

**Order of the
Inter-American Court of Human Rights
of November 21, 2007
Case of Juan Humberto Sánchez v. Honduras
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the preliminary objection, merits, reparations and costs handed down on June 7, 2003 (hereinafter "the Judgment") by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), whereby it decided:

1. to dismiss the preliminary objection filed by the State.

AND DECLAR[ED] THAT:

2. the State violated the right to personal liberty established in Article 7(1), Article 7(2), Article 7(3), Article 7(4), Article 7(5), Article 7(6) and the latter in combination with Article 25 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, and the right to personal liberty protected by Article 7 of the American Convention on Human Rights to the detriment of Juan José Vijil Hernández.

3. the State violated the right to humane treatment established in Article 5 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, María Dominga Sánchez, Juan José Vijil Hernández, Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Julio Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

4. the State violated the right to life established in Article 4(1) of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez.

5. the State violated the right to humane treatment established in Article 8 of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez, María Dominga Sánchez, Juan José Vijil Hernández, Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Julio Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

6. the State violated the right to life established in Article 4(1) of the American Convention on Human Rights, to the detriment of Juan Humberto Sánchez. The State also violated the rights established in Article 1(1) in regard to Articles 5, 7, 8 and 25 of the American Convention on Human Rights in detriment to Juan José Vijil Hernández; and the State violated the rights established in Article 1(1) in regards to Articles 5, 8 and 25 of the American Convention on Human Rights in detriment to María Dominga Sánchez, Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Julio Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez, Donatila Argueta Sánchez, Breidy Maybeli Sánchez Argueta, Velvia Lastenia Argueta Pereira and Norma Iveth Sánchez Argueta.

7. the [...] Judgment constitutes *per se* a form of reparation to the victims [...].

AND DECID[ED] THAT:

8. the State must pay the total sum of US\$39,700.00 (thirty-nine thousand seven hundred United States dollars) or their equivalent in Honduran currency, as compensation for pecuniary damage, distributed as follows:

- a) US\$25,000.00 (twenty-five thousand United States dollars) or their equivalent in Honduran currency, to be distributed among his daughters, Breidy Maybeli Sánchez Argueta and Norma Iveth Sánchez Argueta; his companions, Donatila Argueta Sánchez and Velvia Lastenia Argueta Pereira, and his parents, María Dominga Sánchez and Juan José Vijil Hernández, as the beneficiaries of Juan Humberto Sánchez [...].
 - b) to Donatila Argueta Sánchez, US\$3,500.00 (three thousand five hundred United States dollars) or their equivalent in Honduran currency [...].
 - c) US\$8,200.00 (eight thousand two hundred United States dollars) or their equivalent in Honduran currency, to be distributed equally between Juan José Vijil Hernández and María Dominga Sánchez [...].
 - d) to Domitila Vijil Sánchez, US\$1,500.00 (one thousand five hundred United States dollars) or their equivalent in Honduran currency [...].
 - e) to Reina Isabel Sánchez, US\$1,500.00 (one thousand five hundred United States dollars) or their equivalent in Honduran currency [...].
9. the State must pay the total sum of US\$245,000.00 (two hundred forty-five thousand United States dollars) or their equivalent in Honduran currency, as compensation for non pecuniary damage, distributed as follows:
- a) US\$100,000.00 (one hundred thousand United States dollars) or their equivalent in Honduran currency, to be distributed among his daughters, Breidy Maybeli Sánchez Argueta and Norma Iveth Sánchez Argueta; his companions, Donatila Argueta Sánchez and Velvia Lastenia Argueta Pereira, and his parents, María Dominga Sánchez and Juan José Vijil Hernández, as the beneficiaries of Juan Humberto Sánchez [...].
 - b) to Juan José Vijil Hernández, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency [...].
 - c) to María Dominga Sánchez, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency [...].
 - d) to Donatila Argueta Sánchez, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency [...].
 - e) to Velvia Lastenia Argueta Pereira, US\$5,000.00 (five thousand United States dollars) or their equivalent in Honduran currency [...].
 - f) to Breidy Maybeli Sánchez Argueta, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency [...].
 - g) to Norma Iveth Sánchez Argueta, US\$20,000.00 (twenty thousand United States dollars) or their equivalent in Honduran currency [...].
 - h) to each of the following: Reina Isabel Sánchez, María Milagro Sánchez, Rosa Delia Sánchez, Domitila Vijil Sánchez, María Florinda Vijil Sánchez, Juan Carlos Vijil Sánchez, Celio Vijil Sánchez and Julio Sánchez, US\$5,000.00 (five thousand United States dollars) or their equivalent in Honduran currency [...].
10. the State must continue to effectively investigate the facts in the instant case [...], identify those responsible, both the direct perpetrators and the instigators, as well as any possible accessories after the fact, and punish them administratively and criminally as appropriate; the next of kin of the victim must have full access and legal standing at all stages and levels of said investigations, in accordance with domestic laws and the provisions in the American Convention on Human Rights; and the results of said investigations must be made known to the public.
11. the State must provide the conditions required to transfer the mortal remains of Juan Humberto Sánchez to the place chosen by his next of kin, at no cost to them [...].
12. the State must implement a record of detainees enabling control of the legality of detentions [...].

