

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Marco Antonio Servellon Garcia, Rony Alexis Betancourth Vasquez, Diomedes Obed Garcia Sanchez and Orlando Alvarez Rios v. Honduras
Doc. Type:	Judgement (Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Antonio A. Cancado Trindade; Cecilia Medina Quiroga; Manuel E. Ventura Robles; Diego Garcia-Sayan
	The Judge Oliver Jackman did not participate in the deliberation and signing of the present Judgment, since he informed the Court that, due to reasons of force majeure, he could not participate in the LXXII Regular Session of the Tribunal.
Dated:	21 September 2006
Citation:	Servellon Garcia v. Honduras, Judgement (IACtHR, 21 Sep. 2006)
Represented by:	APPLICANTS: the Center for Justice and International Law and the Association Casa Alianza Latin America
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In the case of Servellón García et al.,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the 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, 53(2), 55, 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 February 2, 2005, pursuant to that stated in Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted an application against the Republic of Honduras (hereinafter “the State” or “Honduras”) to the Court, originating from petition No. 12,331, received at the Commission’s Secretariat on October 11, 2000.

2. The Commission presented the petition in this case for the Court to decide if the State has violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation with Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Marco Antonio Servellón García (16 years old), Rony Alexis Betancourth Vásquez (17 years old),

Diomedes Obed García Sánchez (19 years old), and Orlando Álvarez Ríos (32 years old). Likewise, it requested that the Court issue a ruling regarding the violation by the State of Articles 5(5) (Right to Humane Treatment), 7(5) (Right to Personal Liberty), and 19 (Rights of the Child) of the Convention in relation with Article 1(1) (Obligation to Respect Rights) of said treaty, in detriment of the children Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, and of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, in connection to Article 1(1) (Obligation to Respect Rights) of said treaty, in detriment of the next of kin of the alleged victims. The Commission mentioned that it presented before the Court the petition due to the alleged inhumane and degrading conditions of detention of the alleged victims by the State; the blows and attacks against the personal integrity that they are mentioned as being the victims of by the police agents; their alleged death while they were detained under the custody of police agents; as well as the alleged lack of investigation and right to a fair trial that characterize their cases, which are still in impunity more than “nine” years after the facts occurred. Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos and Diomedes Obed García Sánchez, were allegedly arrested, between September 15 and 16, 1995, during a preventive detention or operation carried out by the Public Security Force of that time (hereinafter “FUSEP”). [FN1] State agents allegedly extra judicially killed the four youngsters and their bodies were found on September 17, 1995 out in the open in different places of the city of Tegucigalpa, Honduras.

[FN1] In 1993 a police reform process was started which resulted, in the year 1998, in the enactment of the Organic Police Law (Decree Number 156/98), which substituted the Organic Law of the Public Security Force (Decree Number 369 of August 16, 1976). Pursuant to the new Law, the Preventive Police and the Investigation Police were merged under the responsibility of the General Authority of Criminal Investigation attached to the State Security Secretary. The hierarchal structure of the Public Security Force (FUSEP) was modified when it was transformed into the National Police, going from a military organization to a police organization.

3. 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 Inter-American 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. PROCEDURE BEFORE THE COMMISSION

5. On October 11, 2000 the Center for Justice and International Law and the Association Casa Alianza Latin America (hereinafter “the petitioners”) presented before the Inter-American Commission a petition, which was processed under the number 12,331.

6. On February 27, 2002, the Inter-American Commission approved Admissibility Report No. 16/02, in which it declared the admissibility of the case.

7. On October 19, 2004 the Commission, during its 121st Regular Meeting, approved Report of Merits No. 74/04, pursuant to Article 50 of the Convention, through which it concluded that the State is responsible for the violation of the rights enshrined in Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), 7 (Right to Personal Liberty), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, and Articles 5(5) (Right to Humane Treatment) and 19 (Rights of the Child) of the Convention, in detriment of the alleged underage victims. Likewise, the State is responsible for the violation of Articles 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said instrument, in detriment of the next of kin of the alleged victims. At the same time, the Commission recommended that the State adopt a series of measures in order to correct the mentioned violations.

8. On November 2, 2004 the Inter-American Commission transmitted Report of Merits No. 74/04 to the State and granted it a two-month period to inform on the measures adopted in order to comply with the recommendations made. On that same day, the Commission informed the petitioners of the approval of the report and its transmission to the State and requested that they present their position regarding the assertion of the case before the Inter-American Court. On December 2, 2004 the petitioners requested that the case be submitted before the Court.

9. On January 13, 2005 the State presented information, in which it referred to the measures adopted regarding the recommendations included in the Report of Merits No. 74/04.

10. On February 1, 2005 the Commission decided to submit the present case to the jurisdiction of this Tribunal.

IV. PROCEEDING BEFORE THE COURT

11. On February 2, 2005 the Commission submitted the application to the Court, and it included documentary evidence as well as testimonial evidence and expert assessments. The Commission appointed Evelio Fernández Arévalo and Santiago A. Canton as delegates, and Ariel Dulitzky, Martha Braga, Victor Madrigal Borloz, and Manuela Cuvi Rodríguez as legal advisors.

12. On March 2, 2005 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. The Secretariat, following the President's instructions, also informed the State of its right to appoint a judge ad hoc to participate in the consideration of the case.

13. On that same day, pursuant to that established in Articles 35(1)(d) and 35(1)(e) of the Rules of Procedure, the Secretariat notified the Center for Justice and International Law (hereinafter "CEJIL") and the Association Casa Alianza Latin America (hereinafter "Casa Alianza"), appointed in the application as the representatives of the alleged victims and their next of kin (hereinafter "the representatives"), of the application and informed them that there was a two-month term to present their brief of pleadings, motions, and evidence (hereinafter "brief of pleadings and motions").

14. On April 29, 2005 the State informed of the appointment of Mr. Álvaro Agüero Lacayo, Ambassador before the Government of Costa Rica, as Agent and of Mrs. Argentina Wellerman, as deputy agent. [FN2]

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

15. On May 2, 2005 the representatives presented their brief of pleadings and motions, with which they enclosed documentary evidence and they offered testimonial evidence and expert assessments. The representatives requested that the Court conclude that the State is responsible for the violation of Articles 4(1) (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, in detriment of the alleged victims, and for the violation of Articles 5(5) (Right to Humane Treatment) and 19 (Rights of the Child) of the Convention with regard to Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez. The representatives claimed the violation of Articles 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same with regard to the next of kin of the alleged victims. Similarly, they requested that the Court declare the violation of the right to truth of the next of kin of the alleged victims and the Honduran society in general, pursuant to Articles 8, 13, 25, and 1(1) of the Convention. Finally, they requested that the Court order specific measures of reparation in favor of the alleged victims and their next of kin, as well as payment of costs and expenses.

16. On July 4 and 12, 2005 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 its appendixes, respectively, through which it communicated its assent to the facts included in paragraphs 27 through 106 of the petition presented by the Inter-American Commission and it responded to the facts that referred to the alleged context in which they occurred, thus rejecting that the violations occurred in a context of systematic violation of human rights tolerated by the State. Likewise, it acknowledged its international responsibility for the violation of the rights enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention, making several

considerations in this sense (*infra paras. 54 and 55*). In said brief it communicated the appointment of Mr. Sergio Zavala Leiva, Attorney General of the Republic of Honduras, as agent in the present case.

17. On August 16, 2005 the Inter-American Commission and the representatives forwarded, respectively, their observations to the assent made by the State in its brief of response to the petition.

18. On October 4, 2005 the Secretariat informed the parties of the Court's decision not to summon a public hearing in the present case. Instead, the Secretariat, following the President's instructions, requested that the list of witnesses and experts proposed by the parties be forwarded to it so that the President could evaluate the relevance of ordering that they offer a sworn statement before a notary public (affidavit).

19. On November 8, 2005 the representatives and the Commission presented their observations to the definitive list of expert witnesses proposed by the State. In its observations, the Commission and the representatives referred to Messrs. Ramón Antonio Romero Cantanero and Ricardo Rolando Díaz Martínez, and the representatives also mentioned Mrs. Nora Suyapa Urbina Pineda, indicating that these persons could have participated in the processing of the case in the domestic jurisdiction, reason for which they could be included in any of the causes described in Article 50 of the Rules of Procedure in relation to Article 19(1) of the Statutes. On November 9, 2005, the Secretariat, following the President's instructions, requested Messrs. Romero Cantanero and Díaz Martínez and Mrs. Urbina Pineda to refer to, no later than November 13, 2005, through the State, the observations made by the Commission and the representatives. On November 16 and 21, 2005, the Secretariat reiterated to the State that the persons mentioned should forward through them their observations to that stated by the Commission and the representatives. The persons stated did not present the observations mentioned.

20. On November 24, 2005 the Court issued a Ruling, through which it requested that Mr. Leo Valladares Lanza, proposed as an expert witness by the Inter-American Commission; Mrs. Reina Auxiliadora Rivera Joya and Mr. Carlos Tiffer Sotomayor, proposed as expert witnesses by the representatives, and Mrs. Lolis María Salas Montes and Nora Suyapa Urbina Pineda and Messrs. Ramón Antonio Romero Cantarero and Ricardo Rolando Díaz Martínez, proposed as expert witnesses by the State, present their expert opinion through a statement given before a notary public (affidavit). These expert opinions should be presented no later than December 19, 2005. Besides, in the mentioned Ruling the Tribunal informed the parties that they had time until January 23, 2006 to present their final written arguments in relation to the merits and the possible reparations and costs.

21. On December 19, 2005 the representatives presented the authenticated expert opinions of Mrs. Reina Auxiliadora Rivera Joya and Mr. Carlos Tiffer Sotomayor.

22. On December 19, 2005 the Commission presented the authenticated expert opinion of Mr. Leo Valladares Lanza, and the appendixes enclosed in it.

23. On December 20 and 22, 2005 the State presented the expert opinions given before notary public by Mrs. Lolis María Salas Montes and Messrs. Ricardo Rolando Díaz Martínez and Ramón Antonio Romero Cantarero. On January 16, 2006 the State, after an extension granted until January 5, 2006, presented the time-barred expert opinion of Mrs. Nora Suyapa Urbina Pineda.
24. On January 23, 2006, the Commission forwarded its observations to the expert opinions presented by the parties (*supra* paras. 21 and 23). The State and the representatives did not present observations.
25. On January 23, 2006 the Commission and the representatives presented their final written arguments. The representatives enclosed several appendixes to said arguments.
26. On February 24, 2006 the State presented its brief of final arguments and several appendixes. This presentation was time-barred, since the term to do so had expired on January 23, 2006.
27. On March 8, 2006 the State informed that it appointed, as of January 27, 2006, Mrs. Rosa América Miranda de Galo, Attorney General of the Republic of Honduras, as agent in the present case in substitution of Mr. Sergio Zavala Leiva. On April 7, 2006 the State informed that it appointed, as of that date, Mr. David Reyes Paz, Sub Attorney General of the Republic, as agent in the present case in substitution of Mrs. Rosa América Miranda de Galo.
28. On April 25, 2006 the Secretariat, following the President's instructions, requested that the Commission, the representatives, and the State forward, no later than May 26, 2006, certain information and documentation as evidence to facilitate adjudication of the case.
29. On May 26, 2006 the representatives presented part of the documentation as evidence to facilitate adjudication of the case, in response to that requested by the President in its note of April 25, 2006. On June 14 and July 24, 2006 the representatives informed that they had located some of Diomedes Obed García Sánchez's next of kin. On May 25 and 31, and June 23, 2006 the State presented part of the documentation requested as evidence to facilitate adjudication of the case.
30. On August 25, 2006 the Secretariat requested that the representatives forward, no later than September 4, 2006, certain information and documents as evidence to facilitate adjudication of the case.
31. On September 4, 2006 the representatives presented the evidence to facilitate adjudication of the case, in response to the request made by the President in his note of August 25, 2006. On September 6, 2006 the Secretariat granted the Commission and the State an unpostponable term until September 12, 2006 so they could, if they considered it convenient, present the observations to the sworn statement of Mrs. Dilcia Álvarez Ríos presented by the representatives as evidence to facilitate adjudication of the case. On September 11, 2006 the Commission informed that it did not have any observations regarding said evidence. On

September 13, 2006 the State presented its observations to the mentioned sworn statement of Mrs. Dilcia Álvarez Ríos.

V. EVIDENCE

32. Prior to examining the evidence offered, the Court will present, based on that established in Articles 44 and 45 of the Rules of Procedure, some considerations developed in the jurisprudence of the Tribunal and applicable to this case.

33. The principle of the presence of the parties to the dispute applies to evidentiary matters, and it involves respecting the parties' right to a defense. The 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. [FN3]

[FN3] Cfr. Case of Ximenes Lopes. Judgment of July 4, 2006. Series C No. 149, para. 42; Case of Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 106; and Case of Baldeón García. Judgment of April 6, 2005. Series C No. 147, para. 60.

34. According to the Tribunal's practice, at the beginning of each stage in the first opportunity granted to offer a written statement, the parties must mention what evidence they will offer. Also, in the exercise of the discretionary authorities contemplated in Article 45 of the Rules of Procedure, the Court or its President may request additional evidentiary elements from the parties as evidence to facilitate adjudication of the case, without this turning into a new opportunity to expand or supplement the arguments, unless expressly permitted by the Tribunal. [FN4]

[FN4] Cfr. Case of Ximenes Lopes, supra note 3, para. 43; Case of the Ituango Massacres, supra note 3, para. 107; and Case of Baldeón García, supra note 3, para. 61.

35. The Court has stated, 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 presented before them regarding the relevant facts, pursuant to the rules of logic and on the basis of experience. [FN5]

[FN5] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 44; Case of the Ituango Massacres, *supra* note 3, para. 108; and Case of Baldeón García, *supra* note 3, para. 62.

36. Based on the aforementioned, the Court will proceed to examine and assess the documentary evidentiary elements forwarded by the Commission, the representatives, and the State in the different procedural opportunities or as evidence to facilitate adjudication of the case requested by the Tribunal or its President, all of which makes up the body of evidence of the present case. For this, the Tribunal will comply with the principles of competent analysis, within the corresponding legal framework.

A) DOCUMENTARY EVIDENCE

37. The Commission, the representatives, and the State presented the expert opinions authenticated or given before a notary public, in response to that stated by the Court in its Ruling of November 24, 2005 (*supra* para. 20). Said expert opinions are summarized below.

1. Expert witness proposed by the Inter-American Commission

a) Leo Valladares Lanza, former National Human Rights Commissioner of Honduras

He was the National Human Rights Commissioner from October 1992 up to March 5, 2002. On January 21, 2002 he published the “Special Report on the Violent Deaths of Boys, Girls, and Teenagers in Honduras,” where he summarizes the findings and presents a series of conclusions and recommendations to the State, which he enclosed in his expert opinion.

The State has adopted measures seeking to improve the situation with children, but there are still an elevated number of young deaths and the almost complete ineffectiveness in their investigations persists, as well as the lack of sanctions upon those responsible. Police officers accused of abusing children’s human rights have been brought before the courts, but the number is low in comparison with the number of cases denounced. The State has increased repressive measures against youngsters. On one hand, there is no criminal policy to avoid the abuse against youngsters, and on the other hand, the prevention and protection measures are weak. The Honduran Institute for Children and the Family (hereinafter “IHNFA”) is characterized by its bureaucracy, which makes it inefficient. Similarly, the Code for Children and Teenagers, despite being in force for a decade, has not had an effective application and the judges have not received a proper formation. Honduras is the country with the highest poverty levels in the hemisphere, but this does not justify that the main problems be left unattended, and one of them is the situation of boys, girls, and teenagers.

From his Report as National Human Rights Commissioner and of the observations of the current situation, the expert witness concludes that there is a context of violence with regard to boys, girls, and teenagers in Honduras, that impunity persists, and that inmates are not offered an adequate treatment.

2. Expert witnesses proposed by the representatives

a) Reina Auxiliadora Rivera Joya, current executive director of the non-governmental organization, Center for the Investigation and Promotion of Human Rights, former Criminal Judge and former assistant district attorney of the Human Rights Public Prosecutors' Office.

During the decades of the eighties and nineties and the beginning of the twenty-first century, the State has gone from worrying about national security and the regional armed conflict to a fear for public safety, especially due to the increase of organized crime and street violence.

Given the increase in the number of homicides as of the year 1992, police bodies started giving common delinquency a priority as well as trying to comply with their role of auxiliary bodies to the Office of the Public Prosecutor and the Judicial Power. In 1998 the Public Security Force (FUSEP) disappeared and the special Police forces attached to the Secretariat of Security were created. Despite the change of approach regarding the new threats to security, the personnel and professional formation of police remained under the coordination of the Armed Forces until the end of the year 1998, reason for which the accusations regarding violations to human rights that were allegedly committed by security bodies were a constant in that decade. Said situation continues up to this date, despite the transition to civil command. There are a high number of complaints against different authorities and against the Armed Forces due to abuse of authority, excessive use of force, physical aggressions, illegal arrests, as well as homicides.

In the year 2002 the Human Rights Commissioner, Leo Valladares Lanza, presented a report that accuses the State and specifically, the police forces, of organizing and/ or tolerating "death squads" under modalities similar to those applied during forced disappearances and extrajudicial killings in the eighties, since there was a "social cleaning" or "social prophylaxis" campaign. In the year 2003, the Head of Affairs of the Secretariat of Security, surprised all Hondurans by publicly accusing police officials and agents of being involved in activities of organized crime such as theft of vehicles, drug trafficking, and especially illegally arrests, torture, and the extrajudicial killing of "criminal" adults and hundreds of children and youngsters who were accused of criminal activities and of belonging to a mara or young gangs. In recent times the promotion (case of Committees of public safety and of legislations such as the reform to Article 332 wrongly called the "antimaras" law) as well as tolerance (police involved in extrajudicial killings and the high impunity of investigations) to the existence of patterns of "social cleaning" is clear, with teenagers and young gang members currently being their main victims.

Youngsters are normally, on a daily basis, victims and perpetrators of violent acts that result in injuries and deaths. Crime and violence become phenomena that are practically inseparable, whichever their causes, and it has been proven that the greatest number of violent deaths are of teenagers and youngsters. Data in general state that in Honduras, during the last three years, almost 14,000 people have lost their life in a violent manner. Statistics inform that in a large proportion the victims of violence are young men between the ages of 16 and 35. Aggressors are also mainly young men. Studies affirm that the participation of children in criminal activities is no greater than 18% in more than two decades.

The violation to the right to life of children and youngsters in Honduras have their maximum expression in the summary killings that have been occurring in the country since the beginning of the nineties, but that started receiving more public attention at the end of this decade. Honduran children and youngsters, especially the poor, live in violent contexts, in which they are the main victims of a war where the authorities, adults, the society in general, and youngsters themselves are active protagonists of the wiping out of hundreds of children, teenagers, and youngsters murdered as a consequence of the stigmatization of being a member of a mara or gang. Data from the National Commission of Human Rights points out that of the deaths

accounted for in the year 2001, in 54.9% the authors are unknown, a number that allows us to infer that they are planned and executed with premeditation and in an environment in which the authors are concealed.

The maras or gangs are not a new phenomenon in Honduras. The maras are connected to organized crime, because the policy in charge of cleaning the streets has joined many members to drug traffickers, for protection. Gangs are classified as a violent response to a state violence to which their members have been submitted through both exclusion and abandonment.

The main measures adopted by the State to confront the problem of young delinquency stereotyped in gangs or maras have been an increase in administrative apprehensions as of the nineties, which has generated the segregation of children and youngsters in street situations and “under suspicion” of belonging to a mara, and the State’s policy of “zero tolerance”, among others.

According to data of 2003, in Honduras 50.4% of the population was under the age of 18. 66% of boys and girls between the ages of 0 and 14 years old are under the line of poverty. Despite the important legal instruments the State has, in which it acknowledges the superior interest of children, it has not been able in the practice to improve the general situation of Honduran children and youngsters, since there is a lack of guiding policies and plans in the matter.

b) Carlos Tiffer-Sotomayor, attorney

The current violence in Central America is the result of a long structural process linked to problems of a social, economic, and political-military nature. In recent years a phenomenon of juvenile violence has expanded, and in the case of Honduras it has reached the level of juvenile gangs. Said gangs frequently find themselves involved in illegal activities such as drug consumption, violent acts with other gangs, and the committing of crimes against property such as robbery and theft, and in some cases a delinquency related with crimes against life, sexual liberty, drug trafficking, or extortive kidnapping. However, it is not true that the child and teenage factor are the determining conditions in a phenomenon of insecurity. Besides, we would have to add the important difference between the real criminal rate and the phenomenon of the perception of citizens regarding crime and the security or insecurity in a society. This difference between perception and reality is generated by some members of the press, who exacerbate the fears of the population, with regard to the violence and insecurity generated by the so-called young gangs.

In Honduras the State’s response is focused on repression, not only institutional but even private, that seeks to eliminate violence with more violence, thus creating a completely erroneous public policy. True public safety is achieved with a solid social security. Violence has a social structure with a spiral form, that is, if when faced with a violent reaction, the response is more violence, it is sure and probable that there will be more violence. When this repression is focused toward children and teenagers, the problem and dimension of the violent response are greater, since they include violence as cultural patterns, reason for which they will also be violent adults. Public policies must be oriented toward social, and especially, educational policies. At the same time, the best criminal policy must be a good social policy, especially when dealing with young gangs or maras. The criminal policy oriented only to repression is condemned to fail.

The stigmatization suffered by children and teenagers turn them from perpetrators to victims, and produces a phenomenon of exclusion both by the population as well as through auto exclusion. When perceived as those responsible for the lack of public safety, they themselves incorporate

this perception and consider themselves excluded from society. Said stigmatization will emphasize stratification and the differences between social classes.

The elaboration of a public policy for children and teenagers that considers prevention, before repression, and a predominant educational purpose, that minimizes state intervention and that makes criminal reaction flexible and diversified, and that offers greater reflection and a multidisciplinary analysis is necessary. Specific measures are necessary, such as prioritizing social policy along with studies of the cost of violence, redistribution of wealth and an offer of a better work level for all and the possibility of healthy recreation for youngsters.

3) Expert witnesses proposed by the State

a) Lolis María Salas Montes, attorney

The State carried out an interinstitutional process of large dimensions that seeks to deepen the legislation regarding family and children matters, with the objective of overcoming the gaps, hiatus, contradictions, and legislative dispersion in this subject. It also seeks to update said legislation to the international instruments Honduras has signed. Among the actors that conform this initiative are The Supreme Court of Justice, the National Congress, the National Human Rights Commission, and the State Secretariat in the Offices of the Interior and Justice.

A National Plan for the Attention of Children and Teenagers is being prepared, programmed to be executed in the period 2002-2010. Governmental sectors, the civil society, and non-governmental organizations were recently summoned in order to revise the mentioned Plan and improve the elaboration of the actions executed in the country in favor of children and teenagers. One of the great recommendations is directed to the inclusion of a new chapter on violence against boys, girls, and teenagers, which includes sections on child abuse, sexual abuse, and on maras or gangs.

Another effort of the State was the intervention of the Honduran Institute for Children and Family (IHNFA) that motivated the conformation of an Intervening Commission to diagnose the reality of this Institute, of which the expert witness was a part from August 2003 to September 2004. This Intervening Commission prepared the Situational Diagnosis on the institutional scenario of the IHNFA and suggested strategies to achieve absolute respect of the superior interest of boys and girls. As a result, the State expanded the time period to appoint the Intervening Commission, time in which a series of actions were executed in order to ensure the protection of minors in situations of social risk and in conflict with the law, based on national legislation and international instruments on matters of children and teenagers. Likewise, an approach was achieved with all sectors of civil society and non-governmental organizations to analyze the situation of the IHNFA and to know of both the work of the State and those sectors.

The State has shown good will in collecting the national budgets in order to assign sufficient resources to attend the needs of the child and teenage populations in vulnerable conditions. The institutions with the responsibility of leading this matter must be located in the corresponding level given their fundamental importance and to receive the budget demanded.

b) Ramón Antonio Romero Cantarero, Presidential Advisor in Security matters, former Consultant of the Interinstitutional Commission for the Protection of the Moral and Physical Integrity of Children

The phenomena of violent deaths in boys and girls has multiple causes, among which we can mention, based on the results of the investigations of the Special Unit of Investigation of Deaths of Minors: the deaths occurred within gangs; those produced in conflicts between rival gangs; those produced in confrontations with the authority or with citizens when gang members are committing crimes; those produced by executions ordered by groups of drug traffickers and organized crime, and those produced by clandestine groups, which have been characterized by the Former National Human Rights Commissioner, Leo Valladares Lanza, himself as groups of social cleaning financed by non-identified national sectors, presumably formed by criminal, military members, former military members, police agents, and former police agents.

From 1986 and up to 2002 approximately 700 boys and girls died violently and in unclear conditions, conclusion based on the forms for the removal of bodies of the Department of Forensic Medicine of the Public Prosecutors' Office and the DGIC, which offer the trustworthiest information. The above explains the difference between the numbers of the State in comparison with the numbers presented by non-governmental organizations whose source is the imprecise information published in national newspapers. The deaths within gangs are approximately 60% of the cases, the actions of organized crime and drug trafficking cause more than 30% of said deaths, and 8% is attributed to specific clandestine groups of "social cleaning". Investigations have also established that among the alleged guilty parties are police agents linked to specific clandestine groups of "social cleaning", proceeding immediately to their criminal processing. The results of the different actions tend to be evident and decisive in the medium and long term, although there are already valuable results in the short-term.

The State has worried about investigating the cases of deaths in minors and ending all type of impunity. The President of the Republic has acknowledged before the national and international community that the phenomenon of violent deaths of youngsters is occurring in Honduras, many of them linked to gangs, as well as its commitment to investigate these deaths.

The State has adopted several measures for the prevention of the death of minors and violence related to gangs: the creation of the National Program for the Prevention, Rehabilitation, and Social Reinsertion of people related to gangs; the intervention and restructuring of the IHNFA; the request for international cooperation for the execution of projects for methodological readjustment and social infrastructure for the internment of boys and girls under the responsibility of the IHNFA; the offering of the opportunity to more than 600 boys and girls of the street or in risky situations of being attended in Spanish institutions and to a greater number of being attended nationally, as well as more than a million children benefited by the Program of School Snacks; the readjustment of the infrastructure of criminal centers, and the execution of rehabilitation programs and removal of tattoos in criminal centers and in some penitentiary centers.

c) Ricardo Rolando Díaz Martínez, general supervisor of the Secretariat of Security, appointed in charge of the Special Unit for the Investigation of the Deaths of Minors

The Special Unit for the Investigation of the Deaths of Minors must investigate all the cases of deaths of people under the age of 21 that have characteristics of patterns considered as executions. The team is in charge of around 1,016 files assigned to homicides, among which an average of 186 have been forwarded to the Prosecutors of the Public Prosecutors' Office.

Monthly reports with the results of the investigative activities are given to the Interinstitutional Commission for the Protection of Children, which is the governing body of the Special Unit.

Through cooperation with non-governmental institutions some type of witness protection to deponents or personnel who becomes aware of violent acts has been established. Likewise, transparent mechanisms of information regarding the investigative activities carried out have been established.

C) EVIDENCE ASSESSMENT

Assessment of Documentary Evidence

38. In this case, as in others, [FN6] the Tribunal admits the probative value of the documents presented in a timely fashion by the parties, or requested 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.

[FN6] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 48; Case of the Ituango Massacres, *supra* note 3, para. 112; and Case of Baldeón García, *supra* note 3, para. 65.

