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Title/Style of Cause:	Dudley Stokes v. Jamaica
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Decided by:	Chairman: Paolo Carozza; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Victor E. Abramovich. Commissioner Felipe Gonzalez did not participate in the decision of this report pursuant to Article 17 of the Rules of Procedure of the Inter-American Commission on Human Rights.
Dated:	14 March 2008
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I. SUMMARY

1. On January 14, 2004, Mr. Claudio Grossman (hereinafter the "petitioner") presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") against the State of Jamaica (hereinafter "the State") in connection with civil proceedings for libel initiated by a former State official against Mr. Dudley Stokes (hereinafter "Mr. Stokes").

2. The complaint alleged that the facts related constitute violations of the rights guaranteed by Article 13 (Freedom of Thought and Expression) in relation to Articles 1(1) and 2 of the American Convention on Human Rights (hereinafter "the American Convention").

3. The petitioner affirmed that the State violated Mr. Stokes' right to freedom of expression by imposing on him a disproportionate award of damages arising out of a civil action for libel.

4. The State argued that the domestic courts acted pursuant to Article 13 of the American Convention since the civil sanction against Mr. Stokes was imposed for the purpose of ensuring "respect for the...reputations of others."

5. The Commission adopted report No. 65/04 admitting the present case on October 14, 2004 and determined that it would analyze the claims raised in relation to Articles 13, 1(1) and 2 of the American Convention. Having examined the evidence put forward by both parties and their arguments on the merits of the case, the Commission concluded that Jamaica is not responsible for the violation of the right enshrined in Article 13 of the American Convention in

relation to Article 1(1) of the same instrument, to the detriment of Mr. Dudley Stokes. The Commission decided to notify the Jamaican State and the petitioner, and to publish this report in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

6. On October 14, 2004, the Commission approved Report No. 65/04 declaring this case admissible.[FN2] On November 18, 2004, the Commission forwarded the admissibility report to the parties. The Commission stated that it was making itself available to the parties to assist them in seeking a friendly settlement, if they wished to pursue that procedure.

[FN2] IACHR, Report No. 65/04. Petition 28/04. Admissibility. Dudley Stokes (Jamaica). October 14, 2004. Available at: <http://www.cidh.org/annualrep/2004eng/Jamaica.28.04eng.htm>.

7. On January 13, 2005, the petitioner expressed his wish to participate in seeking a friendly settlement and asked the Commission to consider his previous briefs as his observations on the merits. On February 22, 2005, the State sent a brief expressing its wish to participate in the friendly settlement process. In the same brief, the State asked the Commission whether, in view of this circumstance, it should present its observations on the merits.

8. On March 15, 2005, the Commission informed the parties of its decision to suspend the period for submission of the State's observations on the merits of the case, pending the outcome of the friendly settlement process. The petitioner confirmed his interest in seeking such a solution on April 12, 2005. On October 14, 2005, the State notified the Commission of its participation in the friendly settlement process.

9. On June 1, 2006, the petitioner stated that there did not appear to be any real intention on the State's part of resolving the matter through friendly settlement. On June 9, 2006, the Commission received a letter from the petitioner requesting the closure of the friendly settlement process and the issuance of a report on the merits. On June 16, 2006, the Commission transmitted the petitioner's request to the State.

10. On June 27, 2006, the Commission requested the State to present its observations on the merits within a period of one month. On August 25, 2006, the State requested an extension of one month in order to submit its response. On August 31, 2006, the extension was granted.

11. On September 7, 2006, the Commission received a brief from the petitioner containing additional observations on the merits. The Commission acknowledged receipt of this information and forwarded it to the State, which was requested to present its observations within the period of the extension granted on August 31, 2006.

12. On October 2, 2006, the Commission received a brief from the State requesting a new extension of the period in which to forward its observations. The Commission granted a new extension of 15 days.

13. On October 18, 2006, the Commission received an amicus curiae brief from the Public Interest and Human Rights Clinic of Universidad Diego Portales in Santiago, Chile. The Commission acknowledged receipt of the brief and forwarded it to the parties on November 13, 2006. This was in addition to several other amicus curiae briefs that were submitted to the Commission prior to the Commission's decision on admissibility of the case on October 14, 2004.[FN3]

[FN3] IACHR, Report No. 65/04. Petition 28/04. Admissibility. Dudley Stokes (Jamaica). October 14, 2004 at para's: 7, 8, 9, 11 and 13.

14. On November 10, 2006, the Commission received a brief from the State containing observations on the merits of the case. On December 8, 2006, the Commission acknowledged receipt of the brief and transmitted a copy of it to the petitioner.

15. On February 7, 2007, the Commission received a brief from the State reiterating its observations on the merits of the case. On that same day, the Commission acknowledged receipt of the brief, and transmitted a copy of it to the petitioner.

16. On December 14, 2007, the Commission received a request from the petitioner to hold a hearing on the merits during its 131st Regular Period of Sessions. On February 13, 2008 the Commission informed the petitioner that a hearing had not been granted.

III. POSITIONS OF THE PARTIES

A. The petitioner

17. The petitioner claims that Mr. Dudley Stokes was the Editor-in-Chief of the three most important and widely circulated newspapers in Jamaica: the Daily Gleaner, the Sunday Gleaner, and the Star, all owned by the Gleaner Company, Ltd.

18. The petitioner states that, on September 17, 1987, the Star published a news report that referred to an investigation that United States federal authorities were conducting in Connecticut in relation to kickbacks allegedly paid by American firms to Jamaican State officials, including Mr. Eric Abrahams while he served as Jamaican Minister of Tourism[FN4]. The news report was reproduced from a wire service report from the Associated Press, an international news agency.

[FN4] Mr. Abrahams served as Minister of Tourism for Jamaica between 1980 and 1984.

