In the case of López Álvarez,

the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 56, and 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the present Judgment.

I. INTRODUCTION OF THE CASE

1. On July 7, 2003, pursuant to that stated in Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted an application against the Republic of Honduras (hereinafter "the State" or "Honduras") to the Court, originating from petition No. 12,387, received at the Commission's Secretariat on December 13, 2000.

2. The Commission submitted the petition for the Court to decide if the State has violated Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 24 (Right to Equal Protection) of the American Convention, in relation with the obligations established in Articles 2 (Domestic Legal Effects) and 1(1) (Obligation to Respect Rights) of said treaty, in detriment of Mr. Alfredo López Álvarez (hereinafter "Alfredo López Álvarez", "Mr. López Álvarez" or "alleged victim"), member of a Honduran Garifuna community. The Commission stated that: a) the alleged victim was deprived of his personal liberty as of April 27, 1997, date on which he was arrested for the possession and illegal trafficking of narcotic drugs; b) on November 7, 2000 the judge that

examined the case issued a conviction against Mr. López Alvarez that was annulled on May 2, 2001 by the Appellate Court of the Ceiba; it ordered that the trial be taken back to its preliminary stage, and c) on January 13, 2003 the Lower Court issued a new judgment, confirmed by the Appellate Court of the Ceiba, which acquitted Mr. López Álvarez; however, he remained in custody until August 26, 2003.

3. Likewise, the Commission requested that the Court, pursuant to Article 63(1) of the Convention, order the State to adopt certain measures of reparation indicated in the petition. Finally, it requested that the Tribunal order the State to pay the costs and expenses generated in the processing of the case in the domestic jurisdiction and before the bodies of the Inter-American system.

II. COMPETENCE

4. The Court is competent to hear the present case, in the terms of Articles 62 and 63(1) of the Convention, since Honduras is a State Party in the American Convention since September 8, 1977 and it acknowledged the adjudicatory jurisdiction of the Court on September 9, 1981.

III. PROCEEDING BEFORE THE COMMISSION

5. On December 13, 2000 the Honduran Black Fraternal Organization (hereinafter "OFRANEH" or "the petitioner"), represented by Mrs. Gregoria Flores Martínez, presented before the Inter-American Commission the petition corresponding to the facts of this case.

6. On December 3, 2001 the Inter-American Commission approved Admissibility Report No. 124/01, in which it declared the admissibility of the case. On that opportunity, the Commission put itself at the disposal of the parties in order to reach an amicable solution. On February 13, 2002 the State informed that it refused to accept the Commission's offer of an amicable solution based on that set forth by the petitioner.

7. On March 8, 2002, during the 114th Regular Meeting of the Inter-American Commission, a hearing was held with the presence of the State and members of the OFRANEH, in which the testimonies of two witnesses offered by the petitioner were heard.

8. On March 4, 2003, during the 117th Regular Meeting of the Commission, the latter approved Report of Merits No. 18/03, pursuant to Article 50 of the Convention, in which it recommended that the State:

1. Order the immediate release of Mr. Alfredo López Álvarez.
2. Adopt the necessary measures so that a definitive judgment was issued in the trial followed against Mr. López Álvarez, with strict submission to the human rights enshrined in the Convention.
3. Investigate the irregularities set forth in the present report with regard to the arrest and subsequent processing of Alfredo López Álvarez.

4. Reform the domestic law that violates the human rights enshrined in the American Convention, especially those norms that limit or restrict the right to release the defendants on bail.
5. Repair the victim for the consequences of the violations to the human rights mentioned.
6. Adopt the measures necessary to avoid that similar acts occur in the future, pursuant to the duty to prevent and guarantee the fundamental issues acknowledged in the American Convention.

9. On March 7, 2003 the Commission transmitted Report of Merits No. 18/03 to the State and granted it a two-month period to inform on the measures it would adopt in order to comply with the recommendations made. On that same day the Commission informed the petitioner of the approval of the mentioned report and requested that it present, within a one-month period, its position regarding the assertion of the case before the Court.

10. On April 10, 2003 the OFRANEH requested that the Commission submit the case before the Court, in the event that the State did not comply with the recommendations made in its report.

11. On July 7, 2003 the State, after two extensions, forwarded its response to the Commission regarding the recommendations of Report of Merits No. 18/03, in which it stated, inter alia, that: a) Mr. López Álvarez was still imprisoned and an appeal for annulment presented against the judgment that confirmed his acquittal was pending; b) in virtue of the norms of domestic law it was impossible to grant immediate liberty to Mr. López Álvarez; c) it would request the Supreme Court of Justice of Honduras the prompt ruling of the case; d) the change from a conviction to an acquittal was due, according to the prosecution, to the fact that someone had manipulated the evidence in the court substituting the cocaine confiscated from the defendant for another substance; e) the alleged irregularities mentioned in the report of merits with regard to the arrest and the processing of Mr. López Álvarez were investigated and the substitution of the cocaine confiscated was being investigated; f) the criminal procedural legislation was reformed in the year 2002, in what refers to domestic law that limits or restricts the right to release the defendants on bail; g) the reparation of the consequences of the alleged violations to human rights will be deducted once the process is concluded, and h) the declaration of the inadmissibility of the case proceeds. In a separate note of the same date Honduras asked the Commission to correct the Report of Merits N° 18/03 in consideration of the arguments made.

IV. PROCEEDING BEFORE THE COURT

12. On July 7, 2003 the Inter-American Commission submitted the application to the Court, and it included documentary evidence, testimonial evidence, and expert assessments. The Commission appointed Julio Prado Vallejo and Santiago Canton as delegates and Isabel Madariaga, Martha Braga, and Ariel Dulitzky as legal advisors. [FN1]

[FN1] During the processing of the case the Commission made changes in the appointment of its representatives before the Court.

---

13. On August 1, 2003 the Secretariat of the Court (hereinafter "the Secretariat"), prior preliminary examination of the application by the President of the Court (hereinafter "the President"), notified it to the State and informed the latter of the terms for its reply and appointment of their representation in the process. On that same day the Secretariat, following the President's instructions, informed the State of its right to appoint a judge ad hoc to participate in the consideration of the case.

14. On August 4, 2003, according to that established in Article 35(1)(d) and 35(1)(e) of the Rules of Procedure, the Secretariat notified the OFRANEH, in its condition of representative of the alleged victim [FN2] (hereinafter "the representatives") of the application and informed it of the time limit to present the brief of pleadings, motions, and evidence (hereinafter "brief of pleadings and motions").

[FN2] During the processing of the case the representatives made changes in the appointment of its representatives before the Court.

---

15. On September 30, 2003 the State appointed Mr. Jacobo Cáliz Hernández as Agent and Mrs. Argentina Wellerman Ugarte as Deputy Agent. [FN3] On December 4, 2003 the State informed that Mr. Álvaro Agüero Lacayo, Ambassador of Honduras before the Government of Costa Rica, was appointed as Agent in substitution of Mr. Jacobo Cálix Hernández.

[FN3] During the processing of the case the State made changes in the appointment of its representatives before the Court.

---

16. On November 20, 2003 the OFRANEH and the Center for Justice and International Law (hereinafter "CEJIL"), in their condition of representatives of the alleged victim, forwarded their brief of pleadings and motions, in which they enclosed documentary evidence and they offered testimonial evidence and expert assessments. The representatives claimed that, besides the rights indicated by the Inter-American Commission in the application (supra para. 2), the State also violated the rights enshrined in Articles 13 (Freedom of Thought and Expression), 16 (Freedom of Association), and 17 (Rights of the Family) of the Convention, in detriment of the alleged victim, and Article 5 (Right to Humane Treatment) of the same instrument, in detriment of the alleged victim's next of kin.

17. On December 15, 2003 the State presented its response to the petition and observations to the brief of pleadings and motions (hereinafter "brief of response to the petition"), and it enclosed documentary evidence and offered testimonial evidence and expert assessments.

18. On April 22, 2004 Honduras informed this Tribunal that the parties involved in the case "had started a process of amicable solution, through [OFRANEH], result of which it would

inform the Court in a timely manner." On April 12, 2005 the representatives stated that OFRANEH had presented to the State a proposal for an amicable solution on January 13, 2004; once again on February 7, 2005 OFRANEH and CEJIL presented to the State a proposal for an amicable solution of the case. They also stated that on February 17, 2005 Honduras acknowledged receipt of the same and informed that "it [would] send [its] comments to the same […]."

19. On May 11, 2005 the President called upon Messrs. Secundino Torres Amaya, Juan Edgardo García, Ernesta [FN4] Cayetano Zúñiga, and Andrés Pavón Murillo, proposed as witnesses by the Commission; Gilberto Antonio Sánchez Chandías, proposed as a witness by the representatives, and José Mario Salgado Montalbán, Dennis Heriberto Rodríguez Rodríguez, Darwin Valladares, and José Roberto Cabrera Martínez, proposed as witnesses by the State, to offer their testimonies through statements offered before Notary Public (affidavit). It also called upon Mrs. Débora S. Munczek, proposed as an expert witness by the representatives and Mr. Dennis A. Castro Bobadilla, proposed as an expert witness by the State, which offered expert statements before notary public (affidavit). Likewise, the President summoned the parties to a public hearing to be held in the venue of the Inter-American Court as of June 28, 2005, in order to hear the testimonial statements of Alfredo López Álvarez, Teresa Reyes Reyes, and Gregoria Flores Martínez, proposed by the Inter-American Commission and the representatives; the statement of Álvaro Raúl Cerrato Arias, proposed by the State, and the expert opinion of Milton Jiménez Puerto, proposed as expert witness by the Commission and the representatives, as well as the final closing arguments on merits and reparations and costs. The President also informed the parties that they had time until July 29, 2005 to present their final written arguments with regard to the merits of the case and the reparations and costs.

[FN4] This Tribunal points out that in diverse documents processed in the present case, Mrs. Cayetano Zúñiga appears indistinctly with the name of "Ernesta" or "Ernestina". For the effects of the present Judgment we will use the name "Ernesta".

---

20. On May 20, 2005 the representatives informed that they desisted from the expert opinion of Mrs. Débora S. Munzcek.

21. On June 1, 2005 the Inter-American Commission presented the four statements given before a notary public (affidavit) (supra para. 19).

22. On June 1, 2005 the State presented three sworn statements of the witnesses, given before a notary public (affidavits), and stated that "it was impossible to obtain a statement from the witness Darwin Valladares, [and that] the same situation occurred with the expert Dennis Castro Bobadilla" (supra para. 19).

23. On June 8, 2005, after an extension, the representatives presented the statement given by the witness Gilberto Sánchez Chandías before a notary public (supra para. 19).

24. On the 17th and 20th day of June 2005 the representatives and the Commission presented, respectively, observations to the different statements given before a notary public offered by the State and the representatives.

25. On the 28th and 29th day of June 2005 the Court held the public hearing on the merits and reparations and costs, in which it received the statements of the witnesses (infra paras. 40(1)(a), 40(1)(b), and 40(1)(c)) and the opinion of the expert witness (infra para. 40(2)(a)) proposed by the parties. Likewise, it heard the closing arguments of the Commission, the representatives, and the State. In the public hearing, the following appeared before the Court: a) for the Inter-American Commission, Messrs. Evelio Fernández and Santiago Canton as delegates and Mrs. Isabel Madariaga and Lilly Ching, and Mr. Víctor H. Madrigal as advisors; b) for the representatives of the alleged victim, Mrs. Soraya Long, Gisela de León, and Gabriela Citroni, and Mr. Luis Francisco Cervantes G., from CEJIL, and c) for the State, the Ambassador Álvaro Agüero Lacayo as Agent and Mrs. Argentina Wellermann as Deputy Agent; Mr. Sergio Zavala Leiva, Attorney General of Honduras; Mrs. Sandra Ponce, Special Prosecutor; Mr. Germán Siverstrutti, advisor of the Attorney General, and Mr. Roberto Ramos Bustos, General Director of Special Matters.

26. On June 30, 2005 the State presented the sworn statement given by Mr. Álvaro Raúl Cerrato Arias, proposed as a witness by the State, since his appearance before this Court was not possible.

27. On July 29, 2005 the Commission and the representatives presented their final written arguments. The representatives enclosed several annexes.

28. On August 16, 2005 the State presented its brief of final written arguments. This presentation was time-barred, since the period to do so had expired on July 29, 2005.

29. On October 6, 2005 the Secretariat, following the President's instructions, required that the Commission, the representatives, and the State present different documents as evidence to facilitate adjudication of the case, pursuant to Article 45 of the Rules of Procedure.

30. On October 24, 2005 the representatives presented the majority of the documents requested as evidence to facilitate adjudication of the case. On October 27, 2005 the Commission informed the Court that it had understood that the representatives of the alleged victim would present the evidentiary elements required by the Tribunal and that it remained at the Court's disposition if the presentation of any element were to remain pending. On November 4, 2005 the State presented part of the documents requested as evidence to facilitate adjudication of the case.

31. On November 4, 2005 the Secretariat, following the President's instructions and pursuant to Article 45 of the Rules of Procedure, requested that the Commission, the representatives, and the State present several documents as evidence to facilitate adjudication of the case. On that same date the State forwarded several documents requested as evidence to facilitate adjudication of the case.

32. On November 10 and 11, 2005 the representatives and the Commission referred to the evidence requested to facilitate adjudication of the case. On November 16, 2005 it reiterated to the State the petition of the evidence to facilitate adjudication of the case. On November 24, 2005 the State forwarded the evidence to facilitate adjudication of the case.

V. PROVISIONAL MEASURES

33. On May 30, 2005 the representatives presented a brief to the Inter-American Court, in which they stated that Mrs. Gregoria Flores, General Coordinator of the OFRANEH, "was headed, in company of the Licentiate [Christian Alexander Callejas Escoto], legal advisor of this organization, from La Ceiba toward the community of Triunfo de la Cruz, in order to collect the statements that must be presented by affidavit as part of this process. […W]hile they were parked in a gas station a man, that would later be identified as the security guard of that establishment, fire[d] shots toward the inside of the vehicle [where she was sitting] injuring Mrs. Flores in her right arm […and] some of the splinters of the bullet also reached [her] […] on the side of her stomach." They also informed that the guard mentioned that "[he had] fired the weapon since he was chasing a burglar[; h]owever, neither Mrs. Flores nor Licentiate Callejas saw the person he was allegedly chasing," and they requested that the Tribunal "assess the situation exposed and determine if it is necessary to take measures that guarantee the security of the witnesses, expert witnesses, and members of OFRANEH involved in the processing of the case."

34. On June 13, 2005 the Court required that the State adopt, without delay, the measures necessary to protect the life and personal integrity of Mr. Alfredo López Álvarez, and Mrs. Teresa Reyes Reyes and Gregoria Flores Martínez, who would appear as witnesses before the Court in the public hearing that would be held as of June 28, 2005. [FN5]

[FN5] Cf. Case of López-Álvarez et al. Provisional Measures. Ruling of the Inter-American Court on Human Rights of June 13, 2005, first operative paragraph.

---

35. On September 21, 2005 the Court ordered an extension, inter alia, of the measures necessary to protect the life and personal integrity of the mother and daughters of Mrs. Gregoria Flores Martínez. [FN6]

[FN6] Cf. Case of López-Álvarez et al. Provisional Measures. Ruling of the Inter-American Court of Human Rights of September 21, 2005, operative paragraphs one through four.

VI. EVIDENCE

36. The principle of the presence of the parties to dispute applies to evidentiary matters, and it involves respecting the parties' right to a defense. This principle is enshrined in Article 44 of the Rules of Procedure, in what refers to the time frame in which evidence must be submitted, in order to secure equality among the parties. [FN7]

[FN7] Cf. Case of Blanco-Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 37; Case of García-Asto and Ramírez-Rojas. Judgment of November 28, 2005. Series C No. 137, para. 82, and Case of Gómez-Palomino. Judgment of November 22, 2005. Series C No. 136, para. 45.

---

37. The Court has previously pointed out, with regard to the receipt and assessment of the evidence, that the proceeding followed before them is not subject to the same formalities as domestic judicial actions, and that the incorporation of certain elements into the body of evidence must be done paying special attention to the circumstances of the specific case and taking into account the limits imposed by the respect to legal security and the procedural balance of the parties. The Court has also taken into account that international jurisprudence, when it considers that international courts have the power to appraise and assess the evidence according to the rules of competent analysis, has not established a rigid determination of the quantum of the evidence necessary to substantiate a ruling. This criterion is especially valid for international human rights tribunals that have ample powers in the assessment of evidence, pursuant to the rules of logic and on the basis of experience, in order to determine the State's international responsibility. [FN8]

[FN8] Cf. Case of Blanco-Romero and others, supra note 7, para. 39; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 84, and Case of Gómez-Palomino, supra note 7, para. 46.

---

38. Based on the aforementioned, the Court will proceed to examine and assess the totality of the elements that make up the body of evidence of the present case.

A) DOCUMENTARY EVIDENCE

39. The Commission, the representatives, and the State forwarded specific statements and an expert opinion, which are summarized below, in response to the President's Decision of May 11, 2005 (supra para. 19).

Statements

1) Proposed by the Inter-American Commission and the representatives

a) Ernesta Cayetano Zúñiga, resident of the Garifuna town of Triunfo de la Cruz

She knows Alfredo López Álvarez since he was a boy. Mr. López Álvarez has participated as leader of the Defense Committee for the Lands of Triunfo de la Cruz (hereinafter "CODETT"). He has received threats. Once, when she was with the deponent, he was arrested by police agents. They later let him go without accusing him. On that occasion the deponent did not tell anybody. The witness considers that Mr. López Álvarez was arrested for his fight for the lands

and that he was slandered with an accusation of selling drugs. Mr. López Álvarez's arrest momentarily interrupted the fight for the land, which was restarted a short time later.

b) Secundino Torres Amaya, resident of the Garifuna town of Triunfo de la Cruz, and president of the CODETT

There are many problems with the land in the Community of Triunfo de la Cruz. The Municipality of Tela has sold Garifuna land to the Marbella Company and through "a contract with the Franciscans" it planned to keep the lands that belong to the Garifuna people. All these problems have affected the community in a negative manner, since the geographic space of the Garifuna population has been reduced, creating an environment of suspicion, impunity, and confrontation between the members of the community.
He has known Mr. López Álvarez for ten or twelve years, and states that he has worked as a sailor, electrician, and has acted as President of the CODETT. Members of this committee have been threatened by people from within and outside the community, for the work carried out in defense of the land; some have been criminally tried; there are arrest warrants against members of the CODETT. Five community leaders and a minor involved in movements of fights for lands have died. The witness attributes the arrest of Mr. López Álvarez to the fight for the defense of the land.

c) Juan Edgardo García, resident of the Garifuna community of Triunfo de la Cruz

He has known Mr. Alfredo López Álvarez for sixteen years, and in that time he has become aware of anonymous threats against him. He pointed out an incident that occurred nine years ago: he found out that they tried to kill Mr. López Álvarez, but the perpetrators got confused and shot a person traveling in a car the same as that of Mr. López Álvarez.

d) Andrés Pavón Murillo, President of the Committee for the Defense of Human Rights in Honduras (hereinafter "CODEH")

He met Mr. Alfredo López Álvarez when he was the leader of the Garifuna community and he later became aware that he had been deprived of his liberty under "non transparent" conditions. In the year 2001 a technical team of the CODEH visited the prison of Tela to carry out a workshop on inmates' human rights. In that meeting they achieved the organization of the individuals deprived of liberty and Mr. López Álvarez was appointed a directing member of the organization. For his participation in this organization, Mr. López Álvarez was the object of harassment and persecution, up to the point where he was prohibited from communicating in his own language. He was later transferred to the prison of Puerto Cortés, away from his family. He was warned that he would be submitted to cruel treatments if he were to participate again in the organization of the detainees.

2) Proposed by the representatives

a) Gilberto Antonio Sánchez Chandías, former Assistant and Special Prosecutor at the Public Prosecutor's Office of Ethnic Groups and Cultural Heritage

In his condition of Special Prosecutor he received complaints of all nature, among them those related to the premeditated murder of leaders that fought for land. The complaints were presented before the competent authorities, but the material perpetrators were generally charged with very weak technical investigations, reason for which they were released and the intellectual perpetrators remained completely unpunished. When the investigations reached people of "social[,] economic, and political layers of the sector", they filed a complaint against the agents before their bosses and campaigns to discredit the institutions involved were created. The witness stated that the language normally used in the complaints is Spanish; the administrators of justice do not speak the languages of the Indian communities. Mr. Sánchez Chandías also stated that in the prisons and the centers of public detention Indians and Afro-Americans are beaten when they speak in their own language, because it is assumed that they are up to something; they are recommended to speak in Spanish. Mistreatments in the detention centers are common for prisoners and they are of public knowledge.

3) Proposed by the State

a) José Mario Salgado Montalbán, lawyer, prosecutor on duty in the local offices of the Office of the Public Prosecutor of the City of Tela, Atlántida

The deponent remembers that on the last Sunday of April 1997 the detectives of the Authorities for the Fight Against Drug Trafficking assigned to the city of Ceiba, Atlántida, informed him that they had carried out an operation on the beach in the surroundings of the Puerto Rico Hotel, and as a result of it they had seized two packages that allegedly contained two kilos of cocaine. The agents arrested three men, among them Mr. Alfredo López Álvarez, from who they also seized "a bit of marihuana and a portion of cocaine." Later, in his condition of prosecutor on duty, he prepared the complaint that was presented before the Sectional Court of First Instance of Tela. He sent the defendants to the same court, where they were "inquired" and sent to the criminal center. The substances seized were sent to the North-Occidental Authority of Forensic Medicine for their corresponding analysis, which resulted positive with regard to the cocaine in a 97.4% of purity, which coincides with the field trial performed at the time of the seizure. Although he did not hear the entire case, since he was transferred to the city of San Pedro Sula, he later found out that the drug had been substituted with another substance. When the arrest was carried out there was full evidence that a crime had been committed and rational evidence to consider those responsible of said illicit act.

b) Dennis Heriberto Rodríguez Rodríguez, former agent of the General Office of Criminal Investigation of the Office of the Public Prosecutor (hereinafter "Office of Criminal Investigation" or "the DIC")

As an agent of the DIC he remitted Messrs. Alfredo López Álvarez, Luis Ángel Acosta, and Sunny Loreto Cubas to the Sectional Court of Lower Court of Tela, Atlántida, along with the evidence collected, which consisted of two kilos of cocaine covered in rubber and with "tape". He witnessed the field test, which gave a positive result. Later, the Toxicological Laboratory of San Pedro Sula confirmed that the samples were more than 90% pure. Before the arrest, the prosecution received several calls filing a complaint against the detainees as drug traffickers, reason for which the Prosecutor José Mario Salgado called the agents of the Office for the Fight

Against Drug Trafficking in order to speed up the corresponding investigations. He considers that the sample seized was switched when the court changed buildings and the evidence was not duly handled.

c) José Roberto Cabrera Martínez, former agent of the Office for the Fight Against Drug Trafficking

He carried out the arrest of Mr. Alfredo López Álvarez. With it he concluded an investigation that began at the end of March 1997 with a telephone call in which someone informed that Mr. López Álvarez was trafficking drugs. They proceeded then to follow Mr. López Álvarez during two weeks and they recollected evidence that he was meeting with individuals related with drug trafficking activities. He later obtained information that on April 27, 1997 Mr. López Álvarez had drugs in his power, reason for which he was intercepted along with Messrs. Acosta and Loreto Cubas. The agents checked the car they were driving; in the back seat they found two packages containing approximately one kilo of cocaine each, and then they performed a field test that came out positive. Once in the offices of the Office of Criminal Investigation they received Alfredo López Álvarez's statement, where he acknowledged he had been given the two packages of cocaine in his house and that Luis Ángel Acosta offered to find him a buyer. If he was able to sell that drug, he would be paid ten thousand lempiras for each package. The evidence was later handed over, duly packed, to the prosecutor; it was deposited in the Court. He is sure that drugs were found at the moment of Mr. López Álvarez's arrest, according to the field tests carried out on both packages, and he ignores what could have happened later with that evidence.

d) Álvaro Raúl Cerrato Arias, Supernumerary Judge of First Instance of the City of Tela, Department of Atlántida in the year 1997

He examined the case opened against Messrs. Alfredo López Álvarez, Sunny Loreto Cubas, and Luis Ángel Acosta Vargas, begun for the commission of the crime of trafficking drugs and narcotics in detriment of the health of the population of Honduras. The trial against the accused was carried out within the legal parameters in force at the time of its processing. He stated that from the time of the arrest of the accused up to April 28, 1998, date set for the incineration of the drugs, they were kept in a warehouse of the Court of First Instance of Tela. The Prosecutor of the Office of Public Prosecutor and representatives of other departments of the Office of the Public Prosecutor, of the National Police, of the Honduran Institute for the Prevention and Treatment of Alcoholism and Drug Addiction, as well as members of the press were summoned to presence the incineration of the substance. At that time the expert assessment was carried out again and the results stated that they were another innocuous substance. Since the process was in full trial, the defense counsel of the accused presented evidence to exhaust the proceeding. He did not know of the further development of the case, because he presented his irrevocable resignation due to health reasons.

B) TESTIMONIAL EVIDENCE AND EXPERT ASSESSMENT

40. On the 28th and 29th days of June 2005 the Court received in a public hearing the statements of the witnesses proposed by the Inter-American Commission and the representatives

and the opinion of the expert proposed by the representatives (supra paras. 19 and 25). Below, the Tribunal summarizes the relevant parts of said statements.

Statements

1) Proposed by the Commission and the representatives

a) Gregoria Flores Martínez, former President of OFRANEH

She pointed out that the Honduran Garifuna community has had to undertake a fight to defend their lands, this because since 1990 the expansion of the urban area of the municipal mayoralties lead to a process of the sale of lands to businessmen, which has lead to harassments and violations of human rights in the community; for example: the destruction of the crops and the burning of coconut cultivations, thus forcing the abandonment of those lands, the murder of 52 Indian and Black leaders accused of seizing the land, arrest warrants, and processes against colleagues, and threats to Alfredo López Álvarez so he would stop the actions of the defense of the lands he was leading as president of the CODETT, of the Board of Directors of OFRANEH, and as coordinator of the unit of Garifuna boards of the sector of Tela (UPAGAT). She believes that the threats and attacks suffered by those members of the community are part of a State strategy to expel its communities from their lands. She was also a victim of threats. A security guard fired a gun against a car in which the witness was traveling and injured her, allegedly because he was following a thief.
On the day of the arrest of Mr. Alfredo López Álvarez, she went to his home and saw that the top of his car had been opened and its tires had been punctured, the tool shed and the house were open, there were damages to the floors, mattresses, furniture, and the ceiling. When she was in the house, she saw people leaving with some documents. Later, along with Mrs. Teresa Reyes Reyes, they started searching for Mr. Alfredo López Álvarez, whom they found hours later in the Office of the Public Prosecutor arrested and apparently beaten, because his hands were swollen.

b) Alfredo López Álvarez, alleged victim

At the time of his arrest he held the position of Coordinator of the Committee for the Defense of the Lands of Triunfo de la Cruz (CODETT), treasurer of the Confederation of Indigenous People and Vice-President of OFRANEH. On April 26, 1994 he was intercepted by members of the Security of Tela and taken to the department of military investigation to be investigated for drug possession and for problems with the lands. He mentioned that on April 27, 1997 he left for Tela with a mechanic, who could not fix the vehicle he used for the community's activities. Upon their arrival at the town, when they were going to get out of the vehicle, armed groups surrounded the automobile; they took out the mechanic and the witness and threw them on the ground face down, putting their feet on their head and backs. The agents of the Office of Criminal Investigation of Tela handcuffed them, without presenting an arrest warrant, and took them to the offices of the DIC. There they were submitted to a detailed physical inspection, to which a police agent assigned another prisoner who was detained, and he was later questioned and coerced into acknowledging as his the two packages presented to him. He needed them to "loosen the shackles because his wrists were trapped, they were bleeding." They did not let him communicate with his lawyer or next of kin. He gave his preliminary examination statement in

the presence of the secretary of the Sectional Court of First Instance of Tela, after being held for 24 hours; five days later he signed a power of attorney for the attorney Víctor Manuel Vargas Navarro.
The arrest conditions in the Criminal Center of Tela were degrading. In a room designed to hold 40 people there were 300 prisoners, either convicted or assigned to preventive detention, and there was no medical attention. He was initially allowed to speak his mother tongue in this criminal center, with some limitations, but at the end it was totally forbidden.
As a result of the claims made against the director of the penitentiary center the Committee for the Defense of the Inmates (hereinafter "CODIN") was formed; Mr. López Alvarez was elected Vice-President of that Committee. Due to his participation in this organization he was transferred to the National Penitentiary of Támara, without any warning. In the new criminal center the situation got worse. The long distance from his next of kin made it impossible for them to visit him, there was no medical assistance, the area of the cell was smaller and it did not have latrines.
During his detention, the Garifuna community remained in a vulnerable state. Several projects were lost, including the installation of a public library and the construction of a training and literacy center for the elderly. Even after being released, his next of kin, his community, and he himself have been harassed.
During the years in which he was imprisoned, he was never personally notified of any judgment nor did he have the opportunity to go before a judge. He states that "during that time he could only see breeches, fire arms, 'stomps', and mistreatment of all types", and that there was "never any presence of a legitimate authority in the act."

c) Teresa Reyes Reyes, partner of the alleged victim

The same as her partner, she worked in the defense of the Garifuna territory as secretary and member of the CODETT and OFRANEH. Due to her participation in the defense of the lands, the witness and her partner have been the victims of threats. A commitment order has been issued against her for the alleged misappropriation of a property under dispute. The day on which Mr. Alfredo López Álvarez was arrested, she found him in the Prosecutor's Office in very bad shape and beaten, and it seemed like he had murdered someone or that he had committed a serious crime; his ankles were all cracked, the handcuffs were very tight and his wrists were swollen and bleeding. The witness found her home completely "violated" and in bad conditions; the neighbors told her that it had been the police.
At the beginning of her partner's imprisonment in the Criminal Center of Tela, she used to take him water and food everyday. When she visited him, the prison guards did not allow them to carry out some of the activities of the Garifuna community, such as speaking their language, and therefore, they could not communicate freely about the community's work. Later, and especially after his transfer to the National Penitentiary of Támara, it was often difficult for her to visit him; since he was located more than three hours away and her economic situation was precarious. They did not allow them to communicate by phone. While Mr. López Álvarez was detained, the economic situation of the witness was affected, since her economic survival depended on his work.
In the six years during which Mr. Alfredo López Álvarez was imprisoned, his next of kin lived in fear. Four more colleagues were arrested in that period of time and his home was settled on several occasions. The mentioned harassment and the arrest of Mr. López Álvarez have

traumatized his children. She had to support her family by working with CODETT and OFRANEH, as well as by accepting contributions of her next of kin.
She considers that Mr. López Álvarez was arrested in order to separate him from the defense of the lands of the Garifuna community, because he has been the leader that has worked the hardest in their defense and he has belonged to almost all the organizations for the restoration of the community. After being released, Mr. López Álvarez went back to the fight for the lands of Triunfo de la Cruz lands upon the request of the members of the community.

Expert Opinions

2) Proposed by the Commission and the representatives

a) Milton Danilo Jiménez Puerto, attorney

In the case of Mr. Alfredo López Álvarez there was a violation of the guarantees established in treaties and conventions of which Honduras is a part of. The law stated that the accused could only appoint a defense counsel once he had been "inquired", thus in the investigative stage he did not even have access to a complete knowledge of the charges against him. The accused was not allowed to appear before the judicial authority that would be in charge of his case. He should have been informed personally of some decisions. The Political Constitution of Honduras (hereinafter "the Constitution") and the Law on Legal Protection of 1936 (hereinafter "Law on Legal Protection"), establish that the arrest warrant must be issued in writing, except in situations of flagrancy. In Mr. López Álvarez's case there was an investigation prior to his arrest, of which the police authorities should have informed the Office of the Public Prosecutor.
There is a clear constitutional stipulation regarding the separation between those being processed and those convicted. With regard to the imprisonment itself there is no legal stipulation that restricts a person's right to express themselves in their mother tongue.
Different bodies of the Office of the Public Prosecutor and of the Office of Criminal Investigation are in charge of maintaining the chain of custody of a sample of the substance seized, and its extraction must be made in the presence of a judge, of the clerk of the court, and of the defendant through his defense counsel. In this case there was a technical report from which it was concluded that the material analyzed was not a narcotic or a drug. This should have determined the release of Mr. López Álvarez, upon the request of the defense counsel or by an act ex officio of the Judge, pursuant to the stipulations included in the Code of Criminal Procedures of Honduras (hereinafter "Code of Criminal Procedures") in force at that time.
The Constitution, in force as of 1982, states the possibility that a person, even having been submitted to trial, could be released once they have offered enough bail or guarantee for said purpose. However, the Code of Criminal Procedures in force up to February 2002 limited this right only to those accused for crimes with a punishment no greater than 5 years. The Law on the Defendant without Conviction was applied to people who had not been convicted and that had already served a third of the average sentence they would be sentenced to if they were found guilty, with certain exceptions such as drug trafficking crimes, for which Mr. López Álvarez was being processed.
In order to issue a commitment order under the legislation in force in 1997, it was necessary that two requirements be present: conclusive evidence that the crime was committed and reasonable evidence of the participation of a person in the same; in the present case those requirements were

not present. There were irregularities, such as excessive abuse of the reversals by the representative of the Office of the Public Prosecutor and the admission of evidence that was absolutely irrelevant. With regard to the appeal of relief presented, the Appellate Court of La Ceiba rejected it; it simply denied it, which is the same as not having admitted it.
Finally, he considers that the legislation adopted in 2002 implies great advances with regard to the one in force in 1997, but those processed in accordance with the previous procedure are not allowed to enjoy the benefits of the measures included in the new criminal legislation that may substitute the preventive detention.

C) EVIDENCE ASSESSMENT

Assessment of Documentary Evidence

41. In this case, as in others [FN9], the Tribunal admits the probative value of the documents presented in a timely fashion by the parties, or as evidence to facilitate adjudication of the case pursuant to Article 45 of its Rules of Procedure, that were not disputed or objected, and whose authenticity was not questioned.

[FN9] Cf. Case of Blanco-Romero et al., supra note 7, para. 43; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 88, and Case of Gómez-Palomino, supra note 7, para. 49.

