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Title/Style of Cause: Pastor Juscamaita Laura v. Peru
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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 23 February 1999
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I. SUMMARY

1. On April 25, 1990, the Inter-American Commission on Human Rights (hereafter "the Commission") received a petition against the Republic of Peru (hereafter "the Peruvian State", "the State", or "Peru"), denouncing the arrest and disappearance of Pastor Juscamaita Laura (38), a Peruvian citizen, and alleging the following:

On March 10, 1990, at about 8:00 p.m., Mr. Pastor Juscamaita Laura was arrested on charges of terrorism by members of the Peruvian Army from the Huanta Army Base (Ayacucho), when he went to that city looking for work; the soldiers were in uniform.

Mr. Pastor Juscamaita was taken to the Huanta army base and from there, according to testimony from family members, was apparently removed to the army (BIM) barracks, "Los Cabitos", in Huamanga. He was kept incommunicado since the date of his arrest. His family has approached the army base at Huanta, which denies that he is being held there.

Mr. Pastor Juscamaita was 38 years old, a widower and father of small children. He was born in Cahua, province of Angaraes, department of Huancavelica. It should be noted that his father and three brothers were killed by senderistas (members of the "Shining Path" guerrilla group) for having collaborated with the Army unit from the Julcamarca military base.

II. PROCESSING BY THE COMMISSION

2. Upon receipt of the complaint, which was amplified by communications received in the month of October 1990, and without ruling on its admissibility, the Commission transmitted the

pertinent portions of the complaint to the Peruvian State on November 7, 1990, asking it to provide any information it might deem pertinent to the case.

3. This request for information was reiterated by means of a note to the Peruvian State, dated March 18, 1991, in which reference was made to possible application of Article 42 of the Regulations of the Commission, should no reply be received. The Peruvian State, by Note No. 7-5-M/013, dated January 9, 1992, replied as follows:

... the Peruvian Ministry of Defense has informed the Ministry of Foreign Relations, with respect to the presumed arrest/disappearance of the citizen referred to, that the case has been investigated by the Provincial Prosecutor of Huanta, following a complaint by Mrs. Alexandra Juscamaita Laura, and that responsibility for the case has subsequently been transferred to the Office of the Special Prosecutor for Human Rights, which is now conducting an investigation into the case.

By letter of March 24, 1992, the Commission transmitted the pertinent portions of the Peruvian State's response to the petitioner, asking for the latter's observations within a period of 45 days. Because the response was not received by the petitioner, it was sent a second time, on August 28, 1992.

4. On October 9, 1992, pursuant to Article 34(7) of the Commission's Regulations, the petitioner submitted his observations to the Peruvian State's response, and these were transmitted to the State on November 30, 1992.

5. The Peruvian State, by Note No. 7-5-M/165A, of June 3, 1994, sent the following information, provided by the Ministry of Justice, relating to the present case:

In the reports submitted by the Attorney General's Office pursuant to the provisions of Article 5 of Decree Law No. 25592, there is no record of the disappearance of the citizen referred to.

In its note No. 008/94/FEDPDH-DH-D dated January 12, 1994, the Special Prosecutor for public defense and human rights asked the Senior Prosecutor of Ayacucho for information on the case. A reply is awaited.

Friendly Settlement

6. In a letter of May 16, 1997, the Commission, acting in accordance with the provisions of Article 48(1)(f) of the American Convention, and Article 45(1) and (2) of its Regulations, placed itself at the disposition of the parties with a view to reaching a friendly settlement.

7. By letter of June 12, 1997, the petitioner agreed to begin the procedure of friendly settlement, under five explicit conditions. This information was transmitted to the Peruvian State by letter of June 17, 1997.

8. The Peruvian State, by Note No. 7-5-M/292 of August 15, 1997, declared it impossible to begin proceedings for a friendly settlement, because "the proposed basis of the friendly settlement would entail (,,) acceptance a priori of responsibility on the part of agents of the

Peruvian State for committing the acts denounced, a situation that, as we have consistently and repeatedly pointed out, is not the case."

