



**Organización de los
Estados Americanos**



Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Sindicato de Funcionarios, Profesionales y Técnicos de la Empresa
de Servicio de Agua Potable y Alcantarillado de Lima
[Union of Employees, Professionals, and Technicians of the
Lima Water and Sewerage Service Company]
(Case 12.384)
against the State of Peru

DELEGATES:

Luz Patricia Mejía, Commissioner
Santiago A. Canton, Executive Secretary

ADVISORS:

Elizabeth Abi-Mershed
Silvia Serrano Guzmán

January 16, 2010
1889 F Street, N.W.
Washington, D.C., 20006

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF PERU - CASE 12384
SINDICATO DE FUNCIONARIOS, PROFESIONALES
Y TÉCNICOS DE LA EMPRESA DE SERVICIO DE
AGUA POTABLE Y ALCANTARILLADO DE LIMA**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “the Commission,” or “the IACHR”), submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) the application in Case 12384, *Miembros del Sindicato de Funcionarios, Profesionales y Técnicos de la Empresa de Servicio de Agua Potable y Alcantarillado de Lima* [Members of the Union of Employees, Professionals, and Technicians of the Lima Water and Sewerage Service Company (SEDAPAL) (hereinafter “members of SIFUSE” or “the victims”) versus¹

¹ The victims in this case are: (1) Yolanda Andía Cárdenas, (2) Daniel Orlando González Flores, (3) Augusto Alejandro Zúñiga Ornay, (4) Claudio Claussen Valderrama, (5) Jorge Antonio Descalzi Arana, (6) Elías Minaya Méndez, (7) Manuel Nava Valdeiglesias, (8) Rosalinda del R. Ortega, (9) Carlos A. Castañeda Burgos, (10) Gil Augusto Gómez Zegarra, (11) Víctor Rodríguez González Zúñiga, (12) Juan Adán Quintana, (13) Oscar Francisco Pacheco Vargas, (14) Julio Pedro Stanchi Vargas, (15) Jorge Armando Raygada Correa, (16) Libia Consuelo Reyes Zamora, (17) Víctor V. Rodríguez Cáceres, (18) Ebel Salas Flores, (19) Alejandro Morales Castillejo, (20) Carlos Raúl Iraola Ruíz, (21) Juan Alberto Yañez La Rosa, (22) Manuel E. Montoya Torres, (23) Elard Profirio Aguilar Alarico, (24) Víctor Darwin Abril, (25) José Eduardo Aguirre Galdos, (26) Henry B. Alvarado Llerena, (27) Teobaldo Cerna Pereyra, (28) Pedro Aranda Carrasco, (29) Julio César Torres Salazar, (30) Martha L. Aranguren Carvajal, (31) Rosa E. Aspíllaga Benavides, (32) Juana F. Arzola Guerrero, (33) Pablo Ramón Azabache Soto, (34) Marco Aurelio Benavides Galvez, (35) Angel Benites Marchand, (36) Luís Franklin Bocanegra Roca, (37) Irma Zenobia Borda Mamani, (38) Luis Manuel Braga Vega, (39) Javier Bacigalupo Matellini, (40) Beatriz M. Cáceres Leturia, (41) Jaime Cáceres Rivera, (42) Juan Gelasio Calderón Llaguento, (43) Sonia Callirgos de Dupont, (44) Teodoro Carhuamaca Sulluchuco, (45) Rigoberto René Carranza Chávez, (46) Santiago M. Cerro González, (47) Enrique M. Charriarse Cabrera, (48) Celso Chávez Miranda, (49) Ruth Chávez Díaz, (50) Cesil Cholón Dávila, (51) Gloria Elena Chu Armijo, (52) Hilmer Alonso Chunga Galvez, (53) José Antonio Clavo Delgado, (54) Guido Antonio Colona, (55) Manuel L. Corrales Sandoval, (56) Jorge F. Cornejo Alvarado, (57) Guillermo Cuadros Capilla, (58) Félix Isafas Cotito Arias, (59) José Antonio Cuadros Salcedo, (60) Victoriano Avelino Cueto Padilla, (61) María Jessie Delgado Chirinos, (62) Severo Paulo Díaz Rojas, (63) José Nemesio Díaz Ipanaque, (64) Pedro Amador Dueñas Toledo, (65) Augusto Durand Romero, (66) Ananías Egúsqüiza Minaya, (67) Pablo Enrique Engel Goytizolo, (68) Alfonso Escobar Zamalloa, (69) Juan Manuel Espinoza Yarleque, (70) Hilario Fernández Armuto, (71) Román Enrique Fernández Culque, (72) Luís Amadeo Ferrari Ranilla, (73) Carlos Galarreta Vera, (74) Pedro Gamarra Rey, (75) Arnulfo Gómez Villasante, (76) Toribio Pedro Guerrero Magno, (77) Roberto Hall Arias, (78) Luís Hernández Legario, (79) Olga Soledad Haymez Vilchez, (80) Néstor Herrera Zegarra, (81) Luís José Huanca Aguilar, (82) Blanca A. Hinojosa Mendoza, (83) Félix Humberto Hurtado Saco, (84) Carlos Jiménez Alberca, (85) Luis Manuel Latorre Santillán, (86) César Augusto Lazcano Carreño, (87) Javier Luís López Estrella, (88) Víctor Raúl López Julca, (89) Guillermo López Fernández, (90) Alejandro López Florián, (91) Mirtha Amparo Malo Cheng, (92) Carlos Alfredo Malaver Heredia, (93) David Moisés Mendoza Nieto, (94) Juan A. Martínez Barrionuevo, (95) Hidelbrando Martínez Del Barrio, (96) Carlos Guillermo Mesta Meneses, (97) Félix Mesa Santillana, (98) Oscar Abraham Miñano Zeballos, (99) Francisco Félix Miranda Olivera, (100) María Susana Montoya Córdova, (101) Oscar Eduardo Moreno Hernández, (102) Víctor Motta Torres, (103) Héctor Alberto León Borda, (104) Jorge Luís Neyra Yáñez, (105) Rosa Virginia Olazo Tejada, (106) Víctor Abraham Oliva, (107) Adriana Luisa Oviedo Quino, (108) Hernán E. Palacios Romero, (109) Margarita Palomeque de Villaseca, (110) Tito F. Pizarro de los Santos, (111) José Manuel Polanco Soto, (112) Wuile Hector Portillo Silva, (113) Gregorio Portugal Ponce, (114) Roberto Antonio Prieto Méndez, (115) Gilberto R. Quin Carhuaz, (116) Jorge Quispe Huamanciza, (117) Daniel Quinto Patiño, (118) Hernán F. Quispe Vivas, (119) Ronald Ramírez Naranjo, (120) Jorge Reyes Cluquipiondo, (121) Betty Ríos Cobos, (122) Luís Homero Ríos, (123) Elmo Ernesto Rodríguez, (124) José Manuel Rodríguez Ordoñez, (125) Raúl Rodríguez Ríos, (126) Francisco Rojas Espinoza, (127) Elí Horacio Rojas Cortegana, (128) Víctor Romero Castro, (129) Víctor Walter Ruiz, (130) Julio Ruíz Cerquin, (131) Maximiliano Ruíz Zamora, (132) Claudio Salas Condori, (133) Jorge William Sánchez Mesta, (134) Oscar Sánchez Martínez, (135) Marcelino Sauni Alarcón, (136) Juan Walter Sedano, (137) Luís Guillermo Soto Herencia, (138) María Soldevilla Soldevilla, (139) Eduardo Quimana Carcovich, (140) José Miguel Toche Lora, (141) Luís H. Tori Gentile, (142) Elizabeth Tu Tim, (143) Felix Alejandro Trigoso Granados, (144) Filiberto Urbano Rodríguez, (145)

the Republic of Peru (hereinafter “the State of Peru,” “the State,” or “Peru”) for violation of the right to judicial protection to the detriment of 233 members of that trade union, due to the failure of the State to provide them with an effective recourse to the retroactive application of decrees that eliminated the wage scale system governing them between 1991 and 1992, despite the fact that the applicable Political Constitution established the guarantee of the non-retroactive application of laws, except in criminal matters whenever such laws were more favorable.