---

42. The Court adds to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure and because it considers that they are useful in the issuing of a ruling in this case, the documents provided by the representatives as annexes to their final written arguments [FN10] (supra para. 27); the documents of the State provided as annexes in their brief of June 28, 2005, [FN11] and the documents presented during the public hearing held before the Court by Mrs. Gregoria Flores Martínez and Mr. Alfredo López Álvarez, which were made of the knowledge of all the parties present in said hearing. [FN12]

[FN10] Specifically: final letter of release issued by the Judge of the Sectional Court of First Instance of Tela in favor of Mr. Alfredo López-Álvarez on August 26, 2003 and several proofs of expenses incurred in by the CEJIL in the case of López-Álvarez.[FN11] Specifically: paper clippings regarding the loan granted by the Inter-American Development Bank (IDB) with the objective of orienting and developing the nine indigenous and black communities of Honduras, and documents issued by the Secretariat of Government and Justice of Honduras, regarding the presentation of securities to the OFRANEH.
[FN12] Specifically: a map in which the area covered by the Garifuna communities of Honduras was highlighted; copy of two photographs of Mrs. Gregoria Flores Martínez's car; a diskette with the photographs of Mrs. Gregoria Flores Martínez's car; copy of a photograph of June 19, 2005 named "confrontation [Defense Committee for the Lands of Triunfo de la Cruz (CODETT)], Coop[erative] women. Fight between police agents of Tela and alleged owners of the land of the Cooperative [of women]. Home of Secundino Torres"; copy of a photograph named "community land/ lawsuit of Dilcia Ochoa versus Teresa Reyes"; copy of the transcripts

of the hearing for the substitution of the precautionary measure of June 23, 2005 in the case against Teresa Reyes Reyes as the alleged responsible for the crime of misappropriation and damages; official letter of the Local Prosecutor's Office of Tela of September 6, 2004, through which it summoned Mrs. Gregoria Flores to appear before the Prosecutor's Office of the Office of the Public Prosecutor of Tela; document signed by Mr. Francisco Amaya Guzmán in the year 1949, received by Mr., Alfredo López-Álvarez in the year 1994; arrest warrant issued on August 25, 2004 by the Captain of the National Preventive Police of Tela Atlántida against Messrs. Jose Luis Martínez, William Blanco, Augusto Medina, and Liborio Medina Centero; report given by the Investigative Commission of the Community center of Triunfo de la Cruz, on April 23, 1994; public complaint presented by the Defense Committee for the Lands of Triunfo de la Cruz (CODETT) on June 24, 2005; paper clippings regarding the complaint made by OFRANEH regarding discrimination of the Garifunas within the Judicial Power; public complaint presented by the Defense Committee for the Lands of Triunfo de la Cruz (CODETT) on June 24, 2005 and February 11, 2005; judgment of the Sectional Court of First Instance of Tela, on March 29, 2005, through which it admitted the ordinary petition of nullity regarding the final property deed presented by Mr. Esteban Loreto Guity; record of the statement of the accused in the process against Teresa Reyes Reyes for the crime of misappropriation on February 15, 2005; final judgment of the legal action presented by Mr. Ramón Edgardo Benedit issued by the Sectional Court of First Instance of Tela on April 8, 2003; certification of the judgment issued by the Appellate Court of la Ceiba, on September 29, 2004, in which it declared the motion of appeal presented against the final judgment issued by the Sectional Court of First Instance of Tela deserted; certification of the real estate and mercantile registry of entry 2,402, issued on January 20, 2003; memorandum of the Office of the Public Prosecutor of June 10, 2004; sheet provided of the appeal for annulment against the commitment order and the arrest warrant issued against Luis Harry, Teresa Harry, Juan Martínez, and others presented by Mr. Secundino Torres; record of the initial hearing held in the city of Tela, on March 14, 2005, in the process against Teresa Reyes Reyes and others; minutes of the general meeting held by the Board for Improvement on March 8, 2005; legal action presented by Ramón Edgardo Benedit, President of the Garifuna Community, before the Sectional Judge of First Instance of Tela, on February 7, 2003; complaint filed for harassment and threats against leaders of the Community of Triunfo de la Cruz presented by Gregoria Flores Martínez, General Coordinator of the Honduran Black Fraternal Organization (OFRANEH) before the Prosecutor's Office of the Municipality of Tela, on March 21, 2001; official letter of the Local Prosecutor's Office of Tela of August 27, 2002, through which it summoned Mr. Aduardo Benedit to appear before the Prosecutor's Office of Tela; letter for the definitive release of Teresa Harry issued by the Secretariat of the Sectional Court of First Instance on September 18, 2002, and claim presented by Mr. Secundino Torres Amaya against Mrs. Ana Cristina Morales for the alleged invasion of land on May 5, 2003.

---

43. In application of that stated in Article 45(1) of the Rules of Procedure, the Court included in the body of evidence of the case the documents presented by the representatives, which were requested by the Tribunal as evidence to facilitate adjudication of the case (supra paras. 30 and 32). [FN13] The Commission stated that it understood that the representatives would present the evidentiary elements required by the Court and that it remained at the disposal of the latter if the presentation of any element were to continue pending. The State also presented part of the evidence to facilitate adjudication of the case requested (supra paras. 31 and 32). [FN14]

[FN13] Specifically: Constitution of the Republic of Honduras, Decree No. 131 of January 11, 1982 and that is currently in force; Criminal Code, Decree No. 144-83 of September 26, 1983 and that is currently in force; Code of Criminal Procedures reformed, Decree No. 144-83 of August 23, 1983, Decree No. 191-96 of October 31, 1996, and Decree No. 59-97 of May 8, 1997; New Code of Criminal Procedures, Decree No. 9-99 of February 2002; Law on the Wrongful Use and Illicit Trafficking of Drugs and Psychotropic Substances, Decree No. 126-89 of September 5, 1989 and that is currently in force; Law of the Defendant without Conviction, Decree No. 127-96, modified by Decree No. 183-97; motion of appeal admitted by the Sectional Court of First Instance of Tela on November 20, 2000 and Table of Minimum Wages for an Ordinary Workday Executive Agreement No. STSS 029-05, of March 28, 2005. Regarding the birth certificates, they presented the majority of those requested, specifically: of Cirilo Isrrael García Álvarez, Rosel Bernardo García Álvarez, Desma Apolonia García López, Amilcar Danilo García Álvarez, René López García, Oscar López García, Crecencio López García, Elsa López García, and Bernardo Secundino García Álvarez.

[FN14] Specifically: report of the Supreme Court of Justice of Honduras of October 25, 2005; Code of Criminal Procedures of 1984, Decree No. 189-84 of October 31, 1984; Criminal Code of 1984, Decree No. 144-83 of August 23, 1983; Decree No. 120-94 of August 30, 1994, which reforms part of the Criminal Code; Decree No. 191-96 of October 31, 1996, which reforms part of the Criminal Code; Decree No. 59-97; Decree No. 194-94 of December 17, 2004, which reforms part of the Criminal Code; Decree No. 212-04 of December 29, 2004, which reforms part of the Criminal Code; Decree No. 127-96 of August 19, 1996, Law of the Defendant without Conviction; Decree No. 126-89 of September 5, 1989, with the reforms introduced by Decree No. 86-93 of May 24, 1993, which reforms Article 36 of the Law on the Wrongful Use and Illicit Trafficking of Drugs and Psychotropic Substances; Political Constitution of Honduras, Decree No. 131 of January 11, 1982; Bylaws to the Law of the Defendant without Conviction, Agreement No. 160-97 of the Presidency of the Republic of Honduras of December 19, 1997; Table of Minimum Wages for an Ordinary Workday, Executive Agreement No. STSS 029-05, of March 28, 2005, and the birth certificates of Crecencio López García; Teresa Siomara López García; Teresa de Jesús López García; Elsa López García; Rosa López García; René López García; Joel García López, and Cirilo Isrrael García Álvarez. Similarly, the State presented; proof of the Secretariat of the Appellate Court of la Ceiba, Mrs. Auxiliadora de Cardinale, of June 19, 2004; writ of the prosecutor of the Office of Public Prosecutors, Mr. Joel Edgardo Serrano Carcamo, of July 31, 2003; certification of the ruling of the Supreme Court of Justice of the Republic of Honduras of August 19, 2003, and other documents of the dossier that include the substantiation of the appeal for review by a higher court due to violation of Law Nº 1624-2003.

---

44. Likewise, the Court adds the following documents to the body of evidence, in application of Article 45(1) of the Rules of Procedures since it considers them useful for the resolution of this case: a) Law on Amparo, Decree No. 009- 1936, enacted on April 14, 1996; b) United Nations, “El Racismo, la Discriminación Racial, la Xenofobia y todas las Formas de Discriminación”, informe del Sr. Doudou Diène, Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia.

Adición – MISIÓN A HONDURAS. UN Doc. E/CN.4/2005/18/Add.5, of March 22, 2005; c) United Nations, Commission on Human Rights, Civil and Political Rights, Including the Questions of: Independence of the Judiciary, Administration of Justice, Impunity, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission on Human Rights resolution 2003/43. Addendum – Situations in specific countries or territories. UN Doc. E/CN.4/2004/60/Add.1, of March 4, 2004; d) United Nations, Commission on Human Rights, Human Rights Defenders, Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders. Addendum – Summary of cases transmitted to Governments and replies received. UN Doc. E/CN.4/2004/94/Add.3, of March 23, 2004; e) United Nations, Commission on Human Rights, Human Rights Defenders, Report submitted by Hina Jilani, Special Representative of the Secretary-General on human rights defenders, in accordance with Commission on Human Rights resolution 2000/61. Addendum – Communications to and from Governments. UN Doc. E/CN.4/2003/104/Add.1, of February 20, 2003; f) United Nations, Commission on Human Rights, Los Derechos Humanos y las Cuestiones Indígenas, Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, Sr. Rodolfo Stavenhagen. Adición – Análisis de la situación de los países y otras actividades del Relator Especial. UN. Doc. E/CN.4/2005/88/Add.1, of February 16, 2005; g) United Nations, Commission on Human Rights, Report of the Special Representative of the Secretary-General, Hina Jilani. Addendum – Summary of cases transmitted to Governments and replies received. UN Doc. E/CN.4/2005/101/Add.1, of March 16, 2005; h) United Nations, Program of the United Nations for Development, Honduras Office. National Report on Human Development 2003, ISBN 99926-676-0-5; i) UNESCO, Obra maestra del patrimonio oral e inmaterial de la humanidad – "La lengua, la danza y la música de los garífunas", available on: http://www.unesco.org/culture/intangible-heritage/masterpiece_annex.php?lg=es&id=1, access on October 13, 2005, and j) United Nations. Human Rights Committee. Considerations of Reports submitted by Status parties under article 4º of the Covenant. Inicial Report, Honduras. UN Doc. CCPR/C/HND/2005/1, of April 26, 2005.

45. Regarding the statements offered before notary public (affidavit) by the witnesses Ernesta Cayetano Zúñiga, Secundino Torres Amaya, Juan Edgardo García, Andrés Pavón Murillo, Gilberto Antonio Sánchez Chandias, José Mario Salgado Montalbán, Dennis Heriberto Rodríguez Rodríguez, and José Roberto Cabrera Martínez (supra paras. 39(1)(b), 39(1)(c), 39(1)(a), 39(1)(d), 39(2)(a), 39(3)(a), 39(3)(b), and 39(3)(c)), the Court admits them since they concur with its object and it will assess them within the totality of the body of evidence and through the application of the rules of competent analysis, considering the observations made to the statements of Messrs. Gilberto Antonio Sánchez Chandías, José Mario Salgado Montalbán, Dennis Heriberto Rodríguez Rodríguez, and José Roberto Cabrera Martínez, presented by the Commission and the representatives (supra para. 24).

46. In what refers to the statement offered before notary public (affidavit) by Mr. Álvaro Raúl Cerrato Arias (supra paras. 26 and 39(3)(d)), this Court points out that said deponent was summoned to appear in the public hearing of the present case. However, the State informed the Court that Mr. Cerrato Arias would not appear in the mentioned hearing, reason for which the Tribunal authorized the State to present a sworn statement. Based on the above, this Court admits the sworn statement, and assesses it within the totality of the body of evidence.

47. This Tribunal points out that the statement offered before notary public (affidavit) by the witness Darwin Valladares and the expert assessment of Mr. Dennis A. Castro Bobadilla, presented by the State and of Mrs. Débora S. Munczek, presented by the representatives, ordered in the Ruling of the Court of May 11, 2005 (supra paras. 19, 20, and 22), were not presented by them.

48. The brief of final arguments of the State was presented in a time-barred manner; therefore, the Tribunal does not include it in the case (supra para. 28).

49. Regarding the articles published by the press presented by the parties, the Tribunal considers that they may be assessed when they include public or notorious facts or statements of State employees or they corroborate aspects related to the case. [FN15]

[FN15] Cf. Case of Palamara-Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 60; Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 79, para. 134, and Case of the Girls Yean and Bosico. Judgment of September 8, 2005. Series C No. 130, para. 96.

Assessment of the Testimonial and Expert Evidence

50. Regarding the statement given by Mr. Alfredo López Álvarez (supra para. 40(1)(b)), this Tribunal admits it in what it concurs with its object stated in the Decision of May 11, 2005 (supra para. 19). Given the fact that the alleged victim has a direct interest in the case, his statement cannot be assessed in an isolated manner, but instead within the totality of the body of evidence, applying the rules of competent analysis. The statements made by the alleged victims have a special value, since they offer relevant information on the consequences of the violations that could have been committed against them. [FN16]

[FN16] Cf. Case of Blanco-Romero et al., supra note 7, para. 45; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 91; and Case of Gómez-Palomino, supra note 7, para. 50.

---

51. The Tribunal also admits the statement given by Mrs. Teresa Reyes Reyes (supra para. 40(1)(c)), in what it concurs with the object of the statement, and it will assess it within the totality of the body of evidence. The Court considers that since she is a relative of the alleged victim and she has a direct interest in this case, her statements may not be assessed in an isolated manner, but instead within the totality of the evidence collected during the process. The statements of the next of kin of the alleged victims are useful in what refers to the merits and the reparations, in the measure a in which they offer more information on the consequences of the alleged violations committed. [FN17]

[FN17] Cf. Case of Blanco-Romero et al., supra note 7, para. 45; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 91; and Case of Gómez-Palomino, supra note 7, para. 50.

---

52. Regarding the testimony of Mrs. Gregoria Flores Martínez (supra para. 40(1)(a)) and the expert report of Mr. Milton Jiménez Puerto (supra para. 40(2)(a)), this Tribunal admits them since it considers that they are useful in solving the present case and considering the observations made by the State in its final oral arguments regarding the statement of Mrs. Flores Martínez, and includes them in the body of evidence applying the rules of competent analysis.

53. In the terms mentioned, the Court will weigh the evidentiary value of the documents, statements, and expert reports presented to it in writing or offered before it. The evidence presented during the process has been brought together into a single body, considered a whole. [FN18]

[FN18] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 96; Case of the Girls Yean and Bosico, supra note 15, para. 99, and Case of Acosta-Calderón. Judgment of June 24, 2005. Series C No. 129, para. 49.

VII. Proven Facts

54. Based on the evidence presented and considering the statements made by the parties, the Court finds that the following facts have been proven:

BACKGROUND – GENERAL CONTEXT

Regarding the Garifuna Community and the problems surrounding the land

54(1) Honduras has a multiethnic and pluricultural composition. It is made up of people of mixed blood, indigenous, and afro descendents. The Garifunas are afro descendents mixed with indigenous people, whose origin goes back to the XVIII century and whose Honduran villages were developed in the North Coast of the Atlantic littoral region. Their economy is based on, among others, traditional fishing, cattle raising, the cultivation or rice, banana, and yucca, and the traditional production of fishing instruments. Male polygamy is admissible within the Garifuna culture. The Garifunas, as an ethnical minority, have their own culture, which has had great influence of the development of the Honduran culture. [FN19]

[FN19] Cf. Republic of Honduras, “Perfil de los Miembros Indígenas de Honduras”, preliminary document, December 1999 (dossier of appendixes to the petition, appendix 6, folios 689, 690, 705 through 707); United Nations, United Nations Development Program, Honduras Office. National Report on Human Development 2003, ISBN 99926-676-0-5, page 142, and UNESCO, Master works of the oral and abstract patrimony of humanity - “La lengua, la danza y la música

de los garífunas", available in: http://www.unesco.org/culture/intangible-heritage/masterpiece_appendix.php?lg=es&id=1, accessed on October 13, 2005.

54(2) There have been divergences regarding the rights over the lands that had been given in property to members of the Garifuna communities. [FN20]

[FN20] Cf. statements of members of the Garifuna Community of Triunfo de la Cruz presented to the Local Office of the Public Prosecutor of Tela, Atlántida (dossier of appendixes to the petition, appendix 3, folios 332 through 349); official letter forwarding the complaint sent on July 8, 1999 by the Head Prosecutor of Tela, Mrs. Edith Rodríguez Valle, to the Special Prosecutor of Ethnic Groups and Cultural Heritage, Mr. Gilberto Sánchez Chandias (dossier of appendixes to the petition, appendix 17, folio 815); official letter sent on February 1, 2000 by the Special Prosecutor of Ethnic Groups and Cultural Heritage, Mr. Gilberto Sánchez Chandias, to the Executive Director of the National Agricultural Institute, Mr. Aníbal Delgado Fiallos (dossier of appendixes to the petition, appendix 18, folio 816); Title of "Guarantee of Occupation" granted by the Executive Director of the National Agriculture Institute on September 28, 1979 to the Garifuna Community of "Triunfo de la Cruz", Municipality of Tela, Department of Atlántida (dossier of appendixes to the petition, appendix 7, folio 788); "Definitive title deed in complete domain" granted by the Executive Director of the National Agriculture Institute on October 29, 1993 to the Garifuna Community of "Triunfo de la Cruz", Municipality of Tela, Department of Atlántida (dossier of appendixes to the petition, appendix 8, folios 789); "Definitive title deed in complete domain" granted by the Executive Director of the National Agriculture Institute on July 6, 2000 to the Garifuna Community of "Triunfo de la Cruz", Municipality of Tela, Department of Atlántida (dossier of appendixes to the petition, appendix 3, folios 294 through 297); official letter sent on June 26, 2000 by the Secretary General of the National Agriculture Institute, Mr. José Adolfo Guzmán Herrera, to the Mayor of the Municipality of Tela, Department of Atlántida (dossier of appendixes to the petition, appendix 19, folio 817); United Nations. Human Rights Committee. Considerations of Reports submitted by States parties under article 4º of the Covenant. Inicial Report, Honduras. UN Doc. CCPR/C/HND/2005/1, of April 26, 2005, and United Nations, "El Racismo, la Discriminación Racial, la Xenofobia y todas las Formas de Discriminación", report of Mr. Doudou Diène, Special Rapporteur on the contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance. Addition – MISSION TO HONDURAS. UN Doc. E/CN.4/2005/18/Add.5, of March 22, 2005. para. 28.

54(3) There have been complaints of threats and attacks against the life of the defenders of the human rights of the Garifunas. [FN21]

[FN21] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850); statement offered by Gilberto Antonio Sánchez Chandías before notary public (affidavit) on May 27, 1005 (dossier of merits and reparations, volume III, folios 651 through 657); statement of Mrs. Gregoria Flores Martínez given in public hearing

celebrated before the Inter-American Court on June 28, 2005; argument of Mrs. Gregoria Flores in the Hearing on the merits carried out on March 8, 2002 in the 114° Regular Session of the Inter-American Commission (dossier of appendixes to the petition, appendix 3, folios 425 through 438, and dossier of appendixes to the petition, volume I, appendix 5, folios 665 through 678); statement of Mrs. Basilicia Ramos Flores in the hearing on merits held on March 8, 2002 in the 114° Regular Session of the Inter-American Commission (dossier of appendixes to the petition, appendix 3, folios 431 through 434); International Amnesty, "Honduras: La justicia defrauda a los pueblos indígenas", index AI AMR 37/10/99/s, September of 1999 (dossier of appendixes to the petition, appendix 15, folios 802 through 813); United Nations, "El Racismo, la Discriminación Racial, la Xenofobia y todas las Formas de Discriminación", report of Mr. Doudou Diène, Special Representative on the contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance. Addition – MISSION TO HONDURAS. UN Doc. E/CN.4/2005/18/Add.5, of March 22, 2005, para. 19; United Nations. Human Rights Committee. Considerations of Reports submitted by States parties under article 4º of the Covenant. Inicial Report, Honduras. UN Doc. CCPR/C/HND/2005/1, of April 26, 2005 United Nations, Human Rights Commission, Report of the Special Representative of the Secretary-General, Hina Jilani. Addendum – Summary of cases transmitted to Governments and replies received. UN Doc. E/CN.4/2005/101/Add.1, of March 16, 2005. paras. 292 through 300; United Nations, Commission on Human Rights, "Los Derechos Humanos y las Cuestiones Indígenas", Report of the Special Rapporteur on the situation of human rights and fundamental liberties of the indigenous people, Mr. Rodolfo Stavenhagen. Adición – Analysis of the countries' situation and other activities of the Special Representative. UN. Doc. E/CN.4/2005/88/Add.1, of February 16, 2005. paras. 49 and 50; United Nations, Commission on Human Rights, "Human Rights Defenders", Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders. Addendum – Summary of cases transmitted to Governments and replies received. UN Doc. E/CN.4/2004/94/Add.3, of March 23, 2004, paras.. 241 through 253; United Nations, Commission on Human Rights, "Civil and Political Rights, Including the Questions of: Independence of the Judiciary, Administration of Justice, Impunity", Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission on Human Rights resolution 2003/43. Addendum – Situations in specific countries or territories. UN Doc. E/CN.4/2004/60/Add.1, of March 4, 2004. para. 36, and United Nations, Commission on Human Rights, "Human Rights Defenders", Report submitted by Hina Jilani, Special Representative of the Secretary-General on human rights defenders, in accordance with Commission on Human Rights resolution 2000/61. Addendum – Communications to and from Governments. UN Doc. E/CN.4/2003/104/Add.1, of February 20, 2003. paras. 286 through 290.

Regarding Mr. Alfredo López Álvarez, his next of kin, and his participation as a community leader

54(4) Mr. Alfredo López Álvarez was born on April 10, 1951, in the municipality of El Progreso, Department of Yoro, Honduras. At the time of the facts he lived in the village of Triunfo de la Cruz, city of Tela, Department of Atlántida, and he performed independent works as an electrician and in construction. [FN22]

[FN22] Cf. Certification of the birth certificate of Mr. Alfredo López-Álvarez, number 02069, issued by the Registry of Births, Marriages, and Deaths of the Republic of Honduras on February 25, 2002 (dossier of appendixes to the petition, appendix 43, folio 1520); preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850), and evidence of the Figueroa Transportation Company, signed by its general manager, Mr. Rafael Figueroa, issued on March 4, 1997 (dossier of appendixes to brief of pleadings and motions, appendix 8, folio 118).

54(5) Mrs. Teresa Reyes Reyes lived with Mr. Alfredo López Álvarez when the facts of the case occurred and she is still his partner. The children of both are Alfa Barauda López Reyes, Suamein Alfred López Reyes, and Gustavo Narciso López Reyes. Mr. Alfredo López Álvarez also has the following children: Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, [FN23] José Álvarez Martínez, and Joseph López Harolstohn. Likewise, Mrs. Teresa Reyes Reyes is also the mother of José Jaime Reyes Reyes and María Marcelina Reyes Reyes. [FN24]

[FN23] Cf. statement of Mrs. Teresa Reyes Reyes offered in the public hearing held before the Inter-American Court on June 28, 2005; certification of the birth certificate of Alfa Barauda López Reyes issued by the Municipal Civil Registrator on March 1, 2002 (dossier of appendixes to the petition, appendix 43, folio 1524); certification of the birth certificate of Suamein Alfred López Reyes, number 00384, issued by the Municipal Civil Registrator on March 1, 2002 (dossier of appendixes to the petition, appendix 43, folio 1525); certification of the birth certificate of Gustavo Narciso López Reyes, number 00385, issued by the National Registry of People of the Republic of Honduras on March 1, 2002 (dossier of appendixes to the petition, appendix 43, folio 1526); certification of the birth certificate of Alfred Omaly López Suazo, number 0107-32-02445, issued by the Municipal Civil Registrator on September 24, 1987 (dossier of appendixes to the petition, appendix 43, folio 1527); certification of the birth certificate of Deikel Yanell López Suazo, number 0501-80-013147, issued by the Municipal civil Registrator on September 21, 1987 (dossier of appendixes to the petition, appendix 43, folio 1529), and certification of the birth certificate of Iris Tatiana López Bermúdez, number 00348, issued by the National Registry of People of the Republic of Honduras on September 5, 1997 (dossier of appendixes to the petition, appendix 43, folio 1531).

[FN24] Cf. certification of the birth certificate of José Jaime Reyes Reyes, number 01020, issued by the National Registry of People of the Republic of Honduras on March 7, 1993 (dossier of appendixes to the petition, appendix 43, folio 1533); certification of the birth certificate of María Marcelina Reyes Reyes, number 01368, issued by the National Registry of People of the Republic of Honduras on July 17, 1996 (dossier of appendixes to the petition, appendix 43, folio 1534).

54(6) Mr. Catarino López and Mrs. Apolonia Álvarez Aranda are the parents of Mr. Alfredo López Álvarez. [FN25] Some of the brothers of Mr. López Álvarez are: Alba Luz García Álvarez, Mirna Suyapa García Álvarez, Rina Maribel García Álvarez, Marcia Migdalia García Álvarez, and Joel Enrique García Álvarez. [FN26]

[FN25] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850), and certification of the birth certificate of Alfredo López-Álvarez, number 02069, issued by the Registry of Births, Marriages, and Death of People of the Republic of Honduras on February 25, 2002 (dossier of appendixes to the petition, appendix 43, folio 1520).

[FN26] Cf. certification of the birth certificate of Alba Luz García Álvarez, number 1804-1954-00085, issued by the National Registry of the People of the Republic of Honduras on November 4, 2003 (dossier of appendixes to the brief of pleadings and motions, appendix 11, folio 407); certification of the birth certificate of Mirna Suyapa García Álvarez, number 00075, issued by the National Registry of People of the Republic of Honduras on May 9, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix 11, folio 414); certification of the birth certificate of Rina Maribel García Álvarez, number 00274, issued by the National Registry of People of the Republic of Honduras, not dated (dossier of appendixes to the brief of pleadings and motions, appendix 11, folio 410); certification of the birth certificate of Marcia Migdalia García Álvarez, number 00061, issued by the National Registry of People of the Republic of Honduras on February 9, 2001 (dossier of appendixes to the brief of pleadings and motions, appendix 11, folio 416), and certification of the birth certificate of Joel Enrique García Álvarez, number 00455, issued by the National Registry of People of the Republic of Honduras, not dated (dossier of appendixes to the brief of pleadings and motions, appendix 11, folio 408).

54(7) Mr. Alfredo López Álvarez was a leader of the Honduras Black Fraternal Organization (OFRANEH) and of the Confederation of Indigenous People of Honduras (CONPAH) for more than three years, as well as of the Lands Defense Committee of Triunfo de la Cruz (CODETT). [FN27] At the time of his arrest, on April 27, 1997, he was president of CODETT and Vice-president of OFRANEH. [FN28]

[FN27] Cf. documentary evidence of the President of the Organization of Community Ethnic Development (ODECO), Mr. Celeo Álvarez Casildo, of May 14, 1997 (dossier of appendixes to the response to the petition, volume I, folio 157); ruling of the Lands Defense Committee of Triunfo de la Cruz signed by its president, Mr. Alfredo López-Álvarez, of June 7, 1995 (dossier of appendixes to the petition, appendix 21, folios 834 and 835); letter of the Lands Defense Committee of Triunfo de la Cruz addressed to Messrs. Nicole Sander and Marie Peron, signed by its president, Mr. Alfredo López-Álvarez, of July 26, 1995 (dossier of appendixes to the petition, appendix 21, folio 836); statement offered by Ernesta Cayetano Zúñiga before notary public (affidavit) on May 30, 2005 (dossier on merits and reparations, Volume III, folios 603 through 606); statement offered by Secundino Torres Amaya before notary public (affidavit) on May 30, 2005 (dossier on merits and reparations, volume III, folios 607 through 611); statement offered

by Andrés Pavón Murillo before notary public (affidavit) on May 30, 2005 (dossier on merits and reparations, volume III, folios 616 through 620); statements of the witnesses Santos Diego Valerio, Ester Valerio Martínez, Margarita Martínez Castillo, and Victoria Palacios Martínez offered before the Sectional Court of First Instance of Tela on May 23, 1997 (dossier of appendixes to the response to the petition, volume I, folios 172 through 175), and official letter presented by Mr. Víctor Vargas Navarro, representing defense counsel of Mr. Alfredo López-Álvarez, before the Sectional Judge of First Instance of Tela on May 29, 1997 (dossier of appendixes to the response to the petition, volume I, folio 197).
[FN28] Cf. arguments of Mrs. Gregoria Flores in hearing on the merits carried out during the 114° Regular Sessions of the Inter-American Commission on March 8, 2002 (dossier of appendixes to the petition, volume I, appendix 5, folios 665 through 678), and official letter presented by Mr. Víctor Vargas Navarro, representing defense counsel of Mr. Alfredo López-Álvarez, before the Sectional Judge of First Instance of Tela on May 29, 1997 (dossier of appendixes to the response to the petition, volume I, folio 197).

54(8) Mr. Alfredo López Álvarez, while he was detained in the Criminal Center of Tela, was a member of the Committee for the Defense of the Rights of Inmates (CODIN), established in the twelve criminal centers of Honduras, within the framework of the Interinstitutional Agreement between the Secretariat of Security and the Committee for the Defense of Human Rights in Honduras (CODEH). [FN29]

[FN29] Cf. official letter issued by the president of the Committee for the Defense of Human rights in Honduras (CODEH), Mr. Andrés Pavón Murillo, addressed to the Secretary of Security, Mr. Gautama Fonseca Zúñiga, on April 5, 2001 (dossier of appendixes to the petition, appendix 36, folios 885 through 888).

Regarding the arrest of Mr. Alfredo López Álvarez

54(9) On March 31, 1997 the Office of Criminal Investigation received a telephone call from a non-identified person, who stated that “Mr. Sunny Loreto Cubas was a large-scale drug dealer”. On that date, officers of the Office for the Fight Against Drug-Dealing “started investigating the case, receiving other phone calls regarding the movements of the accused, [Mr. Sunny Loreto Cubas].” On April 27, 1997 the DIC received a new telephone call from a “non-identified source”, who said that on that same day “[Mr.] Sunny Loreto [Cubas] would meet with two people on the beach.” Consequently, the officers Fabricio Lupiac, Darwin Valladares, Alex Wilmer Bejarano, Roberto Cabrera, Omar Discua, and Angel Reyes started surveillance on the surroundings of the Puerto Rico Hotel, city of Tela, Honduras. [FN30]

[FN30] Cf. accusation presented by the prosecutor of the Office of the Public Prosecutor of the Republic of Honduras, Mr. José Mario Salgado Montalbán, before the Sectional Judge of First Instance of Tela against Messrs. Alfredo López-Álvarez, Luis Ángel Acosta, and Sunny Loreto

Cubas on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folios 126 and 127).

54(10) On April 27, 1997 Mr. Alfredo López Álvarez looked for Mr. Luis Ángel Acosta, mechanic, in order to repair his automobile, which was not working. The latter informed him that it would be necessary to tow the automobile in order to repair it. Since it was not possible to transfer the vehicle at that time to the city of Tela, the alleged victim "hitched a ride" with Mr. Acosta, to the proximities of the Puerto Rico Hotel in said population. [FN31]

[FN31] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850); production of testimonial evidence number six of Mrs. Teresa Reyes Reyes before the Sectional Court of First Instance of Tela on January 22, 1999 (dossier of appendixes to the response to the petition, volume II, folio 461), production of testimonial evidence number six of Mrs. Gregoria Martínez Flores before the Sectional Court of First Instance of January 22, 1999 (dossier of appendixes to the response to the petition, volume II, folios 457 through 459).

54(11) On that same April 27, 1997, in hours of the afternoon, officials of the Fight Against Drug-Trafficking checked the vehicle in which Messrs. Alfredo López Álvarez and Luis Ángel Acosta were traveling and found and seized two packages that contained a white powder. They immediately detained them in the parking area of the Puerto Rico Hotel. At the time of the arrest Mr. Alfredo López Álvarez was not informed of his rights as a detainee, nor of the facts he was being charged with. On that day the Officers of the DIC arrested Mr. Sunny Loreto Cubas in the proximity of the Puerto Rico Hotel. [FN32]

[FN32] Cf. accusation presented by the prosecutor of the Office of the Public Prosecutor of the Republic of Honduras, Mr. José Mario Salgado Montalbán, before the Sectional Judge of First Instance of Tela against Messrs. Alfredo López-Álvarez, Luis Ángel Acosta, and Sunny Loreto Cubas on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folios 126 and 127).

54(12) When Mr. López Álvarez was detained by the officers of the State he was obliged to lay on the ground and some agents stood on his back. After his arrest, he was taken to the office of the Head of Criminal Investigation, where he was instructed to take off his clothes; once naked, he was submitted to a body inspection carried out by another detainee. [FN33]

[FN33] Cf. statement of Mr. Alfredo López-Álvarez offered in the public hearing held before the Inter-American Court on June 28, 2005.

54(13) On the night of April 27, 1997 Mrs. Teresa Reyes Reyes found out of the arrest of Alfredo López Álvarez. Since he did not return from the city of Tela, his next of kin and members of the community worried and went out to look for him. He was found in the office of the Head of Criminal Investigation. The alleged victim was not allowed to speak to his partner when she arrived at said office. [FN34]

[FN34] Cf. statement of Mr. Alfredo López-Álvarez offered in the public hearing held before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing held before the Inter-American Court on June 28, 2005.

54(14) On April 27, 1997 Mr. Alfredo López Álvarez remained at the Office of Criminal Investigation with the tight handcuffs, which caused his wrists to bleed and swell and he was coerced into confessing to the facts he was being charged with. He did not receive medical attention for the physical mistreatment he was submitted to. [FN35]

[FN35] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850); statement of Mr. Alfredo López-Álvarez offered in the public hearing held before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing held before the Inter-American Court on June 28, 2005.

Regarding the legal process followed against Mr. Alfredo López Álvarez

54(15) On April 28, 1997, within the twenty-four hours following the arrest, Mr. Dennis H. Rodríguez Rodríguez, research officer of the Office of Criminal Investigation, brought "before the [Sectional] Court [of First Instance] Messrs: Luis Ángel Acosta, [Sunny] Loreto Cubas, and Alfredo López, considering them responsible for the Crime of ['']POSSESSION AND DEALING OF NARCOTIC[S'] in detriment of THE PUBLIC HEALTH OF THE STATE OF HONDURAS", and he presented as "evidence what was allegedly "TWO KILOS OF COCAINE AND A JOINT OF 'MARIJUANA', [and] A SMALL BAG CONTAINING A ROCK THAT WAS ALLEGEDLY CRACK." [FN36]

[FN36] Cf. official letter issued by the investigation offer of the General Office of Criminal Investigation of the Office of the Public Prosecutor, Mr. Dennis H. Rodríguez R., addressed to the Sectional Judge of First Instance of Tela on April 28, 1997 (dossier of appendixes to the response to the petition, Volume I, folio 110).