9. In that Note No. 7-5-M/292 of August 15, 1997 the Peruvian State refers in the following terms to a report prepared by the Ministry of Defense on August 21, 1990, to which no previous reference had been made, and confirms the outcome of that report in the following terms:

The Ministry of Defense, through Report No. 3660-SGMD-D of August 21, 1990, reported that the citizen in question was not arrested by members of the Armed Forces, nor of the National Police, and noted that the investigation into the case was in the hands of the Provincial Prosecutor of Huanta. By means of report N° 448-90-MP-FPMH of August 15, 1990, the Provincial Prosecutor reported that the case has been turned over to the Head of the Technical Police for investigation, pursuant to law, noting that the complaint was based essentially on imprecise and circumstantial testimony that failed to identify any of the possible authors or to produce any evidence that would point to responsibility on the part of the military.

Similarly, by report 3488-SGMD-G of June 4, 1997, the Ministry of Defense reported that, in the light of investigations into the case by the Joint Chiefs of Staff of the Armed Forces, "it has been concluded that the citizen in question was not arrested by military personnel on duty in the area".

By report N° 3581-SGMD-G of July 1, 1997, the Ministry of Defense reiterated this information, to the effect that the participation [sic] of Pastor Juscamaita had been ruled out, and adding that there was no conclusive evidence to suggest any responsibility on the part of members of the Armed Forces in those events.

The investigations conducted by the Provincial Prosecutor of Huanta likewise failed to establish any involvement or responsibility on the part of members of the military.

III. ANALYSIS

A. ADMISSIBILITY

10. The petition fulfills the formal requirements of admissibility set out in article 46 of the Convention. The petition was submitted within the time limits established by Article 46(b) of the Convention and Article 38 of the Commission's Regulations. With respect to Article 46(c) of the Convention and Article 38 of the Regulations, the case is not pending in another international proceeding for settlement. Furthermore, pursuant to Article 44 of the Convention, of which Peru is a State Party, the Commission is competent to hear this case since it involves denunciations of alleged violations of rights guaranteed by the Convention.

B. ANALYSIS OF THE MERITS

The proven facts

11. What happened to Mr. Pastor Juscamaita Laura, as set out in the present case, corresponds in its nature and characteristics to the concept of "forced disappearance" that has

been developed in the jurisprudence of the Commission and of the Inter-American Court of Human Rights (hereafter the "Inter-American Court"), and subsequently incorporated into Article II of the Inter-American Convention on the Forced Disappearance of Persons.[FN1]

[FN1] See ANNUAL REPORT 1985-6 of the Inter-American Commission on Human Rights, OAS/Ser,L/V/II.68, Doc. 8 rev. 1 of September 26, 1986, pages 40-41; ANNUAL REPORT 1982-3 of the Inter-American Commission on Human Rights, OAS/Ser,L/V/II.61, Doc. 22 rev. 1 of September 27 1983, pages 48-50; ANNUAL REPORT 1980-2 of the Inter-American Commission on Human Rights, OAS/Ser,L/V/II.54, Doc. 9 rev. 1 of October 16, 1981, pages 133-14; the Velásquez Rodríguez Case, Judgment of July 29 1988, para. 147; the Inter-American Convention on the Forced Disappearance of Persons, Article II. The Inter-American Convention on Forced Disappearance of Persons entered into effect on March 28, 1996, following the deposit with the OAS General Secretariat of instruments of ratification by Argentina and Panama on February 28, 1996.

12. Article II of that Convention defines "forced disappearance" in the following terms:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

13. Peru is not a State party to the Convention on Forced Disappearance, but the drafting of the definition of the term, "forced disappearance", by the authors of the Convention is useful for the purpose of identifying its various elements. The essential consideration is that individuals are deprived of their liberty by agents of the State, or with the appearance of legality, followed by the refusal or inability of the State to explain what has happened to the victim or to provide information on his whereabouts. In this case, in its response dated August 15, 1997, Peru has stated that "the complaint was based essentially on imprecise and circumstantial testimony that failed to identify any of the possible authors or to produce any evidence that would point to responsibility on the part of the military."

14. In reality, the record shows that Mr. Pastor Juscamaita was arrested by military personnel and that he was alive at that time. The testimony of Mrs. Alejandra Juscamaita de Eslava, sister of Mr. Pastor Juscamaita Laura, in a communication dated April 6, 1990 expressed to the Departamental Confederation of Huancavelica (CODEHUAN) her concern about her brother's situation. She said that:

He was arrested on March 10 of this year by members of the Military Base in Huanta, from where it is possible that they have taken him to the "Los Cabitos" headquarters in Huamanga.

