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CASES 11. 602, 12.385, 12.665 and
12.666

REPORT ON MERITS

DISMISSED EMPLOYEES (PETROPERÚ, MEF AND ENAPU)

REPORT ON ADMISSIBILITY AND MERITS

DISMISSED EMPLOYEES (MINEDU)
PERU

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I. SUMMARY

1. Between February 1996 and March 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received four petitions regarding 163¹ persons,² alleging the international responsibility of the State of Peru (hereinafter “the State,” “the Peruvian State,” or “Peru”) because of the alleged irregular dismissal of civil servants from their jobs in various state institutions, namely: the state oil company *Petróleos del Perú* (hereinafter “Petroperú”), the Ministry of Education (hereinafter “MINEDU”), the Ministry of Economy and Finance (hereinafter “MEF”) and the state seaport administration company *Empresa Nacional de Puertos S.A.* (hereinafter “ENAPU”), respectively.

2. The petitioners alleged that their dismissals were decided upon by means of decree law decree laws and administrative decisions issued as of April 1992 in a context of the breakdown of democratic law and order. They indicated that these dismissals undermined their fair-trial guarantees under administrative law as well as other constitutional rights. They said that the alleged victims filed suits for constitutional relief (*amparo*) aimed at their reinstatement but they were rejected. They added that, although the Peruvian State has granted benefits to some of the alleged victims, it is not enough to redress the material and moral damages that they have suffered as a result of the arbitrary loss of their jobs.

3. As for the State, it denied that the facts claimed by the petitioners constitute violations of the American Convention. It contended that the dismissals were carried out pursuant to the laws in force at the time and that from 2001 onward laws were adopted to review the alleged irregularity of the collective dismissals that took place. In particular, it highlighted that Law No. 27803 of July 28, 2002 provided various benefits to the persons affected by the above-mentioned dismissals.

4. After examining the position of the parties, the Inter-American Commission concluded that the Peruvian State is responsible for the violation of the rights enshrined in Articles 8.1 and 25.1 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, based on the denial of to the persons indicated in the respective section, in the context of the collective dismissals that occurred in Peru in the 1990s. Accordingly, the Commission has made the relevant recommendations.

II. PROCESSING BY THE IACHR

5. Between February 1996 and March 2002, the Inter-American Commission received four petitions whose processing, up until the decision on admissibility in three of them, is explained in detail in reports on admissibility Nos. 54/08,³ 55/08,⁴ and 56/08,⁵ respectively, all of which were adopted on July 24,

¹ See Annex 1 to the present report. In case 11.602, on the basis of communications of July 31, 2009 and March 30, 2010, Mr. Federico Antón voiced his intention to withdraw as an alleged victim in case No. 11.602. On March 23, 2011, the Commission issued Reported No. 56/11 whereby his claim was archived.

² These petitions are part of a larger group of cases about the same subject which are currently being heard by the Commission in other stages of proceedings.

³ IACHR, Report No. 54/08, Petition 160-02, Admissibility, Employees Dismissed from the Ministry of Economy and Finance (MEF), Peru, July 24, 2008.

2008. In those reports, the IACHR ruled that the petitions were admissible and indicated that the allegations could tend to establish a violation of rights enshrined in Articles 8 and 25 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument.

6. Regarding case 11.602, in the stage on the merits, the petitioners submitted briefs on February 12 and June 18, 2009. As for the State, it submitted a brief on June 25, 2009. Subsequently, the Commission continued receiving communications from the petitioners and the State, which were duly forwarded to the parties.

7. Regarding case 12.665, in the stage on the merits, the petitioners submitted a brief on February 16, 2009. As for the State, it submitted a brief on June 15, 2009. Subsequently, the Commission continued receiving communications from the petitioners and the State, which were duly forwarded to the parties.

8. Regarding case 12.666, in the stage on merits, the petitioner submitted a brief on June 4, 2009. As for the State, it submitted a brief on December 4, 2008. Subsequently, the Commission continued receiving observations from the petitioners and the State, which were duly forwarded to the parties.

9. The fourth petition—case 12.385—was received by the Commission on September 8, 2000. On October 5, 2001, the State submitted its observations regarding the petition. On October 23, 2001, the IACHR informed the parties that “taking into account the position of the illustrious Peruvian State regarding the requirements for admissibility,” by virtue of Article 37.3 of its Rules of Procedure, it had decided to postpone dealing with its admissibility until the discussion and ruling on the merits. On June 6, 2005, and January 6, 2006, the petitioners submitted observations on merits. On March 15, 2006, the State submitted its observations on the position of the petitioners. The Commission has continued to receive observations from the petitioners and the State, which have been duly forwarded to the parties.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

10. The petitioners in the four cases alleged that, in the early 1990s, the Peruvian Government enacted various legislative measures aimed at adopting a program promoting private-sector investment. They said that, on the basis of these laws, a special process was established to ensure the collective dismissal of employees from a number of public institutions, including Petroperú, ENAPU, MINEDU, and MEF. They indicated that the legal provisions on which their dismissal was based were not only unconstitutional but also violated the provisions of the American Convention as they abridged their rights to a fair trial and judicial protection. They specified that they were unable to challenge their dismissals, either by administrative or judicial remedies, that they could not exercise their right to defense, and that they did not have access to the rules and subsequent performance evaluations that were conducted to justify their dismissals, among other adverse impacts.

11. In the case of **ENAPU**, the petitioners indicated that, in February 1996, the employers of said company sent letters to the 28 alleged victims offering them a voluntary retirement plan and that if they did not accept it their employment contracts would be terminated. They indicated that the alleged victims decided not to accept this arrangement and were dismissed as a result. They reported that the National Federation of ENAPU Employees (hereinafter “Fentenapu”), which included the 28 alleged victims, filed suit for constitutional relief (*amparo*) alleging violation of their rights. They indicated that the various courts, and

[... continuation]

⁴ IACHR, Report No. 55/08, Petition 532-98, Admissibility, Workers Dismissed from Empresa Nacional de Puertos S.A. (ENAPU), Peru, July 24, 2008.

⁵ IACHR, Report No. 56/08, Case 11.602, Admissibility, Workers Dismissed from Petróleos del Perú (Petroperú) – Northwest – Talara Area, Peru, July 24, 2008.

even the Constitutional Court, the court of last resort, denied the *amparo* suit simply because the dismissals were in line with the laws in force at that time.

12. In the case of **MEF**, the petitioners indicated that, as of 1992, the 15 alleged victims were subjected to performance evaluations. They indicated that, in January 1998, the MEF notified them that, because they had not obtained the minimum score in their performance evaluation the preceding year, they were being dismissed “because of overstaffing.” They reported that a group of dismissed employees, including the alleged victims, filed suit for constitutional relief (*amparo*) alleging violation of their rights. They indicated that various judges of the Constitutional Court, as the court of last resort, ruled that the suit was without merits, simply because the dismissals were in line with the laws in force at that time. They added that they filed a contentious administrative suit, which was ruled inadmissible.

13. In the case of **MINEDU**, the petitioners indicated that, during the first semester of 1996, 39 of the alleged victims were subjected to performance evaluations. They indicated that, in October 1996, MINEDU notified them that because they had not passed their qualification test, they were dismissed “because of overstaffing.” They reported that the alleged victims filed suit for constitutional relief (*amparo*) alleging the violation of their rights. They indicated that the various judges and even the Constitutional Court, as the last court of appeal, ruled that the suit was without merit, simply because the dismissals were in line with the laws in force at the time.

14. In the case of **Petroperú**, the petitioners indicated that, in January 1996, the employers of said company sent letters to the 84 alleged victims offering them a voluntary retirement plan and that if they did not accept it their employment contracts would be terminated. The petitioners said that the alleged victims decided to not accept this plan and were dismissed as a result. They reported that the Consolidated Oil Employees Union of Peru, to which the alleged victims were belonged, filed suit for constitutional relief (*amparo*) alleging the violation of their rights. They said that both judicial instances that heard the suit ruled that it was without merit, simply because the dismissals were in line with the laws in force at that time. They added that they filed a contentious administrative suit, which was ruled inadmissible.

15. The petitioners in the four cases argued that the dismissals and the subsequent denial of justice had deeply harmed them professionally and in terms of their ability to provide for their families. They said that after the administration of Alberto Fujimori, the then-President, was replaced the State recognized that the collective dismissals were irregular. They said that, on that basis, various measures were taken, such as the issuance of lists of employees dismissed irregularly and the introduction of regulations aimed at providing benefits to said persons. The petitioners stated that, despite this, many of the alleged victims were not included in those lists and did not receive any type of benefit.

16. Regarding the persons who did receive some type of benefit, they said that the State did not provide any comprehensive reparation, because it did not recognize the period of time that they were illegally and arbitrarily separated from service for the purposes of retirement, compensation, pension and other fringe and social security benefits. They added that they did not receive compensation for the damages caused by their dismissal. The petitioners agreed that comprehensive reparation should include (i) their reinstatement or redeployment in a similar position and payment of unpaid wages due, and (ii) if reinstatement is not possible, payment of compensatory damages.

B. Position of the State

17. The State indicated that the collective dismissals took place in the 1990s pursuant to laws adopted by the administration at that time, that is, that of President Alberto Fujimori. The State specified the situation of the various groups of victims. That information is specified in detail in the section on proven facts. In this section, the Commission describes in general terms the various assumptions set forth by the State.