54(16) On April 29, 1997 the Sectional Court of First Instance of Tela started the preliminary criminal proceedings, admitted the transfer of the defendants Luis Ángel Acosta, Sunny Loreto Cubas, and Alfredo López Álvarez, and of "two kilos of cocaine, a joint of Marijuana and a rock that was allegedly crack", as evidence, instructed that the preliminary examination statements be received from the defendants, and sent them to the Criminal Center of Tela for "the term of Law to inquire". For the assessment of the evidence and their economic evaluation, it sent it to the Department of Forensic Medicine of the city of San Pedro de Sula, "so that it [could] determine the purity of the cocaine and if the [a]mount [allegedly] seized of [c]ocaine, [m]arijuana, and the alleged rock of crack, is considered for consumption or for dealing," and it appointed expert witnesses for that effect. As of that date the mentioned the evidence remained under the custody of the Sectional Court of First Instance of Tela. [FN37]

[FN37] Cf. court order to initiate preliminary proceedings issued by the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the response to the petition, volume I, folio 111).

54(17) On April 29, 1997 Mr. Alfredo López Álvarez offered his preliminary examination statement in the Sectional Court of First Instance of Tela before the Judge Reina Isabel Najera, and the secretary of the court, Adela E. Mejía de Murillo, without the presence of a defense counsel. [FN38]

[FN38] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850), and power of attorney granted by Mr. Alfredo López-Álvarez to the attorney Víctor Manuel Vargas Navarro on April 29, 1997, and received by the Sectional Court of First Instance of Tela on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folio 129). ----------

54(18) On the same April 29, 1997 Mr. Alfredo López Álvarez granted a power of representation to Mr. Víctor Manuel Vargas Navarro. The corresponding instrument was received on April 30, 1997 in the Sectional Court of First Instance of Tela, which admitted it on May 2, 1997. Mr. Alfredo López Álvarez appointed new representatives during the criminal proceedings followed against him. During the course of the latter, his defense counsel was notified of several judicial acts. [FN39]

[FN39] Cf. power of attorney granted by Mr. Alfredo López-Álvarez to the attorney Víctor Manuel Vargas Navarro on April 29, 1997, and received by the Sectional Court of First Instance of Tela on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folio 129); document of revocation and granting of a power of attorney signed by Mr. Alfredo López-Álvarez in favor of Messrs. Elvin Javier Varela Rapalo and Miguel Ángel Izaguirre Fiallos on September 22, 1997 (dossier of appendixes to the response to the petition, volume I, folio 256);

document substituting the power granted to Mr. Elvin Javier Varela Rapalo in favor of Mr. Dagoberto Alcides Varela Rapalo on February 13, 1998 (dossier of appendixes to the response to the petition, volume I, folio 282); document substituting the power granted to Mr. Dagoberto Alcides Varela Rapalo in favor of Mr. Humberto Cuellar Erazo on March 19, 1999 (dossier of appendixes to the response to the petition, volume II, folio 487); document substituting the power granted to Mr. Humberto Cuellar Erazo in favor of Mr. Elvin Javier Varela Rapalo on October 9, 2000 (dossier of appendixes to the response to the petition, volume II, folio 576); document substituting the power granted to Mr. Elvin Javier Varela Rapalo in favor of Mr. José Luis Mejía Herrera on September 3, 2001 (dossier of appendixes to the response to the petition, volume II, folio 624); document substituting the power granted to Mr. José Luis Mejía Herrera in favor of Mr. Nelson Martín Reyes Morales on February 5, 2003 (dossier of appendixes to the response to the petition, volume II, folio 845), and official letter of the Sectional Court of First Instance of Tela apparently of May 2, 1997 (dossier of appendixes to the response to the petition, volume I, folio 950).

54(19) On April 30, 1997 Mr. José Mario Salgado Montalbán, prosecutor of the Office of Public Prosecutors of Honduras, presented before the Sectional Judge of First Instance of Tela an accusation against Messrs. Alfredo López Álvarez, Luis Ángel Acosta Vargas, and Sunny Loreto Cubas "considering them responsible of the crimes of 'POSSESSION, SALE, AND TRAFFICKING OF COCAINE', in detriment OF THE PUBLIC HEALTH OF THE POPULATION OF THE STATE OF HONDURAS." [FN40]

[FN40] Cf. accusation presented by the prosecutor of the Office of the Public Prosecutor, Mr. José Mario Salgado Montalbán, before the Sectional Judge of First Instance of Tela against Messrs. Alfredo López-Álvarez, Luis Ángel Acosta, and Sunny Loreto Cubas on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folio 126).

54(20) On May 2, 1997 the Sectional Court of First Instance of Tela issued a commitment order against Messrs. Luis Ángel Acosta Vargas, Alfredo López Álvarez, and Sunny Loreto Cubas, "for the crime of POSSESSION AND ILLEGAL TRAFFICKING OF NARCOTICS, in detriment of the public health of the State of Honduras [; f]act that was verified on Sunday [April 27, 1997, approximately at] two [or] three in the afternoon, in front of the Puerto Rico Hotel of [the city of Tela]." Said order determined the preventive detention of the accused based on the elements of evidence supplied by the officers of the Office of Criminal Investigation in an official letter of April 28, 1997. On that opportunity, Mr. Alfredo López Álvarez was not allowed to offer bail in order to be released on conditional freedom. The alleged victim was notified of the commitment order, but he refused to sign it. Mr. López Álvarez remained detained in the Criminal Center of Tela. [FN41]

[FN41] Cf. commitment order issued by the Sectional Court of First Instance of Tela on May 2, 1997 (dossier of appendixes to the response to the petition, volume I, folio 137), and statement of Mr. Alfredo López-Álvarez offered in the public hearing held before the Inter-American Court.

54(21) According to the set of rules in force in Honduras at the time of the facts, the judicial detention to inquire could not exceed six days as of the date in which it occurred. In the present case, on April 29, 1997 the judicial detention of the alleged victim was declared and "the term to inquire" was opened. The order of preventive detention was issued on May 2, 1997 (supra paras. 54(16) and 54(20)). [FN42]

[FN42] Cf. Article 71 of the Political Constitution of Honduras, Decree No. 131, of January 11, 1982 (dossier of evidence to facilitate adjudication of the case of the representatives, appendix A, folio 1615); Article 117 of the Code of Criminal Procedures, Decree number 189-1984 (dossier of evidence to facilitate adjudication of the case of the representatives, appendix C, folio 1941); court order to initiate preliminary proceedings issued by the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the response to the petition, volume I, folio 111), and commitment order issued by the Sectional Court of First Instance of Tela on May 2, 1997 (dossier of appendixes to the response to the petition, volume I, folio 137).

54(22) "In attention to the official letter of May 2, 1997 of the Sectional Court of First Instance of Tela," the Office of the Public Prosecutor made the analysis of "a sample [of the evidence seized from] the defendants Luis Ángel Acosta, [Sunny] Loreto, and Alfredo López Álvarez" (supra paras. 54(11), 54(15) and 54(16)) and on May 14, 1997 the previously mentioned department passed the following report:

A) Net weight of the sample: 1.8 grams[; r]esult: positive for cannabinoids[; c]onclusion: according to the amount seized the evidence is considered for immediate personal consumption.
B) Net weight of the sample: 1.5 grams[; w]hite powder: positive [for] cocaine 94.7% purity[; w]hite stone: positive [for] cocaine 95% purity[;c]onclusion: according to the amount seized in the official letter [.]
2 kilograms, the evidence is considered for trafficking.
Note: the evidence was destroyed during the analysis. [FN43]

[FN43] Cf. opinion issued by the Office of the Public Prosecutor and signed by Messrs. Darlan W. Membreño, toxicologist, and Francisco J. Herrera A., regional director of Forensic Medicine, on May 14, 1997 (dossier of appendixes to the response to the petition, volume I, folio 161).

54(23) On June 19, 1997 the Sectional Court of First Instance of Tela ordered that the process be forwarded to full trial, informing the parties so that the accusation could be formalized and the defendants could reply to the charges presented against them, respectively, within the terms of law. On July 25, 1997 the same court declared the partial nullity of the mentioned order, since in the process some of the evidence requested in a timely manner by the parties was not practiced. [FN44]

[FN44] Cf. court order to move on from the preliminary proceedings to the full trial ordered by the Sectional Court of First Instance of Tela on June 19, 1997 (dossier of appendixes to the response to the petition, volume I, folio 207); request to annul the actions presented by Mr. José Luis Mejía Herrera on July 23, 1997 (dossier of appendixes to the response to the petition, volume I, folio 212), and ruling of partial nullity ordered by the Sectional Court of First Instance of Tela on July 25, 1997 (dossier of appendixes to the response to the petition, volume I, folio 213).

54(24) On August 4, 1997 Mr. Alfredo López Álvarez requested before the Sectional Court of First Instance of Tela the reversal of the order of preventive detention issued on May 2, 1997 (supra para. 54(20)). On August 7, 1997 the referred Court considered the request presented by the alleged victim inadmissible, since the commitment order was considered according to law. [FN45]

[FN45] Cf. appeal for annulment presented by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on August 4, 1997 (dossier of appendixes to the response to the petition, volume I, folio 246), and ruling issued by the Sectional Court of First Instance of Tela on August 7, 1997 (dossier of appendixes to the response to the petition, volume I, folio 248).

54(25) On October 8, 1997 the Sectional Court of First Instance of Tela considered preliminary informative stage concluded, opened the full trial and informed the parties so that they could make the accusation formal and reply to the charges, whichever the case. [FN46]

[FN46] Cf. ruling issued by the Sectional Court of First Instance of Tela on October 8, 1997 (dossier of appendixes to the response to the petition, volume I, folio 259).

54(26) On April 6, 1998 the Sectional Court of First Instance of Tela declared the first evidentiary period of ten days closed and the second evidentiary period of thirty days to furnish the evidence proposed in a timely manner and in form by the parties opened. [FN47]

[FN47] Cf. ruling issued by the Sectional Court of First Instance of Tela on April 6, 1998 (dossier of appendixes to the response to the petition, volume I, folio 306).

54(27) On April 13, 1998, the Sectional Court of First Instance of Tela, given the fact "the [a]mount, [q]uality, and [p]urity of the drug seized from the [d]efendants LUIS ÁNGEL ACOSTA [VARGAS], [SUNNY] LORETO CUBAS, AND ALFREDO LÓPEZ [ÁLVAREZ]" had been proven in court records "and the corresponding reports and expert assessments were duly established," determined that the drug should proceed to be destroyed. On April 28, 1998,

date established for the destruction, when "the two kilos of cocaine[,] evidence of the present cause, were being incinerated, the results of the field tests [established by law] carried out by experts [of the Criminal Laboratory and that of Forensic Sciences of the Office of the Public Prosecutor] were negative." According to the report issued by said Laboratory on May 4, 1998 the material consisted of "[t]hree (3) plastic bags, containing white powder," on which an analysis was practiced pursuant to the methodology of color trials, for the identification and determination of the purity of the sample. [FN48]

[FN48] Cf. ruling issued by the Sectional Court of First Instance of Tela on April 13, 1998 (dossier of appendixes to the response to the petition, volume I, folio 307); report issued by the Toxicological Chemical Laboratory of the Office of the Public Prosecutor of Honduras, signed by Vivian Castillo, analyst, and Francisco Herrera, regional director, and that was sent to the attorney Álvaro Raul Cerrato on May 4, 1998 (dossier of appendixes to the response to the petition, volume I, folios 345 and 346), and judgment issued by the Sectional Court of First Instance of Tela on January 13, 2003 (dossier of appendixes to the response to the petition, volume II, folios 827 through 829) .

54(28) On September 9, 1998 the Sectional Court of First Instance of Tela determined the absolute nullity of the actions as of and including the ruling of April 6, 1998 (supra para. 54(26)), in virtue of the existence of procedural irregularities in the furnishing of the evidentiary elements. [FN49]

[FN49] Cf. interlocutory decision issued by the Sectional Court of First Instance of Tela on September 9, 1998 (dossier of appendixes to the response to the petition, volume I, folios 397 and 398), and brief of the representatives of Messrs. Luis Ángel Acosta and Alfredo López-Álvarez of August 11, 1998 (dossier of appendixes to the response to the petition, volume I, folios 392 and 393).

54(29) On September 24, 1998 the Sectional Court of First Instance of Tela, considering the absolute nullity ordered (supra para. 54(28)), declared the first evidentiary period of ten days definitely closed and the second evidentiary period of thirty days for the furnishing of the means of evidence proposed by the parties open. [FN50]

[FN50] Cf. ruling issued by the Sectional Court of First Instance of Tela on September 24, 1998 (dossier of appendixes to the response to the petition, volume I, folio 400).

54(30) On February 22, 1999 the Sectional Court of First Instance of Tela declared the second evidentiary period of thirty days definitely closed and notified the parties so they could present their respective conclusions. On March 10, 1999 said Court ordered the absolute nullity of the actions as of the date in which the Office of the Public Prosecutor was notified that it could

prepare its conclusions, since the mentioned ruling of February 22 had not been notified to the main agent of the Office of the Attorney General of the Republic. [FN51]

[FN51] Cf. ruling issued by the Sectional Court of First Instance of Tela on February 22, 1999 (dossier of appendixes to the response to the petition, volume II, folio 477); ruling issued by the Sectional Court of First Instance of Tela on March 10, 1999 (dossier of appendixes to the response to the petition, volume II, folio 484), and brief of March 8, 1999 of the prosecutor of the Office of Public Prosecutors through which he requests that the absolute nullity of the acts be declared (dossier of appendixes to the response to the petition, volume II, folios 482 and 483).

54(31) On October 20, 2000 the Sectional Court of First Instance of Tela decided that having had enough time and not being able to locate the witnesses appointed, belonging to the Office of Criminal Investigation, it was convenient to summon the parties to hear the final judgment. [FN52]

[FN52] Cf. ruling issued by the Sectional Court of First Instance of Tela on October 20, 2000 (dossier of appendixes to the response to the petition, volume II, folio 579).

54(32) On November 7, 2000 the Sectional Court of First Instance of Tela issued a conviction for the crime of possession and dealing of narcotics against the defendants, Messrs. Alfredo López Álvarez and Luis Ángel Acosta, and of acquittal with regard to Mr. Sunny Loreto Cubas, who died on June 25, 1999. The judgment was based on the testimonial description of what occurred on April 27, 1997 and on the analysis performed on May 14, 2997 on the substance seized in the arrest. The judgment convicted the defendants Luis Ángel Acosta and Alfredo López Álvarez "to serve fifteen years of imprisonment in the National Penitentiary Center of Tamara [...], prior subtraction of the time they had already served [,…] [and it imposed] a fine of one million lempiras." Said judgment did not specify the sanction for each of the convicted parties. [FN53]

[FN53] Cf. judgment issued by the Sectional Court of First Instance of Tela on November 7, 2000 (dossier of appendixes to the response to the petition, volume II, folios 589 through 593), and certification of the death certificate of Sunny Loreto Cubas issued by the National Registry of People on August 30, 1999 (dossier of appendixes to the response to the petition, volume II, folio 553).

54(33) On November 16, 2000 Mr. Elvin Javier Varela Rapola, defense counsel of Messrs. Alfredo López Álvarez and Luis Ángel Acosta, in the act of notification of the judgment of November 7, 2000, presented before the Sectional Court of First Instance an application for reconsideration and additionally a motion of appeal against the conviction. [FN54] On November 20, 2000 the Sectional Court of First Instance of Tela declared the application for

reconsideration inadmissible and accepted the motion of appeal, which was forwarded to the Appellate Court of La Ceiba. [FN55] On May 2, 2001 the Appellate Court of la Ceiba decided to declare, ex officio, the absolute nullity of the actions as of and including the ruling dated October 8, 1997 due to procedural irregularities that were "a violation of norms of obligatory compliance", in virtue of, among others, the fact that a) in the conviction of November 7, 2000 the participation of each of the accused in the commission of the crime was not determined, and in the operative part the sentence imposed on each of them was not determined or clarified (supra para. 54(32)); b) the pieces that must make up the process were not numbered successively as per their order of presentation; c) the practice of reconstruction of the facts was requested as evidence to facilitate adjudication of the case, and it was not furnished despite having set two hearings to this effect; d) there were unnecessary delays in the receipt of the statements; e) the investigation of the facts was not exhausted because the Office of the Public Prosecutor and the Judge did not present or summon the antidrug agents that carried out the operation; f) in the confrontation hearing one of the accused was sworn in, which constitutes a violation of constitutional guarantees, such as the right to a defense and the due process, and g) the parties were unduly summoned twice to hear the final judgment. This Court determined that the case be returned to the Court of origin, in order to correct the flaws mentioned for which the powers granted to the parties will survive and be considered valid "for the resulting legal effects." [FN56]

[FN54] Cf. manuscript note of presentation of the application for reconsideration and appeal by Mr. Elvin Javier Varela Rapola on November 16, 2000 (dossier of appendixes to the response to the petition, volume II, folio 595).
[FN55] Cf. ruling issued by the Sectional Court of First Instance of Tela on November 20, 2000 (dossier of appendixes to the response to the petition, volume II, folio 596).
[FN56] Cf. certification of the judgment of the Appellate Court of la Ceiba on May 2, 2001 (dossier of appendixes to the response to the petition, volume II, folios 609 through 611).

54(34) On July 20, 2001 Mrs. Teresa Reyes Reyes presented an habeas corpus in favor of Messrs. Alfredo López Álvarez and Luis Ángel Acosta before the Appellate Court of la Ceiba, based on the fact that said Appellate Court had decided to "declare ex officio the absolute nullity of the actions as of and including the decision of October 08, 1997, […] in order to correct the defects[, and] that it is clear that in the present case there had been an excessive and unjustified delay in the processing of the criminal case against the injured parties and based on that […] their detention had become illegal." [FN57]

[FN57] Cf. habeas corpus presented by Teresa Reyes Reyes in favor of Alfredo López-Álvarez and Luis Ángel Acosta before the Appellate Court of la Ceiba on July 20, 2001 (dossier of appendixes to the petition, appendix 3, folios 119 through 122).

54(35) On July 23, 2001 the Appellate Court of la Ceiba declared the appeal presented by Mrs. Reyes Reyes inadmissible, based on the fact that the procedural action of declaring ex officio the

nullity of the actions due to procedural breaches "did not constitute a violation of constitutional guarantees," and that "on the other hand it did not appear that any of the alleged injured parties were illegally detained or that they were being object of humiliations or burdens by any authority." [FN58]

[FN58] Cf. judgment on the habeas corpus issued by the Appellate Court of la Ceiba on July 23, 2001 (dossier of appendixes to the petition, appendix 3, folio 123).

54(36) On January 16, 2002 Mr. José Luis Mejía Herrera, public defense counsel of Mr. Alfredo López Álvarez requested the annulment of the commitment order of May 2, 1997 (supra para. 54(20)) and his immediate release based on the fact the "there were no evidentiary elements valid to consider the body of the crime as completely established, […] since there would always be a reasonable doubt regarding if the substance that was allegedly seized was or was not cocaine." On January 24, 2002 the Sectional Court of First Instance of Tela declared the request for annulment of the commitment order inadmissible, since all actions ordered after October 8, 1997 lacked any legal value. [FN59]

[FN59] Cf. request for annulment of the commitment order and release of January 16, 2002 (dossier of appendixes to the response to the petition, volume II, folios 655 through 657), and decision of the Sectional Court of First Instance of Tela of January 24, 2002 (dossier of appendixes to the response to the petition, volume II, folios 658 and 659).

54(37) On January 30, 2002 Mr. Luis Mejía Herrera, public defense counsel of Mr. Alfredo López Álvarez, in the act of the notification of the decision of January 24, 2002, presented before the Sectional Court of First Instance of Tela an application for reconsideration and additionally a motion of appeal against the mentioned decision. On February 1, 2002 the application for reconsideration was declared inadmissible and the motion of appeal was admitted and forwarded to the Appellate Court of la Ceiba. On June 18, 2002 the Appellate Court of la Ceiba declared the appeal presented inadmissible, and declared that "the trial would continue until the issuing of the final judgment." [FN60]

[FN60] Cf. manuscript note of the presentation of the application for reconsideration and appeal by Mr. José Luis Mejía Herrera on January 30, 2002 (dossier of appendixes to the response to the petition, volume II, folio 665); ruling of the Sectional Court of First Instance of Tela of February 1, 2002 (dossier of appendixes to the response to the petition, volume II, folio 670), and certification of the ruling of the Appellate Court of la Ceiba of June 18, 2002 (dossier of appendixes to the response to the petition, volume II, folios 675 y 676).

54(38) On July 30, 2002 the Sectional Court of First Instance of Tela forwarded the trial to full trial and notified the parties so they could formalize the accusation and to reply to the charges

within the term established by Law. On August 30, 2002 said Court opened the trial to evidence for twenty days. On November 5, 2002 the Sectional Court of First Instance of Tela stated that it would continue with the change of venue so that the parties could present their respective conclusions. [FN61]

[FN61] Cf. ruling issued by the Sectional Court of First Instance of Tela of July 30, 2002 (dossier of appendixes to the response to the petition, volume II, folios 680); ruling issued by the Sectional Court of First Instance of Tela of August 30, 2002 (dossier of appendixes to the response to the petition, volume II, folios 698), and ruling of the Sectional Court of First Instance of Tela of November 5, 2002 (dossier of appendixes to the response to the petition, volume II, folios 793).

54(39) On November 26, 2002 Mr. José Luis Mejía Herrera, public defense counsel of Mr. Alfredo López Álvarez requested to the Sectional Court of First Instance of Tela that it issue in his favor an acquittal based on, among other arguments, the fact that the alleged drug seized had been found within a vehicle that did not belong to Mr. López Álvarez nor was it driven by him; that he can not be considered the owner or the illegitimate possessor of the substance that was said to be cocaine; that as expressed by the prosecutor only one rock of crack was seized from him, and that once the same was analyzed it resulted for personal use, and that reasonable doubt had been established with regard to the existence of the alleged drug, since the first report did not establish any chain of custody regarding the alleged two kilos of cocaine. On November 27, 2002 the mentioned Court summoned the parties to hear its judgment. [FN62]

[FN62] Cf. petition of the defense counsel of Mr. Alfredo López-Álvarez, Mr. José Luis Mejía Herrera, presented before the Sectional Court of first Instance of Tela on November 26, 2002 (dossier of appendixes to the response to the petition, volume II, folios 821 through 824), and ruling of the Sectional Court of First Instance of Tela of November 27, 2002 (dossier of appendixes to the response to the petition, volume II, folios 825).

54(40) On January 13, 2003 the Sectional Court of First Instance of Tela issued an acquittal in favor of Messrs. Alfredo López Álvarez and Luis Ángel Acosta, and dismissed the case followed against Mr. Sunny Loreto Cubas, based on the fact that "the chain of custody was not established for the evidence seized, reason for which up to this date there was no certainty if the sample sent to the toxicological lab and that resulted positive was taken from the two kilos of white powder seized from the accused, since there was no evidence in the court records of who performed said judicial proceeding or if the same was later replaced and when the tests were redone it resulted that it was not cocaine. Therefore two toxicological reports with different results from what seemed to be the same evidence results in the fact that the body of the crime was not proven. [...] [S]ince there are two different toxicological reports, there is doubt in determining which of the two is the one actually practiced on the evidence seized in the present case." [FN63]

[FN63] Cf. judgment issued by the Sectional Court of First Instance of Tela of January 13, 2003 (dossier of appendixes to the response to the petition, volume II, folios 827 through 829).

54(41) On January 20, 2003 the Office of the Public Prosecutor presented a motion of appeal before the Appellate Court of la Ceiba against the acquittal issued by the Sectional Court of First Instance of Tela. On January 23, 2003 that Court admitted the appeal. On May 29, 2003 the Appellate Court confirmed the acquittal based on the fact that "from the assessment of the evidence added to the trial it could not be concluded that the accused h[ad] participated in an act that constituted a crime […]." The judgment added that "even when it is true that the statements of the police agents that participated in the capture of the accused are present in the process, they differ in details or essential aspects and therefore are not worthy of credit." [… I]n the event that it is accepted that the packages [seized in the arrest] that appear as evidence in the present trial were seized from the accused, it would not be possible to determine if in effect they contained a prohibited substance, since we can not know which of the two samples analyzed was actually taken from said packages [… and] since, based on the assessment of the evidence included in the trial, we could not derive the conclusion that the accused h[ad] participated in an act that constituted a crime […], it is evident that what proceeds is to confirm the [acquittal]." [FN64]

[FN64] Cf. manuscript note of the presentation of the motion of appeal by the prosecutor of the Office of the Public Prosecutor, Mr. Jacobo Jesús Erazo, of January 20, 2003 (dossier of appendixes to the response to the petition, volume II, folio 830); ruling of the Sectional Court of First Instance of January 23, 2003 (dossier of appendixes to the response to the petition, volume II, folio 832), and judgment on the appeal of the Appellate Court of la Ceiba of May 29, 2003 (dossier of appendixes to the response to the petition, volume II, folio 885 through 888).

54(42) In June 2003 the Office of the Public Prosecutor announced an appeal for annulment against the decision of the Appellate Court of la Ceiba before the Supreme Court of Justice of Honduras. On July 31, 2003 the Office of the Public Prosecutor desisted from the appeal. On August 14, 2003 the Criminal Chamber of the Supreme Court of Justice considered "the appeal for annulment dismissed due to announced violation of the law" before the mentioned Appellate Court, and as definitive the judgment issued on May 29, 2003. [FN65]

[FN65] Cf. evidence of the secretary of the Appellate Court of la Ceiba, Mrs. Auxiliadora de Cardinale, of June 19, 2004 (dossier on merits and reparations and costs, volume V, folio 1151); brief of the prosecutor of the Office of the Public Prosecutor, Mr. Joel Edgardo Serrano Carcamo, of July 31, 2003 (dossier on merits and reparations and costs, volume V, folio 1157), and certification of the ruling of the Supreme Court of Justice of the Republic of Honduras of August 19, 2003 (dossier on merits and reparations and costs, volume V, folio 1195).

***

54(43) On March 22, 2001 Mr. Alfredo López Álvarez was transferred from the Criminal Center of Tela to the National Penitentiary of Támara, in the city of Puerto Cortés, at dawn. While he was sleeping he was woken up and driven half naked in the "back" of a police pick up vehicle. [FN66]

[FN66] Cf. report of Mr. Nazir López Orellana, director of the Criminal Center of Tela, of March 20, 2001 addressed to Mrs. Lizeth Gómez Robleda, Sectional Judge of First Instance of Tela, Atlántida (dossier of appendixes to the petition, volume I, folio 878); statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(44)This transfer prevented Mr. Alfredo López Álvarez from continuing with his tasks of Vice-President of the Committee for the Defense of the Rights of Inmates (CODIN) in the Criminal Center of Tela. Another four leaders of the CODIN were also transferred, and each of them was sent to a different criminal center. [FN67]

[FN67] Cf. communication forwarded by the Legal Advisor of the Project of Human Rights and Prison Population of the CODEH, Mrs. Julia Gutiérrez, to the Special Prosecutor of Human Rights, Mrs. Aida Estela Romero, on May 24, 2000 (sic) (dossier of appendixes to the petition, volume I, folios 883 and 884); communication forwarded by the president of the Committee for the Defense of Human Rights in Honduras (CODEH), Mr. Andrés Pavón Murillo, to the Secretary of Security, Mr. Gautama Fonseca Zúñiga on April 5, 2001 (dossier of appendixes to the brief of petitions and motions, appendix 36, folios 885 through 888), and statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

***

54(45) Mr. Alfredo López Álvarez initially remained detained on the 27th and 28th days of April of 1997 at the Office of Criminal Investigation. On April 28, 1997 he was brought before the Sectional Court of First Instance of Tela. On the 29th of the same month and year he was sent to the Criminal Center of Tela. On May 2nd said Court issued the order of preventive detention, and therefore Mr. López Álvarez remained detained without interruption since that date, first in the Criminal Center of Tela and later in the National Penitentiary of Támara, until August 26, 2003, when he was released. [FN68] The alleged victim was imprisoned for six years and four months or seventy six months. [FN69]

[FN68] Cf. letter of definitive release issued by the Sectional Judge of First Instance of Tela in favor of Mr. Alfredo López-Álvarez on August 26, 2003 (dossier of appendixes to the brief of petitions and motions, volume I, appendix 4, folio 19).

[FN69] Cf. accusation presented by the prosecutor of the Office of Public Prosecutors, Mr. José Mario Salgado Montalbán, before the Sectional Judge of First Instance of Tela against Messrs. Alfredo López-Álvarez, Luis Ángel Acosta, and Sunny Loreto Cubas on April 30, 1997 (dossier of appendixes to the response to the petition, volume I, folios 126 and 127); preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850); court order to initiate preliminary proceedings issued by the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the response to the petition, volume I, folio 111); commitment order issued by the Sectional Court of First Instance of Tela on May 2, 1997 (dossier of appendixes to the response to the petition, volume I, folio 137); letter of definitive release issued by the Sectional Judge of First Instance of Tela in favor of Mr. Alfredo López-Álvarez on August 26, 2003 (dossier of appendixes to the brief of petitions and motions, volume I, appendix 4, folio 19), and statement offered by Mr. Alfredo López-Álvarez in the public hearing celebrated before the Inter-American Court on June 28, 2005.

Regarding the prison conditions to which Mr. Alfredo López Álvarez was submitted

54(46) Honduras approved the Law of the Defendant without Conviction in consideration of the fact that "many people who, despite the considerable period of time that had gone by since the date of their arrest, ha[d] not yet been convicted or acquitted by the tribunals and courts of justice were imprisoned in the country's penitentiaries and criminal centers." In the system of criminal procedures in force in 1997 there was no maximum term established for any case of preventive detention. [FN70]

[FN70] Cf. Law of the Defendant without Conviction, Decree No. 127-96, of August 13, 1996, modified by Decree No. 183-97, of October 16, 1997, third whereas (dossier of appendixes to the petition, appendix 3, volume I, folios 246 through 250).

54(47) At the centers where the alleged victim was detained no system was applied for the classification of the inmates; there was no separation between those being processed and those convicted. During his preventive detention in the Criminal Center of Tela and the National Penitentiary of Támara, Mr. Alfredo López Álvarez was imprisoned along with the convicted population. [FN71]

[FN71] Cf. letter addressed by the President of the Supreme Court of Justice of Honduras, Mr. José María Palacios, to the Secretary of State in the Office of Foreign Affairs, Mr. Tomas Arita Valle (dossier of appendixes to the petition, appendix 3, folios 234 through 237), and statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(48) During the time of his detention in the Criminal Center of Tela and in the National Penitentiary of Támara, in the city of Puerto Cortés, the alleged victim was submitted to unhealthy and overcrowded prison conditions. Both criminal establishments were overpopulated and they lacked adequate hygiene conditions. Mr. Alfredo López Álvarez had to share a reduced cell with several people, he did not have a bed to rest on and, for some time, he had to sleep on the floor. He did not receive an adequate diet. Additionally, the Criminal Center of Tela lacked drinkable water and on occasions the alleged victim had to wait for it to rain in order to take a shower. [FN72]

[FN72] Cf. statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005; statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and the State's oral arguments during the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(49) At the beginning of the year 2000 the director of the Criminal Center of Tela prohibited the Garifuna population imprisoned in said center, among which Mr. Alfredo López Álvarez was included, from speaking Garifuna, their native language, with the other inmates they knew and with the people that visited them. [FN73]

[FN73] Cf. communication forwarded by the Legal Advisor of the Project of Human Rights and Prison Population of the Committee for the Defense of Human Rights in Honduras (CODEH), Mrs. Julia Gutiérrez, to the Special Prosecutor of Human Rights, Mrs. Aida Estela Romero, on May 24, 2000 (dossier of appendixes to the petition, appendix 35, folios 883 and 884); letter forwarded by the president of the Committee for the Defense of Human Rights in Honduras (CODEH), Mr. Andrés Pavón Murillo, and the Coordinator of the Project on Human Rights and Prison Population, Mr. Nelson Reyes M., to the Prosecutor of Human Rights, on behalf of Mrs. Aida Estela Romero, on March 28, 2000 (dossier of appendixes to the petition, appendix 35, folio 882); communication forwarded by the president of the Committee for the Defense of Human Rights in Honduras (CODEH), Mr. Andrés Pavón Murillo, to the Secretary of Security, Mr. Gautama Fonseca Zúñiga on April 5, 2001 (dossier of appendixes to the petition, appendix 36, folios 885 through 888); witness statement before the Local Office of Public Prosecutors of the city of Tela, offered by Mr. Alfredo López-Álvarez, undated (dossier of appendixes to the petition, appendix 33, folios 876 and 877); statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

Regarding the pecuniary and non-pecuniary damages caused to Mr. Alfredo López Álvarez and his next of kin

54(50) At the time of his arrest, Mr. Alfredo López Álvarez worked independently as an electrician and in construction activities. As a consequence of the facts he stopped receiving any income, which caused pecuniary damages. The alleged victim did not have a fixed monthly salary. He supported his partner Teresa Reyes Reyes and their family. [FN74]

[FN74] Cf. preliminary examination statement offered by Mr. Alfredo López-Álvarez before the Sectional Court of First Instance of Tela on April 29, 1997 (dossier of appendixes to the petition, appendix 24, folios 848 through 850); evidentiary document of the Figueroa Transportation Company, signed by its general manager, Mr. Rafael Figueroa, on March 4, 1997 (dossier of appendixes to the brief of pleadings and motions, appendix 8, folio 118); statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(51) Mr. López Álvarez was imprisoned for six years and four months in the criminal centers of Tela and Támara, time during which he remained detained along with those already convicted, while he was being processed, in overcrowded and unhealthy prison conditions. He was prohibited from speaking in his mother tongue. Likewise, he received physical mistreatments at the time of his arrest, as well as while he remained in the Office of Criminal Investigation, and he was kept away from his family (supra paras. 54(12), 54(14), 54(47), 54(48), and 54(49)), all of which affected his dignity and personal integrity, and caused him non-pecuniary damages. [FN75]

[FN75] Cf. statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(52) Mrs. Teresa Reyes Reyes, partner of Mr. Alfredo López Álvarez, was affected since she had to support their family without any help due to the detention of the alleged victim. Besides, she had to make different expenditures related with the transfers to the penitentiary centers, food, and lodging, which caused her pecuniary damages. Likewise, some of Mr. López Álvarez's siblings incurred in expenses as a consequence of his imprisonment. [FN76]

[FN76] Cf. proof of the expenses of Mrs. Teresa Reyes Reyes (dossier of appendixes to the brief of petitions and motions, volume I, appendix 7, folios 68 through 116); statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

54(53) The arrest and the conditions in which Mr. Alfredo López Álvarez remained imprisoned in the penitentiary centers of Tela and Támara and other facts derived from that situation, such as: that Mrs. Teresa Reyes Reyes was pregnant at the time of the arrest of Mr. López Álvarez; that she also had to take care of her children without the support of their father; that they have not had a father figure close by, and three of them, Alfa Barauda, Suamein Alfred, and Gustavo Narciso, all López Reyes were even born while their father was detained, and the fact that the alleged victim remained under preventive detention for more than six years, has caused suffering and feelings of helplessness in Mrs. Teresa Reyes Reyes, the children of the alleged victim with said women and the children of the latter. Besides, said situation also affected the other children of Mr. López Álvarez, as well as the alleged victim's parents and some of his siblings. [FN77]

[FN77] Cf. statement of Mrs. Teresa Reyes Reyes offered in the public hearing celebrated before the Inter-American Court on June 28, 2005, and statement of Mr. Alfredo López-Álvarez offered in the public hearing celebrated before the Inter-American Court on June 28, 2005.