15. Mr. Pastor Juscamaita was arrested while he was staying at the home of the Bautista family, in Huanta. On that day, he had been drinking liquor with other persons who, like himself, had gone to Huanta in search of work. Two members of the Bautista family told Mrs. Alexandra Juscamaita, in the following terms, that they were witnesses to her brother's arrest:

They told me that during the night, the soldiers had come to their home at about 8:00 p.m., had knocked at the door and entered the house (...). The Bautistas did not know why, and then the soldiers looked for and found my brother, who was staying there while looking for work, and then (...) he was a bit drunk, they were three, like, three friends, people from the country who had come to Huanta to look for work (...) two men escaped and so did the owner of the house, but since he [my brother] was drunk, he was captured by the soldiers....

... then they beat him on the spot ...he was the only one who stayed in the house, afterwards the soldiers asked him what he had with him, and he answered that he had his clothes and his blankets, and they tied all this stuff on his head and took him away.

16. Mrs. Alexandra Juscamaita stated that since the arrest and disappearance of her brother, other people had seen him alive in the company of soldiers, as expressed in the following testimony:

One lady saw Pastor by chance during the month of April, in a civil defense group (Ronda campesina) (...) she should certainly be able to recognize him, because she is from my area and my niece saw him and recognized him ... with all of his clothes ... he was ... there among the members of the army, with the soldiers and all.[FN2]

These versions confirm that Mr. Pastor Juscamaita was in fact arrested by military personnel and that he was alive.

[FN2] The rondas campesinas are civil defense groups organized by the military.

17. Despite such testimony to the arrest of Mr. Pastor Juscamaita, the politico-military Commander of the emergency zone of Huancavelica did not undertake any investigation, nor did he attempt to locate the victim or to identify those responsible for his arrest.

18. Experience has shown the Commission that the principal cause of forced disappearances lies in the abuse of the powers granted to the armed forces of the State during a state of emergency. Under a state of emergency, arbitrary arrests become more frequent, individuals are arrested without charges and are held without trial or court order, they are deprived of their access to judicial remedies and their arrest is not recorded: all of this in flagrant violation of the rule of law.

19. The General Assembly of the Organization of American States, in resolution AG/RES. 666 (XIII-O/83) declared that "the practice of forced disappearance of persons in America is an affront to the conscience of the Hemisphere and constitutes a crime against humanity".[FN3]

[FN3] Resolution AG/RES. 666 (XIII-O/83) of the General Assembly of the Organization of American States.

The right to life (Article 4 of the Convention)

20. The Inter-American Court of Human Rights has stated that the forced disappearance of persons "often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention". (Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 157).

21. In the case of Mr. Pastor Juscamaita Laura, the evidence presented leads to the presumption that he was arrested by agents of the State. The fact that his arrest and disappearance were denounced to the authorities of Huancavelica, and that no serious investigation was undertaken to determine his whereabouts, is demonstrated by the fact that the authorities limited themselves to reporting that they had no responsibility for the events. To the present day there have been no results presented from the investigations conducted by the Superior Prosecutor of Ayacucho, nor by the Provincial Prosecutor of Ayacucho. The investigations carried out by the the Public Prosecutor's Office have not led to identification of those responsible for the forced disappearance of Mr. Pastor Juscamaita Laura. It is the responsibility of the Public Prosecutor to identify the soldiers who were involved in his arrest and disappearance. The context in which the disappearance (...) occurred and the lack of knowledge about his fate create a reasonable presumption that he was killed. (Godínez Cruz case, Judgment of January 20, 1989, paragraph 198).

22. The jurisprudence of the Court has held that "[t]he right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (...). It also demands of the States that they take all appropriate measures to protect and preserve it (...). [t]he International protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions." (Gangaram Panday case, Judgment of January 21, 1994, dissenting vote of judges Picado Sotela, Aguiar-Aranguren and Cançado Trindade, paragraphs 3 and 4).