18. Thus, it said that not all the persons who were dismissed at that time, were dismissed irregularly and, therefore, there are groups of persons who are not entitled to any kind of reparation. The State submitted descriptions of the situation of the alleged victims, which are specified in detail in the section

of proven facts. Thus, for example, the State reported that the 15 alleged victims of MEF are on the lists and identified those who accepted benefits. It also indicated that, of the 84 employees dismissed from Petroperú, 34 were on the lists and only 5 of those opted for some kind of benefit. Likewise, it reported that 39 employees dismissed from MINEDU were included on the lists and some of them received benefits.

19. The State said that, as of 2000, various measures were adopted for the purpose of providing reparation to the persons who were dismissed irregularly. In particular, the State referred to Decree Law No. 27803 which established a special program of benefits to which “irregularly dismissed employees could have access” and that the latter could opt for one of the following benefits: reinstatement of their job or relocation; early retirement; financial compensation; and training and job recycling.

20. The State said that many of the alleged victims were hired once again in their workplaces and, in other cases, received monetary compensation. Thus, it indicated that the harm to these persons was repaired.

21. Regarding the alleged failure to provide comprehensive reparation, the State contended that “there are (...) administrative mechanisms in domestic law to adequately channel the claims made by reinstated petitioners.” It added that some of the alleged victims appealed to the Judicial Branch of Government in order to file claims for compensation and reinstatement of salaries for the period during which they were dismissed. It contended that these proceedings are under way.

22. As for the admissibility of case 12.385, the State initially alleged that the domestic courts already ruled about the matter targeted by the complaint without having found any type of harm being done as a result of the dismissal of the alleged victims. In subsequent briefs, the State alleged that it has adopted various measures to provide reparation to the alleged victims, especially on the basis of Law No. 27803. As a result, the State contended that “the present petition does not set forth facts tending to establish a violation of the rights guaranteed by the Convention, because the Peruvian State itself has been taking measures to settle the situation of the (...) petitioners who have been identified by the Special Committees set up by the State as former employees irregularly dismissed.”

IV. ANALYSIS OF ADMISSIBILITY OF CASE 12.385 – MINEDU

A. Jurisdiction *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci* of the Commission

23. Article 44 of the American Convention entitles the petitioners to lodge complaints with the Inter-American Commission. The alleged victims are natural persons who were under the jurisdiction of the Peruvian State at the time of the alleged incidents. Therefore the Commission has jurisdiction *ratione personae* to examine the petition. The Commission has jurisdiction *ratione loci* to examine the petition, because it alleges violations of the American Convention which had taken place in the territory of a State Party to said treaty. Likewise, the IACHR has jurisdiction *ratione materiae* because the petition refers to the alleged violations of the American Convention. The Commission also has jurisdiction *ratione temporis* because Peru ratified the American Convention on July 28, 1978 and therefore the obligation to respect and guarantee the rights enshrined in the American Convention was already in force for the State on the date when the incidents took place.

B. Requirements for admissibility

1. Exhaustion of remedies under domestic law

24. Article 46.1.a) of the American Convention provides that, for a petition filed with the Inter-American to be admissible pursuant to Article 44 of the same instrument, domestic remedies under domestic law must have been attempted and exhausted in line with the generally recognized principles of international law. This requirement is aimed at enabling national authorities to hear cases of the alleged violation of a right

that is protected and, if appropriate, giving them the opportunity to resolve them before they are heard by an international instance.

25. The Commission observes that the present petition is based on the alleged violation of the guarantees of due process of law and judicial protection in the process that concluded with the dismissal of the alleged victims from their jobs in a state enterprise. Regarding this matter, the Commission finds that the petitioners filed suit for constitutional relief (*amparo*) as a valid remedy to enter into a litigation for the violation of the guarantees and rights enshrined in the Constitution. Regarding this, as has happened in similar petitions, the IACHR highlights that this proceeding is viewed by Peruvian law as a plea for constitutional guarantees “to reinstate matters as they were prior to the violation or threat of violation of a constitutional right.”⁶

26. The Commission also highlights that the Law governing proceedings for constitutional relief (*amparo*) provides for its admissibility even in those cases where “the violation or threat is based on a law that is incompatible with the Constitution.” The Commission observes that this remedy provided a valid way to try to overturn the legal situation that was violated in this case, in connection with alleged violation of the constitutional rights to due process of law, the principle of legality and the right to equality before the law. Regarding this, the Commission observes that the petitioners clearly pointed out to the local courts their wish to be reinstated in their jobs, alleging violations of due process of law and job stability. To that extent, the Commission believes that the purpose of the petition that it is now examining was filed with domestic courts using one of the remedies that could have been suitable and effective to settle this type of situation domestically.⁷

27. In view of the above, the Commission believes that, in the present case, the petitioners did exhaust in all instances a remedy that was available and suitable to address the situation being reported, and therefore the requirement set forth in Article 46.1 of the American Convention has been met.

2. Deadline for filing the petition

28. Article 46.1.b) of the Convention establishes that, for the petition to be declared admissible, it must be filed within six months as of the date when the interested party was notified of the final judgment that exhausted the remedies under domestic law. In the present case, the Commission observes that the judgment that exhausted domestic remedies was adopted by the Constitutional Court on November 19, 1999. According to the petitioners, this judgment was notified to them on March 8, 2000, which information has not been challenged by the State. In this regard, bearing in mind that the petition was filed on September 8, 2000, the Commission concludes that the petition was filed within the time-limits established in Article 46.1.b of the Convention.

3. Duplication of international proceedings and international *res judicata*

29. Article 46.1.c) of the Convention provides that the admissibility of petitions is subject to the requirement that the matter “is not pending in any other international proceeding for settlement,” and Article 47.d) of the Convention stipulates that the Commission shall not admit any petition that is substantially the same as a prior petition or communication already heard by the Commission or another international body. In the present case, the parties have not shown that there is any of these two circumstances, nor can this be inferred from the record.

⁶ IACHR, Report No. 55/08, Petition 532-98, Admissibility, Workers Dismissed from Empresa Nacional de Puertos S.A. (ENAPU), Peru, July 24, 2008, par. 32.

⁷ IACHR, Report No. 55/08, Petition 532-98, Admissibility, Workers Dismissed from Empresa Nacional de Puertos S.A. (ENAPU), Peru, July 24, 2008, par. 32.

4. Colorable claim

30. For the purpose of admissibility, it pertains to the Commission to determine whether the facts described in the petition tend to establish violations of the rights enshrined in the American Convention, in line with the requirements of Article 47.b), or whether the petition, in conformity with Article 47.c), must be considered inadmissible for being “manifestly groundless” or for being “obviously out of order.” The standard for judging these two extremes is different from the one required to decide on the merits of a petition. The Commission must conduct a *prima facie* evaluation, not for the purpose of establishing an alleged violation, but rather to examine whether or not the petition reports facts that could establish grounds for the apparent or potential violation of a right guaranteed by the Convention. This review constitutes a summary review that does not imply any prejudice or prior opinion on the merits of the case.

31. Likewise, neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the system’s case law, to decide in its admissibility reports which provision of the relevant inter-American instruments is applicable or could establish its violation if the allegations are proven on the basis of sufficient evidence.

32. The IACHR finds that the facts described by the petitioners could tend to establish violations of the rights enshrined in Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument.

V. PROVEN FACTS

33. The four cases that are the subject of the present report are related to the issue of collective dismissals in Peru in the 1990s. This issue arose as a result of a series of general laws that gave rise to special standards and procedures for streamlining various state institutions. All four cases have in common the filing of suits for constitutional relief (*amparo*) against the dismissals stemming from said procedures and the negative response of the courts. In that regard, the Commission will examine the proven facts in four main respects: (i) General context of the collective dismissals; (ii) Special procedures in each of the institutions, their application to the alleged victims, and remedies invoked; (iii) Initiatives by the Peruvian State to provide reparation for the collective dismissals; and (iv) Situation of the alleged victims in this case with respect to those initiatives.

A. General context of the collective dismissals

34. On July 28, 1990, Mr. Alberto Fujimori came into office as President of Peru in accordance with the Political Constitution of 1979.⁸ First the Commission and then the Inter-American Court, in the *Case of Dismissed Congressional Employees (Aguado Alfaro and others) v. Peru* found that, in this framework, many irregular dismissals took place in the public sector.⁹

35. On September 27, 1991, Legislative Decree No. 674 was published whereby “it was declare(d) that promoting private-sector investment in the sphere of companies comprising the activities of state enterprises was of national interest.”¹⁰

⁸ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 89.1.

⁹ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 108.

¹⁰ Annex 1. Legislative Decree No. 674. Available at: http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/ML_GRAL_PI_DL674/10-D_L_674.pdf

36. On December 27, 1992, Decree Law No. 26120 was published. Article 7 provided for the following:

After an agreement with the Commission to Promote Private-Sector Investment (Comisión de Promoción de la Inversión Privada—COPRI) was reached, all the measures aimed at economic, financial, legal and administrative restructuring, as well as streamlining the staff, of the companies included in the process of private-sector investment referred to in Legislative Decree No. 674 shall be adopted on the basis of a Supreme Decree, including the following measures:

a) Employee streamlining 1: to adopt and implement voluntary retirement programs for the staff, with or without incentives. once the deadline for accepting the voluntary retirement has expired, the company shall submit to the Administrative Labor Authority a request for downsizing redundant staff, attaching therewith the list of employees included in this measure. The employees who are dismissed as a result of the downsizing shall be entitled only to the corresponding social benefits in line with the law, and the provision of additional benefits shall not be admissible.

The Administrative Labor Authority shall adopt the Downsizing Program proposed within five (05) days of submitting the request, without the applicability of the procedures provided for by Legislative Decree No. 728.