39. 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 appendixes to their final written arguments (*supra* para. 25), and the documents provided by the expert witness Leo Valladares Lanza as appendixes to his expert opinion (*supra* para. 22).

40. 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 correspond to part of the documents requested by the Tribunal as evidence to facilitate adjudication of the case (*supra* paras. 29 and 31). The State also presented part of the evidence requested to facilitate adjudication of the case (*supra* para. 29).

41. The Court adds the following documents, which were not presented by the representatives in the corresponding procedural moment, 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, specifically: part of the domestic judicial dossier that corresponds to folios 502 through 569; official letter of the Criminal Court of First Instance of the Judicial Section of Tegucigalpa, Department of Francisco Morazán, addressed to the President of the Supreme Court of Justice of Honduras, dated May 26, 2006; birth certificate of Diomedes Tito Casildo García, No. 0201-1940-00277, issued by the National Registry of Persons, Civil Municipal Registry, on June 19, 2006; birth certificate of Andrea Sánchez Loredo, No. 0201-1935-00149, issued by the National Registry of Persons, Civil Municipal Registry, on June 19, 2006; death certificate of Andrea Sánchez Loredo, No. 0107-1985-00206, issued by the National Registry of Persons, Civil Municipal Registry on June 20, 2006; birth certificate of Ester Patricia García Sánchez, No. 0801-1979-08582, issued by the National registry of Persons, Civil Municipal Registry on June 19, 2006; birth certificate of Jorge Moisés García Sánchez, No. 0801-1976-09742, issued by the National Registry of Persons, Civil Municipal Registry, on June 19, 2006; and birth certificate of

Fidelia Sarahí García Sánchez, No. 0801-1977-07721, issued by the National Registry of Persons, Civil Municipal Registry, on June 19, 2006. Likewise, pursuant to that stated in Article 45(1) of the Rules of Procedure, the Court adds to the body of evidence some documents that, even though presented in a time-barred manner by the State as appendixes to their brief of final arguments (*supra* para. 26 and *infra* para. 49), the Tribunal considers that they contribute elements and are useful for the resolution of this case, specifically: Diagnosis on Criminality in Honduras (Executive Summary), National Human Rights Commission of Honduras, UNDP; Synopsis of agreements 2000-2003, Interinstitutional Commission on Criminal Justice (CIJP), Spanish Agency of International Cooperation (AECI), Project for the Strengthening of the Judicial Power of Honduras. Tegucigalpa M.D.C., Honduras. May 2004; Report on the advances in the legal proceedings and investigation of the deaths of children and youngsters in Honduras of August 25, 2003. Secretariat of State in the Offices of the Interior and Justice, Tegucigalpa M.D.C., Honduras; Report on the advances in the legal proceedings and investigation of the deaths of children and youngsters in Honduras of February 25, 2004, Secretariat of State in the Offices of the Interior and Justice, Tegucigalpa M.D.C, Honduras; Report on the advances in the legal proceedings and investigation of the deaths of children and youngsters in Honduras of August 25, 2003, Secretariat of State in the Offices of the Interior and Justice, Tegucigalpa M.D.C, Honduras; National Statistics. Published between July 2003 and October 2005 and National Statistics. Published between July 2003 and January 2006. Special Unit for the Investigation of the Deaths of Minors; Report on convictions in violent deaths of boys and girls. Public Prosecutors' Office; Lists of participants and training materials for Workshops on the identification of maras and tattoos; and National Statistics from June 2003 through January 2006. Special Unit for the Investigation of Deaths in Minors. Finally, pursuant to that stated in Article 45(1) of the Rules of Procedure, the Court adds as evidence to facilitate adjudication of the case the document "Los derechos civiles y políticos, en particular las cuestiones relacionadas con las desapariciones y las ejecuciones sumarias. Ejecuciones extrajudiciales, sumarias o arbitrarias". Report of the Special Rapporteur, Mrs. Asma Jahangir, presented in compliance of Decision 2002/36 of the Human Rights Commission. Addition. Mission to Honduras. E/CN.4/2003/3/Add.2. June 14, 2002.

42. Regarding the statements given before to a notary public (affidavit) by the expert witnesses Ramón Antonio Romero Cantarero, Ricardo Rolando Díaz Martínez, and Nora Suyapa Urbina Pineda (*supra* para. 23), the Commission stated that it agreed with the observation made at that time by the representatives, in the sense that these persons were public employees, and that due to their position they could have a motive that leads to the possibility to question their characterization as expert witnesses. In what refers to the specific observations, the Commission stated that Mr. Ricardo Rolando Díaz Martínez, General Supervisor of the Secretariat of Security, appointed in charge of the Special Unit for the Investigation of the Deaths of Minors since May 2003, gave his statement "from the point of view of a person interested in proving the effectiveness of measures adopted by the State regarding some substantive elements." Likewise, it stated that Mr. Romero Cantarero gave a statement referring to "matters that were under his charge [as Consultant or Presidential Advisor]" and that Mrs. Urbina Pineda offered a statement on "the defense of her work as Special Prosecutor of Children". Therefore, the Commission concluded that the three statements "lack the characteristics of fairness necessary to substantiate the receipt of an opinion of an expert witness."

43. In this regard, in first instance, the Court observes that, despite calling repeatedly upon Ramón Antonio Romero Cantarero, Ricardo Rolando Díaz Martínez, and Nora Suyapa Urbina Pineda, through the State, for the presentation of information regarding if they were included in any of the motives described in Article 50 of the Rules of Procedure in relation with Article 19(1) of the Statute and if they had any direct participation in this case, it was not presented. In that sense, this Tribunal reprimanded the State who upon proposing said persons as expert witnesses, who through it should have sent the information required, it should have made the corresponding diligences to send the Court said information, so the Tribunal could have it. [FN7]

[FN7] Cfr. Case of the Sawhoyamaya Indigenous Community. Judgment of March 29, 2006. Series C No. 146, para. 48; Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 77; and Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 52.

44. In second place, in what refers specifically to the statements offered before a notary public by the expert witnesses Ramón Antonio Romero Cantarero (supra para. 37(3)(b)) and Ricardo Rolando Díaz Martínez (supra para. 37(3)(c)), taking into account the Commission's observations, this Court admits them within the totality of the body of evidence, pursuant to the principles of competent analysis.

45. In what refers to the statement offered before a notary public by Mrs. Nora Suyapa Urbina Pineda, it was presented in a time-barred manner, on January 16, 2006 (supra para. 23), that is, eleven days after the time period set to do so, reason for which this Tribunal does not accept it within the body of evidence.

46. Regarding the authenticated statement offered by the expert witnesses Leo Valladares Lanza (supra para. 37(1)(a)), offered by the Commission; Reina Auxiliadora Rivera Joya (supra para. 37(2)(a)) and Carlos Tiffer Sotomayor (supra para. 37(2)(b)), offered by the representatives, and the expert opinion given before a notary public (affidavit) by Lolis María Salas Montes (supra para. 37(3)(a)), proposed by the State, this Court admits the expert opinions, and assesses them within the totality of the body of evidence pursuant to competent analysis. It is important to mention that the Tribunal has, on other occasions, admitted sworn statements that were not given before a notary public, when this does not affect legal certainty and the procedural balance between the parties. [FN8]

[FN8] Cfr. Case of Ximenes Lopes, supra note 3, para. 52; Case of the Ituango Massacres, supra note 3, para. 114; and Case of Baldeón García, supra note 3, para. 66.

47. On the other hand, through its Decision of November 24, 2005, the Court ordered that the Inter-American Commission, the representatives, and the State present their final written arguments, no later than January 23, 2006 (supra para. 20). Both the Commission and the representatives presented the mentioned final arguments on the date stated (supra para. 25). The

State, however, presented its brief of final arguments along with its appendixes on February 24, 2006 (*supra* para. 26).

48. In this sense, on March 13, 2006 the Commission and the representatives presented their observations with regard to the presentation of said brief by the State. The Commission indicated that the presentation of the State's final arguments and its appendixes was time-barred and that its admission would threaten the equality between the parties in the proceedings before the Court. On their part, the representatives requested that the Court "not admit the final arguments presented by the [...] State [...], since they were presented in a time-barred manner and affected the procedural balance" of the parties. However, they also mentioned that in the section called "Content and scope of the State's Partial Assent", Honduras offers "light on the scope of the acceptance of the State's international responsibility, that up to that time was not clear[, and that] it seems to indicate that its assent covers all matters of this case that do no refer to the existence of a pattern of extrajudicial killings of boys, girls, and teenagers tolerated or fomented by the State," and they requested that the Court "issue a favorable ruling regarding the assent presented [by the State] in the terms described."

49. Given that the State presented its brief of final arguments along with its appendixes in a time-barred manner, this Tribunal does not admit them. However, this Court cannot ignore that in the mentioned brief the State expressed its position on the scope of its acknowledgement of responsibility, by expanding and precisising its terms with regard to the violations presented by the Commission and the representatives. In this sense, given that the State may assent during any stage of the procedure, [FN9] this Tribunal considers that it may not exclude or limit the effect of that expressed by the State regarding its acquiescence. Therefore, this Court will consider that expressed by the State regarding its assent in the mentioned brief.

[FN9] Cfr. Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, para. 66; and Case of Mack Chang. Judgment of November 25, 2003. Series C No. 101, para. 108.

50. 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 when they corroborate aspects related to the case. [FN10]

[FN10] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 55; Case of the Ituango Massacres, *supra* note 3, para. 122; and Case of Palamara Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 60.

VI. ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

51. Article 53(2) of the Rules of Procedures establishes that

[i]f the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

52. The Inter-American Court, in exercising its contentious function, applies and interprets the American Convention and, when a case has already been submitted to its jurisdiction, it is empowered to declare the international responsibility of a State Party to the Convention for violation of its provisions. [FN11]

[FN11] Cfr. Case of Ximenes Lopes, supra note 3, para. 61; Case of the Ituango Massacres, supra note 3, para. 57; and Case of Baldeón García, supra note 3, para. 37.

53. The Tribunal, in the use of its jurisdictional functions of international protection of human rights, may determine if an acknowledgment of international responsibility made by a respondent State offers sufficient foundation, in the terms of the American Convention, to continue or not with the examination of the merits and the determination of the possible reparations and costs. For these effects, the Court will analyze the situation presented in each specific case. [FN12]

[FN12] Cfr. Case of Montero Aranguren et al. Judgment of July 5, 2006. Series C No. 150, para. 39; Case of Ximenes Lopes, supra note 3, para. 62; and Case of the Ituango Massacres, supra note 3, para. 58.

54. In the respondent's plea the State indicated that

it does not contest the facts exposed in paragraphs 27 through 106 of the application [... of] the Inter-American Commission [...], nor does it contest the arguments regarding these same facts presented by [... the] representatives, [... since] the same are duly substantiated and proven. Therefore, the State [...] accepts the commission of acts by individuals that, despite having resulted in the violations argued by the [...] Commission and [...] [the representatives] in what refers to the [alleged] victims and their next of kin, it rejects that the same have occurred within the context of a systematic violation of human rights tolerated by the State.

[...]

[...T]he State [...] assents to the parts of the application that relate to those regretful facts, accepting the measures of reparation proposed by the applicants and promising to comply in the least time possible to what that [...] Court decides to order in this sense. The State [...] DOES NOT assent to the parts included in the arguments of the [...] Commission [...] and [...the] representatives that mention the existence of a context of alleged systematic violation of human rights tolerated and consented by it.

55. When referring to the acknowledgment of responsibility, the State, inter alia:

- a) acknowledged, in reference to the violation of Article 7 of the Convention, that: i) Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez were detained without an arrest warrant, and none of them was surprised in fraganti in the commission of a crime, reason for which in the arrest with excessive violence and without a justified reason Articles 7(2) and 7(3) of the Convention were violated; ii) it did not inform the parents of the minors Servellón García and Betancourth Vásquez about their arrest, despite there was a special obligation to do so, nor did it inform the next of kin of Orlando Álvarez Ríos and Diomedes Obed García Sánchez, in violation of Article 7(4) of the Convention; iii) the alleged victims were not released despite the fact that the Police Judge issued a decision that stated it, being detained in a clandestine manner, since they appeared in the list of persons released on September 16, 1995, and that said Judge did not make sure that the mentioned decision was made effective, in violation of Article 7(5) of the Convention; iv) the minors Servellón García and Betancourth Vásquez were not separated from the adults at the time of their arrest and they remained in the police cells, which exposed them to damaging circumstances for the minors, nor were measures adopted so that the children could have contact with their next of kin or that a minor's judge revise the legality of their arrest, and v) by being detained in a clandestine manner the alleged victims were deprived of their right to make use of a simple and effective recourse to guarantee their liberty (habeas corpus), in violation of Article 7(6) of the Convention;
- b) acknowledged the violation of Article 4 of the Convention, in detriment of the four alleged victims, since their death was caused and the fact occurred while they were under the custody of State agents;
- c) acknowledged the violation of Article 5 of the Convention, in detriment of the four alleged victims, for the tortures and cruel, inhuman, and degrading treatments to which they were submitted, as proven by physical evidence at the time of the disinterment;
- d) acknowledged the violation of Articles 8 and 25 of the Convention, since in the way in which the facts occurred it was not possible to provide the four detainees who were later murdered with an effective protection through the recourse of habeas corpus. With regard to the "pardon" allegedly granted by the Police Judge Roxana Sierra, as has been argued by the State, what happened was that there was "a bad use of the term" by the police officials;
- e) acknowledged that the results produced in the investigation have not been up to now adequate and that, therefore, Articles 8 and 25 of the Convention have been violated by omission, in detriment of the next of kin of the alleged victims, but it rejected that the facts have not been investigated, and
- f) it acknowledged having violated the rights mentioned, since "there has still not been an adequate sanction for the perpetrators [of the] crime."

56. In its observations to the State's acquiescence, the Commission indicated, inter alia, that

- a) the controversy on the facts described in paragraphs 27 through 106 of the application has ceased, as well as regarding the allegations made in this sense by the representatives in their brief of pleadings and motions, with the exception of the context in which the facts occurred described in paragraphs 23 through 26 of the application. In what refers to the facts not acknowledged by the State regarding the alleged context of violence in which they occurred, the Commission

mentioned that the evidence provided in a timely manner proves a context of violence and immunity, and that the verification of the context is essential in qualifying the violations for which the State has assumed responsibility and, especially, in defining the reparations whose execution results imperative in order to guarantee the prevention of similar violations;

b) the State acknowledged the violation of the Articles of the Convention argued by the Commission in its application, but presented some considerations on the way in which, in its opinion, said violations occurred. Therefore, the Commission considers that the facts and reasons in which the State substantiates said acknowledgment do not correspond integrally to the arguments presented by it. In that sense, the Commission mentioned that in the present case a situation of impunity has presented itself, since more than “nine” years after the facts occurred those responsible for the extra judicial killings and torture of the four alleged victims have not been individualized or sanctioned through a definitive and executed judgment. However, the State, when referring to the legal claims of the application, indicated that “we cannot speak of impunity in these cases, in a conclusive and definitive manner,” reason for which the Commission considers that this affirmation “does not concur with the realities proven in the case [...]”

c) the acknowledgment of the state’s responsibility includes a general acceptance of the obligation to repair the alleged victims and their next of kin, and

d) it values the acknowledgment of partial responsibility made by the State.

57. Finally, the Commission requested that the Court admit the acceptance of the facts, as well as the partial acknowledgment of international responsibility made by the State, and that the Court detail in its judgment the facts and the legal considerations that substantiate the violations acknowledged by the State.

58. On its part in its observations to the assent made by the State, the representatives acknowledged “the good will expressed by the State [...] by not contesting the facts presented in the application [...] and in [the brief of pleadings and motions] ‘since the same are duly substantiated and proven’ and upon the acceptance of the measures of reparation proposed by both parties.” However, they stated that

the terms in which [the State] [...] made the mentioned acquiescence are not clear, since they seem to indicate that the State accepts its international responsibility for all the violations argued based on the facts accepted as true, but [...] from] the section titled “ON THE RIGHTS OF THE AMERICAN CONVENTION ON HUMAN RIGHTS THAT THE COMMISSION AND THE PETITIONERS CONSIDER HAVE BEEN VIOLATED IN THE PRESENT CASE,” we can conclude that the State is not accepting all the violations claimed.

Besides, the State denies the existence of a pattern of “social cleaning” in Honduras.

59. Additionally, the representatives indicated, inter alia, that the State: did not refer to its responsibility for not having notified the alleged victims of the reasons for their arrest (Article 7(4) of the Convention), and only referred to the violation of the right to legal control of the alleged minor victims, not that of those of legal age, who were not presented before an impartial and independent judge, but instead before a police judge (Article 7(5) of the Convention). According to the representatives, the State did not refer to the violation of Articles 5(5) and 19 of

the Convention, in detriment of the alleged minor victims, for having been detained along with adults and for omitting the adoption of special protective measures in relation to these, nor to the violation of Article 5 of the Convention, in detriment of the next of kin of the alleged victims. The representatives argued that the State did not acknowledge its responsibility for the violation of the alleged victim's right to be heard in a reasonable period of time (Article 8(1) of the Convention), nor did it refer to the violation of the principle of presumption of innocence of the alleged victims (Article 8(2) of the Convention). Likewise, the State omitted all reference to its responsibility for the violation of the right to truth of the next of kin of the alleged victims and the Honduran society in general (Articles 8, 13, 25, and 1(1) of the Convention).

60. Later, the State pointed out that even though the acknowledgment was accompanied of a full detail of the rights of the American Convention it acknowledged had been violated in the present case, due to the interest of the petitioners in a clarification regarding the scope of the assent, it stated that it acknowledged:

- a) expressly in the respondent's plea the violation of Article 7 subparagraphs 1, 2, 3, 4, 5, and 6 (Right to Personal Liberty) of the Convention, and clarified that said transgression was in accordance with Article 1(1) of that Treaty, and that the violation of Article 7(6) of the Convention was at the same time in relation with Articles 25 and 1(1) of the same;
- b) expressly the violation of Article 5 (Right to Humane Treatment) of the Convention, and clarified that it acknowledged said violation in the terms of subparagraphs 1 and 2 of the mentioned article, and always in relation with Article 1(1) of that instrument;
- c) expressly its responsibility for the violation of Article 4 (Right to Life) of the Convention, and, clarified that this acknowledgment was made in connection with Article 1(1) of that treaty;
- d) expressly in the respondent's plea the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention regarding Marco Antonio Servellón García, Rony Alexis Betancourt Vásquez, Diomedes Obed García Sánchez, and Orlando Alvarez Ríos, and clarified that it acknowledged said violation in the terms of subparagraphs 1 and 2 of Article 8 and subparagraph 1 of Article 25 of the Convention, and in relation with Article 1(1) of that treaty, and
- e) its responsibility for the violation of Articles 19 (Rights of the Child), 5(5), and 7(5) of the American Convention, in connection with Article 1(1) of the same, regarding the minors Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, since said acknowledgment was omitted from its response to the petition.

61. Based on the facts established, the evidence presented in the present case, as well as that argued by the parties, the Court will proceed to determine the scope and legal effects of the acknowledgment of international responsibility made by the State (*supra* paras. 16, 54, 55, and 60), within the framework of the state's responsibility generated by violations to the American Convention. For said effects it will analyze the mentioned acknowledgment of responsibility under three aspects: 1) regarding the facts; 2) regarding the law, and 3) regarding the reparations.

- 1) Regarding the facts

62. In attention to the acknowledgment of responsibility made by the State, the Tribunal considers that the controversy between the facts included in paragraphs 27 through 106 of the application presented by the Inter-American Commission in the present case (*supra* para. 11) has ceased. However, the State mentioned that it is not true that there has not been an investigation and that we cannot speak of a conclusive and definitive impunity in this case.

63. Therefore, the Court considers it appropriate to open a chapter regarding the facts of the present case, which will cover both the facts acknowledged by the State and those that result proven from the totality of elements that appear in the case file.

2) Regarding the legal claims

64. In attention to the acknowledgment of responsibility made by the State (*supra* paras. 16, 54, 55, and 60), the Court considers as established the facts referred to in paragraphs 79(1) and 79(60) of this Judgment and, based on them and weighing in the circumstances of the case, proceeds to precise the different violations found against the articles claimed.

65. The Court considers that it is convenient to admit the acknowledgment of international responsibility made by the State for the alleged violation of the rights enshrined in Articles 4(1) (Right to Life); 5(1) and 5(2) (Right to Humane Treatment); 7(1), 7(2), 7(3), 7(4), 7(5), and 7(6) (Right to Personal Liberty), 8(1) and 8(2) (Right to a Fair Trial), and 25(1) (Right to Judicial Protection) of the American Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos, as well as the violation of Articles 5(5) (Right to Humane Treatment), 7(5) (Right to Personal Liberty), and 19 (Rights of the Child) of the Convention, in detriment of the minors Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez.

66. Likewise, this Tribunal admits the acknowledgment of international responsibility made by the State in relation to the alleged violation of the rights enshrined in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in detriment of the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez.

67. However, the Court points out that the State did not refer in its assent to the alleged violation of Article 5 of the Convention, in detriment of the next of kin of the alleged victims.

3) Regarding the reparations

68. In the respondent's plea the State indicated that "it assent[ed] to the parts of the petition related to those regretful facts, accepting the measures of reparation proposed by the petitioners and promising to comply faithfully in the least time possible with what [the...] Court decides to order in this sense [...]." However, at the same time the State made considerations regarding the implementation of some of the measures requested by the Commission and the representatives, by stating, for example, that "the Public Prosecutors' Office continues to develop important efforts for the persecution and sanction of the perpetrators and planners of the arrest and death

[of the alleged victims],” and that it has elaborated the National Plan for the Attention of Children and Teenagers 2002-2010, which must serve as the framework document for the State’s public policies.

69. In this regard, the Inter-American Commission pointed out that the State made several affirmations, that “even though they show an appreciable statement from [it] to repair the next of kin of the [alleged] victims, it does not constitute an assent to the demands presented for them to the Court” and stated that “the next of kin of the [alleged] victims specified their demands for different aspects in a very detailed manner in their brief of pleadings [and] motions [...]” Likewise, the Commission mentioned that the State, when it referred to the demands of the petition, “made arguments that seemed destined to contest the measures requested, with different shades. Therefore, the Commission consider[ed] that it cannot exactly speak of assent in the present case, since the State has only partially accepted the demands of the Commission and of the representatives of the [alleged] victims and their next of kin.”

70. The representatives stated that, “even when the State has assented to the reparations, it is important to consider that the arguments presented in this sense do not satisfy the totality of the reparations requested.” They added, “the considerations made by the [...] State in relation to the measures adopted by it refer only to some of the reparations developed by the Commission and by [that] representation, but that they do not imply the totality of the reparations.”

71. From that exposed, the Court understands that the observations made by Honduras regarding the measures of non-repetition or satisfaction requested by the Commission and the representatives seek to prove that the State is making efforts to implement them, and that the observations are consistent with that mentioned by the State in the sense that it “accept[ed] the measures of reparation proposed [...]” However, given that both the Commission and the representatives differ in some aspects regarding these measures, specifically, in regard to their implementation or effectiveness, this Court considers it appropriate to issue a ruling on this matter (*infra paras. 186 through 203*).

C) The extent of the subsisting controversy

72. Article 38(2) of the Rules of Procedures states that

[i]n its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested.

73. The Tribunal has previously stated that, pursuant to the mentioned Article 38(2) of the Rules of Procedure, the Court has the power to consider as accepted the facts that have not been expressly denied and the claims that have not been expressly contested. However, the Tribunal is not obliged to do so in all cases in which a similar situation presents itself. Therefore, in the exercise of its responsibility to protect human rights, the Court will determine in each specific case the need to make legal considerations and to consider the facts as established, either as presented by the parties, assessing the elements of the body of evidence, or as best concluded from said analysis. [FN13]

[FN13] Cfr. Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 37; and Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 38.

74. Based on the previous considerations, this Tribunal grants complete effect to the partial acknowledgment of responsibility (*supra* paras. 16, 54, 55, and 60). However, the Court acknowledges that there is still a controversy with regard to some of the violations claimed.

75. Pursuant to the terms in which the parties have made themselves heard, the Court considers that the controversy subsists with regard to:

- a) the fact that the State denied that there has not been an investigation and that there has been impunity in the present case, despite that it assented to the violation of Articles 8(1) and 25(1) of the Convention, in relation with Article 1(1) of that instrument, in detriment of the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos. With regard to the investigation, the State differs in what refers to the reasons argued by the Commission and the representatives to substantiate the mentioned violation. Likewise, the State did not refer to the alleged unjustified delay in the investigations;
- b) the alleged violation of Article 5 (Right to Humane Treatment) of the Convention, in relation to Article 1(1) of the same instrument, in detriment of the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos, and
- c) that referring to the determination of the reparations and costs and expenses (*supra* para. 71).

76. Even though the State did not go on record in the respondent's plea regarding the alleged violation of the right to truth, the Court does not consider that this is an autonomous right enshrined in Articles 8, 13, 25, and 1(1) of the American Convention, as argued by the representatives, and therefore, it will not issue a ruling regarding this matter. The Court has stated that the right to truth is included in the right of the victim or his next of kin to obtain from the State's competent bodies the clarification of the violating facts and the corresponding responsibilities, through investigation and a trial. [FN14]

[FN14] Cfr. Case of Montero Aranguren et al., *supra* note 12, para. 55; Case of Baldeón García, *supra* note 3, para. 166; and Case of the Pueblo Bello Massacre, *supra* note 7, para. 219.

77. The Court considers that the State's assent constitutes a positive contribution to the development of this process and to the effectiveness of the principles that inspire the American Convention [FN15] in Honduras.

[FN15] Cfr. Case of Montero Aranguren et al., supra note 12, para. 57; Case of Ximenes Lopes, supra note 3, para. 80; and Case of the Ituango Massacres, supra note 3, para. 79.

78. Taking into account the responsibilities that correspond to the State of protecting human rights and given the nature of the present case, the Court considers that the issuing of the present Judgment, in which the truth regarding the facts and all the elements of the merits of the matter are determined, as well as the corresponding consequences constitutes in itself a form of reparation, [FN16] in favor of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos.

[FN16] Cfr. Case of Montero Aranguren et al., supra note 12, para. 131; Case of Ximenes Lopes, supra note 3, para. 81; and Case of the Ituango Massacres, supra note 3, para. 80.

VII. PROVEN FACTS

79. Examining the evidentiary elements on record in the dossier of the present case, the statements made by the parties, as well as the acknowledgment of international responsibility made by the State, the Court considers as proven the facts detailed below. The majority of the paragraphs included in this section are the facts considered as established by this Tribunal based on the acknowledgment of responsibility made by the State, and that correspond to the facts presented in paragraphs 27 through 106 of the application presented by the Inter-American Commission (supra para. 11). Additionally, the Court has established as proven a series of other facts, mainly regarding the criminal proceeding, pursuant to the evidence presented by the Commission, the representatives, and the State.