19. The petitioner indicates that, on September 18, 1987, the same news report was reprinted for a second time in the Daily Gleaner[FN5] and that on September 19, 1987, a clarification was

published in the same newspaper, indicating that the reference to the Minister of Tourism did not relate to the then-current Minister.

[FN5] According to the petitioner, the article reproduces the one published on September 17, 1987 in the Star, with the omission of the following sentence: “People were talking. There were things everybody know (sic). There was no secret about the situation with the (former) Minister of Tourism.”

20. The petitioner maintains that, on September 20, 1987, Mr. Stokes published in the Sunday Gleaner a statement that was based on the denial sent by Mr. Abrahams on September 17, 1987.

21. The petitioner states that, on September 23, 1987, Mr. Abrahams filed a claim before the Supreme Court of Jamaica against the Gleaner Company and Mr. Stokes, alleging that the news reports they had published on September 17, 18 and 19, 1987 were libelous. The petitioner affirms that although [the defendants] appeared at trial, a defense was not entered at trial. The petition indicates that, accordingly, a default judgment was entered by the Supreme Court in favor of Mr. Abrahams on October 23, 1987. The petitioner adds that on December 18, 1991, Mr. Stokes and the Gleaner Company filed a defence against Mr. Abraham’s claim, pleading justification and qualified privilege.

22. The petitioner further states that, on January 24, 1994, the Court of Appeal of Jamaica ordered the defense presented by the Gleaner Company and Mr. Stokes to be struck, concluding that the evidence presented in support of the pleadings was insufficient. Also according to the petitioner, the Court of Appeal stated that Mr. Abrahams had a constitutional right to a fair trial within a reasonable time, which had been affected in view of the time that had elapsed since the filing of the claim. The petition indicates that this same judgment ordered the Jamaican Supreme Court to proceed to an assessment of damages with respect to Mr. Abrahams’ libel claim.

23. The petitioner maintains that the Court of Appeal upheld the default judgment that had established that the Gleaner Company and Mr. Stokes were legally responsible for the alleged libel, and ordered that the subsequent phases of the trial be confined to the quantification of damages. The petition states that the decision appeared to be based on the undeveloped state of domestic law in the matter.

24. The petitioner indicates that, on July 10, 1995, the Star and the Daily Gleaner published an apology indicating that, at the time they published the allegedly libelous information, they honestly believed it to be true and accurate, yet acknowledged that they could not sustain the allegations and thereby withdrew them.

25. The petitioner affirms that, on July 17, 1996, the Jamaican Supreme Court awarded compensatory damages to Mr. Abrahams in the sum of J\$80.7 million (GBP £1.2 million). The petitioner indicates, however, that the decision did not take into consideration the fact that Mr. Stokes had reproduced information from a news agency of recognized reputation. The petition

also claims that the Jamaican courts did not consider the fact that Mr. Abrahams had continued to act as a parliamentarian until 1989 and that the damage to his professional reputation had not been proven.

26. The petitioner maintains that on July 31, 2000, the Court of Appeal of Jamaica reduced the award of the damages to J\$35 million GBP £533,000. The petition claims that, despite the Court of Appeal's reduction of the damages award, it manifestly exceeded previous libel awards, as established by previous Jamaican judicial precedents.

27. The petitioner states that the Gleaner Company and Mr. Stokes appealed this decision to the Judicial Committee of the Privy Council, arguing that (a) the amount was disproportionate; (b) it had a chilling effect on the right to freedom of expression; and (c) it included a punitive element in the form of compensatory damages. The petitioner affirms that on July 14, 2003, the Judicial Committee of the Privy Council upheld the judgment by the Court of Appeal of Jamaica ordering J\$35 million in damages to Mr. Abrahams, stating expressly that freedom of expression was not at issue in this case.

28. The petitioner argues that the State violated Article 13 of the American Convention to the detriment of Mr. Stokes on four grounds. First, the petitioner claims that the amount of damages awarded restricts the right to freedom of expression to a greater extent than is necessary, because it is not proportionate and is not closely tailored to the accomplishment of a legitimate objective. The petition also states that the amount awarded by the Court of Appeal of Jamaica fails to distinguish between compensatory and punitive damages, leading to a disproportionate damages award in violation of Article 13.

29. Second, the petitioner maintains that the State found Mr. Stokes liable for reproducing defamatory articles derived from a wire service report issued by the Associated Press (AP). In this respect, the petitioner argues that finding of liability for the reproduction of information supplied by a third party has a chilling effect on the right to freedom of expression, and encourages self-censorship by journalists and editors.

30. Third, the petitioner argues that, in the legal proceedings leading to the award of damages to Mr. Abrahams, the Jamaican courts failed to apply the "actual malice" test. The petitioner indicates that, in the determination of civil liability in defamation cases, it must be proved that in disseminating a news story, the communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news. The petitioner claims that Mr. Abrahams presented no proof establishing actual malice on the part of Mr. Stokes.

31. Finally, the petitioner argues that the damages award imposed on Mr. Stokes is disproportionate and of such a character that it undermines the interest and the right of the Jamaican populace to be informed of actions of their public officials.

B. The State

32. The State maintains that it respects and guarantees the right to freedom of expression pursuant to the provisions contained in the American Convention and the Constitution of Jamaica. The State asserts that neither Article 13(2) nor 13(3) of the American Convention mentions damages award as a factor in limiting freedom of expression.

33. Jamaica further submits that the indirect means of restricting freedom of expression mentioned in Article 13(3) of the Convention refer only to acts emanating from the executive branch. The State argues, therefore, that the award of damages by an independent and impartial court cannot constitute a violation of Article 13(3) of the Convention.