13. the State must publicly acknowledge its responsibility regarding the facts in this case, and as amends to the victims it must publish in the official gazette and in another daily with nationwide circulation, once only, the operative part of this Judgment and the chapter on proven facts therein [...].

14. the State is to pay a lump sum of US\$19,000.00 (nineteen thousand United States dollars) or their equivalent in Honduran currency for legal costs and expenses [...].

15. compensation for pecuniary damage, non pecuniary damage, and costs and expenses established in the [...] Judgment may not be subject to currently existing or future taxes, levies or charges.

16. the State must comply with the measures of reparation ordered in the [...] Judgment within six months of the date it is notified.

17. if the State were in arrears, it must pay interest on the amount owed, which will be the banking interest for arrears in Honduras.

18. the compensation ordered in favor of the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez, must be deposited by the State in their name in an investment with a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency, within six months time, and under the most favorable financial conditions allowed by banking practice and legislation [...].

19. it will monitor compliance with this judgment and will close the instant case once the State has fully applied the provisions of the instant Judgment. Within the period of six months, which shall commence with the notification of [the] Judgment, the State shall submit a report to the Court on the measures that have been adopted comply with [the] Judgment [...].

2. The Orders for Compliance with the Judgment issued by the Tribunal on November 17, 2004 and on September 12, 2005. In this latter one, the Court:

DECLAR[ED]:

1. That as pointed out in Considering clause 8 of the instant Order, the state has complied in part with the provision in the thirteenth operative paragraph of the Judgment on preliminary objections, merits and reparations handed down by the Tribunal on June 7, 2003 in that it complied with effecting the public acknowledgement of its responsibility regarding the facts in this case.

2. That it will keep open the proceeding for monitoring compliance with the aspects pending complete fulfillment in the present case, namely:

- a) the obligation to continue effectively investigating the facts in the instant case, and to identify those responsible, both the direct perpetrators and the instigators, as well as any possible accessories after the fact, and to punish them administratively and criminally as appropriate (tenth operative paragraph);
- b) full access by the next of kin of the victim to all stages and levels of said investigations and that the results of said investigations be made known to the public (tenth operative paragraph);
- c) transfer of the mortal remains of Juan Humberto Sánchez to the place chosen by his next of kin, at no cost to them (eleventh operative paragraph);
- d) implementing a record of detainees enabling control of the legality of detentions (eleventh operative paragraph);
- e) publishing the operative part and the chapter on proven facts of the Judgment of June 7, 2003 in the official gazette and in another daily with nationwide circulation (thirteenth operative paragraph);
- f) placing the compensation ordered in favor of the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez, in an investment with a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency and under the most favorable financial conditions allowed by banking practice and legislation (eighteenth operative paragraph).

- g) payment of the lump sum ordered by the Court as compensation for pecuniary damage (eighth operative paragraph);
- h) payment of the lump sum ordered by the Court as compensation for non pecuniary damage (ninth operative paragraph);
- i) payment of the lump sum ordered by the Court as compensation for legal costs and expenses (fourteenth operative paragraph);
- j) payment of applicable arrears interest (seventeenth operative paragraph).

3. The brief of September 29, 2005 and its appendixes, whereby the representatives of the victim and his next of kin (hereinafter "the representatives") referred to compliance with the Judgment. They stated that after the remains of Juan Humberto Sánchez were exhumed, the State had had them sent to the Forensic Medical facilities in order to effect DNA tests thereon and that more than a year had gone by after such exhumation without the State having delivered the remains to the next of kin. In order to justify such delay, the State alleged that the equipment required for the tests was damaged, that spare parts and reactivities were lacking or, at a later point, it alleged that the tests had failed to produce conclusive results. The representatives stated they failed to understand the reason why the State did not deliver the remains of Juan Humberto Sánchez, since they were his beyond all doubt. Lastly, they pointed out that the State had not mentioned its reasons for doubting that the remains found were those of Juan Humberto Sánchez, and therefore the grounds on which it justified the DNA tests and the aforementioned delays.

4. The brief of March 24, 2006 and its appendixes, whereby the State of Honduras (hereinafter "the State" or "Honduras") reported on the results of the identification tests on the remains of Mr. Juan Humberto Sánchez. It expressed that it "proceeded to effect the test at the *Laboratorio de Genética Forense de la Dirección de Medicina Forense* (Forensic Genetics Laboratory of the Forensic Medicine Bureau), for the purpose of extracting and amplifying [...] from [...] two bone pieces considered to be in the best conditions for their genetic study and for obtaining the genetic profile to be compared with those of [the] alleged mother and sister [of Juan Humberto Sánchez]." Likewise, it pointed out that "after trying six times it turned out to be impossible to obtain the necessary genetic material by means of such technique, for which reason it was recommended to carry out the tests by analyzing Mitochondrial DNA.