A) Context of violence against children and youngsters in Honduras: extrajudicial killings and impunity

79(1) At the beginning of the nineties, and within the framework of the state's response of preventive and armed repression of young gangs, a context of violence that is currently marked by the victimization of children and youngsters in a situation of social risk, identified as young delinquents that cause the increase in public insecurity, appeared. The deaths of youngsters identified as involved with "maras" or young gangs became more frequent every day between 1995 and 1997. Thus, for example, 904 minors died violently between the years of 1995 and 2002. [FN17]

[FN17] Cfr. Civil and political rights, specifically the matters related with the disappearances and summary killings. Extrajudicial, summary or arbitrary killings. Report of the Special Rapporteur, Mrs. Asma Jahangir, presented in compliance of Decision 2002/36 of the Human Rights Commission. Addition. Mission to Honduras. E/CN.4/2003/3/Add.2. June 14, 2002; National Human Rights Commission of Honduras, Annual Report 2003, Chapter II (dossier of appendixes to the brief of pleadings and motions, appendix 2, folios 1927 through 1932); Special

Report on the violent deaths of boys, girls, and teenagers in Honduras. National Human Rights Commission. January 21, 2002 (dossier of appendixes to the petition, appendix 10(8), folios 1575 through 1628); Gangs or maras within the context of violence and impunity in Honduras. Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, March 2004 (dossier of appendixes to the brief of pleadings and motions, appendix 1, folios 1828 through 1895); Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, “Work Meeting on the phenomenon of maras or gangs in Honduras” of October 26, 2004 (dossier of appendixes to the petition of the representatives of the victims and their next of kin, volume I, appendix 5, folios 1969 through 1983); Diagnosis of Criminality in Honduras (Executive Summary). National Human Rights Commission of Honduras (dossier of evidence to facilitate adjudication of the case, folios 2370 through 2417); and National Statistics. Published between July 2003 and October 2005 and National Statistics. Published between July 2003 and January 2006. Special Unit for the Investigation of the Deaths of Minors (dossier of evidence to facilitate adjudication of the case, folios 2738 through 2866).

79(2) That context of violence is materialized in the extrajudicial killings of children and youngsters in risky situations, both by state agents as well as by individual third parties. In this last case, the violence occurs, among others, within the young gangs or between rival gangs or as a consequence of the action of alleged clandestine groups of social cleaning. [FN18]

[FN18] Cfr. Civil and political rights, specifically the matters related with the disappearances and summary executions. Extrajudicial, summary or arbitrary killings. Report of the Special Rapporteur, Mrs. Asma Jahangir, presented in compliance of Decision 2002/36 of the Human Rights Commission. Addition. Mission to Honduras. E/CN.4/2003/3/Add.2. June 14, 2002; Special Report on the violent deaths of boys, girls, and teenagers in Honduras. National Human Rights Commission. January 21, 2002 (dossier of appendixes to the petition, appendix 10(8), folios 1575 through 1628); Gangs or maras within the context of violence and impunity in Honduras. Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, March 2004 (dossier of appendixes to the brief of pleadings and motions, appendix 1, folios 1828 through 1895); Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, “Work Meeting on the phenomenon of maras or gangs in Honduras” of October 26, 2004 (dossier of appendixes to the petition of the representatives of the victims and their next of kin, volume I, appendix 5, folios 1969 through 1983); Diagnosis of Criminality in Honduras (Executive Summary). National Human Rights Commission of Honduras (dossier of evidence to facilitate adjudication of the case, folios 2370 through 2417); and expert opinion of Mr. Ramón Antonio Romero Cantarero offered on December 14, 2005 (dossier of merits, reparations, and costs, volume III, folios 548 through 554).

79(3) The violence has obeyed to a common pattern in relation to: a) the victims, who are children and youngsters in risky situations; b) the cause of the deaths, which are extrajudicial killings characterized by extreme violence, produced with fire arms and cutting and thrusting

weapons, and c) the publicity of the crimes since the victims' bodies are exposed to the population. [FN19]

[FN19] Cfr. National Human Rights Commission of Honduras, Annual Report 2003, Chapter II (dossier of appendixes to the brief of pleadings and motions, appendix 2, folio 1928); National Human Rights Commission of Honduras, Annual Report 2003, Chapter II (dossier of appendixes to the brief of pleadings and motions, appendix 2, folios 1927 through 1932); Special Report on the violent deaths of boys, girls, and teenagers in Honduras. National Human Rights Commission. January 21, 2002 (dossier of appendixes to the petition, appendix 10(8), folios 1575 through 1628); Gangs or maras within the context of violence and impunity in Honduras. Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, March 2004 (dossier of appendixes to the brief of pleadings and motions, appendix 1, folios 1828 through 1895); Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, "Work Meeting on the phenomenon of maras or gangs in Honduras" of October 26, 2004 (dossier of appendixes to the petition of the representatives of the victims and their next of kin, volume I, appendix 5, folios 1969 through 1983); and Diagnosis of Criminality in Honduras (Executive Summary). National Human Rights Commission of Honduras (dossier of evidence to facilitate adjudication of the case, folios 2370 through 2417).

79(4) Those responsible for the crimes are reported by the police as unidentified persons and the investigations carried out with the objective of attributing responsibility are generally not able to identify the authors of said crimes. [FN20]

[FN20] Cfr. National Human Rights Commission of Honduras, Annual Report 2003, Chapter II (dossier of appendixes to the brief of pleadings and motions, appendix 2, folio 1928); Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, "Gangs or maras within the context of violence and impunity in Honduras," March, 2004, Report presented before the Inter-American Commission of Human Rights during its 120^o period of hearings (dossier of appendixes to the brief of pleadings and motions, appendix 1, folios 1828 through 1895); Civil and political rights, specifically the matters related with the disappearances and summary executions. Extrajudicial, summary or arbitrary killings. Report of the Special Rapporteur, Mrs. Asma Jahangir, presented in compliance of Decision 2002/36 of the Human Rights Commission. Addition. Mission to Honduras. E/CN.4/2003/3/Add.2. June 14, 2002; Special Report on the violent deaths of boys, girls, and teenagers in Honduras. National Human Rights Commission. January 21, 2002 (dossier of appendixes to the petition, appendix 10(8), folios 1575 through 1628); Gangs or maras within the context of violence and impunity in Honduras. Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, March 2004 (dossier of appendixes to the brief of pleadings and motions, appendix 1, folios 1828 through 1895); Casa Alianza Honduras, Reflection, Investigation, and Communication Team (ERIC) of the Compañía de Jesús of Honduras, "Work Meeting on the phenomenon of maras or gangs in Honduras" of October 26, 2004 (dossier of appendixes to the petition of the

representatives of the victims and their next of kin, volume I, appendix 5, folios 1969 through 1983); Diagnosis of Criminality in Honduras (Executive Summary). National Human Rights Commission of Honduras (dossier of evidence to facilitate adjudication of the case, folios 2370 through 2417); and Diagnosis of Criminality in Honduras (Executive Summary). National Human Rights Commission of Honduras (dossier of evidence to facilitate adjudication of the case, folios 2370 through 2417); and National Statistics. Published between July 2003 and October 2005 and National Statistics. Published between July 2003 and January 2006. Special Unit for the Investigation of the Deaths of Minors (dossier of evidence to facilitate adjudication of the case, folios 2738 through 2866).

B) General aspects of the arrest of the victims

79(5) The 15th day of September of 1995 the Public Security Force (FUSEP) made collective arrests, that included the capture of 128 people, within the framework of a preventive and indiscriminate police operative that took place in the surroundings of the National Stadium Tiburcio Carias Andino, in the city of Tegucigalpa, in order to avoid disturbances during the parades held to celebrate Honduras' National Independence Day.

79(6) The 16th day of September of 1995 the Police judge Roxana Sierra Ramírez issued a ruling of “pardon” accompanied by a list with the names of 62 people, among which Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, and Orlando Álvarez Ríos were included. On that same day, although the majority of the detainees were released, eight people were taken to the second floor of the Seventh Regional Command of the FUSEP (hereinafter “CORE VII”) in order to take their fingerprints, and only four of them returned to their cells and were released.

79(7) The Lieutenant José Alberto Alfaro Martínez gave the order that the four victims of the present case remain on the second floor of the CORE VII, specifically, “Lieutenant Alfaro [...] said, [‘]leave these separate for me[‘...], the four that appeared dead on Sunday September seventeenth of [1995]; and he could observe that they were tied with some rope he had, and he saw that DIOMEDES was crying[. They were] tied to a Plywood [(sic)], looking towards the wall, [...]. They were nervous, because they were afraid they were going to be killed, since they had been warned and [they had been told] they belonged to the MARA OF THE [POISON] and that they had a debt to pay.” [FN21]

[FN21] Cfr. statement offered by Marvin Rafael Díaz before the Second Criminal Peace Court on March 19, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folio 1201 through 1203).

C) Arrest, torture, and extrajudicial killing of Marco Antonio Servellón García

79(8) Marco Antonio Servellón García was born on May 3, 1979, in the Central District of the department of Francisco Morazán. He was the son of Reyes Servellón Santos and Bricelda Aide

García Lobo. He lived in the Colony El Carrizal No. 2, Main Street, of the city of Tegucigalpa, Honduras. During the day he sold lottery and he attended his primary studies in the night school for adults Centroamérica Oeste. At the time of his arrest he was 16 years old.

79(9) Marco Antonio Servellón García was arrested in the collective arrest of September 15, 1995. He was obliged to lie down on the floor, he was hit on the head with a gun, and accused of being a thief. They later took the laces from his shoes, tied him up, and drove him to CORE VII, located in the “Los Dolores” suburb of Tegucigalpa. On the way and in the offices of the CORE VII, the police agents hit him in the face, kept him isolated for an hour during which they tied him up by his feet, pulled him across the floor, and hit him on the back, in the stomach, and on the face, and on one opportunity they hit him with a chain. He was detained with adults.

79(10) Marco Antonio Servellón García was isolated from the outside world, without being able to communicate with his next of kin and inform them of the violent treatment he was receiving from the agents of the CORE VII. Even though his mother Bricelda Aide García Lobo visited the CORE VII on the 15th and 16th days of September of 1995, asking for her son, she was not allowed to communicate with him.

79(11) Bricelda Aide García Lobo, saw her son alive for the last time on September 16, 1995, at 1:00 in the afternoon, when she saw him go up to the second floor of the CORE VII, while under the custody of State agents. On September 17, 1995 the body of Marco Antonio Servellón García was found dead close to the surroundings of a place known as “El Lolo”.

79(12) The autopsy practiced on Marco Antonio Servellón García’s body on September 19, 1995 revealed that the victim presented four wounds caused by a fire arm whose entrance wounds were: one at the level of the right retro auricular region; one at the level of the right occipital: one in the cheekbone of the face, and one in the region of the left occipital, that is the four shots were directed to his face and head.

79(13) The autopsy did not refer to the state of Marco Antonio Servellón García’s body, nor did it prove that there were wounds caused with a blade, evidence of beatings, bruises, or signs on his wrists. The Public Prosecutors’ Office, in its Report of Ocular Inspections of September 17, 1995, mentioned that the victim “was found at the side of the road, toward [E]l [L]olo, he had signs on his wrists as if he would have [(sic)] been tied up, [and that] a white tennis lace was found next to his right hand.” [FN22] The Office of the Public Prosecutor did not take pictures of the body, because it did not have film.

[FN22] Cfr. report of ocular inspections No. 2192 issued by the Public Prosecutors’ Office on September 17, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folio 1006).

D) Arrest, torture, and extrajudicial killing of Rony Alexis Betancourth Vásquez

79(14) Rony Alexis Betancourth Vásquez was born on November 2, 1977 in the Department of Choluteca, Honduras. He was the son of Manases Betancourth Núñez and Hilda Estebana

Hernández López. He lived in the Colony of Nueva Suyapa and he had finished the third grade of his primary education. According to the statement given by the father of Rony Alexis Betancourth Vásquez, he had been a “gang member” at the age of fourteen, reason for which the father had filed a complaint against the gang in order to save him. According to Mr. Betancourth Núñez the gang was later disbanded. At the time of his arrest Rony Alexis Betancourth Vásquez was 17 years old.

79(15) Rony Alexis Betancourth Vásquez was detained in the collective arrest of September 15, 1995. He was beaten on the way to and during his stay at the CORE VII. Rony Alexis Betancourth Vásquez indicated through signs to Carlos Yovanny Arguijo Hernández, who had also been arrested on that same day, that he was going to be killed, “that he was going to have his head cut off, since [Rony] took one of his hands to his neck, making him understand [...] and what was what he heard him say ‘if they kill me, they kill me...’ since [Rony] told [him] that they were saying that he belonged to the mara of the poison.” [FN23] He was detained with adults.

[FN23] Cfr. statement offered by Carlos Yovanny Arguijo Hernández before the Second Criminal Peace Court on March 20, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1146 through 1148).

79(16) His arrest was kept clandestine, the victim was isolated from the outside world and was not allowed to communicate with his family and friends. His mother found out about the arrest through a third party at the end of the afternoon of September 16, 1995. The victim’s partner, Ana Luisa Vargas Soto, was informed by the Police Judge that her partner would not be released on September 16, 1995 because he was going to be investigated, and she was told by the guards of the CORE VII that Rony Alexis Betancourth Vásquez was not at that Command.

79(17) Rony Alexis Betancourth Vásquez was not released nor did he exit the CORE VII at 11:00 a.m. on September 16, 1995, as was registered by the judge, but instead he continued to be under the custody of State agents. The body of Rony Alexis Betancourth Vásquez was found dead on September 17, 1995, in hours of the morning, in the Suyapa village.

79(18) The autopsy performed on Rony Alexis Betancourth Vásquez’s body on September 17, 1995 by the Public Prosecutors’ Office revealed that the victim presented two wounds made by a fire weapon with entrance wounds at: one on the cheekbone in the face and one at the level of the right retro auricular region; and four wounds caused with a blade as follows: one blade wound at the level of the sternal manubrium and three blade wounds caused over the left breast. As with the bodies of the other three victims he presented bruises and torture marks.

E) Arrest, torture, and extrajudicial killing of Orlando Álvarez Ríos

79(19) Orlando Álvarez Ríos was born on November 22, 1962 in the location of Santa Rita, Department of Yoro. He was the son of Concepción Álvarez and Antonia Ríos. He had graduated with an industrial high school degree and since January 1995 worked in the

construction of the home of his sister, Dilcia Álvarez Ríos. At the time of his arrest Orlando Álvarez Ríos was 32 years old.

79(20) He was detained in the collective arrest of September 15, 1995. Of the four victims of the present case he was the only one allowed to inform a family member that he was detained, opportunity in which he told his sister, Dilcia Álvarez Ríos, not to worry since they had told him that he would be released on Monday September 18, 1995. The victim remained in the custody of agents of the CORE VII even after the police judge registered his release. On September 17, 1995, in hours of the morning, the body of Orlando Álvarez Ríos was found dead on the North highway, at the height of kilometer 41 near the Community of Las Moras, in Tegucigalpa.

79(21) Dilcia Álvarez Ríos went to the CORE VII to ask for her brother on September 19, 1995, since he had not come back on September 18th as he had told her. In said Command they informed her that [nobody with [the] name [of Orlando Álvarez Ríos] had been there and that if he had been there he had already left.” She later went to the Office of Criminal Investigation where once again her brother was not on the list of the detainees. Finally, she went to the morgue, where she identified the body of Orlando Álvarez Ríos.

79(22) The autopsy practiced on the body of Orlando Álvarez Ríos on September 17, 1995 by the Public Prosecutors’ Office revealed that the victim presented two wounds produced by fire weapon with entrance wounds at: one behind the right ear and the other located 3 cm. under the right ear. The autopsy does not refer to blade wounds, bruises, or other marks that could have been found on the body of Orlando Álvarez Ríos.

79(23) Orlando Álvarez Ríos’ body was found with signs of having been object of sexual violence. The State did not perform exams to investigate whether the victim was sexually abused before his extrajudicial killing.

F) Arrest, torture, and extrajudicial killing of Diomedes Obed García Sánchez

79(24) Diomedes Obed García Sánchez was born on August 20, 1974 in Trujillo, Department of Colón, and he lived in the Colony of San Miguel of Tegucigalpa. He was the son of Diomedes Tito García Casildo and Andrea Sánchez Loredó. He lived in the “Nazareth” house, coordinated by Mr. Carlos Jorge Mahomar Marzuca, dedicated to offer housing to youngsters with behavioral problems and drug addictions. At the time of his arrest he was 19 years old.

79(25) He was arrested between the 15th and 16th day of September of 1995 in the surroundings of a video game establishment located next to the Church of la Merced in Tegucigalpa. He was later transported in a police vehicle to the CORE VII. His arrest was not recorded in the corresponding registries, reason for which he does not appear on the list of those “pardoned” on September 16, 1995.

79(26) Diomedes Obed García Sánchez had been previously threatened by the Lieutenant José Alberto Alfaro Martínez, when the latter told him that “he would give him fifty lempiras [...] to disappear from Tegucigalpa; and this was before being arrested, like on a Monday; and, he told

him that if he were to end up there again, he knew what would happen to him, that they were going to finish him off.” [FN24]

[FN24] Cfr. statement offered by Marvin Rafael Díaz before the Second Criminal Peace Court on March 19, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folio 1201 through 1203). In consideration of the context of the statement, the Court understands that “finish” means kill.

79(27) Marvin Rafael Díaz, in his statement given before the Public Human Rights Prosecutors’ Office on September 20, 1995, stated that Diomedes Obed García Sánchez was taken to the second floor of the CORE VII when Lieutenant Marco Tulio Regalado Hernández threatened him saying: “you see I told you what was going to happen to you the next time, that I did not want to see you here,” to which Diomedes responded that “he had been taken in without reason, that he was not stealing anything.” At the CORE VII the Lieutenants Marco Tulio Regalado Hernández, José Alberto Alfaro Martínez, Hugo Antonio Vivas, José Antonio Martínez Arrazola made death threats to Marlon Antonio Martínez Pineda, known as “Big Foot”, and to Diomedes Obed García Sánchez.

79(28) On October 30, 1995 Marlon Antonio Martínez Pineda, known as “Big Foot”, and another youngster named Milton Adaly Sevilla Guardado were found dead in a similar manner to the victims of the present case.

79(29) Days prior to his death, Diomedes Obed García Sánchez told his girlfriend “they had already told him that they were going to kill him.” [FN25] Likewise, prior to September 15, 1995, Diomedes and a friend had been arrested for being undocumented and on that day “they beat [Diomedes] up with a thole and their fists, and they tie[d] up his hands and torture[d] him and [...] they [did] nothing to [his friend].” [FN26]

[FN25] Cfr. statement offered by Krisell Mahely Amador before the Second Criminal Peace Court on October 11, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folios 1183 through 1186).

[FN26] Cfr. statement offered by Cristian Omar Guerrero Harry before the Second Criminal Peace Court on March 15, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1197 and 1198).

79(30) The body of Diomedes Obed García Sánchez was found dead in the morning of September 17, 1995, on kilometer 8 and 9 of the Olancho highway, in Tegucigalpa.

79(31) The autopsy practiced on the body on September 17, 1995, by the Public Prosecutors’ Office revealed that Diomedes Obed García Sánchez presented eight wounds produced by a fire weapon as well as three blade wounds, one of which was so deep that “they almost cut off his head.” [FN27] The entry wounds of the bullets were: one in the left temporal region, one in the

top part of the left cheekbone, one behind the right ear, one in the left cheek, one in the left pectoral region, and three bullet entries in the left hand. Besides, the body presented two blade wounds produced with a machete, one on the right side of the neck and another on his right arm, and a blade wound on the left side of his neck. The Public Prosecutors' Office did not take any pictures of the body, "due to lack of film."

[FN27] Cfr. newspaper article titled "Encuentran otros tres desconocidos ejecutados en diferentes lugares", published by the newspaper El Heraldo, on September 18, 1995 (dossier of appendixes to the petition, appendix 4, folio 967).

G) Similarities between the four illegal arrests, tortures, and extrajudicial killings

79(32) After having been arrested and having remained under the custody of the State since the 15th or 16th of September of 1995, the bodies of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez were found on September 17, 1995, after having been tortured and murdered, [FN28] in different parts of Tegucigalpa, Honduras. The points of the city in which the bodies were found, when joined together formed a circle, reason for which the case was locally known as "the four cardinal points."

[FN28] Cfr. "report on claim [No.] 9173 received [(sic)] in the DIC" issued by the human rights inspector of the DIC, Mrs. Nery Suyapa Osorio, addressed to the Main Prosecutor of the Public Human Rights Prosecutors' Office, Mrs. Marlina Durbor de Flores, on September 17, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folio 987 through 980).

79(33) The deaths of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez were "all [...] homicides, [and] the relationship between the ways in which they died is similar at the light of the characteristics of the entrance wounds of the bullets[...] reason for which we could be dealing with the same weapon[. The] injuries found, [...] are compatible with those produced by bullets from fire weapons, with signs of having been produced from short and long distances. The blade wounds [...] are compatible with those produced by a long metal object that is sharp on one of its sides, whose measures are similar and the mechanism of production is pressure that is exercised overcoming the elasticity of the tissue producing serious internal injuries. The blade wounds are compatible with those produced by a long metal instrument that is sharp on one of its sides, which acts through its weight and edge (machete) [...]" [FN29]

[FN29] Cfr. expansion of the legal medical report of the specialist in Legal Medicine and Forensic Pathology of the Public Prosecutors' Office of December 8, 1995 (dossier of appendixes to the petition, appendix 4, volume 1, folios 927 and 928).

79(34) The bullets extracted from the bodies of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, and Diomedes Obed García Sánchez were shot by the same fire weapon. The caliber of the bullet found in Orlando Álvarez Ríos' body could not be determined due to its deformation. The Human Rights inspector subordinated to the Office of Criminal Investigation expressed that its hypothesis was that the four deaths were related, reason for which he decided to investigate them in a joint manner.

79(35) In the murders of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez a common *modus operandi* was used, and they occurred within in the context of extrajudicial killings of children and youngsters in risky situations that existed at the time of the facts in Honduras (*supra paras.* 79(1), 79(2), and 79(3)).

H) Regarding the police investigations and the criminal proceedings initiated as a result of the deaths of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez

79(36) After September 18, 1995 the Main Prosecutor of the Human Rights Public Prosecutors' Office received from the Human Rights Inspector of the Office of Criminal Investigation, a report on the claim made by Mrs. Marja Ibeth Castro García for the illegal arrest of her brother Marco Antonio Servellón García and the investigations that had been carried out by the Human Rights Public Prosecutor's Office as a result of said claim. [FN30]

[FN30] Cfr. report of the Human Rights Inspector of the Office of Criminal Investigation, Nery Suyapa Osorio, addressed to the Main Prosecutor of the Human Rights Public Prosecutors' Office, Sonia Marlina Durbor de Flores, on September 17, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folio 987 through 990).

79(37) On October 5, 1995 the First Assistant of the National Human Rights Commission forwarded to the Special Human Rights Prosecutor the claim presented by Dilcia Álvarez Ríos, in which she argued that her brother Orlando Álvarez Ríos had been found dead with two bullet shots to the head. The First Assistant of the National Human Rights Commission requested that the corresponding investigations regarding the case be carried out. [FN31]

[FN31] Cfr. official letter of the First Assistant of the National Human Rights Commission, Irma Esperanza Pineda Santos, addressed to the Special Human Rights Public Prosecutor, Sonia Marlina Dubor de Flores, of October 5, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folio 952).

79(38) On March 5, 1996 Mr. Manases Betancourth Núñez, father of the minor Rony Alexis Betancourth Vásquez, presented a criminal accusation "for the crimes of Abuse of Authority and

Violation of the Duties of Officials, Illegal Arrest, and Murder against Messrs. Lieutenant Colonel David Abraham Mendoza Regional Commander of the FUSEP, the Captains [Miguel Ángel] Villatoro [Aguilar], [Egberto] Arias [Aguilar], [Rodolfo] Pagoada [Medina], [Juan Ramón] Ávila [Meza], the Effective Lieutenants Marco Tulio Regalado [Hernández], [José Francisco] Valencia [Velásquez], [Edilberto] Brizuela [Reyes], the Second Lieutenants [José] Alberto Alfaro [Martínez]*, [Leonel] Matute Chávez, [Orlando] Mejía [Murcia], [José Reinaldo] Servellón [Castillo], and [Osvaldo] López [Flores], for the same crimes against Seargents Núñez, Palacios, Adan, Zambrano, and Miranda and Cano for the same crimes against agents Laínez, [Hugo Antonio] Vivas, [José Antonio] Martínez [Arrazola], and Francisco Morales Suanzo and against the Police Judge Roxana Sierra [Ramírez], for the crimes of Illegal Arrest, Abuse of Authority, and Violation of the duties of Officials and Concealment, in detriment of the minor Rony Alexis Betancourth [Vásquez].” [FN32]

* In what refers to Mr. José Alberto Alfaro Martínez, in the documents presented by the parties he appears indistinctively with the name José Alberto or Alberto José. This Court understands that it is dealing with the same person, thus in the present Judgment it will use the name José Alberto Alfaro Martínez.

[FN32] Cfr. claim of March 5, 1996 presented by Manases Betancourth Nuñez before the Criminal Court of First Instance (dossier of appendixes to the petition, appendix 4, volume I, folios 845 through 850)

79(39) On March 5, 1996 the Criminal Court of First Instance (hereinafter “the Court”) admitted the accusation, prior obligatory proceedings, and ordered the measures and investigations that needed to be performed. [FN33]

[FN33] Cfr. ruling issued by the Criminal Court of First Instance, of March 5, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 864 through 865).

79(40) On May 6, 1996 the representative of the Public Prosecutors’ Office presented a criminal accusation before the Court against “Marco Tulio Regalado Hernández, [José Alberto] Alfaro Martínez, Hugo Antonio Vivas, José Antonio Martínez Arrazola, [and] Roxana Sierra Ramírez [...] for the crimes of murder committed in detriment of the youngsters Orlando Álvarez Ríos, Rony Alexis Betancourth [Vásquez], Marco Antonio Servellón García, and Diomedes Obed García Sánchez, [...] by [said] officials against the exercise of the rights guaranteed by the Constitution, in detriment of the existence and security of the State, and abuse of authority, in detriment of public administration.” In the charges, they requested, among others, that: 1) the corresponding arrest warrants be issued, and 2) the joining of the charges with the records of the proceedings started regarding these same facts through the indictment presented before the same Court by the Ombudsman of the Committee for the Defense of Human Rights in Honduras (CODEH), as well as those presented before the Second Criminal Peace Court of Comayagua. [FN34]

[FN34] Cfr. criminal charges presented by the Assistant District Attorney of the Special Human Rights Public Prosecutors' Office, Mercedes Suyapa Vásquez Coello before the Criminal Court of First Instance, of May 6, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 905 through 926).

79(41) On May 6, 1996 the Court admitted the charges presented by the Public Prosecutors' Office, and therefore ordered that the corresponding inquiries be made, that a communication be issued to the Second Criminal Court of Tegucigalpa and the Second Criminal Peace Court of Comayagüela, so that they could disqualify themselves from hearing the cases conducted to clarify the deaths of Marco Antonio Servellón García, Orlando Álvarez Ríos, Rony Alexis Betancourth Vásquez, and Diomedes Obed García Sánchez and which were forwarded to said Court for their continuation. Finally, the Court denied the request for an arrest warrant based on lack of sufficient grounds to do so. [FN35]

[FN35] Cfr. ruling issued by the Criminal Court of First Instance, on May 6, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1022 and 1023).