23. Consequently, the Commission concludes that the Peruvian State has violated the right to life, the fundamental right protected by the Convention in Article 4, which establishes that "every person has the right to have his life respected..." and that "no one shall be arbitrarily deprived of his life".

The right to personal liberty (Article 7 of the Convention)

24. On April 23, 1990, two actions for habeas corpus were brought before the examining magistrates of Huanta and Huamanga, denouncing the arrest and disappearance carried out by members of the Army belonging to the Huanta Military Base and also against the Head of the "Los Cabitos" barracks at Huamanga. This is corroborated by Mrs. Alejandra Juscamaita, in her letter to the Examining Magistrate of Huanta on April 27, 1992. To this moment, despite the time that has elapsed and the repeated requests for information on the investigations carried out, there has been no response.

25. The Examining Magistrate of Huanta failed to notify the interested parties in terms of a judicial resolution in which he pronounces himself formally with respect to the appropriateness of habeas corpus, with the result that this action has been rendered ineffective, in violation of the provisions of Law No. 23506 which, in its Article 16, establishes the duty of the judge to pronounce himself immediately on the appropriateness or otherwise of habeas corpus. The outcome of the legal actions taken by the victim's sister shows that, in effect, none of them has been of any use in determining the whereabouts of Pastor Juscamaita Laura.

26. Forced disappearance is a crime perpetrated by agents of the State or by groups of irregulars who act with the state's acquiescence; it is therefore very difficult to obtain from the authorities an official admission of the arrest. The objective elements of crimes of this kind are that an arrest is made, it goes officially unrecognized, and the prisoner is held in secrecy. If these are the constituent elements of the crime defined as forced disappearance, it is apparent that the legal mechanisms of domestic jurisdiction are ineffective for securing the re-appearance of the victim.

27. In Peru, habeas corpus is the appropriate remedy for protecting individual liberty. Nonetheless, in the context of forced disappearances, it has not been an effective remedy, i.e. it has not been able to produce the result for which it was conceived, because it has lacked the power to compel obedience by the military authorities, given the control they exercise over emergency zones. Habeas corpus in Peru has not succeeded in bringing about the re-appearance of any person who has been arrested and disappeared.

28. With respect to the violation of this right, the Inter-American Court has stated that: "The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty." (Godínez Cruz case, Judgment *ibid.*, paragraph 163).

29. As a result of the disappearance, Pastor Juscamaita Laura was the victim of an arbitrary detention, which deprived him of his physical liberty without legal cause and without a determination of the lawfulness of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized by Article 7 of the Convention and are a violation imputable to Peru of the duties to respect and ensure the right under Article 1(1). (Godínez Cruz case, Judgment *ibid.*, paragraph 196).

The duty of States to guarantee and respect rights

30. In the present case it has been shown that the Peruvian State has failed to comply with the provisions of Article 1(1) to "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". This constitutes a violation of the rights contemplated in Articles 4 and 7 of the Convention.

31. The first duty of States, arising from Article 1(1), is to respect the rights and liberties of all individuals within their jurisdiction. With respect to this obligation, the Court has stated that "...under international law a State is responsible for the acts of its agents undertaken in their official capacity, and for their omissions, even when those agents act outside the sphere of their authority or violate internal law". Moreover, it establishes that "...in principle, any violation of rights recognized by the Convention, carried out by an act of public authority or by persons who use their position of authority is imputable to the State." (Velásquez Rodríguez case, Judgment of July 29, 1988, paragraphs 170 and 172).

32. The Commission concludes that the arrest of Pastor Juscamaita Laura and his subsequent disappearance are acts of a public nature that were perpetrated by agents of the State, which means that the Peruvian State violated the victim's rights accorded in Article 1(1) with respect to violations of Articles 4 and 7 of the Convention.

33. The second duty established in Article 1(1) is that of guaranteeing the free and full exercise of the rights and freedoms recognized in the Convention. In this respect, the Court's jurisprudence has held that "this obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention, and, moreover, if possible attempt to restore the right violated, and provide compensation as warranted for damages resulting from the violation." (Velásquez Rodríguez case, Judgment op.cit. para. 166).

34. The State, in the case of a "forced disappearance", has the duty to determine the fate and situation of the victim, to punish those guilty and to grant fair compensation to his family. In this case, those obligations have not been fulfilled.