Regarding the representation of Mr. Alfredo López Álvarez before the domestic courts and before the Inter-American system and the expenses incurred in during said procedures

54(54) The Honduran Black Fraternal Organization (OFRANEH) incurred in expenses related to the different administrative and judicial procedures carried out in the scope of the domestic jurisdiction. [FN78]

[FN78] Cf. proof of the expenses incurred in by OFRANEH (dossier of appendixes to the brief of petitions and motions, volume I, appendix 9, folios 120 through 391).

54(55) The alleged victim and his next of kin have been represented in the procedure before the Inter-American Commission by the Honduran Black Fraternal Organization (OFRANEH) and before the Court by the OFRANEH and by the Center for Justice and International Law (CEJIL), which have incurred in expenses related to this representation. [FN79]

[FN79] Cf. proof of the expenses incurred in by CEJIL (dossier on merits and reparations and costs, volume IV, folios 905 through 921), and notarial testimony of the granting of a power of attorney by Mr. Alfredo López-Álvarez to CEJIL, OFRANEH, and Mr. Nelson Martín Reyes Morales (dossier of appendixes to the brief of petitions and motions, appendix 1, folio 3).

VIII. VIOLATION OF ARTICLE 7 OF THE AMERICAN CONVENTION IN RELATION WITH ARTICLE 1(1) OF THE SAME (Right to Personal Liberty and Obligation to Respect Rights)

55. Arguments of the Commission

a) Regarding the characteristics of the arrest:

i) Mr. López Álvarez was arrested by State agents on April 27, 1997 without an arrest warrant issued by a competent authority. The State has not proven that it was an infragranti arrest; the agents in charge of the detention were looking for people with physical characteristics different to those of Mr. López Álvarez and his participation in the acts he was charged with have not been proven. There is evidence that allows us to consider that the detainment of Mr. López Álvarez was carried out with the objective of inhibiting him from his participation as defender of the community lands of his people, and from the criminal procedure followed against the alleged victim we can conclude that the courts of justice did not investigate the possibility that public power could have been used for purposes different to those established in the legal system, through acts endowed of legal appearance, that seeked to deprive Mr. López Álvarez of his personal liberty, and

ii) No field tests were performed on the alleged drugs seized when the arrest was made. Both the officers of the Office of the Public Prosecutor and the judge that ordered the preliminary criminal proceedings prejudged the nature of said substance.

b) Regarding the preventive detention

i) In reason of that stated in the Criminal Code and the Code of Criminal Procedures in their Articles 425 and 433, respectively, and of the application of the same, Mr. López Álvarez was excluded of the benefit of being released on bail, and

ii) the lower court acquitted Mr. López Álvarez on January 13, 2003, and the judgment was confirmed on May 29th of the same year, despite which the alleged victim remained imprisoned until August 26, 2003.

56. Arguments of the representatives

a) Regarding the characteristics of the arrest

i) the objective of the arrest of Mr. López Álvarez was to involve him in a crime he did not commit and coerce him into declaring himself guilty of the facts he was charged with, and

ii) the competent authorities did not produce additional elements of evidence after the arrest to make the preventive detention, which was arbitrary, legal since there was no consistent, univocal, and direct evidence that could result in serious, precise, and concurrent presumptions against Mr. López Álvarez.

b) Mr. López Álvarez was not notified without delay of the charges against him;

c) Mr. López Álvarez could not be released on bail, and he remained imprisoned for seventy six months, in violation of Article 7(5) of the Convention. In the practice, the guarantee of a judicial revision of the imprisonment means sending the dossier to the judge of the case so that it may decide on the appropriateness of issuing a temporary commitment order, and

d) the appeal for legal protection or the habeas corpus presented to protect the rights of the alleged victim were unsuccessful; this constitutes a joint violation of Articles 7(6) and 25(1) of the American Convention.

57. Arguments of the State

The assertion that the arrest of Mr. López Álvarez was the consequence of a setup carried out in virtue of his actions as a social leader is false, since prior to the criminal trial followed against him it had carried out a police investigation in order to capture the alleged victim infragranti.

Considerations of the Court

58. Article 7 of the American Convention states 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.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
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.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

[…]

59. The Court has stated that the protection of a person's liberty covers both their physical liberty as well as their personal security, in a situation in which the absence of guarantees may subvert the rules of law and deprive the detainees of legal protection. [FN80]

[FN80] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 104; Case of Acosta-Calderón, supra note 18, para. 56, and Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 97.

---

60. Article 7(2) of the Convention establishes the material and formal conditions for the deprivation of liberty. [FN81]

[FN81] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 105; Case of Palamara-Iribarne, supra note 15, para. 196, and Case of Acosta-Calderón, supra note 18, para. 57.

---

61. Article 84 of the Political Constitution in force when Mr. Alfredo López Álvarez was detained establishes that

[n]obody may be arrested or detained if not in virtue of a written order issued by a competent authority, issued with the legal formalities and due to a motive previously established by Law. However, the infraganti criminal may be arrested by any person with the only effect of handing him over to the authorities.
The person arrested or detained must be informed in the act and with clarity of his rights and of the charges against him; and the authorities must also allow them to communicate the arrest to a family member or person of their choice.

62. Article 11 of the Code of Criminal Procedures, Decree No. 189 of 1984, in force at the time of the facts, established that

[t]he infranganti criminal may be arrested by any person with the sole effect of handing him over to the authorities. The person arrested or detained must be informed in the act with all clarity of his rights and of the charges against him; and the authorities must also allow him to communicate his arrest to a family member or a person of his choice. An infraganti criminal will be understood as a person found in the act itself of committing a crime or that has just committed it, or when he is still being chased by the roar of the crowd as author or accomplice, or he is surprised with the weapons, instruments, or documents that imply said participation. […]

63. Pursuant to that mentioned in Articles 84 of the Constitution and 11 of the Code of Criminal Procedures, in force at the time of the facts, it can be concluded that in order to arrest a person there must be an arrest warrant, except when dealing with a crime detected in the act.

64. In a legitimate in flagrante arrest it is precise that there be an immediate judicial control of said arrest, in order to avoid the arbitrariness or illegality of the measure.

65. In the present case, according to the facts established (supra para. 54(11)), Mr. Alfredo López Álvarez was detained in conditions that let us reasonably assume, the flagrantness required for that purpose by the domestic law, taking into account that the arrest coincided with the seizure of a substance that appeared to be an illegal drug by the State agents; therefore, the arrest in itself was not illegal.

***

66. Article 7(3) of the Convention prohibits the arrest or imprisonment by methods that although qualified as legal, may in the practice result unreasonable or out of proportion. [FN82] Besides, the arrest may become arbitrary if in its course facts attributable to the State, considered incompatible with the respect to the detained person's human rights, occur.

[FN82] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para.. 105; Case of Palamara-Iribarne, supra note 15, para. 215, and Case of Acosta-Calderón, supra note18, para. 57.

---

67. 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. [FN83] 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. [FN84] The rule must be the defendant's liberty while a decision is made regarding his criminal responsibility.

[FN83] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 106; Case of Palamara-Iribarne, supra note 15, para. 197, and Case of Acosta-Calderón, supra note 18, para. 74.
[FN84] Cf. Case of Palamara-Iribarne, supra note 15, para. 196; Case of Acosta-Calderón, supra note 18, para. 74, and Case of Tibi, supra note 80, para. 106.

---

68. The legitimacy of the preventive detention does not arise only from the fact that the law allows its application under certain general hypotheses. The adoption of this precautionary measure requires a judgment of proportionality between said measure, the evidence to issue it, and the facts under investigation. If the proportionality does not exist, the measure will be arbitrary.

69. The State's obligation to not restrict the detainee's liberty beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade justice is inferred from Article 7(3) of the Convention. [FN85] The personal characteristics of the alleged author and the seriousness of the crime that he is charged with are not, in themselves, sufficient justification for the preventive detention. The preventive detention is a precautionary measure, not a punitive one. [FN86] The Convention is violated when a person whose criminal responsibility has not been established is kept detained for an excessively prolonged, and therefore disproportionate, period of time. This would be tantamount to anticipating a sentence. [FN87]

[FN85] Cf. Case of Palamara-Iribarne, supra note 15, para. 198; Case of Acosta-Calderón, supra note 18, para. 111, and Case of Tibi, supra note 80, para. 180.
[FN86] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 106; Case of Acosta-Calderón, supra note 18, para. 75, and Case of Tibi, supra note 80, para. 180.
[FN87] Cf. Case of Acosta-Calderón, supra note 18, para. 111; Case of Tibi, supra note 80, para. 180, and Case of Suárez Rosero. Judgment of November 12, 1997. Series C No. 35, para. 77.

---

70. Pursuant to Article 71 of the Constitution of Honduras, when an arrest is performed, the person can not remain detained or incommunicated for more than 24 hours without being brought before a competent authority, which must issue a legal commitment order to inquire, which may not exceed six days. In the present case, the Sectional Court of First Instance of Tela issued an order of preventive detention against Mr. Alfredo López Álvarez, on May 2, 1997, five days after the arrest.

71. Once the preventive detention was ordered, the substance seized was object of two analysis, according to the reports issued by the Office of the Public Prosecutor, one on May 14, 1997 and another on May 4, 1998, respectively, whose results were contradictory (supra paras. 54(22) and 54(27)).

72. The first report stated that the substance seized was cocaine; the second stated the contrary. Mr. Alfredo López Álvarez was processed for the crime of drug trafficking. In these cases the processing is based on the existence of a prohibited substance, which was disproved in the second report.

73. The tribunal of the case did not evaluate in a timely manner the evidentiary contradiction pursuant to the parameters of the domestic law and the American Convention, in order to precise if the conditions that justified Mr. López Álvarez's preventive detention still existed.

74. It was not until January 13, 2003, almost five years after the appearance of the evidentiary problem on May 4, 1998, that the Sectional Court of First Instance of Tela referred to the contradiction of the evidence and issued an acquittal in favor of Mr. Alfredo López Álvarez based on the fact that "there [were …] two toxicological reports with different results and being that they referred […] to the same evidence the body of the crime was not proven." (supra para. 54(40)). Said decision was confirmed on May 29, 2003 (supra para. 54(41)) through the judgment of the Appellate Court of la Ceiba, which stated that

[… i]n the event that it is accepted that the packages [seized in the arrest] that appear as evidence in the present trial were seized from the accused, it would not be possible to determine if in effect they contained a prohibited substance, since we can not know which of the two samples analyzed was actually taken from said packages [… and] since, based on the assessment of the evidence included in the trial, we could not derive the conclusion that the accused h[ad] participated in an act that constituted a crime […], it is evident that what proceeds is to confirm the [acquittal].

75. By maintaining the alleged victim under preventive detention in these circumstances, his right to not be subject to an arbitrary and illegal arrest or imprisonment was violated.

***

76. Article 178 of the Code of Criminal Procedures of Honduras, at the time of the facts, stated that

[a] commitment order may not be issued without the existence of conclusive evidence that a crime or simple offense that deserves the punishment of deprivation of liberty has been committed and without the existence of rational evidence of who the author is. [… E]vidence will be understood as any fact, act, or circumstance that helps the Examining Judge acquire the conviction that a person has participated in committing a crime.

77. The Code of Criminal Procedures of Honduras distinguished between the degrees of conviction necessary to arrest in flagrante, which could be done based on the mere presumption

of having committed a crime (supra para. 62), and those necessary to issue an order of preventive detention. The latter should be based, according to domestic law, on "conclusive evidence" of the execution of the crime and "rational evidence" of its wrongdoing, that is, on evidence more determining than that necessary to make an arrest in the case of a crime detected in the act.

78. The Judge of the case issued an order of preventive detention against Mr. Alfredo López Álvarez "for the crime of possession and illegal trafficking of narcotics, in detriment of the public health of the State of Honduras," based on the "fact that was proven on the day of Sunday, April [27, 1997]," that is, on the fact that Mr. Alfredo López Álvarez was detained by police agents in the act of committing the crime. The judicial authority did not take into account new evidentiary elements that could justify the detention, instead it only considered the same elements that supported the arrest in flagrante (supra para. 54(11) and 54(20)).

79. In the circumstances of the present case, the above violates the principles and the norms applicable to the preventive detention, pursuant to the American Convention and the corresponding domestic law (supra paras. 67, 68, 69, and 77).

80. On the other hand, the same criteria and norms that apply to the preventive detention must give content to the legislation that regulates it (supra paras. 67, 68, and 69).

81. In the present case, although Article 93 of the Constitution of Honduras states that "[e]ven with a commitment order, no person may be imprisoned or detained […], if they offer sufficient bail," Article 433 of the Code of Criminal Procedures only permits the concession of said benefit in the event of crimes that "do not deserve a prison sentence that exceeds five years." The sentence that may be applied for illicit drug-trafficking, of which the alleged victim was accused, was of 15 to 20 years in prison. Therefore, the imprisonment to which Mr. Alfredo López Álvarez was subject was also a consequence of that stated in the legislation on criminal procedures. Said legislation ignored the need, enshrined in the American Convention, that the preventive detention be justified in each specific case, through the weighing of the elements that concurred in the same, and that in no case shall the application of said precautionary measure be determined by the crime with which the individual is being charged.

***

82. In what refers to the alleged violation of Article 7(4) of the Convention, this Tribunal reiterates that the representatives of the alleged victims may argument rights different to those stated by the Commission, always in relation to the facts considered in the application made by the latter. [FN88]

[FN88] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 218; Case of Gómez-Palomino, supra note 7, para. 59, and Case of the girls Yean and Bosico, supra note 15, para. 181.

---

83. The right of the person detained or retained to be informed of the reasons for his arrest and notified, without delay, of the charges against him is enshrined in Article 7(4) of the American Convention, which does not distinguish between the arrest made through a court order and that practiced infragranti. Therefore, we can conclude that the person arrested in a crime detected in the act conserves that right.

84. Taking into account that said information permits an adequate right to defense, it is possible to state that the obligation to inform the person of the motives and reasons for his arrest and of his rights does not accept exceptions and must be observed independently of the way in which the arrest occurs.

85. Article 84 of the Constitution of Honduras also stipulates said guarantee when it establishes with regard to any form of deprivation of liberty, including the one that occurs when the crime is detected in the act, that "the person arrested or detained must be informed in the act and with all clarity of his rights and the charges against him; and the authorities must also allow him to communicate his arrest to a family member or a person of his choice."

86. In the case sub judice it was proven that the state authorities that detained Mr. Alfredo López Álvarez did not notify him of the reasons of his arrest or of the charges against him (supra para. 54(11)). Therefore, the State violated Article 7(4) of the Convention in detriment of Mr. Alfredo López Álvarez.

***

87. Pursuant to Article 7(5) of the Convention and according to the principles of judicial control and procedural immediacy, the person arrested or retained must be taken, without delay, before a competent judge or judicial authority. This is essential for the protection of the right to personal liberty and of other rights, such as life and personal integrity. The simple awareness of a judge that a person is detained does not satisfy this guarantee; the detainee must appear personally and give his statement before the competent judge or authority. [FN89]

[FN89] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 109; Case of Palamara-Iribarne, supra note 15, para. 221, and Case of Acosta-Calderón, supra note 18, para. 78.

---

88. The immediate judicial revision of the arrest has particular relevance when it is applied to captures infraganti (supra para. 64) and it is a State duty in order to guarantee the detainee's rights.

89. In the present case the Commission and the representatives argued that Mr. López Álvarez was not taken before a competent judge. The alleged victim stated, during the public hearing celebrated in the Court, that he offered his preliminary examination statement before the secretary of the Sectional Court of First Instance of Tela, who he knew, and added that at no time, during the process, was he brought before a judge (supra para. 40(1)(b)).

90. On its part, the State held that during the validity of the previous legislation, which was applied to the alleged victim, "it was very frequent, […] and it was [the] common practice that the statements were […] in their majority, […] given before clerks or secretaries of the Court, which occurred not only in Honduras […]", but that in the case sub judice, Mr. López Álvarez appeared before the judge to offer his preliminary examination statement, and that the records drawn up to this effect is signed by the judicial employee himself, the defendant, and the secretary of the court.

91. In the present case it has been proven that on April 28, 1997 the Office of the Public Prosecutor brought Mr. López Álvarez before the Sectional Court of First Instance of Tela, and that on April 29, 1997 the alleged victim gave his preliminary examination statement before the Judge of the mentioned Court, pursuant to what appears in the corresponding record (supra para. 54(17)), in which the signatures of the Judge Reina Isabel Najera, the secretary of the court, Mrs. Adela E. Mejía Murillo and Mr. Alfredo López Álvarez appear, without there being enough evidence to invalidate the existence or authenticity of the signature of the Judge or her absence in the judicial proceeding, and therefore the existence of a violation of Article 7(5) of the Convention is not proven.

***

92. In relation to the right of all detainee to appear before a competent judge or court, enshrined in Article 7(6) of the Convention, the Court has considered that "the proceedings of habeas corpus and legal protection are judicial guarantees essential for the protection of several rights whose suspension is reserved by Article 27(2) and they also help to preserve legality in a democratic society." [FN90]

[FN90] Cf. Case of García-Asto, supra note 7, para. 112; Case of Acosta-Calderón, supra note 18, para. 90, and Case of Tibi, supra note 80, para. 128.

---

93. According to the facts, the alleged victim presented several recourses with the objective of obtaining the annulment of the preventive detention and being granted his freedom, including that of habeas corpus (supra paras. 54(24), 54(34), and 54(36)), which were unsuccessful.

94. In what refers to the habeas corpus, in the present case Mrs. Teresa Reyes presented it on behalf of Mr. Alfredo López Álvarez, on July 20, 2001, to "obtain the personal liberty of the aggrieved party[…]." Said recourse was based on the fact that "there had been an unjustified delay in the processing of the criminal case against [the] injured party[…] and based on that she state[d] that his imprisonment had become illegal," since "as of the date on which the accused was placed in legal custody, until [the moment at which the habeas corpus was presented] more than 50 months had gone by, situation that was made worse with the judgment of nullity issued by the […] [Appellate] Court [of la Ceiba issued on May 2, 2001]" (supra paras. 54(33) and 54(34)).

95. On July 23, 2001 the Appellate Court of la Ceiba declared "said recourse inadmissible[,] considering it out of order." In this regard, it limited itself to stating that the statement of nullity "did not constitute a violation [of] the constitutional guarantees," and that "nothing else indicated that the alleged aggrieved parties we[re] illegally detained or that they we[re] being object of abuses or burdens by any authority" (supra para. 54(35)).

96. The analysis by the competent authority of a judicial recourse that debates the legality of the imprisonment can not be reduced to a mere formality, instead it must examine the reasons invoked by the claimant and make express statements regarding the same, according to the parameters established by the American Convention.

97. When examining the habeas corpus the Appellate Court omitted going on record regarding that argued by the alleged victim in the sense that the arrest term was excessive and could constitute a violation of the Convention. This omission shows that the recourse was not effective, in this specific case, in fighting the alleged violation.

98. The Court considers that the different remedies presented in said process were not effective in terminating the preventive detention and obtaining the alleged victim's freedom.

***

99. The previous consideration lead the Court to conclude that the State is responsible for the violation of the right to personal liberty enshrined in Article 7(1), 7(2), 7(3), 7(4), and 7(6) of the American Convention in relation to Article 1(1) of said treaty, in detriment of Mr. Alfredo López Álvarez.

IX. VIOLATION OF ARTICLE 5(1) OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) OF THE SAME (Right to Personal Integrity and Obligation to Respect Rights)

100. Arguments of the Commission:

a) Respect to the physical and moral integrity of the alleged victim:

i) Mr. López Álvarez claimed he was coerced by police agents in the offices of the Department of Criminal Investigation, through physical and mental mistreatment so that he would incriminate himself. However, there is no evidence that the courts of justice urged the competent employees to carry out an investigation on the facts claimed;

ii) Mr. López Álvarez was not allowed to speak in his native language while he was in the Criminal Center of Tela and his participation in the Committee of Defense for the Rights of the Inmates (CODIN) was prohibited, when he was transferred to the National Penitentiary of Támara, in Puerto Cortés, which is a violation to the right to personal integrity;

iii) Mr. Alfredo López Álvarez was submitted to a period of preventive detention that escapes any reasonable parameter and he was later acquitted based on facts occurred in 1998 and that were recorded in the criminal process followed against him. This equals the application of inhumane treatment that affected the personal dignity and integrity of the alleged victim and caused a serious alteration in the course his life would have followed, and

iv) Mr. López Álvarez was subject to continuous psychological torture for more than six years, for having been deprived of his liberty despite being innocent.

b) Mr. Alfredo López Álvarez was imprisoned along with persons that had already been sentenced.

101. Arguments of the representatives:

a) Regarding the physical, mental, and moral integrity of Mr. Alfredo López Álvarez:

i) the violations to the physical, mental, and moral integrity of Mr. López Álvarez are a consequence of the inhumane treatment suffered at the time of his arrest; of the lack of psychological treatment for the consequences of said treatment; of having been coerced to declare against himself; of the lack of medical assistance; of the imprisonment in a penitentiary center for convicts, even when he was still being processed, and of the prohibition to speak in his mother tongue in the Criminal Center of Tela;

ii) Mr. López Álvarez was submitted to "miserable" prison conditions, which worsened with his transfer to the National Penitentiary of Támara, and

iii) The transfer of Mr. López Álvarez to the National Penitentiary of Támara helped to the purpose of dismantling a committee for the defense of the human rights of the inmates and was accompanied by an inhumane and degrading treatment in detriment of the alleged victim, who was moved away from his next of kin and community.

b) Mr. López Álvarez was not given a treatment adequate to his condition of defendant, and

c) the right to the mental integrity of the next of kin of Mr. Alfredo López Álvarez has been violated as a direct consequence of his illegal and arbitrary detention, the anguish caused by watching the consequences of the violence he was submitted to; the separation of the family, which was aggravated by the physical distance between the place of detention and the residence of the members of the same; the lack of investigation and sanctions of those responsible for the facts; the slowness and arbitrary acts within the criminal procedure. All that generated suffering, anguish, insecurity, frustration, and helplessness among the next of kin of the alleged victim, reason for which they requested that the next of kin, parents, partner, children, and some siblings be considered victims in the present case.

102. Arguments of the State:

a) the transfer of Mr. Alfredo López Álvarez to the National Penitentiary of Támara, in the city of Puerto Cortés was not arbitrary; it was ordered to protect his life and physical integrity since he was constantly in fights with other detainees, and

b) "the truth is that the [imprisonment] conditions of the criminal centers of practically the entire Republic are not the best."

Considerations of the Court

103. Article 5 establishes, in what is relevant here, that:

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.
[…]

104. This Tribunal has established that a "person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated." [FN91] Also, the Court has indicated that the restriction of the rights of the detainee, as a consequence of the deprivation of liberty or a collateral effect of it, must be rigorously limited; the restriction of a human right is only justified when it is absolutely necessary within the context of a democratic society. [FN92]

[FN91] Case of Tibi, supra note 80, para. 147; Case of the Gómez-Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 108, and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 87.
[FN92] Cf. Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 154, and Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, para. 116.
---

105. The international organizations for the protection of human rights have established that detainees have the right to live in conditions of imprisonment compatible with their personal dignity and that the State must guarantee them the right to personal integrity. [FN93]

[FN93] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 221; Case of Raxcacó-Reyes. Judgment of September 15, 2005. Series C No. 133, para. 95, and Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 118. In that same sense: United Nations, Basic Principles for the Treatment of Prisoners, adopted and proclaimed by the General Assembly in its Resolution 45/111, of December 14, 1990, Principle 1.
---

106. The State is the guarantor of the rights of the detainees, and it must offer them life conditions compatible with their dignity. [FN94] The European Court of Human Rights has indicated that

according to [Article 3 of the Convention], the State must ensure that a person is detained in conditions compatible with the respect to his human dignity, that the manner and methods used to exercise the measure does not submit them to anguish or difficulty that exceed the inevitable level of suffering intrinsic to the detention, and that, given the practical demands of the

imprisonment, his health and well-being are adequately insured, offering him, among other things, the medical assistance required. [FN95]

[FN94] Cf. Case of the "Juvenile Reeducation Institute", supra note 92, para. 159.
[FN95] Eur. Court H.R. Kudla v. Poland, judgment of 26 October 2000, No. 30210/96, para. 94.

---

a) Arrest and custody in the Office of Criminal Investigation

107. This Tribunal considers that the acts committed by the State agents against Mr. Alfredo López Álvarez in virtue of his arrest and custody referred to in the section of facts proven of the present Judgment (supra paras. 54(12) and 54(14)) did not adjust to the stipulations included in Articles 5(1) and 5(2) of the Convention.

b) Conditions of the detention

108. It has been proven that during the detention of Mr. Alfredo López Álvarez in the criminal centers of Tela and of Támara there was prison overpopulation; the alleged victim was in a situation of permanent overcrowding; he was in a reduced cell, inhabited by numerous inmates; he had to sleep on the floor for a long period of time; he did not receive an adequate diet or drinkable water, nor did he have essential hygiene conditions (supra para. 54(48)).

109. In the public hearing held on June 28, 2005 before the Court, the State not only acknowledged that Mr. Alfredo López Álvarez suffered "real hardships" during his detention, but it also stated that "the truth is that the conditions in the criminal centers of practically all the Republic are not the best."

110. From that previously stated we can conclude that the alleged victim was not treated with the due respect to his human dignity, and that the State did not comply with the duties that correspond to it in its condition of guarantor of the rights of the detainees.

d) Lack of separation between the accused and the convicted in the criminal centers

111. Article 5(4) of the American Convention states that "save in exceptional circumstances", the accused persons must be segregated from convicted persons, and be subject to a treatment appropriate to their status. [FN96]

[FN96] Cf. Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, 85. 1), and the Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173, December 9, 1988, Principle 8.

---

112. It has been proven that in the penitentiary centers where Mr. Alfredo López Álvarez was incarcerated there was no classification system for the detainees. For more than six years and four months during which he was deprived of his liberty, he remained in company of convicted inmates, without the State having invoked and proved the existence of exceptional circumstances (supra para. 54(47)).

***

113. The previous consideration lead the Court to conclude that the State is responsible for the violation of the right to personal integrity, enshrined in Articles 5(1), 5(2), and 5(4) of the American Convention, with relation to Article 1(1) of said instrument, in detriment of Mr. Alfredo López Álvarez.

***

114. The representatives argued the violation of Article 5(1) of the Convention due to the breach of the mental and moral integrity of the closest family members of Mr. Alfredo López Álvarez (supra para. 101(c)).

115. Although the Inter-American Commission did not argue said violation, the Court has established that the alleged victims, their next of kin, or their representatives may invoke rights different to those included in the Commission's application, based on the facts presented by the latter (supra para. 82).

116. This Tribunal acknowledges the situation that Mrs. Teresa Reyes Reyes, partner of the alleged victim, and the children of both and of Mr. Reyes Reyes went through. As a consequence of the detention of Mr. López Álvarez for more than six years, Mrs. Reyes Reyes assumed the responsibility of taking care of her family without the support of her partner; she had three pregnancies while the alleged victim was detained, and she suffered the precarious conditions of the penitentiary centers when she visited Mr. Alfredo López Álvarez; this situation turned worse when the alleged victim was transferred to the National Penitentiary of Támara. The children of Mr. López Álvarez and Mrs. Reyes Reyes, as well as those of the latter, have not had a father figure and have suffered the emotional and economic consequences of the situation the alleged victim was submitted to. Mrs. Reyes Reyes stated before the Court that her children are anxious and traumatized (supra paras. 40(1)(b), 40(1)(c), 54(5), 54(52), and 54(53)).

117. This Tribunal considers that it has been reasonably proven that the other children of Mr. Alfredo López Álvarez, as well as the parents of the alleged victim, were affected by what happened to Mr. López Álvarez in the present case, since they suffered for more than six years due to the prison conditions and the arbitrary nature of the detention suffered by the alleged victim (supra paras. 54(5), 54(6), and 54(53)).

118. Likewise, the Court considers as proven that there has been a bond of closelessness with four sisters and one of the brothers of Mr. López Álvarez, especially because Alba Luz, Rina Maribel, Marcia Migdali, and Joel Enrique, all with the surnames García Álvarez, visited their

brother while he was detained in Tela and Támara, and they knew the prison conditions suffered by him (supra paras. 54(6) and 54(53)).

119. This Court has mentioned that the next of kin of the victims of violations of human rights may be, at the same time, victims. It has considered as violated the right to mental and moral integrity of the next of kin of the victims for the suffering caused by the violations perpetrated against their loved ones and the subsequent actions or omissions of the state authorities. [FN97] In consideration of that exposed, this Tribunal considers that the personal integrity of specific family members of Mr. López Álvarez has been affected.

[FN97] Cf. Case of Gómez-Palomino, supra note 7, para. 60; Case of the "Mapiripán Massacre", supra note 15, paras. 144 and 146, and Case of the Serrano-Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, paras. 113 and 114.

---

120. The previous consideration lead the Court to conclude that the State is responsible for the violation of the right to personal integrity enshrined in Article 5(1) of the American Convention, in relation with Article 1(1) of said treaty, in detriment of Mrs. Teresa Reyes Reyes, partner of Mr. López Álvarez; of Alfa Barauda López Reyes, Suamein Alfred López Reyes, and Gustavo Narciso López Reyes, children of Mrs. Reyes Reyes and Mr. López Álvarez; of Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, and Joseph López Harolstohn, children of the alleged victim, and of José Jaime Reyes Reyes, and María Marcelina Reyes Reyes, children of Mrs. Teresa Reyes Reyes, who will also be considered children of the alleged victim; of Apolonia Álvarez Aranda and Catarino López, parents of Mr. López Álvarez, and of his sisters and his brother: Alba Luz, Rina Maribel, Marcia Migdali, Mirna Suyapa, and Joel Enrique, all with the surnames García Álvarez.

***

121. On the other hand, the representatives of the alleged victim argued the violation of Article 17(1) of the Convention, which enshrines the Protection of the Family, adducing that the transfer of Mr. Alfredo López Álvarez to the National Penitentiary of Támara worsened his separation with regard to his next of kin and his community. They indicated that the alleged victim could not carry out work activities while detained, he left his family unprotected, and he was not with them during difficult times. Neither the Commission nor the State referred to this violation.

122. The facts argued by the representatives as violations of Article 17 of the Convention were already examined in relation to the right to personal integrity of Mr. Alfredo López Álvarez and his next of kin (supra paras. 113 through 120), reason for which the Court will not issue a ruling regarding the alleged violation to this precept.

X. VIOLATION OF ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION IN RELATION WITH ARTICLE 1(1) OF THE SAME (Right to a Fair Trial, Right to Judicial Protection, and Obligation to Respect Rights)

123. Arguments of the Commission:

a) regarding the reasonable time, the States must pay special attention when dealing with trials where there are people subject to preventive detention. The criminal procedure followed against Mr. Alfredo López Álvarez lasted more than seventy months, reason for which the State has violated in detriment of the alleged victim the right to a reasonable time for the judgment;
b) the factual and judicial simplicity of the charges presented against the accused, and his procedural behavior of constantly pushing the procedure forward through recourses, including the habeas corpus, so that the domestic court would issue a ruling regarding the rights argued and would grant him his freedom, contrasts the behavior of the judicial authorities, which during the six years of process did not prove the effective participation of the alleged victim in the crime he was charged with, nor the existence of the body of the crime;
c) the prolonged preventive detention to which Mr. López Álvarez has been subject, implies that the State has presumed his guilt and has treated him as guilty of a crime, in violation of the principle of presumption of innocence enshrined in the Convention, that is also stipulated in Article 6 of the Code of Criminal Procedures;
d) the Honduran courts acquitted the defendant, after six years of trial and imprisonment. During this entire period of time they did not attend to the arguments presented by the defense counsel of the alleged victim. The remedies presented by him were unsuccessful, thus existing a violation to the right to a fair trial, and
e) the alleged victim was not assisted by an attorney during his statement before the Tribunal.

124. Arguments of the representatives:

a) the State violated Article 8(1) of the Convention by imprisoning Mr. Alfredo López Álvarez for more than six years and four months, as well as for not observing the reasonable time for the issuing of a judgment;
b) the excessive duration of the preventive detention of Mr. López Álvarez is a violation to the presumption of innocence;
c) the authorities did not comply with the legal times for the processing of the trial, which produced an excessive delay in the decision of the case, and
d) Mr. López Álvarez was not provided with legal representation during the first moments of his arrest, nor at the time of his statement; nor was he assigned a public defender when he did not have an attorney; besides, he was coerced into declaring himself guilty of the crime he was being charged with.

125. Arguments of the State:

a) the state authorities showed good faith in deciding on the present case. It tried to prevent the Attorney General of the Republic from presenting an appeal for annulment before the maximum Court of Justice. The immediate release of Mr. López Álvarez could only be granted after the discontinuance of the appeal for annulment;
b) the trial against Mr. López Álvarez was processed with all the guarantees and rights granted by law, and there is no evidence that his rights were violated. For example, the Appellate

Court of la Ceiba annulled ex officio part of the accusations as a consequence of the alleged substitution of the substance seized for another powder, which determined the issuing of an acquittal, and

c) during the validity of the legislation prior to the year 2002 there was no immediacy, the judicial proceedings were not always practiced by judges, but by other judicial employees, however this did not occur in the case of Mr. Alfredo López Álvarez.

Considerations of the Court

a) Reasonable time of the criminal process

126. Article 8(1) of the American Convention states that

[e]very 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 establishes that

[e]veryone 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 right to access justice implies that the solution of the controversy be reached in a reasonable time [FN98]; a prolonged delay may constitute, in itself, a violation to the right to a fair trial. [FN99]

[FN98] Cf. Case of Myrna Mack-Chang. Judgment of September 25, 2003. Series C No. 101, para. 209; Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 114; and Case of Hilaire, Constantine, and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, paras. 142 through 145.

[FN99] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 166; Case of Gómez-Palomino, supra note 7, para. 85; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 160.

---

129. The reasonability of the time period referred to in Article 8(1) of the Convention must be analyzed with regard to the total duration of the criminal process developed against a certain accused party, up to the issuing of a definitive judgment. [FN100] In criminal matters this period of time starts when the first procedural act against a specific person as the probable responsible of a certain crime is presented.

[FN100] Cf. Case of Acosta-Calderón, supra note 18, para. 104; Case of Tibi, supra note 80, para. 168, and Case of Suárez Rosero, supra note 87, para. 70.