79(42) On August 6, 1996 Mr. Manases Betancourth Núñez asked the Judge to issue an arrest warrant against Messrs. Lieutenant Colonel David Abraham Mendoza; the Captains Miguel Angel Villatoro Aguilar, Egberto Arias Aguilar, Rodolfo Pagoada Medina, and Juan Ramón Avila Meza; Lieutenants Marco Tulio Regalado [Hernández], José Francisco Valencia Velásquez, and Edilberto Brizuela Reyes; Second Lieutenants José Alberto Alfaro Martínez, Leonel Matute Chavez, Orlando Mejía Murcía, José Reinaldo Servellón Castillo, and Osvaldo López Flores; the agents Núñez, Palacios, Cano, Laínez, Hugo Antonio Vivas, and Francisco Morales Suazo, and the Police Judge Roxana Sierra Ramírez, since from the preliminary proceedings presented, the persons mentioned resulted involved in the commission of the crimes denounced, in detriment of the minor Rony Alexis Betancourth Vásquez, besides "having gathered on record enough evidence verified through Expert Opinions and Doctors and issued by the Office of Criminal Investigation and Forensic Medicine [...] to produce sufficient evidence of their guilt. [FN36]"

[FN36] Cfr. complaint of the attorney Henrieck Rommel Pineda Platteros, legal proxy of Mr. Manases Betancourt Núñez, presented before the First Criminal Court of First Instance, on August 6, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folios 1210 and 1211).

79(43) On the same August 6, 1996 the Court denied the request for an arrest warrant since there were not enough grounds to issue a commitment order. The representatives of Mr. Manases Betancourth Núñez appealed said decision, and on January 21, 1997 the First Appeals Court denied the appeal presented and confirmed the decision appealed. [FN37]

[FN37] Cfr. ruling issued by the First Criminal Court of First Instance, on August 6, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folio 1212); complaint of the attorney Mercedes Suyapa Vasquez Coello presented before the First Criminal Court of First Instance requesting reconsideration and appeal in subsidy, of August 13, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1215 and 1216); and decision issued by the First Appellate Court, Tegucigalpa, Municipality of the Central District, of January 21, 1997 (dossier of appendixes to the petition, appendix 4, volume I, folios 1223 through 1226).

79(44) From March 1996 to February 2005 both the Public Prosecutors' Office and the legal authorities focused the preliminary proceedings mainly on five requests: a) inspect the installations of the Seventh Regional Command (CORE VII) in order to verify in the Registration Book of detainees the day and entry time and alleged exit of the victims; b) verify the complete name, assignment and degree of the accused in the sheet of police services for the month of September 1995, especially Marco Tulio Regalado Hernández; c) determine from the inventory of weapons if they were seized and not returned by the Police, the permits to carry weapons in force in that dependency and if the suspects possessed personal weapons assigned in 1995; d) request the expert reports that include the result of the bullets found in the victims' bodies from the Ballistics Laboratory of the Public Prosecutors' Office and e) seek the expansion of the testimony of Mrs. Liliana Ortega Alvarado. At the beginning of the year 2005, more than nine years after the facts occurred, the criminal process was still in its preliminary stages.

79(45) On May 16, 2002 the Supreme Court of Honduras requested ad efectum videndi that the Court forward the cause presented for the crime of murder in detriment of Marco Antonio Servellón García et al., in attention to the request of the Secretariat of Foreign Affairs of Honduras so that the Supreme Court could issue an analysis of the "unjustified delay in justice" in the mentioned cause. [FN38]

[FN38] Cfr. official letter of the Secretariat of the Supreme Court of Justice addressed to the First Criminal Court of First Instance, of May 21, 2002 (dossier of appendixes to the petition, appendix 4, volume II, folio 1433).

79(46) On August 12, 2002, the Criminal Chamber of the Supreme Court of Justice verified that: "1. The present investigative proceedings are still in its preliminary stages, [which pursuant to legislation] [can] not [exceed] three months. 2. [That] within the proceedings ordered by the examining judge are: identification of files, appointments, the reason for the appointment and discharges of some lieutenants and agents, without having executed the requirements ordered by the authority responsible obliged to supply the information required [and that the] Judge responsible for the investigation can not let said negligence go by without being noticed [...]. 3. The levels of investigation practiced up to now [...] have not been effective, since they have not been able to fulfill the objective of the preliminary stage of the process[,] which is the practice of

proceedings with the purpose of proving the body of the crime, discovering its authors or participants, finding out their personality and [the] nature and amount of the damage.” [FN39]

[FN39] Cfr. official letter of the Secretariat of the Supreme Court of Justice addressed to the Criminal Court of First Instance of the Judicial Section of Tegucigalpa, of August 21, 2002 (dossier of appendixes to the petition, appendix 4, volume II, folio 1433).

79(47) On January 14, 2005 once again the Public Prosecutors’ Office requested that the corresponding arrest warrants be issued against David Abraham Mendoza, Marco Tulio Regalado Hernández, José Alberto Alfaro Martínez, José Antonio Martínez Arrazola, and Roxana Sierra Ramírez. [FN40] On February 9, 2005, more than nine years after the extrajudicial killings, the Court decided to “order the immediate capture of Messrs. José Alberto Alfaro Martínez and Víctor Hugo Vivas Lozano, for considering them responsible for having committed the crimes of Torture [...] and Murder, in detriment of Orlando Álvarez Ríos, Rony Alexis Betancourth [Vásquez], Marco Antonio Servellón García, and Diomedes Obed García Sánchez and [...] the immediate capture of Mrs. Roxana Sierra Ramírez, for considering her responsible of having committed the crime of Illegal Arrest [...]” [FN41] The Public Prosecutors’ Office appealed said decision because it ordered the capture of only some of the people accused of the deaths of the victims. [FN42]

[FN40] Cfr. complaint of the attorney Tania Fiallos Rivera, Prosecutor of the Public Prosecutors’ Office, attached to the Special Human Rights Prosecutors’ Office, addressed to the Criminal Judge of First Instance, of January 14, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2317 through 2325).

[FN41] Cfr. operative ruling of the Criminal Court of First Instance of the Judicial Section of Tegucigalpa, of February 9, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2327 through 2334).

[FN42] Cfr. order of notification of the attorney Tania Fiallos Rivera, presenting an application for reconsideration and appeal in subsidy against the court’s ruling of February 9, 2005, on February 16, 2005. (dossier of appendixes to the respondent’s plea, folio 2359); and ruling of the Criminal Court of First Instance of the Judicial Section of Tegucigalpa, of February 17, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folio 2363).

79(48) On February 15, 2005 José Alberto Alfaro Martínez appeared before the Court to “present [himself] voluntarily [...] since he was aware that a process was start[ed against him] for being considered the responsible of the commission of the crimes of MURDER AND TORTURE in detriment of Messrs. Rony Alexis Betancourt [Vásquez], Diomedes Obed García Sánchez, Marco Antonio Servellón García, and Orlando Álvarez Ríos [...]” [FN43] and on that same day he offered his preliminary examination statement. [FN44] On February 20, 2005 Mr. José Alberto Alfaro Martínez requested, within the legal term to make inquiries, that the Court declare a definitive dismissal, since the incriminating conditions necessary to issue a commitment order had disappeared. [FN45]

[FN43] Cfr. brief of Alberto José Alfaro Martínez presented before the Criminal Court of First Instance, Judicial Section of Tegucigalpa, of February 15, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2344 and 2345).

[FN44] Cfr. record of the preliminary examination statement of José Alberto Alfaro Martínez given before the First Criminal Court of First Instance, on February 15, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2351 through 2355).

[FN45] Cfr. complaint of the attorneys Isis B. Linares Mendoza and Juan Pablo Aguilar Galo, addressed to the Criminal Judge of First Instance, Judicial Section of Tegucigalpa, of February 20, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2372 through 2383).

79(49) On February 21, 2005 the Court issued a commitment order against José Alberto Alfaro Martínez, it declared the preliminary proceeding closed and forwarded the proceedings to full trial. [FN46] On the next day, the defense attorneys of José Alberto Alfaro Martínez appealed said decision. [FN47] On June 22, 2005 the First Appellate Court declared the appeal presented admissible, it revoked the commitment order against Mr. José Alberto Alfaro Martínez and issued a definitive dismissal of the proceedings in his favor. [FN48]

[FN46] Cfr. ruling of the Criminal Court of First Instance, of the Judicial Section of Tegucigalpa of the Department of Francisco Morazán, of February 21, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2393 through 2400).

[FN47] Cfr. order of notification of the attorney Juan Pablo Aguilar Galo and the attorney Isis B. Linares Mendoza presenting an application for reconsideration and appeal in subsidy, of February 22, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folios 2401 through 2402), and official letter of the First Supreme Court of Appeals addressed to the Criminal Court of the Judicial Section of Tegucigalpa of the Department of Francisco Morazán, of April 14, 2005 (dossier of appendixes of evidence to facilitate adjudication of the case, folio 2412).

[FN48] Cfr. judgment of the Supreme Court of Justice, Constitutional Chamber, of December 14, 2005 (dossier of evidence to facilitate adjudication of the case, appendix A, folios 3241 through 3252).

79(50) On June 22, 2005 the First Appellate Court declared the appeal presented against the ruling of February 9, 2005 inadmissible (supra para. 79(47)), since it understood that “the arrest warrants issued at its time against some of the accused were issued by the Judge in the exercise of his powers and supposing that there were grounds to do so only with regard to the same, reason for which the decision appealed was in accordance with the law.” [FN49] On August 2, 2005 the Public Prosecutors’ Office presented an appeal of relief against this decision, which was decided on by the Supreme Court of Justice on December 14, 2005, which in application of, among others, Articles 8 and 25 of the American Convention, accepted the appeal of relief, “so that a new decision could be issue[d] [deciding the appeal presented by the Public Prosecutors’

Office against the ruling of February 9, 2005] with the motives and grounds ordered by the due process.” [FN50] (supra para. 79(47))

[FN49] Cfr. ruling of the First Appellate Court, of June 22, 2005 (dossier of evidence to facilitate adjudication of the case, appendix A, folios 3229 through 3240).

[FN50] Cfr. ruling of the Supreme Court of Justice, Constitutional Chamber, of December 14, 2005 (dossier of evidence to facilitate adjudication of the case, appendix A, folios 3241 through 3252).

79(51) Up to the date of the present Judgment the criminal trial is still in process, the Court has decided to close the preliminary proceedings and forward the procedures to full trial, decision that is still pending an appeal (supra paras. 79(49) and 79(50)). Likewise, the Court has issued arrest warrants against three of the accused, Messrs. Víctor Hugo Vivas Lozano, Roxana Sierra Ramírez, and José Alberto Alfaro Martínez. Regarding the first two, said orders have not been effective. In what refers to Mr. José Alberto Alfaro Martínez, who had been in preventive detention, on the date of the present Judgment, he has been released since the case was dismissed in his favor (supra para. 79(49)).

D) On the victims’ next of kin

79(52) The next of kin of Marco Antonio Servellón García are Reyes Servellón Santos, father, who passed away after the facts; Bricelda Aide García Lobo, mother; Marja Ibeth Castro García, sister; Pablo Servellón García, brother, and Héctor Vicente Castro García, brother.

79(53) The next of kin of Rony Alexis Betancourth Vásquez are Manases Betancourth Núñez, father; Hilda Estebana Hernández López, mother; Juan Carlos Betancourth Hernández, brother; Manaces Betancourt Aguilar, brother; Emma Aracely Betancourth Aguilar, sister; Enma Aracely Betancourth Abarca, sister; Lilian María Betancourt Álvarez, sister; Ana Luisa Vargas Soto, partner; Zara Beatris Bustillo Rivera, daughter, and Norma Estela Bustillo Rivera, mother of Zara Beatriz.

79(54) The next of kin of Orlando Álvarez Ríos are Concepción Álvarez, father, who passed away on October 15, 1982; Antonia Ríos, mother, and Dilcia Álvarez Ríos, sister.

79(55) The next of kin of Diomedes Obed García Sánchez are Diomedes Tito García Casildo, father; Andrea Sánchez Loredó, mother, who passed away on October 25, 1985; Esther Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings.

79(56) Messrs. Reyes Servellón Santos and Bricelda Aide García Lobo, the parents of Marco Antonio Servellón García; and Manases Betancourth Núñez and Hilda Estebana Hernández López, the parents of Rony Alexis Betancourth Vásquez, suffered when they found out of the ways in which their sons were arrested and kept imprisoned under an illegal arrest, submitted to

torture and cruel, inhuman, and degrading treatment, and then extra judicially killed, as well as for the way in which the victims' bodies were found, in different parts of the city of Tegucigalpa, along side the street. Rony Alexis Betancourth Vásquez's mother also suffered upon recognizing her son's mortal remains, since she hoped he was safe under the State's custody. These next of kin have been submitted to a deep suffering and anguish in detriment of their mental and moral integrity.

79(57) Dilcia Álvarez Ríos, the sister of Orlando Álvarez Ríos, has suffered as a consequence of the death of her brother, with whom she lived at the time of the facts and with who she had a close affective relationship and she suffered of anguish and pain when she saw that her brother did not come home like he had promised. On Monday September 19, 1995, she looked for her brother and made several diligences to find him. She was informed that the victim was not detained in the CORE VII, until she finally found her brother's body in the morgue. She has suffered in the search for justice she started. Likewise, Marja Ibeth Castro García, sister of Marco Antonio Servellón García, has suffered due to the arrest conditions and extrajudicial killing of her brother, when he was under the custody of state authorities, and during the proceedings she carried out to present a claim for the facts occurred. [FN51]

[FN51] Cfr. statement of Dilcia Álvarez Ríos given before the Criminal Peace Court of Tegucigalpa, on February 23, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1102 and 1103); and report of the Human Rights Inspector of the Office of Criminal Investigation, Nery Suyapa Osorio, addressed to the Main Prosecutor of the Human Rights Prosecutors' Office, Sonia Marlina Dubor de Flores, on September 17, 1995 (dossier of appendixes to the petition, appendix 4, volume I, folios 987 through 990).

79(58) Ana Luisa Vargas Soto maintained an affectionate bond and was the partner of Rony Alexis Betancourth Vásquez. [FN52]

[FN52] Cfr. statement offered by Ana Luisa Vargas Soto before the First Criminal Court of First Instance on March 07, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 867 through 870), and statement given by Manases Betancourt Nuñez before the Second Criminal Peace Court on March 7, 1996 (dossier of appendixes to the petition, appendix 4, volume I, folios 1137 through 1140).

79(59) The girl Zara Beatris Bustillo Rivera is the daughter of Rony Alexis Betancourth Vásquez.

J) Costs and Expenses

79(60) Casa Alianza has incurred in a series of expenses in the domestic jurisdiction. The Center for Justice and International Law (CEJIL) and Casa Alianza have incurred in expenses related to

the processing of the present case before the bodies of the Inter-American System for the Protection of Human Rights, in representation of some of the victims' next of kin. [FN53]

[FN53] Cfr. receipts of expenses of CEJIL (appendixes to the brief of pleadings and motions, volume II, folios 2255 through 2259, and dossier of appendixes to the brief of final arguments presented by the representatives, folios 2252 through 2254; and 2258 through 2260).

VIII. VIOLATION OF ARTICLES 4(1), 5(1), 5(2), AND 5(5), 7(1), 7(2), 7(3), 7(4), AND 7(5), AND 19, OF THE AMERICAN CONVENTION, IN RELATION WITH ARTICLE 1(1) OF THE SAME (Right to Life, to Humane Treatment, to Personal Liberty, Rights of the Child and Obligation to Respect Rights)

80. The Court in Chapter VI concluded that the State acknowledged its international responsibility for the violation of Articles 4(1), 5(1) and 5(2) and 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention, in relation with Article 1(1) of said instrument, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, and Articles 5(5) and 19 of the Convention, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez. Based on the aforementioned, the Court will not summarize the arguments presented by the Commission, the representatives, and the State.

Considerations of the Court

81. 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 office 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.

[...]

82. Article 5 of the American Convention establishes 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.

[...]

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

[...]

83. Article 4 of the Convention states that

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

[...]

84. Article 19 of the Convention establishes that

[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

85. Article 1(1) of the American Convention states that

[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

86. The Convention has enshrined the prohibition of an illegal or arbitrary detention or imprisonment as the main guarantee of personal liberty and security. The Court has stated, with regard to illegal arrests, “that even though [...] the State has the right and obligation to guarantee its security and maintain public order, its power is not unlimited, since it has the duty, at all times, to apply procedures pursuant to Law and respectful of the fundamental rights, of all individual under its jurisdiction.” [FN54]

[FN54] Cfr. Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 124; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 86; and Case of Hilaire, Constantine and Benjamín et al. Judgment of June 21, 2002. Series C No. 94, para. 101.

87. Therefore with the purpose of maintaining public security and order, the State legislates and adopts different measures of a diverse nature to prevent and regulate the behavior of its citizens, one of which is to promote the presence of police forces in public spaces. However, the Court points out that any incorrect action of those state agents in their interaction with the persons it must protect, represents one of the main threats to the right to personal liberty, which, when violated, generates a risk of violation to other rights, such as humane treatment and, in some cases, life.

88. Article 7 of the Convention enshrines guarantees that represent limits to the exercise of authority by State agents. Those limits are applied to the instruments of state controls, one of which is the detention. Said measure shall be pursuant to the guarantees enshrined in the Convention as long as its application has an exceptional nature, it respects the principle of presumption of innocence and the principles of legality, need, and proportionality, all of which are strictly necessary in a democratic society. [FN55]

[FN55] Cfr. Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 67; Case of García Asto and Ramírez Rojas. Judgment of November 25, 2005. Series C No. 137, para. 106; and Case of Palamara Iribarne, supra note 10, para. 197.

89. A restriction to the right to personal liberty, such as an arrest, must be carried out only due to the causes and the conditions previously established by the Political Constitutions or by the laws enacted pursuant to them (material aspect), as well as strictly subject to the procedures objectively defined in the same (formal aspect). [FN56] At the same time, the legislation that establishes the grounds for a restriction to personal liberty must be issued pursuant to the principles that govern the Convention, and be conducive to the effective observation of the guarantees established thereto.

[FN56] Cfr. Case of the Ituango Massacres, supra note 3, para. 149; Case of López Álvarez, supra note 55, para. 58; and Case of the Pueblo Bello Massacre, supra note 7, para. 108.

90. Likewise, the Convention prohibits the arrest or imprisonment by methods that although qualified as legal, may in the practice result unreasonable or out of proportion. [FN57] The Court has established that in order to comply with the requirements necessary to restrict the right to personal liberty, there must be sufficient evidence to lead to a reasonable supposition of guilt of the person submitted to a proceeding and the arrest must be strictly necessary to ensure that the accused party will not impede an effective development of the investigations nor will he evade the action of justice. When ordering restrictive measures to freedom it is precise that the State justify and prove the existence, in the specific case, of those requirements demanded by the Convention. [FN58]

[FN57] Cfr. Case of López Álvarez, supra note 55, para. 66; Case of García Asto and Ramírez Rojas, supra note 55, para. 105; and Case of Palamara Iribarne, supra note 10, para. 215.

[FN58] Cfr. Case of López Álvarez, supra note 55, para. 69; Case of Palamara Iribarne, supra note 10, para. 198; and Case of Acosta Calderón, supra note 13, para. 111.

91. In this case the arrest of the victims was part of a collective and programmed arrest, in which approximately 128 people were detained, without an arrest warrant and without having

been caught in the act of committing a crime, and that was carried out with the declared purpose of avoiding disturbances during the parades that would take place to celebrate the National Independence Day (supra para. 79(5)).

92. The Tribunal understands that a collective arrest may represent a mechanism to guarantee public security when the State has elements to prove that the actions of each of the persons affected fits into one of the causes of arrest established in its internal norms consistent with the Convention. That is, when there are elements to individualize and separate the behaviors of each of the detainees and that there is, at the same time, control of the judicial authority.

93. Therefore, a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest. Consistent with the aforementioned, in the Case of Bulacio the Court established that the razzias are not compatible with the respect for fundamental rights, among others, the presumption of innocence, the existence of a legal arrest warrant –except in the case of a crime detected in the act- and the obligation to inform the legal guardians of all minors. [FN59]

[FN59] Cfr. Case of Bulacio, supra note 54, para. 137.

94. This Tribunal considers that the fundamental principle of equality and non-discrimination belongs to the realm of jus cogens that, of a peremptory character, entails obligations erga omnes of protection that bind all States and result in effects with regard to third parties, including individuals. [FN60]

[FN60] Cfr. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 110.

95. The Tribunal, in its Advisory Opinion OC-18 on the Judicial Condition and Rights of Undocumented Migrants, established that there is an indissoluble bond between the obligation to respect and guarantee human rights and the fundamental principle of equality and non-discrimination, and that it must permeate all the State's actions. [FN61] In that sense, the State may not act against a specific group of people, owing to reasons of gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status. [FN62]

[FN61] Cfr. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03, supra note 60, para. 85.

[FN62] Cfr. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03, supra note 60, paras. 100 and 101.

96. Programmed and collective arrests, which are not well-founded on the individualization of punishable acts and that lack judicial control, are contrary to the presumption of innocence, they wrongfully coerce personal liberty and they transform preventive detention into a discriminatory mechanism, reason for which the State may not perform them under any circumstance.

97. On its part, Article 5 of the American Convention expressly acknowledges the right to humane treatment, which implies the absolute prohibition of torture and cruel, inhuman, or degrading punishments or treatments. This Tribunal has constantly considered in its jurisprudence that said prohibition is currently encompassed in the *jus cogens*. [FN63] The right to humane treatment may not be suspended under any circumstance. [FN64]

[FN63] Cfr. Case of Montero Aranguren et al., supra note 12, para. 85; Case of Ximenes Lopes, supra note 3, para. 126; Case of the Ituango Massacres, supra note 3, para. 252; Case of Baldeón García, supra note 3, para. 117; Case of García Asto and Ramírez Rojas, supra note 55, para. 222; Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No 126, para. 117; Case of Caesar, supra note 13, para. 59; Case of Lori Berenson Mejía. Judgment of November 25, 2004. Series C No.119, para. 100; Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 125; Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 143; Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, paras. 111 and 112; Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, paras. 89 and 92; Case of Bámaca Velásquez. Judgment of November 25, 2000, Series C No. 70, para. 154; and Case of Cantoral Benavides. Judgment of August 18, 2000. Series C No. 69, para. 95.

[FN64] Cfr. Case of Ximenes Lopes, supra note 3, para. 126; Case of the Pueblo Bello Massacre, supra note 7, para. 119; and Case of the “Juvenile Reeducation Institute”. Judgment of September 2, 2004. Series C No. 112, para. 157.

98. Article 4 of the Convention guarantees the right of every human being to not be deprived of his life arbitrarily, which includes the need that the State adopt substantive measures to prevent the violation of this right, as would be the case of all measures necessary to prevent arbitrary killings by its own security forces, as well as to prevent and punish the deprivation of life as a consequence of criminal acts carried out by individual third parties. [FN65]

[FN65] Cfr. Case of Montero Aranguren et al., supra note 12, para. 64; Case of Ximenes Lopes, supra note 3, para.125; and Case of the Ituango Massacres, supra note 3, para. 131.

99. In the present case, the victims were detained collectively, illegally and arbitrarily, submitted to torture and cruel, inhuman, and degrading treatments during their detention. They were hit on the head with guns and chairs, accused of being thieves” and they were isolated and tied up during their detention in the CORE VII. While under state custody, and fulfilling the

threats made by state agents, they were murdered with fire weapons and cutting and thrusting weapons (supra paras. 79(5) through 79(31)). The minor Marco Antonio Servellón García was killed with four shots from a fire weapon to his face and head. The minor Rony Alexis Betancourth Vásquez received two shots from a fire weapon to the head, and four blade wounds, three of which were located on his chest. Orlando Álvarez Ríos died as a consequence of two shots from a fire weapon and his body presented signs that he had been object of sexual violence prior to his death. Diomedes Obed García Sánchez was killed by eight shots produced by a fire weapon, besides three blade wounds, two of them made with a machete, one of which was so deep that it “almost [...] cut off his head.” (supra para. 79(31)). The extreme cruelty with which the victims were killed, depriving them of their life in a humiliating manner, the marks of physical torture present in the four bodies, and the manner in which their bodies were abandoned out in the open, were serious assaults against the right to life, to humane treatment, and personal liberty.

100. In this regard, in the statement offered by Marvin Rafael Díaz in the Second Criminal Peace Court on March 19, 1996, he stated that “lieutenant Alfaro [...] said, [‘]leave these separate for me[’], the four appeared dead on Sunday September 17, [1995]; and he could observe that they were tied with some rope he had, and he saw that DIOMEDES was crying[. They were] tied to a Plywood [(sic)], looking towards the wall, [...]. They were nervous, because they were afraid they were going to be killed, since they had been warned and [they had been told] they belonged to the MARA OF THE [POISON] and that they were out to get them.” (supra para. 79(7)) On her part, Krisell Mahely Amador, the girlfriend of Diomedes Obed García Sánchez, in her statement offered before the Special Human Rights Prosecutor on October 11, 1995, stated that days before his death, the victim told her “that they had already told him that they were going to kill him.” (supra para. 79(29))

101. Likewise, this Court points out the treatment received by the underage victims. Rony Alexis Betancourth Vásquez indicated through signs to Carlos Yovanny Arguijo Hernández, who had also been arrested on that same day, that he was going to be killed, “that he was going to have his head cut off, since [Rony] took one of his hands to his neck, making him understand [...] and what was what he heard him say ‘if they kill me, they kill me...’ since [Rony] told [him] that they were saying that he belonged to the mara of the poison.” (supra para. 79(15)).

102. Any form of exercise of public power that violates the rights acknowledged by the Convention is illegal. [FN66] The Court has stated that the States respond for the acts of its agents, carried out under the protection of their official nature, and for the omissions of the same, even when they act outside the limits of their competence or in violation of their domestic legislation. [FN67] The States must especially supervise that their bodies of security, which are attributed the use of legitimate force, respect the right to life of those under its jurisdiction. [FN68]

[FN66] Cfr. Case of Ximenes López, supra note 3, para. 84; Case of the “Mapiripán Massacre”, supra note 9, para. 108; and Case of the Gómez Paquiyauri Brothers, supra note 63, para. 72.

[FN67] Cfr. Case of Ximenes Lopes, supra note 3, para. 84; Case of the Pueblo Bello Massacre, supra note 7, para. 111; and Case of the “Mapiripán Massacre”, supra note 9, para. 108.

[FN68] Cfr. Case of Montero Aranguren et al., supra note 12, para. 66.

103. In the present case agents of the police force, making illegal use of their authority, arrested and killed the victims. In this regard, the Court has reiterated that when dealing with the right to life, the State has the obligation to guarantee the creation of the conditions required to avoid violations of that inalienable right, [FN69] and that its violation is especially serious when it is produced by state agents, fact acknowledged by the State in its assent.

[FN69] Cfr. Case of Montero Aranguren et al., supra note 12, para. 64; Case of Ximenes Lopes, supra note 3, para. 125; Case of the Ituango Massacres, supra note 3, para. 129; Case of Baldeón García, supra note 3, para. 83; Case of the Sawhoyamaxa Indigenous Community, supra note 7, para. 151; Case of the Pueblo Bello Masacre, supra note 7, para. 120; Case of Huilca Tecse. Judgment of March 3, 2006. Series C No. 121, para. 65; Case of the “Juvenile Reeducation Institute”, supra note 64, para. 156; Case of the Gómez Paquiyauri Brothers, supra note 63, para. 128; Case of 19 Tradesmen. Judgment of July 12, 2003. Series C No. 93, para. 153; Case of Myrna Mack Chang, supra note 9, para. 152; Case of Juan Humberto Sánchez, supra note 54, para. 110; and Case of the “Street Children” (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144.

104. Besides the aforementioned, the Court has established, that the facts of this case occurred within the framework of a context of violence against children and youngsters in situations of social risk in Honduras (supra paras. 79(1), 79(2), 79(3) and 79(35)).