If the Administrative Labor Authority does not issue a ruling within the time-limits set in the preceding paragraph, said Program shall be deemed automatically approved with full rights. On the basis of the express or implied ruling referred to in the preceding paragraphs, the administrative remedy will have concluded. (...)

B. Special procedures in each of the entities, their application to the alleged victims, and remedies invoked

1. Dismissals by ENAPU

37. In November 1992, Decree Law No. 25582 was published, which included ENAPU in the process of promoting private-sector investment in line with Legislative Decree No. 674.

38. On January 12, 1996, Supreme Decree No. 003-96-PCM was adopted. Article 1 provided for the following:

Article 1. The Board of Directors of the state seaport administration company Empresa Nacional de Puertos S.A. (ENAPU) is hereby authorized to implement the program adopted at the session of January 10, 1996 of the Commission to Promote Private-Sector Investment (Comisión de Promoción de la Inversión Privada—COPRI), which is based on the provisions set forth in subparagraph a) of Article 7 of Decree Law No. 26120.¹¹

39. On January 22, 1996, Directive No. 001-96 ENAPUSA/GRRHH which governs the Staff Downsizing Program was adopted. The Directive points out the following:

Any invited employee who decides not to accept the PRVCI [voluntary retirement plan] by the deadline for doing so, as established in the present Directive (...), shall be dismissed by ENAPU S.A., in accordance with the procedure set forth in subparagraph a) of Article 7 of Decree Law 26120 (...)¹².

¹¹ Annex 2. Supreme Decree No. 003-96-PCM. Annex 1-L to the petitioners' communication of November 2, 1998.

¹² Annex 3. Petitioners' communication of November 2, 1998.

40. The petitioners said that, on January 23, 1996, ENAPU distributed to the staff, including the alleged victims, a communiqué similar to the directive.¹³ They contended that, on January 27, 1996, a communiqué was published in the daily newspaper *La República* specifying that the employees invited to resign had five days to do it, after which “the Ministry of Labor would proceed to terminate their employment in accordance with the law.”¹⁴

41. The petitioners reported that, as of January 1996 the alleged victims started receiving letters inviting them to resign. They said that they decided not to accept the voluntary retirement program and therefore they were dismissed in February 1996.¹⁵

42. Before the order to terminate employment, on January 31, 1996, the National ENAPU Employees Federation, of which 25 of the alleged victims were members, filed suit for constitutional relief (*amparo*) against ENAPU with the Civil Court of Callao.¹⁶ It requested that ENAPU not implement Supreme Decree No. 003-96-PCM and Article 7 of Decree Law No. 26120 because said laws made it possible to unconstitutionally terminate employment contracts that were in force for employees.¹⁷ They also requested reinstatement of those persons who might eventually be terminated if this threat of violation were to materialize.¹⁸

43. On December 6, 1996, almost one year after the dismissals took place, the First Civil Court of Callao issued a judgment ruling that the suit for constitutional relief (*amparo*) was without merits.¹⁹ The Court contended that the ENAPU “had not committed any violation or threatened to violate the constitutional right of the complainant when implementing the downsizing program and if it had not done so it would have failed to observe the law.”²⁰

44. The Federation filed an appeal and, on March 18, 1997, the Civil Chamber of the Superior Court of Callao upheld the judgment of the First Civil Court of Callao ruling that the suit for constitutional relief (*amparo*) was without merit.²¹ Afterwards, the Federation filed a special appeal, and on March 3 1998, the Constitutional Court upheld the ruling of the Civil Court and ruled that the suit for constitutional relief (*amparo*) was without merits.²² The Constitutional Court contended that:

(...) the respondent, in strict compliance with the procedure established by (...) legal norms, issued Directive No. 001-96-ENAPUSA/GRRHH (...) stipulating the guidelines to follow for the implementation of the above-mentioned program for voluntary retirement, on the basis of which it could not be inferred that there was any alleged intent to restrict or jeopardize the constitutional rights of those who were being represented by the complainant; as a

¹³ Annex 3. Petitioners’ communication of November 2, 1998.

¹⁴ Annex 3. Petitioners’ communication of November 2, 1998.

¹⁵ Annex 4. Report on the employees dismissed by ENAPU S.A. Annex to the petitioners’ communication of November 2, 1998.

¹⁶ Annex 5. Suits filed for constitutional protection (*amparo*) by the National Federation of ENAPU Employees, January 31, 1996. Annex 1-H to the petitioners’ communication of November 2, 1998.

¹⁷ Annex 5. Suits filed for constitutional protection (*amparo*) by the National Federation of ENAPU Employees, January 31, 1996. Annex 1-H to the petitioners’ communication of November 2, 1998.

¹⁸ Annex 5. Suits filed for constitutional protection (*amparo*) by the National Federation of ENAPU Employees, January 31, 1996. Annex 1-H to the petitioners’ communication of November 2, 1998.

¹⁹ Annex 6. Ruling No. 12 of the First Civil Court of Callao, December 6, 1996. Annex 1-I to the petitioners’ communication of November 2, 1998.

²⁰ Annex 6. Ruling No. 12 of the First Civil Court of Callao, December 6, 1996. Annex 1-I to the petitioners’ communication of November 2, 1998.

²¹ Annex 7. Ruling No. 21 of the Civil Chamber of the Superior of Callao, March 18, 1997. Annex 1-J to the petitioners’ communication of November 2, 1998.

²² Annex 8. Constitutional Court judgment, March 3, 1998. Annex 1-K to the petitioners’ communication of November 2, 1998.

result, since this contingency has been discredited, the present petition for guarantee is without merits.²³

2. Dismissals by MEF

45. On December 28, 1992, Decree Law No. 26093 was issued, providing for the following:

Article 1. The heads of the various Ministries and Decentralized Public Institutions must conduct half-yearly staff performance evaluations in accordance with the regulations that are established for said purpose. (...)

Article 2. The staff members who, on the basis of the provisions of the preceding article, do not qualify, can be dismissed because of overstaffing.²⁴

46. On July 3, 1997, Ministerial Resolution No. 123-97-EF was issued, adopting the Staff Performance Evaluation System of the Ministry of Economy and Finance.²⁵ In that year, the alleged victims underwent the corresponding evaluation and the MEF decided to include them in a training program during the second semester of 1997 in the Peruvian Business Administration Institute (Instituto Peruano de Administración de Empresa—IPAE).²⁶

47. The petitioners passed the academic evaluation carried out by the IPAE.²⁷ On that same day, the MEF notified the alleged victims of Circular No. 023-97-EF/43.01 indicating that they had to undergo a “psycho-technical evaluation.”²⁸

48. On December 31, 1997, the alleged victims were notified, on the basis of Circular No. 065-97-EF/43.40, that they had not obtained the minimum score averaging both the psychological evaluation and the tests previously taken.²⁹ The Circular ordered that, if the evaluation was not passed, then the provisions of Article 2 of Decree Law No. No. 26093 would be implemented, that is, dismissal because of overstaffing.³⁰

49. The petitioners alleged that, on January 8, 1998, the alleged victims were notified of Ministerial Resolution No. 234-97-EF/10 of December 31, 1998.³¹ In said resolution, the alleged victims were dismissed “because of overstaffing” as they had not obtained the minimum passing score in the half-yearly evaluation process.³²

50. On March 23, 1998, 29 former employees, including the 15 alleged victims, filed suit for constitutional relief (*amparo*) against the Ministry of Economy and Finance with the First Transitory Corporate Court Specializing in Public Law of Lima.³³ They requested nonobservance of Ministerial

²³ Annex 8. Constitutional Court judgment, March 3, 1998. Annex 1-K to the petitioners’ communication of November 2, 1998.

²⁴ Annex 9. Decree-Law No. 26093. Available at: <http://peru.justia.com/federales/decretos-leyes/26093-dec-28-1992/gdoc/>

²⁵ Annex 10. Ministerial Resolution No. 123-97-EF. Annex 5 to the petitioners’ communication of March 4, 2002.

²⁶ Annex 11. Letter No. 01473-97-EF/43.40, of August 6, 1997. Annex 8 to the petitioners’ communication of March 4, 2002.

²⁷ Annex 12. IPAE academic record letters. Annex 9 to the petitioners’ communication of March 4, 2002.

²⁸ Annex 13. Circular No. 023-97-EF/43.01. Annex 10 to the petitioners’ communication of March 4, 2002.

²⁹ Annex 14. Circular No. 065-97-EF/43.40. Annex 13 to the petitioners’ communication of March 4, 2002.

³⁰ Annex 14. Circular No. 065-97-EF/43.40. Annex 13 to the petitioners’ communication of March 4, 2002.

³¹ Annex 15. Ministerial Resolution No. 234-97-EF/10, of December 31, 1998. Annex 16 to the petitioners’ communication of April 16, 2004.

³² Annex 15. Ministerial Resolution No. 234-97-EF/10, of December 31, 1998. Enclosed with the petitioners’ communication of April 16, 2004.

³³ Annex 16. Brief of March 23, 1998. Annex 17 to the petitioners’ communication of March 4, 2002.