---

130. In the present case, the first procedural act was the apprehension of Mr. Alfredo López Álvarez on April 27, 1997, date as of which the time period must be analyzed, even when we are here dealing with the time period for the realization of the process, not the duration of the detention, since that was the first proceeding of which there is news within the totality of the acts of the criminal procedure corresponding to Mr. López Álvarez. In order to determine if the term was reasonable it is precise to take into account that the process concludes with the issuing of the definitive judgment; when the exercise of the jurisdiction of acquaintance with the case concludes. [FN101] In criminal matters the term must include the entire procedure, including all the recourses of review that may be presented.

[FN101] Cf. Case of Tibi, supra note 80, para. 168, and Case of Suárez Rosero, supra note 87, para. 71.

---

131. On January 13, 2003 the Sectional Court of First Instance of Tela issued an acquittal in favor of Mr. Alfredo López Álvarez, judgment that was confirmed on May 29, 2003 by the Appellate Court of la Ceiba. In June 2003, the Office of the Public Prosecutor announced an appeal of annulment against the judgment of the Appellate Court of la Ceiba, but it abandoned it on July 31, 2003. On August 14, 2003 the Criminal Chamber of the Supreme Court of Justice considered "the appeal of annulment dismissed due to violation of the law announced" before the mentioned Appellate Court, and confirmed the judgment issued on May 29, 2003. Mr. López Álvarez was released on August 26, 2003 (supra paras. 54(40), 54(41), 54(42), and 54(45)).

132. To examine the reasonability of the time period in this process pursuant to the terms of Article 8(1) of the Convention, the Court takes into account three elements: a) the complexity of the matter, b) the procedural activity of the interested party, and c) the behavior of the judicial authorities. [FN102]

[FN102] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 166; Case of Acosta-Calderón, supra note 18, para. 105, and Case of the Serrano-Cruz Sisters, supra note 97, para. 67.

---

133. The case was not marked by a special complexity. There were only two defendants (supra para. 54(32)). The substance had been seized and once it was identified it would determine the appropriateness of the procedures. There is no evidence in the dossier that Mr. López Álvarez carried out procedures that delayed or slowed down the processing of the case.

134. On the other hand, in the criminal procedure at least four annulments were issued due to different procedural irregularities: a partial one on July 25, 1997 and three absolute ones on

September 9, 1998, March 10, 1999, and May 2, 2001 (supra paras. 54(23), 54(28), 54(30), and 54(33)).

135. The nullities which served to the purposes of adjusting the procedures to the due process were motivated by the lack of diligence in the actions of the judicial authorities in charge of the case. The internal judge, when carrying out the actions later annulled, did not comply with the duty of directing the process pursuant to law. This was determining in the fact that the alleged victim was obliged to wait more than six years for the State to administrate justice.

136. Based on the above considerations, and on the global study of the criminal procedure against Mr. Alfredo López Álvarez, we point out that the same lasted more than six years. The State did not observe the principle of reasonable time enshrined in the American Convention, due to the sole responsibility of the judicial authorities who should have administrate justice.

137. Article 25(1) of the Convention establishes the obligation of the States to offer all people submitted to its jurisdiction an effective judicial recourse against acts that violate their fundamental rights. [FN103] It is not enough for the recourses to exist formally; it is necessary that the be effective, [FN104] that is, the person must be given a real opportunity to present a simple and prompt recourse that allows them to obtain, in their case, the judicial protection required. [FN105]

[FN103] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 113; Case of Palamara-Iribarne, supra note 15, para. 183, and Case of Acosta-Calderón, supra note 18, para. 92.
[FN104] Cf. Case of Palamara-Iribarne, supra note 15, para. 184; Case of Acosta-Calderón, supra note 18, para. 92, and Case of Tibi, supra note 80, para. 131.
[FN105] Cf. Case of Acosta-Calderón, supra note 18, para. 93; Case of the Serrano-Cruz Sisters, supra note 97, para. 75, and Case of Tibi, supra note 80, para. 131.

---

138. The existence of this guarantee "represents one of the basic mainstays, not only of the American Convention, but also of the Rule of Law in a democratic society in the sense set forth in the Convention." [FN106]

[FN106] Cf. Case of Palamara-Iribarne, supra note 15, para. 184; Case of Acosta-Calderón, supra note 18, para. 93, and Case of the Serrano-Cruz Sisters, supra note 97, para. 75.

---

139. In this regard, this Court has reiterated that said obligation does not end with the legal existence of a remedy; it is necessary that it be suitable to fight the violation, and its application by the competent authority must be effective. [FN107]

[FN107] Cf. Case of Palamara-Iribarne, supra note 15, para. 184; Case of Acosta-Calderón, supra note 18, para. 93, and Case of Tibi, supra note 80, para. 131.

---

140. Therefore, the Court considers that the State violated Article 25 of the American Convention, in detriment of Mr. Alfredo López Álvarez, since it did not guarantee his access to effective judicial recourses that could protect him against the violations to his rights.

b) Presumption of innocence

141. Article 8(2) of the Convention states that

[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.

142. In their domestic law and in the application of the same by the competent authorities, the States must observe the exceptional nature of the preventive detention and respect the principle of presumption of innocence all throughout the process (supra paras. 67, 68, and 69).

143. In the present judgment it was established that Mr. Alfredo López Álvarez suffered an illegal and arbitrary preventive detention and that he remained imprisoned until August 26, 2003 (supra paras. 75 and 54(45)).

144. The alleged victim was detained for more than 6 years, without a reason that justified the preventive detention (supra paras. 74 and 78), which violated his right to be presumed innocent of the criminal offense he was being charged with.

c) Right to a fair trial in the criminal process

145. This Court reiterates that the alleged victims or their representatives may invoke rights different to those included in the Commission's application, as long as they stick to the facts included in the latter (supra para. 82). Therefore, the Court will analyze the violation of Article 8, subparagraphs 2(b), 2(d), 2(e), and 2(g) of the Convention, claimed by the representatives.

146. Article 8 establishes, in what is relevant, that:

2. […] During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[…]

b) prior notification in detail to the accused of the charges against him;

[…]

d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

[…]

g) the right not to be compelled to be a witness against himself or to plead guilty [.]

147. The States Parties in the American Convention have an obligation to comply with the rules of the due process of law (Article 8(1)), within the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)). [FN108]

[FN108] Cf. Case of Palamara-Iribarne, supra note 15, para. 163; Case of the "Mapiripán Massacre", supra note 15, para. 195, and Case of the Moiwana Community, supra note 99, para. 142.

---

148. All organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the Convention. [FN109]

[FN109] Cf. Case of Palamara-Iribarne, supra note 15, para. 164; Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 149; Case of Ivcher Bronstein. Judgment of February 6, 2001. Series C No. 74, para. 104.

***

149. Article 8(2)(b) of the American Convention orders that the competent judicial authorities notify the accused of the charges presented against him, their reasons, and the crimes or offenses he is charged with. [FN110] In order for this right to satisfy its inherent purposes, it is necessary that this notification be given before the accused offers his first statement. [FN111] This guarantee is essential for the effective exercise of the right to a defense. It is precise to especially consider the application of this guarantee when measures that restrict the right to personal liberty are adopted, as in this case.

[FN110] Cf. Case of Palamara-Iribarne, supra note 15, para. 225; Case of Acosta-Calderón, supra note 18, para. 118, and Case of Tibi, supra note 80, para. 187.
[FN111] Cf. Case of Palamara-Iribarne, supra note 15, para. 225; Case of Acosta-Calderón, supra note 18, para. 118, and Case of Tibi, supra note 80, para. 187.

---

150. In the present case, it was proven that Mr. Alfredo López Álvarez offered his preliminary examination statement on April 29, 1997, without the assistance of legal counsel (supra para. 54(17)). The evidence offered proves that on that same day the alleged victim appointed his legal counsel, whose accreditation before the Sectional Court of First Instance of Tela was presented on April 30, 1997 and this Court admitted the writ on May 2, 1997 (supra para. 54(18)). On the mentioned April 30, 1997 the Office of the Public Prosecutor presented before the Sectional Court of First Instance of Tela an accusation for the possession, sale, and trafficking of cocaine

against Mr. Alfredo López Álvarez and others (supra para. 54(19)). Therefore, Mr. López Álvarez gave his preliminary examination statement without a previous and detailed knowledge of the accusation against him.

***

151. Article 229 of the Code of Criminal Procedures, in force in 1998, established that "[…] once he has given his preliminary examination statement, the accused person may appoint his defense counsel and he will be allowed to request the corresponding copy." At the same time, Article 253 of the same Code stated that "[i]n the court order in which the full trial is opened the Judge will order, in its case, that the accused party appoint his defense counsel or that the state do so if it must be appointed ex officio. If this statement were affirmative, he will immediately proceed to make the appointment."

152. It is stated that Mr. López Álvarez did not have the opportunity to offer his preliminary examination statement in the presence of his defense counsel, with whom he had communication some days after his arrest. Therefore, he was not guaranteed the right to have legal counsel pursuant to Article 8(2)(d) of the Convention.

153. On the other hand, it has also been proven that Mr. López Álvarez made several appointments and substitutions of legal counsel throughout the process (supra para. 54(18)), reason for which this Court does not have sufficient elements of evidence to determine if the right of the alleged victim to be assisted by legal counsel in the terms of Article 8(2)(e) of the Convention was violated.

154. This Tribunal considers that the mentioned Articles 229 and 253 of the Code of Criminal Procedures were incompatible with the parameters of the American Convention, and it also observes that said internal norms are no longer valid in Honduras for the processes followed under the current Code of Criminal Procedures.

***

155. Mr. Alfredo López Álvarez stated in his preliminary examination statement that "he was strongly coerced [in the Office of Criminal Investigation], through physical and mental mistreatment, into incriminating [himself...] with the questions that [the state agents were] making […]," despite which the alleged victim did not accept the charges (supra para. 54(14)). In consideration of that expressed by Mr. López Álvarez, which was not debated by the State, and the specifics of the present case, this Court considers that the alleged victim was subject to said acts with the purpose of weakening his mental resistance and making him incriminate himself for the fact he was being charged with, in violation of the stated in Article 8(2)(g) of the Convention.

***

156. The previous consideration lead the Court to conclude that the State is responsible for the violation of the rights enshrined in Articles 8(1), 8(2), 8(2)(b), 8(2)(d), and 8(2)(g), and 25(1) of

the American Convention, in relation to Article 1(1) of the same, in detriment of Mr. Alfredo López Álvarez.

XI. VIOLATION OF ARTICLES 13 AND 24 OF THE AMERICAN CONVENTION IN RELATION WITH ARTICLE 1(1) OF THE SAME (Freedom of Thought and Expression, Right to Equal Protection and Obligation to Respect Rights)

157. Arguments of the Commission:

a) it did not argue violation of Article 13 of the Convention;
b) the general prohibition of discrimination established in Article 1(1) of the Convention extends to the domestic law of the States Parties, who have made a commitment to not introduce discriminatory norms in their legal systems. In order for a distinction in treatment not be discriminatory, the State must prove an interest particularly important or an imperious social need, that may justify the distinction, and that the measure adopted be the less restrictive of the right in question, and
c) Mr. López Álvarez was not allowed to use his native language during his stay in the prison. The State has argued security reasons to justify said restriction; even if there can be legitimate reasons to restrict certain rights within a criminal establishment, the State did not prove that the prohibition to use the language was "evidently necessary" or that it was the less restrictive measure possible. The prohibition suffered by the alleged victim violated Article 24 of the Convention and the general prohibition of discrimination for reasons of language, established in Article 1(1) of the same.

158. Arguments of the representatives:

a) the State is the guarantor of the people detained under its custody, reason for which any measure adopted tending to restrict rights must be pursuant to human dignity, have a reasonable justification and it should be the measure that implies the least burden possible;
b) language is one of the constitutive elements of the identity of the Garifuna people, therefore the liberty of expression has an individual and social dimension. The prohibition directed to the Garifuna people of speaking in their mother tongue, was not justified and up to this date the State has not been able to invalidate the arbitrary nature that characterized it, and
c) the principles of right to equal protection and non discrimination belong to the field of the jus cogens. The arbitrary prohibition of the use of the Garifuna language in the Criminal Center of Tela was a discriminatory act. The State violated Mr. Alfredo López Álvarez's right to no discrimination. The representatives referred to Articles 4, 5, and 28(3) of Agreement 169 of the International Labor Organization and Article 173 of the Constitution of Honduras.

159. Arguments of the State:

a) it condemns that Mr. López Álvarez's right was limited and states that an investigation was carried out by the Office of the Public prosecutor in order to attribute responsibilities. However, since it has been proven before the Court that the alleged victims also speak perfect Spanish, the damages argued by them and their representatives are not of the magnitude and seriousness affirmed by them;

b) it acknowledges that ethnical minorities may express themselves in their native language. The State has put into action, through the Ministry of Education, programs for the implementation of a bilingual education, and
c) it totally and absolutely respects the Garifuna people and other ethnic groups of Honduras. There is no type of segregation or discrimination for reasons of sex, race, religion, or social condition. An equal treatment is a guarantee enshrined in the Constitution.

Considerations of the Court

160. Although the Inter-American Commission did not argument the violation of Mr. López Álvarez's right to express himself in the Garifuna language, the alleged victims, his next of kin, or representatives may argument violations based on the facts considered in the Commission's application (supra para. 82).

161. Article 13 of the American Convention states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
    a) respect for the rights or reputations of others; or
    b) the protection of national security, public order, or public health or morals.

[…]

162. Article 24 of the American Convention states that

[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

163. The Court has previously stated, regarding the content of the right to freedom of thought and expression, that it contains a double dimension: the individual one, which consists in the right to disseminate information and the social one that consists in the right to seek, receive and disseminate information and ideas of all types. [FN112] Both aspects are equally important and must be guaranteed in full simultaneously in order to grant total effectiveness to the right to freedom of thought and expression in the terms of Article 13 of the Convention. [FN113]

[FN112] Cf. Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 77; Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 108, and Case of Ivcher Bronstein, supra note 109, para. 146.
[FN113] Cf. Case of Ricardo Canese, supra note 112, para. 80; Case of Herrera Ulloa, supra note 112, para. 111, and Case of Ivcher Bronstein, supra note 109, para. 149.

---

164. Article 13(1) expressly enshrines the liberty to orally impart information. The Court considers that one of the mainstays of the freedom of expression is precisely the right to speak, and that the latter necessarily implies the right of people to use the language of their choice when expressing their thoughts. The expression and dissemination of thoughts and ideas are indivisible; therefore a restriction to the possibilities of spreading information directly represents, in the same measure, a limit to the right to express oneself freely. [FN114]

[FN114] Cf. Case of Palamara-Iribarne, supra note 15, para. 72; Case of Ricardo Canese, supra note 112, para. 78, and Case of Herrera Ulloa, supra note 112, para. 109.

---

165. The "need" and, therefore, the legality of the restrictions to the freedom of expression based on Article 13(2) of the American Convention, will depend on if they are oriented to satisfying an imperative public interest, which clearly predominates over the social need of the complete enjoyment of the right guaranteed in Article 13. Among several options to reach this objective, the one that least restricts the right protected is the one that must be chosen. [FN115] The above applies to laws, as well as administrative decisions, and acts, and acts or decisions of any other nature, that is, to all demonstration of state power.

[FN115] Cf. Case of Palamara-Iribarne, supra note 15, para. 85; Case of Ricardo Canese, supra note 112, para. 96, and Case of Herrera Ulloa, supra note 112, paras. 121 and 123.

---

166. In the present case, in the year 2000 the Director of the Criminal Center of Tela prohibited the Garifuna population of said criminal center, among which Mr. Alfredo López Álvarez was included, from speaking their mother tongue (supra para. 54(49)). Said measure denied the alleged victim from expressing himself in the language of his choice. This measure was not justified by the State. Said prohibition infringes the detainee's individuality and does not obey to security conditions or treatment needs.

167. The penitentiary authorities exercise a strong control over the people subject to their custody. Therefore, the State must guarantee the existence of adequate conditions so that the person deprived of his liberty may develop a decent life, ensuring him the exercise of the rights whose restriction is not a necessary consequence of the deprivation of liberty, pursuant to the rules that are characteristic of a democratic society. [FN116]

[FN116] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 221; Case of Raxcacó-Reyes, supra note 93, para. 95, and Case of Fermín Ramírez, supra note 93, para. 118.

---

168. The Court considers that the observance of rules in the collective treatment of the detainees within a criminal center, does not give the State, in the exercise of its power to punish,

the legal authority to limit, in an unjustified manner, the freedom of the people to express themselves through any means and in the language chosen by them.

169. According to the facts of this case, the prohibition was issued regarding the native language of Mr. Alfredo López Álvarez, which is the form of expression of the minority to which the alleged victim belongs. Therefore the prohibition acquires a special seriousness, since the mother tongue represents an element of identity of Mr. Alfredo López Álvarez as a Garifuna. In this way, the prohibition affected his personal dignity as a member of that community.

170. This Tribunal has reiterated that the peremptory legal principle of the equal and effective protection of the law and non-discrimination determines that the States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of the population when exercising their rights. Moreover, States must combat discriminatory practices and must adopt the measures needed to ensure the effective right to equal protection for all individuals before the law. [FN117]

[FN117] Cf. Case of the Girls Yean and Bosico, supra note 15, para. 141; Case of Yatama, supra note 109, para. 185, and Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 88.----------

---

171. The States must take into consideration the information that differentiates the members of the Indian populations from that of the population in general, and that make up their cultural identity. [FN118] Language one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture.

[FN118] Cf. Case of the Indigenous Community Yakye Axa. Judgment of June 17, 2005. Series C No. 125, para. 51.

---

172. In the present case, the restriction on the liberty to speak Garifuna applied to some inmates of the Criminal Center of Tela was discriminatory in detriment of Mr. Alfredo López Álvarez, as a member of the Garifuna community.

173. The Court finds that by prohibiting Mr. Alfredo López Álvarez to express himself in the language of his choice, during his detention in the Criminal Center of Tela, the State applied a restriction to the exercise of his liberty of expression incompatible with the guarantee established in the Convention and that, at the same time, constituted a discriminatory act against him.

174. The above considerations lead the Court to conclude that the State is responsible for the violation of the rights to liberty of thought and expression and equal protection before the law, enshrined in Articles 13 and 24 of the American Convention, and for the non-compliance of the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the same instrument, in detriment of Mr. Alfredo López Álvarez.

XII. VIOLATION OF ARTICLE 16 OF THE AMERICAN CONVENTION IN RELATION WITH ARTICLE 1(1) OF THE SAME (Freedom of Association and Obligation to Respect Rights)

175. Arguments of the representatives:

a) the arrest of Mr. Alfredo López Álvarez had the purpose of separating him from his tasks as a defender of human rights in his quality of member of the Committee of Lands and of the Honduran Black Fraternal Organization. His transfer to the National Penitentiary of Támara, in Puerto Cortés, helped to the objective of separating him from the Committee of Defense of the Rights of the Inmates, and
b) the actions of the Honduran authorities are part of a pattern of persecution and harassment against the defenders of human rights; said persecution is not limited to the present case, since it has cost some Honduran indigenous leaders their life.

176. Arguments of the Commission:

It did not present arguments regarding this Article.

177. Arguments of the State:

The transfer was a security measure since Mr. Alfredo López Álvarez and other inmate leaders of CODIN allegedly maintained disputes with other detainees in the Criminal Center of Tela.

Considerations of the Court

178. Even though the representatives may claim rights not presented by the Commission in its application (supra para. 82), the Court considers that the facts argued as violations of Article 16 of the Convention do not correspond to the suppositions established in this precept.

XIII. REPARATIONS (APPLICATION OF ARTICLE 63(1))

Obligation to Repair

179. It is a principle of International Law that all violation of an international obligation that has produced damage involves the duty to adequately repair it. [FN119] In this sense, the Court has based its decisions on Article 63(1) of the American Convention, according to which:

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN119] Cf. Case of Blanco-Romero et al., supra note 7, para. 67; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 246, and Case of Gómez-Palomino, supra note 7, para. 112.

---

180. Article 63(1) of the American Convention constitutes a rule of customary law that enshrines one of the fundamental principles in contemporary international law on state responsibility. Thus, when an illicit act is imputed to the State, its international responsibility arises, together with the subsequent duty of reparation and to put an end to the consequences of said violation. [FN120] The obligation to repair is regulated by International Law and may not be modified or not complied with by the State invoking for said purpose stipulations of its domestic law. [FN121]

[FN120] Cf. Case of Blanco-Romero et al., supra note 7, para. 68; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 247, and Case of Palamara-Iribarne, supra note 15, para. 234.
[FN121] Cf. Case of Blanco-Romero et al., supra note 7, para. 98; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 248, and Case of Gómez-Palomino, supra note 7, para. 113.

---

181. Reparations consist in those measures necessary to make the effects of the committed violations disappear. Their nature and amount depend on the characteristics of the violation and of the harm caused at both material and moral levels. Reparations cannot entail either enrichment or impoverishment of the victim or his successors, and they must be coherent with the violations stated in the Judgment. [FN122]

[FN122] Cf. Case of Blanco-Romero et al., supra note 7, para. 67; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 246, and Case of Gómez-Palomino, supra note 7, para. 112.

---

182. The reparation of the damage caused by a violation of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists in the restoring the situation that existed before the violation occurred. When this is not possible, as in the majority of the cases, among those the present case, the international court will determine the measures to guarantee the rights violated, repair that the consequences caused by the infractions, and establish payment of an indemnity as compensation for the harm caused. [FN123] It is necessary to add measures of a positive nature that the State must adopt in order to ensure that detrimental acts like those of the present case do not occur again. [FN124]

[FN123] Cf. Case of Blanco-Romero et al., supra note 7, para. 69; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 248, and Case of Palamara-Iribarne, supra note 15, para. 234.
[FN124] Cf. Case of Blanco-Romero et al., supra note 7, para. 69; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 248, and Case of Palamara-Iribarne, supra note 15, para. 234.

A) BENEFICIARIES

183. Arguments of the Commission:

The right of reparation in the terms of Article 63(1) of the Convention vests in Alfredo López Álvarez and his next of kin.

184. Arguments of the representatives:

The State must repair Mr. Alfredo López Álvarez for the violation of Articles 5, 7, 8, 13, 16, 17, 24, and 25 of the American Convention in relation with Article 1(1) of the Convention, as well as for non-compliance of Article 2 of the same, and the following members of his family for violation of Articles 5(1) and 5(2) of the American Convention: Teresa Reyes Reyes, partner; Alfa Barauda López Reyes, Suamein Alfred López Reyes, Gustavo Narciso López Reyes, José Álvarez Martínez, Alfred Omaly López Suazo, Deikel Yanell López Suazo, Joseph López Harolstohn, and Iris Tatiana López Bermúdez, his children, and José Jaime Reyes Reyes and María Marcelina Reyes Reyes, children of his partner Teresa Reyes Reyes and adopted by Mr. López Álvarez; Apolonia Álvarez Aranda and Catarino López, his parents, and Alba Luz García Álvarez, Mirna Suyapa García Álvarez, Rina Maribel García Álvarez, Marcia Migdali García Álvarez, and Joel Enrique García Álvarez, his siblings.

185. Arguments of the State:

It did not refer to the persons entitled to reparations.

Considerations of the Court

186. The Court considers Mr. Alfredo López Álvarez as the "injured party" in his nature of victim of the violations of the rights enshrined in Articles 5, 7, 8, 13, 24, and 25 of the American Convention, in relation to Article 1(1) of this instrument, reason for which he will be the creditor of the reparations established by the Tribunal for pecuniary and non-pecuniary damages.

187. Likewise, Teresa Reyes Reyes, the partner of Mr. López Álvarez; Alfa Barauda López Reyes, Suamein Alfred López Reyes, and Gustavo Narciso López Reyes, children of Mrs. Reyes Reyes and Mr. López Álvarez; Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, and Joseph López Harolstohn, other children of the victim; José Jaime Reyes Reyes and María Marcelina Reyes Reyes, children of Teresa Reyes Reyes, who will also be considered as children of the victim; Apolonia Álvarez Aranda and Catarino López, the parents of Mr. López Álvarez, and Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdali García Álvarez, Mirna Suyapa García Álvarez, and Joel Enrique García Álvarez, his siblings, are the victims of the violation of the right enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) of the same (supra para. 120). All of them must be considered as included within the category of injured party and are creditors of the reparations determined by the Court, both in relation to the pecuniary damage and the non-pecuniary damage, whichever the case.

***

188. The next of kin that have not proven the family ties with Mr. López Álvarez, and who the Court considers beneficiaries of reparations (supra para. 187 and infra paras. 201(c) and 202(c)) must appear before the State within the one-year period after the date on which this Judgment is notified and provide authentic evidence, pursuant to domestic law, of their condition of family members of the victim, in the terms of the previously mentioned Article 2(15) of the Rules of Procedure in force. Said family members are the sons of the victim: José Álvarez Martínez and Joseph López Harolstohn.

B) PECUNIARY DAMAGE

189. Arguments of the Commission:

It requested that the Court determine that the victims receive adequate and timely reparation that would satisfy them completely for the violations committed, as well as payment of a just compensation for the pecuniary damages.

190. Arguments of the representatives:

a) in what refers to pecuniary damages they stated that:

i) Mr. Alfredo López Álvarez interrupted his professional activity (construction contractor and specialist in electricity) and therefore did not receive income for his own support or that of his family. He approximately received the amount of US$400.00 (four hundred Dollars of the United States of America) per month, which means US$30,400.00 (thirty thousand four hundred Dollars of the United States of America) in the 76 months while he was detained. They requested that the Court based on this calculation determine in equity the compensation for the concept of "lost earnings" in favor of the victim;

ii) the damages for loss of the vehicle and home of Mr. López Álvarez amount to US$10,000.00 (ten thousand Dollars of the United States of America), and

iii) the expenses related to transfer, lodging, and food of the next of kin, specifically, of Mrs. Teresa Reyes Reyes, the sisters of the victim, Mrs. Alba Luz García Álvarez, Rina Maribel García Álvarez, and Marcia Migdali García Álvarez and his brother Mr. Joel Enrique García Álvarez in order to visit Mr. López Álvarez, during 6 years and 4 months, in the criminal centers of Tela and of Támara, amount to approximately US$12,930.56 (twelve thousand nine hundred and thirty Dollars of the United States of America with fifty six cents). They requested the Court to determine in equity the amount corresponding to this concept, since they do not have the corresponding receipts, and that the value be distributed in equal proportions.

191. Arguments of the State:

It stated that the pecuniary damages referred to in the application do not proceed.

Considerations of the Court

192. This Court enters to determine the pecuniary damage, which assumes the loss or detriment of the victim's income and, in his case, of his next of kin, and the expenses incurred in

virtue of the facts of the case sub judice. [FN125] In this respect, it will determine a compensatory amount that seeks to recompense the pecuniary consequences of the violations declared in the present Judgment. In order to decide on the pecuniary damages, it will take into account the body of evidence, the jurisprudence of the same Tribunal and the arguments of the parties.

[FN125] Cf. Case of Raxcacó-Reyes, supra note 93, para. 129; Case of Gutiérrez Soler. Judgment of September 12, 2005. Series C No. 132, para. 74, and Case of Acosta-Calderón, supra note 18, para. 157.

---

a) Loss of income

193. The representatives of the victim and the Inter-American Commission requested compensation for Mr. Alfredo López Álvarez's loss of income and stated that besides the different activities he carried out in the organizations to which he belonged, at the time of the facts he worked as an electrician and construction contractor. The representatives stated that Mr. Alfredo López Álvarez received a monthly salary of approximately US$400.00 (four hundred Dollars of the United States of America).

194. The dossier does not include any suitable receipts that may help determine with exactness the income perceived by Mr. Alfredo López Álvarez at the time of the facts. Taking into consideration the activity carried out by the victim as his means of survival, as well as the circumstances and specifics of the present case (supra para. 54(4)), the Court establishes in equity US$25,000.00 (twenty-five thousand Dollars of the United States of America) in favor of Mr. Alfredo López Álvarez, for loss of income, which must be given to him by the State.

b) Emerging damage

195. Considering the facts of the case, the information received, and its established jurisprudence, this Tribunal estimates that the compensation for pecuniary damage must also include:

a) an amount of money corresponding to the expenses made by Mrs. Teresa Reyes Reyes to travel to the Criminal Center of Tela and later to the National Penitentiary of Támara, to visit Mr. Alfredo López Álvarez, as well as the expenses related with her food, lodging, and telephone calls (supra para. 54(52)). In this respect, the Court considers it correct to set in equity the amount of US$2,000.00 (two thousand Dollars of the United States of America) as compensation, which must be paid to her, and

b) an amount of money corresponding to the expenses incurred in by Mrs. Alba Luz García Álvarez, Rina Maribel García Álvarez, and Marcia Migdali García Álvarez and by Mr. Joel Enrique García Álvarez, for the concept of transfers, food, and lodging to visit their brother Alfredo López Álvarez in the criminal centers of Tela and Támara (supra para. 54(52)). In this point, the Court considers it pertinent to set in equity the amount of US$8,000.00 (eight thousand dollars of the United States of America) that must be distributed in equal parts between the

mentioned ladies Alba Luz, Rina Maribel, and Marcia Migdali, and Mr. Joel Enrique, all of them García Álvarez, as compensation for this concept. The amounts set must be handed over to each of them, as established.

C) NON-PECUNIARY DAMAGES

196. Arguments of the Commission:

It requested that the Court pay a just compensation for non-pecuniary damages.

197. Arguments of the representatives:

a) regarding the non-pecuniary damages they stated:

i) the reparation must consider the victim's sufferings due to the humiliations against his physical and emotional integrity, suffered while he was detained, the prohibition to express himself in his native language, the separation from his family, and his arbitrary transfer to a detention center located further away. Likewise, the process started against the alleged victim for the alleged criminal offense of possession and trafficking of narcotics, without any grounds, caused damages to his honor and reputation, which must be repaired by the State;

ii) the State must pay US $50,000.00 (fifty thousand dollars of the United States of America) to repair the physical and mental infringement suffered by Mr. Alfredo López Álvarez. They requested that the Court set in equity the "moral damage" caused to Mrs. Teresa Reyes Reyes, as well as to Mr. López Álvarez's children, and those of Mrs. Reyes Reyes. However, in the closing arguments they requested that the Court set in equity US$100,000.00 (one hundred thousand dollars of the United States of America) in favor of Alfredo López Álvarez for "moral damage" and US$50,000.00 (fifty thousand dollars of the United States of America) in reparation to Mrs. Teresa Reyes Reyes for that same concept. Finally, they requested that the Tribunal set in equity an amount for the other next of kin of the victim, his parents, children, and siblings for their "moral damage", and

iii) the violations to the human rights of Mr. Alfredo López Álvarez deprived him of the possibility to develop his life project, therefore not being able to reach his personal, professional, and family objectives that he had set for himself along with his family, reason for which they requested the Court to, in equity, order the State to repair the damage caused to the life project of the alleged victim.

198. Arguments of the State:

It stated that the non-pecuniary damages referred to in the application do not proceed.

Considerations of the Court

199. Non-pecuniary damages may include both suffering and affliction, detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of a victim. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for the purposes of a comprehensive reparation to the victims, it can only be the object of compensation in two forms. First, through payment of an amount of money or delivery of

goods or services that can be estimated in monetary terms, which the Tribunal will establish through reasonable application of judicial discretion and equity. And, second, through acts or works which are public in their scope or effects, which among other effects have that of acknowledging the victim's dignity and avoiding the repetition of the violations. [FN126]

[FN126] Cf. Case of García-Asto and Ramírez-Rojas, supra note 7, para. 276; Case of Palamara-Iribarne, supra note 15, para. 234; and Case of the "Mapiripán Massacre", supra note 15, para. 282.

---

200. International jurisprudence has repeatedly established that the judgment constitutes, per se, a form of reparation. [FN127] However, due to the circumstances of the case sub judice, the suffering that the facts have caused the victim and his next of kin, the change in their living conditions, and the other non-pecuniary consequences suffered by them, the Court considers it convenient to determine the payment of a compensation, set with equity, for non-pecuniary damages.

[FN127] Cf. Case of Blanco-Romero et al., supra note 7, para. 69; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 268; and Case of Palamara-Iribarne, supra note 15, para. 258.

---

201. Taking into account the different aspects of the damage argued by the Commission and the representatives, the Court sets in equity the value of the compensations for non-pecuniary damages, pursuant to the following parameters:

a) to determine the compensation for the non-pecuniary damage suffered by Mr. Alfredo López Álvarez, the Court has present, inter alia, that: i) he was subject to cruel, inhuman, or degrading treatments; ii) during his detention and while he remained at the Office of Criminal Investigation he was subject to physical and mental mistreatment so that he would incriminate himself, he did not receive medical attention, and he was object of a physical inspection by another detainee (supra paras. 54(12) and 54(14)); iii) during his detention in the Criminal Center of Tela and in the National Penitentiary of Támara he was subject to infrahuman, unhealthy, and overcrowded conditions of imprisonment, without a bed to rest on, he did not receive an adequate diet, nor did he have the essential hygienic conditions (supra para. 54(48)); and in the Criminal Center of Tela he was prohibited from speaking in his native language, Garifuna (supra para. 54(49)); iv) he was imprisoned with persons that had already been convicted, despite the fact that he was still being processed (supra para. 54(47)), and v) he was illegally and arbitrarily imprisoned for more than six years in those conditions and kept away from his family, all of which affected his personal dignity and integrity. Therefore, this Tribunal considers that an amount must be set in equity for the reparation of the non-pecuniary damage;

b) in the determination of the compensation for non-pecuniary damage that corresponds to Mrs. Teresa Reyes Reyes, it is necessary to consider that she had to assume the care of her children without the support of the victim, that at the time of Mr. Alfredo López Álvarez's arrest she was pregnant, and that she experimented anguish and pain for the inhuman and unhealthy

conditions to which Mr. López Álvarez was subject in the penitentiary centers were he was imprisoned, and which she suffered when she visited the victim (supra para. 54(53));
c) in what refers to Mr. Alfredo López Álvarez's children, that is: Alfa Barauda López Reyes, Suamein Alfred López Reyes, Gustavo Narciso López Reyes, Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, and Joseph López Harolstohn, and the children of Teresa Reyes Reyes, José Jaime Reyes Reyes and María Marcelina Reyes Reyes, who are considered children of Mr. López Álvarez, this Court considers that their father's situation caused them suffering and insecurity; for the more than six years that the victim remained detained they did not have a father figure by their side (supra para. 54(53)). This was worse in the case of the children Alfa Barauda, Suamein Alfred, and Gustavo Narciso López Reyes, who were born when their father was incarcerated. Therefore, an amount must be set in equity for the reparation of the non-pecuniary damage;
d) regarding the parents of the victim, Messrs. Apolonia Álvarez Aranda and Catarino López, in this case, due to the conditions of imprisonment and the penalties imposed on the detainee in the criminal centers of Tela and Támara (supra para. 54(53)), it is considered that they should be compensated for non-pecuniary damages, and
e) finally, in what refers to the victim's siblings the Tribunal considers that Mrs. Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdali García Álvarez, Mirna Suyapa García Álvarez, and Mr. Joel Enrique García Álvarez, were not indifferent to the sufferings of Mr. Alfredo López Álvarez; they visited him in the two criminal centers were he was imprisoned and they knew up close the detention conditions he suffered (supra para. 54(53)). In this virtue, the Court must determine a compensation to repair the non-pecuniary damage caused to the victim's siblings.