105. The Tribunal points out that, even though in the dossier of the present case the existence, at the time of the facts, of a systematic pattern of violations of human rights in detriment of children and youngsters in risky situation has not been proven, the context of violence within which the violations to the rights to life, humane treatment, and personal liberty occurred in this case has been proven.

106. It is necessary to point out that the State said before the Court that “since 1997 and up to this date [of presentation of the respondent’s plea, on July 4, 2005], an important number of violent deaths of children has been recorded,” and that the State “[...] has been doing important efforts to strengthen a policy for the protection of children and their rights in general and, specifically, to counteract the phenomenon of deaths of minors.” The State acknowledges the existence of what it has called the phenomenon of violent deaths of minors, although it denies the argument that the phenomenon is the result of a policy of “social prophylaxis”.

107. However, the Court has affirmed that international responsibility appears immediately with the international crime attributed to the State, and it is the consequence of any damage to human rights that may be attributed to that action, as well as the omission, of any power or body of the same. [FN70] International responsibility may also be attributed even in the absence of intention, and the acts that violate the Convention are the State’s responsibility regardless of the fact that they are or not a consequence of a deliberate state policy.

[FN70] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 172; Case of Baldeón García, *supra* note 3, para. 140; and Case of the Pueblo Bello Massacre, *supra* note 7, para. 112.

108. The positive duty, derived from the obligation to respect and guarantee, of creating the conditions required to avoid violations to human rights in circumstances such as that of the present case, in which there has been a context of violence characterized by extrajudicial killings and impunity, becomes the State's duty to stop the conditions that allow the repeated occurrence of the arbitrary deprivations of life and their lack of investigation.

109. In the present case, it has been proven that the State did not adopt the measures necessary to change the context of violence against children and youngsters, framework within which Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez were killed. This makes the State's international responsibility worse.

110. The mentioned context was marked by the stigmatization of the youngsters as the alleged responsible parties for the increase in public insecurity in Honduras and by the identification, as young delinquents, of the children and youngsters in situations of social risk, that is, poor, in situations of vagrancy, without stable employment or that suffer from other social problems (*supra* para. 79(1)).

111. Regarding that link between poverty and violence directed to children and youngsters, the Special Rapporteur of the United Nations for Extrajudicial, Summary, or Arbitrary Killings, stated in her report of June 14, 2003 regarding Honduras, that "[e]ven though children are vulnerable and they are exposed to abuses and to crime due to lack of autonomy, juvenile delinquency can never be used to justify the killing of children by security forces in order to maintain public order." [FN71]

[FN71] Cfr. Civil and political rights, specifically the matters related with the disappearances and summary killings. Extrajudicial, summary or arbitrary killings. Report of the Special Rapporteur, Mrs. Asma Jahangir, presented in compliance of decision 2002/36 of the Human Rights Commission. Addition. Mission to Honduras. E/CN.4/2003/3/Add.2. of June 14, 2002.

112. The Court warns that, in attention to the principle of equality and non-discrimination, the State cannot allow that its agents, nor can it promote in the society practices that reproduce the stigma that poor children and youngsters are conditioned to delinquency, or necessarily related to the increase in public insecurity. That stigmatization creates a climate propitious so that those minors in risky situations are constantly facing the threat that their lives and freedom be illegally restrained.

113. The previous is especially serious in the present case, since Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez were juveniles. In Advisory Opinion No. 17 on the Juridical Condition and Human Rights of the Child, the Court stated that the cases in which the victims of violations to human rights are boys and girls, who also have special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State, are especially gross. [FN72] The Tribunal understands that the due protection of children's rights must take into consideration the characteristics of children themselves and the need to foster their development, and it must offer them the conditions necessary so that the child may live and develop his abilities with full use of his potential. [FN73] Likewise, the Court mentioned that Article 19 of the Convention must be understood as a complementary right that the treaty established for human beings that due to their physical and emotional development require special measures of protection. [FN74]

[FN72] Cfr. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 54. Cfr. also, Case of the Ituango Massacres, supra note 3, para. 244; Case of the "Mapiripán Massacre", supra note 9, para. 152; and Case of the girls Yean and Bosico. Judgment of September 8, 2005. Series No C 130, para. 33.

[FN73] Cfr. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 72, para. 56. Cfr. also, Case of the Ituango Massacres, supra note 3, para. 244; Case of the "Mapiripán Massacre", supra note 9, para. 152; and Case of the Gómez Paquiyauri Brothers, supra note 63, para. 163.

[FN74] Cfr. Case of the Ituango Massacres, supra note 3, para. 244; Case of the "Mapiripán Massacre", supra note 9, para. 152; and Case of the "Juvenile Reeduction Institute", supra note 64, para. 147.

114. The Tribunal in the Case of the "Street Children" (Villagrán Morales et al.) established that special assistance to the children deprived of their family environments, the guarantee of survival and development of the child, the right to an adequate life style, and the social reinsertion of all children victims of abandonment or exploitation should be included within the measures of protection referred to in Article 19 of the Convention. [FN75] The State has the duty to adopt positive measures to fully ensure effective exercise of the rights of the child. [FN76]

[FN75] Cfr. Case of the "Street Children" (Villagrán Morales et al.), supra note 69, para. 196; and Case of the "Street Children" (Villagrán Morales et al.). Reparations (Art.63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 90.

[FN76] Cfr. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 72, para. 91.

115. The then National Human Rights Commissioner, in his report titled "Special Report on the Violent Deaths of Boys, Girls, and Teenagers in Honduras" of January 21, 2002, mentioned that "since Honduras returned to a constitutional order in the year 1980, no government adopted

actions or extraordinary budgets to protect and attend to the needs of the children, despite the seriousness of the situation.” Regarding the violence that affects a sector of Honduras’ youth, he stated that

[the] substitution of investigation and analysis for a journalistic coverage of the matter characterized by “sensationalism” [took place], through which the “marero” was stereotyped or labeled as a “criminal”, despite the fact that the numbers provided by the General Office of Criminal Investigation (DIC) confirmed that those under the age of 18 are not the main protagonists of public insecurity. Of 42 thousand claims received up to February 2000, only 5.5% of those responsible were under the age of 18. One investigation on Gangs and Juvenile Violence stated that “it is not unusual to find in the pages dedicated to accident and crime reports in the local press, chronicles dedicated to the narration of criminal and violent actions perpetrated by teenagers and young mareros or gang members. This wide reception that their activities have had in the local press has contributed to projecting before the public opinion an image that the young maras or gangs are made up of incorrigible teenagers and youngsters for who the only alternative of social prophylaxis is a life sentence or death.”

116. The State has the obligation to ensure the protection of children and youngsters affected by poverty and socially alienated [FN77] and, especially, to avoid their social stigmatization as criminals. It is convenient to point out, as did the Court in the Case of the “Street Children” (Villagrán Morales et al.), that if the States have elements to believe that the children in risky situations are affected by factors that may lead them to commit criminal acts, or it has elements to conclude that they have committed them, in specific cases, they must go to an extreme with criminal prevention measures. [FN78] The State must assume its special position of protector with greater care and responsibility, and it must take special measures oriented toward the principle of the child’s greater interest. [FN79]

[FN77] Cfr. Health and development of teenagers within the context of the Convention of Children’s Rights, July 21, 2003, UN Document CRC/GC/2003/4.

[FN78] Cfr. Case of the “Street Children” (Villagrán Morales et al.), supra note 69, para. 197; and Guidelines from the United Nations for the prevention of juvenile delinquency (Riad Guidelines). Adopted and proclaimed by the UN General Assembly in its ruling 45/112 of December 4, 1990, Chapter III, para. 9.

[FN79] Cfr. Case of the Gómez Paquiyauri Brothers, supra note 63, paras. 124, 163 through 164, and 171; Case of Bulacio, supra note 54, paras. 126, 133, and 134; Case of the “Street Children” (Villagrán Morales et al.), supra note 69, paras. 146 and 195; and Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 72, para. 60.

117. The facts of the present case occurred in reason of the victims’ condition of people in situations of social risk, which proves that the State did not provide Marco Antonio Servellón García or Rony Alexis Betancourth Vásquez with an environment that would protect them from violence and abuse, nor did it allow them access to basic services and goods, in such a way that said absence without doubt deprived the minors of their possibility to emancipate, develop, and become adults that could determine their own future.

118. The Court cannot leave unmentioned that the facts of the present case are part of a situation in which a high level of impunity prevails in criminal acts carried out both by state agents and individuals (supra paras. 79(2) and 79(4)), which creates a propitious field for violations like those of this case to keep on occurring.

119. The Court has established that one of the conditions to effectively guarantee the rights to life, humane treatment, and personal liberty is the compliance with the duty to investigate the violations to the same, which derive from Article 1(1) of the Convention, along with the substantive right that must be protected, or guaranteed. [FN80] At the light of this duty, once the state authorities become aware of the fact, they must begin a serious, impartial, and effective investigation ex officio and without delay. [FN81] This investigation must be carried out through all legal means available and oriented to the determination of the truth and the investigation, persecution, capture, prosecution, and in its case, punishment of all those responsible for the facts. [FN82]

[FN80] Cfr. Case of Ximenes Lopes, supra note 3, para. 147; Case of the Ituango Massacres, supra note 3, para. 297; and Case of Baldeón García, supra note 3, para. 92.

[FN81] Cfr. Case of Montero Aranguren et al., supra note 12, para. 79; Case of Ximenes Lopes, supra note 3, para. 148; and Case of the Ituango Massacres, supra note 3, para. 296.

[FN82] Cfr. Case of Ximenes Lopes, supra note 3, para. 148; Case of Baldeón García, supra note 3, para.94; and Case of the Pueblo Bello Massacre, supra note 9, para. 143.

120. This Tribunal has specified that the efficient determination of truth within the framework of the obligation to investigate a death that could have been the result of an extrajudicial killing, must occur as of the moment of the first proceedings with all due precision. The Court has mentioned that the Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary, and Summary Killings of the United Nations must be taken into account in orienting said proceedings. [FN83] The state authorities that carry out an investigation must, inter alia, a) identify the victim; b) recover and preserve the evidentiary material related to the death; c) identify possible witnesses and obtain their statements with regard to the death that is being investigated; d) determine the cause, form, place, and time of death, as well as any procedure or practice that could have caused it, and e) distinguish between a natural death, an accidental death, suicide, and homicide. Besides, it is necessary to thoroughly investigate the crime scene, autopsies and competent professionals employing the most appropriate procedures must carefully practice analysis of the human remains.

[FN83] Cfr. Case of Montero Aranguren et al., supra note 12, para. 140; Case of Ximenes Lopes, supra note 3, para. 179; Case of the Ituango Massacres, supra note 3, para. 298; and Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary, and Summary Killings of the United Nations, E/ST/CSDHA/.12 (1991).

121. The Court observes that in the case sub judice several proceedings were performed, but they presented important omissions, such as:

- a) the removal of the victims' bodies was done on September 17, 1995, without assuring the recollection and preservation of the crime scene. Blood samples of the victims were not taken, nor were their clothes examined. There is no evidence that the crime scene was analyzed for the presence of blood, hairs, or fibers or any type of fingerprints, nor were the bodies or objects examined to determine the existence of fingerprints. In the photographs of the bodies in the case file the existence of wounds or torture markings cannot be appreciated, and in some of the cases the photographs are only of the top part of the body. This becomes more serious in two of the proceedings regarding the removal of the bodies of Marco Antonio Servellón García and Diomenes Obed García, since the record indicates that photographs of the bodies were not taken due to lack of film for the camera;
- b) in the case of Orlando Álvarez Ríos the body appeared with signs of having been the object of sexual violence by the aggressors, however, no exam was run to prove it. The Public Prosecutor's Office in charge of the investigation did not request proceedings in this sense, and
- c) the autopsies of Marco Antonio Servellón García, Rony Alexis Betancourth Vázquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos were included in the criminal proceedings before the First Criminal Court on June 7 and August 5, 1996. In said autopsies the cause of death of each of the victims was stated and the existence of wounds produced with fire weapons or cutting and thrusting weapons was mentioned, but they did not refer to other types of wounds or torture markings or physical violence in the bodies.

122. In what refers to other marks or injuries in the victims' bodies, in the report of claim No. 9173, issued by the Main Prosecutor of the Human Rights Public Prosecutors' Office on September 17, 1995, it indicated that "all [the bodies] had signs of torture." Despite the conclusion of said report, the prosecutors' office in charge did not request the performance of a new autopsy or of additional exams to investigate and document the torture practiced on the victims prior to their death.

123. In cases of extrajudicial killings it is essential that the States effectively investigate the deprivation of the right to life, and in its case, punish all those responsible, especially when state agents are involved, since on the contrary, it would be creating, within an environment of impunity, the conditions necessary for the repetition of this type of facts, which is contrary to the duty to respect and guarantee the right to life. [FN84] Besides, if the acts that violate human rights are not investigated seriously, they would, in some way, result aided by public power, which compromises the State's international responsibility. [FN85]

[FN84] Cfr. Case of Baldeón García, *supra* note 3, para. 91; Case of the Pueblo Bello Massacre, *supra* note 7, para. 143; and Case of Myrna Mack Chang, *supra* note 9, para. 156.

[FN85] Cfr. Case of Baldeón García, *supra* note 3, para. 91; Case of the Pueblo Bello Massacre, *supra* note 7, para. 145; Case of the "Mapiripán Massacre", *supra* note 9, paras. 137 and 232.

124. To determine if the obligation to protect the rights to life, humane treatment and personal liberties through a serious investigation of what has occurred, has been fully complied with, the procedures opened at an internal level destined to identifying those responsible for the facts of the case must be examined. This exam shall be made in the light of that stated in Article 25 of the American Convention and of the requirements imposed by Article 8 of the same for all proceedings, and it will be carried out in Chapter IX of the present Judgment.

125. The previous considerations lead the Court to conclude that, for having failed in its duties of respect, prevention, and protection of the rights to life, a humane treatment, and personal liberties as a consequence of the illegal and arbitrary arrest, torture, and cruel, inhuman or degrading treatment, and the death of the victims, the State is internationally responsible for the violation of Articles 7(1), 7(2), 7(3), 7(4) and 7(5), 5(1) and 5(2), and 4(1) of the American Convention in relation to Article 1(1) of said treaty, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, as well as for the violation of Article 5(5) of the Convention in connection with Article 19 of that instrument, both in relation to Article 1(1) of the same treaty, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez.

126. The Tribunal goes on to analyze that argued by the Commission and the representatives regarding the violation of Article 5(1) and 5(2) of the American Convention, in detriment of the victims, due to the alleged anguish and suffering experimented as a consequence of the illegal arrest, torture, and extrajudicial killing of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, as well as for the circumstances surrounding their murder, and for the treatment given to their bodies, since they were found with marks of violence and abandoned outdoors in different parts of the city of Tegucigalpa, which would have constituted for their next of kin a cruel, inhuman, or degrading treatment. Added to that, the frustration and helplessness before the lack of investigation of the facts and punishment of those responsible, eleven years after the occurrence of the facts.

127. In its assent, the State did not refer expressly to the alleged violation of Article 5 of the Convention, in detriment of the victims' next of kin.

128. This Court has mentioned, on repeated opportunities, [FN86] that the next of kin of the victims of violations of human rights may be, at the same time, victims. The Tribunal has considered the right to mental and moral integrity of some of the victims' next of kin violated based on the suffering they have undergone as a consequence of the specific circumstances of the violations committed against their loved ones and based on the subsequent actions or omissions of state authorities regarding the facts.

[FN86] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 156; Case of Baldeón García, *supra* note 3, para. 128; and Case of Gómez Palomino, *supra* note 7, para. 60.

129. Having analyzed the circumstances of the case, the Court considers that the illegality and arbitrariness of the arrest of Marco Antonio Servellón García and of Rony Alexis Betancourth Vásquez, the torture and cruel, inhuman, or degrading treatment to which they were submitted, and the extreme cruelty of their extrajudicial killing, breached the right to humane treatment of Messrs. Reyes Servellón Santos and Bricelda Aide García Lobo, parents of Marco Antonio Servellón García, and of Messrs. Manases Betancourth Núñez and Hilda Estebana Hernández López, parents of Rony Alexis Betancourth Vásquez. Regarding the mother of Orlando Álvarez Ríos, Mrs. Antonia Ríos, who left Honduras since the year 1989, and who currently lives in the United States of America, this Tribunal has not found enough elements in the body of evidence of the present case to verify an infringement to her personal integrity due to the death of her son.

130. The Court observes that at the time of his death, Diomedes Obed García Sánchez lived in a welfare house for street children and the whereabouts of his next of kin were unknown, from which we can conclude that said family members had interrupted their ties with the victim, thus an infringement to their rights as a consequence of the facts of this case cannot be established. The aforementioned is reflected in the lack of location of the father and other family members of the victim throughout the domestic proceeding and during the processing of the present case before the bodies of the Inter-American system, after eleven years of the occurrence of the facts. Therefore, this Court considers that the right to humane treatment enshrined in Article 5 of the American Convention of Mr. Diomedes Tito García Casildo, father, Ester Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings of Diomedes Obed García Sánchez, was not violated.

131. On the other hand, in what refers to Mr. Concepción Álvarez, father of Orlando Álvarez Ríos, and Mrs. Andrea Sánchez Loredo, mother of Diomedes Obed García Sánchez, since they passed away prior to the occurrence of the facts of the case sub judice, this Tribunal will not issue a ruling regarding the alleged violation to their right to humane treatment.

132. In what refers to the sister of Orlando Álvarez Ríos, Mrs. Dilcia Álvarez Ríos, the Court considers that it is necessary to point out that the victim lived with her at the time of the facts. She has suffered due to the treatment received by her brother from state agents, for the actions she carried out to try to locate him and finally find him in the morgue, when she was sure that her brother was under State custody. Likewise, she has participated in the search for justice for the death of her brother, reason for which she has relived the circumstances in which he died. The aforementioned breached the right to humane treatment of the victim's sister.

133. Of the facts of the present case we can observe the anguish suffered by the sister of Orlando Álvarez Ríos, who in her statement offered on February 23, 1996 before the Criminal Peace Court of Tegucigalpa said the following:

[...]then on Sunday, [she] wait[ed] [for her brother, Orlando Álvarez Ríos]; but he never came; and then, [...] she did not know anything; and she felt a great sadness [...] and she arriv[ed]

home at around twelve noon; and when she [saw] that [her] brother was not there; she start[ed] to feel worried; and, all day Monday, they wait[ed] for him until nighttime; and, she [thought] that maybe they would release him at the last hour, and she did not look for him and since she was sure that they had him locked up because he [had] called her telling her that he was in the Seventh Command. Then, on Tuesday, when it was noon, and she saw that he had not come home, [she] became trouble[d] and decided to go look [for him] at the Seventh Command [...]. [When she returned] home, she got a feeling that [her] brother could be dead, and [she] went to the Morgue, at seven at night of that same Tuesday she went with [her] son and the Guard from her Colony; upon arriving, [her] son, who went in to see him did not take more than five minutes to identify [Orlando, whose body] was in the freezer. Then the employees of the Morgue told [her] that they had found him at kilometer 41; and she accused the authorities of the Seventh Command of the Public Security Force.

134. Similarly, in what refers to Mrs. Marja Ibeth Castro García, sister of Marco Antonio Servellón García, she has suffered due to the conditions of the arrest and extrajudicial killing of her brother, when he was under the custody of state authorities, and during the actions she carried out to denounce the facts occurred. Due to the aforementioned, this Tribunal concludes that the State breached her right to humane treatment.

135. With regard to the other siblings of the victims, that is: Pablo Servellón García and Héctor Vicente Castro García, brothers of Marco Antonio Servellón García; and Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian María Betancourt Álvarez, siblings of Rony Alexis Betancourth Vásquez, the parties have not presented to the Tribunal evidence that lets it determine the infringement or suffering that the death of the victims could have caused them. Therefore, this Court considers that there are not sufficient evidentiary elements to conclude that the State violated Article 5 of the American Convention, in detriment of the mentioned siblings of the victims.

136. On the other hand, the Commission and the representatives have mentioned the child Zara Beatris Bustillo Rivera, who they argue is the daughter of Rony Alexis Betancourth Vásquez and Mrs. Ana Luisa Vargas Soto, who they argue was his partner at the time of the facts of the present case, as alleged victims. The Commission also included the mother of the child, Mrs. Norma Estela Bustillo Rivera, as an alleged victim.

137. This Court points out that the birth certificate of the child Zara Beatris Bustillo Rivera does not state that she is the daughter of Rony Alexis Betancourth Vásquez. However, the State did not object her existence or her relationship to the victim. Therefore, this Court considers the child Zara Beatris Bustillo Rivera as the daughter of Rony Alexis Betancourth Vásquez. Likewise, the State did not deny the relationship between the victim and Ana Luisa Vargas Soto, reason for which this Tribunal considers that she was his partner at the time of the facts. Finally, this Tribunal has not found sufficient evidentiary elements to establish that a meaningful infringement was produced to Mrs. Norma Estela Bustillo as a consequence of the facts of the present case.

138. In what refers to the child Zara Beatris Bustillo Rivera, this Court points out that, due to her condition of a minor, the presence of her father was essential for her full development. As a consequence of the extrajudicial killing of Rony Alexis Betancourth Vásquez, she has grown up without a father figure. Regarding Ana Luisa Vargas Soto, partner of Rony Alexis Betancourth Vásquez, this Tribunal, in consideration of the violent circumstances of the arrest and extrajudicial killing of her partner, when he was under the custody of state authorities, it concludes that they have caused her suffering and pain. This Court considers that the State is responsible for the breach of the mental and moral integrity of Zara Beatris Bustillo Rivera and Ana Luisa Vargas Soto.

139. The previous considerations lead the Court to conclude that the State is responsible for the violation of the right to humane treatment enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) of said treaty, in detriment of the next of kin of Marco Antonio Servellón García, Messrs. Reyes Servellón Santos, father, Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, sister; of the next of kin of Rony Alexis Betancourth Vásquez, Messrs. Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, and Ana Luisa Vargas Soto, partner, and of the sister of Orlando Álvarez Ríos, Mrs. Dilcia Álvarez Ríos.

IX. VIOLATION OF ARTICLES 8(1) AND 8(2), 7(6) AND 25(1) OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) OF THE SAME (Right to a Fair Trial, Personal Liberty, Judicial Protection, and Obligation to Respect Rights)

140. The Court in Chapter VI concluded in light of the State's acknowledgment of its international responsibility, that it violated Articles 7(6), 8(1) and 25(1) of the American Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, for not having guaranteed an effective protection through the writ of habeas corpus, and that the State violated Article 8(2) of the Convention for not having respected the principle of presumption of innocence, in detriment of the mentioned victims. Likewise, the Tribunal admitted the violation of Articles 8 and 25 of the Convention, in detriment of the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez for the lack of an adequate investigation of the case. In consideration of said assent, the Court will not summarize the arguments presented by the parties. However, the Court determined with regard to Articles 8 and 25 of the American Convention that there was still controversy with regard to the non-compliance of Article 8 of the Convention, which has led to the impunity argued by the Commission and the representatives in the present case.

Considerations of the Court

141. Article 7(6) of the American Convention states that:

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.

[...]

142. Article 8 of the Convention states that:

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

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

[...]

143. Article 25 of the Convention states that:

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

[...]

144. Article 1(1) of the American Convention states that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

145. The Commission and the representatives mentioned that “nine” years after the facts occurred, an accusation has not been presented against any suspect, and that the State has incurred in an unjustified delay in the investigations, since at the time of the presentation of the accusation in the criminal process it was still in its preliminary stages, reason for which the impunity in the present case persists. On its part, the State denied that it had not investigated the facts, but it accepted that the results produced from the same have not been up to now adequate, since “there has still not been an adequate punishment of the perpetrators [of the] crime.” It also stated that the Public Prosecutors’ Office continues to make important efforts in the persecution and sanction of the perpetrators and planners of the arrest and death of the victims, which would mean “that we cannot speak of impunity in these cases, in a conclusive and definitive manner.” The State did not refer expressly to the alleged unjustified delay in the investigation.

146. In the present case, the Court established that the State has failed in its duty to respect, prevent, and protect, and therefore it is responsible for the violation of the rights to life, humane treatment, and personal liberty of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez. In reason of all the above, the State has the duty to investigate the infringement of said rights as a condition for their guarantee, as can be concluded from Article 1(1) of the American Convention.

147. The States Parties to the Convention 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 within the general obligation, of the same States, to guarantee the full and complete exercise of the rights acknowledged by the mentioned treaty to all persons under their jurisdiction (Article 1(1)). [FN87]

[FN87] Cfr. Case of Ximenes Lopes, supra note 3, para. 175; Case of the Ituango Massacres, supra note 3, para. 287; and Case of Baldeón García, supra note 3, para. 143.

148. The Court has verified that a criminal process was started in the ordinary jurisdiction, in which the cases started with regard to the facts of the present case were accumulated. The Tribunal recalls that, in the light of that established in Articles 8 and 25 of the Convention, the proceeding must be developed effectively in regards to a fair trial, in a reasonable period of time, and they must provide an effective recourse to ensure the rights to access to justice, knowledge of the truth of the facts, and the reparation of the next of kin. [FN88]

[FN88] Cfr. Case of Ximenes Lopes, supra note 3, para. 171; Case of the Ituango Massacres, supra note 3, para. 291; and Case of Baldeón García, supra note 3, para. 139.

149. In the present case the criminal process was started on March 5, 1996 and in consideration of the processing of the same an opinion was requested from the Criminal Chamber of the Supreme Court of Justice regarding the direction of the procedure. Said Chamber, in its response of August 12, 2002, stated the following:

[...]1. The present investigative proceedings are still in their preliminary stages, despite the disposition to process included in Article 174 of the Code of Criminal Procedures of 1984, in what refers to the preliminary proceedings not lasting more than one month, except in those cases in which evidence must be collected outside the national territory, but in no case will it exceed 3 months. 2. Within the proceedings ordered by the Examining judge are, identification of files, appointments, cause[s] for the appointments and discharges of some lieutenants and agents, without said requirements having been executed by the authority responsible for providing the information required; likewise it has ordered the forwarding of information on the accused parties' curriculums without the Court having received timely and precise answers to strengthen the investigation; before the inobservance of that ordered, the judge responsible for the investigation cannot let said negligence go by unnoticed, and therefore should act responsibly

within the sphere of his attributions. 3. The levels of investigation practiced up to now to investigate the deaths of MARCO ANTONIO SERVELLON GARCIA, DIOMEDES OBED GARCIA, ORLANDO ALVAREZ RIOS, AND RONY ALEXIS BETANCOURT[H], have not been effective, since they have not been able to fulfill the objective of the preliminary proceedings of the process [...].

150. The situation mentioned by the Criminal Chamber of the Supreme Court of Justice has not changed in the eleven years after the occurrence of the facts or in the four years after having issued the mentioned opinion. In the criminal processing before the First Criminal Court of First Instance of Tegucigalpa a lower court ruling has not yet been issued, in breach of a reasonable time. This Tribunal considers, as it has stated in other cases that said delay, excessively extended, is per se a violation to the right to a fair trial, which has not been justified by the State. [FN89]

[FN89] Cfr. Case of Ximenes Lopes, supra note 3, para. 203; Case of Baldeón García, supra note 3, para. 153; and Case of López Alvarez, supra note 55, para. 128;

151. The above proves the lack of diligence in the impulse of procedures oriented to investigating, prosecuting, and, in its case, punishing all those responsible. The function of the judicial bodies that intervene in the proceedings does not end with providing a due process that guarantees the defense in the trial, but it must also ensure, in a reasonable period of time, [FN90] the right of the victim or his next of kin to know the truth of what happened, as well as the punishment of the resulting responsible parties. [FN91] The right to an effective judicial protection demands that the judges that direct the process avoid unnecessary delays and obstructions, which lead to impunity and frustrate the due judicial protection of human rights. [FN92]

[FN90] Cfr. Case of 19 Tradesmen, supra note 69, para. 188; Case of Myrna Mack Chang, supra note 9, para. 209; and Case of Bulacio, supra note 54, para. 114.