5. The brief of February 12, 2007 and its appendixes, whereby the State submitted its report on compliance, wherein it stated:

- a) regarding the payment of US\$ 5,000.00 in favor of Julio Sánchez, the possibility that such person would have died exists. For such reason, the State has recommended that the representatives undertake the pertinent proceedings to petition for a declaration of presumptive death so that then they could commence the proceedings in order for the descent and distribution of his estate. Regarding the compensation ordered in favor of the girls Breidy Maybeli and Norma Iveth, both of them bearing the last name of Sánchez Argueta, the State informed that, on January 11, 2007 the *Acuerdo Ejecutivo* (Executive Order in Council) authorizing the *Procuraduría General de la República* (Office of the General Attorney for the Republic) to set up a trust for the benefit of the aforementioned minors was published in the official gazette *La Gaceta*, and as of the date the report was submitted the State was going through the procedures for procuring the corresponding funds. As far as the rest of the compensations are concerned, the State informed that they had already been paid out;

- b) regarding the duty to afford the conditions required to transfer the mortal remains of Juan Humberto Sánchez to the place elected by his next of kin, at no cost for them, the State reported that the *Laboratorio de Análisis Clínicos y Moleculares* (Clinical and Molecular Tests Laboratory), after carrying out the Mitochondrial DNA test, concluded that “[the] sample does not sustain any conclusions, since it generated no information [...]”. The foregoing notwithstanding, and on the basis of similar precedents, the State expressed that the delivery of the remains could be obtained judicially on the basis of testimony. For such reason, the *Fiscal de Derechos Humanos* (Human Rights Prosecutor) detailed to obtain judicially that the remains be returned informed that “conversations were resumed with [one of the representatives], for the purpose of locating and identifying witnesses who would be able to testify about certain specific circumstances that would provide the grounds to request the Tribunal to deliver the remains [and] that some next of kin had already [been contacted] to such effect;
- c) regarding publication of the operative part and of the proven facts of the Judgment in the official gazette and in another daily with nationwide circulation, publication was effected on January 11, 2007 in the official gazette *La Gaceta*, and on January 27, 2007 publication was effected in the daily newspaper *El Heraldo* (The Herald);
- d) regarding the duty to implement a record of detainees enabling control of the legality of detentions, the State reported that in the first place, as from the year 2002, in the area of the *Secretaría de Seguridad* (Office of the Security Secretary), the *Proyecto NACMIS (Sistema Automatizado de Recepción e Investigación de Casos)* (NACMIS Project, an Authomatized Case Investigation and Reception System), which is a nationwide data base wherein all the information related to detained persons is stored, is in existence. In the second place, during the year 2004, through the *Programa de Apoyo a la Modernización of the Administración de Justicia - Etapa II* (Justice Administration Modernization Support Programme - Stage II), the *Proyecto Sistema de Expediente Digital Interinstitucional* (Inter-Institutional Digital File System Project) (hereinafter “the *SEDI* Project” or “the Project”) was started. The *SEDI* Project is a authomatized record enabling registration of all the detentions effected by the police, from the report which might have preceded detention up to the closing of the pertinent judicial proceedings. Honduras pointed out that the company in charge of structuring the *SEDI* Project would be informing the State on the possibility of incorporating and implementing the *Registro Único de Detenidos* (Single Record of Detainees) by means of the *SEDI*. Lastly, it underscored the decisive strengthening of constitutional guarantees achieved with the entry in force of the *Ley de Justicia Constitucional* (Constitutional Justice Statute) and the amendments made to the Constitution; and
- e) regarding the obligation to continue investigating the facts in the instant case, to identify those responsible, both the direct perpetrators and the instigators, as well as any possible accessories after the fact, and to punish them administratively and criminally as appropriate, and to afford the next of kin of the victim full access and legal standing at all stages and levels of the aforementioned proceedings, the *Secretaría de Seguridad* (Office of the Security Secretary) “continued investigating what really happened in this case.”

6. The brief of February 27, 2007 and its appendix, whereby the State forwarded additional information on compliance with the Judgment and stated “[its] will [...] to continue investigating effectively the facts in the instant case” and informed that “no authority of the State of Honduras had participated in the event to any extent.” “[T]he investigation shows that [the execution of the victim in this case] to have been perpetr[ed] by neighbors of the communities in the *Municipio de Colomoncagua* (Colomoncagua Township) who, attired in military dress, perpetrated the murder of Juan Humberto Sánchez. Nine [...] persons [have been] identified as the alleged perpetrators and instigators. [...N]one of them turned out to be an active member of the Honduran Army at the time of the event.”