Resolution No. 234-97-EF/10 because it violated their right to due process of law and to their reinstatement in the workplace.³⁴

51. On July 21, 1999, the First Transitory Corporate Court Specializing in Public Law ruled the petition was inadmissible because the dismissals did comply with Decree Law No. 26093.³⁵ After an appeal was filed, on December 13, 1999, the Transitory Corporate Court Specializing in Public Law upheld the judgment issued and ruled that the suit for constitutional relief (*amparo*) was inadmissible.³⁶

52. On September 6, 2001, in response to a special appeal that was filed, the Constitutional Court ruled that the suit for constitutional relief (*amparo*) for the benefit of Ms. Mirtha Ruiz (who is not an alleged victim in the present case but who is indeed part of the 20 persons who, in accordance with paragraph 50, did file suit for constitutional relief) was with merits and ordered that she be reinstated because, at the time of the performance evaluations, she was disabled.³⁷ Regarding the other persons, the remedy that was filed was without merits. The Constitutional Court indicated that the dismissal took place in line with the provisions of Decree Law No. 26093.³⁸

53. In addition to the suit for constitutional relief (*amparo*), on October 2, 2001, 16 persons, including some of the alleged victims, filed a claim for administrative dispute proceedings in labor affairs against the MEF with the Labor Chamber of the Superior Court of Justice.³⁹ They requested that Ministerial Resolution No. 234-97-EF/10 be declared null and void because it had violated the right to due process of law and reinstatement into the workplace.⁴⁰ The petitioners alleged that, on October 5, 2001, the Labor Chamber ruled that it was inadmissible because it had been filed past the time-limits stipulated in Article 81 of the Law on Labor Proceedings, which requires the above-mentioned claim to be filed within three months after the resolution being challenged is notified.⁴¹

3. Dismissals by Petroperú

54. On January 3, 1996, Supreme Decree No. 072-95-PCM was adopted, authorizing Petroperú to implement a downsizing plan on the basis of Decree Law No. 26120.⁴²

55. On January 30, 1996, the Consolidated Oil Employees Union of Peru (*Sindicato Único de Trabajadores de Petr6leos del Per6*), of which 84 of the alleged victims were members, filed a communication with the head of the Regional Labor Office of Talara, reporting the irregularities of the downsizing process which was being conducted on the basis of the legislation that had been adopted.⁴³ The petitioners allege that they did not receive any response.⁴⁴

³⁴ Annex 16. Brief of March 23, 1998. Annex 17 to the petitioners' communication of March 4, 2002.

³⁵ Annex 17. Ruling No. 16 of the First Transitory Corporate Court Specializing in Public Law of July 21, 1999. Annex 18 to the petitioners' communication of March 4, 2002.

³⁶ Annex 18. Brief of the Transitory Corporate Court Specializing in Public Law of December 13, 1999. Annex 21 to the petitioners' communication of March 4, 2002.

³⁷ Annex 19. Constitutional Court judgment of January 29, 2001. Annex 21 to the petitioners' communication of March 4, 2002.

³⁸ Annex 19. Constitutional Court judgment of January 29, 2001. Annex 21 to the petitioners' communication of March 4, 2002.

³⁹ Annex 20. Brief of October 1, 2001. Annex 22 to the petitioners' communication of March 4, 2002.

⁴⁰ Annex 20. Brief of October 1, 2001. Annex 22 to the petitioners' communication of March 4, 2002.

⁴¹ Annex 21. Petitioners' communication of March 4, 2002.

⁴² Annex 22. Supreme Decree 072-95-PCM. Enclosed with the petitioners' communication of February 19, 1996.

⁴³ Annex 23. Brief of January 30, 1996. Enclosed with the petitioners' communication of February 19, 1996.

⁴⁴ Annex 24. Petitioners' communication of February 19, 1996.

56. The petitioners alleged that the State did not deny that, in January 1996, the alleged victims started receiving notarized letters whereby they were invited to participate in the voluntary retirement program or face dismissal.⁴⁵ The IACHR noted that, in the record, there is a list, issued by Petroperú, of “employees invited but who did not accept the program” where the alleged victims appear.⁴⁶

57. On February 6, 1996, the alleged victims received notarized letters from Petroperú in which they were informed that, because they had not accepted the voluntary retirement program with incentives, their employment ties with the company had been terminated.⁴⁷ The following day, the union addressed the Labor Authority to complain that, because a case file had not been opened by the Labor Authority and the union had not been subsequently notified, the right of the employees to defense and due process of law had been violated. The petitioners allege that they did not receive any response.⁴⁸

58. The union filed suit for constitutional relief (*amparo*) against the State and Petroperú requesting suspension of Supreme Decree No. 072-95-PCM for having violated their right to work.⁴⁹ On March 18, 1996, the Specialized Civil Court of Talara ruled that the petition was inadmissible.⁵⁰ The union filed an appeal and, on July 3, 1996, the Second Civil Chamber of the Superior Court of Piura upheld the judgment that had been appealed.⁵¹

59. In addition to the suit for constitutional relief (*amparo*), the alleged victims filed administrative dispute proceedings calling for the nullification of the resolutions of the Directorate for the Prevention and Settlement of Labor Disputes and the Regional Directorate of Piura.⁵² On February 26, 1996, the Second Chamber of the Superior Court of Piura ruled that the petition was inadmissible and that their petition was “legally impossible.”⁵³

4. Dismissals by MINEDU

60. On September 13, 1996, Ministerial Resolution No. 218-96-ED was published, whereby the “Regulations governing the performance evaluation program for the Ministry’s employees” was adopted.⁵⁴ With Directive No. 001-96-CE-ED the Ministry established the Rules and Procedures for the Implementation of the Program for Evaluating the Employment Performance of the Permanent Staff of the Ministry of Education.⁵⁵

⁴⁵ Annex 24. Petitioners’ communication of February 19, 1996.

⁴⁶ Annex 25. List – Staff invited and not accepting the program. Petitioners’ communication of February 19, 1996.

⁴⁷ Annex 26. Notarized letter of February 6, 1996. Annex to the petitioners’ communication of December 12, 1996.

⁴⁸ Annex 27. Additional arguments supporting the appeal, February 7, 1996. Enclosed with the petitioners’ communication of February 19, 1996.

⁴⁹ Annex 28. Resolution No. 7 of the Specialized Civil Court, February 9, 1996. Enclosed with the petitioners’ communication of February 19, 1996.

⁵⁰ Annex 29. Judgment No. 64-96 of the Specialized Civil Court of Talara of March 26, 1996. Enclosed with the State’s communication of September 6, 1996.

⁵¹ Annex 30. Resolution No. 26 of the Superior Court of Piura, July 3, 1996. Enclosed with the State’s communication of October 30, 1996.

⁵² Annex 31. Resolution No. 1 of the Second Chamber of the Superior Court of Piura, February 26, 1996. Enclosed with the petitioners’ communication of September 28, 1996.

⁵³ Annex 31. Ruling No. 1 of the Second Chamber of the Superior Court of Piura, of February 26, 1996. Enclosed with the petitioners’ communication of September 28, 1996.

⁵⁴ Annex 32. Ministerial Resolution No. 218-96-ED. The regulations governing the performance evaluation program for the Ministry’s employees are adopted, Lima, September 12, 1996. Official Gazette *El Peruano*, Page 142519. Enclosed with the petitioners’ communication of September 8, 2000.

⁵⁵ Annex 33. Directive No. 001-96-CE-ED. Enclosed with the petitioners’ communication of September 8, 2000.

61. The 39 alleged victims underwent the evaluation and, on October 10, 1996, the scores were published on lists posted on the walls of the workplace, indicating that they had not passed the test.⁵⁶ On October 15, 1996, the alleged victims sent a formal letter to the Education Minister at the time, requesting an official detailed breakdown of the scores stemming from the evaluation.⁵⁷

62. On October 19, 1996, Ministerial Resolution No. 245-96-ED was published in the Official Gazette *El Peruano*. In its first article, the Resolution ordered that various employees of the Ministry, including the alleged victims, be “dismissed as of November 1, 1996 because of overstaffing.”⁵⁸ The alleged victims filed an administrative appeal against the above-mentioned resolution and, on February 14, 1997, by means of Supreme Resolution No 003-97-ED, the Ministry of Education ruled that the appeal was without merits.⁵⁹

63. On May 13, 1997, the alleged victims filed suit for constitutional relief (*amparo*) with the Specialized Public Law Judge in Lima requesting the repeal of the laws that led to their dismissal, their immediate and unconditional reinstatement in the jobs, and payment of the benefits that they had stopped receiving.⁶⁰

64. On September 30, 1997, the First Transitory Corporate Court Specializing in Public Law of Lima ruled that the suit was without merits. The Court based its ruling essentially on three facts: (i) the evaluation was conducted on the basis of orders issued in Decree Law 26093; (ii) the complainants underwent the evaluation, which indicated that they did not challenge, at that time, the validity of the law which was the subject of the suit; and (iii) it was not appropriate to consider the characteristics of the performance evaluation process in an *amparo* suit because those proceedings did not offer a suitable evidentiary stage for that purpose.⁶¹

65. On October 30, 1997, the complainants appealed the ruling and, on March 19, 1998, the Transitory Corporate Court Specializing in Public Law upheld the judgment of the first instance. The Corporate Court agreed entirely with the arguments put forth by the judge of the first instance.⁶²

66. On April 22, 1998, the alleged victims filed a special appeal.⁶³ On November 19, 1999, the Constitutional Court upheld the ruling of the Transitory Corporate Court Specializing in Public Law.⁶⁴ The Court based its decision on the fact that “it is evident from the proceedings that the complainants voluntarily submitted to the employee evaluation process; nevertheless, upon failing to obtain the score needed to pass,

⁵⁶ Annex 34. Official letter signed by Manuel Paiba Cossios and others, addressed to Domingo Palermo Cabrejos, Minister of Education, San Borja, October 15, 1996. Enclosed with the petitioners’ communication of September 8, 2000.

⁵⁷ Annex 34. Official letter signed by Manuel Paiba Cossios and others, addressed to Domingo Palermo Cabrejos, Minister of Education, San Borja, October 15, 1996. Enclosed with the petitioners’ communication of September 8, 2000.

⁵⁸ Annex 35. Ministerial Resolution No. 245-96-ED. *Cesan personal del ministerio por causal de excedencia*, Lima, October 19, 1996. Official Gazette *El Peruano*, p. 143644. Enclosed with the petitioners’ communication of September 8, 2000.

⁵⁹ Annex 36. Supreme Resolution No. 003-97-ED. Lima, February 14, 1997. Enclosed with the petitioners’ communication of September 8, 2000.

⁶⁰ Annex 37. Brief of May 13, 1997. Enclosed with the petitioners’ communication of September 8, 2000.

⁶¹ Annex 38. First Transitory Corporate Court Specializing in Public Law of Lima, judgment of September 30, 1997. Enclosed with the petitioners’ communication of September 8, 2000.

⁶² Annex 39. Judgment of the Transitory Corporate Court Specializing in Public Law of March 19, 1998. Enclosed with the petitioners’ communication of September 8, 2000.

⁶³ Annex 40. Brief by Manuel Paiba and others of April 21, 1998. Enclosed with the petitioners’ communication of September 8, 2000.

⁶⁴ Annex 41. Constitutional Court judgment of November 19, 1999. Enclosed with the petitioners’ communication of September 8, 2000.

they were dismissed because of overstaffing pursuant to [Law No. 26093]; therefore, there is nothing in the record to show a violation of the constitutional rights invoked.⁶⁵

C. Initiatives by the Peruvian State to provide reparation for the collective dismissals

67. With the swearing in of the transition government in 2000, laws and administrative provisions were enacted requiring the review of the collective dismissals in order to afford the dismissed public-sector workers the possibility of demanding their rights. The special committees of review created under this legal framework concluded that thousands of workers were arbitrarily dismissed.

68. On May 22, 2001, Law No. 27452 was published in the Official Gazette *El Peruano* and stated the following:

Article 1.- Purpose of the Law

A special committee is hereby established to review the collective dismissal proceedings conducted between 1991 and 2000 at the state-owned companies that underwent a private investment promotion process in any of the forms of investment promotion encompassed within the scope of Legislative Decree No. 674, as regulated or amended.

69. June 21, 2001 saw the promulgation of Law No. 27487, which provided as follows:

Article 1.- Decree Law No. 26093 [...], Law No. 25536[...] and any other specific norms that authorized collective dismissals under reorganization processes are annulled.

Article 3.- Within 15 calendar days of the date on which this law comes into force, public institutions and agencies [...] shall establish Special Committees composed of representatives of the institution or agency and of the employees, responsible for reviewing the collective dismissals of employees under the personnel evaluation procedure conducted under Decree Law No. 26093 or in reorganization processes authorized by a specific law.

Within 45 calendar days of their installation, the Special Committees shall prepare a report containing the list of the employees who were dismissed irregularly, if there are any, and also the recommendations and suggestions to be implemented by the Head of the sector or local government. ...

70. Supreme Decrees 021 and 022-2001-TR established the “terms of reference for the composition and operation of the Special Committees responsible for reviewing the collective dismissals in the public sector.”⁶⁶

71. December 12, 2001, saw the publication of Law No. 27586. It established that the deadline for the Special Committees to conclude their final reports was December 20, 2001. The Law also created a Multisectoral Commission composed of the Ministers of Economy and Finance, Labor and Social Promotion, the Presidency, Health, and Education, as well as by four representatives of the provincial municipalities and by the Ombudsman, or their respective representatives. This Multisectoral Commission would be:

... responsible for evaluating the viability of the suggestions and recommendations of the Special Committees of the entities included within the sphere of Law No. 27487, and also for establishing measures to be implemented by the heads of the entities and for the adoption of supreme decrees or the elaboration of draft laws, taking into consideration criteria relating to administrative efficiency, job promotion, and reincorporation in the affected sectors; if necessary, it would be able to propose reinstatement, and also the possibility of a special

⁶⁵ Annex 41. Constitutional Court judgment of November 19, 1999. Enclosed with the petitioners’ communication of September 8, 2000.

⁶⁶ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 89.33.

early pension regime. ... The said Multisectoral Commission may, also, review the reasons for the dismissals and determine the cases in which the payment of earned or pending remuneration or social benefits is owing, provided these aspects have not been the object of legal action.

72. On March 26, 2002, the Multisectoral Commission issued its final report, concluding, *inter alia*, that “the norms that regulated the collective dismissals should not be questioned [...], merely the procedures by which they were implemented.” It also agreed “that any recommendation on reincorporation or reinstatement should be understood as a new labor relationship, which could be a new contract or a new appointment, provided that there are vacant budgeted posts in the entities or that such posts are opened up; that the employees comply with the requirements for these posts; that there is legal competence to hire, and that there is a legal norm authorizing appointments.”

73. On July 29, 2002, Congress issued Law No. 27803 concerning the implementation by the Multisectoral Commission of “the recommendations of the [Special] Committees created by Acts Nos. 27452 and 27586, responsible for reviewing the collective dismissals in the State enterprises undergoing processes to promote private investment and in entities of the public sector and local government.”⁶⁷ That act provides the following:

Article 1.- Scope of application

This law applies exclusively to former employees who were terminated through collective dismissal proceedings before the Administrative Labor Authority in the framework of the private investment promotion process, which dismissals, as determined by the Special Committee established by Law No. 27452, have been considered irregular; and to former employees whose collective dismissals from the public sector and local governments have likewise been considered irregular according to the parameters determined by the Multisectoral Commission established by Law No. 27586.

This law also applies to former employees who were coerced to resign in the framework of the above-mentioned private investment promotion process or in the context of the collective personnel dismissals under Decree Law No. 26093 or reorganization processes referred to in Article 3 of Law No. 27487, as determined by the Executive Committee mentioned in Article 5 herein.

Article 2.- Purpose of the Law

A Special Benefits Program is hereby instituted, whose intended recipients are the former employees covered by the scope of application of this law. ...

Article 3.- Benefits of the Special Program

The former employees covered by the scope of this law who are duly enlisted in the National Register of Irregularly Dismissed Workers created in Article 4 herein shall be entitled to choose exclusively one of the following benefits:

1. Reinstatement or redeployment
2. Early retirement
3. Financial compensation
4. Vocational training and retraining

Article 4.- Creation of the National Register of Irregularly Dismissed Workers

As part of the Special Benefits Program mentioned in Article 2, the National Register of Irregularly Dismissed Former Workers (hereafter, “National Register”) is hereby established, in which the former employees covered by Article 1 of this law must be enrolled in order to have access to the benefits provided in the preceding article.

⁶⁷ Annex 42. Law No. 27803. Available in Spanish at: http://www.mintra.gob.pe/contenidos/destacados/ceses/ley_27803.doc

Enrollment in the Register is a mandatory requirement in order voluntarily to have access to exclusively one of the benefits envisaged herein.

Supplementary Provision 4.- This law covers the irregular dismissals of former employees who had judicial proceedings in progress, provided that they desist from their claims before the courts.

74. The Ministry of Labor has published lists of workers who were irregularly dismissed from the public sector under the previous law. The Ministry of Labor and Employment Promotion had published four lists of irregularly dismissed former employees.⁶⁸

D. Situation of the victims in this case with respect to those initiatives

1. Enapu

75. Law No. 27396 was adopted on January 12, 2001, repealing Executive Decree No. 003-96-PCM⁶⁹

76. On October 15, 2002, the Vice Minister of Transport and Communications admitted that the 25 individuals who are named as alleged victims were irregularly dismissed.⁷⁰

77. On December 2, 2002, the then-director of ENAPU requested the reinstatement of the 28 former workers "as a demonstration of the change of attitude on the current board of directors and because personnel will be needed to handle machinery and for various services." ⁷¹ The Board of Directors decided "to instruct the administration to proceed with the necessary formalities for hiring those individuals ... within 30 days."

78. On March 27, 2003 the second list of irregularly dismissed former workers, which includes the alleged victims in this case from Enapu, was published in the Official Gazette *El Peruano*.⁷² That resolution provides:

Article 3. The former employees included in the aforesaid list ... shall have five business days counted from March 31, 2003, to choose one of the benefits provided in Article 3 of Law No. 27803, which choice should be communicated at any of the offices of the Administrative Labor Authority in the country.⁷³

79. The Commission has information that, to date, (i) twelve of the alleged victims⁷⁴ have been hired by ENAPU under a new employment contract⁷⁵; (ii) three of the alleged victims have retired on

⁶⁸ Annex 43. The lists are available at www.mintra.gob.pe/mostrarResultado.php?id=196&tip=195.

⁶⁹ Annex 44. Law No. 27396. Available in Spanish at: <http://docs.peru.justia.com/federales/leyes/27396-jan-11-2001.pdf>

⁷⁰ Annex 45. Official letter No. 767-2002-MTC/15.02 from the Vice Minister of Transport and Communications, dated October 15, 2002. Annex 4 to the petitioners' communication of April 19, 2004.

⁷¹ Annex 45. Official letter No. 767-2002-MTC/15.02 from the Vice Minister of Transport and Communications, dated October 15, 2002. Annex 5 to the petitioners' communication of April 19, 2004.

⁷² Annex 46. Ministerial Resolution No. 059-2003-TR. Second List of Former Employees Irregularly Dismissed under the Laws 27452, 27586, and 27803. Enclosure in file 1.

⁷³ Annex 46. Ministerial Resolution No. 059-2003-TR. Second List of Former Employees Irregularly Dismissed under the Laws 27452, 27586, and 27803. Enclosure in file 1.

⁷⁴ Justo Azcarate, Alberto Antonio Chala, Juan Espinoza, Jorge García, Jose Nolasco and Isi Rosas. Marco Castro, Honorato Mayorga and Carlos Lizarbe were later hired. Gladys Delgado, Rufino Ysique, and Juan Marraguerra were later hired. See: Annex 47. General Resolution No. 005-2009-ENAPUSA/GG of January 7, 2009. Enclosed with the petitioners' communication of November 13, 2009.

⁷⁵ Annex 48. Letters from Enapu, dated August 25, 2003. Enclosed with the petitioners' communication of February 22, 2005. Letters from Enapu, dated August and October 2004. Enclosed with the petitioners' communication of February 22, 2005.

pensions⁷⁶; (iii) one alleged victim resides abroad⁷⁷ and received compensation⁷⁸; (iv) three alleged victims have died without receiving any benefits⁷⁹; and (v) six alleged victims obtained new employment contracts with Enapu and later opted for the voluntary retirement program that the company proposed to them, hence their termination from service.⁸⁰

2. MEF

80. The third list of irregularly dismissed workers was published in the Official Gazette *El Peruano* on October 2, 2004. On it were the alleged victims Lucio Chávez Quiñónez and Segundo León Barturén.⁸¹

81. According to information from the petitioners, Lucio Chávez and Segundo León were granted new employment contracts with the MEF in 2013, after suing following the release of the list in which they were included as irregularly dismissed workers.⁸²

82. Eduardo Colán died in February 2003.⁸³two months after the adoption of Ministerial Resolution No. 563-2002-EF/43 of December 26, 2002, which ordered his reinstatement in service "in light of documents attesting that at the time of his dismissal he was suffering from an incurable disease."⁸⁴

83. The 12 remaining alleged victims lodged a request for review under Law No. 29059.⁸⁵ That Law granted the Executive Committee established by Law No. 27803 powers to review the cases of former workers who invoked a review due to their non-inclusion in any of the ministerial resolutions.⁸⁶

84. The State said that this group of alleged victims "did not meet the formal requirements set forth in Article 1 of Law No. 29059, for which reason they were considered ineligible; that is, they did not satisfy the formal requirements contained in the law that would have afforded them access to the additional and final evaluation by the ... Committee."⁸⁷

⁷⁶ Alfredo Vásquez, Eduardo Rivadeneyra, and Fermín Urcia. Annex 49. Resolution of the Office of the General Manager of Enapu of September 7, 2004. Enclosed with the State's communication of June 13, 2005.

⁷⁷ David Desiglioli. Annex 50. Official letter No. 1920-2005 ENAPU S.A./GCA/GPDH, dated June 7, 2005. Enclosed with the State's communication of June 13, 2005. See: Annex 51. Report No. 008-2012-ENAPU S.A./OAJ/SPJ, dated February 10, 2012. Enclosed with the State's brief of August 2, 2012.

⁷⁸ Annex 52. State's brief of January 15, 2015.

⁷⁹ Abraham Cano, Fernando Padilla, and Nancy Macgregor. Annex 53. Official letter No. 293-2007-FENTENAPU, dated November 16, 2007. Enclosed with the petitioners' communication of December 17, 2007.

⁸⁰ Cecilio Ríos, Ernesto Meza and Victor Acuña in July 2011. See: Annex 54. Settlement of fringe benefits – PRI for Cecilio Ríos, Ernesto Meza and Victor Acuña,. Enclosed with the State's brief of August 2, 2012. Renzo Torero. See: List of personnel without an employment relationship. Appendix to the State's brief of March 26, 2013. Antonio Rodriguez, Renzo Torero and Rogelio Delgado were incorporated to the voluntary retirement program later. See: Annex 55. State's brief of January 15, 2015.

⁸¹ Annex 56. Available at : <http://www.mintra.gob.pe/mostrarContenido.php?id=196&tip=9>

⁸² Annex 57. State's communication of February 4, 2010. Petitioners' communication of February 3, 2009.

⁸³ Annex 58. Petitioners' communication of April 22, 2008.

⁸⁴ Annex 59. State's communication of September 30, 2005.

⁸⁵ Annex 60. Law No. 29059 was adopted on July 6, 2007. Available at: [http://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoc_condoc_2006.nsf/d99575da99ebf305256f2e006d1cf0/6f32aacff48db7130525732500574144/\\$FILE/29059.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoc_condoc_2006.nsf/d99575da99ebf305256f2e006d1cf0/6f32aacff48db7130525732500574144/$FILE/29059.pdf)

⁸⁶ Annex 61. State's communication of February 29, 2008.

⁸⁷ Annex 62. State's communication of September 21, 2009.

85. The information available indicates that these individuals (the remaining 12 workers) were also not included in the fourth list of irregularly dismissed workers. To date, the IACHR has no information that these individuals have received benefits of any kind.

3. Petroperú

86. The third list of irregularly dismissed workers was published in the Official Gazette *El Peruano* on October 2, 2004. It included 33 of the alleged victims. Of those persons: (i) three chose early retirement⁸⁸; (ii) one chose reinstatement⁸⁹; and (iii) 29 did not choose any benefit.⁹⁰

87. The information available indicates that the remaining 51 alleged victims were also not included in the fourth list of irregularly dismissed workers. The Commission also has no information that this group of persons has received benefits of any kind. The IACHR notes with respect to this group that six of the alleged victims are retired.⁹¹ The Commission also has information that 13 of the alleged victims have died.⁹²

4. Minedu

88. Ministerial Resolution No. 419-2001-ED was adopted in 2001 pursuant to Law No. 27487, for the purpose of setting up a special committee to review the collective dismissals from the Ministry of Education.⁹³ In that final report, the Committee found:

Having analyzed the supporting documents accompanying the applications submitted, the Special Committee has determined that these evaluations, in 1993 and 1996, suffered from flaws in terms both of the instructions that were issued on each occasion and of the procedures conducted, resulting in the irregular dismissal of the claimants.⁹⁴

89. The Special Committee held that there was "no legal impediment to the reinstatement of the workers at the ... Ministry of Education ..., who were dismissed in 1993 and 1996."⁹⁵

⁸⁸ Juan Echandía Ochoa, Manuel Mechado Sernaque, and Eduardo Panta Valladares. Annex 63. Petitioners' communication of September 6, 2013.

⁸⁹ José Torres Namuche.

⁹⁰ Luís Abad Saldarriaga, Gregorio Albuquerque Carrillo, William Jacinto Alemán Benitez, Sebastián Amaya Fiestas, Jorge Cabanillas Dedios, Santos Calderón Ávila, Luís Carrasco Lozada, Alberto Chira Guerrero, Mario Duque Mogollón, Jaime Garcés Sandoval, Pedro Carlos Garcés Solís, Gonzalo Ginocchio Guerrero, Pedro Infante Antón, José William Jacinto Zavala, Pedro López Antón, Abraham Montero Ramírez, Emilio Augusto Morales Silva, Miguel Hugo Morán García, Gregorio Jaime Noriega González, Ricardo Quevedo Herrera, Edwin Quevedo Saavedra, José Félix Saavedra Medina, Catalino Sandoval Ancajima, Dionisio Sandoval Flores, Joaquín Santillán Zavala, Luís Távora Ramírez, Jorge Carlos Tinedo Puell, Oscar Valiente Paico, and Felito Vitonera Saldarriaga. Subsequently, Emilio Augusto Morales was reinstated as a result of a precautionary measure adopted on October 27, 2011. Annex 64. Petitioners' communication of September 6, 2013. Furthermore, Alberto Chira has reportedly retired. Annex 65. List of petitioners (undated). Annex to the State's communication of February 27, 2013.

⁹¹ Juan Benítez, Víctor Garay, and Leonarda Montero. List of petitioners (undated). Annex 66. Annex B to the petitioners' communication of January 4, 2013. Maria Sancarranco, Oswaldo Duque, and Pedro Carrasco. List of petitioners (undated). Annex 65. Annex to the State's communication of February 27, 2013.

⁹² Neptali Aguirre, Segundo Barrientos, Gregorio Noriega, Joaquín Santillán, Ricardo Vilchez, Ana Rojas, Fredesvinda Socola, Nolberto Vilela. Annex 67. List of 32 petitioners represented by Mr. Abraham Montero Ramírez (undated). Annex to the petitioners' communication of January 8, 2014. Jaime Noriega. Annex 68. Petitioners' communication of September 6, 2013. Jaime Garcés, Leyther Quevedo, Luis Vallejo, and Felito Vitonera. List of petitioners (undated). Annex B to the petitioners' communication of January 4, 2013.

⁹³ Annex 69. Final Report of the Special Committee – Ministerial Resolution No. 419-2001-ED of October 31, 2001. Enclosed with the petitioners' communication of December 20, 2001.

⁹⁴ Annex 69. Final Report of the Special Committee – Ministerial Resolution No. 419-2001-ED of October 31, 2001. Enclosed with the petitioners' communication of December 20, 2001.

⁹⁵ Annex 69. Final Report of the Special Committee – Ministerial Resolution No. 419-2001-ED of October 31, 2001. Enclosed with the petitioners' communication of December 20, 2001.

90. March 27, 2003, saw the publication in the Official Gazette *El Peruano* of Ministerial Resolution No. 059-2003-TR, containing the second list of irregularly dismissed former employees.⁹⁶ All except 10 of the alleged victims⁹⁷ were included on the list.⁹⁸ Those 10 remaining individuals⁹⁹ were included on the third list.¹⁰⁰

91. According to the petitioners' July 2011 communication, 25 of the alleged victims signed new employment contracts with the Ministry of Education and six others received compensation.¹⁰¹ The other eight victims would not appear to have received any benefits.¹⁰² The IACHR notes that Mr. Manuel Paiba, who is included in this last group of alleged victims, obtained a contract at the Ministry of Education in 2014, outside the scope of Law 27803.¹⁰³

VI. LEGAL ANALYSIS AND CONCLUSION

92. The Commission highlights that the substantial aspect of the analysis focuses on determine whether the alleged victims, after being ceased, had the possibility to access to an adequate and effective judicial remedy in order to challenge their dismissals pursuant to the American Convention's standards. In that sense, the IACHR will not determine whether the dismissals of the workers were arbitrary; it will analyze the judicial response of the domestic courts against the alleged violations of their rights.

A. Right to a fair trial and judicial protection (Articles 8(1) and 25(1) of the American Convention) in conjunction with the obligations to observe and ensure rights and to adopt provisions under domestic law (Articles 1(1) and 2 of the American Convention)

93. The provisions of the American Convention referred to in the title above provide as follows:

Article 8.1 Right to a Fair Trial

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25.1 Judicial Protection

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even

⁹⁶ Annex 70. Ministerial Resolution No. 059-2003-TR. Available at : <http://www.mintra.gob.pe/mostrarResultado.php?id=196&tip=9>

⁹⁷ Dorina Reyes, Manuel Coz, Ermith Trigo, Luis Arditto, Víctor Montalván, Blanca Ayala, Margarita Ávalos, Fernando Valdivia, Ernesto Arauco, and Frida Ramírez.

⁹⁸ Annex 70. Ministerial Resolution No. 059-2003-TR. Available at : <http://www.mintra.gob.pe/mostrarResultado.php?id=196&tip=9>

⁹⁹ Dorina Reyes, Manuel Coz, Ermith Trigo, Luis Arditto, Víctor Montalván, Blanca Ayala, Margarita Ávalos, Fernando Valdivia, Ernesto Arauco, and Frida Ramírez.

¹⁰⁰ Annex 71. Available at: http://www.mintra.gob.pe/archivos/file/ceses/3era_Lista_MTPE.pdf

¹⁰¹ Annex 72. Petitioners' communication of July 16, 2011.

¹⁰² Blanca Ayala, Villy Cancino, Eloy Huapaya, Cristina Molina, Manuel Paiba, Gregorio Paredes, Frida Ramírez, and Ermith Trigo. They did not choose any of the benefits. Annex 73. Petitioners' communication of July 16, 2011.

¹⁰³ Annex 74. Petitioners' communication of December 5, 2013. State's communication of June 26, 2013.

though such violation may have been committed by persons acting in the course of their official duties.

Article 1. Obligation to Respect Rights

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.

Article 2. Duty to Adopt Domestic Legal Provisions

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

94. The organs of the inter-American system have determined that the States Parties to the Convention have the obligation to provide effective judicial remedies for victims of human rights violations, which must be examined in accordance with the rules of due process of law.¹⁰⁴ The Inter-American Court has established the following:

When establishing the international responsibility of the State for the alleged violation of the rights embodied in Articles 8.1 and 25 of the American Convention, the substantial aspect of the dispute before the Court is not whether judgments or administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims of the facts, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights that were in dispute.¹⁰⁵

95. The Inter-American Court has found that under that under Article 8.1 of the Convention everyone has the right to be heard by a competent and impartial organ with due procedural guarantees, such as the possibility of presenting arguments and adducing evidence. The Court has also found that this provision of the Convention “means that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived. The latter does not mean that the right must always be granted, but rather that the capacity of the body to produce the result for which it was conceived be guaranteed.”¹⁰⁶

96. In relation to Article 25.1 of the Convention, the Court has held that that provision

... includes an obligation for States Party to guarantee all persons under [their] jurisdiction access to an effective judicial remedy against acts that violate their fundamental rights. This effectiveness supposes that in addition to the formal existence of the remedies, they get results or responses to the violations of the rights contemplated in the Convention, in the Constitution or in laws. In this sense, remedies that because of the country’s general

¹⁰⁴ IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights*. OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007. par. 177. I/A Court H.R., I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 106.

¹⁰⁵ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 107.

¹⁰⁶ I/A Court H.R., *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, par. 122.

conditions or even because of specific conditions related to the case in question are illusory cannot be considered effective. This can be the case, for example, when their uselessness has been demonstrated in practice, due to a lack of means for executing rulings, or due to any other situation giving rise to a context of denial of justice. Thus the proceeding must tend toward the materialization of the protection of the right recognized in the judicial ruling through the suitable application of that ruling.¹⁰⁷

97. The Inter-American Court has determined that for an effective remedy to exist, it is not sufficient that it be provided for by the constitution or the law or that it be formally recognized, but rather it must be truly effecting in establishing whether there has been a violation of human rights and in providing redress.¹⁰⁸ As regards the admissibility requirements of a judicial claim, the Court has found that:

[t]o ensure legal certainty, for the proper and functional administration of justice and the effective protection of human rights, the States may and should establish admissibility principles and criteria for domestic recourses of a judicial or any other nature. Thus, although these domestic recourses must be available to the interested parties and result in an effective and justified decision on the matter raised, as well as potentially providing adequate reparation, it cannot be considered that always and in every case the domestic organs and courts must decide on the merits of the matter filed before them, without verifying the procedural criteria relating to the admissibility and legitimacy of the specific recourse filed.¹⁰⁹

98. The Commission finds that the four cases with which this report is concerned occurred in the context of the collective dismissals in Peru in the 1990s and, therefore, their characteristics are similar to those of the *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*¹¹⁰ examined by the Commission and the Inter-American Court, and those of the *Case of Canales Huapaya et al. v. Peru*, examined by the Commission and currently before the Inter-American Court¹¹¹.

99. In the former case, which, in turn, constituted the basis for the decision in the matter, the commission and the Inter-American court made general pronouncements on the context of collective dismissals and the absence of fair trial guarantees against those dismissals, although their findings were not limited to the particular circumstances of the dismissed congressional workers.

100. Indeed, the Inter-American Court noted that during the period described “numerous irregular dismissals took place in the public sector,” which was acknowledged “by the State as of 2001 when it enacted laws and administrative provisions ordering a review of the collective dismissals in order to provide the employees who had been dismissed irregularly with the possibility of claiming their rights.”¹¹²

101. The Court also said that “considers that States evidently have discretionary powers to reorganize their institutions and, possibly, to remove personnel based on the needs of the public service ... ;

¹⁰⁷ I/A Court H.R., *Case of Abril Alosilla et al. v. Peru*. Merits, Reparations, and Costs. Judgment of March 4, 2011. Series C No. 235, par. 75. The references in the original have been omitted.

¹⁰⁸ I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, par. 61; *Case of the “Five Pensioners”*. Judgment of February 28, 2003. Series C No. 98, par. 136; and *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, par. 113.

¹⁰⁹ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 126.

¹¹⁰ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.pdf. See also, IACHR, Report No. 126/12, Case 12.214, Merits, Carlos Alberto Canales Huapaya et al., Peru, November 13, 2012.

¹¹¹ IACHR, Report No. 126/12, Case 12.214, Merits, Carlos Alberto Canales Huapaya et al., Peru, November 13, 2012.

¹¹² I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 108.

however, these powers cannot be exercised without full respect for the guarantees of due process and judicial protection, because, to the contrary, those affected could be subjected to arbitrary acts.”¹¹³

102. As regards the guarantees of due process in the context of the collective dismissals in Peru during the 1990s, the Court considered that it had been demonstrated that the independence and impartiality of the Constitutional Court, as a democratic institution guaranteeing the rule of law, were undermined by the removal of some of its justices.¹¹⁴ The Court added that that impeded the possibility of exercising the control of constitutionality and the consequent examination of the compatibility of the State’s conduct with the Constitution.¹¹⁵ The Inter-American court concluded that the above “resulted in a general situation of absence of guarantees and the ineffectiveness of the courts to deal with facts such as those of the instant case, as well as the consequent lack of confidence in these institutions at the time.”¹¹⁶ Finally, the Court found that as a result of the lack of effective access to judicial protection whereby the competent authorities might make the pertinent decisions, the victims found themselves in a situation of “defenselessness and uncertainty.”¹¹⁷

103. In ruling on the effects of the interference in the composition of the Constitutional Court for the victims of the *Case of the Dismissed Congressional Employees v. Peru*, the Inter-American Court said the following:

On May 28, 1997, the Congress in plenary session, dismissed the following Constitutional Court justices: Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano. On November 17, 2000, Congress annulled the dismissal resolutions and reinstated them in their posts. In another case, this Court has verified that, while this destitution lasted, the Constitutional Court “was dismantled and disqualified from exercising its jurisdiction appropriately, particularly with regard to controlling constitutionality [...] and the consequent examination of whether the State’s conduct was in harmony with the Constitution.”¹¹⁸

104. The Commission highlights that in the Enapu, Minedu, and MEF cases, the actions for constitutional relief were taken up by the Constitutional Court in the context established in the previous paragraph, this is, at a time when its membership consisted of four justices, owing to the fact that the Congress had removed the other three justices of said tribunal.¹¹⁹

105. In addition, in its *Second Report on the Situation of Human Rights in Peru* the IACHR noted that following the interruption of the democratic and constitutional order on April 5, 1992, several reforms were undertaken of the judiciary that undermined its independence and autonomy, particularly where matters with a bearing on the interests of the executive branch were concerned. The IACHR noted that more than 80% of Peruvian judges were provisional appointees who could be dismissed or removed from office

¹¹³ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 110.

¹¹⁴ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 108.

¹¹⁵ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 109.

¹¹⁶ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 109.

¹¹⁷ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158*, par. 150.

¹¹⁸ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 89.27, which cites the *Case of the Constitutional Court v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 55, par. 112.

¹¹⁹ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C No. 158, par. 89.27, which cites the *Case of the Constitutional Court v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 55, par. 112.

without cause by an executive committee of the magistracy composed of individuals with close ties to the government of the day. It also mentioned that three justices of the Constitutional Court had been dismissed by the Congress of the Republic on May 29, 1997, after returning a decision denying an action for constitutional relief whose purpose was to enable the then-president, Alberto Fujimori, to stand for reelection as president a second time. On that occasion, the IACHR said that the permanent interference of other powers of the state in the judiciary eroded the right of the citizenry to adequate administration of justice in Peru.¹²⁰

106. The Commission highlights that the cases examined in this report were framed within the context of the collective dismissals. The proven facts show that in all four cases the alleged victims were dismissed as part of streamlining processes carried out by the public entities to which they belonged, all within the aegis of the general legal framework introduced by the then-government for that purpose.

107. Therefore, despite the fact that in the cases examined in this report there was no there was no express prohibition filed suits for constitutional relief (*amparo*), the precedent of the Court in the case *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru* is fully applicable in relation to the structural problems facing the judiciary at that time, including the lack of independence and impartiality of the highest court charged with protection of constitutional rights, as well as the general climate of inefficiency of the judiciary described by the Court itself in those terms.

108. Taking into account that the Court established that the minimum institutional foundations for the dismissed workers from that time were not given to have a judicial response with the guarantees established by the Convention, the Commission notes that the results of constitutional relief (*amparo*) filed by the alleged victims in the four cases confirm the ineffectiveness of such mechanism. Indeed, an evaluation of the motivation given by the authorities who resolved the constitutional relief (*amparo*) shows that they simply stated, without substantive analysis, that the dismissals were in accordance with the domestic legislation of that time. Even in the only case in which a lower court made a reference to the constitutionality of the dismissals, such reference did not have a minimum motivation that could allow to understand that a substantive analysis of the collective dismissals was made according to the constitutional rights of the alleged victims.

109. In that sense, because the decisions in the suits cited as exclusive grounds the existence of the legislation at the time -when the purpose of the *amparo* suits was to obtain a response from the courts as to whether or not the dismissals under the decrees enacted by the government violated constitutional guarantees- the dismissed workers of the four cases were denied a judicial remedy that established whether their dismissals were arbitrary, in violation of their constitutional guarantees. The Commission also highlights that the workers were also not informed what recourse they should invoke, apart from constitutional relief, to obtain a ruling from a judicial authority. On the contrary, some groups also attempted a contentious administrative action with similarly unfavorable results.

110. The foregoing confirms that the 25 workers dismissed from Enapu, the 15 workers dismissed from the MEF, the 39 workers dismissed from the Minedu, and the 84 workers dismissed from Petroperú, were victims of the climate that existed at the time of the events, characterized by ineffectiveness and lack of independence and impartiality on the part of the judiciary in responding to collective dismissals such as those that gave rise to this report.

111. Based on the above, the IACHR concludes that the Peruvian State is responsible for violation of rights protected in Articles 8.1 and 25.1 of the American Convention, taken in conjunction with the obligations envisaged in Articles 1.1 and 2 of that instrument, to the detriment of the persons listed in Annex 1 to this report.

VII. RECOMMENDATIONS

¹²⁰ IACHR, *Second Report on the Situation of Human Rights in Peru*, June 2, 2000. Available at: <http://www.cidh.org/countryrep/Peru2000en/TOC.htm>

112. The Commission has taken note of the information furnished by the State of Peru on initiatives undertaken since 2001 to provide a response to the collective dismissals issue. Those initiatives and their impact on the victims in the four cases are described in the section on proven facts herein. The Commission considers that the international responsibility of the State of Peru for violation of the rights to a fair trial and judicial protection was triggered when the victims filed suits for constitutional protection (*amparo*), which were heard and disposed of in the above-described context without addressing the question as to whether or not the dismissals were irregular. The lack of an effective judicial response was, then, the factor that triggered the State's international responsibility, which is a *fait accompli* and has been analyzed and established in the preceding section. Initiatives that followed the consummation of that international responsibility are relevant for the purposes of determining adequate measures to redress that violation.

113. As regards the 25 workers dismissed from ENAPU, the Commission notes that in 2002 the Vice Minister of Transport and Communications recognized that the dismissals of all 25 victims had been irregular. In that connection, all of the victims are on one of the lists of irregularly dismissed workers; in this instance, the one published in the Official Gazette on March 27, 2003. As noted in the proven facts, the positions of the victims vary where the benefits provided under Decree 27803 are concerned.

114. As to the 15 workers dismissed from the MEF, two are on the third list of irregularly dismissed workers, and a third is covered by a ministerial resolution that was issued, establishing the irregularity of their dismissal.

115. In relation to the 84 employees dismissed from Petroperú, 33 are on the third list of irregularly terminated workers. However, only 4 opted for one of the benefits under Decree 27803. The available information suggests that the remaining 51 dismissed workers are not on the lists and have not received any kind of benefit.

116. Finally, with respect to the 39 workers dismissed from Minedu, all of them were included in either the second or third list of irregularly dismissed workers. Of those, 25 signed new employment contracts with Minedu, 6 received compensation, and 8 receive no benefit of any sort.

117. In recapping, the Commission notes three situations: (i) that of the individuals who are not on any of the lists, whose dismissals, therefore, have not been recognized as irregular at the domestic level; (ii) that of the individuals who are on one of the lists or who have been afforded some form of State recognition of the irregularity of their dismissal and opted for one of the benefits under Decree 27803; and (iii) that of the individuals who are on one of the lists or who have been afforded some form of State recognition of the irregularity of their dismissal, but did not opt for any of the benefits under Decree 27803.

118. **Regarding the first group of victims** (see Annex 2 hereto), the Commission finds that the appropriate recommendation concerns the creation of a fast-track mechanism to perform a case-by-case assessment of their dismissals, determine if they were arbitrary or not, and arrange appropriate reparations, including minimum elements of redress for arbitrary dismissal, in other words: (i) reinstatement in the same institution or another institution in the public sector in a position of at least the same rank that they held at the time of dismissal; (ii) if said reinstatement is objectively impossible, payment of alternative compensation; (iii) payment of a sum for unpaid wages and benefits;¹²¹ (iv) such other measures as may be applicable to provide non-pecuniary compensatory damages. The Commission finds that these components are consistent, for example, with the reparations agreed upon in the context of the implementation mechanism in the *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)* after the irregularity of the dismissals was determined in that case.

¹²¹ With regard to this component of the reparations, see, for instance, I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, operative paragraph 6.

119. **Regarding the second group of victims** (see Annex 3 hereto), the Commission notes that they received exclusively one of the following benefits offered in Decree 27803: (i) Reinstatement or redeployment; (ii) early retirement; (iii) financial compensation; and (iv) vocational training and retraining. With respect to acceptance of only one of these benefits, and no other, the petitioners argue that this did not constitute adequate reparation as it did not recognize the time that they were illegally and arbitrarily separated from their positions of employment for the purposes of compensation, retirement and other fringe and social security benefits.

120. The Commission considers that, based on the information available in the record, the State has provided only partial redress to this group of victims. Thus, for example, as the State itself has acknowledged, some of the victims in this group received no amount in compensatory damages but simply began a new employment contract. Other victims in this group received some form of financial compensation but were not reinstated and the Commission does not have detailed information by which to determine at this time if that compensation satisfied the minimum components that should be included in reparations of this nature.

121. Therefore, the appropriate recommendation with respect to the second group of victims is the creation of a fast-track mechanism that provides, based on a case-by-case assessment, reparations in addition to those already received by each victim under Decree 27803.

122. **Regarding the third group of victims** (see Annex 4 hereto), the Commission finds that since the irregularity of their respective dismissals has already been formally recognized, the appropriate recommendation is the creation of a fast-track mechanism to reach a direct determination of suitable reparations, including minimum components of redress for arbitrary dismissal, as mentioned in paragraph 118 of this report on merits. It should be clarified that in the opinion of the Commission, under no circumstances could this group of victims have been compelled to choose only one of the benefits that offered, as noted, only partial redress, particularly when the information available indicates that the very standards that governed those benefits excluded anyone who was suing the state and did not desist from doing so. The IACHR highlights that the recommendations on this issue are not based on the State's domestic system but on the principle that a breach of an international obligation generates the duty to establish an adequate reparation.

123. Based on the foregoing conclusions,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS MAKES THE FOLLOWING
RECOMMENDATIONS TO THE STATE OF PERU:**

1. With respect to the individuals who are not on any of the lists, whose dismissals, therefore, have not been recognized as irregular at the domestic level, the Peruvian State should create a fast-track mechanism to perform a case-by-case assessment of their dismissals, determine if they were arbitrary or not, and arrange appropriate reparations, including minimum elements of redress for arbitrary dismissal.

2. With respect to the individuals who are on one of the lists or who have been afforded some form of State recognition of the irregularity of their dismissal and opted for one of the benefits under Decree 27803, the Peruvian state should create a fast-track mechanism that provides, based on a case-by-case assessment, reparations in addition to those already received by each victim under Decree 27803.

3. With respect to the individuals who are on one of the lists or who have been afforded some form of State recognition of the irregularity of their dismissal, but did not opt for any of the benefits under Decree 27803, the State should create a fast-track mechanism to reach a direct determination of suitable reparations, including minimum components of redress for arbitrary dismissal.