[FN91] Cfr. Case of Montero Aranguren et al., supra note 12, para. 55; Case of Ximenes Lopes, supra note 3, para. 206; and Case of the Ituango Massacres, supra note 3, para. 289.

[FN92] Cfr. Case of Myrna Mack Chang, supra note 9, para. 210; and Case of Bulacio, supra note 54, para. 115.

152. Likewise, in the case sub judice the relationship of the State agents, allegedly responsible of participating in the extrajudicial killing of the victims, with the facts of the case has not been fully investigated; reason for which the corresponding criminal responsibilities for said facts has not been determined. After several requests of the Public Prosecutors' Office, on February 9, 2005 the First Criminal Court of First Instance issued arrest warrants against three of the accused, Messrs. José Alberto Alfaro Martínez, Víctor Hugo Vivas Lozano, and Roxana Sierra Ramírez, but these orders have not had any effectiveness. Among those accused, the only detainee, Mr. José Alberto Alfaro Martínez, turned himself in voluntarily. The State has not

adopted specific measures to make the investigation, processing, and, in its case, the punishment of those responsible effective.

153. Taking into account the acknowledgment made by the State and the body of evidence of the present case, the tribunal finds that the lack of promptness in the investigation and the negligence of the judicial authorities in performing a serious and full investigation of the facts that would lead to their elucidation and to the prosecution of those responsible, is a gross offense to the duty to investigate and offer an effective recourse that may establish the truth of the facts, the prosecution and punishment of those responsible for them, and guarantee the access to justice for the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez in complete observance of a fair trial. The investigation that is currently being carried out could leave the possible responsible parties of the facts in impunity.

154. The Court warns that the State has the obligation to fight impunity by all available legal means, since it promotes the chronicle repetition of violations to human rights and the complete defenselessness of the victims and their next of kin. [FN93] That obligation to fight impunity is emphasized when dealing with violations whose victims are children. The impunity in the present case is verified by the State itself who, in its “Report of the Advances in the legal and investigative procedures of deaths in children and youngsters in Honduras, of August 25, 1003” stated that “up to now, those responsible for the majority of those crimes[, murders of children under the age of 18,] have not been apprehended.”

[FN93] Cfr. Case of Montero Aranguren et al., supra note 12, para. 137; Case of the Ituango Massacres, supra note 3, para. 299; and Case of Baldeón García, supra note 3, para. 168.

155. The Tribunal considers that the State is responsible for the violation of the rights enshrined in Articles 8(1), 8(2), 7(6), and 25(1) of the American Convention, in relation to Article 1(1) of that treaty, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez.

156. The Court concludes that the criminal process has not been an effective recourse to guarantee access to justice, the determination of the truth of the facts, the investigation, and, in its case, the punishment of those responsible and the reparation of the consequences of the violations. Therefore, the State is responsible for the violation of Articles 8(1) and 25(1) of the Convention in relation to Article 1(1) of that instrument, in detriment of the next of kin of Marco Antonio Servellón García, Reyes Servellón Santos, father, Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, Pablo Servellón García, and Héctor Vicente Castro García, siblings; of the next of kin of Rony Alexis Betancourth Vásquez, Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, Ana Luisa Vargas Soto, partner, and Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian

María Betancourt Álvarez, siblings; of the next of kin of Orlando Álvarez Ríos, Antonia Ríos, mother, and Dilcia Álvarez Ríos, sister, and of the next of kin of Diomedes Obed García Sánchez, Diomedes Tito García Casildo, father, and Esther Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings.

157. In what refers to the next of kin of Diomedes Obed García Sánchez it should be mentioned that they were not identified in the application presented by the Commission. His parents, Messrs. Diomedes Tito García Casildo and Andrea Sánchez Loredo, were included in the list of next of kin presented by the representatives in their brief of pleadings and motions. On June 14th and July 24th, 2006 the representatives indicated to the Tribunal that “after ten years of a difficult search” they had been able to locate the following family members of Diomedes: Diomedes Tito García, father, Ester Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings, and Lidia Sánchez Loredo and Betania García Casildo, aunts. Besides, they informed that Mrs. Andrea Sánchez Loredo, mother of the victim, had passed away in the year 1985. They enclosed the birth certificates of the parents and siblings, and the death certificate of the victim’s mother. Prior to that finding and during the processing of the case before the Inter-American system, both the Commission and the representatives had stated that they had not been able to “locate [the parents of Diomedes], since the youngster did not have any type of relationship with them and at the time of his killing he lived in a welfare house for minors in street situations [...]”.

158. The jurisprudence of this Tribunal, in what refers to the determination of who the victims are, has been ample and adjusted to the circumstances of the case. The alleged victims must be identified in the application and in the report of merits of the Commission issued pursuant to Article 50 of the Convention. Therefore, pursuant to Article 33(1) of the Rules of Procedure of the Court, it corresponds to the Commission, and not to this Tribunal, to identify with precision, and in the due procedural opportunity, the alleged victims in a case before the Court. [FN94] However, in its defect, on some occasions the Court has considered as victims people that were not argued as such in the application, as long as the right to defense of the parties has been respected and that the alleged victims are related to the facts described in the application and with the evidence presented to the Court. [FN95]

[FN94] Cfr. Case of the Ituango Massacres, supra note 3, para. 98.

[FN95] Cfr. Case of the Ituango Massacres, supra note 3, para. 91; and Case of Acevedo Jaramillo et al. Judgment of February 7, 2006. Series C No. 144, para. 227.

159. In this regard, since the father of Diomedes Obed García Sánchez had been included in the brief of pleadings and motions, and that subsequently the representatives proved the existence of Ester Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez and of their corresponding bonds or relationships with Diomedes Obed García Sánchez, this Court, in consideration of the fact that their lack of inclusion was due to a difficulty in finding them, and that their location was only possible after the presentation of the application

and the brief of pleadings and motions, it considers said family members as alleged victims and it ruled a violation of Articles 8 and 25 of the Convention in their detriment (*supra* para. 156). The parties were granted their right to a defense by forwarding them the information provided by the representatives and no observation was received in this regard.

X. REPARATIONS (APPLICATION OF ARTICLE 63(1) OBLIGATION TO REPAIR)

160. Pursuant to the analysis made in the aforementioned chapters, the Court has declared, based on the State's partial acknowledgment of responsibility, and on the facts of the case and the evidence presented before this Tribunal, that the State is responsible for the violation of the rights enshrined in Articles 4(1), 5(1), 5(2), 5(5), 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1), 8(2), 19, and 25(1) of the American Convention, and for the non-compliance of the obligations derived from Article 1(1) of the same international instrument (*supra* paras. 125, 139, 155, and 156). The Court has established, on several occasions, that all violation of an international obligation that has produced damage involves the duty to adequately repair it. [FN96] To this effect, Article 63(1) of the American Convention states that:

[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.

[FN96] Cfr. Case of Montero Aranguren et al., *supra* note 12, para. 115; Case of Ximenes Lopes, *supra* note 3, para. 207; and Case of the Ituango Massacres, *supra* note 3, para. 345.

161. As previously stated by the Court, 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. [FN97] Said international responsibility is different to the responsibility in domestic legislation. [FN98]

[FN97] Cfr. Case of Montero Aranguren et al., *supra* note 12, para. 116; Case of Ximenes Lopes, *supra* note 3, para. 208; and Case of the Ituango Massacres, *supra* note 3, para. 346.

[FN98] Cfr. Case of Ximenes Lopes, *supra* note 3, para. 208; Case of the Ituango Massacres, *supra* note 3, para. 365; and Case of the "Mapiripán Massacre", *supra* note 9, para. 211.

162. The reparation of the damage caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the situation that existed before the violation occurred. When this is not possible, the international court will determine a series of measures to guarantee the rights violated, repair the

consequences caused by the infractions, and establish payment of an indemnity as compensation for the harm caused [FN99] or other means of satisfaction. The obligation to repair, regulated in all its aspects (scope, nature, modalities, and determination of the beneficiaries) by International Law, may not be modified or ignored by the State obliged, by invoking stipulations of its domestic law. [FN100]

[FN99] Cfr. Case of Montero Aranguren et al., supra note 12, para. 117; Case of Ximenes Lopes, supra note 3 para. 209; and Case of the Ituango Massacres, supra note 3, para. 347.

[FN100] Cfr. Case of Montero Aranguren et al., supra note 12, para. 117; Case of Ximenes Lopes, supra note 3, para. 209; and Case of the Ituango Massacres, supra note 3, para. 347.

163. Reparations, as indicated by the term itself, consist in those measures necessary to make the effects of the committed violations disappear. Their nature and amount depend on the harm caused at both material and moral levels. Reparations cannot entail either enrichment or impoverishment of the victim or his successors. [FN101]

[FN101] Cfr. Case of Montero Aranguren et al., supra note 12, para. 118; Case of Ximenes Lopes, supra note 3, para. 210; and Case of the Ituango Massacres, supra note 3, para. 348.

164. Pursuant to the evidentiary elements collected during the process and in the light of the aforementioned criteria, the Court proceeds to analyze the demands presented by the Commission and by the representatives and the State's consideration regarding the reparations in order to determine, first of all, who the beneficiaries of the reparations are, in order to later order the measures of reparation of the material and moral damages, the measures of satisfaction and non-repetition and, finally, that regarding costs and expenses.

165. The Court goes on now to summarize the arguments of the Inter-American Commission, the representatives, and the State regarding the reparations.

Arguments of the Commission:

166. The Commission stated, inter alia, the following:

a) Beneficiaries

The right to reparation in the terms of Article 63(1) of the convention vests in the victim Marco Antonio Servellón García and his next of kin, specifically: Reyes Servellón Santos, father; Bricelda Aide García Lobo, mother; Marja Ibeth Castro García, Pablo Servellón García, and Héctor Vicente Castro García, siblings; the victim Rony Alexis Betancourth Vásquez and his next of kin, specifically: Manases Betancourth Núñez, father; Hilda Estebana Hernández López, mother; Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian María Betancourt Álvarez

siblings; Ana Luisa Vargas Soto, partner; Norma Estela Bustillo Rivera, mother of his daughter, and Zara Beatris Bustillo Rivera, daughter; the victim Orlando Álvarez Ríos and his next of kin, specifically: Concepción Álvarez, father; Antonia Ríos, mother, and Dilcia Álvarez Ríos, sister. On the date of the presentation of the application the Commission did not identify the beneficiaries of the reparations due to Diomedes Obed García Sánchez.

b) Pecuniary damage

It requested that the Court determine that the victims receive fair and prompt reparation for the violations established in virtue of the pecuniary damages caused, taking into account international standards.

c) Non-pecuniary damage

In consideration of the suffering undergone by the victims' next of kin due to the lack of a diligent investigation of the facts and the corresponding punishment of those responsible, among other damages, it requested that the Court set in equity a compensatory amount for that concept.

d) Other forms of reparation

It requested that the Court order the State to:

- i) identify, prosecute, and criminally punish the perpetrators and planners of the arrests, tortures, and subsequent extrajudicial killings of the victims;
- ii) make a public acknowledgment of its international responsibility and adopt administrative measures or of another nature tending to remove the State agents that result involved in the violations;
- iii) identify the authors of the violations and their duties within the administration, which must be done through the study and publishing of the flow charts that existed in the institutions where the violations were executed;
- iv) “advance in its investigation programs on the conditions of children and youngsters, in relation with the compliance of their rights and in the design of a national policy for the prevention and comprehensive protection of children, with the opinion or participation of citizens and institutions;”
- v) “advance in its policy for the promotion and protection of children’s human rights, including the diffusion of the rights of children and the special duty of protection that must be offered by state authorities and society in general regarding said group;”
- vi) implement an effective and impartial system for the supervision of police actions and reinforce the actions of the Inter-Institutional Commission for the Protection of Physical and Moral Integrity of Children created in the year 2002 through Executive Decree PCM-006-2002 in which organizations and members of the civil society participate, and
- vii) implement permanent programs for the formation of police personnel offering training on international standards in matters of prohibition of torture, illegal or arbitrary arrests, and the principles related to the use of force and fire weapons, as well as on the treatment that must be given to children, in light of the special protection established in the instruments that form part of the international corpus juris in this subject.

e) Costs and Expenses

It requested the payment of costs and expenses incurred in by the victims and their next of kin in the processing of the case at a domestic level, as well as those originated from the processing of the case before the Inter-American system.

Arguments of the representatives:

167. The representatives stated, inter alia, the following:

a) Beneficiaries

The victims are Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, and the reparations that correspond to them shall be transmitted to their successors. Likewise their next of kin shall also be considered beneficiaries of the reparations ordered by the Court. The next of kin of Marco Antonio Servellón García are: Reyes Servellón Santos, father; Bricelda Aide García Lobo, mother; Marja Ibeth Castro García, Pablo Servellón García, and Héctor Vicente Castro García, siblings. The next of kin of Rony Alexis Betancourth Vásquez are: Manases Betancourth Núñez, father; Hilda Estebana Hernández López, mother; Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian María Betancourt Álvarez, siblings; Ana Luisa Vargas Soto, partner, and Zara Beatris Bustillo Rivera, daughter, represented by her mother Norma Estela Bustillo Rivera. The next of kin of Orlando Álvarez Ríos are: Concepción Álvarez, father; Antonia Ríos, mother, and Dilcia Álvarez Ríos, sister. The next of kin of Diomedes Obed García Sánchez are: Diomedes Tito García Casildo, father, and Andrea Sánchez Loredó, mother.

b) Pecuniary damage

i) Marco Antonio Servellón García was 16 years old at the time of his death and he sold lottery and went to night school and the Centroamérica West School. Given his occupation it is difficult to estimate his income, taking as a base the value of a minimum wage of 18.10 lempiras per day in the area of Tegucigalpa, pursuant to the decree of minimum wages corresponding to the economic activity called “Communal, Social, and Personal Services”, the Honduran labor legislation that contemplates two minimum monthly wages per year as a measure of social compensation, that life expectancy for men was 65.6 in the year 1995 and minus 25% for expenses, the representatives requested the amount of US\$28,881.90 (twenty eight thousand eight hundred and eighty one dollars of the United States of America with ninety cents) in the concept of lost earnings;

ii) Rony Alexis Betancourth Vásquez was 17 years old at the time of his death and he worked as a welder. Taking as a base the value of a minimum wage of 18.10 lempiras per day in the area of Tegucigalpa, pursuant to the decree of minimum wages corresponding to the economic activity called “Communal, Social, and Personal Services”, the Honduran labor legislation that contemplates two minimum monthly wages per year as a measure of social compensation, that life expectancy for men was 65.6 in the year 1995 and minus 25% for

expenses, the representatives requested the amount of US\$28,299.62 (twenty eight thousand two hundred and ninety nine dollars of the United States of America with sixty two cents) in the concept of lost earnings;

iii) Diomedes Obed García Sánchez was 19 years old at the time of his death and we do not have enough information regarding his income. Given the aforementioned, it requested that the presumption of minimum wage be used to calculate lost wages. Therefore, they indicated that taking as a base the value of a minimum wage of 18.10 lempiras per day in the area of Tegucigalpa, pursuant to the decree of minimum wages corresponding to the economic activity called “Communal, Social, and Personal Services”, the Honduran labor legislation that contemplates two minimum monthly wages per year as a measure of social compensation, that life expectancy for men was 65.6 in the year 1995 and subtracting 25% for expenses, the representatives requested the amount of US\$27,135.03 (twenty seven thousand one hundred and thirty five dollars of the United States of America with three cents) in the concept of lost wages;

iv) Orlando Álvarez Ríos died at the age of 32 and he was an industrial expert in general mechanics. He also worked as a carpenter in construction work and worked on weekends. The representatives considered that due to the victim’s technical specialization, the minimum wage should not be assigned to him when estimating lost wages, but that they did not know the amount he perceived as salary. Therefore, they indicated that taking into account the value of a salary of 25 lempiras per day, the Honduran labor legislation that contemplates two minimum monthly wages per year as a measure of social compensation, that life expectancy for men was 65.6 in the year 1995 and subtracting 25% for expenses, the representatives requested the amount of US\$27,023.15 (twenty seven thousand and twenty three dollars of the United States of America with fifteen cents) in the concept of lost wages, and

v) the next of kin incurred in expenses regarding the vigil and burial of the alleged victims, and due to the time that has gone by they do not have the receipts for said expenses, reason for which they requested that the Court set in equity the amount of those damages.

c) Non-pecuniary damages

i) the vulnerability of the victims regarding state agents, the way in which they were arrested, the threats and tortures they were subject to, their emotional and physical suffering, and the way in which they were killed must be taken into consideration when estimating a compensation for “non-pecuniary damages”. Likewise, the violation to the victims’ life project must be considered when estimating the “non-pecuniary damages”;

ii) they requested that the Court set the amount of US\$150,000.00 (one hundred and fifty thousand dollars of the United States of America) in the cases of Orlando Álvarez Ríos and Diomedes Obed García Sánchez to compensate the suffering lived. Due to their conditions of minors, they requested the amount of US\$175,000.00 (one hundred and seventy five thousand dollars of the United States of America) for Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, and

iii) that the next of kin are also victims and that among the facts that must be analyzed by the Court are that the mother of Marco Antonio Servellón García was not allowed to see her son while he was detained; that the mother of Rony Alexis Betancourt Vásquez “thought that he was safe because he was in State custody” and that his partner was not allowed to see him, despite the fact that she waited all day outside the police office; and Orlando Álvarez Ríos informed his sister that he would be released, which did not happen. Likewise, the mental state of the next of

kin was altered by the subsequent knowledge of the arbitrary arrest, the threats, the physical and psychological torture, and the killing of their loved ones, whose bodies were left in different parts of Tegucigalpa. The lack of an exhaustive investigation of the facts caused feelings of helplessness and uncertainty in the victims' next of kin, situation that worsened the "non-pecuniary damages" suffered. Due to the aforementioned, they requested that the court set in equity a compensatory amount in their favor.

d) Other forms of reparation

They requested that the Court order that the State:

- i) investigate and determine the material and intellectual responsibilities for the facts and guarantee that those responsible comply effectively with the punishment imposed upon them, and punish the public officials and individuals that have obstructed, put off, or delayed the investigation of the facts;
- ii) hold a public act in which the State acknowledges its international responsibility for the violation of the rights of the victims and their next of kin, in which the highest state leader must participate;
- iii) designate one day of the year and issue postal stamps to commemorate the boys, girls, and youngsters that have been victims of violence, which must indicate the year 1995, as non-pecuniary compensation for the next of kin of the victims;
- iv) strengthen the Special Unit for the Investigation of the Deaths of Minors, the Human Rights Public Prosecutors' Office, and the Inter-institutional Commission for the Protection of Children's Physical and Moral Integrity;
- v) establish programs directed to the authorities in charge of public security and the fight against violence, and to social communicators, according to the standards of international instruments; assign specific resources for its design and implementation and ensure the participation of civil society;
- vi) adopt programs tending to the comprehensive attention of children and the prevention of violence, so that the State may: a) adopt, in consultation with civil society, a short, medium, and long term policy for the attention of children and teenagers in conflict with the law and in a street situation, pursuant to the standards of international instruments on the subject; b) seek the strengthening of the task of non-governmental organizations dedicated to the assistance of children, through the granting of resources and facilities in order to fulfill their tasks; c) establish a school of technical education named after the victims of the case, for young offenders that wish to be reinserted in a social and working life, which should offer a program of complete scholarships, and d) establish in its detention centers for minors and adults training programs that tend to make their social and work reinsertion easier;
- vii) publish, for a single time, the parts corresponding to the facts and operative paragraphs of the Judgment of the Court in the main means of communication of national circulation;
- viii) implement a registry of detainees that permits a control of the legality of the arrests by the next of kin and protection organizations, and
- ix) prohibit razzias or collective arrests through the adoption of a specific legislation.

e) Costs and Expenses

The representatives stated that

- i) Casa Alianza Honduras promoted the judicial proceedings at a domestic level and incurred in expenses related with the investigation, mail, telephone, and transfers estimated in the amount of US\$27,145.44 (twenty seven thousand one hundred and forty five dollars with forty four cents). Since they have not been able to present the receipts corresponding to those expenses, the representatives asked the Court to set the amount in equity and order the State the reimbursement of the same, and
- ii) CEJIL has acted as a representative of the victims before the Inter-American system for which it has incurred in expenses that include trips, hotel payments, communication expenses, photocopies, stationery, and shipments. In this regard, it requested the amount of US\$10,213.97 (ten thousand two hundred and thirteen dollars of the United States of America with ninety seven cents). It also requested that, in the corresponding procedural stage, they be given the opportunity to present updated numbers and receipts regarding the expenses in which it will incur during the international process.

Arguments of the State

168. The State declared, inter alia, the following:

a) Beneficiaries

It did not refer expressly to the persons entitled to reparations. However, the State acknowledged to the next of kin of the victims their right to fair and prompt reparations.

b) Pecuniary and non-pecuniary damages

The State acknowledged the right of the next of kin of the victims to fair and prompt reparations, which include the measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The compensation must be given in relation to a calculable damage for the violations of human rights.

c) Other forms of reparation:

The State mentioned that:

- i) the Public Prosecutors' Office of Honduras continues making efforts in the prosecution and punishment of the perpetrators and planners of the case; since March 4, 1996 it has followed a criminal proceeding before the First Criminal Court of First Instance of Tegucigalpa under registry No.224-96 regarding the case, and an arrest warrant was issued against Víctor Hugo Vivas Lozano for being considered one of the authors of the crimes committed against the victims. The criminal action derived from the facts has not expired and the Commission, in its Report No. 74/04, spread upon the record that the Human Rights Inspector appointed to the case and the Public Prosecutors' Office "did a good job with the investigation of the facts";
- ii) it accepts to make a public acknowledgment of its responsibility in the terms agreed upon and promises to invoke the corresponding administrative responsibilities;

- iii) it promises to inform of the location, within the Administration, of those responsible for the facts occurred, once the courts have delimited their participation and have determined their guilt in an unappealable and definitive manner;
- iv) it prepared the “National Plan for the Attention of Children and Teenagers 2002-2010”, which seeks to act as a framework document for public policies for Honduras. It created the IHNFA, whose law grants it the attribution to “prepare, promote, execute, and supervise, in coordination with the public sector and the private sector, the policies for the prevention and comprehensive protection of children.” The Interinstitutional Commission for the Protection of the Physical and Moral Integrity of Children is “a consulting entity for the Executive Power, in all that related to the protection of the integrity” of children. Among the efforts oriented to the prevention and comprehensive protection of children and their rights, it has created different bodies to face the main matters related to childhood, such as the Commission for the Gradual and Progressive Eradication of Child Labor; The Support Committee for the Commission of Children and Families of the National Congress; the Project “Pact for Childhood”; the Municipal Ombudsman for Childhood; the Permanent Interinstitutional Civic Committee; the Interinstitutional Committee of support for Children who have been Orphaned and are Vulnerable due to AIDS, as well as the reform to the IHNFA and the creation of the program Municipalities Friendly to Children;
- v) it created a body of internal control in the Secretariat of Security called “Unit of Internal Affairs”, whose function is to investigate the crimes or infractions committed by any member of the police in a preventive manner. As a result, the documentation of these investigations has been forwarded to the Public Prosecutors’ Office and criminal accusations of different order have been presented. The National Council of Internal Security (CONSAIN) was created with duties of supervision, control, follow-up, and evaluation of the system of public security, of police activities, and of the actions of the members of the National Police Force, and it has the participation of different sectors. Regarding the Interinstitutional Commission for the Protection of the Physical and Moral Integrity of Children, the State promises to give this important consulting entity of the Executive Power continuity, and include in its sessions and activities all those organizations and individuals that may collaborate. It also created the Special Unit for the Investigation of the Deaths of Minors that supervises the actions of police officers, proceeding with the investigation and processing of the members involved, and
- vi) it included the subjects of human rights, police ethics, and general ethics within the academic program of the University Program of Police Sciences, as of the police reform made.

e) Costs and Expenses

The State did not refer expressly to the costs and expenses.

Considerations of the Court

A) BENEFICIARIES

169. The Court considers Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez as the “injured parties” in their nature of victims of the violations of the rights enshrined in Articles 4(1), 5(1) and 5(2), 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6), 8(1) and 8(2) and 25(1) of the American Convention, in

relation to Article 1(1) of the same instrument, and in the case of the underage victims also for the violation of the rights enshrined in Articles 5(5) and 19 of the American Convention, in relation to Article 1(1) of said treaty, reason for which they will be entitled to the reparations set by the Tribunal for pecuniary and non-pecuniary damages.

170. Some of the victims' next of kin will be entitled to the reparations set by the Tribunal for pecuniary and non-pecuniary damages, in their own nature of victims of the violations to the Convention determined by this Court, as well as of those reparations set by the Court in their nature of successors of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez.

171. The victims' next of kin indicated herein shall also be entitled to the reparations that the Tribunal will set in their nature of successors as a consequence of the violations committed in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, which shall be distributed as follows:

- a) in the case of the next of kin of Marco Antonio Servellón García, the corresponding compensation shall be distributed in equal parts between Mr. Reyes Servellón Santos, his father, and Mrs. Bricelda Aide García Lobo, his mother. In reason of the death of Mr. Reyes Servellón Santos, the part that corresponded to him will be added to that of his widow Bricelda Aide García Lobo;
- b) in the case of the next of kin of Rony Alexis Betancourth Vásquez, the corresponding compensation must be distributed in equal parts between Manases Betancourth Núñez, his father; Hilda Estebana Hernández López, his mother, Zara Beatris Bustillo Rivera, his daughter, and Ana Luisa Vargas Soto, his partner;
- c) in the case of the next of kin of Orlando Álvarez Ríos, fifty per cent (50%) of the corresponding compensation shall be distributed in equal parts between Mr. Concepción Álvarez, his father, and Antonia Ríos, his mother. In reason of the death of Mr. Álvarez, the part that corresponded to him shall be added to that of his widow Antonia Ríos. The other fifty per cent (50%) shall be delivered to Mrs. Dilcia Álvarez Ríos, his sister, and
- d) in the case of Diomedes Obed García Sánchez, one hundred per cent (100%) of the corresponding compensation shall be distributed in equal parts between Mr. Diomedes Tito García Casildo, his father; Esther Patricia García Sánchez, sister; Jorge Moisés García Sánchez, brother, and Fidelia Sarahí García Sánchez, sister.

172. In the event that the next of kin entitled to the compensations determined in the present Judgment were to pass away prior to the delivery of the corresponding compensation, the amount that would have corresponded to them will be distributed pursuant to domestic legislation. [FN102] In relation to Mrs. Fidelia Sarahí García Sánchez, and in consideration of the fact that, as was informed by the representatives, she is confined in a S.O.S. Aldea, since as a child she suffered an accident that caused her to have brain damage, the amount that corresponds to her, shall be handed over to those who exercise her ward or representation pursuant to the stipulations of domestic legislation.