34. The State maintains that the damages awarded against Mr. Stokes are proportional and that the amount of the award, in the special circumstances of the case, should not inhibit responsible journalism.

35. The State indicates that the Associated Press (AP) withdrew the wire service report on the same day on which it was initially published. The State points out that the dissemination of this report was intended to correct inaccuracies in the news report reproduced on September 17, 18, and 19, 1987 by Mr. Stokes/the Gleaner. The State notes that, by the time Mr. Stokes/the Gleaner applied for leave to plead the defense of justification, they knew that AP had withdrawn the story, however they persisted in their claim to rely on an alternative source, which later proved to be false. The State indicates that the Jamaican courts rejected this claim.

36. The State asserts that the rights to freedom of expression and respect for reputations, pursuant to the provisions contained in Article 13(2) of the American Convention, are protected in section 22 of the Jamaican Constitution.[FN6] Jamaica claims that domestic courts have a wider margin of appreciation than the Inter-American Commission with regard to estimates of damage and the imposition of civil penalties in libel cases.

[FN6] Section 22 of the Jamaican Constitution provides that:

1. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

a. which is reasonably required-

i. in the interests of defence, public safety, public order, public morality or public health; or
ii. for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

b. which imposes restrictions upon public officers, police officers or upon members of a defence force.

37. The State claims that, on September 17, 1987, the Star published a news story based on a wire service report from an international news agency [Associated Press] relating to Mr. Abrahams' alleged participation in unlawful activities while he was serving as Minister of Tourism. Jamaica states that on that same date, Mr. Stokes spoke by telephone with Mr. Abrahams. The State submits that Mr. Abrahams subsequently wrote to Mr. Stokes denying the allegations made against him in the news report. The State indicates that Mr. Stokes promised to publish the denial in the September 18, 1987 edition of the Star. The State affirms that, nonetheless, on September 18, 1987, the Daily Gleaner republished the news story previously disseminated by the Star, omitting some of the sentences contained in the original news story. The State further affirms that, on September 19, 1987, the Daily Gleaner published an article stating clearly that the previous news story had referred to Mr. Abrahams.

38. Jamaica indicates that during the litigation, up to July 1991, the Gleaner Company and the petitioner claimed that they could demonstrate the truth of allegations against Mr. Abrahams.

39. The State maintains that Mr. Abrahams had an excellent reputation in Jamaican political and business circles at the time the three articles were published. Jamaica states that the publications gravely damaged Mr. Abrahams' reputation and seriously limited his activities as a tourism consultant. The State also claims that the articles gave rise to incidents of public mockery and insults directed against Mr. Abrahams.

40. Jamaica states that in view of the State's interest in protecting the reputations of others, and based on the wide circulation and level of credibility of the newspapers owned by the Gleaner Company, the quantum of damages awarded is proportional to the damage sustained by Mr. Abrahams.

41. The State maintains that the inclusion of a punitive element in the award of compensatory damages is characteristic of the common law system, and that the mere fact that the amount of reparation may be very high does not mean that it is inappropriate in the specific circumstances of the case.

42. The State indicates that the "actual malice" standard is not incorporated into Article 13 of the American Convention and therefore is not binding on Jamaica.

43. The State affirms that there is no standard in the American Convention requiring the adoption of laws that exempt a journalistic medium from liability because it reproduces information published in another medium. In this connection, it maintains that the Gleaner Company and Mr. Stokes should have previously established the veracity of the information and assessed the possibility that it might damage Mr. Abrahams' reputation.

IV. ANALYSIS OF MERITS

A. Established facts

44. In light of the foregoing, and on the basis of the evidence adduced and the statements made by the parties, the Commission considers that the following facts have been established:

45. Between 1986 and 1991, Mr. Dudley Stokes served as Editor-in-Chief of three newspapers owned by the Gleaner Company, Ltd.: the Daily Gleaner, the Sunday Gleaner, and the Star.[FN7]

[FN7] Petitioner's brief of January 14, 2004, Section IV, p. 2.

46. Between 1980 and 1989, Mr. Eric Anthony Abrahams served as a member of the House of Representatives of the Jamaican Parliament. Between 1980 and 1984, Mr. Abrahams was Minister of Tourism of Jamaica.[FN8] In 1994 Mr. Abrahams started a private tourism consulting business.[FN9]

[FN8] Petitioner's brief of January 14, 2004, Section IV, p. 2; and Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 5.

[FN9] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 5.

47. In September 1987 the Associated Press (AP), an international news agency, had an agreement with the Gleaner Company to supply it with news reports.[FN10]

[FN10] Joint Affidavit of Dudley Stokes and Donna Smith, January 29, 1988, para. 1.

48. In September 1987 a journalist for the newspaper the Advocate in the city of Stamford, Connecticut, conducted an interview with a person who had been prosecuted by the United States authorities for tax fraud.[FN11] During the interview it was stated that United States federal authorities were conducting an investigation in Connecticut with respect to kickbacks allegedly paid by American firms to public officials in Jamaica, and that Mr. Abrahams was among the public officials being investigated.[FN12] The journalist wrote a preliminary version of the article based on the interview, but continued to carry out new inquiries in the case. The Advocate did not publish the preliminary version.[FN13]

[FN11] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, paras. 6-7.

[FN12] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 7.

[FN13] Petitioner's brief of January 14, 2004, Section IV, pp. 2-3; and Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, paras. 8 and 11.

49. On September 16, 1987, the journalist had a telephone conversation with Mr. Abrahams and brought the preliminary version of the article to his attention. Mr. Abrahams denied the allegation and declared that it was libel. The final version of the article was published in the Advocate on September 19, 1987 including a balanced representation of the information and Mr. Abraham's denial.[FN14]

[FN14] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 8.