7. The brief of March 14, 2007, whereby the representatives filed their observations to the information forwarded by the State of February 12 and 27, 2007. The representatives stated, among other considerations, that:

- a) regarding the payment of compensations for pecuniary and non pecuniary damage, the outcome of the declaration of the presumptive death of Julio Sánchez and of the proceedings for the descent of his estate in Dominga Sánchez as sole heiress would be communicated to the State in due course. On the other hand, the representatives deplored the lack of diligence by the State to set up a trust for the benefit of the girls Breidy Maybeli and Norma Iveth, both of them bearing the last name of Sánchez Argueta, since, at the time the representatives filed their brief, more than three years had passed from the date the Judgment establishing a six-month delay to comply with such obligation was issued, and it was but two months before it filed its report that the State published the *acuerdo ejecutivo* (executive order in council) with a view to set up the trust. They pointed out that the retention of the compensation the State of Honduras was effecting implied non-compliance with what was ordered by the Court;
- b) regarding the delivery of the mortal remains of Juan Humberto Sánchez to his next of kin, they remarked that the next of kin of the victim had already been waiting for upwards of three years; that the latter were unacquainted with the conditions and the place where the State was keeping the remains of Juan Humberto Sánchez, and that they were still uncertain about the time when the remains would be delivered to them. They requested the Court to order the State of Honduras to immediately deliver such remains to the next of kin and to pay the expenses of transferring them to the place chosen by the latter;
- c) regarding publication of the operative part and of the proven facts of the Judgment in the official gazette and in another daily with nationwide circulation, the representatives reported that the publication effected by the State in the daily newspaper *El Herald* (The Herald) did not comply with what was ordered by the Court. On the other hand, they reported that the publication in the official gazette *La Gaceta* was indeed effected in the manner required in the Judgment. They requested that the pertinent publication in a daily with nationwide circulation, in the terms ordered by the Court, be required;
- d) regarding the creation of a record of detainees, they pointed out that none of the projects mentioned by the State in its report had the characteristics established by the Court to conform to a true record of detainees. Regarding the so-called *NACMIS* Project, the representatives affirmed that several civil society organizations devoted to working with

persons deprived of their freedom stated they did not know of the existence and the operation of such project. The representatives added that such project does not include the characteristics required in a true record because a) it is a technical instrument to serve the authorities, to which the general population does not have access; b) the data base is focused on processing the reports lodged with the *Dirección General de Investigación Criminal* (Criminal Investigations General Bureau); c) it does not contain a component for recording the names of the detained persons, the grounds for their detention, the authority with jurisdiction over them and responsibility for them, the day and the hour they were detained and released and information about the detention order. The aforementioned tool does not enable control over the legality of detentions, rather it simply enables recording reports and statistic data. Regarding the *SEDI* Project, they stated it also lacks the characteristics of a record of detainees. Such project is not a valid tool enabling detention legality control, nor does it enable citizens to access the programme. They argued that a record of detainees must be self-governing, so that it cannot be subject to manipulation. Based on the foregoing, they requested the Court to order the State to create and implement the record of detainees in the terms established in its Judgment, allowing the civil society organizations devoted to working with detained persons to take part in the creation of such record; and

- e) regarding investigation of the facts, the representatives stated that it was evident that the conclusion of the investigation presented by the State contrasted with the facts the Court held to be proven in the instant case. They added that Honduras insisted in evading the international responsibility the Inter-American Court found it to have in the course of a due process when it states that “no authority of the State de Honduras had any degree of participation in the event.” The report filed by the State showed no effort had been made to discover the truth about the facts. They requested the Court to require the State to submit specific reports on the steps taken after the Judgment was handed down for the purpose of investigating the facts of the case.

8. The brief of March, 30 2007, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) filed its observations to the report by the State of February 12, 2007 on compliance with the Judgment, and expressed:

- a) regarding the investigation, that the events in the instant case happened in the year 1992 and that, even though there had been an ongoing investigation all along these last fifteen years, no detailed information, neither on the progress thereof nor about the lines which the investigation by the bodies in charge thereof was following had been made known to the parties. From the information presented by the State, it may be concluded that not even minimal steps were taken to investigate the persons named in the Judgment, such as the policemen who participated in the events leading to the execution of Juan Humberto Sánchez. The Commission reaffirmed that the State has the duty to investigate the events leading to the violations mentioned in the Judgment, and that the actions taken in order to fully comply with the obligation imposed by the Court on the State of Honduras since the year 2003 are unknown;
- b) concerning the obligation to transfer the mortal remains of Juan Humberto Sánchez to the place chosen by the next of kin, the

Commission informed that it was never given any explanation enabling it to understand the motives and the manner in which the State decided to take action as it did concerning the corpse of Juan Humberto Sánchez, an action which has been excessively protracted;