202. Considering the different aspects of the non-pecuniary damage caused, the Court sets in equity the value of the compensations for said concept in the following terms:

a) US$15,000.00 (fifteen thousand dollars of the United States of America) in favor of Mr. Alfredo López Álvarez, victim;
b) US$10,000.00 (ten thousand dollars of the United States of America) in favor of Mrs. Teresa Reyes Reyes, partner of Mr. Alfredo López Álvarez;
c) US$4,000.00 (four thousand dollars of the United States of America) in favor of each of the children of Mr. Alfredo López Álvarez, that is: Alfa Barauda López Reyes, Suamein Alfred López Reyes, Gustavo Narciso López Reyes, Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, Joseph López Harolstohn, José Jaime Reyes Reyes, and María Marcelina Reyes Reyes;
d) US$7,000.00 (seven thousand dollars of the United States of America) in favor of each of the parents of Mr. Alfredo López Álvarez, Mrs. Apolonia Álvarez Aranda and Mr. Catarino López, and
e) US$1,000.00 (one thousand dollars of the United States of America) in favor of each of the siblings of Alfredo López Álvarez, that is: Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdali García Álvarez, Mirna Suyapa García Álvarez, and Mr. Joel Enrique García Álvarez.

203. The compensation determined in the previous paragraph will be delivered to each beneficiary. If any of them were to die before the corresponding compensation is given to them,

the amount that would have corresponded to them will be distributed pursuant to the national legislation applicable. [FN128]

[FN128] Cf. Case of Gómez-Palomino, supra note 7, para. 123; Case of Palamara-Iribarne, supra note 15, para. 263; and Case of Myrna Mack-Chang, supra note 98, para. 294.

D) OTHER FORMS OF REPARATION (SATISFACTION MEASURES AND NON-REPETITION GUARANTEES)

204. Arguments of the Commission:

a) it requested that the Court order the State to:

i) investigate, process, and punish those responsible for the violation to human rights committed against Mr. Alfredo López Álvarez;

ii) make a public acknowledgment to Mr. Alfredo López Álvarez, through a symbolic act, previously agreed on with the victim and his representatives;

iii) take the measures necessary to adapt the domestic legal system to the norms of human rights that protect the right to personal liberty. In this sense, modify the norms included in Articles 425 of the Criminal Code and 433 of the Code of Criminal Procedures of the year 1984, which are not compatible with the American Convention;

iv) adopt the measures necessary so that the members of the Indian communities that are imprisoned are not prohibited from using their native language;

v) give awareness courses to the prison guards so that they can understand the culture of the members of the Indian groups imprisoned through a court order, and

vi) comply with all the satisfaction measures and non-repetition guarantees, so that facts like those of the present case do not repeat themselves.

205. Arguments of the representatives:

a) they requested the Court to order the State to:

i) clarify the facts, investigate them in a serious, fast, impartial, and effective manner and apply the corresponding judicial, administrative, or disciplinary sanctions to those that committed the acts that constituted the violations imputed to the State, and to all those that have permitted, in a malicious or ommissive way, the impunity of this case to prevail;

ii) publish the judgment of the Court in its totality in three newspapers with the highest circulation in the country, and make a public acknowledgement of its international responsibility for the violations to the personal liberty and physical integrity of Mr. López Álvarez, which produced effects on the victim and the community of Triunfo de la Cruz and the different organizations involved in the defense process of their territory, as a measure to restore the good name of the alleged victim and his credibility as a defender of human rights;

iii) adopt measures that improve the prison conditions in Honduras, like those referring to the separation between convicted persons and persons being processed;

iv) take up, in a serious and decided manner, the formulation of a short, medium, and long-term policy in penitentiary matters, following the minimum rules of the United Nations for

the treatment of inmates and the criteria defined by the Inter-American Court regarding the conditions of imprisonment, in order to advance in aspects such as: modernization and adjustment of the penitentiary legal framework to the international standards in this subject; improvement of the physical, sanitary, and dietary conditions provided in the criminal centers, as well as offering medical assistance to those incarcerated, and formation of the penitentiary personnel in the respect of human rights of the inmates, including the protection of cultural identity;

iv) implement the measures necessary so that the Indian and Black populations may have complete access to justice; and especially so that they be allowed to use their mother tongue in all procedural actions and in the detention centers;

v) offer the technical facilities of basic equipment and use of frequencies that allow the community of Triunfo de la Cruz to reinstate the community radio station and therefore reactivate the service for which this means of communication was initially established;

vi) correct the processes begun and followed by the municipality of Tela that affect the territories legally acknowledged as property of Triunfo de la Cruz, returning the situation to that stated in the guarantee deeds of occupation. The State must abstain from carrying out new acts that tend to the appropriation of those territories;

vii) revoke or reform the Articles of the Transition Law of the new Code of Criminal Procedures so it will permit the retroactive application of the regimen of preventive detention established in it, and

viii) adopt the measures necessary in order to guarantee that the violations suffered by the victims of this case do not repeat themselves.

206. Arguments of the State:

a) it did not refer to the measures of non-repetition or satisfaction.

Considerations of the Court

a) Obligation of the State to investigate the facts of the case

207. The State must investigate, within a reasonable period of time, the facts of the present case, and apply the measures that result from that investigation to those responsible for said facts.

b) Publication of this Judgment

208. As a satisfaction measure, [FN129] the State must publish, within six months as of the notice of the present Judgment, both Chapter VII regarding the facts proven, without footnotes, and the operative part of the present Judgment, once, in the Official Newspaper and in another newspaper of national circulation in Honduras.

[FN129] Cf. Case of Blanco-Romero et al., supra note 7, para. 101; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 282; and Case of Gómez-Palomino, supra note 7, para. 142.

---

c) Improvement of the physical, sanitary, and diet conditions in the criminal centers and formation of the prison officers

209. In attention to the right of people imprisoned to a decent life in the criminal establishments, the State must adopt, within a reasonable time, measures tending to create conditions that ensure the inmates an adequate diet, medical attention, and physical and sanitary conditions pursuant with the international standards on this subject. [FN130]

[FN130] Cf. Case of Raxcacó-Reyes, supra note 93, para. 134; Case of Fermín Ramírez, supra note 93, para. 130(f); and Case of Caesar. Judgment of March 11, 2005. Series C 123, para. 134.

---

210. Within the measures of non-repetition adopted in the present case, the State must implement, within a reasonable period of time, a training program on human rights for the officers that work in the penitentiary centers.

F) Costs and Expenses

211. Arguments of the Commission:
It requested that the Court, once it had heard the representatives and the victim, order the State to pay the costs originated in the domestic jurisdiction, as well as those incurred in at an international level before the Commission and the Court.

212. Arguments of the representatives:

a) during the processing of the judicial dossier No. 1205/97 before the Sectional Court of First Instance of Tela and the process before the Commission, Alfredo López Álvarez was assisted by various legal representatives. OFRANEH requested the amount of US$64,117.00 (sixty four thousand one hundred and seventeen dollars of the United States of America) for professional fees;
b) OFRANEH incurred in administrative expenses for the defense of Alfredo López Álvarez, such as: mobilization of leaders to carry out procedures before the judicial system, photocopies, communication, lobbying meetings, meetings with the communities and with international organizations. For this concept it requested US$18,628.00 (eighteen thousand six hundred and twenty eight dollars of the United States of America), and
c) CEJIL incurred in expenses related with the obtainment of information and evidence in Honduras in order to attend to the process before the Court, which includes purchase of airplane tickets, travel expenses, and expenses related to the trip of a witness that appeared before the Court. In this respect, it requested the amount of US$5,250.25 (five thousand two hundred and fifty dollars of the United States of America with twenty-five cents).

213. Arguments of the State

a) it stated that the costs and expenses referred to in the application do not proceed.

Considerations of the Court

214. The costs and expenses are included within the concept of reparation enshrined in Article 63(1) of the American Convention. The Tribunal must prudently and based on equity appraise their scope, considering the expenses generated before the domestic and Inter-American jurisdictions, and taking into account their verification, the circumstances of the specific case, and the nature of the international jurisdiction for the protection of human rights. [FN131]

[FN131] Cf. Case of Blanco-Romero et al., supra note 7, para. 114; Case of García-Asto and Ramírez-Rojas, supra note 7, para. 223; and Case of Gómez-Palomino, supra note 7, para. 150.

---

215. In this respect, the Tribunal considers it in equity to order the State to reimburse the amount of US$10,000.00 (ten thousand dollars of the United States of America) or its equivalent in Honduran currency to Mr. Alfredo López Álvarez, who will give OFRANEH and CEJIL the amounts he considers appropriate to compensate the expenses incurred in by them.

D) Method of Compliance

216. The State shall pay the compensations and reimburse the costs and expenses (supra paras. 194, 195(a), 195(b), 202(a), 202(b), 202(c), 202(d), and 202(e), and 215) within one year, as of the notification of this Judgment. In the case of the other reparations ordered the measures must be complied with in a reasonable period of time (supra paras. 207, 209, and 210), or in the one specifically stated in the Judgment (supra para. 208).

217. Payment of the compensations established in favor of the victim and his next of kin will be made directly to them. If any of them were to pass away, payment will be made to their successors.

218. In what refers to the compensation ordered in favor of the minors Alfa Barauda López Reyes, Suamein Alfred López, Gustavo Narciso López Reyes, Iris Tatiana López Bermúdez, José Jaime Reyes Reyes, and María Marcelina Reyes Reyes, the State must deposit it in a solvent Honduran institution. The investment will be made within a one-year period, in the most favorable financial conditions allowed by legislation and bank practices, and it will be kept there while the beneficiaries are minors. It may be withdrawn by them when they become of legal age, in its case, of before if it is in the best interest of the child, established through the determination of a competent judicial authority. If the compensation is not claimed after ten years as of the turning of legal age, the amount will be returned to the State, along with the interests earned.

219. If due to causes attributable to the other beneficiaries of the compensation it were not possible for them to receive it within the mentioned one-year term, the State will deposit said amounts in favor of those in an account or certificate of deposit in a solvent Honduran bank institution, and in the most favorable financial conditions permitted by the legislation and bank

practices. If the compensation has not been claimed after ten years, the corresponding amount will be returned to the State, along with the interests earned.

220. Payments destined to paying the costs and expenses made by the representatives in the internal and international proceedings will be made to Mr. Alfredo López Álvarez (supra para. 215), who will make the corresponding reimbursements.

221. The State must comply with the economic obligations stated in this Judgment through payment in dollars of the United States of America or its equivalent in the national currency of Honduras.

222. The amounts assigned in the present Judgment under the concepts of compensations, expenses, and costs must be delivered to the beneficiaries in their totality pursuant to that established in the Judgment. Therefore, they may not be affected, reduced, or conditioned by current or future fiscal reasons.

223. If the State falls in arrears, it shall pay interests over the amount due, corresponding to bank interest on arrears in the Republic of Honduras.

224. In accordance with its consistent practice in all cases subject to its knowledge, the Court will monitor compliance of the present Judgment in all its aspects. This supervision is inherent to the Tribunal's jurisdictional attributions and necessary so that it may comply with the obligation assigned to it in Article 65 of the Convention. The case will be closed once the State has fully implemented all of the provisions of this Judgment. Within one year of notification of this Judgment, the State must present a first report of the measures taken in compliance of this Judgment.

XIV. OPERATIVE PARAGRAPHS

225. Therefore,

THE COURT,

DECLARES:

Unanimously, that:

1. The State violated the right to personal liberty enshrined in Article 7(1), 7(2), 7(3), 7(4), and 7(6) of the American Convention on Human Rights, in detriment of Mr. Alfredo López Álvarez, in relation with the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the same, in the terms of paragraphs 59 through 99 of the present Judgment.

Unanimously, that:

2. The State violated the right to personal integrity enshrined in Article 5(1), 5(2), and 5(4) of the American Convention on Human Rights, in detriment of Mr. Alfredo López Álvarez, in relation with the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the same, in the terms of paragraphs 104 through 113 of the present Judgment.

Five votes against one, that:

3. The State violated the right to a fair trial and judicial protection enshrined in Articles 8(1), 8(2), 8(2)(b), 8(2)(d), 8(2)(g), and 25(1) of the American Convention on Human Rights, in detriment of Mr. Alfredo López Álvarez, in relation with the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the same, in the terms of paragraphs 128 through 156 of the present Judgment.
Judge Medina Quiroga Disagrees.

Unanimously, that:

4. The State violated the rights of freedom of thought and expression and of equal protection enshrined in Articles 13 and 24 of the American Convention on Human Rights, and did not comply with the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the same, in detriment of Mr. Alfredo López Álvarez, in the terms of paragraphs 163 through 174 of the present Judgment.

Unanimously, that:

5. The State violated the right to personal integrity enshrined in Article 5(1) of the American Convention, in relation with 1(1) of the same, in detriment of Teresa Reyes Reyes, Alfa Barauda López Reyes, Suamein Alfred López Reyes, Gustavo Narciso López Reyes, Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, Joseph López Harolstohn, José Jaime Reyes Reyes, María Marcelina Reyes Reyes, Apolonia Álvarez Aranda, Catarino López, Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdalia García Álvarez, Mirna Suyapa García Álvarez, and Joel Enrique García Álvarez, in the terms of paragraphs 114 through 120 of the present Judgment.

Unanimously, that:

6. This Judgment is, per se, a form of reparation in the terms of paragraph 210 of the same.

AND DECIDES:

Unanimously, that:

7. The State must investigate the facts of the present case and apply the measures that result from those investigations to those responsible for said acts, in the terms of paragraph 207 of the present Judgment.

Unanimously, that:

8. The State must publish in the Official Newspaper and in another newspaper of national circulation, a single time, Chapter VII regarding the proven facts, without the corresponding footnotes, and the operative paragraphs of this Judgment, in the terms of paragraph 208 of the same.

Unanimously, that:

9. The State must adopt measures tending to create the conditions that can ensure the inmates of the criminal centers of Honduras an adequate diet, medical attention, and physical and sanitary conditions consistent with the international standards on the subject, and implement a training program on human rights for the officers that work in the penitentiary centers, in the terms of paragraphs 209 and 210 of the present Judgment.

Unanimously, that:

10. The State must pay Mr. Alfredo López Álvarez, for pecuniary damages, the amount set in paragraph 194 of the present Judgment, in the terms of paragraphs 192, 193, and 194 of the same.

Unanimously, that:

11. The State must pay Mr. Alfredo López Álvarez, for non-pecuniary damages, the amount set in paragraph 202(a) of the present Judgment, in the terms of paragraphs 201(a) and 202(a) of the same.

Unanimously, that:

12. The State must pay Mrs. Teresa Reyes Reyes, Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdalia García Álvarez, and Mr. Joel Enrique García Álvarez, for pecuniary damages, the amount set in paragraphs 195(a) and 195(b) of the present Judgment, in the terms of paragraph 195 of the same.

Unanimously, that:

13. The State must pay Teresa Reyes Reyes, Alfa Barauda López Reyes, Suamein Alfred López Reyes, Gustavo Narciso López Reyes, Alfred Omaly López Suazo, Deikel Yanell López Suazo, Iris Tatiana López Bermúdez, José Álvarez Martínez, Joseph López Harolstohn, José Jaime Reyes Reyes, María Marcelina Reyes Reyes, Apolonia Álvarez Aranda, Catarino López, Alba Luz García Álvarez, Rina Maribel García Álvarez, Marcia Migdalia García Álvarez, Mirna Suyapa García Álvarez, and Joel Enrique García Álvarez, for non-pecuniary damages, the amount set in paragraphs 202(b), 202(c), 202(d), and 202(e) of the present Judgment, in the terms of paragraphs 188, 201(b), 201(c), 201(d), 201(e), 202(b), 202(c), 202(d), and 202(e) of the same.

Unanimously, that:

14. The State must pay Mr. Alfredo López Álvarez, for costs and expenses, the amount set in paragraph 215 of the present Judgment, in the terms of paragraphs 214 and 215 of the same.

Unanimously, that:

15. It will monitor the compliance of the present Judgment in all its aspects, and it will close the present case once the State has fully implemented all of the provisions of this Judgment. Within one year of notification of this Judgment, the State must present a report of the measures taken in compliance of this Judgment, in the terms of paragraph 224 of the present Judgment.

Judges García-Ramírez and Cançado Trindade advised the Court of their Concurring Opinions and Judge Medina-Quiroga advised the Court of her Dissenting Opinion, which accompany this Judgment.

Prepared in Spanish and English, bearing witness to the text in Spanish, in San José, Costa Rica, on February 1, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ IN THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF LÓPEZ ÁLVAREZ v. HONDURAS, OF FEBRUARY 1, 2006

I. THE DUE PROCESS

1. The due process constitutes an instrumental and secondary guarantee that becomes, in all honesty, material and primary, as an “access key” to the national and international protection of

the rights and the claim on the duties. Its relevance has been constantly pointed out. The jurisprudence of the Inter-American Court has done it, and it has been pointed out by different members of this Tribunal. The judge Alirio Abreu Burelli observes that "the due process, fundamental guarantee of the human being is also a guarantee of respect for the other rights" ("Responsibility of the judge and human rights", in Revista de Derecho. Supreme Court of Justice, No. 19, Caracas, Venezuela, 2005, p. 44), and the judge Cecilia Medina Quiroga points out that "the due process is an angular stone of the human right's protection system; it is, by excellence, the guarantee of all human rights and a requirement sine qua non for the existence of a Constitutional State" (The American Convention: theory and jurisprudence. Life, personal integrity, due process, and judicial recourse, University of Chile, Law School, Human Rights Center, San Jose, Costa Rica, 2003, p. 267).

2. The matters of the due process keep on appearing in a significant manner in the jurisdictional work of the Inter-American Court on Human Rights: meaningful in a double dimension; on one hand, in what refers to the number of cases in which matters of the due process are discussed; on the other hand, in what refers to the subject of cases --and even of the advisory opinions --, that concur to form a good part of the Inter-American case-law, with a notable repercussion –growing and evident, in the last years – in the judgments of many national courts.

3. In different Concurring and reasoned opinions I have taken up these matters. I have also done so, in some recent presentations on behalf of the Inter-American Court or in relation to its tasks: thus, the XII Encounter of Presidents and Magistrates of the Constitutional Courts and Constitutional Chambers of Latin America "The constitutional guarantees of the criminal due process", summoned by the Supreme Court of Uruguay and the Konrad Adenauer Foundation (Punta del Este, Uruguay, October 10-14, 2005), and the "International Training Course on Reforms to the System of Criminal Justice in Latin America", organized by the Latin American Institute of the United Nations for the Prevention of Crime and Treatment of the Criminal, Institute of the United Nations for Asia and the Far East for the Prevention of Crime and Treatment of the Criminal and the International Cooperation Agency of Japan (San Jose, Costa Rica, July 27, 2005).

4. On those opportunities, among others, I have mentioned the quantitative importance of this matter in the Inter-American Court on Human Rights' case-law. The statistics recollected by it –that is now found in the volume The Inter-American Court on Human Rights. A Quarter of a Century. 1979-2004 (San Jose, Costa Rica, 2006), which puts in evidence that the Tribunal has declared the existence of a violation to Article 8 ("Right to a Fair Trial") of the American Convention on Human Rights in 43 cases, which are the great majority on which it has issued a ruling, as well as the presence of violations to Article 25 ("Judicial Protection") in 40 cases. In my concept, one and the other imply a violation of the due process –in ample and adequate sense: the most convenient one for the judicial protection of the human being --, even though they may and must be analyzed separately. On the other hand, it is necessary to remember that other precepts of the Convention protect matters that may be classified within the scope of the due process: for example, violation of the right to life (Article 4, in what refers to the extraordinary means available for challenging the death penalty), of the right to integrity (Article

5, in what refers to the illicit coercion over detained individuals) and the right to liberty (7, in that concerning the rules of detention and judicial control over the same).

5. It is convenient to mention that the experience of other national and international jurisdictions runs in the same direction, as has been put in relevance by the experts in this field. In the European Court there is abundant presence of matters related with the due process, with great emphasis on criminal aspects. Oscar Schiappa-Pietra observes that Article 6º of the European Convention on Human Rights (ECHR)—precept that establishes the main norms of the due process -- "is the one that has deserved the greater number of cases (before the European system for the protection of human rights), in comparison with all other rights acknowledged by the ECHR" ("Notes on the due process within the framework of the European regional system for the protection of human rights," in Novak, Fabián, and Mantilla, Julissa, Las garantías del debido proceso. Materiales de enseñanza, Pontificia Universidad Católica del Perú, Center of International Studies/ Real Embassy of the Netherlands, Lima, 1996, p. 145).

6. Some national analysts point out the frequency of cases presented before the European Court regarding matters of the trial, as well as those known by the national jurisdiction as of Article 6º of the Convention of 1950, regarding the subject that we are currently dealing with (Cfr., only as an example, Dupré, Catherine, "France", in Blackburn & Polakiewicz, Fundamental Rights in Europe. The ECHR and its Member States, 1950-2000. Oxford University Press, Great Britain, 2001, p. 325, and in what refers to Italy, with emphasis on the problems of the "reasonable time", Meriggiola, Enzo, "Italy", in idem, pages. 487-488 and 501. Regarding Spain, Guillermo Escobar Roca observes that Article 6 is the precept of the Convention most frequently invoked before the Constitutional Court of that country. Cfr. "Spain", in idem, p. 817. The violations to the reasonable time and the right to defense are constantly invoked, in criminal procedural matters, before the European Court, as well as the problems that arise from the right to an independent and impartial tribunal. Cfr. Delmas-Marty, Mireille, "Introduction", in Delmas-Marty (dir.), Procesos penales de Europa (Alemania, Inglaterra y País de Gales, Bélgica, Francia, Italia), translation Pablo Morenilla Allard, Ed. Eijus, Zaragoza (Spain), 2000, p. 33).

7. In what refers to the extremes of the due process –in ample sense, as I have mentioned -- covered by the Court's jurisprudence, it is necessary to mention that it has already elaborated a useful jurisprudential doctrine on subjects such as: independent and impartial tribunal, competent tribunal (subjects that can both be attracted as elements or, even better, as prerequisites of the due process), military jurisdiction (chapter relevant to the previous matters), presumption of innocence, the right to equal protection, defense, the principle of contradiction, public nature of the process, arrest, preventive detention (conditions and characteristics), investigation, admissibility and assessment of the evidence, reasonable time (for the preventive detention and for the process), recourses, new process (res judicata and ne bis in idem), effect of the judgment, specific aspects of the processing of minors that incur in behaviors criminally established by law, etcetera.

II. COMMUNICATION OF THE REASON FOR THE ARREST

8. The judgment issued by the Court in the Case of López Alvarez v. Honduras (February 1, 2006) focuses on matters of the due process, even when it also takes into account some new subjects that had previously not been dealt with by the Inter-American Court, as is the case with the violation to the liberty of (thought and) expression referring to the use of the Garifuna language by the victim while he was imprisoned, something that possesses an autonomous entity of its own, and also has a specific interest in the circumstances of the application of the custodial measures, as I will mention infra.

9. The establishment of the subject of the proceedings –I use this expression deliberately; later on I will refer to the process, itself --, that is, the precision and reasonable verification of the elements that explain and give an action of the State legal standing has a deep impact on a person's rights and liberties, and is a central issue in these matters. It not only justifies interventions that would otherwise be absolutely illegitimate (for example, interferences with a person's liberty, security, property), and establishes the border between the law and its essential limitations (under the terms traditionally acknowledged and firmly provided by, among other instruments, the American Declaration of the Rights and Duties of Man –Article XXVIII—and the American Convention –Articles 27 and 29 through 32--), but it also offers the rational and necessary foundations (although not enough by itself) so that the individual (as a suspect or accused, at its time) may confront those interventions that occur at different stages, under different names and with different circumstances, invariably restrictive of the exercise of rights and liberties.

10. It is inexcusable that any person affected by the persecutory activity of the State know of the motive (and its meaning, with its possible repercussions) of the same in a timely manner, so that he may confront it in an adequate manner through acts of defense, normally oriented in the sense that derives from the knowledge of that motive. I use this last word, not employed in the American Convention, to establish the scope that I believe the expressions "reasons for his detention" and "charge or charges against him", used in Article 7(4) of the Pact of San Jose have.

11. In essence, the international norm refers to enough information to demonstrate the legitimacy of the state's actions (administrative or judicial, at their times) and offer the possibility of a timely and adequate defense. It should not be understood that this duty of the State and this right of the individual are satisfied with the reference to stipulations of criminal codes, which may be insufficient or unintelligible for the subject. It is precise that it receives information on the facts attributed to him (as motives for the state's actions). In a certain way this requirement of the Law (national and international) on human rights, comes to correct the hypothesis –unreal and unequal—which assumes, based on an old and debated presumption, that everybody knows the law and that they are immediately aware that they have observed it or violated it.

12. The Judgment that I now comment distinguishes how it should be done, based on the American Convention, both in the case of an arrest that occurs in compliance with a court order – which supposes previous procedural acts – and the one that occurs in a situation of in flagrante. Both extremes are admissible, although each of them is governed by its own rules. Pursuant to its grammatical meaning, the characteristic of in flagrante generates a state of notoriety or evidence that seems to avoid the need to comply with other duties: among them, the information regarding

the motives for the State's intervention in the individual's liberty. I think that this conclusion is erroneous. The guaranteeing nature of the norm included in Article 7(4) (justification for the State's behavior and defense of the individual) is better attended if the obligation to inform is complied with without being subject to distinctions or deliberations that are not based on the precept nor are they necessarily based on reality.

13. The in flagrante nature –concept that, in all the rest, does not have a uniform scope within all legislations nor a unique and pacific characterization in the doctrine and jurisprudence – that is presented in a case may be enough for the person who carries out the arrest, but insufficient for who suffers it. The interpreter of the norm, who tries to find its best –and always sensible— scope, weighing in the repercussions and applications of each possible interpretation, must give it the meaning that lets it reach, in the totality or at least in the majority of the cases, taking into account the conditions of the reality, the purpose seeked. One should also keep in mind that the information on the motives for the arrest do not only inform that the State's agent considers that certain facts have occurred, but it also implicitly means that they are illicit or reprehensible, all of them considerations that concern the justification of the State and the individual's defense.

14. This decision made by the Court implies a change of criterion with regard to the one held in the Judgment of the Case of Acosta Calderón (Judgment of June 24, 2005, Series C, No. 129, para. 73), in which this Tribunal stated that when there someone is caught committing a crime in the act it is not necessary to inform the detainee of the reasons for his arrest. I applaud this change of criterion by the Court. I celebrate it for two reasons: because I consider that a court must be sensible to the need to modify its opinions when it considers there is reason to do so, and because in this specific case I believe that this modification is completely justified. In what remains, in this case the Court did not even mention –which would be a valid approach that could motivate reflection – if there were extraordinary reasons for the fact that the agents that carried out the arrest abstained from giving the detainee the information ordered by Article 7(4) of the Pact.

III. THE MATTERS OF THE PROCEDURE

15. The Judgment of the Case of López Álvarez has also referred to the matters of the procedure --and, at its time, of the process, as is seen in this case--, which constitutes the substantive reasons why the State does what it is doing: restrict rights and liberties and act, through its authorities, in such a way that it may result in greater restrictions or deprivations, for which a justification must always be clearly established. This consideration leads to the obligation to precise with adequate means of evidence –that is, admissible, sufficient, and persuasive—the existence of the body of the crime, pursuant to the codes that so mention it, or of the elements included in the criminal definition, which must be proven, first for the trial itself (even though complete verification is not demanded at that time), and then, the judgment (which is made based on convincing evidence that prevails over a reasonable doubt).

16. The determination on the nature of the substance whose possession was attributed to the defendant is the center of the criminal persecution, pursuant to the definition used for the incrimination and development of the process, which would support, at its time, a conviction. Therefore, the greatest evidentiary weight must be directed toward that matter as of the first

moment. And, the State must justify, every step of the way, the legitimacy of its criminal intervention, it must have elements of judgment that are enough and constant for that purpose and always be alert to the possible disappearance of that information, which would determine the cessation of the procedure. It is notorious that this did not occur in this case, since there was a situation of serious doubt –much greater than the uncertainty that could be natural in the course of the trial, destined to be dispelled—and that the authority that should have confronted it and solved it did not do so in an immediate and sufficient manner.

17. Even when the arrest is based on a good apparent motive, as can be observed from the facts in which it occurs, and even when the process is started, this is not so when the deprivation of liberty continues even after the apparently good motive has ceased and such circumstance is apparent to the authority called upon to issue a final judgment. It is essential that there be a jurisdictional means that can operate so that a situation that is not well founded, and therefore lacks legitimacy, may be ceased. Nothing justifies the prolongation of a detention, as well as the process itself, when the information that supports one and the other at the light of the criminal definition ceases to exist. With this the presumption of innocence and even the legality of the trial itself look bad. Of course, the International Court can not substitute the domestic court in the assessment of the evidence, but it can not be indifferent before the absolute and prolonged lack of enough evidence and the absence of a timely assessment of the facts, whose circumstances were acknowledged by the domestic jurisdiction itself.

IV. PREVENTIVE DETENTION

18. Once more we are faced with the problem of the preventive detention, that is, of the most severe of the precautionary measures still used in criminal trials, since it implies a profound restriction to freedom, with very important consequences. We normally state that the preventive detention is not a real sanction; it is not a punitive measure, but instead simply a precautionary and ephemeral one. Technically, this is true. However, considering this phenomena in the light of reality –even when it comes up against the technicality—preventive detention does not differ at all, except in its name, of the punitive detention: both are a deprivation of freedom, they (normally) occur in terrible conditions, they cause the subject and those that surround him a serious material and mental damage, and they normally have long-term repercussions, sometimes devastating. In fact, on not little occasions –the Case of López Álvarez is a sample of it, certainly not the only one – the preventive detention prolongs for the same period of time or even longer than a punitive detention. Therefore, among other things, it is necessary to seriously weigh in the justification, the characteristics, duration, and alternatives of the preventive detention.

19. In my concept –deeply-rooted in a tradition of highly unfavorable opinions, or in any case, strongly critical of the preventive detention – the cautionary deprivation of freedom -- “deprive of freedom in order to find out if liberty can be deprived”—must be reduced as much as possible. The jurisprudence of the Inter-American Court has acknowledged this repeatedly and uniformly, with explicit support to the idea that the criminal intervention of the State must be reduced to that strictly necessary and be based on considerations that may prove their appropriateness and legitimacy. Obviously, this is not about backing the crime, but about preserving the rights of citizens, especially of those deprived of their freedom without having committed any crime. This brings with it the demand that the basis for the preventive detention

as well as the conditions that make it admissible be well established, for now, that is, the need to preserve the process and security of those who intervene in it, using the deprivation of freedom when there is no other means available to reach those objectives.

20. Therefore, it is necessary to verify that in the cases in which the precautionary incarceration is proposed and issued, it is really necessary. For this, different references may be invoked, as elements of judgment subject to the assessment in each case, since it is about proving that in the specific case –and not in abstract, in general hypothesis—it is necessary to detain an individual. To base the detention on general considerations, without taking into account the information on the specific case, would open the door, in good logic –that in reality would be bad logic--, to submit people to restrictions and deprivations of all type and automatically, without proving that they are appropriate in the specific case under the consideration of the authority.

21. Thus the importance, in my concept, of absolute, mechanical exceptions, as well as inclusions of the same nature. It is necessary to assess each case, based on a governing concept: the preventive detention, which is clearly against the presumption of innocence, must have an exceptional nature and be strictly conditioned to the obtainment of the procedural and assuring purposes previously mentioned. Therefore, it must be reduced to the minimum number of cases, to the shortest duration, to the least detentions related to imprisonment, to a rule of systematic revision of its foundations in order to determine if the motives that previously explained the deprivation of freedom still exist. Likewise, it is precise to take into account the evidence collected on the facts and the guilt when the time for its application comes. If the sufficiency and reliability on the evidence must be present in order to start the process, the same should be necessary in order to order precautionary measures.

22. To base the preventive detention exclusively on the seriousness of the crime (that was allegedly) committed, on the punishment that the (alleged) author (eventually) deserves and the sentence (that would be) applicable, without considering –because the law itself eliminates the possibility to do so—other information that will permit the assessment of its specific legitimacy, for the due protection, also specifically, of the purposes that make it legal, flagrantly contradicts the presumption of innocence, it implies an anticipated (pre)judgment of the verdict (which is given a convicting nature long before it is issued) and expressly discloses that a conviction will be imposed. Therefore, it is arbitrary, even when legal.

23. In the operation of the preventive detention, as with other precautionary measures, two contradicting principles come into game, which may be called “legal prejudgment” on one extreme and “judicial responsibility” on the other. I speak of legal prejudgment in the sense of a generic and abstract, but binding, trial prior to the specific and concrete trial on the problem subject to legal consideration, which therefore results binding or excluding. That is what happens when the law upfront prevents the procedural liberty of the defendant while the process is being carried out, inexorably taking this trial out of the hands of the senior judge.

24. It is obvious that the idea here is not to replace the regimen of legality with one of discretionality, as would occur if the formula nulla poena sine lege were to fall into the hand of judicial arbitration. In that event, the punishability is legally foreseen and it corresponds to the

judge to, based on the results of the process, rule that it be applied. In the case of precautionary measures –on the top of the list, preventive detention --, it also corresponds to the law, not the judge, to foresee the existence of the measure, but it must only correspond to the latter, based on the body of information available to him and considering the purposes to be reached with the measure –and that, therefore, make its application legal --, to apply it.

V. THE DEFENDANT'S STATEMENT

25. In the Judgment of the Case of López Álvarez we have also considered a procedural subject previously examined and with regard to which there is a ruling of the Court: the guarantees for the issuing of the first statement of the defendant –that may appear in later statements, but possesses special importance on that occasion--, since it may result decisive, beyond suppositions or –once again—technicalities for the result of the process and the defendant's fate. The construction of the system of guarantees that are relevant to the case in this matter correspond to a revision of the situation and the defendant's role in the criminal procedure –prior to the process-, in contrast to the situation and the role of the authorities that intervene in it.

26. It is possible that the defendant remain silent, that he abstain from offering a statement, or that he state only a part of what he knows, and prior to offering his statement he must be informed of the motives of the process and that he has the opportunity to appoint legal counsel, as well as to give a statement without being under oath, promise, or obligation to state the truth. All this acquires effectiveness, when at the time of the statement, the defendant's defense counsel is able to assist him –of course, not to substitute him in the statement or to alter it—and his advisor is present in the act of the statement, so that he may effectively intervene in the protection of the defendant's rights, as of the first that appear here: to know what it is about and to remain silent. The Court has been explicit in this sense –even when dealing with foreign detainees and the consular assistance comes into the case—and is so again in this case: the due process is violated when the statement occurs without the presence –or may have, I will add—of defense counsel. On the contrary, the accused party's defense would be seriously threatened precisely when it must be exercised with greater thought, caution, and guarantees.