50. On September 16, 1987, the Associated Press distributed a wire service report based on the unpublished, preliminary version of the Advocate article.[FN15] Realizing what had happened, AP sent a new wire service report on that same day, withdrawing the version distributed previously. But apparently the correction was not sent to Jamaica.[FN16]

[FN15] Petitioner's brief of January 14, 2004, Section IV, p. 2; and Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 9.

[FN16] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 9.

51. On September 17, 1987, the Star published a news item entitled "Author says his diary sparked kickbacks investigation,"[FN17] relating to Mr. Abrahams' alleged participation in unlawful activities while he had served as Minister of Tourism.

[FN17] The evidence in the Commission's possession does not include a copy of the original text of the wire service report.

52. On September 17, 1987, Mr. Abrahams and Mr. Stokes had a telephone conversation regarding the article published in the Star.[FN18] Mr. Abrahams denied the information in the article and Mr. Stokes confirmed that he would publish a rebuttal in the Star the following day if Mr. Abrahams supplied him with one.[FN19] On that same date, Mr. Abrahams delivered a written statement to Mr. Stokes denying the information contained in the article published by the Star.[FN20]

[FN18] Statement of Claim, September 22, 1987, para. 9 (I); and Joint Affidavit of Dudley Stokes and Donna Smith, January 29, 1988, para. 6.

[FN19] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 11.

[FN20] Statement of Claim, September 22, 1987, para. 9 (I); and Joint Affidavit of Dudley Stokes and Donna Smith, January 29, 1988, para. 6.

53. On September 18, 1987, the Daily Gleaner published a news item entitled “Robin Moore: I suspected Jamaican Tourism Minister”. [FN21] The article reproduced the one published in the Star on September 17, 1987, omitting the following sentence: “People were talking. There were certain things everybody knew. There was no secret about the situation with the (former) Minister of Tourism.”

[FN21] Petitioner's brief of January 14, 2004, Exhibit B; and Gleaner Co. Ltd. & Stokes v. Abrahams, Supreme Court of Civil Appeal 70/96, p. 6.

54. On September 19, 1987, the Daily Gleaner published a news item entitled “Clarification,” in the same newspaper, indicating that the reference to the Minister of Tourism did not relate to the then-current Minister.

55. On September 20, 1987, the Sunday Gleaner published a news item entitled “Abrahams: Has Never Accepted ‘Kickback’”, based on the denial delivered by Mr. Abrahams. [FN22]

[FN22] Petitioner's brief of January 14, 2004, Exhibit D; Gleaner Co. Ltd. & Stokes v. Abrahams, Supreme Court of Civil Appeal 70/96, p. 7.

56. On September 22, 1987, the Star published a news item entitled “Abrahams alarmed over articles,” based on the denial delivered by Mr. Abrahams. [FN23]

In relation to the civil proceeding for libel instituted by Mr. Abrahams against the Gleaner Company and Mr. Stokes

[FN23] Petitioner's brief of September 5, 2006, Exhibit A.

57. On September 23, 1987, Mr. Abrahams filed a claim in the Jamaican Supreme Court against the Gleaner Company and Mr. Stokes, alleging that news items published in the Star and the Daily Gleaner on September 17, 18, and 19, 1987 were libelous. [FN24] Mr. Abrahams asked the Supreme Court to impose a penalty that would include compensatory and punitive damages, but did not specify an amount. [FN25]

[FN24] Statement of Claim, September 22, 1987, para. 9. In any event, Mr. Abraham stated that the articles were printed and published "maliciously and falsely." Specifically, Mr. Abrahams stated as follows:

7. The said words referred to in paragraphs 3, 4 and 5 in their natural and ordinary meaning meant or were reasonably understood to mean that the Plaintiff had committed criminal offences:

1. contrary to the Corruption Prevention Act, and;
2. contrary to Common Law,

and by so doing the Plaintiff was not fit and proper person to hold public office.

8. By reason of the publication of the aforesaid words the Plaintiff has been gravely injured in his character, credit and reputation and as a businessman, tourism and marketing consultant and Member of Parliament, and has been brought to public scandal, odium and contempt.

[...]

[10.] And the Plaintiff claims:

- (a) compensatory damages, and;
- (b) exemplary damages.

[FN25] Statement of Claim, September 22, 1987, para. 9. With regard to punitive damages, Mr. Abrahams indicated that:

9. [...]

i. The Plaintiff on September 17, 1987, after the publication of the libel complained of in paragraph 3, spoke to the Second Defendant, and the Second Defendant's request sent to the Defendants a statement denying the allegation. The Defendants neglected and refused to publish the said statement in breach of undertaking of the Second Defendant to do so in the Star newspaper of September 18, 1987.

ii. The Defendants published the libel complained of in paragraph 4 after the Second Defendant gave the Plaintiff an undertaking that it would not be published in the Daily Gleaner.

iii. The Court will be asked to infer that the Defendants published the said words complained of in paragraphs 3, 4 and 5:

- (a) with knowledge that they were libelous and or with reckless disregard as to whether or not they were libelous;
- (b) having established that the prospect of material advantage to themselves by reason of the publication outweighed the prospect of material loss.

58. On October 23, 1987, the Jamaican Supreme Court issued a default judgment in favor of Mr. Abrahams, stating that although the defendants had registered their appearance at trial, they had not presented a defense.[FN26]

[FN26] Interlocutory Judgment in Default of Defence, October 23, 1987.

59. On December 18, 1987, the Gleaner Company and Mr. Stokes submitted a brief requesting permission to present their defense, which contained the pleadings of justification and qualified privilege.[FN27]

[FN27] Defence, January 18, 1988. The brief contained the pleadings, of justification and qualified privilege, as follows:

5. The words set out in paragraphs 3 and 4 of the Statement of Claim are true in substance and in fact.
6. The Defendants will also rely on Section 7 of the Defamation Act.
7. All of these occasions of alleged publication were occasions of qualified privilege.

PARTICULARS

- (i) The United States of America federal authorities in Connecticut, U.S.A., are investigating public relations and advertising executives who are suspected of making payments to Jamaica Government officials for the award of contracts by Jamaica Government agencies to the firms of those executives.
- (ii) A former director of Tourism during the time when the Plaintiff was Minister of Tourism in Jamaica was a witness appearing before the said federal authorities, namely a Grand Jury in Connecticut aforesaid and gave evidence.
- (iii) The United States of American Internal Revenue Services, through their agents, were in the process of making investigations into allegations of a similar nature.
- (iv) The Jamaican Ministry of Tourism and the Jamaica Tourist Board have made attempts to convene a meeting on all relevant parties who may have knowledge of the facts relevant to each of the said investigations.
- (v) The United States of America Internal Revenue Services have made attempts to obtain information and documents relating to the foregoing from Companies carrying on business in Cayman Islands.
- (vi) The Plaintiff is a key figure in the aforesaid investigation.
- (vii) All members of the public have an interest in knowing and the Defendants had a corresponding interest in informing them of what was happening.

8. The words set out in paragraph 6 of the Statement of Claim are true in substance and in fact.

Section 7 of the Defamation Act provides as follows:

Justification

7. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

Section 9 of the Defamation Action provides, inter alia, that:

Qualified privilege of newspaper. Schedule

9. (1) Subject to the provisions of this section, the publication in a newspaper of any such proved to be made with malice.

60. On January 14, 1988, the defendants submitted in their defense the sworn affidavit of a former Jamaican minister of tourism. That affidavit stated that some American firms had paid kickbacks to State officials, and for that reason the United States federal authorities were conducting an investigation that involved Mr. Abrahams.[FN28]

[FN28] Affidavit of John Gentles, January 14, 1988. In his affidavit Mr. Gentles stated as follows:

3. I have read the words set out in paragraphs 3, 4 and 5 of the Statement of Claim filed herein.

4. The words set out in each of these paragraphs are true in substance and in fact. New York business executives in fact paid kickbacks to Jamaican officials for lucrative tourism promotion contracts. Included among these payments were cheques either made payable to the Plaintiff or negotiated to the Plaintiff and received by the Plaintiff and further negotiated by him.

5. It is true that the United States of America federal authorities in Connecticut are investigating public relations and advertising executives suspected of making payments to Jamaican Government officials for the award of contracts by Jamaican Government agencies to the firms of those executives.

6. The matters involved are currently being investigated by a Federal Grand Jury in Connecticut aforesaid and I have given evidence before the said Grand Jury. I was asked to identify a number of documents and signatures therein and these included public relations and advertising contracts and cheques either drawn by or made payable to the Plaintiff or negotiated to the Plaintiff and on which the Plaintiff's signature appeared. I identify the Plaintiff's signature on those cheques.

7I am aware that the Plaintiff is a key figure in the Federal Grand Jury's investigation.

61. On January 29, 1988, the Gleaner Company and Mr. Stokes submitted a new brief reaffirming the allegations made on December 18, 1987.[FN29]

[FN29] Joint Affidavit of Dudley Stokes and Donna Smith, January 29, 1988.

62. On December 11, 1991, the Court of Appeal of Jamaica set aside the judgment of the Jamaican Supreme Court and granted the appellants a period of 14 days in which to present their defense.[FN30]

[FN30] Gleaner Co. Ltd. & Stokes v. Abrahams, Supreme Court of Civil Appeal, November 11-12 and December 11, 1991.

63. On December 18, 1991, the Gleaner Company and Mr. Stokes submitted a defense brief based on the sworn affidavit of a former minister of tourism of Jamaica.[FN31]

[FN31] In their brief they raised two pleadings, justification and qualified privilege. Petitioner's brief of January 14, 2004, Section IV, p. 6.

64. On October 13, 1992, the Jamaican Supreme Court rejected a request by Mr. Abrahams that it require the Gleaner Company and Mr. Stokes to submit further evidence to support their defense.[FN32]

[FN32] Petitioner's brief of January 14, 2004, Section IV, p. 6; and Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, para. 28.

65. On January 24, 1994, the Court of Appeal of Jamaica set aside the judgment of the Supreme Court and struck the defense presented by the Gleaner Company and Mr. Dudley Stokes, concluding that the evidence presented in support of the pleadings was insufficient. The Court of Appeal further indicated that Mr. Abrahams had a constitutional right to a fair trial within a reasonable time, which had been affected in view of the time that had elapsed since the filing of the claim. This Court of Appeal also ordered the Jamaican Supreme Court to institute proceedings to assess the amount of compensatory damages to be paid to Mr. Abrahams.

66. On July 17, 1996, the Jamaican Supreme Court ordered the defendants to pay the sum of J\$80.7 million to Mr. Abrahams as compensatory damages.[FN33]

[FN33] Gleaner Co. Ltd. & Stokes v. Abrahams, Supreme Court of Judicature, 12th, 15th, 16th, and 17th of July, 1996; and Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003, paras. 31-36.

67. On July 31, 2000, the Court of Appeal of Jamaica issued a judgment reducing the amount of compensatory damages to J\$35 million.[FN34]

[FN34] Gleaner Co. Ltd. & Stokes v. Abrahams, Supreme Court of Civil Appeal No. 70/96.

68. On July 14, 2003, the Judicial Committee of the Privy Council issued an order affirming the judgment of the Court of Appeal of Jamaica.[FN35]

[FN35] Gleaner Co. Ltd. & Stokes v. Abrahams, Privy Council Appeal No. 86 of 2001, July 14, 2003.