- c) concerning the record of detainees, it considered it essential that the State address the observations put forward by the representatives and clearly show how both initiatives adjust, if at all, to what was ordered by the Court. Therefore, the Commission remained in expectation for the relevant information on such matter, in order to give its opinion thereon;
- d) concerning the obligation to publish the operative part and the chapter on proven facts of the Judgment in the official gazette and in another daily with nationwide circulation, the State published in the official gazette *La Gaceta*, the pertinent excerpts according to the Judgment and therefore it acknowledges compliance with this aspect of the reparation. However, in the publication effected on January 27, 2007 in the newspaper *El Herald* (The Herald) the State only published the operative paragraphs of the Judgment, disregarding the chapter on proven facts;
- e) regarding the obligation to deposit the compensation ordered in favor of the girls Breidy Maybeli and Norma Iveth, both of them bearing the last name of Sánchez Argueta, the Commission affirmed its coincidence with the concern expressed by the representatives regarding the expiration of the time-limit and deplored that, in spite of the fact that the six-month delay ran out three years ago, the trusts for the benefit of the daughters of Juan Humberto Sánchez had not been created. The information filed by the State regarding the publication of the *Acuerdo Ejecutivo* (Executive Order in Council) was an important step forward, but it did not meet the requirements of the obligation established by the Tribunal, and
- f) regarding the obligation to pay the amounts ordered as compensation for pecuniary damage, non pecuniary damage and costs and expenses, the Commission observed that the representatives mentioned that the next of kin of Julio Sánchez were processing their petition for a declaration of his presumptive death and the pertaining estate proceedings, but they did not make reference to the payment of the other compensations. It pointed out that detailed information regarding the dates and amounts of the payments alleged by the State was lacking, and that such payments were not mentioned by the representatives either. The Commission deemed it essential to have the necessary information in order to make a statement regarding compliance with such obligation of the State.

9. The brief of July 31, 2007 whereby the State requested a complete copy of the Judgment by the Inter-American Court for the purpose of "making the domestic procedures to comply with some of its operative paragraphs easier."

10. The brief of August 24, 2007 whereby the representatives informed that "[...] on last May10, the State of Honduras complied with the delivery of the mortal remains of Juan Humberto Sánchez to his next of kin. Thus, after waiting for thirteen years, [the next of kin] were finally able to proceed to his burial, and in such way close a protracted mourning period."

11. The brief of September 17, 2007 whereby the State filed updated information on the point reached in the compliance with the Judgment and pointed out that:

- a) regarding the publication of the Judgment in a daily newspaper with nationwide circulation, “[...on] Wednesday, February 14, 2007, the pertaining parts of the Judgment were published [...] in the daily newspaper *El Heraldo* (The Herald) which has nationwide circulation [...]”, and attached an original copy of said publication;
- b) regarding “the mortal remains of Juan Humberto Sánchez, they were delivered to his family, having transferred them to the place they chose; such procedure meant no cost for [the next of kin] because the amount of the expenses [...] was disbursed to the COFADEH in its capacity as a representative, it having already presented the pertaining bill, backed by the corresponding documentary evidence [...]”, and attached copies of the respective documents evidencing such disbursements;
- c) regarding compensations, the State attached copies of the documents evidencing payment in favor of eleven persons and of the two organizations acting in the case. It pointed out that payment in favor of Julio Sánchez had not been effected, since “[...] it is possible that such person [may have] died.” Likewise, it informed that “[...] on May 31 [...2007], [...] a trust agreement was signed [...] for the benefit of minors Breydi Maibelly and Norma Iveth [, both of them bearing the last name of Sánchez Argueta], for an amount of two million seventy one thousand five hundred and sixty-six Lempiras, with ninety-two cents [...], which includes the sums to be paid as compensation, plus accrued interest [...]. COFADEH was informed and took part in the transaction, and it gave its approval so that it be effected in [a given] Banking Institution.” The State attached a copy of the trust agreement;
- d) regarding the implementation of a system to keep a record of detainees, Honduras informed that “as from July, 2007 [the *Proyecto Sistema de Expediente Digital Interinstitucional* (Inter-Institutional Digital File System) (*SEDI*)] has been implemented in the city of San Pedro Sula, in the three participating institutions: the *Secretaría de Seguridad* (Office of the Security Secretary), the *Ministerio Público* (Office of the Public Attorney) and the *Poder Judicial* (Judiciary Branch of Government); that as specifically regards recording detainees, it is at the tryout stage and from August 20 [2007] onwards it would be included in the *SEDI* for good [...].” The State attached a listing from the *SEDI* Project that included the 211 detained persons, the date, time and reason for their detention and the place to which they had been transferred; and
- e) regarding the investigation of the facts, the State informed that “[...] nine persons [have been] identified as the alleged perpetrators and instigators of the killing of Sánchez, [and] that the final enquiry was forwarded to the *Fiscalía del Ministerio Público* (Office of the Prosecuting Public Attorney) with venue in La Esperanza [...]” and produced “[...] a copy of the latest proceedings carried out by the *Juzgado Segundo de Letras de La Esperanza, Intibucá* (Court of Law Number Two of La Esperanza, Intibucá) [...].”