35. The State's response to the confidential report (Article 50) of the Convention is designed to give the State the opportunity to show that it is complying with the Commission's recommendations.[FN4] As the Inter-American Court recently stated in the Loayza Tamayo case, "... if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States...".[FN5]

[FN4] See Inter-American Court of Human Rights, Certain attributes of the Inter-American Commission on Human Rights (Articles 41, 42, 47, 50, and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993, Series A No. 13.

[FN5] Loayza Tamayo case, Judgment of September 17, 1997, paragraph 80.

36. In its response of August 19, 1997, Peru informed the Commission that the arrest and disappearance of Mr. Pastor Juscamaita Laura was not recorded in any official report and that, moreover, his family had not brought any formal complaint before the competent authorities. The information contained in the statements received, however, shows that the question was raised with the politico-military Commander of the emergency zone and with the district Fiscalía, and that both claimed to know nothing about the arrest of this person, despite the fact that the report of the politico-military Commander is dated on the same day as the request, from which it may be concluded that no investigation at all was ordered.

37. The Peruvian amnesty laws Nos. 26479 and 26492, in effect, tie the State's hands when it comes to launching an investigation of any case of involuntary disappearance or other violation of human rights committed by members of the Armed Forces, or by whoever perpetrated them, during the period from May 1980 to June 14, 1995. Those amnesty laws extend to all military and police officers and to all civilian officials, regardless of whether they have been accused, indicted, tried, or sentenced by a common or special tribunal for ordinary or military crimes, for any deed arising from the campaign against terrorism, or as a consequence of that campaign, that may have been committed, individually or collectively, during this period.[FN6] Amnesty, by its very nature, eliminates the criminal element from the act committed, and any sanction, if the person has been convicted or has served a sentence, is deemed never to have been effective.[FN7]

[FN6] See IACHR, ANNUAL REPORT 1996, pages 739-741.

[FN7] See UN STUDY ON AMNESTY LAWS, Report of Mr. Louis Joinet, Special Rapporteur of the Sub-Committee on the Prevention of Discrimination and the Protection of Minorities, E/CN.4/Sub.2/1985/16/Rev.1 (June 21, 1985).

38. In the case of the Peruvian Amnesty Law No. 26479, Article 6 provides:

The deeds or crimes covered by this amnesty, and any dismissals and absolutions, are not liable to investigation, inquiry or summary procedure, and all judicial action in process or pending application is hereby suspended definitively. (Emphasis added by the Commission.)

In short, this law provides that the present case cannot be subject to investigation, in flagrant disregard of the obligations that the American Convention and the jurisprudence of the Commission and the Inter-American Court of Human Rights impose on the Peruvian State.

39. The amnesty laws frustrate and contravene the State's duty to investigate and punish those responsible for violations of human rights, whether they are military or civilian personnel. The expectation of an eventual amnesty grants a cloak of impunity to the Armed Forces and to any non-military violator, which allows them to commit any atrocity in the name of their cause, and this climate inevitably encourages excesses and disrespect for the law. An amnesty in one country of the region that has just emerged from a civil conflict encourages the expectation of a

similar amnesty in the next country, even when that country is still in the midst of a domestic conflict. A policy that allows this kind of impunity, enshrined in amnesty laws, must eventually undermine the prestige and professionalism of the armed forces in the eyes of the rest of the population.

40. Consequently, the Commission concludes that the Peruvian State has violated Article 1(1), because it has failed to safeguard the exercise of the rights and guarantees pertaining to Pastor Juscamaita Laura.

IV. ACTIONS FOLLOWING REPORT N° 13/98

41. The Commission approved Report N° 13/98 (Article 50) on the present case, containing the Commission's recommendations, on March 3, 1998, at its 98th session. The report was transmitted to the Government of Peru on March 23, 1998, with a request for a report on the measures taken to comply with those recommendations. The Government was asked to present its observations within a term of 60 days from the date of the Commission's communication.

42. In its note N° 7-5-M/193 of May 11, 1998, the Government replied to the Commission's confidential report and stated that the conclusions drawn in the Commission's Report N° 13/98 were not based on "objective, incontrovertible and precise" arguments. Therefore, the Commission having based its recommendations on these conclusions, the Government found it "impossible" to adopt them and reaffirmed the arguments and proofs presented in its previous reports.