2. The Inter-American Commission requests the Court to determine the international responsibility of the State of Peru, which has failed to comply with its international obligations and has acted in violation of Article 25 (right to judicial protection), considered in conjunction with its obligations established in Article 1.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

3. This case has been processed in accordance with the provisions of the American Convention, and is brought before the Court pursuant to the transitional provision contained in Article 79(2) of the Court’s Rules of Procedure. A copy of Report 8/09, prepared in accordance with Article 50 of the Convention, is attached to this application as an appendix.²

4. The Commission considers that referral of this case to the Court is justified by the need to obtain justice and reparations for the victims since, as will be explained further on, despite the fact that the State of Peru expressly and repeatedly recognized its international responsibility for failure to provide judicial protection for the victims, it has so far not adopted effective measures to provide for adequate reparations. Moreover, the Commission is of the view that this case will enable the Honorable Court to issue a judgment on the scope of a state’s duties to provide judicial protection when the interests involved correspond to rights protected by the national constitution and/or legislation, in accordance with the general principles set forth in its jurisprudence on the subject.

Luis Untiveros Cárdenas, (146) Manuel Valencia Carpio, (147) Elizabeth Vargas de Cárdenas, (148) Juan Vargas Vargaray, (149) Oscar Vasallo Salazar, (150) Guido Vásquez Navarro, (151) Fredy Lisdoro Velarde Jurado, (152) Guido E. Velásquez, (153) Paulina Yon Po Liu, (154) Jorge Carlos Zavala Cisneros, (155) Oscar Aizcorbe Ugarriza, (156) Giulino Angeles Montalvo, (157) Rodolfo Monroe Echenique, (158) Adelmo Della Casa Moreno, (159) Elba Manrique Zorrilla, (160) Leopoldo Jáuregui Pereyra, (161) Alejandrina Lara Tello, (162) Enrique Linares Patiño, (163) José Felipe Luyo Serna, (164) Arturo Kam Cuellar, (165) Carlos Iyafuso Gusukuma, (166) Luis Alberto Purizaga, (167) Raúl Antonio Pacheco Sánchez, (168) Armando Javier Amans Morote, (169) Francisco Lévano Valenzuela, (170) Juan Carlos Solís Medina, (171) Rubén Adrián Bermúdez Valdivia, (172) Alida Carmen Vicuña, (173) Lourdes Torrelio Valdivia, (174) Jorge Cruz Becerra, (175) Mónica Pérez Santos, (176) Arnaldo Mogollón, (177) Winder Alarcón Saravia, (178) Eleuterio Carranza Ruiz, (179) Roberto Rojas Bustamante, (180) Carlos Miguel Flores Rojas, (181) Federico Criado Chamorro, (182) Jorge Enrique García Carmen, (183) Ana Tisdolina Coletti Heredia, (184) César Augusto Zapata Martínez, (185) Fernando Ordaya Luey, (186) Genaro Sánchez Rojas, (187) Raúl Abelardo Manrique Rojas, (188) Jesús Edgardo Arboleda Salinas, (189) Mario Vega Prialé, (190) Raúl Alvarez Serrano, (191) Josué Céspedes Alarcón, (192) Fernanda Bernabé Arroyo, (193) Edwin Chuquillanqui Dominguez, (194) Luis Medina Mendoza, (195) Juan Faustino Salcedo Ártica, (196) Alfonso García Marín, (197) Humberto Chilet Pichilingue, (198) Efraín Carlos Oscátegui, (199) Edmundo Olano Azaña, (200) Martha Bonilla Cienfuegos, (201) Hector Cruz Limay, (202) Víctor Grandez Rojas, (203) Yolanda María Fernández Matos, (204) Juan Luis Rodríguez Puell, (205) Mario Pablo Peralta Carazas, (206) Carlos Saldiviari Mansilla, (207) Víctor Ochoa Paredes, (208) Fulgencio Honorato Pena Ricse (209) Marco Antonio Gutierrez Alvarez, (210) Ana María Franchini de Sánchez, (211) Hector Manuel Málaga Romero, (212) Perla Carlota Medina Crisanto, (213) Maritza Guillén Delgado, (214) Max Tito Díaz Ávila, (215) Raúl Zamudio Castillo, (216) Francisco Yupanqui Medrano, (217) Sixto Fortunato Inchi, (218) Ali Glicério Gómez, (219) Diego Humberto Sotelo Molina, (220) Constantino Castillo Alvarado, (221) Godofredo Teodoro León, (222) Carlos Pio Barrera Ricci, (223) Carlos Gordillo Santillán, (224) Carlos Humberto Palacios Alcántara, (225) Julio César de los Ríos Zorrilla, (226) Mario Danilo Torres, (227) Juan Carlos Valencia Hernández, (228) Jesús Manuel Peña Navarro, (229) Zenón Altamirano Falconi, (230) Juan Carlos Ruiz González, (231) Carmen Rosa Pena Encizo, (232) Eduardo Barrera Fernández, and (233) Nesse Isabel Pizarro Pecho.

² IACHR, Report No. 8/09 (admissibility and merits), Case 12.384, Trade Union of Officials, Professionals and Technicians of the Drinking Water and Sewerage Service Company of Lima (SEDAPAL) Appendix 1.

II. PURPOSE OF THE APPLICATION

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

- a) the State of Peru is responsible for violating the right to judicial protection established in Article 25 of the American Convention on Human Rights, considered in conjunction with the general obligations to respect and guarantee such rights established in Article 1.1, to the detriment of the members of SIFUSE.

6. As a result of the foregoing, the Inter-American Commission requests that the Court order the Peruvian State:

- a) to adopt the necessary measures to ensure that the victims have access to effective recourse to obtain adequate redress for the violation of their rights as a result of the retroactive application of Decree-Law 25876 and the subsequent lack of judicial protection available to them;
- b) to pay compensation for material and immaterial damages. The amount payable for material damages should be determined by using the remedy referred to in subparagraph a);
- c) to adopt the measures of satisfaction that the Inter-American Court deems appropriate; and
- d) to pay the legal costs and fees incurred in processing the present case with the Inter-American Commission and Court.

III. REPRESENTATION

7. Pursuant to Article 24 of the Court's Rules of Procedure, the Commission has designated Commissioner Luz Patricia Mejía and its Executive Secretary, Santiago A. Canton, as its delegates for this case. The Assistant Executive Secretary, Elizabeth Abi-Mershed, and Silvia Serrano Guzmán, an attorney and a specialist in the Commission's Executive Secretariat, have been designated as legal advisors.

IV. JURISDICTION OF THE COURT

8. Pursuant to Article 62(3) of the American Convention, the Inter-American Court has jurisdiction to hear any case concerning the interpretation and application of the provisions of the Convention submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction.

9. The State of Peru ratified the American Convention on July 28, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981. The violations alleged in this petition occurred under the jurisdiction of the State of Peru subsequent to the date of entry into force of the American Convention for that State and to acceptance by it of the Court's contentious jurisdiction.

V. PROCESSING OF THE INTER-AMERICAN COMMISSION, RECOGNITION OF STATE RESPONSIBILITY AND INFORMATION ON COMPLIANCE WITH THE RECOMMENDATION³

10. On April 14, 2000, the Commission received a complaint lodged by the Trade Union of SEDAPAL Officers, Professionals, and Technicians. On May 14, 2001, the Commission received additional information regarding the petition. On July 30, 2001, the Commission conveyed the relevant parts of the petition to the Peruvian State, and asked it to reply within the following two months. The State submitted its comments, which were forwarded to the petitioners.

11. On October 23, 2001, the IACHR informed the parties that in accordance with Article 37.3 of its Rules of Procedure, it had decided to defer its study of the claim's admissibility until the debate and decision on the merits. It therefore asked the petitioners to submit their comments on the merits within the following two months. On December 10, 2001, the IACHR received the petitioners' reply, which was forwarded to the State on January 7, 2002, along with a two-month deadline for presenting its comments. On April 23, 2002, the State sent its reply.

12. On April 23, 2002, the State submitted its response in a brief dated April 18, 2002, in which it recognized its international responsibility for violation of Article 25 of the American Convention, as explained in paragraph 52 below.

13. In light of the parties' stated positions, on May 10, 2002, the IACHR made itself available with a view toward reaching a friendly settlement agreement as provided for in Article 48.1.f of the American Convention and Articles 45.1 and 45.2 of the Rules of Procedure. On May 24, 2002, the petitioners expressed their willingness to begin friendly settlement proceedings in the case. On October 23, 2002, the State presented its position regarding a possible friendly settlement. On February 27, 2003, the petitioners informed the IACHR of the steps taken by the parties in pursuit of a friendly settlement agreement. On January 20, 2004, the petitioners described a series of what they considered irregularities on the State's part within the friendly settlement procedure. On June 28, 2004, the State submitted its comments on the information furnished by the petitioners. On May 24, 2004, the petitioners submitted additional information, to which the State replied by means of a note dated September 27, 2004 to which a report dated September 3, 2004, was attached. On that occasion, the State reiterated its recognition of responsibility in the terms mentioned in para. 53 below. On October 1, 2004, the petitioners presented additional information on the friendly settlement negotiations. The State submitted additional information on October 20, 2004.

14. On May 25, 2005, the petitioners filed a series of concerns regarding the way in which the friendly settlement proceedings were developing. On July 11, 2005, the State informed the Commission that after taking steps toward the optimal domestic resolution of the matter, it was unable to meet the petitioners' requests because of the existence of a domestic court ruling whereby it was legally prevented from making any payment. In addition, the State asked the IACHR for advice in order to reinstate the friendly settlement process.

³ The proceedings mentioned in this section can be found in file on processing of the case before the IACHR. Appendix 2.

15. On January 18, 2006, the petitioners asked for a hearing to be held at the Commission's headquarters to discuss possible agreement terms. On February 7, 2006, the IACHR convened the parties to attend a working meeting on the case during its 124th regular session, which took place on March 8, 2006.

16. On April 5, 2006, the IACHR wrote to the parties to inquire whether they wished to continue exploring the possibility of a friendly settlement. On May 18, 2006, the petitioners sent a letter indicating their interest in persevering with the process. On July 14, 2006, the petitioners informed the Commission that they had decided to withdraw from the friendly settlement proceedings. On August 29, 2006, the IACHR informed the parties that "in compliance with Articles 41.4 and 41.6 of its Rules of Procedure, it was concluding its involvement in the friendly settlement proceedings" and, consequently, would continue with its processing of the case.

17. On October 11, 2006, April 25, 2007, November 6, 2007, and January 30, 2008, the petitioners submitted additional claims. On February 8 and August 15, 2007, the State submitted its comments. As stated in para. 53 below, in its latest communication, the State reiterated its recognition of international responsibility that had been stated earlier.

18. On March 17, 2009, in the course of its 134th regular session, the Commission approved report 8/09 on admissibility and merits, prepared in accordance with Article 50 of the Convention. In that report, the Commission drew the following conclusions:

On the grounds of the preceding analysis, the Commission concludes that the petition is admissible and that the Peruvian State is responsible for violation of the right to judicial protection established in Article 25 of the American Convention, considered in conjunction with Article 1.1 of that instrument.⁴

19. In that report, the Commission made the following recommendation to the State of Peru:

[That it] adopt the necessary measures to ensure that the victims have access to judicial or another type of recourse that is adequate and effective to obtain reparation for the violation of their rights as a result of the retroactive application of Decree-Law 25876 and of the failure to ensure judicial protection in those circumstances.⁵

20. On April 16, 2009, the Commission notified the State of its Report 8/09 and granted it a period of two months to inform it of the measures adopted to comply with the recommendation.

21. On that same date, in accordance with Article 43(3) of its Rules of Procedure, the Commission informed the petitioners of the report adopted on admissibility and merits and of its transmittal to the State, and requested them, within one month's time, to give their position and the position of the victim regarding the possible referral of the case to the Inter-American Court.

22. On May 1, 2009, the Commission forwarded to the petitioners, on a private basis, the relevant parts of the report on admissibility and merits. In a communication dated

⁴ IACHR, Report No. 8/09 (admissibility and merits), Case 12.384, Trade Union of Officials, Professionals and Technicians of the Drinking Water and Sewerage Service Company of Lima (SEDAPAL), para. 92. Appendix 1.

⁵ IACHR, Report No. 8/09 (admissibility and merits), Case 12.384, Trade Union of Officials, Professionals and Technicians of the Drinking Water and Sewerage Service Company of Lima (SEDAPAL), para. 93. Appendix 1.

June 16, 2009, the petitioners indicated their intention to submit the case to the Inter-American Court in the event that the Peruvian State should not comply with the Commission's recommendation.

23. On that same date, the State requested an extension to report on its compliance with the recommendation, without specifying the time required and without mentioning its acceptance regarding suspension of the deadline for the Commission to submit the case to the Inter-American Court. In a subsequent communication received on June 19, 2009, the State clarified that the extension requested was for three months, and that it understood that the granting of that extension would imply suspension of the deadline established in Article 51(1) of the Convention.

24. On July 9, 2009, the Commission decided to grant the extension requested by the State. On that same date, the Commission sent a communication to the State and to the petitioners to inform them that it had granted a three-month extension. In that communication, the Commission clarified that during that period of time, the time limit established in Article 51(1) for submission of the case to the Inter-American Court would be suspended. The Commission requested the Peruvian State to submit a progress report on September 11, 2009.

25. In accordance with the IACHR's request, in a mailing dated September 11, 2009, the State submitted a preliminary report on compliance with the recommendation. On October 7, 2009, the IACHR received additional information, and a second request for an extension by the State.

26. In its reports dated September 11 and October 7, 2009, the State reported on a series of measures that are summarized below:

- On July 7, 2009, the State's Legal Defense Council, meeting in a Special Session, agreed to propose the establishment of a high-level committee to respond to the IACHR recommendation.
- By Supreme Resolution No. 226-2009-PCM of September 2, 2009, establishment of said committee was approved, under the authority of the Ministry of Justice.
- The high-level committee is made up of two representatives of the Ministry of Labor, two representatives of the Ministry of Energy and Mines, and one representative of the National Fund for Financing the State's Business Operations [*Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado*].
- According to the resolution establishing the high-level committee, once SEDAPAL submits a series of documents, and the petitioners submit the evidence they consider appropriate (on an optional basis), the committee would have 20 working days to evaluate the documents submitted. If appropriate, the high-level committee could summon the parties. Once this time period has lapsed, the members of the Union could request the right to speak.
- After carrying out these steps, the high-level committee would have 20 working days (with no possibility of extension) to draw up a final report, to be submitted to the President of the State's Legal Defense Council. In that report, it would issue its decision regarding the scope of the IACHR's recommendation and the means for implementing it.

- The high-level committee would function for a maximum period of 90 days counting from September 11, 2009, the date on which the high-level committee was established.
- On the date these reports were submitted, the committee had met on four occasions, once in the presence of SEDAPAL and approximately 120 victims (out of a total of 233).

27. Based on this information, and in order to allow the high-level committee to complete its work, on October 13, 2009, the State was granted another three-month extension. In the same letter, the Commission requested the State to present a preliminary report by January 6, 2010. On January 11, 2010, the Commission received the State's report indicating the failure of the internal negotiations.

28. Specifically, the State reported that the high-level committee held 13 private sessions and two sessions with the petitioners and the SEDAPAL company. It indicated that throughout its term, said committee observed the procedural guidelines governing it, "that gave the petitioners access to an adequate and effective remedy to ensure reparation for the violation of its rights due to application of Law 25876 and to denial of judicial protection with respect to the complaint lodged."

29. The State explained that on December 9, 2009, the high-level committee met with the petitioners, in a meeting in which the representative explained that the current amount of their claim for reparations was equivalent to approximately US\$17 million. It added that on January 8, 2010, the chairman of the high-level committee reported that "having executed the steps indicated (...) no agreement on a friendly settlement between SEDAPAL and the Sindicato de Funcionarios, Profesionales y Técnicos de SEDAPAL was reached."

30. The State concluded that "the extreme difference between the positions of the parties that remained firm in their claims (...) explains the failure of the committee." Finally, it indicated that the Specialized Public Prosecution Office [*Procuraduría Pública Especializada*] endeavored to bring the parties together, but that this failed as well for the same reasons.

31. In its communications dated January 11 and 13, 2010, the Peruvian State did not request a further extension. In the view of the IACHR, and in accordance with the terms of the recommendation in its report 8/09, an effective recourse would entail a situation in which the petitioners could present their claims and support them, and the respective entity would take the necessary steps to determine the validity of said claims, and in any event would provide for the corresponding reparations. From the available information, it appears that the high-level committee confined its efforts to an attempt at negotiation, without undertaking a case by case review or developing specific criteria for such a review. The information reported indicates that SIFUSE and SEDAPAL were convened on two occasions, and that the high-level committee then merely concluded that the mechanism had failed. Based on the available information, the Commission concluded that the State of Peru did not comply with the recommendation made in its report 8/09, and consequently, on January 14, 2010, it decided to submit this case to the Inter-American Court.

VI. FACTUAL GROUNDS

1. Background

32. On June 12, 1989, SEDAPAL established a salary system called Salary or Wage Ratios, consisting in automatic adjustment of the salaries of the staff in the company's technical and upper management positions, using as a basis the remuneration of unskilled workers.⁶ This system worked automatically, so that every time the company increased the wages of the lower positions, as a result of a collective bargaining process, there would be an increase in the other positions in the company that could not benefit from that procedure, all for the purpose of maintaining the company's post and salary structure. The ratios were established by the board of the company, following authorization by the National Development Corporation (CONADE). According to the structure of the company, the personnel subject to the collective bargaining process comprised the "employees" and "workers," while the technicians, professionals, and officers (the victims in this case) could not benefit from that process.⁷

33. In June 1989, SEDAPAL and the National Development Corporation agreed on a ratio scale, but the decision was not put into effect by the company;⁸ as a result, in October 1990 a group of workers filed an *amparo* suit with the 16th Civil Court of Lima, seeking for the system to be applied.

34. On December 3, 1990, the 16th Civil Court of Lima issued a judgment in which it upheld the petitioners' claims and ordered that "the personnel in the officers and senior management sectors of the staff" be given "the reinstatement in their monthly earnings of the WAGE RATIOS that were in force in SEDAPAL in June 1989, on the basis of the payment due to the final level or category (*peón*) of the Positions and Earning Structure in force in October 1990; the company is also ordered to proceed to pay the earnings not paid and owed under the enforcement of the aforesaid WAGE RATIOS."⁹

35. In spite of the remedies lodged by the company, the favorable judgment was upheld by the Fifth Civil Chamber of Lima on May 29, 1991,¹⁰ and by the Supreme Court of Justice on February 12, 1992.¹¹

36. Following notification of this final judgment, SEDAPAL complied with its instructions by paying its officers and senior management the adjustments indicated by the increase authorized for the lowest echelon position.¹²

⁶ Annex 1. Report No. 023-2006-GRH, signed by the Human Resource Manager of SEDAPAL.

⁷ The salary ratio system was established by the company and CONADE, and was subsequently upheld by the courts, as a way of maintaining a wage differential among the different posts in the company whenever a wage increase for employees and workers was agreed as a result of collective bargaining. This fact was not disputed either internally or in the procedures before the Commission. Various documents presented to the Commission as well as briefs of the parties refer to this fact. See, for example: Annex 2. Judgment of the 16th Civil Court of Lima, December 3, 1990. Case file No. 3869-90; and, Annex 4. Opinion of the *Ministerio Público* of November 12, 1991.

⁸ Annex 2. Judgment of the 16th Civil Court of Lima, December 3, 1990. Case file No. 3869-90.

⁹ Annex 2. Judgment of the 16th Civil Court of Lima, December 3, 1990. Case file No. 3869-90.

¹⁰ Annex 3. Judgment of the Fifth Civil Court of Lima, May 29, 1991. Case No. 2473-90.

¹¹ Annex 5. Decision of February 12, 1992 of the Supreme Court of Justice. Case file No. 1508-91.

2. The Legislative Decrees

37. In addition to the judicial proceedings described in the above paragraphs, on November 13, 1991, the government enacted Legislative Decree No. 757, the "Framework Law for the Growth of Private Activity,"¹³ which established a series of rules applicable to the establishment of "remunerative improvements." With reference to the instant case, this decree provided that: "collective labor agreements or contracts may not contain systems for the automatic adjustment of earnings set in terms of indexes of variations in prices, or be agreed on or set in foreign currencies (...) Pursuant to Article 1355 of the Civil Code, companies and workers covered by the private activity regime governed either partially or in whole by provisions, agreements, or clauses of such a nature shall replace them with systems for setting earnings that reflect the increase in the output and productivity of each company."¹⁴ (the underlining is not in the original).

38. Later, on June 11, 1992, the government enacted Decree Law No. 25541, Article 1 of which stipulated that: "the application of provisions, agreements, or clauses for the automatic adjustment of earnings as a function of variations in prices, the exchange rate of foreign currency, and other similar mechanisms terminated on December 13, 1991, the date on which Legislative Decree 757 came into force."¹⁵ (the underlining is not in the original). It also stated that workers covered by such rules could request the adjustment of their earnings and the improvement of their working conditions through the collective bargaining procedure, taking into consideration other factors such as increased productivity.

39. On November 25, 1992, the "Emergency and National Reconstruction Government" published Decree Law No. 25876, which amended Article 1 of the previous decree in the following terms:

It is specified and clarified that the application of legal provisions, collective agreements or contracts, customs, transactions, and judicial or administrative rulings establishing collectively applicable automatic earnings adjustment systems based on variations in prices, the exchange rate of foreign currency, basic earnings, and any other similar mechanisms, irrespective of their name, description, mechanics, procedure, and/or methodology, terminated on December 13, 1991, the date on which Legislative Decree 757 came into force.¹⁶ (the underlining is not in the original).

3. Effects of the Decrees' Enforcement of workers earnings

40. As a result of these decrees, starting in July 1992, the company ceased raising wages in accordance with the wage ratios system.

¹² Annex 6. Record of Out-of-Court Settlements reached between SEDAPAL and the Staff [*Personal de Funcionarios*], signed on June 23, 1992.

¹³ Annex 7. Legislative Decree N° 757 published on November 13, 1991.

¹⁴ Annex 7. Legislative Decree N° 757 published on November 13, 1991. Second Supplementary Provision, paragraph b).

¹⁵ Annex 8. Decree-Law No. 25541, published on June 11, 1992. Article 1.

¹⁶ Annex 9. Decree-Law No. 25876, published on November 25, 1992. Article 1.

41. In addition, following the enactment of Decree Law 25876 in November 1992, the company adopted two further measures in connection with its workers' earnings: (i) starting in December 1992, there was a reduction in the portion they had been receiving as a result of the increases generated after December 1991 by the application of the wage ratios system; and (ii) it was decided that the workers had to return the increases paid between January and November 1992 under the wage ratios system since, in the company's view, that system had ceased to exist in December 1991. The repayment of those amounts began in March 1993 by means of deductions of 20% of their monthly earnings until the full amount that, according to the company, had been paid in error was discounted.¹⁷

4. Legal Action Taken By the First Group of Workers

42. In response to the previous measures, on May 14, 1993, a group of 225 workers—including 185 of the victims in this case—initiated an *amparo* procedure.¹⁸ During the processing of the *amparo*, 50 workers who do not appear among the alleged victims withdrew from the action. On June 27, 1995, the 18th Labor Court of Lima ruled the claim grounded and concluded that:

Decree Law 25876 was applied retroactively [and], although it is a provision of public order and obligatory compliance intended to stabilize the state's socioeconomic situation by eliminating the inflationary distortions that can be caused by automatic adjustment systems and must necessarily be enforced, its effects may not harm the legal structure of the nation; in addition, as a reiterative provision intended to clarify Legislative Decree 757, it may not make the effects of a clarification rule retroactive to the date of effect of the provision being clarified, because legal provisions have currency only as of their material existence – that is, as of their publication.¹⁹

43. Consequently, the Labor Court ordered SEDAPAL:

[...] to return to those officers who have not withdrawn from the suit the portions of their monthly earnings discounted as of December 1992; two, to return to them the portions of their earnings discounted during the period January to November 1992; and three, to pay the plaintiffs the increase in earnings given by applying the wage ratio scale to the increase of S/. 70.00 (new soles) to the lowest-echelon position in the ratio structure as of July 1992.²⁰

¹⁷ Annex 11. SEDAPAL report entitled: "Arguments supporting the company's position in the matter of the complaint lodged by the *Sindicato de Funcionarios, Profesionales y Técnicos* (SIFUSE) with the IACHR," page 17; and Annex 10. Judgment No. 227-95 of the 18th Labor Tribunal, Superior Court of Lima. Court File No. 546-93. In the section on the legal grounds, the judgment states as follows:

[The Company] admits to the decrease in the remuneration of employees as of December 1992, and retroactively from January to November 1992, in compliance with Decree-Law 25876; this situation is corroborated by the payroll review report, pages 358 to 365, and was neither commented on nor refuted by the parties. Said report indicates that the retroactive wage discount occurred as of March 1993 as part of a procedure to reduce the base for computing the Wage Ratio system from S/.220.00 to S/. 190.00 new soles, the latter figure in effect as of November 1991, as evidenced in the response provided by the declarant in answering the interrogatory [...] and as further evidenced in the omission on the part of declarant to increase salaries in favor of the petitioning employees as of the month of July 1992 .

¹⁸ Annex 11. SEDAPAL report entitled: "Arguments supporting the company's position in the matter of the complaint filed by the *Sindicato de Funcionarios, Profesionales y Técnicos* (SIFUSE) with the IACHR." page 17.

¹⁹ Annex 10. Judgment No 227-95 of the 18th Labor Tribunal, Superior Court of Lima.

44. An appeal against the first-instance judgment was lodged by the company. On September 30, 1996, the Second Labor Chamber of the Superior Court of Lima upheld the decision, concluding that: “the plaintiffs’ right to the adjustment of their earnings under the wage ratios structure up to November 25, 1992, [...] has been clearly established not only in these proceedings, but also in the *amparo* actions involving the same parties.”²¹ In spite of this, the Second Chamber said that the amounts owed should not be calculated up to the current date, but only up to August 1993, the date on which a directive was issued ordering a new earnings structure for state companies.²²

45. On January 31, 1997, SEDAPAL filed an appeal for annulment against the second-instance judgment; that action was resolved on July 21, 1999, by the Constitutional and Social Law Chamber of the Supreme Court of Justice, which ruled the remedy grounded and overturned the favorable decision handed down to the petitioners. The crux of the Constitutional and Social Law Chamber’s position was the following:

It has already been established by this Supreme Chamber, in its constant jurisprudence, that the termination of all automatic systems for wage increases set by collective contracts, as in the applicants’ case, ordered by the executive branch of government in Legislative Decree 757 and Decree Laws 25541 and 25876, is in accordance with the Constitution and law and has been in effect since the entry into force of the first of those provisions cited.²³

5. Legal Action Taken By the Second Group of Workers

46. On August 3, 1994, another group of workers comprising 50 persons²⁴--including the remaining 48 victims--filed a petition with the rotating Labor Court [*Juzgado de Trabajo de Turno*] of Lima on August 3, 1994. On July 26, 1996, the 13th Specialized Labor Court ruled the action grounded in that Decree Law 25876 had been applied retroactively in violation of constitutional guarantees. It also ordered the restitution of the earnings that had been discounted and deducted.²⁵

47. That judgment was voided by the Second Chamber on February 17, 1997, which ordered that a new judgment be given.

48. On December 7, 1999, the Office of Expert Legal Opinions presented the 13th Labor Court of Lima with Expert Report No. 023-99-PJ-EA, which set out the amounts of remuneration owed to the SEDAPAL officers under the wage ratio system for the period from July 1992 to July 1993.