12. The brief of October 3, 2007, whereby the representatives put forth, among others, the following observations:

a) as regards indemnity payment, that “[a]s the State informs, the next of kin are petitioning for a declaration of presumptive death and instituting proceedings for the descent of the estate in Dominga Sánchez as sole heiress of Julio Sánchez” and that “[t]he outcome of both such proceedings shall be communicated to the State in due course.” On the other hand, regarding the trust for the benefit of the girls Breidy Maybeli and Norma Iveth, both of them bearing the last name of Sánchez Argueta, they informed that “[...] such trust was in effect set up for the benefit of the girls. Thus, with the exception of the payment due Julio Sánchez, the remaining compensations, as well as the costs and expenses, have already been duly cancelled. Therefore, compliance with operative paragraphs numbers 8, 9 and 14 of the Judgment is considered to have been effected;”

b) as regards the delivery of the mortal remains of Juan Humberto Sánchez, they expressed that “[...] such event was duly reported to the [...] Court by means of the [...] brief dated August 23, 2007. Therefore, they moved that compliance with operative paragraph 11 be declared;”

c) as regards publication of the Judgment, they pointed out that “[...] the State of Honduras attach[ed] a copy of the newspaper wherein the pertaining parts of the Judgment were published, in the *El Heraldo* (The Daily Herald), on February 14, 2007.” The representatives considered the publication to have been made in due form and requested “[...] that compliance with the thirteenth operative paragraph be declared;”

d) as regards creation of a record of detainees, they pointed out that the *SEDI* Project does not meet the criteria established by the Tribunal because, among other reasons:

i) it is not possible neither to control the legality of, nor to follow up on the detentions effected either by the armed Forces or by the National Police. It is a tool applicable to cases before the court system, which gives no information concerning other kinds of detentions, such as the ones mentioned;

ii) it does not enable citizens to access the programme;

iii) “it is self-deluding to assume that such system be applicable in all of the police facilities in the country, since most of them do not even have a telephone, let alone access to a computer in which to record the data the *SEDI* requests;”

iv) it does not include relevant information such as which authority ordered detention, the name of the agents responsible for it, the grounds therefor, the action taken with detainees, such as, for example, the places where they were transferred, among others;

v) in order to be able to control the legality of detentions a record of detainees is needed that furnishes the full name of the detainee; the identity card or passport number, as applicable; the motives or grounds for deprivation of freedom; the judicial authority by whose jurisdiction deprivation of freedom was decided; the time of the arrest and the time of transfer to the place where held in custody, as well as the time of the first appearance before the judge or other authority, among others;

vi) the record of detainees must be self-governing, so that it cannot be subject to manipulation, and must be created by statute, and consequently allocated the applicable budgetary appropriation enabling implementation throughout the Honduran territory; and

vii) the representatives further stated their “[...] interest in participating in the creation process of the record of detainees; however, to date [such thing] has not been possible.” Based on the foregoing, they requested the Court to “order the State to create and implement the record of detainees in the terms established in [the] Judgment, allowing the civil society organizations devoted to working with detained persons to participate [therein], and

e) in regards to the investigation of the facts, the representatives stated that the information filed by the State is a repetition of what was said during the proceedings before the Court and that it is evident that no effort has been made to discover the truth about the facts. They pointed out that the State “[...] has not yet investigated [...] participation by [...] the Armed forces officers who on July 22, 1992 landed with a helicopter in Santo Domingo Colomoncagua in order to intimidate the next of kin of Juan Humberto Sánchez. Neither have they investigated the responsibility of the high-ranking officers who, on July 28, 1992 interrogated and kidnapped Ju[a]n José Vigil taking him on board a helicopter belonging to the Armed Forces to Tegucigalpa, where he was subjected to interrogations.” They pointed out that investigation action has also failed to reach “officers Nelson Lagos, Danilo Rico, Jorge Padilla Arias, Gerardo Montoya, Manuel Arita [...], and Coronel Manuel Quintanilla Henríquez, members of the *Batallón de las Fuerzas Territoriales* (Territorial Forces Battalion) and mentioned as those responsible for recapturing Juan Humberto Sánchez [and neither to] obtain statements from the retired officers Luís Alonso Discua Elvir and Emmanuel Flores Mejía, Commander-in-Chief of the Armed Forces and Commander of the Tenth Infantry Battalion[, respectively].” Lastly, the representatives affirmed that “[...] they still have not been given information on the progress of the investigation, as established in paragraph 186 of the Judgment.” Therefore, they request once more that the State submit specific reports on the action taken, after the Judgment was handed down, for the purpose of completing the investigation of the facts.

13. The brief of October 3, 2007, whereby the representatives put forth, among others, the following observations:

- a) “[...] the investigation has been ongoing for fifteen years without the parties having got detailed information neither on the progress thereof nor on the lines the investigation is following [...]” and affirmed that “[...] it is essential that the State report exhaustively on the investigations effected on the case and submit copies of the files related thereto [...]];”
- b) concerning the delivery of the mortal remains of Juan Humberto Sánchez, it underscores the significance of the State “[...] having complied with this essential aspect of the Judgment;”
- c) concerning the obligation to implement a record of detainees, “[...] it considers it essential that the State address the observations put forward by [the representatives] and clearly show how [the *SEDI* Project] adjusts, if at all, to the reparation measure ordered by the Court and how the standards established in the Judgment have shaped such initiative [...]];”

- d) concerning the obligation to publish the pertaining parts of the Judgment, “[...] it underscores the value of the State having complied and deems this point of the Judgment to have been satisfied;”
- e) concerning the obligation to deposit the compensation ordered in favor of the girls Breidy Maybeli and Norma Iveth, both of them bearing the last name of Sánchez Argueta, “[...] it acknowledges such compliance and attaches a positive significance to it;”
- f) concerning the obligation to pay the amounts ordered as compensation for pecuniary damage, non pecuniary damage and legal costs and expenses, “[...] it once more attaches significance to the fact of compliance by the State and remains waiting for the information on the payment related to Julio Sánchez;” and
- g) it underscored “[...] with satisfaction compliance by the State with most of the obligations contained in the Judgment and the importance of seeing to implementation and effective compliance of all aspects thereof”, and it pointed out that it is essential that “[...] the necessary information about [...] the investigation, identification and punishment of the perpetrators and instigators in the case be forthcoming; as well as the implementation of a record of detainees enabling control of the legality of detentions in Honduras.”

