

REPORT No. 118/10
CASE 12.680
MERITS
RAFAEL ARTURO PACHECO TERUEL *ET AL.*
(DEATH FROM FIRE AT SAN PEDRO SULA PRISON)
HONDURAS
October 22, 2010

I. SUMMARY

1. On July 14, 2005, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", the "Commission" or the "IACHR") received a petition lodged by the *Pastoral Penitenciaria, CARITAS Sampedrana*, and the *Equipo de Reflexión, Investigación y Comunicación* (ERIC) (hereinafter "the petitioners") against the State of Honduras (hereinafter "Honduras", "the State" or "the Honduran State") for alleged violation of articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), in conjunction with Article 1(1) thereof, for the alleged violations of the fundamental rights of 107 persons deprived of liberty who died at San Pedro Sula Prison (hereinafter "the alleged victims") and their next of kin.¹

2. The petitioners allege that on May 17, 2004, a fire broke out in Cellblock 19 (hereinafter also referred to as "House No. 19") of the San Pedro Sula Prison that claimed the lives of 107 inmates –named as victims in the present case- and severely injured another 26 inmates. The petitioners contend that the fire was a direct consequence of the State's failure to take preventive measures and to take the steps necessary to protect the lives and personal integrity of the inmates once the fire broke out. They also contend that the State failed to comply with its duty to duly investigate the facts, punish those responsible and adequately redress the victims' next of kin. They argue that the facts in this case were not an isolated event; instead, they fit into a broader picture that included a zero-tolerance policy in combating "gangs," widespread problems in the Honduran prison system, and structural problems specific to the San Pedro Sula Prison.

3. On October 17th, 2008, the Commission approved Admissibility Report No. 78/08 during its 133rd Regular Session. In that report, the Commission concluded that the case was admissible with respect to articles 4(right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, and the obligation to respect the Convention-protected rights, set forth in Article 1(1) thereof, to the detriment of the alleged victims and their next of kin. Also, by application of the principle of *jura novit curia*, the Commission concluded that the petition was admissible for the alleged violation of Article 7 of the Convention.

4. The State, for its part, submitted no additional observations on the merits. However, in the period that preceded the processing of the case, it reported that the fire that broke out in House No. 19 on May 17, 2004, happened when the shoddy electrical system overheated because too many appliances had overloaded the circuitry. It maintained that the appropriate investigations were conducted; that the length of time taken to conduct the investigations was because of the

¹ A five-page petition was received on June 14, 2004, filed by Dr. Eugenio Raúl Zaffaroni and another 24 persons, in which the events of the present case were denounced. After examining the content of this complaint, additional information was requested from the petitioners by a note dated November 16, 2005. However, no reply was received. Subsequently, by a note dated October 12 of that year, Dr. Zaffaroni was notified that his petition would be joined with P-785-05, filed on July 4, 2005 by *Caritas Sampedrana* and ERIC.

complexity of the facts of the case, and that the inquiry remains open. It blamed the problems with prison conditions on a shortage of human and material resources.

5. After examining the parties' positions, at its 140^o Regular Session the Inter-American Commission concluded that the Honduran State is responsible for violation of the rights recognized in articles 4, 5, 7, 8, 9 and 25 of the American Convention, in conjunction with the general obligations undertaken in articles 1(1) and 2 thereof.

II. PROCESSING WITH THE COMMISSION

6. The parties were notified of the Admissibility Report on November 12, 2008. In that same communication, they were advised that the petition had been classified as case number 12,680. Pursuant to Article 38(1) of the Commission's Rules of Procedure, the petitioners were asked to submit, within two months' time, any additional comments they might have on the merits. Under Article 38(4) of its Rules of Procedure, the Commission also placed itself at the parties' disposal with a view to arriving at a friendly settlement of the matter, in keeping with Article 48(1)(f) of the American Convention. It asked that they respond to its offer as soon as possible.

7. On April 10, 2009, the petitioners submitted their observations on the merits, with the respective attachments. Subsequently, on May 14, 2009, the petitioners sent the Commission a CD containing the following: the observations on the merits and its attachments in electronic format; the testimony of the victims' next of kin; and the record of the judicial inquiries into the facts denounced.

8. The petitioners' observations on the merits and the attachments were forwarded to the Permanent Mission of Honduras to the OAS on May 18, 2009; on May 26, 2009, they were personally delivered to an official with the Honduran Ministry of Foreign Affairs. By a note dated December 14, 2009, the IACHR sent the State another copy of the petitioners' observations on the merits and the attachments. However, the State has thus far not presented its observations on the merits.

III. THE PARTIES' POSITIONS

A. The petitioners

9. The petitioners assert that sometime between 1:30 and 2:00 a.m. on May 17, 2004, a fire broke out in Cellblock 19 of the San Pedro Sula Prison, which was housing 183 inmates considered to be members of the gang known as *Mara Salvatrucha* "MS 13". Accused inmates in preventive detention pending trial were not segregated from convicted inmates. The petitioners state that at 1:55 a.m., the Director of the prison called the Fire Department and the National Police to report the fire and that by 2:30 a.m., when the authorities arrived, most of the inmates had already died of smoke inhalation. The 107 victims who died in the fire were inmates being deprived of their liberty. The petitioners point out that of those who perished, 104 died there at the scene of the fire; the other three died in the hospital. They also state that 10 percent of the deceased burned to death, whereas the other 90% died from carbon monoxide poisoning. Another 26 inmates sustained burns in the fire. The petitioners report that when the firefighters arrived at 2:30 a.m. to put out the fire, the inmates were still inside Cellblock 19.

10. They note that while there are discrepancies about how long it was between the time the fire broke out and the time when the inmates were finally let out, it has been amply documented that the authorities were unable to respond fast enough to prevent the loss of inmate's lives. They added that several persons testified to the fact that at the time the blaze broke out the guards began to fire their weapons, which only added to the general confusion amid the fire. This

was established when a number of bullet casings were found among the rubble at the scene of the fire.

11. The petitioners state that according to official reports, the fire started at the entry door to Cellblock 19, when the wires to an air ventilator overheated, which caused fire to break out which then spread to a number of flammable objectives nearby, such as boxes, clothing and mattresses. In other words, the cause of the fire was reportedly a short circuit in the electrical system. The petitioners observe that at the time the fire broke out in Cellblock 19, there were reportedly over 100 electrical apparatuses hooked up to the electrical system.

12. In the original petition, the following persons are named as immediate victims:² 1) Rafael Arturo Pacheco Teruel, 2) Allan Roberto Escalante Mayorquin, 3) José Geovanny Ulloa Díaz, 4) Melvin Isaías López Recarte, 5) Carlos Roberto Izaguirre Alva, 6) Humberto Daniel Bruhier Cárcamo, 7) Willian Antonio Reyes Flores, 8) David Javier Urrea Aguilar, 9) Antony Zuniga Aguilar, 10) Melvin Rolando Arriaga Martínez, 11) Marvin Geovany Montoya Gamez, 12) José Naun Coto Rodríguez, 13) Fredy Enrique Gutiérrez Maldonado, 14) Juan Carlos Rivas, 15) Nelson Geovanni Villeda Rosales, 16) Oscar Edgardo Cruz ó Isidro Mejía Mejía, 17) Carlos Alberto Rivas Hernández, 18) Wilmer Alexis Aguiluz, 19) Darwin Rolando Martínez Sánchez, 20) Ervin Ronaldo Vallecillos Padilla, 21) Jesús Aguilar Leiva, 22) Jony Naun Lemus Mejía, 23) José Amílcar Ramírez Rodríguez, 24) Allan Antony Carrasco Rodríguez, 25) Víctor David Torres Funez, 26) Walter Amílcar Serrano Alberto, 27) Nelson Jesús Jiménez Sevilla, 28) Henry Adalberto Regalado Suazo, 29) Lenin Josué Galindo Ruiz, 30) Ángel Noel Sánchez Rivera, 31) Edgardo Alejandro Hernández Antúnez, 32) Darwin Geovanny López Paz, 33) José Santiago Hernández Morter, 34) Anuar Enrique Fúnez Leiva, 35) José Enrique Hernández Mayorga, 36) Mario Roberto Velásquez Ventura, 37) Luis Alberto Escobar Vallecillo, 38) Gerson Magdiel López Paz, 39) José Neptaly Rivera Sosa, 40) Ángel Israel Meza Agurcia, 41) José Dionicio Cerrato Estrada, 42) Jorge Alberto Sierra Galeas, 43) Marvin Yovany Rivera Santamaría, 44) Warner Moreno Méndez, 45) Esmelin Teruel Fernández, 46) Luis Gustavo Mata Aguilar, 47) José Antonio Flores Méndez, 48) Arnaldo Enrique Bautista, 49) José Luis Hernández Rodríguez, 50) Miguel Eduardo Mercado Valle, 51) Jorge Alberto Ortiz, 52) Annel Antonio Cruz Vásquez, 53) Cesar Edgardo Orellana Mendoza, 54) Edwin Reynaldo Guerrero Villeda, 55) Pedro Tabora Castillo, 56) Hauner Isaías Ríos, 57) Carlos Leonardo Cruz Dubon, 58) Walter Adalid Murcia Serrano, 59) Alberto Antonio Tenorio Lemus, 60) Oscar Irael Duarte Valle, 61) Danilo Antonio Reyes Benavides, 62) Cristhian Alberto Orellana Meléndez, 63) Víctor Manuel Vigil Navas, 64) José Antonio Morales ó Rossel Antonio Moran Rodríguez, 65) Luis Orlando Serrano Cano, 66) Naun Antonio Méndez, 67) Manuel Armando Cortes, 68) Edwin Alberto Guzmán, 69) Javier Iván Marroquín, 70) Omar Neptalí Valle Márquez, 71) Héctor Adán Meza, 72) Marvin Antonio Carballo Vásquez, 73) Eleasar Machado Figueroa, 74) José Francisco Cabrera Gomes, 75) Marcos Josué Sierra Banegas, 76) Sergio Yanel Hernández Ávila, 77) Alejandro Valentín Ramos, 78) Marco Antonio Cabrera Alvarado, 79) Gustavo Arnaldo Martínez Molina, 80) Héctor Javier Guzmán Mejía, 81) Hector Danilo Bautista Herrera, 82) Wilmer Alexander López Leiva, 83) Onix Johe Zelaya Gómez, 84) Luis Ramírez Hernández, 85) Orvil Ramírez Martínez, 86) José Miguel Garay Reyes, 87) Carlos Alberto Amaya Dubon, 88) Andrés Enrique Zepeda Romero, 89) Osman Orlando Arriaga Soto, 90) Miguel Ángel Pérez Godoy, 91) José Edgardo Álvarez Sabio, 92) Oscar Antonio Osorio ó Jesús Fiallos Ulloa, 93) Wilson Ernesto Euceda Ortiz, 94) José Oswaldo Leveron Arita ó Edy Ramón Ramírez Hernández, 95) José Adán Benítez, 96) Mayro Joaquín López Ardón, 97) Gerardo Enrique Castro García, 98) Javier Alexander Maldonado ó Augusto Cesar Portillo Andino, 99) Ixel Alfredo Medina, 100) José Luis Rodríguez Cárcamo, 101) Wilfredo Reyes, 102) Germán Daniel Corrales,

² Original petition received on July 14, 2005, p. 1. According to the 102 autopsy reports in the record of the investigation of the fire, the ages of the alleged victims ranged from 18 to 40. Original petition received on July 14, 2005. Annex 14. Case 1009/04. Folios 360-522: Autopsies. There is nothing in the case file suggesting that anyone who perished in the fire was under the age of 18.

103) Walter Yovany Banegas Sandoval, 104) Josué Ramón Hernández López, 105) José Antonio Rodríguez, 106) Nelson Rafael Ortega Martínez, and 107) Edward Omar Tabora.

13. The petitioners contend that the material facts of the present case must be viewed against the much broader general backdrop of the gang phenomenon in Honduras. The course of action that the State had opted to pursue in response to the phenomenon was reportedly law enforcement policies known as “zero tolerance”; the policies’ objective was not to treat this social problem or to rehabilitate the members of these groups, but rather to repress and wipe out gangs.

14. The petitioners assert that the national prison system is rife with serious problems. As examples, they cite the fact that the inmate capacity has been so far exceeded that the prison administration reportedly regard as habitable, places in the prison that were never meant for that purpose. They also point to the fact that the prisons are very run-down; many had been built decades ago but no improvements have been made since and they had not been properly maintained. They further contend that the General Bureau of Special Services, whose budget would otherwise go almost entirely toward covering the costs of staffing the prisons and feeding the inmates, was without funds; the prisons are not adequately staffed, but are particularly short on prison security guards and medical staff in general; they also have no re-socialization programs, as the State has virtually abandoned any effort to provide education and training within the prisons. The petitioners contend that the prison administration publicly acknowledges this situation.

15. As for the specific conditions in Cellblock 19 where the fire broke out, the petitioners reported that it was an area of less than 200 square meters, made of cinder block and roof sheeting. At the time of the fire, it was housing 183 people. It was cramped and had no natural lighting; the only door was the entrance door and a small opening for ventilation near the ceiling. The interior of the cell was covered with bunks and inmate belongings; the only area that was clear was a narrow aisle area between the beds, which was how one from one place to another. Cellblock 19 did not have a water service and water was supplied at irregular intervals between 7:00 p.m. and 4:00 a.m. On the night before the fire, there was allegedly no water supply.

16. The petitioners report and document that some months before the catastrophic fire, the directors of the San Pedro Sula Prison had sent letters to the electric power company, to the General Bureau of Special Services and to other officials alerting them to the shoddy electrical system at the prison. However, the public authorities allegedly failed to take the necessary measures. The petitioners contend that the maintenance work on the electrical wiring and cables within the prison was done by an inmate, who was unable to get into Cellblock 19 because the inmates there would not let him in. In Cellblock 19, the inmates themselves made the modifications they wanted to the Cellblock’s electrical outlets and wiring. Nowhere in the prison was anyone checking to see what electrical devices were being brought in and installed. The prison administration knew what was happening; nevertheless, no steps were taken to ensure safety at the prison.

17. The petitioners contend that the Honduran State’s international responsibility in the death of the 107 victims in the present case is the direct result of its failure to honor its duty to prevent; its negligence in failing to take the basic measures necessary to guarantee the victims’ lives and personal safety. In their original petition, the petitioners state that the principal omissions that combined to cause the fire are as follows: (a) neglect of the electrical wiring and other parts of the electrical system, as a result of which they became worn and frayed; (b) negligence in checking the condition of the electrical outlets, wiring and other parts of the electrical system, leaving it to the inmates themselves to do the necessary maintenance and checks; (c) the inefficacy of the measures to control inmates’ use of electrical devices; (d) the lack of mechanisms that would allow early intervention in the event of a fire, such as fire extinguishers or fire sprinkler systems, and (e) the lack of an emergency protocol to organize the response by police and emergency personnel.

According to the petitioners, by allowing this combination of problems to go unaddressed, the State failed to honor its consubstantial obligations as guarantors of the rights of those deprived of liberty.

18. As for the merits of the present case, the petitioners argue that the facts denounced constitute violations of the rights to life, to humane treatment, to personal liberty and the duty to properly investigate the facts denounced and make reparations to the next of kin.