B. Considerations of law

Article 13 (Freedom of Thought and Expression) in relation to Articles 1(1) and 2 of the American Convention

69. Article 1(1) of the American Convention provides:

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.

70. Article 13 of the American Convention recognizes the right of everyone to freedom of thought and expression, stating, in its pertinent parts, that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

71. Article 13 of the Convention encompasses two aspects: the right to express thoughts and ideas, and the right to receive them. The Inter-American Court has on various occasions upheld the basic role of freedom of expression in a democratic society, stating that:

[...] general welfare requires the greatest possible amount of information, and it is the full exercise of the right of expression that benefits this general welfare. [...] Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. [FN36]

[FN36] I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 77 and 70.

72. The importance attached to freedom of expression does not, however, transform it into an absolute right. Article 13 of the Convention enumerates in its paragraphs 4 and 5 certain limitations on this right. For its part, paragraph 3 prohibits the restriction of this right by indirect methods or means, enumerating some of them in a non-exhaustive manner, all of which makes clear the exceptional nature of the legitimate restrictions on this basic right.

73. Article 13(2) of the Convention indicates the possibility of establishing restrictions on freedom of thought and expression through the subsequent imposition of liability in cases of an abusive use of this right. The grounds for subsequent liability must be express, exhaustive, and previously established by law to the extent necessary to ensure "respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals," and should in no way limit, more than strictly necessary, the full scope of freedom of expression and become a direct or indirect means of prior censorship.[FN37]

[FN37] I/A Court H.R., Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 95; I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 120; and Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. Advisory Opinion OC-5/85, para. 39.

74. With regard to the restrictions on freedom of expression, the Inter-American Court has established that, under Article 13(2) of the Convention, statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in certain latitude in the broad debate on matters of public interest. This, according to the Court, is essential element of a truly democratic system.[FN38]

[FN38] I/A Court H.R., Case of Ricardo Canese, para. 98; I/A Court H.R., Case of Herrera Ulloa, para. 128; and I/A Court H.R., Ivcher Bronstein Case, para. 155.

75. These considerations apply in the present case with respect to the information published in the Gleaner publications concerning the investigation by United States federal authorities with respect to alleged kickbacks to public officials in Jamaica by American firms, including Mr. Abrahams.

76. The Commission reiterates that democratic control exercised by society through public opinion encourages the transparency of State activities and promotes the accountability of public officials in public administration, for which there should be greater tolerance and openness to criticism vis-à-vis statements and judgments formulated by persons exercising such democratic control.[FN39] Permitting the exercise of such democratic control promotes greater participation by individuals in the interest of society.

[FN39] I/A Court H.R., Case of Ricardo Canese, para. 97; I/A Court H.R., Case of Herrera Ulloa, para. 127; and I/A Court H.R., Ivcher Bronstein Case, para. 155. In the same connection, Feldek v. Slovakia, No. 29032/95, § 83, ECHR 2001-VIII; and Sürek and Özdemir v. Turkey, Nos. 23927/94 and 24277/94, § 60, ECHR Judgment of 8 July 1999.

77. In enacting laws to protect the honor and reputation of persons, Article 11 of the American Convention obliges States to protect this right without unduly limiting the right to freedom of expression. In this respect, Principle 10 of the IACHR Declaration of Principles on Freedom of Expression states that:

Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

78. The requirements emanating from Article 13(2) of the American Convention, as applied in the libel proceedings against the Gleaner Company and Mr. Dudley Stokes, are expressly provided for in Jamaican legislation and have a legitimate purpose: the protection of the honor and reputation of individuals.

79. The issue before the Commission is whether Jamaica violated Mr. Stoke's right to freedom of expression under Article 13 of the Convention by virtue of the civil damages awarded by the Jamaican courts against Mr. Stokes resulting from the libel lawsuit by Eric Anthony Abrahams. In considering this issue, the Commission does not find it necessary or appropriate to review the finding of liability by the Jamaican courts within the context of Article 13 of the Convention. On this point, the Commission observes that there were two separate proceedings by the domestic courts in connection with the libel suit against Mr. Stokes/the Gleaner: (1) determination of liability for libel; and (2) determination of civil damages for libel.

80. With regard to the determination of liability for libel by domestic courts, the Commission observes that petitioners attended the initial hearing in October 1987, but did not enter a defense at that time. Subsequently, petitioners presented a defense of justification and qualified privilege before the Court of Appeal, which heard from both parties, but finally struck the defense on the basis that the evidence presented in support of the pleadings was insufficient.[FN40] The Court of Appeal further ordered the Jamaican Supreme Court to institute proceedings to assess the amount of compensatory damages to be paid to Mr. Abrahams. Petitioners did not seek to appeal this decision by the Court of Appeal. Accordingly, the determination of liability was not contested by petitioners at the domestic level. In fact, the Privy Council confirmed that "It is accepted by the defendants, even though with bad grace, that publication was wrongful and fell outside the permissible limits of section 22(1) [Jamaican Constitution]."[FN41] Upon conclusion of liability proceedings, new proceedings were initiated to determine civil damages for the libel, and that process was contested by petitioners with respect to the proportionality of

the award and was the subject of two appeals processes. This issue was subsequently brought before the Commission. Consequently, the only question for consideration is whether the damages awarded were no more than was necessary to compensate Mr. Abrahams.

[FN40] See Privy Council Appeal No.86 of 2001, para 28. “On 24 January 1994 the Court of Appeal was told by the counsel for the defendants that they were in no position to give any particulars. They were trying to obtain the evidence which had been given to the jury but that was difficult and might take at least a year. The Court of Appeal reminded the defendants that Mr. Abrahams had a constitutional right, under section 20(2) of the Constitution to a fair trial within a reasonable time. They were trying to obtain evidence. A trial without particulars of dishonesty would not be fair and to wait another year would not be reasonable.”

[FN41] See Privy Council Appeal No. 86 of 2001, para. 72.

81. The allegations of the petitioners in connection with the reproduction of information supplied from a third party and the application of actual malice pertain to the determination of liability for libel, which is not presently before the Commission.[FN42]

[FN42] See IACHR, Report No. 65/04. Petition 28/04. Admissibility. Dudley Stokes (Jamaica). October 14, 2004; para 61. According to the admissibility report in the case of Dudley Stokes, the Commission determined that the petition was admissible in connection only with the proceedings on the determination of civil damages, as this was the issue before the Commission. Petitioners did not place the issue of the finding of liability by the domestic courts before the Commission.

82. Having regard for the foregoing considerations of law, the Commission must determine whether the award of damages against Mr. Dudley Stokes violated Article 13 of the American Convention, in so far as the imposition of subsequent liability must in fact be necessary in order to ensure “respect for the the rights or reputations of others.” As has been stated by the European Court of Human Rights (“ECHR” or “European Court”), and acknowledged by the Inter-American Court on Human Rights in its advisory opinion OC-5/85, the term “necessary” implies the existence of a “pressing social need.”

83. In the instant case, the Commission notes that the jury was given a standard instruction to determine the quantum of damages to be awarded to Mr. Abrahams, stating that it should be ‘reasonable and proportionate’ to the damage Mr. Abrahams’ suffered: “[y]ou should ensure that any award you make is proportionate to the damage which the plaintiff has suffered as a result of the libel, and is a sum, which is necessary to award him so as to provide adequate compensation and to re-establish his reputation.”[FN43] As such, the jury made a determination considering several factors including the evidence of loss of earnings and evidence of the actual physiological and psychiatric damage which Mr. Abrahams suffered. In aggravation of the compensatory damages, they were also entitled to have regard to the persistence in the plea of justification until it was struck out (despite the fact that Mr.Stokes/the Gleaner had no

‘particulars’ to proffer regarding evidence presented or other sources to substantiate the defense). In the circumstances, the jury was entitled to regard the ‘apology’ as insincere. “Likewise, they were entitled to regard the terms upon which Mr. Clarke offered Mr. Abrahams employment with Power 106 as contemptuous.”[FN44]

[FN43] See Privy Council Appeal No. 86 of 2001, para. 35.

[FN44] See Privy Council Appeal No. 86 of 2001, para. 36; and para 27 “Offer of Employment” in which Mr. Clarke (representing Gleaner) offered Mr. Abrahams a job in exchange for an apology, but indicated to him that “he should not expect any damages”, and if he did not accept these terms, “it would be five years before he would see the end of the matter.”

84. The evidence shows that the determination of civil damages imposed on Mr. Stokes for libel was grounded in the national standard, contained in section 22 of the Jamaican Constitution, which requires that the provisions of any law restricting freedom of speech should be reasonably required for the purpose of protecting the reputations ... of other persons. In the words of the Lords of the Judicial Committee of the Privy Council,

The judges of the Court of Appeal, like the trial judge, had well in mind the provisions of section 22 [Jamaican Constitution]. That was why they set aside the jury’s award. It is accepted by the defendants, even though with bad grace, that publication was wrongful and fell outside the permissible limits of section 22 (1). So the only question is whether the damages were no more than was necessary to compensate the plaintiff...[F]or the reasons already stated at length, their Lordships would not interfere with the Court of Appeal’s assessment of the necessary amount.

85. The petitioners contend that the amount of the civil damages imposed on Mr. Dudley Stokes constitutes a violation of the right to freedom of expression, because it is not proportional or closely tailored to achieve a legitimate aim, thereby producing a chilling effect. On this point however, the Commission deems it important to affirm that with respect to the determination of damages, it has generally relied on the judgments of domestic courts (absent procedural irregularities that give rise to violations of the Convention) observing that domestic courts are generally best situated to assess the numerous factors required for such an evaluation given that they have more information available to them to measure the impact of harm on the plaintiff within the context of his/her community. Similarly, the European Court recognizes that national authorities must be accorded some deference in the determination of compensatory damages on the grounds that “the competent national authorities are better placed than the European Court to assess the matter.”[FN45]

[FN45] See Privy Council Appeal No.86 of 2001, para 69 citing *Tolstoy v United Kingdom* (1995) 20 EHRR 442 at 472.

86. Looking to the jurisprudence of the European Court, while an award of civil damages in a libel suit is a standard practice, a rule regarding the proportionality of civil damages has yet to be

established. In some cases however, the European Court has analyzed the proportionality of civil damages in libel suits, and in so doing, has relied upon article 10 (2) of the European Convention on Human Rights, and considered the actions by the social communicator with respect to the extent of the harm caused by the libel.

87. In determining whether the amount of civil damages is proportional or closely-tailored to achieve a legitimate aim, the Commission first considers how the issue was dealt with as a matter of internal law; how these standards were applied by domestic courts; and finally, whether the alleged victim had the procedural opportunity or reasonable access to domestic mechanisms to challenge a court's judgment.

88. With respect to the determination of the initial jury award, the Commission observes that the judge gave the jury a standard instruction to determine the civil damages award, which was grounded in a standard of reasonableness and proportionality, pursuant to section 22 of the Jamaican Constitution, which requires that the provisions of any law restricting freedom of speech should be "reasonably required for the purpose of protecting the reputations of other persons" and held this standard to be consistent with the international standard set forth above. In addition, the instruction was given in accordance with domestic jurisprudence on general compensatory damages, stating specifically, "You should ensure that any award you make is proportionate to the damage which the plaintiff has suffered as a result of the libel, and is a sum which is necessary to award him so as to provide adequate compensation and to reestablish his reputation.[FN46] In light of this, the jury was asked to specifically consider Mr. Abraham's loss of earnings and the actual physiological and psychiatric damage suffered by Mr. Abrahams. In addition, an important element considered in the determination of the amount of the civil damages was the 'extraordinary or highly unusual' circumstances of the case, namely, the numerous and excessive delays in the proceedings, deemed by the Court to have been caused by the actions of the appellants, and which further considered these actions to have interfered with Mr. Abrahams' constitutional right to a fair trial in a reasonable amount of time. [FN47] These deliberations concluded with the jury setting the award for compensatory damages at J\$80.7 million in a decision by the Supreme Court of Jamaica on July 17, 1996.

[FN46] See Privy Council Appeal No.86 of 2001, para. 35.

[FN47] See Privy Council Appeal No. 86 of 2001, para. 70.

89. On appeal, the Commission observes that the domestic courts reviewed the lower court's decision applying the standard set forth in section 22 of the Jamaican Constitution, and specifically applied the test for excess: "could a reasonable jury have thought that this award was necessary to compensate the plaintiff and re-establish his reputation". Based on this analysis, the Court of Appeal found that the original award of J\$80.7 million was "in excess of an amount which is reasonably required by law to protect the position of the respondent", in light of section 22 of the Constitution. This determination led the Court of Appeal to decide to reduce the amount of civil damages against Mr. Stokes/the Gleaner to J\$35 million.

90. The Commission observes that the Gleaner and Mr. Stokes had the procedural opportunity and reasonable access to domestic courts to challenge the Court's determination of civil damages. On this point, the Commission notes that petitioners appealed the Supreme Court decision. The appeal was eventually heard between October 1999 and February 2000. The Court of Appeal rejected appellants' claims and the judges all agreed that "there was ample evidence on which the jury could award aggravated damages."^[FN48] Nevertheless, the judges of the Court of Appeal decided that J\$80.7 million was 'in excess of the amount reasonably required to protect the plaintiff's reputation', and on these grounds, decided to substitute what they considered to be an appropriate sum of J\$35 million.^[FN49]

[FN48] See Privy Council Appeal No. 86 of 2001, para. 38.

[FN49] Ibid.

91. With respect to the reduced amount, on July 14, 2003 the Lords of the Privy Council reaffirmed the Court of Appeal decision, stating "[w]hether this was the right figure they were in the best position to say. As the highest court sitting in Jamaica, they would have had a knowledge which the Lordships do not share of, among many relevant matters, the standing in Jamaican society of the Daily Gleaner and the Star, the sensitivity of the local community to corruption and the links between the political, social and business life of the community which amplified the effect of the libel on the plaintiff."^[FN50] The Privy Council affirmed that the judges of the Court of Appeal had given due consideration to section 22 of the Constitution, which led to their decision to set aside the jury award of J\$80.7 million and substitute it with J\$35 million.^[FN51]

[FN50] See Privy Council Appeal No. 86 of 2001, para. 69.

[FN51] See Privy Council Appeal No. 86 of 2001, para. 72.

92. In view of the foregoing, the Commission considers that domestic courts effectively applied existing standards that took into account the principle of proportionality with respect to the determination of civil damages. Further, the Commission considers that the Gleaner and Mr. Stokes had ample opportunity to challenge the determination of civil damages in the domestic courts based on allegations of disproportionality, and notes that they succeeded in having the award reduced by the Court of Appeal of Jamaica as a result of these considerations. They then brought a final appeal to the Judicial Committee of the Privy Council, which considered the claims, reviewed the lower court findings, affirmed the lower court's judgment for civil damages and finally concluded that there was no violation of the right to freedom of expression.

93. With respect to the proportionality of the civil damages award, the Commission notes that due consideration was given by Jamaican courts with respect to the determination of the amount of the award and its proportionality to the harm suffered by Mr. Abrahams. Absent clear errors or due process violations, the Commission finds that the domestic courts were in the best position to determine the amount, and to assess the proportionality of the award with respect to

the harm suffered by Mr. Abrahams. On this point, the Commission reaffirms that the issue of whether the grounds given in a decision are adequate and sufficient is one to be decided in the first place within the domestic jurisdiction of each State.[FN52] Noting the domestic court's considerations on the issue, the Commission finds that the amount of civil damages did not unduly restrict Mr. Stokes right to freedom of expression.

[FN52] See Report N° 48/98, Colombia, Annual Report of the IACHR 1998, citing Report No. 39/96, Argentina, Annual Report of the IACHR 1996, p. 76 ff.

94. In conclusion, the Commission considers that the State did not violate the right to freedom of thought and expression enshrined in Article 13 in relation to Article 1(1) of the American Convention to the detriment of Mr. Dudley Stokes through the restrictions on the exercise of this right that were imposed on him, or that it failed to comply with the general obligation to respect and guarantee the rights and freedoms established in the said treaty.

V. Conclusions

95. On the basis of the preceding considerations of fact and law, the Commission concludes that the State of Jamaica is not responsible for the violation of the right enshrined in Article 13 of the American Convention in connection with the general obligations enshrined in Article 1(1) (Obligation to Respect Rights) to the detriment of Mr. Dudley Stokes.

96. The Commission agrees to transmit this report to the State of Jamaica. The Commission also agrees to notify the petitioners of the approval of a report under Article 50 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To conclude that in the instant case there are no violations of Articles 13, 1(1) and 2 of the American Convention.
2. To send this Report to the Jamaican State and to the petitioner and to publish it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2008.
(Signed): Paolo G. Carozza, President; Sir Clare K. Roberts, Florentín Meléndez, and Victor E. Abramovich, Commissioners.