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.
2. That Honduras is a Party to the American Convention since September 8, 1977, and it accepted the contentious jurisdiction of the Court on September 9, 1981.
3. That Article 68(1) of the American Convention establishes that “[t]he States Parties to the Convention undertake to comply with the Judgment of the Court in any case to which they are parties.” For such purpose, States are required to guarantee implementation of the Court’s rulings at the domestic level.²
4. That, given the binding and final nature of the Court’s Judgments, as established in Article 67 of the American Convention, the State is to comply promptly and fully with said Judgments.
5. That the obligation to comply with the provisions in the judgments of the Court conforms to a basic principle of the law of the international responsibility of States, supported by international case law, according to which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by this Court and provided in Article 27 of the 1969 Vienna Convention on the Law of Treaties, States may not invoke the provisions of their internal law as justification for failing to comply with their pre-established international responsibility. The treaty obligations of States Parties are

¹ Cf. *Case of Baena-Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Molina-Theissen*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Second Considering Paragraph, and *Case of García-Asto and Ramírez-Rojas*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Fourth Considering Clause.

binding on all State powers and organs.²

6. That the States Parties to the American Convention are required to guarantee compliance with treaty provisions and secure their proper effects (*effet utile*) at the level of their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties—that is to say, those dealing with the protected rights—but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations established by the Tribunal. Such obligation includes the State's duty to inform on the measures adopted to comply with what was ordered by this Tribunal in its decisions. Timely fulfillment of the State's obligation to report to the Tribunal on the manner in which it is complying with each of the aspects ordered by the latter is essential to assess the status of compliance in the case.⁴

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* *

8. That the Tribunal sets store by the information provided by the State, whereby it pointed out it had adopted the measures necessary to comply with most of the reparations ordered by the Court in its Judgment.

9. That the Tribunal attaches special significance to the fact that the mortal remains of the victim have been returned to his next of kin on May 9, 2007.

10. That in monitoring the full compliance with the Judgment on the preliminary objection, merits, reparations, and costs delivered in the instant case, and after analyzing the information provided by the State, by the Inter-American Commission and by the representatives of the victim, the Court has ascertained that the State has fully complied with the reparation measures established in the operative paragraphs of the Judgment dated June 7, 2003 listed hereinafter:

a) to pay the indemnifications and compensations ordered for pecuniary damage, non pecuniary damage and legal costs and expenses (*eighth, ninth, fourteenth, and seventeenth operative paragraphs*), except as regards

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of Molina-Theissen*. Monitoring Compliance with Judgment, *supra* note 1, Third Considering Paragraph; and *Case of García-Asto and Ramírez-Rojas*. Monitoring Compliance with Judgment, *supra* note 1, Sixth Considering Paragraph.

³ Cf. *Case of Ivcher-Bronstein*. Competence. Judgment of September 24, 1999, para. 37; *Case of Gómez-Palomino*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Fourth Considering Paragraph; and *Case of Molina-Theissen*. Monitoring Compliance with Judgment, *supra* note 1, Fourth Considering Paragraph.

⁴ Cf. *Case of Barrios Altos*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Seventh Considering Paragraph. *Case of Gómez-Palomino*. Monitoring Compliance with Judgment, *supra* note 4, Fifth Considering Paragraph; and *Case of García-Asto and Ramírez-Rojas*. Monitoring Compliance with Judgment, *supra* note 1, Eighth Considering Paragraph.

compensation for non pecuniary damage in favor of Julio Sánchez (*ninth operative paragraph, subparagraph h, of the Judgment*);

b) "to afford the conditions required to transfer the mortal remains of Juan Humberto Sánchez to the place chosen by his next of kin, at no cost for them" (*eleventh operative paragraph of the Judgment*);

c) "to publicly acknowledge its responsibility regarding the facts in this case, and as amends, to the victims, to publish in the official gazette and in another daily with nationwide circulation, once only, the operative part of this Judgment and the chapter on proven facts thereof" (*thirteenth operative paragraph of the Judgment*);

d) "to deposit the compensation ordered in favor of the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez in their name in an investment with a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency, within six months time, and under the most favorable financial conditions allowed by banking practice and legislation" (*eighteenth operative paragraph of the Judgment*).