[FN102] Cfr. Case of Montero Aranguren et al., supra note 12, para. 124; Case of Ximenes Lopes, supra note 3, para. 219; and Case of Baldeón García, supra note 3, para. 192

B) Pecuniary Damage

173. This Court enters to determine the pecuniary damage, which entails the loss or detriment of the income of the victims and, in its case, of their next of kin, and the expenses incurred in as a consequence of the facts in the case sub judice [FN103]. In this regard, it will set a compensatory amount that seeks to compensate the material consequences of the violations declared in the present Judgment. To decide on the pecuniary damage, the body of evidence, the jurisprudence of the Tribunal itself, and the arguments of the parties will be taken into consideration.

[FN103] Cfr. Case of Montero Aranguren et al., supra note 12, para. 126; Case of Ximenes Lopes, supra note 3, para. 220; and Case of Baldeón García, supra note 3, para. 183.

174. With regard to the loss of income of the youngsters Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, the Court observes that there is no true fact that lets it establish the activity or profession that said youngsters would develop in the future. This item must be estimated as of a true detriment with enough substantiation to determine its probable realization. [FN104] In the circumstances of the present case there is not enough evidence to determine the income that was not perceived by them. Therefore, the Court will determine the pecuniary damage pursuant to the principle of equality.

[FN104] Cfr. Case of the “Juvenile Reeducation Institute”, supra note 64, para. 288; Case of Molina Theissen. Reparations. Judgment of July 3, 2004. Series C, No. 108 , para. 57; and Case of Bulacio, supra note 54, para. 84.

175. In relation to Diomedes Obed García Sánchez there was not a lot of information on his income. Regarding Orlando Álvarez Ríos, the representatives have arguments that he was an industrial expert in general mechanics and worked in construction; however, there are no suitable receipts in the file to determine with exactness the income he was perceiving at the time of the facts. Therefore, the Court will also set the pecuniary damage that corresponds to them pursuant to the principle of equality.

176. In reason of the aforementioned, the Court sets in equity the amount of US\$10,000.00 (ten thousand dollars of the United States of America) for Rony Alexis Betancourth Vásquez; the amount of US\$10,000.00 (ten thousand dollars of the United States of America) for Diomedes Obed García Sánchez, and the amount of US\$10,000.00 (ten thousand dollars of the United States of America) for Orlando Álvarez Ríos, in the concept of loss of income. The

compensations previously set must be delivered to the victims' next of kin, pursuant to that stated in paragraphs 171 and 172 of this Judgment.

177. Having analyzed the information received by the parties, the facts of the case, and its jurisprudence, the Court observes that despite that the receipts of expenses were not presented, it can be assumed that the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, and Orlando Álvarez Ríos incurred in different burial expenses due to their deaths, which is pursuant with the Tribunal's constant jurisprudence. [FN105] Therefore, the Court considers is appropriate to set, in equity, the amount of US\$1,500.00 (one thousand five hundred dollars of the United States of America) as compensation for the concept of consequential damages, for each of the victims. Said amount must be delivered to each of the following persons: Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilcia Álvarez Ríos, respectively.

[FN105] Cfr. Case of Ximenes Lopes, supra note 3, para. 226; and Case of the Gómez Paquiyaury Brothers, supra note 63, para. 207.

178. In what refers to Diomedes Obed García Sánchez, pursuant to that stated (supra para. 79(24)), at the time of his death he resided in a "room at a welfare house for minors in street situations, administered by Mr. Carlos Jorge Mahomar Marzuca", from which it can be concluded that his next of kin did not incur in any expense due to his death, reason for which this Court considers that it should dismiss this aspect with regard to him.

C) Non-Pecuniary Damage

179. Non-pecuniary damages may include 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. [FN106]

[FN106] Cfr. Case of Montero Aranguren et al., supra note 12, para. 130; Case of Ximenes Lopes, supra note 3, para. 227; and Case of the Ituango Massacres, supra note 3, para. 383.

180. International jurisprudence has repeatedly established that the judgment constitutes, per se, a form of reparation. [FN107] In the case sub judice, in consideration of the suffering caused to Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, and that also caused suffering to some of their next of kin,

the change in their conditions of existence, and other consequences of a non-pecuniary nature, the Court considers it convenient to determine payment of a compensation, set with equity, for non-pecuniary damages.

[FN107] Cfr. Case of Montero Aranguren et al., supra note 12, para. 131; Case of Ximenes Lopes, supra note 3, para. 236; and Case of the Ituango Massacres, supra note 3, para. 387.

181. This Tribunal acknowledges that a non-pecuniary damage has been caused to Reyes Servellón Santos, Bricelda Aide García Lobo, Marja Ibeth Castro García, Manases Betancourth Núñez, Hilda Estebana Hernández López, Ana Luisa Vargas Soto, Zara Beatris Bustillo Rivera, and Dilcia Álvarez Ríos.

182. In consideration of the different aspects of the damage argued by the Commission and the representatives, regarding Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, the Court takes into consideration, for the determination of the compensation for the concept of non-pecuniary damage, the suffering of the victims upon being illegally and arbitrarily arrested, that their rights to an effective recourse were not respected during their confinement, that they were submitted to torture, cruel, inhuman, or degrading treatments, and they were later extra judicially killed, situation that was aggravated by the context in which the facts occurred. Besides, this Court takes into consideration the particularly traumatic circumstances of their death, which is made worse in relation to the two underage victims, Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez (supra paras. 79(8) through 79(13) and 79(14) through 79(18)), since it is presumed that the suffering caused by the facts of the case assumed characteristics of a special intensity with regard to said minors. [FN108]

[FN108] Cfr. Case of the Ituango Massacres, supra note 3, para. 390(b); and Case of the Pueblo Bello Massacre, supra note 7, para. 258(b).

183. Similarly, in what refers to Reyes Servellón Santos, Bricelda Aide García Lobo, and Marja Ibeth Castro García, next of kin of Marco Antonio Servellón García; Manases Betancourth Núñez, Hilda Estebana Hernández López, Zara Beatris Bustillo Rivera, and Ana Luisa Vargas Soto, next of kin of Rony Alexis Betancourth Vásquez, and Dilcia Álvarez Ríos, sister of Orlando Álvarez Ríos, the Tribunal, for the determination of the compensation for non-pecuniary damages, considers the suffering caused to these with the facts related to the arrest, torture, cruel, inhuman, and degrading treatment, and the extrajudicial killing of their loved ones.

184. In consideration of the aforementioned, the Court considers it convenient to determine payment of a compensation, set in equity, for non-pecuniary damages in the following terms:

- a) for Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, the Court sets the amount of US\$25,000.00 (twenty five thousand dollars of the United States of America) for each of them;
- b) for Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, who were underage at the time of the facts, this Court sets an additional amount of US\$5,000.00 (five thousand dollars of the United States of America) for each of them. Therefore, the compensation for damages referred to in the previous paragraph, will be added to the aforementioned amount;
- c) for Reyes Servellón Santos and Bricelda Aide García Lobo, parents of Marco Antonio Servellón García; Manases Betancourth Núñez and Hilda Estebana Hernández López, parents of Rony Alexis Betancourth Vásquez, the Court sets the amount of US\$12,500.00 (twelve thousand five hundred dollars of the United States of America) for each of them;
- d) for Dilcia Álvarez Ríos, the Court sets the amount of US\$10,000.00 (ten thousand dollars of the United States of America);
- e) for Marja Ibeth Castro García, the Court sets the amount of US\$5,000.00 (five thousand dollars of the United States of America);
- f) for Zara Beatris Bustillo Rivera, the Court sets the amount of US\$10,000.00 (ten thousand dollars of the United States of America), and
- g) for Ana Luisa Vargas Soto, the Court sets the amount of US\$12,500.00 (twelve thousand five hundred dollars of the United States of America).

185. The compensation determined in subparagraphs a and b of the previous paragraph will be delivered to the victims' next of kin, pursuant to that stated in paragraphs 171 and 172 of the present Judgment, and the compensation set in subparagraphs c, d, e, f, and g of the previous paragraph shall 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. [FN109]

[FN109] Cfr. Case of Montero Aranguren et al., supra note 12, para. 124; Case of Ximenes Lopes, supra note 3, para. 219; and Case of Baldeón García, supra note 3, para. 192.

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

186. In this section the Tribunal will determine those measures of satisfaction that seek to repair non-pecuniary damages, that do not have a pecuniary scope, and it will establish measures of a public scope or repercussion. [FN110]

[FN110] Cfr. Case of Montero Aranguren et al., supra note 12, para. 136; Case of Ximenes Lopes, supra note 3, para. 240; and Case of the Ituango Massacres, supra note 3, para. 396.

187. For the effects of non-repetition of the facts of the present case, the Court values and appreciates the acknowledgment of international responsibility made by the State (supra paras. 16, 54, 55, and 60). In its response to the petition, the State said that:

we assent with the parties to the application related to [the] regretful acts, accepting the measures of reparation proposed by the claimants and promising to comply in the least time possible to what that [...] Court considers convenient to order in this sense.

188. Among the Honduran institutions dedicated to guaranteeing the rights of children and youngsters and to prevent any type of breach to these rights are: a) the Honduran Institute for Childhood and Family, created through Decree No.199-97 in December 1997; b) the National Human Rights Commission, created through Decree No. 153-95 in October 1995; c) the Interinstitutional Commission for the Protection of Physical and Moral Integrity of Children, and d) the Special Unit for the Investigation of the Deaths of Children and the Public Human Rights Prosecutors' Office, as the organization in charge of investigating and punishing the violations of human rights of children and teenagers.

189. This Tribunal observes that the State has specialized organizations to attend to the problems through which this group of the Honduran population is going through. However, as has been stated by the representatives and the Commission, the creation of said institutions has not represented measures that are sufficient or efficient in counteracting the extrajudicial killings of the youngsters in Honduras, or in guaranteeing the rights of children and youngsters.

190. In the opinion of this Court, it is necessary that all institutions created to prevent and sanction the violations of human rights against children and youngsters be fully effective in their performance. The stipulations of the domestic legislation and, in this case, the institutions created to guarantee the human rights of children and youngsters, have to be effective, which means that the State must adopt all the measures necessary so that the stipulations of the Convention are really complied with. [FN111]

[FN111] Cfr. Case of Montero Aranguren et al., supra note 12, para. 64; Case of the Ituango Massacres, supra note 3, para. 129; and Case of Baldeón García, supra note 3, para. 83.

191. Therefore, the State must provide the institutions with suitable personnel trained for the investigation of extrajudicial killings and of the adequate recourses so they may fully comply with their mandate. For the investigation of extrajudicial killings the international norms on the documentation and interpretation of the forensic elements of evidence must be taken into consideration with regard to the commission of acts of torture, and especially those defined in the Manual of the United Nations on the Prevention and Efficient Investigation of Extralegal, Arbitrary, and Summary Killings. [FN112]

[FN112] Cfr. Case of Montero Aranguren et al., supra note 12, para. 140; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 208; and Manual of the United

Nations on the Prevention and Efficient Investigation of Extralegal, Arbitrary, and Summary Killings. E/ST/CSDHA/.12 (1991).

a) Obligation to investigate the facts that caused the violations of the present case, and identify, prosecute, and sanction those responsible

192. The Court has defined impunity as an offense within the obligation to investigation, persecute, capture, prosecute, and sentence those responsible for the violations of the rights protected by the American Convention. [FN113] The State is obliged to fight this situation through all means available, since it promotes the chronicle repetition of violations to human rights and the total defenselessness of the victims and their next of kin. [FN114]

[FN113] Cfr. Case of Montero Aranguren et al., supra note 12, para. 137; Case of Baldeón García, supra note 3, para. 195; and Case of Blanco Romero. Judgment of November 28, 2005. Series C No. 138, para. 94.

[FN114] Cfr. Case of Montero Aranguren et al., supra note 12, para. 137; Case of Baldeón García, supra note 3, para. 195; and Case of the Pueblo Bello Massacre, supra note 7, para. 266.

193. Likewise, the next of kin of the victims of gross violations to human rights have the right to know the truth. Knowledge of the truth of the fact in cases of notorious violations of human rights such as those of the present case, is a inalienable right, an important means of reparation for the victims and their next of kin and it is a fundamental way of elucidation so that the society may develop its own mechanisms and the prevention of violations such as those of this case in the future. [FN115]

[FN115] Cfr. Case of Ximenes Lopes, supra note 3, para. 245; Case of Baldeón García, supra note 3, para. 196; and Case of the Pueblo Bello Massacre, supra note 7, para. 266.

194. In the present case the Court established that, eleven years after the occurrence of the facts, the authors of the illegal and arbitrary deprivation of freedom, torture, cruel, inhuman, or degrading treatment, and extrajudicial killing of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez have not been held responsible for said violations, thus the existence of impunity (supra paras. 125, 154, and 156).

195. In consideration of the violations declared, as well as of that said by the State, this Tribunal considers that the State must seriously comply with all the actions necessary to identify, prosecute, and, in its case, punish all the perpetrators and planners of the violations committed in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez in a reasonable period of time, for criminal effects and any other that could result from the investigation of the facts. For this purpose, as has

been ordered by the Court in other cases, [FN116] the State must remove, in a reasonable period of time, all obstacles and mechanisms of fact and law that help maintain impunity in the present case.

[FN116] Cfr. Case of Montero Aranguren et al., supra note 12, para. 138.

196. The victims' next of kin or their representatives must have full access and capacity to act in all the stages and instances of the domestic criminal proceedings started in the present case, pursuant to domestic legislation and the American Convention. The results of these processes must be publicly diffused by the State, in a manner such that the Honduran society will know the truth about the facts of the present case. [FN117]

[FN117] Cfr. Case of Montero Aranguren et al., supra note 12, para. 139; Case of Baldeón García, supra note 3, para. 199; and Case of the Pueblo Bello Massacre, supra note 7, para. 267.

b) Publishing of the judgment

197. As has been ordered in other cases, as a satisfaction measure, [FN118] the State must publish the Chapter on facts proven of this Judgment, without the corresponding footnotes, and the operative part of the same, once, in the Official Newspaper and in another newspaper of national circulation in Honduras. For these publications the Court establishes a six-month period, as of the notification of the present Judgment.

[FN118] Cfr. Case of Montero Aranguren et al., supra note 12, para. 151; Case of Ximenes Lopes, supra note 3, para. 249; and Case of the Ituango Massacres, supra note 3, para. 410.

c) Public act of acknowledgment of responsibility

198. In order for the assent made by the State and that established by this Tribunal to have their complete effects of reparation, as well as for it to act as a guarantee of non-repetition, the Court considers that the State must hold a public act of acknowledgment of its international responsibility, for the illegal arrest, torture, and extrajudicial killing of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos and for the impunity that prevails in the case. This act must take place within a period of six months as of the notification of the present Judgment.

d) Street or plaza and plaque

199. The State must name, within a one-year period as of the notification of the present Judgment, a street or a plaza, in the city of Tegucigalpa, in memory of Marco Antonio Servellón

García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos. The State must place a plaque on said street or plaza with the names of the mentioned four victims.

e) Establishment of training programs in human rights

200. This Court considers that the State must establish, within a reasonable period of time, a program for the formation and training of police and judicial personnel as well as personnel of the Public Prosecutors' Office and of the penitentiary. That training should deal with the special protection that must be offered by the State to children and youngsters, the principle of equality and non-discrimination, and the principle and norms for the protection of human rights, related to the application of international standards for the arrest of people, respect for their rights and judicial guarantees, the treatment that they must receive, their detention conditions, treatment, and medical control, the right to have an attorney, to receive visits, and that minors and adults, as well as those being processed and those already convicted, be located in different installations. The design and implementation of the training program must include the assignment of specific resources to achieve its purposes.

f) National campaign for sensitization with regard to children and youngsters in risky situations

201. It was established in the present case that the State tends to identify the children and youngsters in situations of risk with the increase of criminality. In reason of this, the State must carry out, within a reasonable period of time, a campaign with the purpose of creating awareness in the Honduran society regarding the importance of the protection of children and youngsters, inform it of the specific duties for their protection that correspond to the family, society, and the State, and make the population see that children and youngsters in situations of social risk are not identified with delinquency (*supra* para. 79(1)).

202. Within the framework of this campaign, the State must issue, within a one-year period as of the date of the notification of the present Judgment, a postal stamp allusive to the protection due by the State and society to children and youngsters in risky situations, in order to prevent them from becoming victims of violence.

g) Creation of a database on the deaths of youngsters due to violence

203. It was established that the State does not have a unified registry, coordinated between the State's institutions, for the recording of information on criminality, especially the deaths of youngsters under the age of 18 due to violence. In the light of the aforementioned, the State must create, within a reasonable period of time, a unified data base between all institutions involved in the investigation, identification, and punishment of those responsible for the violent deaths of children and youngsters in risky situations. That registry must help increase the effectiveness of the investigations.

E) Costs and Expenses

204. 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. [FN119]

[FN119] Cfr. Case of Montero Aranguren et al., supra note 12, para. 152; Case of Ximenes Lopes, supra note 3, para. 252; and Case of the Ituango Massacres, supra note 3, para. 414.

205. In this regard, the Tribunal considers it in equity to order the State to reimburse the amount of US\$11,000.00 (eleven thousand dollars of the United States of America) or its equivalent in Honduran currency, which must be delivered to Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilcia Álvarez Ríos so that they may, on one hand, compensate the expenses in which the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, and Orlando Álvarez Ríos incurred in before the authorities of domestic jurisdiction, and on the other, deliver to Casa Alianza and CEJIL the amounts considered appropriate to compensate the expenses made by them, during the proceedings before the Inter-American system.

F) Means of Compliance

206. The State shall pay the compensations and reimburse the costs and expenses (supra paras. 176, 177, 184, and 205) 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. 197, 198, 199, and 202).

207. 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.

208. In what refers to the compensation ordered in favor of Fidelia Sarahí García Sánchez, it must be made within a one-year period as of notification of the present Judgment, to whom exercises her representation or wardship pursuant to the stipulations of domestic legislation. If said representation has not been appointed, the State must deposit it in a solvent Honduran institution. Said deposit will be made within a one-year period as of the notification of the present Judgment, in the most favorable financial conditions allowed by legislation and bank practices. The person that results her legal representative within domestic legislation may withdraw the deposit. 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.

209. 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.

210. The payment destined to compensate the costs and expenses incurred in by the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, and Orlando Álvarez Ríos before the authorities of the domestic legislation, and, on the other hand, deliver to Casa Alianza and CEJIL the amounts considered convenient to compensate the expenses made by them, during the proceedings before the Inter-American system, which will be made to Mrs. Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilcia Álvarez Ríos (supra para. 205), who will make the corresponding payments.

211. 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.

212. 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.

213. 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.

214. 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

215. Therefore,

THE COURT,

DECIDES,

Unanimously to,

1. Admit the acknowledgment of international responsibility made by the State for the violation of the rights to personal liberty and humane treatment, to life, to a fair trial, and the judicial protection enshrined in Articles 7(1), 7(2), 7(3), 7(4) 7(5) and 7(6), 5(1) and 5(2), 4(1), 8(1) and 8(2), 25(1) of the American Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García

Sánchez, and the right to humane treatment enshrined in Article 19 of the Convention, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 54, 55, 60, and 65 of the present Judgment.

2. Admit the acknowledgment of international responsibility made by the State for the violation of the rights to a fair trial and to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 54, 55, and 66 of the present Judgment.

DECLARES,

Unanimously, that

3. The State violated the rights to personal liberty and humane treatment and to life enshrined in Articles 7(1), 7(2), 7(3), 7(4), and 7(5), 5(1) and 5(2), and 4(1) of the American Convention, and the right to humane treatment enshrined in Article 5(5) of the Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, in relation to the rights of the child enshrined in Article 19 of the Convention, in detriment of Marco Antonio Servellón García and Rony Alexis Betancourth Vásquez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 86 through 125 of the present Judgment.

4. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention, in detriment of the next of kin of Marco Antonio Servellón García, Reyes Servellón Santos, father; Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, sister; of the next of kin of Rony Alexis Betancourth Vásquez, Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, and Ana Luisa Vargas Soto, partner, and of the sister of Orlando Álvarez Ríos, Dilcia Álvarez Ríos, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 126 through 139 of the present Judgment.

5. The State violated Articles 8(1), 8(2), 7(6), and 25(1) of the Convention, in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, all in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 140 and 155 of the present Judgment.

6. The State violated the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in detriment of the next of kin of Marco Antonio Servellón García, Reyes Servellón Santos, father, Bricelda Aide García Lobo, mother, and Marja Ibeth Castro García, Pablo Servellón García, and Héctor Vicente Castro García, siblings; of the next of kin of Rony Alexis Betancourth Vásquez, Manases Betancourth Núñez, father, Hilda Estebana Hernández López, mother, Zara Beatris Bustillo Rivera, daughter, Ana Luisa Vargas Soto, partner, and Juan Carlos Betancourth Hernández, Manaces Betancourt Aguilar, Emma Aracely Betancourth Aguilar, Enma Aracely Betancourth Abarca, and Lilian María Betancourt Álvarez, siblings; of the next of kin of Orlando Álvarez Ríos, Antonia Ríos, mother, and Dilcia

Álvarez Ríos, sister, and of the next of kin of Diomedes Obed García Sánchez, Diomedes Tito García Casildo, father, and Esther Patricia García Sánchez, Jorge Moisés García Sánchez, and Fidelia Sarahí García Sánchez, siblings, in relation with the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 140, 145 through 154, and 156 through 159 of the present Judgment.

7. This Judgment is, per se, a form of reparation, in the terms of paragraph 180 of the same.

AND DECIDES:

Unanimously, that:

8. The State must seriously undertake, within a reasonable period of time, all actions necessary to identify, prosecute, and, in its case, punish all the perpetrators and planners of the violations committed in detriment of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Orlando Álvarez Ríos, and Diomedes Obed García Sánchez, for criminal effects and any other that may result from the investigation of the facts. For this, the State must remove, in a reasonable period of time, all obstacles and mechanisms of fact and law that have maintained the impunity in the present case, in the terms of paragraphs 192 through 196 of the present Judgment.

9. The State must publish, within a six-month period, the Chapter on facts proven of this Judgment, without the corresponding footnotes, and the operative part of the same, once, in the terms of paragraph 197 of the present Judgment.

10. The State must hold, within a six-month period, a public act of acknowledgment of its international responsibility, in the terms of paragraph 198 of the present Judgment.

11. The State must name, within a one-year period, a street or a plaza, in the city of Tegucigalpa, in memory of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos. The State must place a plaque on said street or plaza with the names of the mentioned four victims, in the terms of paragraph 199 of the present Judgment.

12. The State must establish, within a reasonable period of time, a program for the formation and training of police and judicial personnel as well as personnel of the Public Prosecutors' Office and of the penitentiary regarding the special protection that must be offered by the State to children and youngsters, the principle of equality and non-discrimination, and the principles and norms for the protection of human rights, related to the application of international standards for the arrest of people, respect for their rights and judicial guarantees, the treatment that they must receive, their detention conditions, treatment, and medical control, the right to have an attorney, to receive visits, and that minors and adults, as well as those being processed and those already convicted, be located in different installations, in the terms of paragraph 200 of the present Judgment.

13. The State must carry out, within a reasonable period of time, a campaign with the purpose of creating awareness in the Honduran society regarding the importance of the protection of children and youngsters, inform it of the specific duties for their protection that correspond to the family, society, and the State, and make the population see that children and youngsters in situations of social risk are not identified with delinquency. Likewise, the State must issue, within a one-year period, a postal stamp allusive to the protection due by the State

and society to children and youngsters in risky situations, in order to prevent them from becoming victims of violence, in the terms of paragraphs 201 and 202 of the present Judgment.

14. The State must create, within a reasonable period of time, a unified data base between all institutions involved in the investigation, identification, and punishment of those responsible for the violent deaths of children and youngsters in risky situations, in the terms of paragraph 203 of the present Judgment.

15. The State must pay the next of kin of Marco Antonio Servellón García, Rony Alexis Betancourth Vásquez, Diomedes Obed García Sánchez, and Orlando Álvarez Ríos, in their condition of successors, and in a one-year period, as compensations for pecuniary and non-pecuniary damages, the amounts determined in paragraphs 176 and 184(a) and 184(b) of the present Judgment, in the terms of paragraphs 169 through 172, 176, 180, 182, 184(a) and 184(b) and 185 of the same.

16. The State must pay Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilcia Álvarez Ríos, within a one-year period, as compensation for pecuniary damages, the amount set in paragraph 177 of the present term, pursuant to its terms.

17. The State must pay Reyes Servellón Santos, Bricelda Aide García Lobo, Marja Ibeth Castro García, Manases Betancourth Núñez, Hilda Estebana Hernández López, Zara Beatris Bustillo Rivera, Ana Luisa Vargas Soto, and Dilcia Álvarez Ríos, within a one-year period, as compensation for non-pecuniary damages, the amounts set in paragraphs 184(c), 184(d), 184(e), 184(f) and 184(g) of the present Judgment, in the terms of paragraphs 180, 181, 183, 184(c), 184(d), 184(e), 184(f) and 184(g), and 185 of the same.

18. The State must pay, within a one-year period, in the concept of costs and expenses generated in the domestic realm and in the international proceedings before the Inter-American system for the protection of human rights, the amount set in paragraph 205 of the present Judgment, which must be delivered to Bricelda Aide García Lobo, Hilda Estebana Hernández López, and Dilcia Álvarez Ríos, in the terms of paragraphs 204 and 205 of the same.

19. 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 to the Court.

Judge Antônio A. Cançado Trindade advised the Court of his Concurring Opinion, which accompanies the present Judgment.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

CONCURRING VOTE OF THE JUDGE A.A. CANÇADO TRINDADE

1. Destiny presented once again, during my period of service as a Full Judge of the Inter-American Court of Human Rights, the drama of the street children before this Tribunal. Seven years after the Court's first Judgment in the historic leading case of the "Street Children " (Villagrán Morales et al.) versus Guatemala, (merits, 1999, and reparations, 2001), and three years after the Judgment of the Court in the dramatic case of Bulacio versus Argentina (merits and reparations, 2003), the subject of violence of children and youngsters in the streets once again occupies the central position in a Judgment of this Court, in the present case of Servellón et al. versus Honduras. When voting in the adoption of the present Judgment, I allow myself to add to the same this Concurring Vote, with my personal reflections as the grounds to my position regarding that discussed by the Court. I will focus my reflections on the following matters: a) grounds for the State's international responsibility; b) foundations for international jurisdiction; c) the threats against human rights within the decadence of social fabric; and d) the reaction of the Law: the prohibitions of the jus cogens and the due reparation revisited.

I. Grounds for the State's International Responsibility.

2. In the present Judgment in the case of Servellón et al., the Court has positively assessed the State's acknowledgement of responsibility for the violations against the rights protected by the American Convention (para. 77). However, the terms of said acknowledgment do not cover the totality of the vindications included in the petition (para. 75), AND, I allow myself to add, the terms of the acknowledgment of the State's responsibility, when it expressly excludes "the existence of a context of alleged systematic violence of human rights, both tolerated and consented" by the State (para. 54), set forth a matter that touches the foundations of a State's responsibility (including the basic distinctions between direct and indirect responsibility, objective or absolute international responsibility, and responsibility based on the offense (guilt), besides the matter of intentions (dolus) or lack of as the configuration or not of an aggravated international responsibility).

3. The Court, when facing the terms of the acknowledgment of the State's responsibility, made a mistake in its hasty discussion when it did not summon a public hearing for this important case. The present hearing that was not held, would have without doubt enriched the present Judgment, in three aspects: a) it would have enriched the dossier and preliminary proceedings of the case (especially with the positive attitude of procedural collaboration assumed by the State); b) it would have applied in its totality the principle of the presence of both parties to the case in what refers to the context of the same; and c) it would have served as satisfaction (as a means of reparation) for the victims' next of kin. But in the current desire – that I do not

share, and to which I am opposed, - of productivity of the Court (accompanied of decisions that are inevitably rushed), the current senseless urge to decide on the greatest number of cases in record time, deprived it of elements that could have enriched this Judgment.