19. The petitioners allege that the State violated the victims' right to life (Articles 4 and 1(1) of the Convention) by allowing the San Pedro Sula Prison to become a dangerous institution as a result of a worn and shoddy electrical system. They further contend that the State is in noncompliance with its obligation to guarantee the right to life and to make reparations for the violations. It is the petitioners' position that the reparations should include an effective investigation of the facts and compensation and psychological treatment for the next of kin of the deceased.

20. The petitioners are alleging that the State violated the victims' right to humane treatment (Articles 5(1), 5(2), 5(4), 5(6) and 1(1) of the Convention) based on the following:

- (a) By subjecting the deceased inmates to detention conditions that violated the right to humane treatment. The petitioners allege, for example, that the physical structure of Cellblock 19 was in deplorable condition; that the inmates lived in overcrowded conditions, with 183 persons confined to a space measuring 15 x 20 meters; that Cellblock 19 had no ventilation or natural lighting (with the result that inmates set up air conditioners and ventilators); that visiting was done in the inmates' beds; that sanitary and hygienic conditions were inadequate and insufficient, with no regular supply of running water; and that accused inmates were co-mingled with convicted inmates in Cellblock 19.
- (b) It is alleged that at least 45 of the young men who died were in preventive custody pending trial at the time of the fire. Under Article 5(4) of the American Convention, save in exceptional circumstances, accused inmates are to be segregated from convicted inmates. The petitioners allege further that of these 45 inmates in preventive custody, 22 were charged only with the crime of unlawful association.³
- (c) By the circumstances under which the 107 victims died –either from the burns they sustained or from smoke inhalation, which caused them particular pain and suffering, especially those inmates whose agony was prolonged by their hospitalization.
- (d) By subjecting the victims to treatment unlike the treatment given to the rest of the inmate population at the San Pedro Sula prison. The petitioners allege that one of the features of the State's policy vis-à-vis gang-related crime is to segregate gang members in prisons. As part of this segregation, the petitioners contend, inmates accused or convicted of being gang members have less access to sports facilities and educational, job-related, social and religious services.
- (e) By failing to take positive measures to ensure that sentences serve the aim of social re-adaptation set forth in the American Convention (Article 5(6)). It is alleged that the State did not give this group of inmates access to any kind of educational, vocational or recreational activity, and that the only activities to which they had access were those organized by churches. They further allege that the competent authorities never set up the technical boards required under the Law on

³ The petitioners' observations on the merits, dated April 10, 2009.

Rehabilitation of Offenders and necessary to implement the progressive treatment regime that the law establishes.

- (f) Moreover, the petitioners also allege violation of the right to humane treatment in the case of the next of kin of the 107 young men who died in the Cellblock 19 fire. They contend that those next of kin endured pain and suffering in various ways, first because of the way in which the victims died and then because of the authorities' conduct subsequent to the fire. As regards the authorities' conduct, the petitioners emphasize the way in which the victims' lifeless bodies were treated following the fire, and the disorganized and unscientific method of identifying them and then handing them over to the next of kin.

21. The petitioners also allege a violation of the right to personal liberty, set forth in Article 7 of the American Convention, in the case of the 22 alleged victims who were accused only of the crime of unlawful association and whose names follow:⁴ Andrés Enrique Zepeda, Darwin Geovany López Medina, Edwing Alberto Guzmán, Eleazar Machado Figueroa, Edgardo Alejandro Hernández, Eddy Adalberto Amaya Zepeda, Esmelin Teruel Fernández, Ixel Alfredo Medina, Jesús Aguilar Leiva, José Antonio Morales, José Antonio Rodríguez, Luis Alberto Escobar Vallecillo, Maynor Joaquín Ardón López, Marco Josué Sierra, Melvin Isaías López Recarte, Miguel Eduardo Mercado, Miguel Ángel Pérez Godoy, Mario Roberto Velásquez Dubón, Nelson Rafael Ortega Martínez, Oscar Israel Duarte Valle, Pedro Hernán Tabora Castillo and Víctor David Torres Funez. The petitioners contend that the incarceration of these 22 individuals was the result of the amendments to the grounds for incarceration in the case of the offense of "unlawful association," under which a person could be incarcerated merely for being suspected of belonging to a gang, without considering whether the person in question had actually engaged in any criminal conduct. In practice, any person might be detained arbitrarily and indiscriminately merely on the grounds of outward signs of gang membership, such as tattoos. The petitioners contend that the crime of unlawful association, being an essential element of the "zero tolerance" policies, has been regulated and enforced in such a way as to allow massive detentions of young people merely on suspicion or out of prejudice.

22. As for the alleged violations of articles 8 and 25 of the American Convention, the petitioners basically contend that the investigation that the State launched *ex officio* has been unduly protracted, riddled with irregularities and ineffective. They state that while the Director of the San Pedro Sula Prison was criminally prosecuted, the State has not yet satisfied the right that the victims' next of kin have to know the truth and has not yet punished those responsible.

23. The judicial proceedings against the Director of the San Pedro Sula Prison began on August 11, 2004, when the Public Prosecutor's Office filed a bill of indictment against him in the Criminal Court of the San Pedro Sula Judicial District. The proceedings came to a formal close on January 10, 2005, the date on which the Constitutional Chamber of the Honduran Supreme Court declared inadmissible the petition of *amparo* filed by the Public Prosecutor's Office to challenge the decision of the San Pedro Sula Appellate Court in which it upheld the lower court's dismissal of the charges against the Director of the prison.

24. Specifically, the petitioners contend that the violation of articles 8 and 25 of the American Convention is the result of the failure to conduct a proper investigation and the ineffectiveness of the domestic remedies. On the first of these points, the petitioners argue that the authorities have not pursued other possible avenues of investigation, and have instead exclusively confined themselves to establishing the possible culpability of the prison director; they have

⁴ The petitioners' observations on the merits, dated April 10, 2009.

discarded important pieces of evidence and did not take the appropriate steps to secure the scene of the crime. The petitioners are also claiming an unwarranted delay in the investigations, which have gone on for more than what can be considered a reasonable period of time. They argue that the State cannot claim the complexity of the matter under investigation, as the State has not managed to demonstrate that investigations are actually open or underway. They also assert that the procedural activity of the interested parties cannot be claimed, since on September 27, 2005, the Supreme Court denied the petition of *amparo* that the Public Prosecutor's Office filed on the victims' behalf.

25. With respect to the violations of articles 5, 8 and 25 of the Convention, to the detriment of the victims' next of kin, the petitioners submitted the following names of the 83 next of kin of 18 of the 107 inmates who died in the fire:⁵

1. José Dionicio Cerrato: María Oneyda Estrada (mother) age 46; Wilmer Noe Cerrato (brother) age 13; Ana María Cerrato (sister) age 25; Marco Tulio Euceda (brother-in-law), age 33; and Alex Enrique Cruz (nephew), age 7.
2. Henry Adalberto Regalado Suazo: Marta Elena Suazo (mother), age 44; Karla Patricia Canales (sister), age 11; Diana Carolina Canales (sister), age 17; Gustavo Adolfo Canales (brother), age 15; David Isaac Canales (brother), age 3; Gustavo Adolfo Canales (stepfather), age 53; and María Cristina Rivera (grandmother), age 79.
3. Víctor Manuel Vigil: Rosaura Navas (grandmother) age 52; Federico Vigil (grandfather), age 68; Rosalinda Vigil (sister), age 24; Heidi Liliana Medina (sister), age 20; Miguel Ángel Medina (brother), age 14; and Gustavo Alejandro Vigil (brother), age 11.
4. Edgardo Alejandro Antúnez: Olga Marina Santos (mother-in-law), age 71; Olga Estefanía Hernández Vargas (daughter), age 11; Ashlin Samantha Hernández Vargas (daughter), age 9; and Angie Vargas (stepdaughter), age 14.
5. Mayron Joaquín López Ardon: Marlen Ardon Santos (mother), age 49; Pedro Alexis Girón (stepfather), age 51; Fany Yesenia Menjivar (sister), age 13; and Cinthia Carolina Girón Ardon (sister), age 17.
6. Ángel Noe Sánchez Rivera: Eusebia Rivera (mother), age 50; José Ángel Sánchez (father), age 64; Kevin Antonio Rivera (brother), age 13; and Kensi Vanessa Rivera (sister), age 12.
7. Isidro Mejía Mejía: Tomasa Mejía (mother), age 64; Froylan Santos Mejía (brother), age 13; and Basilio Mejía (brother), age unknown.
8. Nahun Antonio Méndez Hernández: María Elena Hernández (mother), age 49; Antonio Méndez (father), age 50; Esdras Joel Méndez (brother), age 9; Juan Gabriel Méndez (brother), age 29; Darlin Melisa Méndez (sister), age 20; and Josue David Méndez (brother), age 16.
9. Héctor Danilo Bautista: Iris Banesa Molina Hernández (common law wife and principal guarantor of power of attorney), age 22; Katherine Julissa Bautista Molina (daughter), age 6; Angie Vanessa Bautista Molina (daughter), age 8; Ernestina Hernández (mother-in-law), age 52; and Isabel Molina (sister-in-law), age 26.

⁵ The petitioners' observations on the merits, dated April 10, 2009. Annex 9. List of next of kin of the deceased.

10. Ixel Medina Contreras: Silvia Contreras (mother), age 65; María de la Cruz Medina Contreras (sister), age 36; Lilian Victoria Medina Contreras (sister), age 38; and Evelyn Mareicela Hernández (common law wife), age 31.
11. Allan Antony Carrasco: Aida Rodríguez Soriano (mother), age 57; Margarito Carrasco (father), age 73; and Arlyn Karina Carrasco Arce (daughter), age 10.
12. Wilmer Alexander Leiva: Brenda Elena Leiva (mother), age 46; José Osmin Rodríguez (stepfather), age 42; Ángela Yessenia García (sister), age 13; Luis Ramón Leiva (brother), age 16; Diana Guadalupe García (sister), age 9; Wendy Lorena Leiva (sister) age 24; and Lesbia García (sister), age 19.
13. Gerson Magdiel López Paz: Doris Esperanza Paz Santos (mother), age 53; Moisés Zepeda (brother), age 20; Jonathan Uriel (brother), age 14; and Doris Gissel Zepeda Claros (sister), age 14.
14. William Antonio Reyes: Rosa Isabel Flores Peña (mother), age 53; Abencio Eleazar Reyes (father), age 58; David Reyes (brother), age 26; Gerardo Reyes (brother), age 20; and Sonia Reyes (sister), age 29.
15. Darwin Geovany López Paz: Doris Esperanza Paz Santos (mother), age 53; Moisés Zepeda (brother), age 20; Jonathan Uriel (brother), age 14; and Doris Gissel Zepeda Claros (sister), age 14.
16. David Javier Urrea: Alicia Reyes Argueta (grandmother), age 86.
17. Wilfredo Reyes: Sandra Lorena Ramos Carcamo (common law wife), age 26; Maryuri Nicolle Reyes Ramos (daughter), age 6; Andrea Michelle Reyes Ramos (daughter), age 8, and Keilyn Carina Reyes Ramos (daughter), age 10.
18. Manuel Armando Cortés: Manuel Armando Fuentes (father), age 57; Ninfa Luz Cortés (mother), age 62; Ninfa Estefany Cortés (niece), age 13; Michael Steven Cortés (nephew), age 9; Paola Nicole Cortés (daughter), age 9; Angie Dolores Cortes (son), age 8); and Erick Ariel Cortés (son), age 4.

B. The State

26. As noted in the section on the processing of the petition, in the instant case the State abstained from submitting any observations on the merits. However, the principal arguments it made in support of its position prior to the adoption of Admissibility Report No. 78/08 can be summarized as follows:

- (a) The State does not take issue with the fact that in general, the prisons in Honduras, especially those in the cities of Tegucigalpa and San Padre Sula, have structural problems. By the State's account, those problems are due to the country's shortage of human and material resources. It points out, however, that considerable investments have been made to remodel the physical structures of some prisons and to better feed inmates.
- (b) Another fact the State does not dispute is that on May 17, 2004, a fire broke out in Cellblock 19 of the San Pedro Sula Prison; the cause of the fire was the worn and shoddy condition of the electrical system, and the excessive number of electrical

devices plugged into the system, which overloaded it, whereupon it overheated and caught fire; the fire spread rapidly and claimed the lives of 107 persons. However, the State denies that any inmate was shot to death; based on the autopsy reports, none of the deceased died of a bullet wound; the shell casings found were from the shots fired off to alert the entire prison population to the fact that the cellblock was on fire.

- (c) The State reports that the person who was Director of the San Pedro Sula prison at the time of the events was prosecuted, but was not found guilty of any crime. The State also asserts that the investigations into the fire did not stop with prosecution of the former director of the prison and may continue with respect to other persons who may bear responsibility for what happened. It alleges that investigations of this type are complex, which means that they may take considerable time, even years. The State contends that no matter what, it is the obligation of the petitioners to show how the investigations are deficient and how the case has been affected by the pace of the investigations.
- (d) Specifically addressing the petitioners' claims that certain pieces of evidence were destroyed, the State argued that certain pieces of evidence or clues were thrown out in accordance with the legal procedure set forth in the Code of Criminal Procedure (Decree No. 9-99-E) and the Rules on the Handling of Clues and Evidence.
- (e) The State flatly denies any violation of Article 4 of the Convention. As for the alleged violation of Article 5, the State asserts that efforts have been made to correct the conditions of incarceration. The State contends that conditions in the prisons are due to the shortage of human and material resources that the country is experiencing; it argues that those conditions are in no way attributable to a state policy of torture or cruel, inhuman or degrading treatment of persons deprived of their liberty.

IV. PROVEN FACTS

A. The fire in Cellblock 19 and the authorities' response

27. The fire in Cellblock 19 of the San Pedro Sula Prison broke out between 1:30 and 2:00 a.m. in the early morning hours of May 17, 2004, and started in the upper left portion of the interior side of the entrance to the cellblock. At the time of the fire, the cellblock had an inmate population of 183 supposed members of the *Mara Salvatrucha* (MS-13). At 1:55 a.m. the Director of the prison called the Fire Department and National Police Headquarters, asking for assistance. While he did so, the guards on duty went in search of the warden who had the keys to the cells. At 2:05 a.m., the warden opened the locks to the first and second gates to Cellblock 19. Minutes later the fire department arrived.⁶

28. The record of the court case also contains the sworn testimony given by the inmates who survived the fire. The Commission observes that the majority of these statements are essentially in agreement on three critical points:⁷ (a) when the prison guards learned of the fire they

⁶ Original petition received on July 14, 2005, pp. 16 and 17; Annex 12. Case 1009/04. Folio 1451 and 1452: Record of the Initial Hearing. The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Folios 4 and 5: Bill of Indictment.