11. That the Court considers it essential that the State submit to it updated information on the following points, compliance with which is still pending:

a) to pay the compensation ordered for non-pecuniary damage in favor of Julio Sánchez (*ninth operative paragraph, subparagraph h, of the Judgment*); The Court observes that compliance with such obligation is directly related to the information which must be provided by the representatives of the victim concerning the petition for a declaration of the presumptive death of Julio Sánchez and the pertaining estate proceedings (*supra* Having Seen 7(a));

b) "to continue effectively investigating the facts in the instant case, to identify those responsible, both the direct perpetrators and the instigators, as well as any possible accessories after the fact, and to punish them administratively and criminally as appropriate; the next of kin of the victim must have full access and legal standing at all stages and levels of said investigations, in accordance with domestic laws and the provisions in the American Convention on Human Rights; and the results of said investigations must be made known to the public." (*tenth operative paragraph of the Judgment*). Specifically, the Court deems it essential for the State to produce complete and updated information on the steps taken in the pending investigations aimed at complying with such obligation, making reference therein to the observations put forth by the Inter-American Commission and by the representatives (*supra* Having Seen paragraphs 8(a), 12(e) and 13(a)) and that it produce the elements it took that would exclude participation by State agents in the event under investigation;

c) "to implement a record of detainees enabling control of the legality of detentions" (*twelfth operative paragraph of the Judgment*). To such respect, Honduras reported the *NACMIS* and *SEDI* Projects to have been implemented (*supra* Having Seen paragraph 5(d)). On the other hand, the representatives questioned both initiatives and concluded that they do not adjust to what the Tribunal ordered in its Judgment. The Court values the advances shown by the State as regards recording the detentions made within its territory. Notwithstanding which, in order to be able to determine compliance with such obligation, the Court deems it necessary for the State to give details on the

way each one of the aforementioned project works; and particularly to inform about the extent in which both or any one of such initiatives do adjust to what was ordered by the Court.

12. That the Court will consider the general status of compliance with the Judgment on the preliminary objection, merits, reparations and costs dated June 7, 2003 once it receives the pertinent information on the points ordering reparations regarding which compliance is still pending spelled out in the preceding Having Seen paragraph.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That, according to what has been pointed out in Having Seen Paragraph 10 of the instant Order, the State has complied totally with the following measures of reparation:

a) to pay the indemnifications and compensations ordered for pecuniary damage, non pecuniary damage, costs and expenses (*eighth, ninth, fourteenth, and seventeenth operative paragraphs*), except in regards to compensation for non pecuniary damage in favor of Julio Sánchez (*ninth operative paragraph, subparagraph h, of the Judgment*);

b) "to afford the conditions required to transfer the mortal remains of Juan Humberto Sánchez to the place chosen by his next of kin, at no cost for them" (*eleventh operative paragraph of the Judgment*);

c) "to publicly acknowledge its responsibility regarding the facts in this case and, as amends to the victims, to publish in the official gazette and in another daily with nationwide circulation, once only, the operative part of this Judgment and the chapter on proven facts thereof" (*thirteenth operative paragraph of the Judgment*);

d) "to deposit the compensation ordered in favor of the girls, Breidy Maybeli Sánchez and Norma Iveth Sánchez in their name in an investment with a solid Honduran banking institution, in United States dollars or their equivalent in Honduran currency, within six months time, and under the most favorable financial conditions allowed by banking practice and legislation" (*eighteenth operative paragraph of the Judgment*).

2. That according to what has been pointed out in Having Seen Paragraph 11 of the instant Order, it will keep the proceedings active to monitor compliance of the points in the instant case regarding which compliance is still pending, namely:

a) to pay the compensation ordered for non pecuniary damage in favor of Julio Sánchez (*ninth operative paragraph, subparagraph h, of the Judgment*);

b) "to continue effectively investigating the facts in the instant case, to identify those responsible, both the direct perpetrators and the instigators, as well as any possible accessories after the fact, and to punish them administratively and criminally as appropriate; the next of kin of the victim must have full access and legal standing at all stages and levels of said investigations, in accordance with domestic laws and the provisions in the American Convention on Human Rights; and the results of said investigations must be made known to the public." (*tenth operative paragraph of the Judgment*); and

c) "to implement a record of detainees enabling control of the legality of detentions" (*twelfth operative paragraph of the Judgment*).

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the points regarding which compliance is still pending of those ordered by the Court in the Judgment on the preliminary objection, merits, reparations and costs handed down on June 7, 2003, and in the instant Order, pursuant to the provisions in Article 68(1) of the American Convention on Human Rights.

2. To request that no later than March 24, 2008, the State submit to the Inter-American Court of Human Rights a report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court and regarding which compliance is still pending, as established in Considering Paragraph 11 and in the second declarative paragraph of the instant Order.

3. To call upon the representatives of the victim and upon the Inter-American Commission on Human Rights to submit their observations to the State's report to which reference is made in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date they receive such report.

4. To continue monitoring those aspects of the Judgment on the preliminary objection, merits, reparations and costs of June 7, 2003 regarding which compliance is still pending.

5. To notify the instant Order to the State, to the Inter-American Commission on Human Rights, to the representatives of the victim and to his next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayan

Leonardo Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary