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HAVING SEEN:

1. The various communications received by the Inter-American Commission on Human Rights reporting that on the morning of July 2, 1986, during a protest demonstration called by groups in opposition to the Government of Chile, the youths, Rodrigo Rojas DeNegri and Carmen Gloria Quintana Arancibia, were arrested in a neighborhood of Santiago by an army patrol, searched, beaten, held within proximity of inflammable material, sprinkled with fuel, set on fire, and taken to a place on the outskirts of the city where they were unable to receive medical care, and there they were abandoned.
2. The subsequent death of Rodrigo Rojas DeNegri on July 6, 1986, as a result of burns received.
3. The intervention of the 19th Criminal Court of Santiago, which received, on July 3, 1986, at 12:15 a.m. and 12:45 a.m. testimony from the victims (Appendix 1), who stated that a group of military personnel had willfully set fire to them. This statement was later corroborated by Carmen Gloria Quintana in Montreal, Canada, on March 12, 1987 (Appendix 2).
4. The transfer of judicial records to the 15th Criminal Court of Santiago, which orders Department OS-5 of the Carabineros Police to conduct an investigation, and the report prepared (Appendix 2A).
5. The request by the Minister of the Interior calling for the appointment of an Ad Hoc Judge of the Santiago Court of Appeals to investigate the complaint, and the ensuing appointment of Judge Alberto Echavarría Lorca, who took charge of the proceedings on July 7, 1986.
6. The information conveyed to the Supreme Court Judge of the 19th Criminal Court by Brigadier General Carlos Ojeda Vargas, Commanding General of the Santiago Army Garrison, on July 9, 1986, to the effect that there were no military forces in the sectors area and the events occurred (Appendix 3), contrary to statements made by the very same military officer in an internal summary administrative investigation of the Army that Regiment No. 10, Libertadores, (Appendix 4) was operating in the area.
7. The official statement by the Commanding Officer of the Santiago Army Garrison on July 18, 1986, which states the following:

2. Notwithstanding the findings of initial reports and information received, which showed no involvement on the part of institutional personnel in the events in reference, it may be concluded from subsequent inquiries that certain Army personnel did intervene in those events.

In fact, according to that information, on July 2, while an army patrol was keeping the public peace, it came upon a group of people attempting to disturb the peace and carrying inflammable material in containers designed for that very purpose. Among those persons were Carmen Gloria Quintana and Rodrigo Rojas DeNegri. Also, according to information provided by the persons referred to in the paragraph below, when one of the containers of inflammable material was knocked over by one of the persons detained, the clothing of those persons caught fire, and was extinguished with blankets that the military were carrying.

As a result, the Commander of this Garrison has ordered the arrest of the three officers, five non-commissioned officers, and 17 conscripts, who allegedly participated in the events in reference, and this afternoon, officially communicated this information to the ad hoc judge, Alberto Echavarría Lorca, and placed the aforementioned personnel at his disposal so that he might investigate their possible participation and degree of responsibility, if any, in accordance with the law.

8. The request by Rodrigo Rojas' mother, Mrs. Veronica DeNegri, and the Bar Association of Chile that the Inter-American Commission on Human Rights appoint a special commission to investigate the circumstances surrounding the events denounced "in the face of the absence of findings from judicial inquiries in similar cases."

9. The transmittal of that request to the Government of Chile and that Government's refusal, dated August 13, 1986, to accept the Commission's investigation since it was "a case that is clearly sub judice, it is being fully investigated ...," and therefore it "is clear that internal remedies have by no means been exhausted..."

10. The judgment of the ad hoc judge, dated July 23, 1986, in which he cites statements made by seven military personnel making up the patrol as a basis for his ruling, and considers:

a) that on July 2, Rodrigo Rojas De Negri and Carmen Quintana Arancibia were arrested by an army patrol that was ensuring the flow of traffic, and held temporarily at the place where they were arrested, side by side, and near material that could easily be ignited, which is what happened as a result of a movement made by the girl, whereupon one of the containers fell and broke causing serious burns to the two and the subsequent death of the former; and

b) that no effort was made to find immediate medical attention for the injured that were not conducive to their getting that attention.

Second. That those facts constitute the crime of manslaughter of Rodrigo Rojas De Negri and serious injury to Carmen Quintana Arancibia, which are criminal acts that are so defined and punishable under Art. 490 of the Penal Code.

On the basis of this reasoning, the ad hoc Judge Alberto Echavarría Lorca charged Lieutenant Pedro Fernández Dittus, who was leading the patrol, as the alleged author of that manslaughter and acquitted all the other military personnel.

11. The decision of the ad hoc judge, also dated July 23, 1986, whereby he declares himself incompetent to continue to try the case since military personnel were involved, and transfers the records to the Military Judge.

12. The appeal of the ad hoc judge's decision by representatives of family members of the victims of which the Military Appeal Court took cognizance, and concluded in its ruling of August 12, 1986, after evaluating 24 testimonies, that:

... the existence of the crimes of unnecessary violence resulting in the death of Rodrigo Andres Rojas DeNegri and serious injury to Carmen Gloria Quintana Arancibia has been proven, and are punishable under the first and second numerals of Article 330 of the Code of Military Justice;

The Military Appeal Court decided to try Lieutenant Pedro Fernandez Dittus for these crimes.

13. The following events, which have affected persons involved in the trial and which were brought to the attention of the Government of Chile by the Commission in due course:

a. The arrest of Pedro Martinez Pradenas, witness, on August 22, 1986, on orders from the military prosecutor, when he was summoned by that prosecutor to testify on the 25th of August. Subsequently, this witness was indicted under the Arms Control Law, since the prosecutor felt he had been involved in acts that occurred on the day of the events.

b. The abduction, also on August 22, 1986, of Jorge Sanhueza Medina, witness, by unidentified civilians. Jorge Sanhueza Medina was pressured so that he would change his incriminating testimony against the military personnel, but in regard to this situation, the Government limits itself to saying that there has been no denunciation by Mr. Sanhueza in relation to those facts.

c. The proceedings filed on September 1, 1986, against the attorney of the family members of the victims, Mr. Hector Salazar, at the First Office of the Military Prosecutor for defamation of the Armed Forces following statements he made to the press at which time he said that with the Military Appeal Court's verdict "... it has been established that the second version given by the Army does not correspond to reality. I believe that the high command of the Chilean Army owes the courts and the country the truth." The Commission should note that the Government of Chile never forwarded the basic documents that gave rise to those proceedings before the military justice system and which the Secretariat repeatedly requested.

d. The attempted abduction, on September 12, 1986, of the attorney of family members of the victims, Mr. Luis Toro, by a large group of unidentified and heavily armed persons late at night at his place of residence.

14. The decision of the ad hoc examining magistrate of January 29, 1987, amending the assessment of the Military Appeal Court and going back to the characterization of the facts as manslaughter and serious injury.

15. The promotion of Pedro Fernandez Dittus to the rank of captain of the Army.

16. The removal from office of Colonel Rene Mucoz Bruce, Commanding Officer of Regiment No. 10 Libertadores for having been informed of the events that gave rise to the denunciation and hidden that information from his superiors.

17. The secrecy in which the judicial proceedings in progress have been shrouded, with the exception of a brief period at the beginning of January 1987, despite repeated requests by the attorneys of the injured parties to gain access to information concerning the case.

18. Repeated statements by high government officials, including statements made by President Pinochet and his wife, absolving military personnel of responsibility and attributing the events denounced to a national and international conspiracy.

19. The observations made by the complainant concerning the numerous communications from the Government of Chile in this case, and especially, the official statements by that Government during the General Assembly of the Organization of American States in reference to the events that are the subject of

this case. Those observations were conveyed to the Government of Chile on February 16, 1988, which was given thirty days within which to reply.

20. The note from the Government of Chile, dated March 7, 1988, expressing its view that the complainant's observations concerned its statement before the General Assembly and not the proceedings relevant to the case, and that the preparation of observations required a longer period than the thirty days. That note further reiterates that at issue was "a case that is clearly sub judice," and therefore "the internal remedies have by no means been exhausted..."

21. The observations of the Government of Chile in resolution 01a/88, provisionally approved by the IACHR during its 72nd session, and forwarded on March 30, 1988.

CONSIDERING:

1. That the denunciation received meets the formal admissibility requirements established under Article 32 of the Regulations of the Commission.

2. That there is sufficient proof that on the morning of July 2, 1986, Rodrigo Rojas DeNegri and Carmen Gloria Quintana were arrested by an army patrol in a neighborhood in Santiago, Chile, in the course of a protest demonstration. Violence was used in the arrest, and the patrol seized inflammable material that was going to be used in building a barricade. The two persons in question were burnt and taken to a rural road by the army patrol where they were abandoned.

3. That the discrepancy between the versions of what happened concerns how the fire that caused serious burns to Carmen Gloria Quintana and the death of Rodrigo Rojas started; whereas the victims in question and some witnesses maintained that the fire was intentionally set by a member of the patrol after the head of the patrol had soaked the two parties in question with fuel, the members of the patrol maintained that the fire was accidentally started by a movement made by Carmen Gloria Quintana.

4. That there are direct indications that would lead one to accept the veracity of the version that the fire was deliberately started after two victims were doused with fuel, as they told the Judge of the 19th Criminal Court, and according to the report prepared by Department OS-7 of the Carabineros Police, which discounts the possibility of the fire having started accidentally, and states that the burns could not have been as they were if the clothing had not been soaked with fuel.

5. That the patrol's conduct in transferring the victims to a distant rural road between 14 and 17 kilometers from the place of the events, and leaving them there in a situation where it was virtually impossible for them to get the kind of help they needed would lead one to believe that the members of the patrol were aware that they had committed a punishable act, and there can be no logical validity to the explanation that they left them there because the services of the patrol were needed elsewhere in the city.

6. That the repeated denial on the part of the military authorities of participation by military personnel in the events would confirm this interpretation, and that once these events could no longer be covered up, they devised the version of the accidental fire, which could have been reported immediately, were the version true.

7. That the remedies of domestic law in this case cannot be considered to be pending, for the following reasons:

a. More than twenty months have elapsed since the events that are the object of this case transpired, but as of March 23, 1988, date of the provisional approval of this resolution, there has been no indication

of accountability, and it could, therefore be considered that there has been an unwarranted delay in the judicial decision under the provisions of Article 37.c of the Regulations of the Commission, which would make it possible to waive the requirement of the exhaustion of domestic remedies;

b. The clearly arbitrary manner in which Judge Echavarría Lorca assessed the evidence, purely on the basis of the testimony of seven members of the patrol and ignoring all the other evidence and the serious distortion of the facts revealed in the expression "... they were released..." used in the verdict calling for the trial of Lieutenant Fernández Dittus for the commission of manslaughter and serious injury and acquitting the rest of the patrol, all of which would constitute behavior that is at odds with the obligation of any magistrate to safeguard the rights of citizens and see to the proper observance of the law;

c. The various irregularities pertaining to legal process inherent in the military justice system in Chile, which the Commission has discussed in detail in Chapter VIII of its 1985 Report on the Situation of Human Rights in Chile, wherein it states the following:

"... the actions of these courts [military] have served to provide a veneer of legality to cover up the impunity which the members of the Chilean Security Forces enjoy when they are found to be involved in flagrant violations of human rights."

In the case under examination, these irregularities pertaining to legal process inherent in Chilean military justice are reflected in the abusive recourse to secrecy in the conduct of the proceedings. The situation that has thereby arisen has made it virtually impossible to gain access to basic elements of the trial and allows the military authorities to control the evidence submitted. The Commission is, therefore, led to believe that the provisions of Article 37.2.b concerning the nonexistence of due process of law should be applied in this case.

d. The very small proportion of military or police personnel who have been convicted in Chile for numerous denunciations of human rights violations, which gives reason to believe that the delay in judicial proceedings in this case could become yet another device for assuring the impunity of the perpetrators of a crime that is so reprehensible, especially when one takes into account Lieutenant Fernández Dittus' promotion to the rank of Captain, and the freedom he enjoys while such extremely serious accusations are under investigation. Added to this are the statements made by high-level Chilean authorities, including the President himself, exonerating the military officers involved, and indication of the negative attitude that exists as regards inflicting the punishment that those responsible for so condemnable an offense deserve.

8. That the long period that has lapsed since the events giving rise to the present case occurred and publicity they have received both in Chile and abroad lead the Commission to believe that the Government of that country has incurred in an unwarranted delay by not submitting a response to the claimant's observations as requested and that, in any event, the Government may make such observations as it may deem pertinent when this resolution is forwarded to it, in accordance with the provisions of Article 53.2 of the Regulations of the Commission.

9. That the early request forwarded to the Government of Chile that the Commission be allowed to investigate this case in situ was denied then and again 15 months later, in identical terms, giving cause to believe that the Government of Chile has not provided the necessary cooperation in enabling the Commission to have direct knowledge of the material involved in the proceedings.

10. That the observations of the Government of Chile on the resolution concern the need for prior exhaustion of domestic remedies without invalidating the considerations set forth in paragraph 7 above, especially if one takes into account that five months have already elapsed since the provisional approval of resolution 01a/88, and more than 26 months since the events that are the motive for Case No. 9755, without any judicial decision having been taken on the matter.

11. That among the factual aspects mentioned by the Government of Chile in its observations, some

are impossible to verify, since, as that very communication acknowledged, they are covered by the secrecy of the preliminary proceedings. Others are definitely incongruous, as for example in the case of the abduction of witness Sanhueza Medina, with regard to which the only reference made is to his possible participation in acts of violence, or show a mindless lack of understanding of the events, as for example when the Government states that Carmen Gloria Quintana left Chile of “her own free will,” when she left for Canada to undergo specialized treatment for severe burns received.

Wherefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES,

1. To declare that the Government of Chile has violated Rodrigo Rojas DeNegri’s right to life and Carmen Gloria Quintana’s right to personal integrity, recognized in Article I of the Declaration of the Rights and Duties of Man, through acts committed by its agents when they arrested the victims in question, soaked them with fuel and deliberately set the fire causing injury to them, after which they abandoned them on a rural road.
2. To declare that the Government of Chile has violated the right to a fair trial upheld in Article XVIII of the American Declaration of the Rights and Duties of Man by not providing a judicial remedy to protect the rights of the injured parties.
3. To recommend to the Government of Chile that it adopt the necessary measures to proceed expeditiously to determine the responsibility of the perpetrators of so reprehensible an act and to subject those persons to proper punishment to avoid the future recurrence of such condemnable crimes.
4. To recommend to the Government of Chile that it proceed to make amends for the material damage and moral injury caused to Carmen Gloria Quintana and the family of Rodrigo Rojas DeNegri.
5. To publish the present resolution in the Annual Report, for the purposes provided for in Article 63.g of the Regulations of the Commission.
6. To transmit the present resolution to the Government of Chile and to the claimant.