VI. REASONABLE TIME

27. The reasonable time –temporary reference of great importance for the acts of the process and its totality--, that constantly interests the jurisprudence on human rights –European and American--, was once again subject of the consideration of the Court, as has previously happened with frequency, in the case to which this Judgment refers. In the American Convention there are at least three imperious and explicit references in this sense, with their own suppositions and expressions: first, any person detained or retained "shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings" (Article 7(5) that refers to the conditions of the detention and/ or preventive detention, under the generic title "Right to personal liberty"); second, every person "has the right to a hearing, with due guarantees and within a reasonable time", by the corresponding tribunal "in the substantiation of any accusation of a criminal nature made against him" or for the determination of his rights and obligations of another nature (Article 8(1), that refers to the

complete process, up to the issuing of a judgment on the merits of the case, under the epigraph "Right to a Fair Trial"); and third, "everyone has the right to simple and prompt recourse" for protection against acts that violate his fundamental rights (Article 25(1), regarding "Judicial Protection").

28. Despite the diversity of the situations contemplated in each case, diversity that I am not going to discuss at this time, the three stipulations of the Convention obey to a same project for the defense of the individual's rights: opportunity for protection, which may be useless, inefficient, or deceptive if it is not offered on time, in the understanding that "arriving on time" means operating with maximum efficiency in the protection and minimum infringement of the individual's rights, promptness that does not mean riding roughshod, rashness, or thoughtlessness. These stipulations take into consideration the concerns that preside the aphorism "delayed justice is denied justice."

29. The facts examined in the Judgment I am now commenting involves violations to the reasonable time in the detention (that concern Article 7(5)) and in the development of the process (which refer to Article 8(1)). In what refers to this last matter, the Court has once again brought forward the criterion it claimed some time back, taken from the jurisprudence of the European Court of Human Rights, for the examination of the reasonability of the time period –complexity of the matter, procedural activity of the interested party, and behavior of the judicial authorities--, without forgetting that it is not possible to ignore the specifics of each case nor determine strict "calendars" for the universal solution of all cases. Would it be possible and recommendable to explore a fourth element, as stated infra, as of the actual infringement caused by the process on the individual's rights and duties –that is, his judicial situation. The Tribunal also studied the dies a quo of the reasonable time in function of the act as of which the time should be computed, which is not exactly a term, because this ordinarily supposes the determination of a specific time and/ or of periods –with a starting and end point—for the realization of a specific procedure or the variation of a situation.

30. When analyzing the complexity of the matter, the Court that verified the compatibility between the State's behavior and the stipulations of the Convention –that is, the body that practices the "control of conventionality"— must explore the circumstances de jure and de facto of the case. It is possible that the judicial analysis may be relatively simple, once the facts regarding which the lawsuit has occurred have been established, but these may be extraordinarily complex and be subject to tests that are difficult, necessarily prolonged, or of complicated, costly, risky or late recollection. The contrary may also occur: relative clarity and simpleness of the facts, in contrast with severe problems in the judicial appreciation or in their classification: different opinions, changes in the case-law, inexact legislation, reasons worthy of consideration in different or dissenting senses.

31. Likewise, it will be precise to consider the number of relationships that concur in the lawsuit: sometimes it is not only one, but multiple relationships that appear within the controversy and that must be explored, understood. Similarly, it is precise to take into account the number of participants in the material relationships and in the procedures, with their respective positions, their rights, and their interests taken to trial, as well as their reasons, and

expectations. And the conditions in which the case is analyzed, that may be under the pressure of contingencies of a diverse gender, from natural to social, must be considered.

32. The activity of the interested party may be determining in the prompt or delayed attention of the conflict. I am referring to the activity in the process, and in this sense, to a procedural activity, but one should also consider the activity –or better yet, the behavior: active or omissive—in other fields, if it transcends the process or influences it. The individual may, in order to defend his rights, use an ample number of instruments and opportunities that the law puts at his disposal, under the form of recourses or other figures that delay the moment of the decision on the merits of the case. It is precise to be aware of the desire that the individual dispense of acts of defense in favor of speed or pursuant to criteria of alleged rationality, in the judgment of distant or committed observers. The court must prudently distinguish between the actions and the omissions of the litigant focused on the defense –well or bad informed—and those that only seek to delay the process.

33. Regarding the behavior of the court –but it would be better to talk, generically, about the behavior of the authorities, because not only the first operate on behalf of the State--, it is necessary to separate the activity carried out with justifiable reflection and caution, and that performed with excessive calm, exasperating slowness, excessive rituals. What is the possible performance of a court (or, more extensively, of an authority) applied seriously to the solution of the conflicts presented to it, and that of one that distracts its energy while the defendants await a judgment that does not come?

34. In this aspect we must take into consideration the insufficiency of the courts, the complexity of the old procedural regimen, the overwhelming workload, including with regard to the courts that make a serious effort of productivity. It is necessary to know this part of the reality, but none of these should damage the individual's rights and be used against him. The excess workload can not justify the non-observance of the reasonable time, which is not a national equation between the amount of lawsuits and the number of courts, but instead an individual reference for the specific case. All those shortages translate into obstacles, from severe to impossible to overcome, for the access to justice. Should the impossibility to access justice because the courts are saturated with cases or because the judicial system has too many days off be considered a violation of rights?

35. Now, it seems possible that the complexity of the matter that motivates the process, the behavior of the interested party –in this case, the defendant—and the acts of the authority may not be enough to provide a convincing conclusion on the undue delay, that violates or puts the judicial rights of the subject in grave danger. Thus the appropriateness, in my opinion, to explore other elements that complement, do not substitute, them for the determination of a fact –the violation of the reasonable time—for which there are no quantitative comments universally applicable.

36. I referred to, as a possible fourth element to be considered in estimating a reasonable time, what I called "actual infringement caused by the process on the individual's rights and duties –that is, his judicial situation." It is possible that the latter could have little relevance in this situation; if this is not so, that is, if the relevance increases, up to intense, it would be

necessary, for the sake of justice and security, both seriously threatened, that the process be more diligent so that the subject's situation, which has begun to seriously affect his life, may be decided upon in a short time –"reasonable time". The infringement must be real, not simply possible or probable, casual or remote.

37. I am aware that these concepts do not have the precision I would want, as happens with the others provided for the analysis of the reasonability of the time period: complexity of the matter, behavior of the interested party, behavior of the one who judges. Certainly this is information subject to a reasoned examination; references that must be assessed as a whole, within certain circumstances that are not the same for all cases. The reasonability of the time period will be assumed from this totality and the assessment of the Tribunal will be supported, in each case, by the excess that may be incurred in and the violation committed.

38. ¿As of which act is the time period computed and therefore is the reasonability of the time that goes by before deciding on a detention or a controversy analyzed? The precision in this regard is indispensable when we are faced with different judicial regimens, with different judicial and procedural structures, that are equally subject to conventional dispositions and that must apply the criterion of reasonable time. In my concept, what the international order of human rights seeks is that the infringement of the people's rights, by action or abstention of the State, is not unjustifiably prolonged until it generates conditions of injustice, inequality, or judicial insecurity. The solution to this problem requires precisions that must be provided by the jurisprudence and that are usable in different procedural systems.

39. The determination of the act –and therefore, the time to start the assessment of the term— does not present greater problems when dealing with the period of detention. Evidently, the period starts when the detention starts, based on the individual's capture; a legitimate capture is understood pursuant to the rules of arrests in cases of crimes detected in the act or under the protection of the arrest warrant, because in the case of an illegal or arbitrary capture the matter of reasonable time can not even be brought up. In the matter sub judice, the moment of the arrest of the victim establishes the dies a quo. The problems may appear, instead, when trying to precise –independently if there is or not an imprisonment— the act as of which the period of time for the conclusion of the process in the terms of Article 8(1) of the Convention must be computed. Also here there was no problem is what refers to the Case of López Álvarez: since he was arrested in a situation in flagrante, there was not –or there was no evidence that there was—infringement or risk of prior infringement of his rights, that could have been considered as previous interference of the State in their realm.

40. It has been said that the reasonable time for purposes of the process is computed as of the subject's arrest. This affirmation does not apply to the cases, which are not few, in which the detention occurs after a lot of time dedicated to and many procedures carried out in the investigation of crimes and against the subject that will later be detained. It has also been affirmed that this term starts when the judge takes charge of the investigation. This rule, that could be enough in systems that entrust the preliminary proceedings to the judge, is not adequate for those in which the investigation is in the hands of the Office of the Public Prosecutor and only reaches the court a long time after that. On the other hand, it is stated that the term can be computed from the act of formal accusation by the Office of the Public Prosecutor. It is obvious

that this has a different sense and scope in the different procedural systems: in one, the accusation (or an act to which it is possible to assign, due to its material characteristics, that nature and content) is presented almost immediately; in another, it can be presented when the State's persecutory activity has advanced. Likewise, it has been stated that the multimentioned term starts when the commencement of the process is issued (with the different names given to the decision that orders the commencement of the process, once certain persecutory suppositions have been complied with). It is clear that since there is no unanimity of regimens regarding this matter, a reference that does not have uniform and invariable characteristics may not be subject to the reasonable time.

41. The Inter-American Court has previously stated that the term starts, in criminal matters, on the date on which the individual was arrested (cfr. Case of Suárez Rosero. Judgment of November 2, 1997. Series C, No. 35, para. 70; Case of Tibi. Judgment of September 7, 2004. Series C, No. 114, para. 168, and Case of Acosta Calderón. Judgment of June 24, 2005, Series C, No. 129, para. 104), and that when this measure is not applicable, but a criminal process is ongoing, the term must be computed as of the time in which the judicial authority takes up the case (Case of Tibi, cit., para. 168).

42. In the Judgment to which I add this Opinion, the Court advances in the consideration of the matter. The advance implies, in my judgment, an acknowledgment that the previous solutions should have been developed attending to the problems that may arise in this field and taking into account the different procedural systems. Thus, the Tribunal considered that "the reasonability of the time period referred to in Article 8(1) of the Convention must be analyzed with regard to the total duration of the criminal process developed against a certain defendant, up to the issuing of a definitive judgment. In criminal matters this period of time starts when the first procedural act against a specific person as the probable responsible of a certain crime is presented" (para. 129), which is relevant or implies certain intensity of the infringement of the subject's rights, either because it actively limits or compromises them (as in the case of the defendant), or because it ignores or puts them off in an unacceptable manner (as occurs in the case of the offended party). Therefore, the assessment of those extremes must be made in the circumstances of the specific case, with adequate analysis and reasoning.

43. Thus, we have here a substantial expansion on the start of the time to be considered when appreciating the reasonability of the term: not the arrest, that does not even apply to all cases; nor the accusation of the Office of the Public Prosecutor or the judicial writ of indictment, which may occur with the persecution well in advance; or with the formal opening of the process (full trial), that also comes when acts that affect the scope of the individual rights have been carried out, sometimes for a long time. That is, what must be taken into consideration is that act within the persecutory actions of the State –that has different manifestations and basis prior to arriving at, if it comes, the formal process—already directed against a specific subject, pursuant to the stipulations of the Domestic law, that therefore means, infringement of his rights: infringement that must not be excessively prolonged in the time period that leads to the corresponding decision: the judgment in firm –as also indicated in this case—that puts an end to the process and irrevocably solves the defendant's situation. The latter, however, does not disturb the operation of extraordinary recourses in benefit of the defendant.

44. As stated, the act of reference to state the dies a quo of the reasonable period of time –or, better said, of the reasonable time—is not necessarily found in a criminal process that has not started when the infringement occurs. Thus, that the Court chose to speak more extensively of procedure, without going into the distinction between process and procedure, which is an interesting matter from a technical perspective, but one that should not interfere with the protection of human rights. The terms used by the Court, which it may return to later on if it were necessary to include greater precisions, allow the observer, the interpreter, the law enforcement agent, and the defender of rights to know which is the scope of Article 8(1) of the Convention in what refers to the guarantee of the reasonable time.

VII. FREEDOM OF EXPRESSION

45. At the beginning of this Vote I also mentioned a subject of the Judgment that does not refer directly to the due process: freedom of (thought and) expression, pursuant to Article 13, affected in the present case, because the victim was prohibited from using the language of the social group he belongs to, the Garifuna people, while he was imprisoned. This violation, in the concept of the Court, also touches Article 24 of the Convention –"Right to Equal Protection"—in connection with Article 1(1), that is, it constitutes an act of discrimination that violates those precepts of the Pact of San Jose, or that concurs to characterize the violation declared with regard to Article 13.

46. In this extreme, the use of a language has a multiple scope: on one hand, it is the means through which the right to expression of thought, essential instrument of the latter, is exercised by different ways; on the other, it is a specific part of the cultural identity of the victim, taking into account that it is the language that corresponds to the group to which he belongs, which is a minority, with its own cultural presence within the national Honduran society; and finally, the prohibition occurs within a prison and affects a more or less ample group of inmates –and of course the victim in this case--, that are in a special situation of vulnerability and with regard to whom the State's special role of guarantor must be exercised, given its characteristic relationship with the people subject de jure and de facto, in an extremely ample form, to its power of control.

47. The freedom of expression guaranteed by Article 13 of the Convention has certain limits, authorized by the same Pact (paragraphs 2 through 5); none of them was reached by the behavior of the inmate who was prohibited from using his language in prison. The restrictions or limits derived from Article 32 of the Convention were also not of relevance in this case. If any of the hypothesis that apparently justify the prohibition imposed would have been present, the State would have had to prove in which way the use of the Garifuna language within the prison could have implied problems of national security, public order, health, moral, rights of third parties, or common good. The simple statement of these concepts puts in evidence the illegality of the prohibition established. It is not even necessary to say, but I will mention it, that we are referring to a language established in a social group, not a code of voices used by criminals to trick or distract State agents.

48. Besides, the Garifuna language is an element of personal and collective identity. It is an element of the characteristic culture of a certain group within the Honduran society. The members of the same have the right to their identity, which informs of their individual and

collective values, orients its vital trajectory, its personal and social options. The State is obliged to acknowledge that singularity –which becomes untouchable, within the national generality— and offer measures of respect and guarantee for them. The principle of equality and non-discrimination, enshrined in Article 1(1), and the equal protection before the law, established in Article 24, imply that all people subject to the jurisdiction of a certain State may enjoy the protection they require for the effective enjoyment and exercise of their rights. This implies different valid personal options that are not subject to the assessment or discretion of the State's agents, as long as the restriction or limitation factors that I previously mentioned are not present.

49. It is possible that the person that speaks this language –as well as others, in different means—may also speak other different languages or that he may be in conditions to learn them. However, this does not mean that the State's agents are empowered to impose the use of a language different to the one the individual wishes to use when communicating with other subjects. A different matter would be to try to carry out judicial acts that must be recorded in the language officially accepted for those effects (case in which the intervention of an interpreter or translator may be provided), but in the case sub judice this did not come up at any time.

50. Also, the detention regimen puts in movement specific relationships between the State, who is in charge of the detainees, and the latter, which are subordinated to the public power in conditions that are particularly intense and extensive. Therefore, in the jurisprudence of the Inter-American Court the situation of guarantor –with special characteristics—that corresponds to the State as custodian of the detainees or executor of convictions that imply confinement, and, in general, as controller of the behavior of those subject both immediately and constantly to its authority and supervision is weighed in, and it may not make and execute for itself numerous decisions that would be common in ordinary circumstances.

51. The precautionary or criminal deprivation of the personal liberty brings with it severe restrictions, inherent to the detention itself, which must be limited to their inevitable minimum expression, and it must not imply the reduction or suppression of other rights, whose restriction is not a necessary consequence of the deprivation of freedom. This is the case of the use of a person's own language, pursuant to the selection that the person in whom the right to expression vests makes in this regard. The State's condition of guarantor supposes, from one perspective, that it has the power to order, supervise, and control; and from another, that it has the obligation to ensure the good course of the rights that are not subject to restriction or condition.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

CONCURRING VOTE OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred with my vote to the adoption of the Judgment made by the Inter-American Court of Human Rights in the case of López Álvarez versus Honduras. Given the importance of a matter dealt with in the present Judgment, I am in the obligation to spread upon

the record my reflections regarding the same, as the basis for my position in this sense. I am referring to the central axis made up by the right to access (lato sensu) justice and the guarantees of the due process of law, taken necessarily as a whole, with regard to Article 1(1) of the American Convention. I take the right in this Vote to the present case of López Álvarez to reiterate some considerations that I developed in my Concurring Vote of yesterday's Judgment, of only 24 hours ago, in the case of the Massacre of Pueblo Bello versus Colombia.

2 These considerations, in support to the decision of the Court of having determined a joint violation of Articles 8 and 25 of the American Convention, pursuant to its constant case-law, cover the following aspects of the subject: a) Articles 25 and 8 of the American Convention in the ontological and hermeneutic levels; b) genesis of the right to an effective recourse before the domestic courts in the corpus juris of the International Law on Human Rights; c) the right to an effective recourse in the jurisprudential construction of the Inter-American Court; d) the inseparability to dissociate between the access to justice (right to an effective recourse) and the guarantees of the due process of law (Articles 25 and 8 of the American Convention); e) the inseparability between Articles 25 and 8 of the American Convention in the constant case-law of the Inter-American Court; f) the inseparability between Articles 25 and 8 of the American Convention as an intangible jurisprudential advance; g) the overcoming of the vicissitudes regarding the right to an effective recourse in the jurisprudential construction of the European Court; h) the right to access justice lato sensu; and i) the right to Law as an imperative of the jus cogens.

I. Articles 25 and 8 of the American Convention, in the Ontological and Hermeneutic Levels.

3. It is axiomatic that the rights protected by the human rights treaties have, each of them, their own material content, from which their different formulations derive naturally, - as is the case of Articles 25 and 8 of the American Convention. This is an essentially ontological level. Despite the fact that they are provided with their own material content, some of said rights have had to go through a long jurisprudential evolution to reach their autonomy. This is the case, for example, of the right to an effective recourse, under Article 25 of the American Convention and Article 13 of the European Convention of Human Rights (cf. infra). It is also the case of Article 8 of the American Convention and Article 6 of the European Convention.

4. The meaning it has today is the result of a jurisprudential construction, and they are currently understood differently from what motivated their original formulation. The fact that the rights protected have their own material content and autonomy does not mean that one may not be related with the others, in reason of the circumstances of the cas d'espèce; all the contrary, said interrelationship is, in my opinion, what offers, in the light of the indivisibility of all human rights, a more effective protection. Here we go from the ontological plan to the hermeneutic level. Having made this precision, I go on to refer to the trajectory of the right to an effective recourse in time.

II. Genesis of the Right to an Effective Recourse before the Domestic Courts in the Corpus Juris of the International Law On Human Rights.

5. The travaux préparatoires of the Universal Declaration of Human Rights followed different stages. The Commission on Human Rights of the United Nations decided to elaborate a project in April/ May of 1946, when it appointed a "nuclear commission" for the initial studies. At the same time, the UNESCO consulted (in 1947) with thinkers of that time on the basis of a future Universal Declaration. [FN1] The project of the Declaration itself was prepared within the Commission of Human Rights of the United Nations, by a Work Group that elaborated it between May 1947 and June of 1948. As of September of 1948, the Declaration project went on to be examined by the III Commission of the General Meeting of the United Nations, and then finally approved on December 10th of the same year by the same Meeting. [FN2] One of the most relevant stipulations of the Universal Declaration of 1948 is found in Article 8, according to which every person has the right to an effective recourse before the competent national courts against the acts that violate the fundamental rights granted to him by the Constitution or the law.

[FN1] UNESCO, Los Derechos del Hombre - Estudios y Comentarios en torno a la Nueva Declaración Universal, México/ Buenos Aires, Economic Culture Fund, 1949, pp. 233-246.
[FN2] For an account, cf. A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, vol. I, 2nd. ed., Porto Alegre/Brazil, S.A. Fabris Ed., 2003, chapter I, pp. 51-77.

---

6. The mentioned Article 8 enshrines, in its final analysis, the right to access justice (within domestic law), an essential element of all democratic society. The project for the article that turned into the mentioned Article 8 of the Universal Declaration, despite its relevance, was only inserted in the text in the final stage of the travaux préparatoires of the Universal Declaration, when the matter was already under examination in the III Commission of the General Meeting of the United Nations. However, it did not have any significant objection, being approved in the III Commission by 46 votes against zero and three abstentions, and unanimously in the full session of the General Meeting. The initiative, late but so successful, came from the Delegations of the Latin American States. It can even be considered that Article 8 (on the right to an effective recourse) represents the Latin American contribution par excellence to the Universal Declaration.

7. The stipulation of Article 8 of the Universal Declaration of 1948 was inspired, in effect, on the equivalent stipulation of Article XVIII of the American Declaration of the Rights and Duties of Man of eight months before (April of 1948) [FN3]. The basic argument that led to the inclusion of this precept in the American and Universal Declarations of 1948 consisted in the acknowledgment of the need to fill a void in both: protect the individual's rights against abuses of public power, submit all and any abuse of all individual rights to the judgment of the Judicial Power in the scope of domestic law. [FN4]

[FN3] Said Latin American initiative was strongly influenced in the principles that govern the appeal for legal protection, already enshrined in the national legislations of many countries of the region. So much so that in the Conference of Bogota on April of 1948, the mentioned American Declaration adopted its Article XVIII unanimously by the 21 Delegations present. On the legacy of the American Declaration of 1948, cf. A.A. Cançado Trindade, "O Legado da Declaração

Universal de 1948 e o Futuro da Proteção Internacional dos Direitos Humanos", 14 Anuario Hispano-Luso-Americano de Derecho Internacional (1999) pp. 197-238.
[FN4] Cf. A. Verdoodt, Naissance et signification de la Déclaration Universelle des Droits de l'Homme, Louvain, Nauwelaerts, [1963], pp. 116-119; A. Eide et alii, The Universal Declaration of Human Rights - A Commentary, Oslo, Scandinavian University Press, 1992, pp. 124-126 e 143-144; R. Cassin, "Quelques souvenirs sur la Déclaration Universelle de 1948", 15 Revue de droit contemporain (1968) n. 1, p. 10; R. Cassin, "La Déclaration Universelle et la mise en oeuvre des droits de l'homme", 79 Recueil des Cours de l'Académie de Droit International de La Haye (1951) pp. 328-329.
---

8. In summary, the original enshrinement of the right to an effective recourse before the national competent judges or courts in the American Declaration (Article XVIII) was transplanted to the Universal Declaration (Article 8), and, from the latter, to the European and American Conventions on Human Rights (Articles 13 and 25, respectively), as well as to the Pact of Civil and Political Rights of the United Nations (Article 2(3)). Article 8 of the Universal Declaration, and the corresponding stipulations in the treaties of human rights in force, such as Article 25 of the American Convention, establish the State's duty to provide adequate and efficient internal recourses; I have always stated that said duty is in fact a basic mainstay not only of said treaties but also of any rule of law itself in a democratic society, and its correct application seeks to perfect the administration of justice (material and not only formal) at a national level.

9. Additionally, this key-provision is intimately linked to the general obligation of the States, also enshrined in the human rights treaties, to respect the rights included in them, and ensure the free and complete exercise of the same to all the people under their corresponding jurisdictions. [FN5] It is also linked to the guarantees of the due process of law (Article 8 of the American Convention) [FN6], in the sense that it assures access to justice. Thus, through the enshrinement of the right to an effective recourse before the national competent judges and courts, of the guarantees of the due process, and of the general obligation to guarantee the protected rights, the American Convention (Articles 25, 8, and 1(1)), and other human rights treaties, attribute protective functions to the domestic law of the States Parties.

[FN5] American Convention on Human Rights, Article 1(1); European Convention on Human Rights, Article 1; Pact of Civil and Political Rights of the United Nations, Article 2(1).
[FN6] On the judicial protection and the guarantees of the due process of law according to the American Convention, cf. A. A. Cançado Trindade, "The Right to a Fair Trial under the American Convention on Human Rights", in The Right to Fair Trial in International and Comparative Perspective (ed. A. Byrnes), Hong Kong, University of Hong Kong, 1997, pp. 4-11; A.A. Cançado Trindade, "Judicial Protection and Guarantees in the Recent Case-Law of the Inter-American Court of Human Rights", in Liber Amicorum in Memoriam of Judge J.M. Ruda, The Hague, Kluwer, 2000, pp. 527-535.
---

10. It is important that the jurisprudential advances in this sense, reached by the Inter-American Court of Human Rights up to the present, be preserved and even further developed in the future, -and never stopped through a disintegrating hermeneutics, - in benefit of the people protected by them. The relevance of the duty of the States in providing adequate and efficient internal recourses must never be minimized. The right to an effective recourse before the national competent judges or courts within the scope of judicial protection – to which the Universal Declaration of 1948 have worldwide projection – is much more relevant than what was recently thought. The duty of the States Parties to provide those recourses in the scope of their own domestic law and of ensuring all persons under their jurisdictions the guarantee of the free and complete exercise of all the rights enshrined in the human rights treaties, as well as all the guarantees of the due process of law, assume a special importance even greater, in a continent like ours (including the three Americas), marked by cases that do not rarely deprive individuals of the protection of the Law.

III. The Right to an Effective Recourse in the Jurisprudential Construction of the Inter-American Court.

11. Almost a decade ago, in my Dissenting Opinion in the case of Genie Lacayo versus Nicaragua (Request for Revision of the Judgment, Decision of 09.13.1997), [FN7] I proceeded to analyze the material content and scope of Article 25 (right to an effective recourse) of the American Convention on Human rights, in relation to Article 8(1) (due process of law) of the Convention, as well as with the general duties (to guarantee the exercise of the protected rights and of harmonization of the domestic law with the international conventional law) enshrined, respectively, in Articles 1(1) and 2 of the Convention (paras. 18-23 of the mentioned Opinion). Contrary to that established by the Court in that case, - which considered these stipulations under the optics of formal and not material justice, - I concluded that a violation had occurred, by the respondent Government, of Articles 25, 8(1), 1(1), and 2 of the Convention “taken as a whole " (para. 28).

[FN7] Inter-American Court of Human Rights (CIDH), Series C, n. 45, Request of Revision of the Judgment of 01.29.1997, Ruling of 09.13.1997, pp. 3-25.

---

12. In the same line of reasoning, also in my previous Dissenting Opinion in the case of Caballero Delgado and Santana versus Colombia (reparations, Judgment of 01.29.1997), [FN8] I developed an integrating hermeneutics of Articles 8, 25, 1(1), and 2 of the American Convention, once again considering them as a whole (paras. 2-4 and 7-9 of the mentioned Opinion), and stating, contrary to the Court, the violation by the respondent government of these four conventional provisions related inter se. Regarding the right to an effective recourse under Article 25 of the Convention, specifically, I made, in my previously mentioned Dissenting Opinion in the case of Genie Lacayo versus Nicaragua, the following statement:

“The right to a simple, prompt and effective remedy before the competent national judges or tribunals, enshrined in Article 25 of the Convention, is a fundamental judicial guarantee far more important than one may prima facie assume, [FN9] and which can never be minimized. It

constitutes, ultimately, one of the basic pillars not only of the American Convention, but of the rule of law itself in a democratic society (in the sense of the Convention). Its correct application has the sense of improving the administration of justice at national level, with the legislative changes necessary to the attainment of that purpose.

The origin - little-known - of that judicial guarantee is Latin American: from its insertion originally in the American Declaration of the Rights and Duties of Man (of April 1948), [FN10] it was transplanted to the Universal Declaration of Human Rights (of December 1948), and from there to the European and American Conventions on Human Rights (Articles 13 and 25, respectively), as well as to the United Nations Covenant on Civil and Political Rights (Article 2(3)). Under the European Convention on Human Rights, in particular, it has generated a considerable case-law, [FN11] apart from a dense doctrinal debate.

It could be argued that, for Article 25 of the American Convention to have effects vis-à-vis acts of the Legislative Power, for example, the incorporation of the American Convention into the domestic law of the States Parties would be required. Such incorporation is undoubtedly desirable and necessary, but, by the fact of not having incorporated it, a State Party would not thereby be dispensed from applying always the judicial guarantee stipulated in Article 25. Such guarantee is intimately linked to the general obligation of Article 1(1) of the American Convention, which, in turn, confers functions of protection onto the domestic law of the States Parties.

Articles 25 and 1(1) of the Convention are mutually reinforcing, in the sense of securing the compliance with one and the other in the ambit of domestic law. Articles 25 and 1(1) require, jointly, the direct application of the American Convention in the domestic law of the States Parties. In the hypothesis of alleged obstacles of domestic law, Article 2 of the Convention comes into operation, requiring the harmonization with the Convention of the domestic law of the States Parties. These latter are obliged, by Articles 25 and 1(1) of the Convention, to establish a system of simple and prompt local remedies, and to give them effective application. [FN12] If de facto they do not do so, due to alleged lacunae or insufficiencies of domestic law, they incur into a violation of Articles 25, 1(1) and 2 of the Convention." (paras. 18-21).

[FN8] CIDH, Judgment of 01.29.1997 (reparations), Series C, n. 31, pp. 3-43.

[FN9] Its importance was mentioned, for example, in the Informe de la Comisión de Juristas de la OEA para Nicaragua, of 02.04.1994, pp. 100 and 106-107, paras. 143 and 160, published six years later; cf. A.A. Cançado Trindade, E. Ferrero Costa, and A. Gómez-Robledo, "Gobernabilidad Democrática y Consolidación Institucional: El Control Internacional y Constitucional de los Interna Corporis - Informe de la Comisión de Juristas de la OEA para Nicaragua (02.04.1994)", 67 Boletín de la Academia de Ciencias Políticas y Sociales (2000) n. 137, pp. 603-669.

[FN10] At the same time that, in parallel, the Commission on Human Rights of the United Nations was still preparing the Project of the Universal Declaration (from May 1947 until June 1948), as stated, in a fragment of the memoirs by the rapporteur of the Commission (René Cassin); the insertion of the disposition on the right to an effective recourse before the domestic jurisdictions in the Universal Declaration (Article 8), inspired on the corresponding disposition of the American Declaration (Article XVIII), was carried out in the following debates (of 1948) of the III Commission of the General Assembly of the United Nations. Cf. R. Cassin, "Quelques

souvenirs sur la Déclaration Universelle de 1948", 15 Revue de droit contemporain (1968) n. 1, p. 10.
[FN11] Cf. infra.
[FN12] The matter of the effectiveness of domestic recourses is intimately related to the administration of justice itself and the operation of domestic competent organizations for the reparation of the violations of the protected rights.
---

13. Little after the mentioned cases of Genie Lacayo and Caballero Delgado and Santana, the Inter-American Court, for the first time in the case of Castillo Páez versus Peru (Judgment on the merits, of 11.03.1997), stated the material content and scope of Article 25 of the Convention, which it concluded had been violated, in combination with Article 1(1) of the same, by the respondent government. In the words of the Court itself, the provision of Article 25 on the right to an effective recourse before the national competent judges or courts "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention. (para. 82)" [FN13]

[FN13] Emphasis increased.
---

14. Since then this has been the Court's position in this regard, reiterated in its decisions on the merits of the cases of Suárez Rosero versus Ecuador (Judgment of 11.12.1997, para. 65), Blake versus Guatemala (Judgment of 01.24.1998, para. 102), Paniagua Moralesa, et al. versus Guatemala (Judgment of 03.08.1998, para. 164), Castillo Petruzzi, et al. versus Peru (Judgment of 05.30.1999, para. 184), Cesti Hurtado versus Peru (Judgment of 09.29.1999, para. 121), "Street Children" (Villagrán et al. versus Guatemala, Judgment of 11.19.1999, para. 234), Durand and Ugarte versus Peru, Judgment of 08.16.2000, para. 101), Cantoral Benavides versus Peru (Judgment of 08.18.2000, para. 163), Bámaca Velásquez versus Guatemala (Judgment of 11.25.2000, para. 191), Mayagna (Sumo) Awas Tingni Community versus Nicaragua (Judgment of 08.31.2001, para. 112), Hilaire, Constantine and Benjamin et al. versus Trinidad and Tobago (Judgment of 06.21.2002, para. 150), Cantos versus Argentina (Judgment of 11.28.2002, para. 52), Juan Humberto Sánchez versus Honduras (Judgment of 06.07.2003), Maritza Urrutia versus Guatemala (Judgment of 11.27.2003, para. 117), 19 Merchants versus Colombia (Judgment of 07.05.2004 para. 193), Tibi versus Ecuador (Judgment of 09.08.2004, para. 131), Serrano Cruz Sisters versus El Salvador (Judgment of 03.01.2005, para. 75), Yatama versus Paraguay (Judgment of 06.23.2005, para. 169), Acosta Calderón versus Ecuador (Judgment of 06.24.2005, para. 93), and Palamara Iribarne versus Chile (Judgment of 11.22.2005, para. 184).

15. In the Judgment adopted by the Inter-American Court in the present case of López Álvarez versus Honduras, the Tribunal has once again been faithful to its best case-law, by trying the alleged – and proven – violations of Articles 25 and 8(1) jointly, in relation with Article 1(1) of the American Convention (paras. 126-156). Effectively, the access to justice and the guarantees of the due process of law are inevitably interlinked. This is what can be clearly concluded, inter alia, from the consideration of the Court that, in the present case of López Álvarez,

"The right to access justice implies that the solution of the controversy must be issued in a reasonable time; a prolonged delay could constitute, in itself, a violation of the judicial guarantees." (para. 128)

IV. The Inseparability between the Access to Justice (Right to an Effective Recourse) and the Guarantees of the Due Process of Law (Articles 25 and 8 of the American Convention).

16. On the day on which the Court adopted the Substantive Judgment (of 11.03.1997) in the case of Castillo Páez, - the starting point of this lucid constant case-law of the Inter-American Court, - I experimented, with satisfaction, a feeling of realization of a meaningful advance in the jurisprudence of the Court, that went on to place the right to an effective recourse in the important position it deserves, as an expression of the right itself to access justice – in its lato sensu sense, understood as the right to jurisdictional benefits, thus covering, inevitably, the guarantees of the due process of law, as well as the faithful execution of the judgment. How then can we stop relating Article 25 with Article 8 of the Convention? At the end, what would be the effectiveness of the guarantees of the due process (Article 8) if the individual does not have the right to an effective recourse (Article 25)? And what would be the effectiveness of the latter without the guarantees of the due process of law?

17. The truth is that one and the other complement each other, in the legal framework of the rule of law in a democratic society. This is the sane hermeneutics of these two conventional provisions. Also, on the day on which the Court adopted the substantive Judgment in the tragic case of Castillo Páez, I felt gratified upon verifying that the mentioned jurisprudential advances of the Inter-American Court had freed Article 25 – in the tradition of the most lucid Latin American legal thoughts [FN14] - of the American Convention of the vicissitudes experimented by the corresponding Article 13 of the European Convention (cf. infra). The Inter-American Court correctly pointed out the indelible link between Articles 25 and 8 of the American Convention, by weighing in, in its Judgment (of 09.15.2005), in the case of the Mapiripán Massacre, related to Colombia, that, as had been stated for some time,

"according to the American Convention, the States Parties are obliged to provide effective judicial recourses to the victims of violations to human rights (Article 25), recourses that must be substantiated pursuant to the rules of the due process of law (Article 8(1)), all of it within the general obligation, of the same States, to guarantee the full and free exercise of the rights acknowledged by the Convention to every person under its jurisdiction (Article 1(1))." (para. 195)

[FN14] Cf. note (4) supra.

---

18. Recently, in the public hearing of 12.01.2005 before this Court in the case of Ximenes Lopes versus Brazil, both the Inter-American Commission of Human Rights (ICHR) as well as the Representatives of the alleged victim and their next of kin maintained an integrative interpretation of Articles 8(1) and 25 of the American Convention, to be considered, in its understanding, necessarily as a whole. The ICHR stated [FN15] that

"Article 8(1) can not be separated from 25 nor vice versa, since they definitely respond to a same type of responsibility within the judicial realm (...)."

According to the ICHR, - remembering for this the “firm”, and today convergent, jurisprudence in this matter of the Inter-American and European Courts, - the “reasonable time” contemplated in Article 8 of the American Convention is intimately linked to the effective, simple, and prompt recourse contemplated in its Article 25. The Representatives of the alleged victim and his next of kin also expressed their respect for the constant case-law of the Inter-American on that matter up to this date, and its support to the same, which they are determined to follow stating that “the most clear reading of this norm within the Inter-American system would be that the two Articles [Articles 8 and 25 of the Convention] should be analyzed jointly.” This is the point of view of the beneficiaries themselves of the Inter-American system of protection, as well as of the ICHR, in the case of Ximenes Lopes before this Court.

[FN15] As stated in the transcription of the mentioned hearing, deposited in the files of the Court and sent to the parties in the cas d'espèce.

---

19. In a study I presented in an International Seminar of the International Committee of the Red Cross (ICRC) on the Due Process of Law, carried out a few years ago in Hong Kong, China, I allowed myself to remind those present of that stated in Advisory Opinion n. 9 of the Inter-American Court, [FN16] of 10.06.1987, in the sense that effective recourses before national competent judges or tribunals (Article 25(1) of the Convention) such as the habeas corpus and the amparo, and any other recourses essential to ensure the respect of nonrevocable rights (not subject to annulment under Article 27(2) of the Convention), are “essential” judicial guarantees, that must be exercised within the framework and in the light of the principles of the due process of law (under Article 8 of the American Convention). [FN17] Thus, in its ninth Advisory Opinion, the Court considered that stated in Articles 25 and 8 of the American Convention as an undividable whole.

[FN16] I.-A. Court H.R., Series A, n. 9, 1987, pp. 23-41.
[FN17] Paragraph 41.

---

20. In the same Seminar in China, I added references to the jurisprudence developed by the Court (as of the end of 1997 and the beginning of 1998), especially as of the cases of Loayza Tamayo versus Perú, Blake versus Guatemala, and Suárez Rosero versus Ecuador, in what refers to relevant aspects of the due process of law and the right to an effective recourse (Articles 25 and 8 of the American Convention), that, in the “second generation” of cases submitted to the knowledge of the Court (after the initial cases on the fundamental right to life), went on to occupy a main position in the consideration of the petitions presented before the Inter-American Tribunal. [FN18]

[FN18] Cf. A.A. Cançado Trindade, "The Right to a Fair Trial under the American Convention on Human Rights", in The Right to Fair Trial in International and Comparative Perspective (ed. A. Byrnes), Hong Kong/China, University of Hong Kong, 1997, pp. 4-11.

---

21. I consider this jurisprudential evolution a judicial patrimony of the Inter-American system of protection and of the people of our region, and I firmly oppose any attempt to deconstruct it. The Court has been faithful to its avant-garde position up to this date. In its already famous Advisory Opinion n. 16, on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (of 10.01.1999), that has been an inspiration for international jurisprudence in statu nascendi on the subject (as amply acknowledged in the specialized bibliography), the Court once again took as a whole the right to an effective recourse and the guarantees of the due process of law (Articles 25 and 8 of the Convention). After pointing out the need to interpret the Convention in the sense that "the regimen for the protection of human rights must have all its own effects (effet utile)" (para. 58), - pursuant to the necessarily evolving interpretation of the entire corpus juris of International Law on Human Rights (paras. 114-155), the Court clearly and categorically stated:

"In the opinion of this Court, for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants." (para. 117).

22. That is, in the understanding of the Court, - in a brilliant Advisory Opinion that is currently a framework in its case-law and its entire history (along with Advisory Opinion n. 18 on the Juridical Condition and Rights of the Undocumented Migrants), - there simply isn't a due process without the effective recourse before the national competent judges or tribunals, and that stated in Articles 25 and 8 of the Court is inevitably linked, not only in a conceptual sense, but also – and especially – in its hermeneutics. The Court added, in the mentioned Advisory Opinion n. 16 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, that it must be alert to ensure and to be able to prove that all parties

"enjoy a true opportunity for justice and the benefit of the due process of law (...)." (para. 119)

V. The Inseparability between Articles 25 and 8 of the American Convention if the Constant Case-Law of the Inter-American Court.

23. In its constant case-law, the Inter-American Court has consistently united, with due reasoning, the consideration of the alleged violations of Articles 8 and 25 of the American Convention, as duly exemplified in its Judgments on the cases of Barrios Altos (Chumbipuma Aguirre et al.) versus Peru (of 03.14.2001, paras. 47-49), Las Palmeras versus Colombia (of 12.06.2001, paras. 48-66), Baena Ricardo et al. versus Panama(of 02.02.2001, paras. 119-143), Myrna Mack Chang versus Guatemala (of 11.25.2003, paras. 162-218), Maritza Urrutia versus Guatemala (of 11.27.2003, paras. 107-130), 19 Merchants versus Colombia (of 07.05.2004, paras. 159-206), Gómez Paquiyauri Brothers versus Peru (of 07.08.2004, paras. 137-156), Serrano Cruz Sisters versus El Salvador (of 03.01.2005, paras. 52-107), Caesar versus Trinidad

and Tobago (of 03.11.2005, paras. 103-117), Moiwana Community versus Suriname (of 06.15.2005, paras. 139-167), Indigenous Community Yakye Axa versus Paraguay (of 06.17.2005, paras. 55-119), Fermín Ramírez versus Guatemala (of 06.20.2005, paras. 58-83), Yatama versus Paraguay (of 06.23.2005, paras. 145-177), Mapiripán Massacre versus Colombia (of 09.15.2005, paras. 193-241), and Gómez Palomino versus Peru (of 11.22.2005, paras. 72-86). [FN19]

[FN19] And cf. also, in the same sense, its Judgments on the cases of Girls Yean and Bosico versus Dominican Republic (of 09.08.2005, para. 201), and Palamara-Iribarne versus Chile (of 11.22.2005, paras. 120-189.

---

24. Besides these Judgments, in others the Court has been particularly emphatic on the need to follow an integrating hermeneutics (and never a disintegrating one) of Articles 8 and 25 of the American Convention, taking them as a whole. For example, in the case of Cantos versus Argentina (Judgment of 11.28.2002), the Court pointed out the importance of the right to access justice, enshrined at the same time, lato sensu, both in Article 25 and in Article 8(1) of the Convention, and promptly added that

"any norm or measure of the domestic order that imposes costs or in any other way makes the access of the individuals to the tribunals difficult, (...) must be understood as contrary to the previously mentioned Article 8(1) of the Convention." [FN20]

[FN20] Paras. 50 and 52 of the mentioned Judgment.

---

25. Article 8(1) is, therefore, in the correct understanding of the Court, closely linked to the right to an effective recourse under Article 25 of the Convention. In this same line of reasoning, in the case of Hilaire, Constantine and Benjamin et al. versus Trinidad and Tobago (Judgment of 06.21. 2002) the Court evoked its obiter dictum in Advisory Opinion n. 16 (1999) in the sense that there is no “due process of law” if a party can not exercise its rights “in an effective manner” (i.e., if it does not have real access to justice), and added that, “in order for a process to have real judicial guarantees,” the observance of “all the requirements” that help “ensure or assert the entitlement or the exercise of a right” is imposed (paras. 146-147).

26. This is the great constant case-law of the Court, patiently built in the last years, emancipating of the human being. And this is why I defend it firmly (since it has taken up a long time of my reflection and it has benefited numerous parties), in the same way that I firmly oppose the current intents within the heart of the Court to deconstruct it, dissociating Articles 8 from 25, apparently due to pure amateurishness or any reason that escapes my comprehension. The jurisprudence of the Court in the line of the position I maintain does not end there. In the well-known case of Bámaca Velásquez versus Guatemala (Judgment of 11.25.2000), the Court expressly took as a whole “the guarantees enshrined in Article 8 and the judicial protection established in Article 25 of the Convention” to analyze the alleged violations of rights in the cas

d'espèce (para. 187). And, in the case of Myrna Mack Chang versus Guatemala (Judgment of 11.25.2003), the Court very significantly stated:

"(...) the Court must examine the domestic judicial proceedings as a whole to attain a comprehensive perception of them and to establish whether said actions contravene the standards on the right to fair trial and judicial protection and the right to effective remedy, derived from Articles 8 and 25 of the Convention." [FN21]

[FN21] Para. 201 of the mentioned Judgment (emphasis added).

---

27. Only an integrative hermeneutics, like the one I have been maintaining and constructing in the heart of this Court for more than a decade, can offer a necessarily integrative vision of the violation of one or more rights protected under the Convention, with direct consequences for the adequate determination of the reparations. That is an additional matter that should not go unnoticed. Also, in another well-known case of this Court, that is already the object of some books dedicated specifically to it, [FN22] that of the “Street Children” (Villagrán Morales et al. versus Guatemala, Judgment of 11.19.1999), the Court once more stated that it

"must examine all the domestic judicial proceedings in order to obtain an integrated vision of these acts and establish whether or not it is evident that they violated the norms on the obligation to investigate, and the right to be heard and to an effective recourse, which arise from Articles 1.1, 8 and 25 of the Convention." [FN23]

[FN22] Cf., on the referred Case of the "Street Children", e.g.: CEJIL, Crianças e Adolescentes - Jurisprudência da Corte Interamericana de Direitos Humanos, Rio de Janeiro, CEJIL/Brazil, 2003, pp. 7-237; Casa Alianza, Los Pequeños Mártires..., San Jose, Costa Rica, Casa Alianza/A.L., 2004, pp. 13-196; among several other publications on the case in study.
[FN23] Para. 224 of the mentioned Judgment (emphasis added), and cf. para. 225.

---

28. In the same Judgment in the historical case of the “Street Children”, the Court added that

"Articles 25 and 8 of the Convention define, with reference to the acts and omissions of the internal judicial bodies, the scope of the (…) principle of generation of responsibility for the acts of all State organs." (para. 220)

That is, the provisions of Articles 25 and 8 of the Convention, taken as a whole, are fundamental for the proper determination of the scope of the existence of the State’s responsibility, even for acts or omissions of the Judicial Power (or of any other power of agent of the State).

29. In the case of Juan Humberto Sánchez versus Honduras (Judgment of 06.07.2003), the Court warned that the recourses that, due to the “general conditions of the country” in question, or even by the “specific circumstances” of a specific case, “are deceptive” can not be considered

“effective” (para. 121). That is, access to justice and the effective exercise of the right (with the faithful observance of the judicial guarantees) are inevitably linked. And, the Court added in that case:

"(...) In the case under discussion it has been proven that the death of Juan Humberto Sánchez was set within the framework of a pattern of extra-legal executions (...), one characteristic of which is that there has also been a situation of impunity (...), in which judicial remedies are not effective, the judicial investigations have serious shortcomings, and the passing of time plays a fundamental role in erasing all traces of the crime, thus making the right to defense and judicial protection an illusion, as regards the terms set forth in Articles 8 and 25 of the American Convention." (para. 135)

30. Likewise, in the case of Durand and Ugarte versus Peru (Judgment of 08.16. 2000), the Court maintained present the argument of the Inter-American Commission on Human Rights (ICHR) in the sense that “the military exclusive court does not offer the minimal guarantees of independence and impartiality as stipulated in Article 8(1) of the Convention. Thus, it does not constitute an effective recourse to protect the victims and relatives' rights and to repair damages violating also Article 25." (para. 120) Thus, when determining the joint violation of Articles 8(1) and 25(1) of the Convention, the Court concluded, on this matter, in the case of Durand y Ugarte:

"As a consequence, Article 8(1) of the American Convention, in connection with Article 25(1) thereof, confers to victims’ relatives the right to investigate their disappearance and death by State authorities, to carry out a process against the liable parties of unlawful acts, to impose the corresponding sanctions, and to compensate damages suffered by their relatives. None of these rights were guaranteed in the present case to the next of kin of Messrs. Durand Ugarte and Ugarte Rivera." (para. 130)

VI. The Inseparability between Articles 25 and 8 of the American Convention as an Intangible Jurisprudential Advance.

31. However, we must not assume a lineal, constant, and inevitable progress in the international jurisprudence in this regard, since the institutions are only the people behind them, and they oscillate, just like the clouds and the waves, as is normal of the human condition. Today I can clearly verify that working in the international protection of human rights is like the myth of Sisyphus, an endless task. It is like constantly pushing a rock towards the peak of a mountain, where it falls back down again and is pushed up again. The task of protection is developed between advances and retreats.

32. When going down the mountain to push the rock once again toward the peak, one becomes aware of the human condition, and of the tragedy that surrounds it, but one must continue fighting: in reality, there is no other choice:

"Sisyphe, revenant vers son rocher, contemple cette suite d'actions sans lien qui devient son destin, créé par lui, uni sous le regard de sa mémoire et bientôt scellé par sa mort. (...) Sisyphe enseigne la fidélité supérieure qui (...) soulève les rochers. (...) La lutte elle-même vers les sommets suffit à remplir un coeur d'homme. Il faut imaginer Sisyphe heureux." [FN24]

In my eyes, to stop the advances made by the integrative hermeneutics of the Inter-American Court regarding the matter under study, assumed by the Court as of the Judgment of Castillo Páez, would be like letting the rock fall down the mountain. Regarding the subject under study, one must start with the whole in order to reach the details, and not vice versa, because, on the contrary, you incur in the great risk of seeing only a few of the closest tree, and missing the entire forest.

[FN24] A. Camus, Le mythe de Sisyphe, Paris, Gallimard, 1942, p. 168.

---

33. Fortunately, in the case of the Pueblo Bello Massacre, there was a general consensus of the Court in dealing jointly, as should be, with Articles 8(1) and 25 of the American Convention, in relation with its Article 1(1), - but I can not believe that only 24 hours after achieving said general consensus of the Court, in the same sense, in the adoption of the judgment in the case of the Pueblo Bello Massacre, there was an intent – by a very small minority – to completely change the criteria in this sense, without the most minimum justification from the facts of the present case of López Alvarez. This has happened before, and the Court can not simply be at the mercy of the wind if it wants to maintain its credibility.

34. I am, as I have always been open to changes in the Court's position, as long as they are in favor of ensuring a more effective protection of the human being. I do not accept regressive positions, that damage said protection, and that do not present the least persuasive force and due foundation. This is why I have always tried to, for as long as possible, throughout the years before this Court, duly justify my position, that has always been the result of a lot of though, and without doubt placing the victims in the central position they deserve within the present realm of protection.

35. Little after the previously analyzed advances, in the sense of an integrative hermeneutics in the case-law of the Inter-American Court, I wrote, in my Tratado de Derecho Internacional de los Derechos Humanos (volume II, 1999), in an almost premonitory tone, that

"É importante que este avanço na jurisprudência da Corte Interamericana seja preservado e desenvolvido ainda mais no futuro. (...) No sistema interamericano de proteção, a jurisprudência sobre a matéria encontra-se em sua infância, e deve continuar a ser cuidadosamente construida. O direito a um recurso efetivo ante os tribunais nacionais competentes no âmbito da proteção judicial (artigos 25 e 8 da Convenção Americana) é muito mais relevante do que até recentemente se supôs, em um continente, como o nosso, marcado por casuísmos que muito freqüentemente privam os indivíduos da proteção do direito. Requer considerável desenvolvimento jurisprudencial nos próximos anos." [FN25]

[FN25] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, p. 67, para. 70.

---

36. Even so, I hoped not to have to go into details again regarding this matter (and specifically the intimate relationship between Articles 25 and 8 of the American Convention), in my point of view pacific in the most lucid legal international doctrine, - even having in its favor the interpretation and application of the treaties on human rights – to which I dedicated a chapter of no less than 177 pages in my Treaty. [FN26] Today, at the beginning of 2006, I see that this is not so, not even in the heart of this Court. The rock has to be pushed again toward the top of the mountain, knowing that tomorrow it may fall back down.

[FN26] Cf. ibid., chapter XI, pp. 23-200.

---

37. Effectively, the judicial protection (Article 25) and judicial guarantees (Article 8) conceptually form an organic whole and make up the rule of law in a democratic society. The effective recourses before the national competent judicial courts (the habeas corpus, the amparo in the majority of Latin American countries, the mandado de segurança in Brazil, among others, all of them in the sense of Article 25 of the American Convention) must be exercised within the framework and pursuant to the principles of the due process of law (enshrined in Article 8 of the Convention). [FN27]

[FN27] Cf., in that sense, the ninth Advisory Opinion of the IACourtHR, on the Judicial Guarantees in States of Emergency (1987).

---

38. It may occur that, in a specific case, there could be a violation of only one of the constitutive elements of that whole of protection and judicial guarantees, - but this does not diminish at all the integrative hermeneutics I have stated, in the sense that, in principle, that stated in Articles 8 and 25 of the American Convention must necessarily be taken as a whole, - which make up, I insist, the rule of law of a democratic society, - in relation with the general duties established in Articles 1(1) and 2 of the Convention. Any affirmation to the contrary would require, in my opinion, a justification that, from where I stand, simply does not exist, and would not be at all convincing. A violation to the right to access justice (Article 25) would in all probability contaminate the guarantees of the due process of law (Article 8).

39. The international organizations that supervise human rights, without setting aside the precepts of the general rule for the interpretation of treaties (Article 31(1) of both Conventions of Vienna on Rights of the Treaties, 1969 and 1986), have developed a teleological interpretation, with emphasis on the realization of the object and purpose of the treaties on human rights, as the most appropriate to ensure an effective protection of said rights. At the end, subjacent to the mentioned general rule of interpretation stipulated in both Conventions of Vienna (Article 31(1)), is the principle, amply supported in the jurisprudence, according to which the conventional stipulations must be ensured their own effects (the so-called effet utile). This principle – ut res magis valeat quam pereat, - through which the interpretation must favor a

treaty's appropriate effects assumed, in matters of human rights, special importance in the determination of the ample scope of the conventional obligations of protection. [FN28]

[FN28] A.A. Cançado Trindade, Tratado..., volume II, op. cit. supra n. (11), pp. 32-33 and 192.

---

40. Said interpretation is, in effect, the one that most faithfully reflects the special nature of the human rights treaties, the objective nature of the obligations included in them, and the autonomous sense of the concepts enshrined in them (different to the corresponding concepts in the framework of the domestic legal systems). Since the human rights treaties include concepts with an autonomous sense, product of a jurisprudential evolution, and since the object and purpose of the human rights treaties is different to those of the classic treaties (since they refer to the relationship between the State and the people under its jurisdiction); the classical postulates of interpretation of the treaties in general adjust to this new reality. [FN29]

[FN29] Ibid., pp. 32-34; and cf. also R. Bernhardt, "Thoughts on the Interpretation of Human Rights Treaties", in Protecting Human Rights: The European Dimension - Studies in Honour of G.J. Wiarda (eds. F. Matscher y H. Petzold), Köln, C. Heymanns, 1988, pp. 66-67 y 70;71; Erik Suy, "Droit des traités et droits de l'homme", in Völkerrecht als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte - Festschrift für H. Mosler (eds. R. Bernhardt et alii), Berlin, Springer-Verlag, 1983, pp. 935-947; J. Velu y R. Ergec, La Convention européenne des droits de l'homme, Bruxelles, Bruylant, 1990, p. 51.

---

41. Additionally, Article 29(b) of the American Convention expressly prohibits the interpretation that limits the exercise of the protected rights. Thus, any reorientation of the constant case-law of the Court, integrative of Articles 8 and 25 of the American Convention would only be justified in the measure in which they offer a greater protection of the rights enshrined, which is not the case. Up to this date, I have never heard in the debates, which I find worrying, that take place in the heart of the Court in this regard, any demonstration in the sense that dissociating or "separating" Article 8 from 25 would lead to a more efficient protection of the rights enshrined in the American Convention.

42. Said debates were unnecessarily repeated in the present case, one day after the adoption of the Judgment of this Court in the case of the Pueblo Bello Massacre, without the circumstances of the present case of López Álvarez justifying a sudden change of criteria by the Court on this matter, within a 24 hour period. Luckily, the understanding that the dissociating vision of Articles 8 and 25 of the Convention would lead to a regretful setback in this Court's jurisprudence prevailed after a sterile debate, even more so before the current tendency, to the contrary, of general international jurisprudence on the subject.

VII. The Overcoming of the Vicissitudes regarding the Right to an Effective Recourse in the Jurisprudential Construction of the European Court.

43. If other international organizations for the supervision of human rights have incurred in the uncertainties of a fragmenting interpretation, why would the Inter-American Court have to follow this road, abdicating its avant-garde jurisprudence, that has won it the respect of the beneficiaries of our system of protection as well as of the international community, and assume a different position that has even been abandoned by other organizations that had mistakenly followed it in the past? This does not make any sense.

44. I take the liberty to illustrate this point with an example, extracted from the experience, of trial and error, of the European system of protection of human rights. In its beginning, the case-law of the European Court of Human Rights stated the "accessory" nature of Article 13 (right to an effective recourse) of the European Convention on Human Rights, understood – as of the eighties – as guaranteeing a subjective substantive individual right. Gradually, in its judgments in the cases of Klass versus Alemania (1978), Silver et al. versus the United Kingdom (1983), and Abdulaziz, Cabales and Balkandali versus the United Kingdom (1985), the European Court started acknowledging the autonomous nature of Article 13. Finally, after years of hesitation and fluctuations, the European Court, in its judgment of 12.18.1996 in the case of Aksoy versus Turkey (paragraphs 95-100), determined the occurrence of an "autonomous" violation of Article 13 of the European Convention.

45. In a pioneer study on the subject published in 1973, Pierre Mertens criticized the "poverty" of the European Court's initial jurisprudence, as well as the vague nature of the European doctrine of that time on the subject, - different from the most advanced Latin American doctrine and practices, as of the adoption of the American Declaration of 1948, first international instrument to enshrine the right to an effective recourse. [FN30] Thus, P. Mertens warned, more than three decades ago, that work had to be done in order for the right to an effective recourse (Article 13 of the European Convention) to generate all its effects in the domestic legislation of the States Parties. Actually, the "effectiveness" of that right is measured in the light of the criteria of the guarantees of the due process of law (Article 6 of the European Convention); thus the conclusion of P. Mertens, in the sense that Articles 6 and 13 of the European Convention – that correspond to Articles 8 and 25 of the American Convention – must be frequently "invoked jointly". ("invoqués ensemble") [FN31]

[FN30] P. Mertens, Le droit de recours effectif devant les instances nationales en cas de violation d'un droit de l'homme, Bruxelles, Éd. de l'Univ. de Bruxelles, 1973, pp. 19-20, 24-25 y 27-29, and cf. pp. 37-39.
[FN31] Ibid., p. 93.

---

46. In effect, with the passing of the years, the attention started turning to the relationships between Articles 13 and 6(1) of the European Convention, the latter (right to a fair trial) being the object of a very vast case-law of the European Court, next to a dense doctrinarian debate. [FN32] In an emphatic decision in the case of Kudla versus Poland (Judgment of 10.18.2000), the European Court on Human Rights stated that the time had come to put an end to the uncertainties of the past and admit the direct relationship between Articles 6(1) and 13 of the

European Convention (cf. paras. 146-149 and 151). And, in a meaningful obiter dictum, the European Court stated that

"(...) Article 13, giving direct expression to the State's obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the travaux préparatoires [of the European Convention on Human Rights], is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6(1), rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings" (para. 152).

[FN32] L.-E. Pettiti, E. Decaux and P.-H. Imbert, La Convention Européenne des droits de l'homme, Paris, Economica, 1995, pp. 455-474.

---

47. And the European Court concluded, in this regard, in the mentioned case of Kudla versus Poland, that "the correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6(1) to hear a case within a reasonable time." (para. 156) Therefore, the Court determined that in the specific case "there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a hearing within a 'reasonable time' as guaranteed by Article 6(1) of the Convention." (para. 160)

48. In truth, in the last years (from the end of the seventies up to this date), the European Court has, in successive cases, taken into account the demands of the due process of law (Article 6 of the European Convention) in direct correlation with that of a right to an effective recourse (Article 13 of the Convention). [FN33] The right to an effective recourse, in the European case-law in evolution, makes up the rule of law, which can not be dissociated from the rule of law in a democratic society. [FN34] Its material content, as a subjective and autonomous right, characterizes it as "un outil fondamental de la mise-en-oeuvre de la protection des droits de l'homme." [FN35]

[FN33] For examples, cf. M. de Salvia, Compendium de la CEDH - Les principes directeurs de la jurisprudence relative à la Convention européenne des droits de l'homme, Kehl/Strasbourg, Éd. Engel, 1998, p. 280. – From the beginning, the European Court has rejected a restrictive interpretation of Article 6 of the European Convention, given its “central” and “prominent” position in the same, and since it is related to the main general principles of law, among which “the fundamental principle of the rule of law"; A. Grotrian, Article 6 of the European Convention on Human Rights - The Right to a Fair Trial, Strasbourg, C.E., 1994, p. 6.

[FN34] D.J. Harris, M. O'Boyle y C. Warbrick, Law of the European Convention on Human Rights, London, Butterworths, 1995, p. 461.
[FN35] A. Drzemczewski y C. Giakoumopoulos, "Article 13", in La Convention européenne des droits de l'Homme - Commentaire article par article (eds. L.-E. Pettiti, E. Decaux y P.-H. Imbert), Paris, Economica, 1995, pp. 474.
---

49. Luckily the jurisprudence of the Inter-American Court has ignored these vicissitudes of the case-law of its European counterpart, whose current position on the matter in question is, as has been seen, similar to that of the Inter-American Court. Trying to dissociate Articles 25 and 8 of the American Convention would also be, for this reason, in my opinion inadmissible and would be a setback to the prehistory of our Court's case-law. It is regretful that, instead of continuing in the avant garde jurisprudence of the Inter-American Court in this sense, I find myself in the obligation to, in the heart of the Court, continue fighting to avoid a serious jurisprudential setback.

VIII. The Right to Access Justice Lato Sensu.

50. In a Discussion held in 1996 by the University of Strasburg and the Cour de Cassation on "Les nouveaux développements du procès équitable" in the sense of the European Convention on Human Rights, J.-F. Flauss correctly pointed out the intimate relationship between the access to a tribunal (through an effective recourse) and the procès équitable, and added that the right to judicial benefits even covers the faithful execution of the Judgment in favor of the victim. [FN36] On this specific matter, the Discussion concluded acknowledging expressly "l'intimité profonde" between the access to justice (through an effective, simple, and prompt recourse) and the right to a procès équitable (the guarantees of the due process of law), in the framework of the rule of law in a democratic society. [FN37]

[FN36] J.-F. Flauss, "Les nouvelles frontières du procès équitable", in Les nouveaux développements du procès équitable au sens de la Convention Européenne des Droits de l'Homme (Actes du Colloque du 22 mars 1996), Bruxelles, Bruylant, 1996, pp. 88-89.
[FN37] G. Cohen-Jonathan, "Conclusions générales des nouveaux développements du procès équitable au sens de la Convention Européenne des Droits de l'Homme", in ibid., p. 172.
---

51. In the Reports I presented, as President at that time of the Inter-American Court, to the competent organizations of the Organization of American States (OAS), e.g., the days 04.19.2002 and 10.16.2002, I maintained my understanding in reference to the ample scope of the right to access justice at an international level, of the right to access justice lato sensu. [FN38] Said right is not reduced to a formal access, stricto sensu, to the judicial instance (both internal and international), but instead, it also includes the right to jurisdictional benefits, and it is subjacent to interrelated stipulations of the American Convention (such as Articles 25 and 8), besides reaching the domestic legislation of the States Parties. [FN39] The right to access justice, provided with its own judicial content, means, lato sensu, the right to obtain justice. Thus, it comes all together as the right to the realization itself of justice.

[FN38] Cf. also A.A. Cançado Trindade, "El Derecho de Acceso a la Justicia Internacional y las Condiciones para Su Realización en el Sistema Interamericano de Protección de los Derechos Humanos", 37 Magazine of the Inter-American Institute of Human Rights (2003) pp. 53-83; A.A. Cançado Trindade, "Hacia la Consolidación de la Capacidad Jurídica Internacional de los Peticionarios en el Sistema Interamericano de Protección de los Derechos Humanos", 37 Magazine of the Inter-American Institute of Human Rights (2003) pp. 13-52.

[FN39] In that sense, cf. E.A. Alkema, "Access to Justice under the ECHR and Judicial Policy - A Netherlands View", in Afmaelisrit pór Vilhjálmsson, Reykjavík, Bókaútgafa Orators, 2000, pp. 21-37.

---

52. One of the main components of this right is precisely the direct access to a competent tribunal, through an effective and prompt recourse, and the right to be heard promptly by said independent and impartial tribunal, both at a national and international level (Articles 25 and 8 of the American Convention). As I mentioned in a recent work, we can visualize here a real right to Law, that is, the right to a legal system – both nationally and internationally – that effectively protects the human being's fundamental rights. [FN40]

[FN40] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume III, Porto Alegre/Brazil, S.A. Fabris Ed., 2002, cap. XX, p. 524, para. 187.

IX. Epilogue: The Right to Law as an Imperative of the Jus Cogens.

53. In the above mentioned Advisory Opinion n. 18, on the Juridical Condition and Rights of the Undocumented Migrants (of 09.17.2993, the Inter-American Court correctly stated that "the State must guarantee that the access to justice is not only formal but also real," (para. 126) which in my judgment, covers the mentioned access through an effective recourse, all the guarantees of the due process of law, including the faithful and final compliance of the judgment. The same Advisory Opinion n.18 stated with clarity that the principle of equality and non-discrimination currently make up the domain of the jus cogens (paras. 111-127).

54. The inseparability that I maintain between Articles 25 and 8 of the American Convention (supra) leads to the characterization of the access to justice, understood as the complete realization of the same as part of the domain of the jus cogens, that is, the intangibility of all judicial guarantees in the sense of Articles 25 and 8 taken jointly. There can be no doubt that the fundamental guarantees, common to International Law on Human Rights and the International Humanitarian Law, [FN41], have a universal vocation when applied in all and any circumstances, as per an imperative law (belonging to the jus cogens), and imply obligations erga omnes of protection. [FN42]

[FN41] E.g., Article 75 of Protocol I (of 1977) to the Conventions of Geneva (of 1949) on International Humanitarian Law.
[FN42] Cf., also in that sense, e.g., M. El Kouhene, Les garanties fondamentales de la personne en Droit humanitaire et droits de l'homme, Dordrecht, Nijhoff, 1986, pp. 97, 145, 148, 161, and 241.
---

55. After its historical Advisory Opinion n. 18 on the Juridical Condition and Rights of the Undocumented Migrants, of 2003, the Court was able to and should have given this other qualitative jump forward in its jurisprudence, - if not it would be in the end consuming precious time on sterile and disaggregating debates, contemplating, - in my concern, and against all lines of its jurisprudential evolution, - the possibility to "separate" Article 8 from 25, in my opinion without even the most minimum convincing judicial basis. I hope that this Court does not stop its avant-garde case-law in the near future to sadly go back, in detriment of the victims of violations to human rights, - since this would be deeply regretful for me. The hermeneutics that offer the greatest protection for the human being must be without doubt preserved.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary

DISSENTING OPINION OF THE JUDGE CECILIA MEDINA-QUIROGA IN THE CASE OF LÓPEZ ALVAREZ V. HONDURAS

1. In general, I agree with the Court's decision with regard to the violations to the human rights determined in the preceding judgment, except with regard to the violation of Article 25 of the American Convention

2. I do not see, in this case, any reason to declare that this Article has been violated. In fact, the paragraphs of the judgment that refer to it, numbers 137 through 139, are limited to citing jurisprudence of the Court without linking it to the facts of the case, as would have been necessary to support a violation of this stipulation. Therefore, I consider that in this case the declaration of a violation to Article 25 does not proceed.

3. I would like to insist in this Opinion that my position is not merely academic and formalistic. As I have stated on other occasions, the joint treatment of Articles 8 and 25 seems to suggest that the only norm of the Convention that enshrines the right "to the recourses" is that of Article 25 and that the only way to protect the rights of the Convention is through "recourses". I think this is not so. The protection of the substantive rights of the American Convention necessarily requires the possibility to be heard before a court to determine rights or obligations or to decide on the innocence or guilt of an accused person, that is, it requires the right to establish actions against others. The processes that give place to these actions are not prompt and simple recourses that must be resolved in days and without greater processing. On the contrary, the period of time used by the State to conclude the processes will probably not be computed in days

or months, but many times, in years, since a considerable period of time is required to make a decision in a trial on a substantive matter, either of a criminal or civil nature, because the parties must be given the possibility, inter alia, to recollect evidence, present it in trial, object that of the other party and give the court the possibility to carefully weigh all this in. Therefore, the term must be "reasonable", which means that it can not be too long, but it can not be too short either. It is also probable that the majority of them will require of the consultancy of an expert in law, among other things, due to the complexity of the procedures. It is true then that to legally ensure the full and free exercise of human rights, the appeal of relief of Article 25 is not enough. [FN1]

[FN1] Concurring Opinión, Case of Gómez-Palomino, Judgment of November 22, 2005, para. 4.

---

4. I consider that the preservation of the distinction between Articles 8 and 25 is of extreme importance. [FN2] To not distinguish between these two stipulations distort the original objective of Article 25, in detriment of the victims. With this position, the Court does not give itself the opportunity to elaborate the concept and requisites of the appeal of relief, thus making the identification of which appeals of relief as such should exist in the domestic legal system of the States Parties to the American Convention in order to protect human rights in a simple, prompt and efficient manner difficult. [FN3]

[FN2] I reaffirm in this paragraph what I have said in mi Opinion of the Judgment of the Case of the 19 Tradesmen, and my Opinion in the Case of Gómez-Paquiyauri.
[FN3] Concurring Opinion, Case of Gómez-Palomino, Judgment of November 22, 2005, section B.

Cecila Medina-Quiroga
Judge

Pablo Saavedra-Alessandri
Secretary