43. The Commission considered that the Government's reply did not demonstrate compliance with the recommendations made to rectify the situations in question. On the contrary, the Government confined itself to citing contradictions in the testimony of petitioner's sister and to point out that the information presented on other persons who asserted having seen the petitioner in the company of military men was hearsay. In addition, as to the Commission's recommendations, the Government alleged that it could not "leave without effect" amnesty laws Nos. 26479 and 26492, which had been enacted by the Congress of the Republic in the exercise of its constitutional functions. In consequence, (the Government went on to say) it is impossible even to conduct an investigation and trial in relation to acts that are subject to amnesty, and hence are regarded as *res judicata* and subject to the principle of legality generally accepted in law and doctrine. In short, the Government concluded that, since the facts in the case are covered by the amnesty laws, a new investigation cannot be opened, and the Government finds it "legally impossible" to act on the Commission's recommendations, allegedly because to do so would violate the rights enshrined in the Peruvian Constitution, specifically paragraph 3 in Article 139, which prohibits the reopening of proceedings that have been concluded, that is, they are regarded as *res judicata*, and that in the present case the amnesty produces the same effect.

44. As to the Commission's recommendation for the payment of an indemnification and reparation to the family of Mr. Pastor Juscamaita Laura, the Government had replied that this was regarded as improper for the reasons previously stated. The investigation that the Government had carried out demonstrated that the Government's agents bore no responsibility

for those acts and that to accept responsibility would imply acknowledgement of the facts charged, which were not committed by the Government.

V. CONCLUSIONS

45. On the basis of the considerations set forth in this report, the Commission arrives at the following conclusions and recommendations:

That agents of the security forces of the Peruvian State arrested Pastor Juscamaita Laura eight years ago and since then have been unable to account for his whereabouts, by which fact the Peruvian State is responsible for violation of the right to life (Article 4) and the right to liberty (Article 7), as well of its general obligation to respect and guarantee the exercise of those rights as enshrined in Article 1(1) of the American Convention on Human Rights.

VI. RECOMMENDATIONS

46. On the basis of the analysis and conclusions of the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE PERUVIAN GOVERNMENT

1. That it derogate or leave without effect any domestic measure, legislative or other, that would tend to prevent the investigation, prosecution and punishment of those responsible for the arrest and disappearance of Pastor Juscamaita Laura. To this end, the Peruvian State should leave without effect Laws Nos. 26479 and 26492.

2. That it carry out a complete, impartial and effective investigation to establish the whereabouts of Pastor Juscamaita Laura, and to identify those responsible for his arrest and disappearance and to punish them in accordance with Peruvian Law.

3. That it take the necessary steps so that the members of the family of Pastor Juscamaita Laura may be properly indemnified for the violations established herein.

VII. NOTIFICATION

47. On October 2, 1998, the Commission approved Report N° 62/98 – the text of which precedes, and transmitted it to the Peruvian State and to the petitioners, and in conformity with the forms established in Article 51(2) of the American Convention it granted an additional period of 2 months to Peru for it to comply with the preceding recommendations, calculated from October 23, 1998, the date of which the report was transmitted.

48. On December 20, 1998 the Peruvian State communicated that it did not agree with the evaluation of the facts and proofs conducted by the Commission in the present case, and pointed out that its observations were not sufficiently analyzed by the Commission, as a result of which the Commission reached the wrong conclusion. The Peruvian State added that consequently, it was unable to adopt the recommendations formulated by the Commission, in their entirety.

49. By virtue of the foregoing considerations, the Commission, in conformity with article 51(3) of the American Convention, concludes that the Peruvian State has not taken adequate measures to solve the violations committed in detriment to the victim, and, in consequence, ratifies its conclusions and recommendations, decides to make the present report public and decides to include it in its Report to the General Assembly of the OAS. The Commission also decides, in conformity with the provisions which govern its mandate, to continue evaluating the measures adopted by the Peruvian State in regard to the recommendations contained in the present report until they have been totally complied with by said State.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 23rd day of the month of February in the year 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.