4. In what refers to the present case of *Servellón García et al.*, one cannot find in the case file presented before this Court evidentiary elements that may lead to the establishment of an intention (*dolus*) of the State to carry out a deliberate, systematic, and massive violation of human rights in detriment of a segment of its population (essentially, youngsters). However, this does not exonerate the State of its responsibility for the sustained pattern of chronicle violence victimizing a segment of its population (youngsters), - pattern proven in the unsatisfactory dossier of the present case. Truly, this pattern has unfortunately continued for a prolonged period of time, that includes the year of occurrence of the facts of the present case (1995) and continues up to this date (that is, more than a decade).

5. There is one detail that I would not like to leave unmentioned, since in my opinion it is very symbolic. As stated by the Court in its recount of the facts proven in the *cas d'espèce*, "the 15th day of September of 1995 the Public Security Force (FUSEP) made collective arrests, that included the capture of 128 people, within the framework of a preventive and indiscriminate police operative (...) in the city of Tegucigalpa, in order to avoid disturbances during the parades held to celebrate Honduras' National Independence Day." (para. 79(5)). Among those arrested were Marco Antonio Servellón García (16 years old), Rony Alexis Betancourth Hernández (17 years old), Diomedes Obed García (19 years old), and Orlando Álvarez Ríos (32 years old), the victims of the present case (that is, two children, one youngster, and one adult), - that were shortly afterwards found murdered, with gun wounds to their nape, head, and chest, in different parts of the city of Tegucigalpa, reason for which the episode was called, and was known as, the case of the "four cardinal points" (para. 79(32)).

6. That is, maintaining the order for the celebrations of the national holiday was an excuse for the perpetration of this violent and criminal operation. The symbolism that characterizes the episode resides, as seen by me, in the counter position between the State and the nation. The State, historically and originally conceived and created for the realization of common good, goes on to victimize – in a scary reversion of values – “undesirable” segments alienated from their own population. As I pointed out in my recent and extensive *General Course on Public International Law* at the Academy of International Law of La Haya (2005), [FN1] of the classic constitutive elements of the State, - and prerequisites of its international judicial personality,- that make up its own identity and continuity in time (that is, territory, normative system, and population), it is precisely the most precise of them, population, the one that has been most neglected and mistreated both in doctrine and in practice!

[FN1] A.A. Cançado Trindade, "International Law for Humankind: Towards a New *Jus Gentium* - General Course on Public International Law", *Recueil des Cours de l'Académie de Droit International de la Haye* (2005) ch. XXI (in press).

7. This reveals characteristics of a real tragedy, the great tragedy of our times, aggravated by the fact that today those that read and think, and seem willing to learn from the lessons of the past are constantly reduced. In the extremely violent world in which we live in today, we must, to the contrary, seek protection from the State, - against the myth of the State [FN2], - against its actions and omissions, and before its express incapacity – in almost all parts of the contemporary world – to offer a minimum protection to its population, and especially to its most vulnerable segments.

[FN2] To evoke the expression used in a classic study of Ernst Cassirer.

8. That decided in the present Judgment of the Court in the case of *Servellón García et al.* is based on the State's objective international responsibility. The classical case in this sense, in the jurisprudence of this Court, is that of "The Last Temptation of Christ", regarding Chile (Judgment of 02.05.2001), in which I allowed myself to present, in my Concurring Opinion, the grounds for objective or absolute responsibility in the legal international doctrine. But not all the cases of violations of human rights are based on an objective international responsibility.

9. In my aforementioned General Course of 2005 in the Academy of International Law of La Haya, I observed that, next to said grounds for international responsibility, there are also cases of violations to human rights in which the guilt (offense), and even the *dolus* (when the intention is proven), are present, thus arising the aggravated international responsibility. [FN3] We can recall, as examples in this last sense, the cases of *Myrna Mack Chang versus Guatemala* (Judgment of 11.25.2003), of the *Massacre of Plan de Sánchez versus Guatemala* (Judgment of 04.29.2004), of the *19 Tradesmen versus Colombia* (Judgment of 07.05.2004), of the *Mapiripán Massacre versus Colombia* (Judgment of 09.15.2005), of the *Massacre of the Moiwana Community versus Suriname* (Judgment of 06.15.2005), of the *Ituango Massacre versus Colombia* (Judgment of 07.01.2006), - in which the State's intent to commit gross violations of human rights, or its express negligence to avoid them, were irrefutably proven.

[FN3] A.A. Cançado Trindade, "International Law for Humankind: Towards a New *Jus Gentium* - General Course on Public International Law", *Recueil des Cours de l'Académie de Droit International de la Haye* (2005) ch. XV (in press).

10. In these cases, the gross breaches were perpetrated in name of the State, as a subject of International Law, and, also, in the same line of its criminal acts the facts were covered, with its aggravated international responsibility deriving from all this. In summary, and in conclusion regarding the present matter under examination, in the current general theory on the State's international responsibility, there is still a coexistence between objective (or absolute) international responsibility and the State's international responsibility based on guilt, and even on *dolus* (aggravated).

II. Foundations of the International Jurisdiction.

11. I go on to the next point of my reasoning: In my Concurring Opinion in the case of Blake versus Guatemala (merits, Judgment of 01.24.1998) I already allowed myself to point out the grounds for international responsibility (conventional obligations) and of international jurisdiction. The first is of material law, being the second of a jurisdictional order. Although in the present case of Servellón García et al. versus Honduras there were no problems of a jurisdictional order, there is room here for one precision. When extending its examination of the case further on than what was object of the acknowledgment of responsibility by the State, the Court – without saying it – has exercised an inherent power to its jurisdiction. The Court seems to not have noticed that the thesis of the inherent powers strengthens its jurisdictional foundations.

12. This has been irrefutably proven in its experience in recent years, in the exercise of its functions, both advisory and contentious. With regard to the first, the Court made use, in an exemplary manner, of its inherent powers in its Advisory Opinion n. 15, on Reports of the Inter-American Commission on Human Rights (Article 51 of the American Convention on Human Rights – of 11.14.1997), as I stated in my Concurring Opinion. And, in what refers to its contentious function, with its two historical Judgments, in jurisdictional subjects, in the cases of the Constitutional Tribunal and of Ivcher Bronstein versus Peru (both of 09.24.1999), which are currently acclaimed as a great contribution to the international jurisprudence in the sense of preservation of integrity and strengthening of the same.

13. The few differing and reactionary voices that still insist on maintaining a willing position on the subject, [FN4] more attentive and open to the State's unilateralism (including the pretension to withdraw the state's acceptance of the competence of the Court with "immediate effects") than to the imperatives of international jurisdiction, forget the special nature of the human rights treaties; forget the thousands and thousands of victims of the repressive regimen established in the State accused at this time; forget that the credibility and integrity themselves of the Court were at stake; forget that the international jurisdiction was the last hope of the defendants that were completely helpless; forget the imperative of access to justice (belonging, from my point of view, to the domain of the jus cogens). If the Court had followed a willing and strictly formalistic vision of the applicable law, maybe it would no longer exist.

[FN4] Including, to my astonishment and regret, those of four Latin American authors.

14. Fortunately, when facing the largest crisis it has faced in all its history up to now, the Court made a firm and correct use of the powers inherent to its jurisdiction, and its two mentioned avant-garde Judgments of 09.24.1999 are a framework for contemporary international jurisprudence in matters of international protection of human rights, as internationally acknowledged. Another notable example of the use of the powers inherent to its jurisdiction can be found in its Judgment of 11.28.2003 in the case of Baena Ricardo et al. versus Panama, in which it held with the same firmness its inherent power to supervise the execution or faithful compliance of its own judgments. Thus, in the present case of Servellón García et al. versus

Honduras, the Court could have been more explicit in what refers to the power inherent to its jurisdiction of having made a more deep examination of the context of the cas d'espèce.

15. Even so, the Court duly took into account the context of the present case. As stated in this Judgment, the State acknowledged the existence of the “phenomena of violent deaths of underage children,” but it denied that it was “a policy of ‘social prophylaxis’.” (para. 106). The Court correctly affirmed that

“International responsibility may also be attributed even in the absence of intention, and the acts that violate the Convention are the State’s responsibility regardless of the fact that they are or not a consequence of a deliberate state policy.” (para. 107)

16. That is, the Court, in the exercise of a power inherent to its jurisdiction, determined the State’s objective international responsibility (supra). The Court stated that, in the origin of the configuration of the State’s international responsibility, the latter proceeded to a programmed and collective arrest of 128 persons, “without an arrest warrant and without having been arrested in a crime detected in the act,” arrest carried out “with the declared purpose of avoiding disturbances during the parades that would be held to celebrate the National Independence Day.” (para. 91) In the Court’s assessment, and pursuant to its previous Judgment (of 09.18.2003) in the case of *Bulacio versus Argentina*, “razzias are incompatible with the respect of fundamental rights,” (para. 93), and the facts of the present case of *Servellón García et al.* occurred “within the framework of a context of violence against children and youngster in situations of social risk in Honduras.” (para. 104)

III. A Contemporary Tragedy: The Attacks against Human Rights in Midst of the Decadence of Social Fabric.

17. In the expert opinions included in the dossier of the present case, gathered in the Judgment that this Court has just adopted, there are references to “the street-cleaning policy” and “the State’s ‘zero tolerance’ policy” (para. 37(2)(a)) as well as to the actions of organized crime, drug traffickers, and “private clandestine groups of ‘social cleaning’.” (para. 37(3)(b)). What we can conclude from the facts of the present case is, in my opinion, a clear decadence of the social fabric, a social environment indifferent to the luck of its alienated members, and partisan of repressive policies, - as can be seen in almost the complete totality of Latin America and in practically the whole world, especially with regard to youngsters (who live in a brief present, without a future), and undocumented immigrants.

18. Not surprisingly and in a good way, the Inter-American Court goes back to its best jurisprudence of Advisory Opinions n. 17 of *The Juridical Condition and Human Rights of the Child* (of 08.28.2002) and n. 18, on *The Juridical Condition and Rights of the Undocumented Migrants* (of 09.17.2003), as well as of its Judgments in the case of the “*Street Children*” (*Villagrán Morales et al.*) versus Guatemala (merits, 11.19.1999, and reparations, 05.26.2001). [FN5] Now, in the present case of *Servellón García et al.*, the facts that have given origin to the cas d'espèce reveal, once more, that the cases of this nature represent a micro-cosmos of the violence perpetrated, without boundaries, against street children throughout the world, revealing at the same time the sad fate of many of those already alienated and excluded in the dawn of

their lives. For them, life is actually nothing more than a walking shadow, in the expression of a universal author, and a shadow that fades very rapidly. Their sad fate evokes the classical regret of Shakespeare's *Macbeth* (1606):

"Tomorrow, and tomorrow, and tomorrow,
Creeps in this petty pace from day to day,
To the last syllable of recorded time;
And all our yesterdays have lighted fools
The way to dusty death. Out, out, brief candle,
Life's but a walking shadow, a poor player
That struts and frets his hour upon the stage,
And then is heard no more. It is a tale
Told by an idiot, full of sound and fury
Signifying nothing." [FN6]

[FN5] Paras. 113, 95, 114, and 116 respectively, of the present Judgment.

[FN6] Shakespeare, *Macbeth* (1606), act V, scene 5.

19. But no matter how brief and ephemeral the life of those abandoned by the world, and tortured and murdered with brutality by their piers, they occupy, as victims, a center stage in the International Law on Human Rights. The establishment of the centralization of the victims within the conceptual universe of International Law on Human Rights is currently very solid, to which the jurisprudence of this Inter-American Court has contributed in a decisive manner. As stated in my Concurring Vote in the case of the "Street Children" (reparations, 2001), - and as the present case of *Servellón García et al.* once again reveals, -

"The human being, even in the most adverse conditions, emerges as subject of the International Law of Human Rights, endowed with full international juridical-procedural capacity." (para. 1)

20. In his classic *Los Misérables* (1862), Victor Hugo weighs in with a witty spirit:

"L'avenir arrivera-t-il? Il semble qu'on peut presque se faire cette question quand on voit tant d'ombre terrible. Sombre face-à-face des égoïstes et des misérables. Chez les égoïstes, les préjugés, les ténèbres de l'éducation riche, l'appétit croissant par l'enivrement, un étourdissement de prospérité qui assourdit, la crainte de souffrir qui, dans quelques-uns, va jusqu'à l'aversion des souffrants, une satisfaction implacable, le moi si enflé qu'il ferme l'âme; - chez les misérables, la convoitise, l'envie, la haine de voir les autres jouir, les profondes secousses de la bête humaine vers les assouvissements, les coeurs pleins de brume, la tristesse, le besoin, la fatalité, l'ignorance impure et simple. Faut-il continuer de lever les yeux vers le ciel? (...)." [FN7]

[FN7] Victor Hugo, *Los Misérables* (1862) (préface de Ch. Baudelaire), volume III, Paris, Libr. Gén. Française, 1972, p. 30.

21. The penetrating words of Victor Hugo acquire great topicality. The disparities that flagellate national societies (and are currently more serious in the erroneously “globalized” world of our days), reveal one of its most marked characteristics: the sad repressive nature of said societies. In the name of public security the most vulnerable, alienated, and excluded, the “undesirable”, Victor Hugo’s misérables, are killed with impunity. Additionally, our repressive societies of today – not only in Latin America but in all continents (I have visited them all, and I know what I am talking about), - do not have a memory, they are condemned to live in a brief and despairing present, without encouraging perspectives, without a future.

22. On the graves of each of the children and youngsters killed in the cas d'espèce the verses with which Victor Hugo concludes his work *Les Misérables* could perfectly be transcribed – until the wind and rain wash them away, that is after the “collective memory”,-:

"Il dort. Quoique le sort fût pour lui bien étrange,
Il vivait. Il mourut quand il n'eut plus son ange;
La chose simplement d'elle-même arriva,
Comme la nuit se fait lorsque le jour s'en va." [FN8]

It was precisely to the chiaroscuro of life that I made reference to, within the Inter-American Court half a decade ago, in my Concurring Opinion in the aforementioned case of the “Street Children”, when I referred to the trilogy formed by victimization, human suffering, and the rehabilitations of the victims, - to be considered as from the integrality of the personalities of the victims (paras. 3 and 19):

“(…) The tension of the clear-dark, of the advances intermingled with setbacks, is proper of the human condition, and it constitutes, in fact, one of the most precious legacies of the thinking of the ancient Greeks (always so contemporary) to the evolution of the human thinking itself, which has penetrated human conscience throughout the centuries. The Platonic allegory of the cave, for example, reveals, with all lucidity and its great existential density, la precariousness of the human condition, and, accordingly, the necessity of transcendence, beyond the alleged crude "reality" of the facts. In the domain of Law, well beyond legal positivism, one is to bear in mind the reality of the human conscience.” (para. 18)

[FN8] Ibid., volume III, p. 536.

23. Regarding the projection of the victims’ suffering I warned, in the same Concurring Opinion,

“(…) the suffering of the excluded ones is ineluctably projected into the whole social corpus. The supreme injustice of the state of poverty inflicted upon the unfortunate ones contaminates the whole social milieu, which, in valuing violence and aggressiveness, relegates to a secondary position the victims (...).Human suffering has a dimension which is both personal and social.

Thus, the damage caused to each human being, however humble he might be, affects the community itself as a whole.” (para. 22)

24. The free and unnecessary violence of bodies and agents of the state, especially against the most vulnerable segments of the population, and the exclusion and punishment, as well as the confinement, of those that are “undesirable”, as state “responses” to a “social problem”, has been a constant in the history of the modern State. This has not only happened in Latin American countries, but also in Europe and the whole world. When examined with historical details, the countries of Western Europe, in the period from 1500 to 1800 (in a work originally published in France in 1961), Michel Foucault let himself comment that "civilization, in a general way, constitutes a milieu favorable to the development of madness", being the latter (madness) “the denial of reason.” [FN9] The murder of street children is, besides a gross breach of human rights, a statement of the madness of the “civilized”, the most emphatic and scary denial of reason.

[FN9] Michel Foucault, *Madness and Civilization - A History of Insanity in the Age of Reason*, N.Y., Vintage, [1986 - reed.], pages 217 and 107, and cf. pages 47-49, 221-222, 269 and 289.

25. In this regard, the respectable legal philosopher Karl Jaspers warned, some decades ago, that reason – which is inseparable from human existence – is not imposed per se, but instead it results from a decision made by a person in the exercise of his liberty. Since we are clearly at the mercy of events that occur “beyond our control”, the result is that "reason can stand firm only in the strength of reason itself." [FN10] I believe that this entire matter is up to a certain point involved by the mystery of human existence itself.

[FN10] K. Jaspers, *Reason and Anti-Reason in Our Time*, Hamden/Conn., Archon Books, 1971, pages 59, 50 and 84.

26. Among the four victims, tortured, and murdered by their executioners in the present case of *Servellón et al.*, one of them, Diómedes, simply cried. He cried when receiving a “prior notice” that he would be tortured and killed. He cried because of his helplessness and the inevitability of his murder before the monopoly of the use of public force by the State. He could do nothing else but cry, when he said goodbye to his life, due to an arbitrary and criminal decision made by his executioners. And this is only one of the many congenerous cases that occur every day throughout Latin America and the world. The State creates the “undesirables”, when it stops fulfilling the social duties for which it was historically created, and it later alienates them, excludes them, confines them, or kills them (or lets them be killed).

IV. The Reaction of the Law: The Prohibitions of the Jus Cogens and the Due Reparatio Revisited.

27. I could not conclude this Concurring Opinion without highlighting the importance of the international jurisdiction on human rights: once more, those forgotten by the world presented

their case before it. The humiliations and suffering they underwent have been judicially acknowledged, along with their juridical consequences for the responsible parties. In the present Judgment, the Court has warned that the dangerous stigmatization that poor children and youngsters would be conditioned to delinquency, creates a “favorable climate” so that said minors in risky situations be placed before a constant threat to their life, their right to humane treatment and personal liberties (para. 112).

28. In its Report of 06.14.2002 regarding Honduras, the Special Rapporteur of the United Nations on Extrajudicial, Summary, or Arbitrary Killings (Sra. A. Jahangir), warning against “the criminalization of poverty” and the wrong tendency of attributing the violent deaths of minors to “confrontations between gangs,” [FN11] stated that

"the cases of extrajudicial killings of children and the general phenomenon of young violence and poverty in Honduras are linked both in a solid and categorical manner. (...) Young delinquency may never be used to justify security forces killing children in order to maintain public order." [FN12]

[FN11] UN, document E/CN.4/2003/3/Add.2, of 06.14.2002, page 12, paras. 31-32.

[FN12] Ibid., page 11, para. 29.

29. And it made it worse that in Honduras “children make up the majority of the population,” living in conditions of vulnerability, affected by “the poverty and insecurity” derived from “social, political, and economic injustice.” [FN13] According to the Special Rapporteur of the United Nations,

"in Honduras some children have been killed by members of the police force. In the majority of the cases the children were unarmed and they had not provoked the police officer to employ force, and even less so lethal means. (...) Besides institutionalized impunity, there is a campaign to condition the public opinion to support the ‘cleaning’ of undesirable children from the streets of Honduras." [FN14]

[FN13] Ibid., pages 27 and 14, paras. 87 and 39. According to the Special Rapporteur of the United Nations, “many of the victims of the extrajudicial killings belong to single-parent families that are normally headed by the mother. The loss of women’s autonomy is closely linked to the alienation of the child”; *ibid.*, page 27, para. 88.

[FN14] Ibid., page 25, para. 73.

30. On its part, and in the same line of reasoning, the [then] National Human Rights Commissioner (Mr. Leo Valladares Lanza), in his Special Report on the Violent Deaths of Boys, Girls, and Teenagers in Honduras, of 01.21.2002, also warned against the social alienation of children and youngsters in Honduras, the social indifference, and the "intolerable impunity"

when facing the “massive death of teenagers and youngsters,” and their fateful consequences, such as the increase of violence and public insecurity. In his words,

"In the last four years the rights to life and to humane treatment have been systematically breached, toward a clearly identified sector. Teenagers and youngsters have been murdered in different cities of the country under arbitrary presumptions and by police agents or groups organized under State tolerance, and even as individual revenges." (para. 7) [FN15]

[FN15] And cf. paras. 1-3 and 11-12.

31. When referring expressly to the case of Servellón García et al., known as the case of the “four cardinal points” (para. 71), he added that “youngsters had been forced to suspect a society that not only alienates them, but also deprives them and puts thousands of obstacles for them to achieve their development or a minimum level of life quality with dignity.” (para. 38) This is no longer about forced disappearances or “clandestine cemeteries” or “hidden detention centers” as occurred in the eighties (para. 69). In the mid nineties, it was about

"a campaign of ‘social cleaning’ or ‘social prophylaxis’, in which with frequency the identity of the victims is unknown, that of the perpetrators is confused, and in many cases nobody asks for an investigation of what happened. (...) The rights of street children or youngsters are not acknowledged, and they are always presumed guilty instead of innocent. (...) The majority of the authors of the violence are police agents, but little by little people classified as ‘unknown’, (...) extermination groups, or death squads, whose members have sometimes been recognized as members of the State’s security forces, have intervened.” (paras. 69 and 72).

32. The authoritarianism of the eighties was followed by this frame of chronicle violence of the nineties, with the State’s tolerance and its negligence regarding impunity. [FN16] In the lucid evaluation of the author of the mentioned Special Report, former Commissioner Leo Valladares Lanza,

"Poverty or extreme poverty is still (...) the worst form of violence to which a large part of the country’s children and youngsters are submitted. In it is the root that explains the thousands of boys and girls that are, on a daily basis, submitted to abuse on the street. (...) Adults have seemed indifferent or have responded wrongly, considering them ‘objects of compassion and repression at the same time, instead of fully legal persons’.” (para. 43)

[FN16] Paras. 91, 152, and 192(11); the mentioned Special Report adds that, of the totality of youngsters that died in a violent manner, “a large number did not belong to ‘maras’ or gangs (66%), nor did they have previous criminal records.” (para. 192(2))

33. Before this international jurisdiction, those forgotten by the world are treated as fully legally persons, endowed with international juridical-procedural capacity. Their sufferings are

not in vain. In the present Judgment in the case of *Servellón García et al.*, the case of the “four cardinal points”, the Inter-American Court concluded that

“the victims were detained collectively, illegally and arbitrarily, submitted to torture and cruel, inhuman, and degrading treatments during their detention. (...)The extreme cruelty with which the victims were killed, depriving them of their life in a humiliating manner, the marks of physical torture present in the four bodies, and the manner in which their bodies were abandoned out in the open, were serious assaults against the right to life, to humane treatment, and personal liberty.” (para. 99)

34. When facing the facts of the present case, the Court has correctly reiterated its position in the sense that the absolute prohibition of torture and cruel, inhuman, or degrading punishments or treatments, and respect for the basic principle of equality and non-discrimination, acquire an imperative nature, belong to the domain of the *jus cogens*, and bring about obligations *erga omnes* of protection (paras. 97 and 94), with all their juridical consequences for the reparations. On this final point, I repeat here what I stated in my Concurring Vote to the case of *Bulacio versus Argentina* (Judgment of 09.18.2003), specifically:

“It is here that the Law intervenes, to halt the cruelty with which human beings treat their fellow men or women. In light of this, it is here that the Law intervenes, to affirm its own prevalence over brute force, to attempt to organize human relations on the basis of *recta ratio* (natural law), to mitigate human suffering, and thus make life less unbearable, or perhaps bearable – understanding that life with suffering, and solidarity, is preferable to non-existence. (...)

This explains the importance of the realization of justice. The juridical order (both domestic and international) sets itself up to oppose violent acts that breach human rights, to ensure that justice prevails and, thus, to provide satisfaction to the direct and indirect victims. In his work on *L'Ordinamento Giuridico*, originally published in 1918, the Italian philosopher of the Law, Santi Romano, argued that punishment is not attached to specific juridical provisions, but rather is inherent to the juridical order as a whole, operating as an “effective guarantee” of all subjective rights protected by said order. [FN17] (...)

The Law, issuing from and moved by human awareness, provides *reparatio* (from the Latin *reparare*, “to dispose once again”); it also intervenes to avoid repetition of the wrong, in other words, to establish, as one of the non-pecuniary forms of reparation of damage resulting from violations of human rights, the guarantee of non-recidivism of the injurious acts. Said guarantee of non-recidivism already has a definite place among the range of forms of reparation for human rights violations. (...)

Reparatio does not end what happened, the violation of human rights. The wrong was already committed [FN18]; *reparatio* avoids a worsening of its consequences (due to indifference of the social milieu, due to impunity, due to oblivion). From this perspective, *reparatio* takes on a dual meaning: it provides satisfaction (as a form of reparation) to the victims, or to their next of kin, whose rights have been abridged, while also reestablishing the legal order weakened by said violations –a legal order erected on the basis of full respect for the inherent rights of the human person. [FN19] The legal order, thus reestablished, requires guarantees of non-recidivism of the injurious facts.

Reparatio disposes once again, reestablishes order in the lives of the surviving victims, but cannot eliminate the pain that is inevitably incorporated into their daily existence. (...) *Reparatio*

is an unavoidable duty of those responsible for rendering justice. In a stage of greater development of human awareness, and therefore of the Law itself, undoubtedly the realization of justice overcomes any and every obstacle (...). Reparatio is a reaction, in the field of the Law, to human cruelty, expressed in various ways: violence in dealing with other human beings, impunity of those responsible with respect to the public authorities, indifference and oblivion in the social milieu

This reaction of the legal order breached (the substratum of which is precisely respect for human rights) is ultimately moved by the spirit of human solidarity. The latter, in turn, teaches us that oblivion is inadmissible (...). Reparation, thus understood - providing satisfaction to the victims (or their next of kin) and guarantees of non-recidivism of the injurious facts, (...) is undeniably important. Rejection of indifference and oblivion, and guarantees of non-recidivism of the violations, are expressions of solidarity between the victims and the potential victims, in the violent world, empty of values, in which we live. (...)" (paras. 30, 33, 35, and 37-40).

[FN17] Santi Romano, *L'ordre juridique* (trad. 2a. ed., reed.), Paris, Dalloz, 2002, page 16.

[FN18] Human capacity both to promote good and for evil has not ceased to attract the attention of human reflection over the centuries; cf. F. Alberoni, *Las Razones del Bien y del Mal*, Mexico, Gedisa Edit., 1988, pp. 9-196; A.-D. Sertillanges, *Le problème du mal*, Paris, Aubier, 1949, pages 5-412.

[FN19] As I pointed out in my Separate Concurring Opinion yesterday, with respect to Advisory Opinion No. 18 of the Inter-American Court, on the Legal Status and Rights of Migrants without Documents (on the 17.09.2203), para. 89.

35. These reflections, which I allowed myself to develop in the case of *Bulacio*, place, in my opinion, in their due dimension the different modalities of reparation ordered by the Inter-American Court also in the present case of *Servellón García et al.* I find it completely appropriate to order, v.g., as has the Court in the present Judgment (operative paragraph n. 13), the realization by the respondent State of "a campaign with the purpose of creating awareness in the Honduran society regarding the importance of the protection of children and youngsters, inform it of the specific duties for their protection that correspond to the family, society, and the State, and make the population see that children and youngsters in situations of social risk are not identified with delinquency."

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary