestic law with

1. L. JOINET (RAPPORTEUR), *LA CUESTIÓN DE LA IMPUNIDAD DE LOS AUTORES DE VIOLACIONES DE LOS DERECHOS HUMANOS (DERECHOS CIVILES Y POLÍTICOS) - INFORME FINAL*, ONU/COMISIÓN DE DERECHOS HUMANOS, DOC. E/CN.4/SUB.2/1997/20, OF 26.06.1997, PP. 1-34; AND, FOR THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS, CF. EL HADJI GUISSÉ (SPECIAL RAPPORTEUR), *LA CUESTIÓN DE LA IMPUNIDAD DE LOS AUTORES DE VIOLACIONES DE LOS DERECHOS HUMANOS (DERECHOS ECONÓMICOS, SOCIALES Y CULTURALES) - INFORME FINAL*, ONU/COMISIÓN DE DERECHOS HUMANOS, DOC. E/CN.4/SUB.2/1997/8, OF 23.06.1997, PP. 1-43.

the international norms of protection² (in the terms of Article 2 of the American Convention on Human Rights).

5. Contemporary doctrine, furthermore, has identified distinct *forms* of reparation (*restitutio in integrum*, satisfaction, indemnizations, rehabilitation of the victims, guarantees of non repetition of the harmful facts, among others) *from the perspective of the victims*, of their needs, aspirations and claims³. In fact, the terms of Article 63(1) of the American Convention on Human Rights⁴ disclose to the Inter-American Court of Human Rights quite a wide horizon in the matter of reparations⁵.

6. Nevertheless, the contents and scope of the measures of reparation in international law remain surrounded by a certain degree of imprecision, despite the existence of a secular case-law on the matter. This is due in great part to the fact that such case-law has developed as from analogies with solutions of private law, and, in particular, of civil law (*droit civil*), in the ambit of national legal systems.

7. Juridical concepts, while encompassing values, are product of their time, and as such are not unchangeable. The juridical categories crystallized in time and which came to be utilized - in a context distinct from the ambit of the International Law of Human Rights - to govern the determination of reparations were strongly marked by

2. It may be recalled that, half a decade ago, the Vienna Declaration and Programme of Action (1993), the main document adopted by the II World Conference of Human Rights, urged the States to "abrogate legislation leading to impunity for those responsible for grave violations of human rights, (...) and prosecute such violations (...)" (part II, paragraph 60).

3. Theo van Boven (special *rapporteur*), *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms -Final Report*, U.N./Commission on Human Rights, doc. E/CN.4/Sub.2/1993/8, of 02.07.1993, pp. 1-65.

4. Article 63(1) of the American Convention provides that: -"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his 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 fair compensation be paid to the injured party".

5. Certainly much wider than that which ensues from the terms of Article 50 of the European Convention of Human Rights, restrictively interpreted and applied by the European Court of Human Rights throughout the years and until the recent entry into force of Protocol n. 11 to the European Convention, on 01 November 1998.

those analogies of private law: such is the case, e.g., of the concepts of material damage and moral damage, and of the elements of *damnum emergens* and *lucrum cessans*.

8. Such concepts have been strongly determined by a patrimonial content and interest, - which is explained by their origin, -marginalizing what is most important in the human person, namely, her condition of spiritual being. This is disclosed by the fact that even the moral damage itself is commonly regarded, in the classical conception, as amounting to the so-called "non patrimonial damage". The point of reference still keeps on being the patrimony. The pure and simple transposition of such concepts onto the international level was bound to generate uncertainties. The criteria of determination of reparations, of an essentially patrimonial content, based upon analogies with those of civil law (*droit civil*), have never convinced us, and do not appear to us entirely adequate or sufficient when transposed into the domain of the International Law of Human Rights, endowed with a specificity of its own.

9. In the framework of this latter, reparations ought to be determined on the basis not only of criteria which rest upon the relationship of the human being with his goods or his patrimony, or upon his capacity to work, and upon the projection of those elements in time. Contrary to what the materialist conception of the *homo oeconomicus* pretends, a conception regrettably prevailing in our times, we hold the firm and full belief that the human being is not reduced to a mere agent of economic production, to be considered solely in function of such production or of his capacity to work.

10. The human being has needs and aspirations which transcend the purely economic measurement or projection. Already in 1948, half a century ago, the American Declaration on the Rights and Duties of Man warned in its preamble that the "*spiritual development is the supreme end of human existence and the highest expression thereof*"⁶. Those words appear quite timely in this *fin de siècle*. In the domain of the International Law of Human Rights, the determination of reparations ought to bear in mind the integrality of the personality of the victim, and the impact upon this latter of the violation of her human rights: it ought to start from an integral and not only patrimonial perspective of her potentialities and capacities.

11. From all the aforementioned it clearly results that non-pecuniary reparations are much more important than one might *prima facie* assume. In the public hearing

6. Fourth preambular paragraph (emphasis added).

before the Inter-American Court of 09 June 1998, it was Mrs. María Elena Loayza Tamayo herself who, as the complainant party and as subject of the International Law of Human Rights, with full international procedural capacity at the phase of reparations, pointed out that she was aware that "the economic indemnization will not repair the whole damage" suffered⁷.

12. The international case-law in the matter of reparations is to be reoriented and enriched with the approach and contribution proper to the International Law of Human Rights. Hence the importance which we attribute to the recognition, in the present Judgment of the Inter-American Court, of the *damage to the project of life of the victim*⁸, as a first step in this direction and purpose. If there had been no determination of the occurrence of the damage to the project of life, how could one achieve the *restitutio in integrum* as a form of reparation? How could one proceed to the *rehabilitation* of the victim as a form of reparation? How could one affirm in a convincing way the guarantee of non-repetition of the harmful facts in the framework of reparations?

13. No answer could be given to those questions without determining the occurrence of a damage to the project of life and establishing its consequences. We think that these considerations gain greater importance in a paradigmatic case like the present one, in which the victim is alive and, therefore, the *restitutio in integrum*, as a form *par excellence* of reparation, is possible.

14. As the juridical consequences of the violations of the conventional obligations of protection have not been sufficiently examined or developed in doctrine, one is to bear always in mind a basic principle of international law in the matter of reparations: States have the obligation to *put an end* to those violations and to remove their consequences⁹. Hence the importance of the *restitutio in integrum*, particularly apt to that purpose, given the insufficiencies of indemnizations.

7. Corte Interamericana de Derechos Humanos, *Transcripción de la Audiencia Pública Celebrada en la Sede de la Corte el 09 de Junio de 1998 sobre las Reparaciones en el Caso Loayza Tamayo*, p. 34, and cf. pp. 60-61 (mimeographed, internal circulation).

8. Paragraphs 143-153.

9. This principle has received judicial recognition as from the well-known *obiter dictum* of the old Permanent Court of International Justice (PCIJ) in the *Chorzów Factory* case (Merits); cf. PCIJ, Series A, n. 17, 1928, p. 47. It has also received support in doctrine; cf., *inter alii*, Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, Cambridge, University Press, 1994 (reprint), p. 233; J.A. Pastor Ridruejo, *La Jurisprudencia del Tribunal Internacional de La Haya -Sistematización y Comentarios*, Madrid, Ed. Rialp, 1962, p. 429; F.V. García-Amador, *The Changing Law of International Claims*, vol. II, N.Y., Oceana Publs., 1984, p. 579; Roberto Ago, "[1973 Report on] State Responsibility", reproduced in *The International Law Commission's Draft Articles on State Responsibility* (ed. S. Rosenne), Dordrecht, Nijhoff, 1991, pp. 51-54. Of the Judgment itself of the PCIJ in the *Chorzów Factory* case (*cit. supra*), it may be inferred that the duty of reparation is the indispensable complement of non-compliance with a conventional obligation; cf., *inter alii*, P. Reuter, "Principes de Droit international public", 103

15. In our understanding, the project of life is ineluctably linked to freedom, as the right of each person to choose her own destiny. The Court has in this way correctly conceptualized it in the present Judgment¹⁰, in warning that "it could hardly be said that a person is truly free if she does not have options to direct her existence and to bring it into its natural culmination. Those options possess, in themselves, a high existential value. Accordingly, their cancellation or minimization imply the objective reduction of freedom and the loss of a value which cannot pass unnoticed from the observation of this Court"¹¹.

16. The project of life encompasses fully the ideal of the American Declaration of 1948 of proclaiming the spiritual development as the supreme end and the highest expression of human existence. The damage to the project of life threatens, ultimately, the very *meaning* which each human person attributes to her existence. When this occurs, a damage is caused to what is most intimate in the human being: this is a damage endowed with an autonomy of its own, which affects the spiritual meaning of life.

17. The whole chapter of reparations for violations of human rights ought to, in our view, be reassessed from the perspective of the integrality of the personality of the victim, bearing in mind her realization as a human being and the restauration of her dignity. The present Judgment of reparations in the *Loayza Tamayo* case, in recognizing the existence of the damage to the project of life linked to the satisfaction, among other measures of reparation, takes a correct and reassuring step in this direction, which, we trust, will be object of further jurisprudential development in the future.

Recueil des Cours de l'Académie de Droit International de La Haye (1961) pp. 585-586; R. Wolfrum, "Reparation for Internationally Wrongful Acts", *Encyclopedia of Public International Law* (ed. R. Bernhardt), vol. 10, Amsterdam, North Holland, 1987, pp. 352-353.