²⁰ Annex 10. Judgment No 227-95 of the 18th Labor Court [*18 Juzgado de Trabajo*], Superior Court of Lima.

²¹ Annex 12. Judgment of the Second Chamber of the Superior Court of Lima, September 30, 1996. Case File No. 3926-95-ID.

²² Annex 12. Judgment of the Second Chamber of the Superior Court of Lima, September 30, 1996. Case File No. 3926-95-ID.

²³ Annex 13. Judgment of the Supreme Court of Justice, Constitutional and Social Law Chamber, July 21, 1999. Proceeding CAS No. 619-97.

²⁴ One of the petitioners was Teoblado Cerna Pereyra, identified with document no. 07938445, who appeared as a petitioner in the first court proceeding.

²⁵ Annex 14. Judgment of the 13th Specialized Labor Court. No 189-96-13°JTL.

49. On December 12, 2000, the 13th Labor Court of Lima handed down a judgment ruling the application groundless since "in a similar case to this one, the Constitutional and Social Law Chamber of the Supreme Court of the Republic gave a specific and final ruling the regarding the facts and rights covered by the suit in File No. 619-97, dated July 21, 1999, which dealt with exactly the same concepts as are disputed in these proceedings." ²⁶

VII. LEGAL CONSIDERATIONS

1. The right to judicial protection (articles 25(1) and 1(1) of the American Convention) and the acknowledgement of responsibility of the State

50. Article 25 of the Convention stipulates that:

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

2. The States Parties undertake:

a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b) to develop the possibilities of judicial remedy; and,

c) to ensure that the competent authorities shall enforce such remedies when granted.

51. Article 1.1 of the Convention provides as follows:

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

52. From the very outset of the procedures with the IACHR in this case, the Peruvian State recognized its international responsibility for violating Article 25 of the American Convention. For instance, in its Report No. 34-2002-JUS/CNDH-SE, the State expressed the following:

3.1 An analysis of the constitutional provisions listed in section 2.19 of this report indicates that it would only be possible for a law to stipulate its entry into force on a date following that of its publication in the Official Journal, but in no instance may it order its entry into force on a date prior to that of said document [...]

3.2 In consideration whereof, the Peruvian State acknowledges its international responsibility in violating the right to judicial protection set out in Article 25 of the American Convention on Human Rights, in that the judicial authorities should have

²⁶ Annex 15. Judgment of the 13th Labor Court of Lima, December 12, 2000.

ruled, at the appropriate moment and through an effective remedy, on behalf of the rights and basic principles enshrined in the Constitution of Peru, which has supremacy in domestic law over any provision of a lower category.²⁷

53. This position of the State gave rise to a friendly settlement process in which Peru reiterated recognition of its responsibility.²⁸ This recognition was maintained subsequently, after the Commission established that the friendly settlement process was concluded. In its brief of additional observations on the merits of the case, the State indicated that recognition of its responsibility

has been maintained to date and, in accordance with the rulings of the Inter-American Court of Human Rights, that acknowledgment has legal effects within the proceedings before the inter-American system.²⁹

54. In light of this, the State clarified that its comments on the merits were not intended to discuss whether or not Article 25 of the Convention had been violated, but rather to explain clearly the obstacles that had prevented a friendly settlement from being reached in the case.³⁰

55. As the Commission observed in its Report 8/09, the State's recognition of responsibility covers the totality of the subject matter of the petition as defined in the decision on admissibility. The Commission understood the State's recognition of responsibility as total, and gave it legal effect throughout the procedures.³¹ And, the Commission applied to the Court on that basis. Recognition of the international responsibility of the State is consistent with the standards defined by the Court in its case law on the right to judicial protection and the scope of the obligation of states to grant effective remedies to persons under its jurisdiction.

56. The Inter-American Court has ruled that safeguarding the individual from the arbitrary exercise of public authority is the main purpose of the international protection of human rights. The absence of effective domestic recourse places the individual in a state of defenselessness.³²

57. Similarly, the Court has repeatedly held that the guarantee set out in those provisions is not limited to the rights enshrined in the American Convention, but that it also covers domestic judicial claims related to other rights afforded to individuals under both the

²⁷ Annex 16. Report No. 34-2002-JUS/CNDH-SE presented by the Peruvian State to the IACHR on April 23, 2002.

²⁸ Annex 17. Report No. 52-2004-JUS/CNDH-SE presented by the Peruvian State to the IACHR on September 27, 2004.

²⁹ Annex 18. Report No. 120-2007-JUS/CNDH-SE-CESAPI presented by the Peruvian State to the IACHR on August 18, 2007.

³⁰ Annex 18. Report No. 120-2007-JUS/CNDH-SE-CESAPI presented by the Peruvian State to the IACHR on August 18, 2007.

³¹ IACHR, Report No. 8/09 (admissibility and merits), Case 12384, *Sindicato de Funcionarios, Profesionales y Técnicos de la Empresa de Servicio de Agua Potable y Alcantarillado de Lima*, March 17, 2009. Paras. 56 – 58 and 82-83. Appendix 1.

³² I/A Court H. R., *Case of Claude Reyes*, Judgment of September 19, 2006, Series C No. 151, paragraph 129; I/A Court H. R., *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, paragraph 113; I/A Court H. R., *Case of Palamara Iribarne*, Judgment of November 22, 2005, Series C No. 135, paragraph 183.

Constitution and domestic law. The Court has expressed that applicability in the following terms:

The terms of Article 25.1 of the American Convention imply the obligation of the States to provide to all persons within their jurisdiction, an effective judicial remedy for violations of their fundamental rights and for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws.³³

58. The Court has also held that domestic remedies must be available to the interested parties, result in an effective and justified decision on the matter, and potentially provide adequate reparation.³⁴

59. The Commission has established that between November 1991 and November 1992, three Legislative Decrees were enacted, adopting measures intended, *inter alia*, to increase the productivity of private companies. Those measures included the elimination of certain kinds of wage adjustments. The first of these, Legislative Decree 757, published on November 13, 1991, stipulated that collective bargaining agreements could not include automatic adjustment systems; the second, Legislative Decree 25541, published on June 11, 1992, ruled that the norms, agreements or clauses terminated upon the entry into force of the first decree; and the third, Legislative Decree 25876, published on November 25, 1992, established that legal provisions, collective bargaining agreements, customary law, transactions, and judicial or administrative rulings for automatic adjustment systems terminated upon the entry into force of the first decree.

60. From a simple reading of the decrees, it is clear that the second and third ones expanded the scope of the elimination of automatic wage adjustment systems in comparison with the first decree, which provided for its elimination only in the case of collective agreements and contracts. In fact, the second and third decrees also provided for elimination of the adjustment system based on other legal documents not contemplated in the first legislative decree.³⁵ According to available information, the victims in this case were not governed by collective agreements or contracts. On the contrary, precisely because of the posts they held and the consequent legal impossibility for the victims to conclude or negotiate collective agreements, their salary increment system was governed by an agreement between CONADE and the company.

³³ I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 122; I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, paragraph 128; I/A Court H. R., *Yatama Case*, Judgment of June 23, 2005, Series C No. 127, paragraph 167.

³⁴ I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, paragraph 126.

³⁵ Decree Law No. 757 provides: "collective labor agreements or contracts may not contain systems for the automatic adjustment of earnings set in terms of indexes of variations in prices, or be agreed on or set in foreign currencies."

Decree 25541 provides: "the application of provisions, agreements, or clauses for the automatic adjustment of earnings as a function of variations in prices, the exchange rate of foreign currency, and other similar mechanisms terminated on December 13, 1991, the date on which Legislative Decree 757 came into force."

Decree 25876 provides: "It is specified and clarified that the application of legal provisions, collective agreements or contracts, customs, transactions, and judicial or administrative rulings establishing collectively applicable automatic earnings adjustment systems based on variations in prices, the exchange rate of foreign currency, basic earnings, and any other similar mechanisms, irrespective of their name, description, mechanics, procedure, and/or methodology, terminated on December 13, 1991, the date on which Legislative Decree 757 came into force."

61. In spite of this, in applying the third decree, the company SEDAPAL adopted a series of measures to eliminate, retroactively, all the effects arising from the automatic adjustment system since the entry into force of the first decree in January, 1992, and the entry into force of the third decree in December, 1992. Those measures had an impact on the earnings received by the victims.

62. The Peruvian Constitution in force at the time of the events established the guarantee of freedom from *ex post facto* laws in the following terms:

Special laws may be enacted because the nature of things so demand, but not because they apply to different persons.

No law shall have retroactive force or effect, save in criminal matters when the accused is favored thereby.

Laws may only be repealed by other laws. They may also be voided by judgments ruling them unconstitutional.

The Constitution does not protect the abuse of law.

63. Notwithstanding the foregoing, the courts concluded that the decrees were not applied retroactively, without taking into account the difference in the scope of each one of them. In this context, it is obvious that the judicial proceedings brought by the victims were not effective in protecting them from the arbitrary conduct of the State in disregarding constitutional guarantees. By virtue of the foregoing, the Commission reiterates its request to the Court that it give full effect to the State's recognition of responsibility and that it conclude and declare that Peru violated the right to judicial protection established in Article 25.1 of the American Convention, considered in conjunction with Article 1.1 of that instrument, to the detriment of the 233 victims of this case.

VIII. REPARATIONS AND COSTS

64. By virtue of the facts alleged in this petition and the consistent case law of the Inter-American Court, which establishes "that it is a principle of International Law that any violation of an international obligation that has caused damage gives rise to a duty to provide adequate reparation for said damage,"³⁶ the Commission presents to the Court its points of view on the reparations and costs that the State of Peru should grant as a consequence of its responsibility for the human rights violations committed to the detriment of the victims.

65. In view of the fact that the Court's Rules of Procedure grant autonomous representatives for individuals, the Commission will merely outline the general claims and criteria related to the reparations and costs that it considers appropriate for the Court to apply in this case. The Commission understands that it is the purview of the victims and their representatives to substantiate their claims in greater detail, in accordance with Article 63 of the American Convention and Article 25 and others of the Court's Rules of Procedure.

³⁶ I/A Court H.R., *Cantoral-Huamani and García- Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 156; I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 103; y I/A Court H.R., *Escué-Zapata v. Colombia Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165., paragraph 126.

However, in the possible case that the representatives of the victims do not avail themselves of this right, the Court is requested to grant the Inter-American Commission an opportunity in the proceedings to quantify the relevant claims. Thus, the Commission will inform the Court in due time if it has any observation to make regarding the quantification of the claims by the victims' representatives.

1. Redress obligation

66. In the case in point, the Inter-American Commission has requested the Honorable Court to conclude and declare that the State of Peru incurred international responsibility for violation of the right to judicial protection established in Article 25 of the American Convention, considered in relation to the obligations enshrined in Article 1(1) of that instrument, to the detriment of the victims.

67. Article 63.1 of the American Convention establishes that:

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

68. As the Court has stated in its case law on record, "Article 63(1) of the American Convention is a customary rule that constitutes one of the fundamental principles of contemporary international law on the responsibility of states. Thus, when an illicit act imputable to a state occurs, the state immediately incurs international responsibility for the violation of an international rule of law, with the consequent duty to provide reparation and to make the consequences of the violation cease."³⁷

69. The redress obligation, which is regulated in all of its aspects by international law (scope, nature, modalities, and determination of beneficiaries) may not be altered or breached by the obligated state by invoking provisions of its domestic law.³⁸

2. Beneficiaries

70. Due to the nature of the present case, the beneficiaries of the reparations to be provided by the Peruvian State at the order of the Court are the victims already referred to in the introduction to this application.

3. Reparation measures in the present case

³⁷ I/A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 200; I/A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 414; I/A Court H. R., *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela Case*. Judgment of July 5, 2006. Series C No. 150, paragraph 116.

³⁸ I/A Court H.R., *Cantoral-Huamaní and García- Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 190; I/A Court H.R., *Zambrano-Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 148; I/A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 200; I/A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 415.

71. Reparations are critical to guarantee that justice is done in an individual case, and they are the mechanism that elevates the Court's decision beyond the scope of moral condemnation. Reparations consist in measures that tend to make the effect of the violations committed disappear.³⁹ These measures comprise the different ways in which a state can meet an international responsibility it has incurred; in accordance with international law, they include measures of restitution, compensation, rehabilitation, satisfaction, and non-repetition.⁴⁰

72. Reparation for the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the reinstatement of the situation prior to the violation.

73. In the present case, the Commission requests the Court to order the State of Peru to adopt the necessary measures so that the victims have an effective judicial or other recourse for obtaining reparation for the consequences of the retroactive application of the legal provisions in violation of the national legal system. This recourse or remedy should be designed in such a way that it is possible to determine the material damage caused to the victims and to order payment of the amounts owing to each one of them.

74. As a measure of compensation, the Commission considers it pertinent that the consequences produced by the impoverishment of the victims in violation of their rights established in the American Convention be redressed by payment of adequate indemnification. As for material damages, the Court has consistently established in its case law on reparations that material damages include indirect or consequential damages [*daño emergente*] and lost revenue.⁴¹

75. Consequential damages are understood to refer to the direct and immediate consequences of the act on one's capital. According to this concept, consideration is giving to the effect on one's capital derived immediately and directly from the violations in relation to the expenses incurred by the victims and their next of kin.⁴² On the other hand, lost revenue is understood as the loss of economic income or benefits that the victims ceased to obtain on the occasion of a specific act, and that it is possible to quantify on the basis of certain measurable, objective indicators.⁴³

³⁹ I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*, paragraph 190; I/A Court H.R., *19 Merchants v. Colombia Case*, *supra*, paragraph 223; I/A Court H. R., *Myrna Mack Chang v. Guatemala Case*, *supra*, paragraph 237; I/A Court H.R., *Cantos v. Argentina Case*, *supra*, paragraph 108 and I/A Court H.R., *the Caracazo v. Venezuela Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paragraph 78.

⁴⁰ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights*, E/CN.4/Sub2/1990/10, July 26, 1990. See also I/A Court H.R., *Blake v. Guatemala Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paragraph 31; I/A Court H.R., *Suárez Rosero v. Ecuador Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, paragraph 41, and I/A Court H.R., *Castillo Páez v. Peru Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43.

⁴¹ I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110; I/A Court H. R., *Maritza Urrutia v. Guatemala Case*, *supra* 5, paragraph 155; I/A Court H. R., *Myrna Mack Chang v. Guatemala Case*, *supra*, paragraph 250; and I/A Court H. R., *Juan Humberto Sánchez v. Honduras Case*, *supra*, paragraph 162.

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

⁴³ *Ibidem*.

76. Based on the foregoing, the Commission requests the Court to order that the State pay the material damages resulting from denial of justice to the detriment of the victims, once the respective amounts are determined according to the recourse referred to in paragraph 73. The Commission further requests the Court to provide for equitable compensation for non immaterial damages.

77. In addition to the above, the Commission considers it relevant that in this case, the Court order measures of satisfaction that it deems opportune, taking into account the nature of the violation alleged in the present petition.

4. Costs and expenses

78. In accordance with the case law of the Court, costs and expenses should be interpreted as included within the concept of reparations established in Article 63(1) of the American Convention, since the activity engaged in by the victim, his successors, or his representatives to accede to international justice entails expenses and economic commitments that must be compensated.⁴⁴

79. In the present case, the Commission requests the Court that, once the victims' representatives have been heard, it order the State of Peru to pay the costs and expenses incurred in the processing of this case both in Peru and by the inter-American human rights system.

IX. PETITION

80. Based on the arguments of fact and law set forth herein, the Inter-American Commission on Human Rights declares that

a) the State of Peru is responsible for violation of the right to judicial protection, established in Article 25 of the American Convention on Human Rights, considered in conjunction with the general obligations of respect and guarantee enshrined in Article 1.1, to the detriment of the members of SIFUSE.

and consequently orders the State

- a) to adopt the necessary measures to ensure that the victims have effective recourse for obtaining adequate redress for the violation of their rights as a result of the retroactive application of Decree-Law 25876 and the lack of judicial protection to remedy that situation;
- b) to pay compensation for material and nonmaterial damages. The appropriate amount for material damages should be determined through the recourse referred to in subparagraph a);
- c) to adopt measures of satisfaction deemed appropriate by the Inter-American Court; and
- d) to pay the legal costs and expenses incurred in processing this case with the Inter-American Commission and Court.

⁴⁴ I/A Court H.R., *La Cantuta v. Peru Case*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paragraph 243; I/A Court H.R., *Miguel Castro-Castro Prison v. Peru Case*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paragraph 455; I/A Court H.R., *Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, paragraph 152.

X. EVIDENTIARY SUPPORT

1. Documentary evidence

81. A list of the documentary evidence available at the time follows:

Appendix 1. Case 12384, *Sindicato de Funcionarios, Profesionales y Técnicos de la Empresa de Servicio de Agua Potable y Alcantarillado de Lima*, March 17, 2009.

Appendix 2. Case file of the procedures of the Inter-American Commission of Human Rights.

Annex 1. Report No. 023-2006-GRH, signed by the Human Resource Manager of SEDAPAL.

Annex 2. Judgment of the 16th Civil Court of Lima, dated December 3, 1990. Case File No. 3869-90.

Annex 3. Judgment of the Fifth Civil Court of Lima, dated May 29, 1991. Case No. 2473-90.

Annex 4. Opinion of the *Ministerio Público*, dated November 12, 1991.

Annex 5. Decision of February 12, 1992 of the Supreme Court of Justice. Case File No. 1508-91.

Annex 6. Record of the Out-of-Court Settlement between SEDAPAL and the Staff, signed on June 23, 1992.

Annex 7. Legislative Decree N° 757 published on November 13, 1991.

Annex 8. Decree-Law No. 25541 published on June 11, 1992.

Annex 9. Decree-Law No. 25876 published on November 25, 1992.

Annex 10. Judgment No. 227-95 of the 18th Labor Tribunal, Superior Court of Lima. Case File No. 546-93.

Annex 11. SEDAPAL Report entitled "Arguments supporting the company's position in the matter of the complaint filed by the *Sindicato de Funcionarios, Profesionales y Técnicos* (SIFUSE) to the IACHR."

Annex 12. Judgment of the Second Chamber of the Superior Court of Lima of September 30, 1996. Case File No. 3926-95-ID.

Annex 13. Judgment of the Supreme Court of Justice, Constitutional and Social Law Chamber, July 21, 1999. Case CAS No. 619-97.

Annex 14. Judgment of the 13th Specialized Labor Court No 189-96-13°JTL.

Annex 15. Judgment of the 13th Labor Court of Lima of December 12, 2000.

Annex 16. Report No. 34-2002-JUS/CNDH-SE submitted by the Peruvian State to the IACHR on April 23, 2002.

Annex 17. Report No. 52-2004-JUS/CNDH-SE submitted by the Peruvian State to the IACHR on September 27, 2004.

Annex 18. Report No. 120-2007-JUS/CNDH-SE-CESAPI submitted by the Peruvian State to the IACHR on August 18, 2007.

Annex 19. Documents submitted by the representatives regarding representation.

Annex 20. *Curriculum vitae* of Samuel Abad Yupanqui, expert offered by the Commission.

82. The Commission explains that the copies of the documents included as annexes are the best copies it has and has been able to obtain to date.

2. Expert testimony

83. The Commission requests the Court to receive the opinion of the following expert:

- Samuel Abad Yupanqui, who will render his expertise on the relationship between domestic and international human rights law with regard to access to effective recourse under the terms of Article 25 of the American Convention. In this context, the expert will explain the reasons why the arbitrary nature of the court decision handed down in the case constituted a denial of justice under Article 25 of that instrument, the subject matter of this complaint, among other aspects. The Commission considers that this case presents substantive issues regarding the nature of an effective remedy and the principle of legality, aspects on which the expert will provide relevant information. Consequently, the Commission offers this expertise in relation to the public interest of the case.

XI. DATA ON THE REPRESENTATIVES OF THE VICTIMS

84. Pursuant to the provisions of the Court's Rules of Procedure, the Inter-American Commission presents the following information: the victims have designated Juan José Tello Harster as their representative for the judicial stage of the process, in accordance with the attached documents.⁴⁵

85. The data on the representative of the victims are as follows:

Legal domicile: Jr. Recuay No. 382 – Breña. Lima, Peru.

Telefax: (51 – 1) 424 2449.

Washington, D.C.

January 16, 2010

⁴⁵ Annex 19. Documents submitted by the representatives regarding representation.