⁷ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Statements of: Allan Javier Bonilla (folios 202-203);

came to the main entrance to the cellblock (the second gate) and did not open it immediately; instead they were slow to open the cellblock door. Hearing the inmates' cries for help, all they did was fire their guns and shout insults at them (such as "Die, you sons of a bitch", "old dogs", "you're not human"); (b) the interior gate of the Cellblock 19 was actually opened by the inmates themselves, using cement weights they used for exercising; and (c) on the day before the fire (which happened the next day in the early morning hours) they had not been given any water provisions, so that the sink the inmates were in the habit of filling to have water to drink was empty. This was confirmed by members of the fire department, who stated that when they entered the cellblock they observed that "the only water there was for the toilets."⁸

29. The record of the court case also contains the reports of the autopsies done on the inmates who perished in the prison fire; those autopsy reports show that at least 101 of the victims died from massive inhalation of carbon monoxide (asphyxiation by suffocation).⁹ There is no evidence of any inmates wounded or killed by gunfire.

30. The petitioners supplied as evidence the testimony of Monsignor Rómulo Emiliani, Auxiliary Bishop of San Pedro Sula who, in the hours immediately following the fire, was present at the scene of the events. Monsignor Emiliani stated the following with respect to the fire and the events that followed:

ON THE MORNING OF THE TRAGIC EVENT

At 3:45 a.m. on the day of the tragedy, May 17, 2004, a police car arrived to pick me up at the bishop's residence, because something serious had happened at the prison. [...] When I arrived, I witnessed the grim spectacle: many bodies were lined up in rows, both outside the cellblock – in a walled patio which serves as the entrance way to their sleeping quarters- and inside cellblock. Accompanied by the surviving leaders of the Mara Salvatrucha, the prosecutors and the other forensic medical personnel on hand, we were identifying the bodies by the nicknames and names of the deceased. [...]

WHAT I HEARD FROM OTHER PRISONERS AND THE GUARDS' ACCOUNTS

I recall that some of the inmates in another cellblock were yelling and insulting the dead, practically saying "too bad everyone didn't die". The guards were nervous, still in shock from what had happened and several times said to me that the first thing they heard were screams from other cellblocks and smoke was spreading throughout the prison. The lights went out and everything was dark. They said that in fact, they didn't know which cellblock was in trouble, since all the inmates were begging them to open the doors. When they realized which cellblock was the scene of the tragedy, they didn't dare open the door for fear of a riot. It seems that the young men had a cement weight they use for exercising and managed to break down the door with that weight. The lock was hanging there. I tried to enter the cellblock, but the smell of the burned bodies and mattresses, the darkness and the smoke stopped me in my tracks. [...]

GIVING THE NAMES OF THE DECEASED TO THE NEXT OF KIN

Arnol Leiva Paz (folio 208); Carlos Eduardo Cerna (folios 212-215); Carlos Hernán Mejía Aguilar (folios 216-217); Carlos Roberto Archaga (folio 218); Celio Alberto Valdez (folio 219); Denis Antonio Santos (folio 224); Alexander Ramírez (folios 230-231); Samuel Amaya Rodríguez (folios 232-233); Elías Leonard Sevilla Zelaya (folio 234); Edwin Alexander Cáceres Salinas (folios 238-239); Elvis Alfredo Soto (folios 241-242); Elvis Joel Lanza Hernández (folios 243-245); Erick Noel Navarro (folio 246); Francisco Jiménez Hernández (folio 248); Franklin Geovanny Chávez Jiménez (folios 249-250); Gilberto Núñez Cruz (folios 251-252); Gustavo Olivera (folios 253-258); Javier Alejandro Pineda Orellana (folios 264-265); Javier Antonio Hernández (folios 266-268); Jesús Humberto Marcia Mendoza (folios 269-270); Jorge Ulises Marroquín Amaya (folios 271-272); José Anselmo Hernández (folios 273-274); José Antonio Rodríguez (folios 275-276); José Luis Chacón Estradas (folios 290-291); José Luis Valdez (folio 292); José Ricardo Cruz (folios 295-296); Juan Antonio Sabala (folios 297-298); and Juan Luis Iria Barahona (folios 301-302).

⁸ Original petition received on July 14, 2005. Annex 12. Case 1009/04. Folio 1458: Record of Initial Hearing.

⁹ Original petition received on July 14, 2005. Annex 14. Case 1009/04. Folios 360-522: Autopsy reports.

At 9:30 a.m. I walked out into the street where many next of kin had gathered. I gave them the list of those who had survived and were inside the prison. [...] By that time, there were some 200 people outside the prison, most of whom were relatives of the young men. They were waiting for information. At 1:00 pm. I returned and read aloud the list of those who were in the hospital. One hour later I had to read the names of the deceased; the reaction of the next of kin ranged anywhere from crying, screaming, fainting to indignation. The scene was one of pain and suffering.

THE SITUATION AT THE MORGUE

I was at the morgue for at least five days, witnessing autopsies, speaking with and consoling family members, and trying to find the fastest way to get the bodies to loved ones. The forensic physician in charge of the autopsy operation had many young physicians working for him; some were from Tegucigalpa, others from elsewhere. The idea was to get the autopsies done as quickly as possible. [...] Even so, by the third day the next of kin waiting outside were getting desperate and tried to break through the fence to get into the morgue. The problem in the identification of the bodies was comparing photographs of the deceased with their identification cards and other documents. The bodies were inside trucks with refrigerated containers, and were taken out one by one as the autopsy process moved along. The coffins were waiting to receive the bodies of the deceased.

The national government gave each family of a deceased victim 10,000 lempiras to cover the expense of moving the bodies and funerals. The money was handed over at the courthouse and at the hospital in the case of the next of kin of the injured. For many family members it was a long wait, hence their sense of desperation and the protests. Little by little the bodies were handed over to families. It is my understanding that some of the deceased -very few in fact- were in the morgue for a long time because no one came to claim the body. [...]

STRUCTURAL NEGLECT OF AN OBSOLETE SYSTEM

A fact-finding committee was appointed but no criminal blame was assigned. I believe that. [...] the electrical system was old and failed. It was unable to carry so much electric power. There was no strategy in place for evacuating the sleeping quarters in the event of a fire, nor were there sufficient fire extinguishers on scene. So that the structural neglect was of enormous proportions and caused an enormous tragedy.¹⁰

B. Causes of the fire in Cellblock 19: the shoddy electrical system. The competent authorities' awareness of the condition of the electrical system

31. The problems with the electrical system at the San Pedro Sula Prison were public knowledge, and had been brought to the authorities' attention.¹¹ Indeed, just two months before the fire in Cellblock 19, the then Director of the prison sent a letter to the Northwestern Manager of the Northern Division of the Electric Power Company to the following effect: "I am writing to request your help in trying to improve or correct the electrical system in the prison, since the one we have has "collapsed" and we run the risk of a fire, mainly on hot summer days."¹² This same message was sent, with copy to, *inter alia*, the Director General of Special Preventive Services, the

¹⁰ The petitioners' observations on the merits, dated April 10, 2009. Annex 4. Testimony of Monsignor Rómulo Emiliani. San Pedro Sula Auxiliary Bishop, founder of the "United for Life" Association to work on the rehabilitation of the gang members. It was his frequent habit to visit the gang members incarcerated in the San Pedro Sula Prison.

¹¹ Original petition received on July 14, 2005, p. 10 and Annex 9. Case 1009/04. Folios 1942: Letter that the then Director of the Prison, José Francisco Blanco Ulloa, sent to the Northwestern Manager of the Northern Division of the National Electric Power Company (ENEE) on November 14, 2003; Annex 8. Article published in *La Prensa* on Wednesday, May 19, 2004; and Annex 10. Article published in *La Prensa* on Saturday, May 22, 2004. The petitioners' submission of April 21, 2007. Annex: CONADEH. *Special Report with recommendations on the fire in the San Pedro Sula Prison on May 17, 2004*, p. 7.

¹² Original petition received on July 14, 2005. Annex 18. Case 1009/04. Folio 1925: Letter that the Head of the Prison, Elías Aceituno Canaca, sent to the Northwestern Manager of the Northern Division of the National Electric Power Company (ENEE), March 19, 2004.

Coordinator of Prosecutors, the head of the Fire Department, and the Chairman of the Security Commission.

32. This situation was precisely what caused the fire in Cellblock 19 on May 17, 2004, a fact corroborated by the various expert reports presented during the investigations pursued into case No. 1009/04. What follows is a transcription of the relevant parts of the corresponding official reports which are part of the case file:

- Report by the Fire Department of the Northwestern Region, prepared on the basis of its operations on the day of the fire:

CAUSES OF THE FIRE

The causes of the fire that happened in Cellblock 19 were as follows:

1. The entire electrical system was studied and analyzed and it was found to have been installed in an improvised fashion, using electrical wiring of different types and grade. The wires were not properly spliced together. Photographs are attached.
2. In each of the platform beds were two or three ventilators; inside the cellblock there were four mini splits that were running constantly, since the cellblock did not have proper ventilation.
3. The wiring that was connected to the mini splits located above the door that led directly into the cellblock was not the proper grade to carry the amount of energy that was flowing to the electrical device and also influenced the amount of power that the cellblock was drawing.

CONCLUSION

Given the causes enumerated above, one can conclude that this fire was caused by an overheating followed by a short circuit in the wiring that was connected to the mini splits located above the entrance door to the cellblock, which caused the material inside the mini split to melt and drop onto the curtain fabric over the entrance, cardboard boxes containing clothing and shoes, and the mattresses. The incomplete combustion that followed was caused by the poor ventilation in the cellblock, with the result that the latter was consumed in smoke, gases and high temperatures.¹³

- Opinion prepared by the technical staff of the National Electric Power Company (ENEE) under Engineer Otto Vallecillo:

FINAL CONCLUSIONS

The conditions were present for the electrical system in cellblock 19 to fail, since the installations were not properly built. However, because the protection hardware of the three load centers worked and the circuit that was unprotected did not trigger any spark in the distribution transformer, other possible causes of the fire should be explored.

SUGGESTIONS

1. Restructure and improve the prison's electrical system.
2. Provide the working logistics necessary to the personnel charged with maintaining the prison's electrical system.
3. Hire trained personnel for corrective and preventive maintenance of the San Pedro Sula prison, in coordination with the personnel currently in charge of maintenance.
4. Improve the monitoring of household appliances now installed and ban any additional domestic appliances.
5. Provide extinguishers and establish evacuation routes and procedures for staff to follow in the event of any emergencies, all in accordance with safety standards.

¹³ Original petition received on July 14, 2005. Annex 30. Case 1009/04. Folio 1813: Honduran Fire Department's Report on the Investigation of the Fire.

6. Prepare long-term plans based on statistical forecasts of the increase in the inmate population at the prison so as to be able to plan what the prison's long-term energy demands will be.¹⁴

- o Opinion prepared by Industrial Electrical Engineer Luis Alberto González Aldana at the request of the Office of the Public Prosecutor:

FINAL TECHNICAL OPINION

Given the conclusions described in part four of this technical opinion, our final opinion is as follows:

1. Due to the overload from air conditioners, air curtains and ventilators.
2. Due to the fact that the electrical installations in Cellblock 19 were unsafe.

The insulation of the cables and other insulation heated up, which caused electrical arcing fed mainly by the oxygen in the arc's environment and the presence of the aforementioned flammable materials.

The fire was fueled by clothing, mattresses and the plastic parts of the electrical appliances and by the electronic parts of the existing equipment, which triggered small explosions.

Among the materials that fed the fire were some that produce very dense, toxic smoke which was the source of the intoxication that the inmates suffered; at that hour of the morning they were probably asleep.

It is obvious in the cell that the flames were not as intense as the toxic smoke that the air conditioners (evaporators) and ventilators -which briefly continued to operate- circulated.¹⁵

33. According to statements that San Pedro Sula prison administrator Mauricio Abelardo Guardado Rivera made during the criminal investigations (Case 1009/04), the succession of directors at that penal institution were aware of the problems with the electrical system; however, the prison had little in the way of resources and a meager budget. He testified that the director is the prison official who gives the authorization for the household electrical appliances to be brought in. He also testified that the person in charge of maintaining the electrical installations was an inmate; that the inmates in Cellblock 19 would not let him enter, with the result that a reliable inventory of the number of electrical devices in that Cellblock could never be taken.¹⁶

34. For its part, the State expressly acknowledges the occurrence of the fire, its magnitude and its causes:

The State of Honduras has not denied that on May 17, 2004, at the Prison of the city of San Pedro Sula, Department of Cortés, specifically in Cellblock 19, a fire broke out that claimed

¹⁴ The petitioners' observations on the merits, dated April 10, 2009. Annex 20, CD with record of the court case in the domestic proceedings and testimony. Case 1009/04. Volume VII. At pages 1826, 1847-1848: Inspection of the Electrical System in Cellblock 19 of the San Pedro Sula Prison, conducted by technical personnel of the National Electric Power Company (ENEE) with the prosecution's authorization, pp. 1, 22-23.

¹⁵ Original petition received on July 14, 2005. Annex 30. Case 1009/04. Folios 1870, 1882, 1883 and 1886: Technical Opinion on the Fire in Cellblock No. 19 of the San Pedro Sula Prison, prepared by Engineer Luis Alberto González Aldana.

¹⁶ Original petition received on July 14, 2005. Annex 12. Case 1009/04. Folios 1455 and 1456: Record of Initial Hearing. Similarly, Ramón Nolberto García, Director of the San Pedro Sula Prison and appointed subsequent to the fire, told the newspaper *Tiempo* that the question of whether electrical devices are to be allowed to enter the prison is the responsibility of the prison's director. See, original petition received on July 14, 2005. Annex 2. Article published in *Tiempo*, Wednesday, May 19, 2004. Furthermore, in the statements made during the proceedings on the case surviving inmate Dennis Antonio Santín said that other inmates installed and manipulated the electrical installations in the prison. See: The petitioners' observations on the merits dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Folios 224 and 225: Witness statement of Dennis Antonio Santín.

the lives of one hundred seven (107) of the one hundred eighty-three (183) inmates inside. Nor has it denied that the source of the fire was the deplorable condition of the electrical system, owing to the excessive number of electrical devices connected to the system, which overloaded it. The fire that broke out started precisely at the only door leading in or out of the cellblock and spread because of the many flammable objects such as curtains, sheets, mattresses, and wardrobes that the inmates used for their physical necessities.

The flames spread rapidly, producing heavy smoke because of the flammable objects; the majority of the victims died from smoke inhalation [...] ¹⁷.

35. It is also proven that when the events of May 17, 2004 occurred, the San Pedro Sula Prison did not have the proper mechanisms to prevent and fight fires. The Director of the Prison at the time admitted as much in the witness statement he made to the DGIC [Dirección General de Investigaciones Criminales –General Bureau of Criminal Investigations]: “In the event of fire, we had no plan, since there had never been a fire. The only thing we did was to cordon off the dead zone and secure the guard station; the fire lasted approximately 30 minutes. The only alarm sounded was shots fired into the ground.” ¹⁸ As was apparent from several testimonies given by guards who were present on the scene, in practice the only instruction they had about responding to fires of this kind was to fire a warning shot. ¹⁹ In the witness statement he gave to the DGIC, prison guard Petronio Chavarría said the following: “In the event of a fire or a prison escape, the only instruction we had is the alarm; in the case of fire, we were also instructed to call the fire department.” When asked about evacuation plans in the event of fire, the prison guard answered that he was unaware of such a plan. ²⁰.

36. In their statements, the firefighters who went to the scene when the fire broke out stated that Cellblock 19 did not have extinguishers, and said that the only water there was for the toilets. ²¹ This problem was also pointed out by the prison administrator. ²² Some statements appear in the record of the initial hearing in criminal case 1009/04.

37. In the specific case of the drinking water system, the file on the investigations contains a note from Engineer Carlos Ramírez Paz to the prosecutor in the case, in which he describes the potable water system at the San Pedro Sula Prison as “inadequate and obsolete.” In his opinion, “the existing system poses a threat to the lives of the users.” In the note, the engineer recommends that hydrants be installed in order to be able to hook up fire hoses. ²³

38. The State has neither objected to nor questioned the fact that the competent authorities were aware that the electrical wiring and other parts of the electrical system in the San

¹⁷ The State’s submission, received on February 28, 2007.

¹⁸ Original petition received on July 14, 2005. Annex 13. Case 1009/04. Folio 165: Witness statement made by Elías Aceituno Canaca.

¹⁹ The petitioners’ observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Folio 171: Witness statement of Fredis Mezari García Vásquez; Folio 179: Witness statement of José Reinaldo Archaga; and Folio 186: Witness statement of Santos Evaristo Correa Gómez.

²⁰ Original petition received on July 14, 2005. Annex 13. Case 1009/04. Folio 190: Witness statement of Petronio Chavarría.

²¹ Original petition received on July 14, 2005. Annex 12. Case 1009/04. Folio 1458: Record of Initial Hearing.

²² Original petition received on July 14, 2005. Annex 12. Case 1009/04. Folio 1456: Record of Initial Hearing.

²³ The petitioners’ observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume III. Folios 1661-1662: Note that Carlos G. Ramírez Paz sent to Prosecutor Walter Menjivar. This note, dated May 20, 2004 (3 days after the fire) was sent with copy to the Director of the San Pedro Sula Prison and to the Office of the Prosecutor for Human Rights.

Pedro Sula prison were very worn and frayed and that there were no fire prevention measures or plans for handling emergencies in that prison.

C. The general situation in the San Pedro Sula Prison and detention conditions in Cellblock 19

39. The San Pedro Sula Prison is located in one of the most densely populated areas of the city, with heavy traffic.²⁴ It has 21 cellblocks (or “houses”) and an estimated inmate capacity of 1500. At the time of the fire, it was housing 2,081 inmates.²⁵

40. In its decision of April 21, 2004, the Sentence Enforcement Court of the San Pedro Sula Judicial District described the general conditions at that prison in the following terms:

At the present time, the prison serving the city of San Pedro Sula has a total inmate population of [...] 2081.

[...]

The conclusion one might draw from the investigations done by this court is that the inmates themselves control the prison and that the prison authorities have allowed this to happen by failing to properly check to ensure that weapons and explosive devices are not allowed into the prison. As a consequence, the prison population and visitors are now at risk.

[...]

[T]he problems of the San Pedro Sula prison might be summarized as follows: (1) prison overcrowding; (2) proliferation of crime; (3) control by the ‘paisa’ prison gang; (4) the lack of alternative solutions; (5) indifference on the part of the responsible authorities; (6) concentration of power in a gang; (7) lack of proper staffing proportional to the inmate population; (8) failure to classify and segregate inmates; and (9) the corruption of prison personnel.²⁶

41. After the May 17, 2004 fire, Officer Ramón Nolberto García was named the new Director of the San Pedro Sula Prison. In statements made to the newspaper *Tiempo*, he said the following:

The most complicated [prison] is the one in San Pedro Sula, because of the prison infrastructure which sits virtually in the center of the city, and the inmate population (almost two thousand). All the conditions are very different. At other prisons, the inmate population is small and the culture is different. The San Pedro Sula prison, on the other hand, looks like a marketplace; there’s too much commerce. There are people coming in and out all day long. All this makes it a difficult place to control 100%. It is the hottest prison.

[...]

It is impossible to control the trade in this prison. It can be controlled if the prison is relocated elsewhere. Right now, however, if a prison authority started to enforce checks and controls, he might trigger more deaths than happened on Monday (the day of the fire in Cellblock 19).

[...]

²⁴ Original petition received on July 14, 2005, p. 12.

²⁵ Original petition received on July 14, 2005, p. 13.

²⁶ Original petition received on July 14, 2005. Annex 16. Case 1009/04, Folio 1979: Decision of the Sentence Enforcement Judge of the San Pedro Sula Judicial District, April 21, 2004.

We currently have about 116 prison guards, although we should have at least 250 to staff two shifts.²⁷

42. As for the structure of Cellblock 19, the experts from the General Bureau of Criminal Investigations (DGIC) and other authorities who examined the scene included the following description in the autopsy reports:

Cellblock 19 is part cinder block and part brick that has been plastered and painted. The cellblock is part of the larger prison complex, but is separated from the other cellblocks. It has a perimeter wall of plastered block and metal bars on the upper portion. It has only one entrance, which is a metal gate with a metal latch.

[...]

Immediately facing the second gate is the entrance leading into the cellblock and the only access to the inmates' sleeping quarters; it is a wide space with two parallel rows of bunk beds. Each bunk bed has three tiers and each tier is able to hold five beds. The one exception is the fifth bunk bed, which is large enough to accommodate six beds per level [...] Inside are three split air conditioners; the first is in the ceiling above bunk three; the second is on the west wall, in the ceiling over the division; while the third is on the wall. It sits above a normal bed. The ceiling in the bathroom and sleeping areas is a metal structure with cross bars supporting zinc roof sheeting, which underlies the second-story floor, also made of cement.²⁸

43. At a proceeding conducted at the scene of the crime the agents and specialists from the General Bureau of Criminal Investigations found the following electrical devices inside Cellblock 19:²⁹ 62 ventilators, 2 refrigerators, 10 television sets, 2 mini splits, 3 compressors for the mini splits, 3 electric irons, 5 speakers, a set of sound equipment, 1 VHS recorder, 1 microwave, 1 blender and one electric stove.

44. In his report on the fire in Cellblock 19, the National Human Rights Commissioner observed the following about its physical condition:

CONADEH saw that so-called "House 19" was a concrete structure of some 200 square meters. It housed 183 inmates who were members of the *Mara Salvatrucha* (MS). These measurements met that each inmate had an area of 1.09 square meters, not counting the space taken up by the refrigerators and other cooling appliances, beds and other [...]

Apart from the cramped space, the cellblock had no window, which meant that natural ventilation and lighting had no way to get in; the interior was always dark; artificial lighting was the only thing possible. As for safety in the event of emergencies, this cell had only one evacuation route [...] ³⁰.

45. In their observations on the merits, the petitioners provide testimony from members of the Catholic Church's *Pastoral Penitenciaria* [Prison Ministry] who had been working at the San Pedro Sula Prison on a steady basis for years. This was testimony not heard in the judicial inquiries

²⁷ Original petition received on July 14, 2005. Annex 2. Article published in *Tiempo*, Wednesday, May 19, 2004.

²⁸ Original petition received on July 14, 2005. Annex 17. Case 1009/04, Folios 56-58: DGIC. Autopsy Report, Report No. 659-2004.

²⁹ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume VII. Folios 1809 and 1810: Annex to Report No. 659-2004.

³⁰The petitioners' submission of April 21, 2007. Annex: CONADEH. *Special Report with recommendations on the fire in the San Pedro Sula Prison on May 17, 2004*, pp. 7 and 8.

and was compiled directly by the petitioners themselves. The following are passages of the testimony that describe the general conditions at the San Pedro Sula Prison and in Cellblock 19 specifically:

1. Testimony of Virginia Alfaro Calvo:

The cellblock in which the fire broke out is part of the prison. The physical conditions are deplorable and fall far short of the minimum conditions that international standards set.

The interior of the prison is a combination of 21 cellblocks, or "houses" as they are called. The prison's estimated total capacity is one thousand, although the prison had 2,081 inmates at the time of the fire. [...] Cellblock [No. 19] has a perimeter wall made of plastered block, with metallic bars on the upper frontal portion. The cellblock has just one entrance with a metal gate; its latch is made of the same material as the gate. [...] Inside, there are no openings for ventilation: just one door and one window. There is no lighting or ventilation. When one enters the cellblock, which is always dark –even by day-, the heat inside is insufferable, especially before the Cellblock had air conditioners. The odor is unpleasant, partly because of the overcrowding and partly because of the substances being smoked (tobacco, marijuana ...). The beds are in disarray and the curtains appear to be an attempt to intimidate [...]

As for the health and hygiene, and specifically the potable water system, it is, in my view, inadequate as it functions by way of a cistern and requires a pump. The system they have even now [June 2008] does not have the capacity to meet the existing demand. In Cellblock 19, like elsewhere in the prison, the water pressure is higher at certain times of the night. So the basins and buckets are filled as a way of storing the water that will be used during the day. Water is one of the privileged items in the prison system and is even sold by the power groups. [...]

The electrical system in the San Pedro Sula Prison is by definition unsafe and does not have the capacity for the existing demand. Temporary and improvised switches have been rigged, with no one overseeing safety concerns [...] Again, this negligence is a function of privileges; there is no regulation of the increased demand; while electrical devices are brought in to be used by the inmates, the electrical system does not have the most rudimentary safety features. This hasn't changed since the fire. The inmates continue to use as much energy as before and continue to install switches.

The physical conditions of the Prison are just as unsafe and improvised. It has neither the space nor the infrastructure to house 2000 inmates, much less to do so in a manner that guarantees the safety of the various groups. [...] The overcrowding is still worse among the gang population, as they are housed in improvised places to segregate them, supposedly for their safety.

The lack of security inside the prison is disturbing, as some of the inmates have firearms like pistols and even military weaponry like grenades. There are makeshift weapons as well. [...] From the standpoint of security, it is also disturbing that the prison guards do not have anti-riot equipment and nonlethal weapons. Another security problem is containing or repelling outbreaks of violence with lethal weapons, as it imperils the safety of the inmate population and visitors, some of whom may be children.

[...]

At the San Pedro Sula Prison, the State does not conduct any educational program or activity. It is the Catholic Church that runs a primary school, a high school, courses in English, vocational training courses [...] For gang members, access to these services is virtually impossible, as they are confined to enclosed areas and are never allowed out into the common areas.

[...]

As happens in the area of education, health services are organized to treat the general prison population. For security reasons, gang members are not allowed free access to the prison center; their segregation obviated the need to organize health services for inmates thus segregated. [...] The logistics become even more complicated when the inmate needs to go to the hospital for specialized treatment.³¹

2. Testimony of Violeta María Discúa:

In terms of physical conditions, the infrastructure of the San Pedro Sula Prison was already in deplorable condition and entirely inadequate, but the section for the gang members was even worse. The conditions in the two sections [where the members of Mara 18 and MS-13 are held] were extremely unhygienic. The unpainted cement brick walls were humid and damp; the patio was also dirty. The odor everywhere was terrible. The inmates lived in overcrowded conditions; they went shirtless and shoeless at all times. The area out front is for moving about; from what I could see it is about half the size of a basketball court. This was all the space that the inmates had to move around in. [...]

[...] The segregation and the bad conditions in the sections where gang members are held are reflected in the mood among these inmates, which is, comparatively speaking, more somber and depressed.³²

3. Testimony of Isis Gricelda Perdomo Zelaya:

[T]he memories I have of the section where the MS members are held is that they did not participate in the activities that the rest of the inmate population had access to. As I recall, they spoke with us through a door with bars; I saw that they had a structure that was used as a patio, where they received visitors and where they took walks; in the background I could get a glimpse of the sleeping quarters. It was a long, enclosed space. The lighting could not have been natural lighting. Also, there was not enough ventilation. It was apparent that this cellblock did not have playing courts or recreation areas.³³

46. The petitioners also supplied testimony about conditions in Cellblock 19, given by relatives of inmates who died in the fire. Their statements are in agreement on the following points:³⁴ (a) Cellblock 19 was basically a small concrete structure with no ventilation or natural lighting; (b) due to the overbearing heat and the dampness within the Cellblock the inmates had to have fans; (c) the Cellblock did not have running water, as water was supplied only for a number of hours each day; the water supply was sometimes irregular; (d) the toilets had to be filled using buckets; there were no sinks or showers for the inmates to wash themselves; (e) inmates were not provided with cleaning items, which had to be provided by relatives; (f) the atmosphere in the cellblock was unwholesome and unhealthy, as it was plagued with insects; the conditions were so bad that the inmates would develop skin conditions like fungi; (g) the inmates were not given proper

³¹ The petitioners' observations on the merits, dated April 10, 2009. Annex 1. Testimony of Missionary Virginia Alfaro Calvo, a Vincentian lay missionary on the Prison Ministry Team of the Archdiocese of San Pedro Sula. She has been doing ministry work in the San Pedro Sula Prison every day since 1998.

³² The petitioners' observations on the merits, dated April 10, 2009. Annex 2. Testimony of Violeta María Discúa. From 2000 to 2004 she worked as a journalist for the Catholic weekly *FIDES* and, in her activities, regularly covered events that members of the Prison Ministry were conducting at the San Pedro Sula Prison.

³³ The petitioners' observations on the merits, dated April 10, 2009. Annex 5. Testimony of Isis Gricelda Perdomo Zelaya. Member of the Prison Ministry working in the legal aid area.

³⁴ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Recordings of the interviews done with: Abencio Reyes, Doris Esperanza Paz, Aida Rodríguez, María de Estrada, Olga Marina Santos, Marlen Santos, Marta Elena Suazo, María Cristina Cruz, Manuel Armando Fuentes and Brenda Elena Leyva.

medical treatment and prison guards routinely ignored inmates' requests for treatment; (h) the food the prison served the inmates had often gone bad; (i) every time prison guards conducted searches or inspections in the cellblock, they robbed or destroyed the inmates' personal belongings, which the relatives had often gone to great pains to provide; (j) the posture of the prison guards vis-à-vis the inmates was one of threat and hostility; (k) the State did not offer any kind of instructive, vocational or recreational activity and the only such activities available to the inmates were those provided by churches; (l) there was no privacy in the cellblock for family visits; even conjugal visits were inside the cellblock, on the very beds where the inmates slept. Some of the relatives interviewed were certain that the inmates were at times subjected to group punishments, such as being made to stand out in the rain or the sun.³⁵

47. The Inter-American Commission observes that the facts that are the subject of this report –the fire in Cellblock 19 and the circumstances surrounding it- were not an isolated event; instead, it was a direct consequence of the structural problems in the Honduran prison system. These problems have been singled out by national institutions, by the Office of the National Commissioner for Human Rights and by the Inter-institutional Commission for Prison Reform, and by United Nations human rights bodies such as the Human Rights Committee³⁶ and the Working Group on Arbitrary Detentions.³⁷

48. In reference to the structural problems, the Inter-institutional Commission for Prison Reform observed the following: "At the present time the national prisons are overpopulated, causing overcrowding, unhealthy conditions, contamination, disagreements, antagonism, confrontations, promiscuity and riots."³⁸ In the decision mentioned earlier, the Sentence Enforcement Court of the San Pedro Sula Judicial District wrote the following about the general situation of the prison system:

The entire prison system in our country is in danger of collapsing because inside the physical facilities, they do not have what they need to control the prison population. [...]

Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment. The conditions in our prison system amount to just that, and are not in compliance with that convention. The face we put forward hardly looks HUMAN.³⁹

49. Throughout this process, the State has neither objected to nor questioned the information supplied by the petitioners in connection with the detention conditions in Cellblock 19. Nor has it disproved the allegations regarding the failure to segregate convicted inmates from

³⁵ See: The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Recordings of the interviews with: Abencio Reyes and Brenda Elena Leyva.

³⁶ UN. Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee. Honduras. December 13, 2006. CCPR/C/HND/CO/1. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/46/PDF/G0645946.pdf?OpenElement>

³⁷ UN. Report of the Working Group on Arbitrary Detentions. Addendum. Mission to Honduras (May 23-31, 2006), A/HRC/4/40/Add.4. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/152/64/PDF/G0615264.pdf?OpenElement>

³⁸ Original petition received on July 14, 2005. Annex I. Report on the prison system in Honduras, issued by the Inter-institutional Commission for Prison Reform, p. 30. The Inter-institutional Commission for Prison Reform was appointed by presidential mandate in April 2003, in the wake of a massacre at the "El Porvenir" Prison Farm. Its mandate was to examine the prison system and make recommendations.

³⁹ Original petition received on July 14, 2005. Annex 16. Case 1009/04, Folio 1979: Decision of the Sentence Enforcement Judge of the San Pedro Sula Judicial District, April 21, 2004.

accused inmates in preventive custody. To the contrary, it largely acknowledges the allegations when it asserts the following:

The State does not contest the fact that the prisons in Honduras, especially those in the cities of Tegucigalpa and San Pedro Sula, are in crisis, owing to the high number of inmates incarcerated in the various institutions, which in many cases exceeds the number they were designed to hold. Nor does the State dispute the fact that in many of these prisons, the electrical system, potable water supply system, sanitary system and others are completely nonfunctional. [...]

[T]he State of Honduras does not dispute the fact that the conditions at the prisons with the largest inmate populations are not what they should be and are not befitting the dignity of the human person. However, we have also told the Commission of the efforts the State is making to correct this situation, which can largely be blamed on a shortage of resources [...] ⁴⁰.

50. One of the factors exacerbating the situation in the prison system is the increase in the degree of overpopulation triggered by the massive arrests conducted as a consequence of the amendments to Article 332 of the Penal Code.⁴¹ According to the initial report issued by the United Nations Human Rights Committee –which was based on information that the State itself supplied– the total capacity of the 24 prisons in the country is 8,280; however, as of 2004, the inmate population was 10,931, a figure that had risen to 11,723 by 2008.⁴² Thus, judging from information provided, the penal reforms adopted as part of the “zero tolerance” policies have had direct consequences on the general conditions in prisons, especially the overpopulation and overcrowding in those establishments to which persons accused of belonging to a gang are sent.

D. The judicial process in Honduran courts

51. The first investigative proceedings into the events began on the very day the fire occurred, Monday, May 17, 2004. The criminal case began on August 11, 2004, the day on which the Prosecutor General of the Republic brought an indictment against Mr. Elías Aceituno Canaca, Director of the San Pedro Sula Prison at the time of the fire, charging him with manslaughter (in the death of the deceased inmates) and dereliction of duty, and thereby instituting case No. 1009-04.⁴³

⁴⁰ The State’s response, received on February 28, 2007.

⁴¹ The petitioners’ submissions on the merits, dated April 10, 2009. Annex 8. Andino Mencia, Tomás. *Mano Suave y Mano Dura en Honduras*. [A Soft Touch and a Hard Hand in Honduras] Lecture delivered at the 1st Central American Congress on Youth, Security and Justice. Antigua, Guatemala, March 15 and 16, 2008, p. 33; OAS, Department of Public Security, *Definition and Classification of Gangs – Annex VI. Honduras Report*, p. 3. Available at: <http://www.oas.org/dsp/documentos/pandillas/AnexoVI.Honduras.pdf>; Petitioners’ submissions, dated April 21, 2007. Annex: CONADEH. *Special Report with recommendations on the fire in the San Pedro Sula Prison on May 17, 2004*, p. 25.

⁴² UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Initial Reports Due in 2008. Honduras, September 9, 2008. CAT/C/HND/1, paragraph 223. Available at: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.HND.1.pdf>

⁴³ The petitioners’ submissions on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Folios 1-16: Bill of indictment against Elías Aceituno Canaca.

52. On August 12, 2004, a hearing was held to allow the accused to enter his plea. The court ordered the substitute preventive measure of judicial detention, whereby Mr. Elías Aceituno Canaca was to report to the judge every fifteen days and was ordered not to leave the country.⁴⁴

53. On September 1, 2004, the Judge of the San Pedro Sula Judicial District dismissed the case against Mr. Elías A. Canaca; in his ruling the judge declared that the prosecution's bill of indictment charging the defendant with manslaughter and dereliction of duty was dismissed. The judge hearing the case based his decision on the following observations:

[N]one of the evidence introduced by the prosecution is sufficient to prove beyond a reasonable doubt that **Elías Aceituno Canaca** is responsible for the "**Wear and tear in the electrical installations in the prison, which like all material exposed to the inexorable march of time, has undergone the natural and understandable wear and tear.**" This is the inference from all the evidence offered by the prosecution; this is the final conclusion to which this supervisory judge has arrived: we cannot blame the person who was in charge of the prison's administration at the time for the wear and tear to the electrical system; we cannot speak of omissions since the defense has produced overwhelming and very solid evidence tearing apart the case brought by the Public Prosecutor's Office. The defense produced the memorandum that the defendant, **Elías Aceituno Canaca**, sent to the Manager of the National Electric Power Company [...], to the Public Prosecutor's Office which, under Article 16 of its statute, is responsible for monitoring prison conditions, to the Fire Department, and to this court, even though the court does not have the authority to be able to find a solution. There are other institutions that could have and should have responded to the defendant's request in order to prevent this fire. The National Electric Power Company, for example, was alerted on March 22 of this year, far enough in advance to have prevented the situation

[...]

On the subject of the crime of omission, there is a duty to prevent an outcome. In this regard, according to everything said at this hearing, the conclusion is that the defendant, **Elías Aceituno Canaca**, was always diligent in his function as guarantor, as he has credibly established that his intention was to have the necessary measures taken to repair the prison's electrical system. The record shows who the proper authorities were, although no tangible evidence has been produced to show their commitment to find a concrete solution [...]

[T]he burden of proof thus becomes the burden of disproof: the technical opinions, the testimony proposed, the prosecution's own bill of indictment show that defendant **Elías Aceituno Canaca** was the true guardian of legal rights and obligations; hence, it makes no sense to blame these events on a simple citizen who did everything he could under the law and performed his duty in an effort to prevent this unfortunate outcome.⁴⁵ (The underlining and bold are in the original).

54. On September 6, 2004, the Public Prosecutor's Office filed an appeal challenging the ruling by the Judge of the San Pedro Sula Judicial District which had ordered the case against Mr. Elías Canaca dismissed once and for all.⁴⁶ On September 22, 2004, the corresponding records were sent to the Appellate Court of the San Pedro Sula Judicial District.⁴⁷

⁴⁴ The petitioners' submissions on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume IV. Folios 1431-1435: Record of the plea that the accused Elías Aceituno Canaca entered.

⁴⁵ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume VII. Folios 1982-1985: Definitive dismissal.

⁴⁶ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume VII. Folios 1986-1991: Appeal entered by the Public Prosecutor's Office.

⁴⁷ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume VII. Folio 2002: For the record.

55. On November 22, 2004, the San Pedro Sula Appellate Court dismissed the appeal filed by the Public Prosecutor's Office and upheld the dismissal of the charges against Mr. Elías Canaca. The appellate court basically agreed with the lower-court's findings. In its ruling, it wrote that:

[W]e understand that the function of the accused, Mr. ELIAS ACEITUNO CANACA, was to protect the safety of the inmates [...] However, in our view, his performance of that function was limited by his subordination to his superiors, who in fact had the authority to earmark the budgetary funds necessary to put a stop to a source of latent danger, of which all the authorities in this branch were aware: i.e., the danger posed by the deplorable state of the electrical installations at the San Pedro Sula Prison.

[...]

The record also proves that the accused was not the cause of the dangerous situation at the Prison, specifically in Cellblock 19. When he became Director of the prison, the air conditioners and other electrical devices in that Cellblock had already been brought in. Nothing in the record suggests that Mr. Elías Canaca gave his authorization to allow additional devices to be brought into the prison.⁴⁸

56. To challenge the Appellate Court's decision, the Public Prosecutor's Office filed a petition of *amparo* with the Constitutional Chamber of the Supreme Court, which declared the petition inadmissible in a decision dated January 10, 2005.⁴⁹

57. No information has been received from the State –nor does the record suggest- that subsequent to this petition of *amparo* any further progress was made in the investigations into the May 17, 2004 fire in Cellblock 19. The Commission has no information to the effect that other lines of investigation were pursued or that authorities or civil servants other than then Director Elías Aceituno Canaca may be held accountable under either criminal or administrative law or may face disciplinary sanctions.

V. THE LAW

A. Preliminary observations: the State as guarantor of those deprived of liberty

58. As the basis of the international obligations undertaken by the States parties, Article 1(1) of the American Convention on Human Rights provides that the States parties “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 [...].” However, these general obligations to *respect* and *to ensure*, which are binding upon the State for all persons, demand from the State an even greater degree of commitment vis-à-vis persons who are vulnerable or at risk, as in the case of persons deprived of their liberty and who are under the State's control for the duration of their detention or imprisonment. Therefore, when the State detains someone, it becomes immediately responsible for that person's life, personal integrity and, ultimately, all those rights that are not restricted by the very act of depriving one of one's liberty. Thus, the State becomes the *guarantor* of the rights of persons deprived of liberty.

⁴⁸ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume VII. Folios 2003-2005: Certification.

⁴⁹ The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Document called: Appeal.

59. The State's position as guarantor is the basis for all those measures that, under international human rights law, States must effectively take to respect and ensure the rights of persons deprived of liberty.⁵⁰

60. In the case of *Neira Alegría et al.*, the Inter-American Court of Human Rights (hereinafter "the Court") wrote that "every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners."⁵¹ Similarly, the provisional measures ordered in the *Matter of the Urso Branco Prison*, the Court held that "[i]n light of the responsibility of the State to adopt security measures to protect persons who are under its jurisdiction, the Court deems that this duty is more evident with respect to persons detained in a State detention center."⁵² In addressing the fact that persons in detention are subordinate to the apparatus of the State, in the *Bulacio case* the Court wrote that "State authorities exercise total control over persons under their custody. The way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."⁵³

61. Later, in the case of the "*Juvenile Reeducation Institute*," the Court elaborated upon this concept:

The State has a special role to play as guarantor of the rights of those deprived of their freedom, as the prison authorities exercise heavy control or command over the persons in their custody. So there is a special relationship and interaction of subordination between the person deprived of his liberty and the State; typically the State can be rigorous in regulating what the prisoner's rights and obligations are, and determines what the circumstances of the internment will be; the inmate is prevented from satisfying, on his own, certain basic needs that are essential if one is to live with dignity..

Given this unique relationship and interaction of subordination between an inmate and the State, the latter must undertake a number of special responsibilities and initiatives to ensure that persons deprived of their liberty have the conditions necessary to live with dignity and to enable them to enjoy those rights that may not be restricted under any circumstances or those whose restriction is not a necessary consequence of their deprivation of liberty and is, therefore, impermissible. Otherwise, deprivation of liberty would effectively strip the inmate of all his rights, which is unacceptable.⁵⁴

62. More than a decade ago, the Inter-American Commission wrote the following in its Report No. 41/99 on the merits of the Case of the *Minors in Detention*:

⁵⁰ IACHR, Report on Citizen Security and Human Rights, approved December 31, 2009, paragraph 151; IACHR, Special Report on the Human Rights Situation at the Challapalca Prison in Peru, approved October 9, 2003, paragraph 113.

⁵¹ I/A C., *Case of Neira Alegría et al. v. Peru*. Judgment of January 19, 1995. Series C No. 20, paragraph 60. A holding reiterated in: I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 195; I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000. Series C No. 68, paragraph 78; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraph 87; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, paragraph 165; and I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 126.

⁵² I/A Court H.R., Provisional Measures in the Matter of the Urso Branco Prison. Brazil. Order of the Inter-American Court of Human Rights, June 18, 2002. *Consideranda* 8.

⁵³ I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 126.

⁵⁴ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraphs 152 and 153.

[T]he State, by depriving a person of his liberty, places itself in the unique position of guarantor of his right to life and to humane treatment. When it detains an individual, the State introduces that individual into a "total institution"--such as a prison--where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established regimen is one of absolute control, a loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights⁵⁵. (emphasis added).

63. This specific and material commitment implies, *inter alia*, the adoption of concrete measures to prevent and react to emergencies like fires. The State, being responsible for prisons, has a specific obligation to maintain and preserve its electrical installations in such a way that they pose no threat to anyone (either inmates or administrative, judicial, or security personnel, visitors and other persons who frequent the prisons). The State must also ensure that prisons have early warning systems to detect threats and proper equipment to react to emergencies of this kind. Furthermore, prison personnel must be trained in evacuation procedures, first aid and how to respond to events of this type.

64. The *jurisprudence constante* of the Inter-American Court is that given the State's international obligation to guarantee to all persons subject to its jurisdiction the free and full exercise of their human rights, the State must design and enforce prison policies intended to prevent crisis situations.⁵⁶ The State's obligation to treat persons deprived of liberty with the respect that human dignity demands, requires reasonable measures to prevent situations that may violate protected rights.⁵⁷

65. The Commission deems that the State's exercise of its role as *guarantor* of the rights of persons deprived of liberty is a complex one in which the areas of competence of various state institutions converge. These range from the executive and legislative bodies charged with devising prison policies and enacting the ordinances necessary to implement those policies, to mid-level institutions charged with running prisons, and the appointed authorities at the prisons who have immediate responsibilities for administering a prison's routine affairs. The judicial branch of government also plays an important role through the sentence-enforcement and supervisory judges, who monitor for the lawfulness of the detention and the conditions under which detainees are held.

B. Right to life and the right to humane treatment (articles 4 and 5 of the American Convention in conjunction with Article 1(1) thereof)

66. Article 4(1) of the American Convention provides that:

⁵⁵ IACHR, Report No. 41/99, Merits, Minors in Detention, Honduras, March 10, 1999, paragraph 135.

⁵⁶ I/A Court H.R., Provisional Measures in the Matter of the Urso Branco Prison. Brazil. Order of the Inter-American Court of Human Rights, April 22, 2004, *Consideranda* 11; I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 178; I/A Court H.R., Provisional Measures in the Matter of the Monagas Judicial Confinement Center ("La Pica") regarding Venezuela, Order of the President of the Inter-American Court of Human Rights, dated January 13, 2006, *Consideranda* 15; I/A Court H.R., Provisional Measures in the Matter of the Yare I and Yare II Capital Region Penitentiary Center (Yare Prison) regarding Venezuela, Order of the President of the Inter-American Court of Human Rights, March 30, 2006, *Consideranda* 18; I/A Court H.R., Provisional Measures in the Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo regarding Brazil. Order of the President of the Inter-American Court of Human Rights of July 28, 2006, *Consideranda* 18.

⁵⁷ I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 118.

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

67. The pertinent paragraphs of Article 5 read as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
[...]
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
[...]
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

1. With respect to the persons who perished in the May 17, 2004 fire in Cellblock 19 of the San Pedro Sula Prison

68. The *jurisprudence constante* of the Inter-American Court is that the right to life is a fundamental human right the full exercise of which is a condition *sine qua non* for the enjoyment of all other human rights.⁵⁸ The Court has held that States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.⁵⁹ As the Court wrote, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).⁶⁰

69. Time and time again the Inter-American Court has held that compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, not only presupposes that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the State adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under its jurisdiction.⁶¹ This active protection of the right to life by the State involves not just legislators, but all State institutions and those who must protect security, both its police forces and its armed forces.⁶² As guarantor of this right, the State must prevent those situations that might lead, by action or omission, to suppression of the inviolability of the right to life.⁶³

⁵⁸ I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 78; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

⁵⁹ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

⁶⁰ I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 79; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 83.

⁶¹ I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 80; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 144.

⁶² I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, paragraph 110.

⁶³ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, paragraph 111.

70. On the subject of the right to humane treatment, the Court has linked the right protected under Article 5 with Article 27 of the Convention where it wrote that the right to humane treatment is of such importance that the American Convention protects it by specifically prohibiting, *inter alia*, torture and cruel, inhuman, or degrading punishment or treatment; it also lists the right to humane treatment among those non-derogable rights that may not be suspended during states of emergency.⁶⁴

71. The right to life and the right to humane treatment require not only that the State respect them (negative obligation) but also that the State adopt all appropriate measures to protect and preserve them (positive obligation), in furtherance of the general obligation that the State undertakes in Article 1(1) of the Convention.⁶⁵

72. The Inter-American Commission finds that there is sufficient evidence to show that the death of the 107 victims in the instant case was not the result of a fortuitous and unpredictable event; instead, it was the result of a long series of omissions on the part of State authorities in fulfilling their obligations to ensure a safe and healthy environment for the persons deprived of liberty in Cellblock 19. The general conditions at the San Pedro Sula Prison; the specific detention conditions in Cellblock 19; the failure to control the inflow of electrical devices and appliances in Cellblock 19; the absence of fire extinguishers; the indefensible lack of a contingency policy or plan and the failure to train the prison staff to respond to incidents of this kind, constitute a confluence of circumstances that made the death of these 107 persons anything but fortuitous; instead, it was predictable and preventable, which made the State internationally responsible.

73. The Commission observes that the State's negligence in preventing the fire that broke out on May 17, 2004 in the San Pedro Sula Prison is obvious. It has been established, and admitted by the State itself, that the fire was caused by a short circuit triggered by the excessive number of electrical devices in Cellblock 19, which exceeded the load capacity of the already worn electrical wiring in the cellblock. The Commission deems that inasmuch as the State is guarantor of the rights of persons in its custody, its duty was to effectively police the influx of devices of this kind into the prison and regulate their possession by inmates by technical standards and in an organized way, not the haphazard way it was done in the instant case.

74. Another consideration for the Commission is why the inmates in Cellblock 19 felt compelled to plug in so many fans and air conditioners, which was that the cellblock lacked proper ventilation and was built in such a way that the environment inside was one of suffocating heat.

75. Another factor well documented by the petitioners and not contested by the State was that authorities were fully aware of the general condition of the San Pedro Sula Penitentiary, and specifically the conditions in Cellblock 19. Indeed, the conditions at the prison were public knowledge. Therefore, although it had prior knowledge of the situation described here and had on a number of occasions been alerted to the problems, the State failed to undertake the measures that it was obligated to take to prevent fire and to control a fire if it broke out.

⁶⁴ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 157.

⁶⁵ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 158; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paragraph 129; I/A Court H.R., *Case of the 19 Tradesmen v. Colombia*. Judgment of July 5, 2004. Series C No. 109, paragraph 153; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paragraph 153.

76. Thus, the State incurred international responsibility by its failure to ensure, by preventive action, that the fire in Cellblock 19 would never happen. This, irrespective of any individual blame that may attach to those whose immediate duty under the law was to prevent these deaths from happening.

77. The Commission considers that the fire that broke out in Cellblock 19 of the San Pedro Sula Prison on May 17, 2004, was the result of a series of egregious omissions committed by various authorities consciously and over a long period of time. It is thus established that the State, guarantor of the life and personal integrity of the inmates, exposed them to latent peril that resulted in the death of 107 of the 183 persons deprived of liberty in Cellblock 19. The Honduran State has thus incurred international responsibility for violation of Article 4(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the 107 persons named in paragraph 12 of this report.

78. As for humane treatment, the right to be treated with the respect that human dignity demands is part of the core of non-derogable rights that cannot be suspended in time of war, public danger or other emergency that threatens the independence or security of a State Party.⁶⁶ Under Article 5(2) of the American Convention, persons deprived of liberty have the same right to live in detention conditions that are compatible with their human dignity.

79. In this regard, the Human Rights Committee of the International Covenant on Civil and Political Rights, in its General Comment No. 21, said the following:

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.⁶⁷

80. The Inter-American Commission observes that the OAS Member States recognized the principle of humane treatment for those deprived of liberty as far back as the American Declaration of the Rights and Duties of Man, adopted in 1948. Article XXV provides that "Every individual who has been deprived of his liberty has the right to [...] humane treatment during the time he is in custody." This principle requiring humane treatment of persons deprived of liberty, which is recognized in a number of universal and inter-American instruments –binding to varying degrees- over the course of sixty years, was echoed by the Commission in its document titled *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, in which humane treatment is a fundamental principle.⁶⁸

⁶⁶ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraph 85; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, paragraph 119; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 274; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, paragraph 126; I/A Court H.R., *Case of Servellón García et al.* Judgment of September 21, 2006. Series C No. 152, paragraph 97.

⁶⁷ UN. General Comment No. 21 of the Human Rights Committee, April 10, 1992. A/47/40(SUPP), paragraph 3.

⁶⁸ Document the Inter-American Commission approved at its 131st session, held March 3 to 14, 2008. Principle I: Humane Treatment.

81. The petitioners allege that the way in which the 107 victims in the instant case died is in itself a violation of the right to humane treatment. They argue that the victims' death was not instantaneous; instead it was a death of prolonged suffering and agony that began when the fire broke out in Cellblock 19, until the doors that kept them locked inside were finally opened. During that period, they likely inhaled toxic gases released by the materials on fire, gradually choked to death while being burned, sensing the smell of the burned flesh of the other inmates already engulfed in flames, while they watched helplessly as the prison authorities did not know what to do to react to the fire. The petitioners argue that the 107 people who died did so under circumstances that caused them terrible pain and suffering, particularly those whose agony went on for the weeks or even months spent in hospital.⁶⁹ The State did not refute these assertions.

82. The Commission observes that based on the information in the record of the court inquiry, specifically the bill of indictment and the record of the initial hearing, approximately 30 minutes were said to have passed between the time the fire broke and the time Cellblock 19 was evacuated.⁷⁰ It also observes that according to the autopsy reports in the record of the court inquiry, at least 100 of the inmates who died in the fire were severely burned.⁷¹ In some cases, like that of Hauner Isaiás Ríos and José López Hernández, the burns covered, respectively, 75% and 80% of their bodies.⁷² Indeed, most of the autopsy reports list the death as "a violent death."⁷³

83. These facts suggest that the victims who perished in the May 17, 2004 fire experienced a traumatic and painful death in that fire, especially those who succumbed to their burns in hospitals. The suffering and pain of the burn victims have to be taken into account: both those who burned to death immediately in the fire, and those who sustained fatal burns that ultimately claimed their lives in the days that followed. Therefore, given the intensity, duration and particular circumstances of their death,⁷⁴ the Commission considers that the manner in which the alleged victims died constituted a violation of the right to humane treatment that is incompatible with the respect that human dignity demands.

84. It has also been established that the inmates incarcerated in Cellblock 19 endured many of the conditions that both the Inter-American Commission and the Inter-American Court have described as constituting cruel, inhuman and degrading treatment. Cellblock 19 was a place measuring just 15 by 20 meters, but housed 183 people; it had neither ventilation (except for a small place in the roof where air was able to get in) nor natural lighting; it had only four toilets, but no sinks or showers; it was a hot, humid and unhealthy place, with no area where inmates could receive visitors, not even for conjugal visits, which had to be on the inmates' beds. Inmates in Cellblock 19 had no access to sports areas. They had no regular water supply and their diet was

⁶⁹ Original petition received on July 14, 2005, p. 36. The petitioners' observations on the merits, dated April 10, 2009.

⁷⁰ Original petition received on July 14, 2005, pp. 16 and 17; Annex 12. Case 1009/04. Folio 1451 and 1452: Record of Initial Hearing. The petitioners' observations on the merits, dated April 10, 2009. Annex 20. CD with the record of the domestic court proceedings in the case and testimony. Case 1009/04. Volume I. Folios 4 and 5: Bill of Indictment.

⁷¹ Original petition received on July 14, 2005. Annex 14. Case 1009/04. Folios 360-522: Autopsy reports.

⁷² Original petition received on July 14, 2005. Annex 14. Case 1009/04. Folios 436 and 521: Autopsy reports.

⁷³ Original petition received on July 14, 2005. Annex 14. Case 1009/04. Folios: 362, 372, 374, 379, 383, 384, 392, 396, 405, 408, 411, 413, 415, 418, 419, 424, 426, 427, 430, 432, 434, 442, 444, 449, 452, 455, 460, 462, 464, 466, 469, 471, 473, 475, 478, 480, 482, 485, 487, 491, 494, 496, 498, 500, 502, 506, 508, 510, 512, 516, 519 and 521. Autopsy reports, See *Conclusions* section in each of those reports.

⁷⁴ As mentioned in the section on *Proven Facts* (see paragraph XX), a number of witnesses testified that the prison guards were slow in opening the gate leading into Cellblock 19; once there, rather than open the door immediately the guards allegedly began hurling insults and shouting abuses at the inmates locked inside. They did not react with the efficiency and speed that an emergency of this kind demands to prevent 107 people from dying.

poor. They had very limited access to the very modest health services that the prison offered. Accused inmates were not segregated from convicted inmates.

85. In building its case law, the Inter-American Court has developed a number of standards regarding detention conditions that constitute violations of articles 5(1) and 5(2) of the American Convention. It has established that the concurrence of certain circumstances may constitute cruel, inhuman or degrading treatment, as for example:⁷⁵ the lack of adequate infrastructure to house the persons detained; confinement in overcrowded conditions; confinement in a cell with no ventilation or natural lighting; confinement in unhealthy cells, without proper medical attention, without inmate segregation (as between adults and children, or between convicted and accused inmates); without adequate sanitary services; with meager food of poor quality; with few opportunities for exercise; with no educational or sports programs; or with very little opportunity to engage in educational or work-related activities; with periodic use of collective forms of punishment, and a lack of privacy in sleeping quarters.

86. During the processing of the present case, it has been documented that inmates in Cellblock 19, all of whom were classified as members of the "*mara salvatrucha*" were segregated from the rest of the prison population and did not have access to programs for study, training or work, except the programs offered by the churches that conducted programs within the prison. This is yet another point that the State does not refute and there is nothing in the case record to disprove the petitioners' allegations. Therefore, the Commission considers that the victims in the present case did not have effective access to activities that would enable their reform and social re-adaptation.

87. On this point, the Commission observes that Article 5(6) of the American Convention, a provision that is unique in both scope and content, makes reform and social re-adaptation of the prisoner the driving principle for enforcement of sentences involving deprivation of liberty. The fundamental goal is to prepare them to rejoin society, which means that sentences of incarceration must focus on ensuring that persons sentenced to prison are willing and able to conduct themselves as law-abiding members of society.

88. The United Nations Standard Minimum Rules for the Treatment of Prisoners provide the following:

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life. (Rule 58).

⁷⁵ I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Judgment of 1 September 7, 1997. Series C No. 33, paragraph 89; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, paragraph 85; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, paragraph 76.b; I/A Court H.R., *Case of Caesar v. Trinidad and Tobago*. Judgment of March 1, 2005. Series C No. 123, paragraph 99; I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paragraph 151; I/A Court H.R., *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, paragraph 91; I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraphs 165-171; I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*. Judgment of June 20, 2005. Series C No. 126, paragraphs 54.55, 54.56 and 54.57; I/A Court H.R., *Case of Raxcacó Reyes v. Guatemala*. Judgment of September 15, 2005. Series C No. 133, paragraph 43.23; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137 Paragraphs 97.55, 97.56 and 97.57; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraphs 54.48 and 108; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraphs 296 and 297; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraphs 90-99 and 104. .

To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners. (Rule 59).

89. For their part, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas are premised on the concept that “punishments consisting of deprivation of liberty shall have as an essential aim the reform, social re-adaptation and personal rehabilitation of those convicted; their reintegration into society and family life; as well as the protection of both the victims and society.”⁷⁶

90. As the Inter-American Commission observed, the priorities of the public policies on citizen security that the Member States of the region put into practice for citizen security should be measures to prevent violence and crime, which should include individualized measures and programs directed at persons who are serving a prison sentence.⁷⁷

91. The State, for its part, has not contested the petitioners’ allegations regarding the detention conditions of the victims in the present case or the treatment they received as a consequence of the segregation regime to which they were subjected within the San Pedro Sula Prison. On the contrary, the State has tried to explain away these problems by alleging the country’s lack of resources.

92. The Inter-American Court has held that “the States cannot invoke economic hardships to justify imprisonment conditions that do not respect the inherent dignity of human beings.”⁷⁸ The Human Rights Committee of the Covenant on Civil and Political Rights has written that “Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party.”⁷⁹ The Commission therefore considers that under the international law of human rights, a State’s claim of a lack of resources does not relieve it of its responsibility to provide general conditions of detention that are compatible with respect for the human dignity and personal integrity of the persons deprived of liberty, as its role of guarantor demands.

93. The Commission therefore concludes that the State is responsible for violation of articles 5(1) and 5(2) of the American Convention, in conjunction with the obligations to respect and ensure undertaken in Article 1(1) thereof, to the detriment of the 107 victims named in paragraph 12 of this report.

⁷⁶ Document approved by the Inter-American Commission on Human Rights at its 131st session, March 3 to 14, 2008. Preamble.

⁷⁷ IACHR, Report on Citizen Security and Human Rights, approved on December 31, 2009, paragraph 155. In this report the Commission also writes that:

“The obligations that the Member States have undertaken vis-à-vis the human rights directly at stake in public policies on citizen security make it incumbent upon them to design and put into practice programs to bring their codes of criminal procedure, infrastructure, and the human and material resources assigned to the prison system to a level that guarantees that sentences delivered by courts of law are served under conditions that strictly conform to international standards in this area. The Commission must underscore that no plan or program to prevent and control violence and crime can succeed if it fails to make the issue of the prison system part of a public policy on citizen security.”(Paragraph 157).

⁷⁸ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, paragraph 85; I/A Court H.R., *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, paragraph 88.

⁷⁹ UN. General Comment No. 21 of the Human Rights Committee, April 10, 1992. A/47/40(SUPP), paragraph 4.

94. Furthermore, by not allowing the victims to participate in productive activities because it regarded them as members of the “*mara salvatrucha*,” the State violated Article 5(6) of the American Convention to the detriment of the 107 persons named in paragraph 12 of this report, in conjunction with the obligations undertaken in Article 1(1) of the Convention.

95. It is a proven fact, not contested by the State, that the sole criterion for the segregation of the inmates housed in Cellblock 19 of the San Pedro Sula Prison, was their presumed membership in the so-called “*mara salvatrucha*.” The Commission observes that their segregation might have been reasonable given the disputes that this gang had with other groups, especially the so-called “*paisas*” (inmates that did not belong to any gang) who far outnumbered the gang members. However, this is no justification for the fact that convicted inmates were co-mingled with accused inmates, regardless of whether they were supposedly all members of the same gang.

96. The petitioners in the present case note that at the time of the fire, at least 45 of the young men who died were in preventive detention. Here again, this claim has not been refuted by the State. However, of those 45, only 22 are identified as being on trial for unlawful association:⁸⁰ Andrés Enrique Zepeda, Darwin Geovany López Medina, Edwing Alberto Guzmán, Eleazar Machado Figueroa, Edgardo Alejandro Hernández, Eddy Adalberto Amaya Zepeda, Esmelin Teruel Fernández, Ixel Alfredo Medina, Jesús Aguilar Leiva, José Antonio Morales, José Antonio Rodríguez, Luis Alberto Escobar Vallecillo, Maynor Joaquín Ardón López, Marco Josué Sierra, Melvin Isafas López Recarte, Miguel Eduardo Mercado, Miguel Ángel Pérez Godoy, Mario Roberto Velásquez Dubón, Nelson Rafael Ortega Martínez, Oscar Israel Duarte Valle, Pedro Hernán Tabora Castillo and Víctor David Torres Funez.

97. In this sense, the Inter-American Commission reiterates that by virtue of the principal of innocence, within the framework of the penal process, the accused should remain free as a general rule⁸¹. On the other hand, the Inter-American Court has established that

The preventive detention is limited by the principles of legality, the presumption of innocence, need, and proportionality, all of which are strictly necessary in a democratic society. It is the most severe measure that can be applied to the person accused of a crime, reason for which its application must have an exceptional nature. The rule must be the defendant’s liberty while a decision is made regarding his criminal responsibility⁸².

98. It is precisely the principal of innocence that went into the preparing of Art. 5.4 of the American Convention, a general rule that those accused and being processed are separated from those already convicted and they are “treated adequately as a person who has not been convicted yet.” This distinction in quality of the conditions of detention of those being processed has been developed *extensively* in other international instruments, such as the U.N. Standard Minimum Rules on the Treatment of Prisoners (art. 84 and art.93) and the U.N. Joint Principals for the Protection of All Persons under Any Form of Detention or Imprisonment (principals 36 and 39).

99. Therefore, the Commission finds that the State has incurred international responsibility for violation of Article 5(4) of the American Convention, in conjunction with the

⁸⁰ The petitioners’ observations on the merits, dated April 10, 2009.

⁸¹ IACHR, Report No. 86/09, Merits, Case 12.553, Jorge, José y Dante Peirano Basso, Uruguay, August 6, 2009.

⁸² I/A Court H.R., Case of López-Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 01, 2006. Series C No. 141, párr. 67; I/A Court H.R., Case of Acosta-Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, párr. 74; I/A Court H.R., Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, párr. 106.

obligations to respect and ensure established in Article 1(1) of the Convention, to the detriment of these 22 victims named above.

2. With respect to the victims' next of kin

100. The Court has repeatedly held that the next of kin of the victims of human rights violations may, in turn, be victims.⁸³ The Court has deemed that the mental and moral integrity of the victims' next of kin has been violated by "the additional suffering experienced as a result of the specific circumstances surrounding the violations committed against their loved ones and of the subsequent acts or omissions by State authorities with respect to the incidents at issue."⁸⁴ The Court has also written that:

[T]his Court has held that it can declare the violation of the right to mental and moral integrity of the next of kin of the victims of certain violations of human rights applying a presumption *iuris tantum* regarding mothers and fathers, sons and daughters, spouses, and life partners (hereinafter "direct relatives"), as long as this responds to the specific circumstances of the case. In the case of those direct relatives, it is the State who shall invalidate said presumption.⁸⁵

101. In the instant case, the Inter-American Commission observes that the relatives of the 107 victims have endured the suffering that attends a violation of the right to life. Their loved ones died a violent death, as they either choked to death or were burned to death in a fire that was, in the final analysis, the result of the State's gross negligence. The next of kin have suffered because of their loved ones' death; but they have also suffered because of what they endured during and in the wake of the May 17, 2004 fire. The victims' next of kin had to wait hours for the lists of the deceased, wounded and survivors to be released; then they had to wait for several days as the process of identifying and claiming the bodies in the morgue progressed. Ultimately, they had to endure a sequence of procedures that are typical of a catastrophic experience.

102. The next of kin of the deceased have had their rights as victims violated, given the authorities' failure to take measures to clarify the facts and hold anyone criminally or administratively responsible for the fire that claimed the lives of the 107 victims in the present case. The victims' next of kin have endured a sense of frustration and powerlessness in seeing that no one is being made to answer for this serious event. In other words, they have had to live with the sense that justice has not been done.

103. The Inter-American Commission considers that the victims' next of kin have suffered because of the cruel, inhuman and degrading treatment that the victims received while inmates in Cellblock 19;⁸⁶ in some cases, this was degrading treatment that they experienced

⁸³ I/A Court H.R., *Case of Goiburú et al.* Judgment on the Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 96; I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, paragraph 156; and I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, paragraph 119.

⁸⁴ I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, paragraph 60; I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paragraphs 144 and 146.

⁸⁵ I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph 162; I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 119; I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paragraph 128.

⁸⁶ Here, the Inter-American Court has held that deprivation of liberty in conditions unbefitting human dignity can be a violation of right to humane treatment of the next of kin of the person deprived of liberty. See: I/A Court H.R., *Case of*

firsthand, because of the lack of privacy and a proper area for visits. This meant that during the inmates' conjugal visits, they had to have sexual relations in their beds in the cellblock, and that family members had to breathe the unhealthy, unwholesome and (life) threatening air of the cellblock.

104. In the present case, the State has not submitted observations, arguments or information to disprove the presumption that the right to humane treatment of the victims' next of kin has been violated given the circumstances described here.

105. The Commission is mindful of the fact that the State gave each victim's next of kin the sum of 10,000 lempiras in a lump-sum payment to cover funeral and burial expenses.⁸⁷ However, this payment cannot be regarded as compensation, much less reparation for the harm that the victims' next of kin have suffered as a consequence of the events in this case.

106. Given the foregoing considerations, the Commission concludes that the State violated the right to have one's mental and moral integrity respected recognized, in Article 5(1) of the American Convention, in conjunction with the obligations to respect and ensure established in Article 1(1) thereof and to the detriment of the 83 next of kin named in paragraph 25 of this report.

C. Right to personal liberty and the principle of freedom from *ex post facto* laws (articles 7 and 9 of the American Convention, in conjunction with articles 1(1) and 2 thereof)

107. Article 2 of the American Convention reads as follows:

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.

108. The pertinent provisions of Article 7 of the American Convention provide that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
[...]

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

[...]

109. Article 9 of the American Convention provides that:

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of

López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, paragraph 117. I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 192.

⁸⁷ The petitioners' observations on the merits, dated April 10, 2009.

the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

110. With regard to the right not to be subjected to arbitrary arrest or imprisonment, as set forth in Article 7(3) of the American Convention, the Inter-American Court has written that "no one shall be subject to arrest or imprisonment for causes or by methods that – although qualified as legal – may be considered incompatible regarding for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion."⁸⁸ In order to comply with the requirements necessary to restrict the right to personal liberty, there must be sufficient evidence to lead to a reasonable supposition of guilt of the person submitted to a proceeding and the arrest must be strictly necessary to ensure that the accused party will not impede the effective course of the investigations or evade justice. When ordering measures that restrict freedom, the State must justify it and prove that in that specific case, the requirements established in the Convention have been satisfied.⁸⁹ The Court has also held that protection of the individual against arbitrary exercise of public authority is a fundamental objective of international human rights protection.⁹⁰

111. As for the content and scope of the right not to be subjected to arbitrary detention or imprisonment, in the case of *Chaparro Álvarez and Lapo Iñiguez*, the Court took the following standards into consideration:⁹¹

The European Court of Human Rights has established that, although any arrest must be made in keeping with a procedure prescribed by domestic law, this domestic law must also be in conformity with the Convention, including the general principles expressed or implied therein.

The Human Rights Committee has stated that:

"[A]rbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. [...]his means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.

112. The Inter-American Commission considers that any law that imposes a restriction of the rights recognized in the American Convention must, *inter alia*, be formulated with sufficient precision to enable the citizen to regulate his conduct accordingly. He must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. In the case of a law that gives the authorities some degree of discretion, the scope of that discretion must be made clear in the law itself.⁹²

⁸⁸ I/A Court H.R., *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 105; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 57; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 98; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 83; I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 146.

⁸⁹ I/A Court H.R., *Case of Servellón García et al.* Judgment of September 21, 2006. Series C No. 152, paragraph 90; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 69; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 198; I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, paragraph 111.

⁹⁰ I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, paragraph 92; I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, paragraph 130; I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paragraph 239.

⁹¹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraphs 91 and 92.

⁹² ECHR, *Case of Silver and Others v. The United Kingdom*, Judgment on the merits, March 25, 1983, paragraph 88.

113. As for the principle of freedom from *ex post facto* law, contained in Article 9 of the American Convention, the Inter-American Court has held that:

[C]rimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of *nullum crimen nulla poena sine lege praevia* in criminal law. This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.⁹³

[U]nder the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields of competence, particularly when the exercise of that punitive power is at stake.⁹⁴ In a democratic system it is necessary to intensify precautions in order for such measures to be adopted with absolute respect for the basic rights of individuals, and subject to a careful verification of whether or not there was unlawful conduct.⁹⁵

114. The petitioners contend that one of the fundamental pieces of the so-called “zero tolerance” policy was amendment of Article 332 of the Penal Code, which criminalizes unlawful association. This amendment was done with passage of the so-called “Anti-Gang Act”, which increased the sentences for this crime. The language of the description of the crime made specific mention of “gangs” as a form of unlawful association.

115. The National Congress approved this amendment on August 7, 2003, by Decree No. 117-2003; the amendment took effect on August 15. That pertinent part of that decree reads as follows:

THE NATIONAL CONGRESS [...] HEREBY DECREES:

ARTICLE 1. To amend Article 332 of the Penal Code, contained in Decree No. 144-83 of August 23, 1983, to read as follows: ARTICLE 331. UNLAWFUL ASSOCIATION. Heads or leaders of gangs and other groups that exist for the purpose of committing any act constituting a crime shall face a sentence of nine (9) to twelve (12) years imprisonment and a fine of ten thousand (L. 10,000) to two hundred thousand (L. 200,000) lempiras.

Members of those unlawful associations shall also face the same sentence, reduced by one third (1/3).

Heads or leaders are those persons who stand out or identify themselves as such and whose decisions influence the group’s state of mind and actions.⁹⁶

⁹³ I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paragraph 121; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 79.

⁹⁴ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 107; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 177; I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 80.

⁹⁵ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 106; *Case of De la Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, paragraph 81.

⁹⁶ The petitioners’ observations on the merits, dated April 10, 2009. Annex 13. *La Gaceta*, Friday, August 15, 2003. No. 30,163.

116. The petitioners assert that the measures the State took as part of its “zero tolerance” policies set in motion a mechanical system in which young men were deprived of their liberty based solely on suspicion or prejudice.⁹⁷ According to the petitioners, in practice this law created a *de facto* situation in which it was the police that decided who was guilty of the crime of unlawful association and, therefore, who had to be incarcerated. The petitioners also report that this amendment and its consequences were widely criticized by various parties, including the National Commissioner for Human Rights⁹⁸ and the Attorney General.⁹⁹

117. The information supplied in connection with the amendment to Article 332 of the Penal Code revealed that that amendment allowed the authorities to make mass arrests of young men, merely on suspicion or out of prejudice. The article, which specifically described gangs as a form of unlawful association, in practice gave the authorities legal grounds to make arrests based on such arbitrary criteria as tattooing. The information reported by the petitioners is that as soon as this amendment entered into force, the Police and the Army embarked upon numerous search operations and mass arrests of alleged gang members, all of which received wide coverage in the media. Even President Ricardo Maduro participated in some of these operations.¹⁰⁰

118. In the instant case, the petitioners allege that at the time of the fire at the San Pedro Sula Prison, 44 of the deceased inmates were deprived of their liberty for just the crime of unlawful

⁹⁷ The petitioners’ observations on the merits, dated April 10, 2009.

⁹⁸ With regard to the amendment, the National Commissioner for Human Rights said the following:

The first consequence of this amendment is to wipe out the presumption of innocence once it is declared that any member of a gang is committing a crime, without implicating that person in the commission of a given offense.

Second, the mere suspicion that a person belongs to a gang –now that membership in a gang is itself a criminal offense- gives the police the authority to act as if it were a case of *flagrante delicto*. For example, the police can search the home where a suspected gang member is or, even worse, may fire on him if he tries to escape. This constant state of *in flagrante delicto* gives the police the authority to apprehend someone without an order from a competent authority, because the crime of gang membership is not consummated in any single act or event; it endures in time. In other words, flagrancy is not confined to a specific act; instead it becomes a condition.

The petitioners’ observations on the merits, dated April 10, 2009. Annex 14. Report of CONADEH, 2003, Chapter II: Security and Justice.

⁹⁹ An article that appeared in the newspaper under the heading: “Attorney General: The Ministry of Security violates the Constitution with the Anti-Gang Act.” The article states the following:

[The Attorney General] recalled that Article 89 of the Constitution provides for the presumption of innocence; in other words, that everyone is innocent until his/her guilt is proven in the presence of a competent judge or tribunal; Article 90 provides for due process and Article 99 provides that homes may not be searched between 6:00 p.m. and 6:00 a.m. without authorization from the persons living in the home or an order from a competent authority.

“What he does say is that the procedures being used by this Ministry of Security are unconstitutional [...] We have seen how it exhibits persons taken into custody on suspicion of being gang members with the torso exposed to show the tattooing and depicting them as guilty of a crime; all this has consequences.”

The petitioners’ submission of April 21, 2007. Attachments. Article published in *Tiempo*, Tuesday, January 6, 2004.

¹⁰⁰ The petitioners’ submission of April 21, 2007. Attachments. Articles published in: *El Tiempo*, Tuesday, August 19, 2003; *El Semanario*, Saturday, August 23, 2003; *La Prensa*, Saturday, August 30, 2003; *La Prensa*, Thursday, October 2, 2003; *La Prensa*, Sunday, December 21, 2003; *La Prensa*, Saturday, December 27, 2003; *Tiempo*, Saturday, December 27, 2003; and *La Prensa*, Thursday, August 12, 2004. According to the study done by Andino Mencia, and cited by the petitioners, in the period from August 15, 2003 to December 31, 2005, a total of 5,418 persons were detained in operations, 64% of whom either had the charges against them dismissed or were the beneficiaries of some administrative release or precautionary measure; the remaining 36% were put in preventive detention. Almost two thirds of these were ordered into preventive detention merely because they had tattoos. The petitioners’ observations on the merits, dated April 10, 2009. Annex 8. Andino Mencia, Tomás. *Mano Suave y Mano Dura en Honduras [A Soft Touch and a Hard Hand in Honduras]*. Lecture delivered at the 1st Central American Congress on Youth, Security and Justice. Antigua, Guatemala, March 15 and 16, 2008, pp. 31 and 32.

association; another 30 were there for the crime of unlawful association committed concurrently with other crimes.¹⁰¹ However, as previously observed, in their observations on the merits the petitioners name a group of 22 victims who, at the time of the fire, were in preventive detention in Cellblock 19, accused only of the crime of unlawful association. Their names are: Andrés Enrique Zepeda, Darwin Geovany López Medina, Edwing Alberto Guzmán, Eleazar Machado Figueroa, Edgardo Alejandro Hernández, Eddy Adalberto Amaya Zepeda, Esmelin Teruel Fernández, Ixel Alfredo Medina, Jesús Aguilar Leiva, José Antonio Morales, José Antonio Rodríguez, Luis Alberto Escobar Vallecillo, Maynor Juaquín Ardón López, Marco Josué Sierra, Melvin Isafías López Recarte, Miguel Eduardo Mercado, Miguel Ángel Pérez Godoy, Mario Roberto Velásquez Dubón, Nelson Rafael Ortega Martínez, Oscar Israel Duarte Valle, Pedro Hernán Tabora Castillo and Víctor David Torres Funez.

119. The State has not contested the facts that the petitioners allege in connection with the detention of these 22 young men, who reportedly had only been accused of the crime of unlawful association and were in Cellblock 19 in preventive custody. Nor did the State refute the information supplied by the petitioners to the effect that the so-called “anti-gang act” served as the legal grounds for detaining many people, merely on suspicion of gang membership and based on such flimsy evidence as tattoo marks, the places where they lived, and other factors.

120. The Inter-American Commission notes also that the United Nations Human Rights Committee said the following on this subject:

The Committee is concerned at the frequent use of arrest on suspicion by members of the security forces, including mass round-ups based on appearance alone and with no warrant from a competent authority. It notes with concern the broad wording of new article 332 of the Criminal Code, which establishes the offence of “unlawful association”, on the basis of which large numbers of juveniles have reportedly been detained, along with human rights activists and homosexuals (articles 9 and 26 of the Covenant).

The State party should ensure that detentions are carried out in accordance with the provisions of article 9 of the Covenant and that those detained are brought before a court without delay. It should also consider the possibility of amending article 332 of the Criminal Code so as to restrict the definition of the offence of unlawful association.¹⁰²

121. Similarly, the United Nations Working Group on Arbitrary Detentions stated that while criminalization of membership in a criminal group is not on its face incompatible with human rights law, the practical application of article 332 does raise serious concerns. The Working Group underscored the fact that the police (as well as the general public and *mara* members themselves) identify *mara* members by the very visible tattoos they wear. Furthermore, as membership in an “unlawful association” is a continuous offence, a tattooed young man or woman is permanently *in flagrante delicto*, and can be arrested by the police at any time without a warrant and could be immediately rearrested upon release.¹⁰³

¹⁰¹ The petitioners’ observations on the merits, dated April 10, 2009.

¹⁰² UN. Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Honduras, paragraph 13. Available at: <http://www.universalhumanrightsindex.org/hrsearch/displayDocumentVersions.do?sessionId=10FC0E7594665368ACBE756ECB3D0BB0?lang=en&docId=1096>.

¹⁰³ UN. Report of the Working Group on Arbitrary Detentions. Mission to Honduras (May 23-31, 2006), December 1, 2006. A/HRC/4/40/Add.4, paragraphs 87 and 88. Available at: <http://daccess-ods.un.org/TMP/9308531.html>.

122. The Commission observes that Decree No. 117-2003, which amended Article 332 of the Penal Code, expressly provides that *maras* will henceforth be classified as unlawful associations, and that mere membership in these youth gangs would be a crime. However, the law that criminalizes membership in the so-called "*maras*" does not define the distinctive features that define a person's membership in any of these groups. In other words, the law does not clearly define what elements are regarded as punishable offenses. This ambiguity in the anti-gang law meant that in practice that determination was made arbitrarily and at the discretion of the authorities charged with enforcing that law. Therefore, the Commission deems that the norm in question opened up a margin of discretion that was so broad that it allowed many people to be arbitrarily detained merely on basis of the perception that they belonged to a gang, without considering other factors such as whether the individual in question is an active criminal, a former member of one of these groups, some who wears the tattoos of a certain gang but is not involved in any criminal activity at the time he or she is taken into custody.

123. The Inter-American Commission considers that Decree No. 117-2003 did not establish the mechanisms or criteria by which to verify whether there was any illicit conduct. It therefore does not comply with a requirement that is part of any democratic system, which is to take the precautions necessary to ensure that punitive power is exercised with absolute respect for fundamental rights. Therefore, that amendment to the Penal Code does not comply with the principle of freedom from *ex post facto* laws established in Article 9 of the American Convention.

124. Therefore, the Inter-American Commission deems that inasmuch as Decree No. 117-2003 lacks objective enforcement criteria and does not comply with the standards established in Article 9 of the American Convention, one can conclude that the detentions and arrests made on the grounds of that law, following the patterns described in the preceding paragraphs, were arbitrary in the sense of Article 7(3) of the American Convention.

125. Based on the above considerations, the Inter-American Commission finds that the State violated articles 9 and 7(3) of the American Convention, in conjunction with the obligations to respect and ensure established in articles 1(1) and 2 thereof, to the detriment to the 22 fire victims named in paragraph of 116 of the present report.

D. Right to a fair trial and right to judicial protection (articles 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof)

126. Article 8(1) of the Convention reads as follows:

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.

127. Article 25(1) of the Convention provides that:

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

128. The obligation of the States Parties to the American Convention to "*ensure*" the free and full exercise of the rights recognized by the Convention to every person subject to their jurisdiction (Article 1(1)) implies that States Parties have a duty to prevent, but also a duty to investigate and punish any violation of the rights recognized by the Convention, to restore the

violated right and provide compensation as warranted for damages resulting from the violation.¹⁰⁴ The obligation to investigate human rights violations is one of the positive measures that States must adopt to ensure the rights recognized in the Convention.¹⁰⁵

129. The Court has written that victims and their families have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin redressed.¹⁰⁶ Accordingly, once the state authorities know of a human rights violation, particularly violations of the right to life, the right to humane treatment and the right to personal liberty,¹⁰⁷ their duty is to initiate a serious, impartial and effective investigation, *ex officio* and without delay¹⁰⁸ and carried out within a reasonable period.¹⁰⁹

130. As to the meaning of the duty to investigate “with due diligence,” the Inter-American Court has written that due diligence implies that the investigations are to be conducted by all legal means available and should be geared to establishing the truth.¹¹⁰ The Court has also written that the State has a duty to ensure that everything necessary is done to ascertain the truth of what happened and to punish anyone responsible,¹¹¹ and that every State institution must be involved.¹¹²

131. For its part, the Inter-American Commission has written the following with regard to the States’ obligation to conduct a serious investigation:

[T]he fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities

¹⁰⁴ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 166.

¹⁰⁵ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, paragraph 74. I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 177.

¹⁰⁶ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 103; I/A Court H.R., *Case of Bulacio. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; and I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

¹⁰⁷ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 100.

¹⁰⁸ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

¹⁰⁹ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

¹¹⁰ I/A Court H.R., *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101.

¹¹¹ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

¹¹² I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 120; and I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, paragraph 66.

without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.¹¹³

132. The Commission has also written that in cases involving crimes that the State prosecutes, the latter has an obligation to move the criminal process forward to its ultimate consequences. As a general rule, a criminal investigation should be carried out promptly to protect the interests of the victims, preserve the evidence, and even safeguard the rights of all persons considered suspects in the investigation.¹¹⁴

133. The duty to investigate is one of means and is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective¹¹⁵ or as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.¹¹⁶

134. The Commission observes that the fire that broke out at the San Pedro Sula Prison on May 17, 2004, and that claimed the lives of 107 persons, was a very serious event of massive proportions in which many people's right to life was violated, all of whom were in the State's custody at the time. The Commission observes further that the causes of the fire were delineated in the investigations and expert reports prepared during the first three months following the fire, especially the shoddy electrical system in Cellblock 19. None of this has been contested at any time, either in the domestic proceedings on the case or in the case with the Commission. Nevertheless, six and a half years have passed since the fire and still the State has not assigned the corresponding criminal, administrative or disciplinary blame.

135. An examination of Case No. 1009-04 reveals that all the procedural activity undertaken by the Honduran court authorities was focused at establishing the criminal culpability of Mr. Elías Aceituno Canaca, who was Director of the San Pedro Sula Prison at the time of the fire. The courts do not appear to have summoned any other authority to submit to questioning. Even the former Director of the prison was never formally indicted. This points up the fact that the State never had a clear interest in determining where the blame for the May 17, 2004 tragedy lies.

136. The Commission is struck by the fact that in the decisions in which the charges against Mr. Elías A. Canaca were dismissed and the lower-court ruling was upheld, the court authorities themselves argued that he was not to blame, that other authorities were to blame for what happened (see paragraphs 53 and 55 of this report), although those authorities were never investigated. Even the State took this position in the Commission's proceedings on this case.¹¹⁷

¹¹³ IACHR, Report No. 33/04, Case 11.634, Merits, Jailton Neri Fonseca, Brazil, March 11, 2004, paragraph 97.

¹¹⁴ IACHR, Report No. 62/00, Case 11.727, Admissibility, Hernando Osorio Correa, Colombia, October 3, 2000, paragraphs 24 and 25; IACHR, Report No 52/97, Merits, Arges Sequeira Mangas, Nicaragua, February 18, 1998, paragraphs 96 and 97.

¹¹⁵ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 131; and I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

¹¹⁶ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

¹¹⁷ See: The State's submission, received July 20, 2007, wherein it stated that the Director of the prison at the time of the events "took the appropriate administrative steps to improve the subhuman conditions in which the inmates lived prior to their death, but received no affirmative response or the assistance needed to take the corrective measures that might have avoided the fire."

137. In its response to the original petition, the State alleged that the matter under investigation was so complex that a “considerable period of time” was needed to solve it, so complex that the investigation would take years.¹¹⁸ However, it has not adequately explain why the case is so complex, much less why six and a half years have gone by without the State establishing any blame for a fire whose causes were determined right from the start. Therefore, in the Commission’s view that six and a half years was well beyond what might be regarded as a reasonable period of time for an investigation of this type

138. The State has provided no concrete information on the measures taken or progress achieved in the investigations conducted subsequent to the dismissal of the charges against the then Director of the San Pedro Sula Prison. Nor has it provided any information indicating that any public official has been identified or blamed either in administrative or disciplinary proceedings, as a consequence of the May 17, 2004 fire in cellblock 19 of the San Pedro Sula Prison, in which 107 inmates died.

139. The Commission deems that allowing an event of such proportions to go unpunished is a violation of the State’s obligation to respect the rights recognized in the Convention and to ensure their free and full exercise; it is in violation of the right of the victims’ next of kin, and encourages chronic recidivism of human rights violations. Every possible legal avenue should be exhausting in investigating this case. The investigation should be geared to ascertaining the truth, pursuing, prosecuting and convicting all those responsible, especially where agents of the State are or may be involved.

140. The investigation into the violations committed in this case must be carried out in strict accordance with the principles of due diligence. This is so not only because of the nature of the facts, but also in view of the general context in which the violations occurred. Allowing those responsible for the deaths of these 107 young men to go unpunished serves to reinforce the general perception that where gang members are concerned, human life is relative; it sends a dangerous message to the authorities and officers charged with enforcing the law that the State would back any use of force where these groups are concerned.

141. In the instant case, it is clear that the State has not practiced due diligence in its investigation, and has not done everything necessary under its legal system to establish the criminal, administrative and disciplinary blame for the deaths of 107 persons that happened in one its prisons.

142. Given these considerations, the Commission concludes that the State did not provide the victims’ next of kin, duly identified in paragraph 25 of this report, with an effective remedy by which to have the event clarified and establish the corresponding blame, all in violation of the rights recognized in articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) thereof.

VI. CONCLUSIONS

143. Based on the observations made throughout this report, the Inter-American Commission on Human Rights concludes that the Honduran State violated the rights laid down in articles 4, 5, 7, 8, 9 and 25 of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 thereof.

¹¹⁸ The State’s submission, received February 28, 2007.

VII RECOMMENDATIONS

144. Based on this report's findings on the merits,

THE INTER AMERICAN COMMISSION OF HUMAN RIGHTS RECOMMENDS THAT THE STATE OF HONDURAS:

1. Conduct a complete, impartial, effective and swift investigation of the facts in order to identify and punish those persons found legally responsible for the conditions that led to the fire that broke out in Cellblock 19 of the San Pedro Sula Prison on May 17, 2004.

2. Make adequate reparations to the victims' next of kin, which shall include the pecuniary and non-pecuniary damages sustained as a result of the violations of their human rights.

3. Adopt the necessary measures to assure that in the future similar facts do not arise in the detention centers of the country, conform to the duty to prevent and guarantee the human rights recognized in the American Convention and assure that the conditions of detention for those deprived of liberty are in accordance with the applicable international standards. In particular,

- (a) adopt adequate and effective measures to avoid overpopulation in prison centers.
- (b) Equip prison centers with equipment and devices to adequately and efficiently resolve emergency situations.
- (c) Enable prison security and civil personnel through permanent programs in human rights, emergency plans and evacuation for fires and other types of catastrophes.
- (d) Realize adequate repair and maintenance of the electrical system in the prisons.

4. Adapt the substantive and procedural norms necessary so that the standardization of the crime of illicit association is in accordance with the content and aims of art. 7 and art. 9 of the American Convention. In particular, clearly define the objective criteria that will be the definition of belonging to organizations that the law determines to be illicit.

5. Recognize its international responsibility for the facts charged in the case 12.650 Rafael Arturo Pacheco Teruel and others, in an official and public act that has been properly publicized.

Given and signed in Washington, D.C. on the 22 day of the month of October 2010. (signed) Felipe González, Presidente; Paulo Sérgio Pinheiro, Primer Vicepresidente; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, y Rodrigo Escobar Gil members of the Commission.

Noted by Santiago A. Canton, in his role as Executive Secretary of the Inter-American Commission of Human Rights, in conformity with article 49 of the Rules of the Commission, certifies that this copy is true to the original, which remains in the archives of the Secretariat of the IAHCR.