10. The Court has warned in the present Judgment that the damage to the project of life attempts against personal development itself, by factors alien to the person, and to her "imposed in an unjust and arbitrary way, with violation of the norms in force and of the trust which she had deposited on organs of the public power obliged to protect her and to grant her security for the exercise of her rights and the satisfaction of her legitimate interests" (paragraph 149).

11. Paragraph 147.

Antônio A. Cançado Trindade

Alirio Abreu-Burelli

Judge

Judge

Manuel E. Ventura-Robles

Secretary

SEPARATE CONCURRING OPINION

OF JUDGE JACKMAN

I am in total agreement with the decision of the Court in this case, with the orders with which the judgment concludes, and with the *ratio decidendi* of the judgment as a whole.

I must, however, reluctantly put on record my inability to join wholeheartedly in the enthusiasm with which the Court appears to have welcomed, in paragraphs 147 to 154, the so-called *proyecto de vida* ("life-plan" or "life project"), a concept which is new to the jurisprudence of this Court, and one which, in my respectful view, is lacking both in clarity and in juridical cogency.

It is to be noted that the Court has refrained from making a specific order for damages in respect of this concept. Nevertheless, the statement at paragraph 153 to the effect that "...the Court recognises the existence of grave damage to the 'life-project' of Maria Elena Loayza Tamayo..." represents a formal acceptance of the concept as a legitimate head of damages which, inevitably, will henceforward form part of the armoury of plaintiffs appearing before the Court in hearings on reparations.

The Court has defined "*proyecto de vida*" in paragraphs 147 to 150 in the following terms:

This notion is different from the notions of special damages (*daño emergente*) and loss of earnings (*lucro cesante*).... [T]he so-called [*proyecto de vida*] deals with the full self-actualisation of the person concerned and takes account of her calling in life, her skills, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals...[D]amage to the "life-plan"...implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of [a person's] prospects of self-development.

In this context the Court has identified as "irreparable damage" to the "life-plan" of Mrs. Loayza the proven fact that her illegal arrest, trial, and imprisonment have obliged her to "interrupt her studies and to take up life in a foreign country far from the context in which her life had been evolving, in a state of solitude, poverty, and severe physical and psychological distress" (paragraph 152).

I am of opinion that there is ample precedent in the jurisprudence of this Court, without necessity for the creation of a new head of damages, to permit the Court to assess the damage here identified and to make the appropriate orders in terms of Article 63 of the American Convention on Human Rights ("the Convention"), from which the Court derives its authority to order reparations when it finds that there has been a violation of a right or freedom protected in the Convention.

From the time of its very first decision on reparations (*Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 7) this Court, like other similar international tribunals, has recognised that violations of the protected rights give rise to a right on the part of the plaintiff to "reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial (*sc*: "*material*" and "*moral*" or "*pecuniary*" and "*non-pecuniary*") damages, including emotional harm." (Loc. cit.: para. 26; emphasis added).

Under the Convention the Court has authority to order "fair compensation" to be paid to a successful plaintiff. In a given case it is thus open to the tribunal, once the standard test of remoteness of the damage is met, to rule on any identifiable damage which the plaintiff has sustained as a result of violations of the rights and freedoms protected under the Convention. A claim for "loss of development prospects" can therefore be examined in precisely the same manner as any other claim, with a determination as to whether and to what extent it is quantifiable; and, if not quantifiable, what fair order may be made with a view to remedying the consequences of the particular violation or violations, as far as is possible in the particular circumstances.

There is, therefore, no call and no room, in my opinion, for new categories of redress to be imported into the jurisprudence of the Court, particularly if such categories are defined in broad and sweeping terms. Article 63 of the Convention authorises the Court to

rule, *if appropriate*, that the consequences of the measure or situation that constituted the breach... be remedied and that *fair* compensation be paid to the injured party". (Emphasis added).

Such language already provides the Court with a considerable margin of judicial discretion, wider, indeed, than that enjoyed by the European Court of Human Rights under the corresponding provision of the European Convention (Article 50). If to this is super-added a novel and broadly-conceived head of damages, the juridical security vital to the functioning of the protective system may be put, in my view unnecessarily, at serious risk.

Oliver Jackman

Judge

Manuel E. Ventura-Robles

Secretary

**CONCURRING OPINION OF
JUDGE GARCÍA-RAMÍREZ**

**IN RELATION TO THE JUDGMENT ON REPARA-
TIONS DELIVERED BY THE INTER-AMERICAN
COURT OF HUMAN RIGHTS IN THE LOAYZA
TAMAYO CASE**

The arguments for my Concurring Opinion in the Judgment on reparations in the *Castillo Páez Case*, of this same date, apply with equal force to the State's duty to investigate and punish the acts that violated the human rights of Ms. Loayza-Tamayo.

San José, Costa Rica, November 27, 1998.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary