

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF LYSIAS FLEURY *ET AL.* v. *HAITI***

**JUDGMENT OF NOVEMBER 23, 2011  
(MERITS AND REPARATIONS)**

In the case of *Lysias Fleury et al.*,

The Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Diego García-Sayán, President  
Leonardo A. Franco, Vice President  
Manuel E. Ventura Robles, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge

also present:

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and with Articles 28, 30, 32, 59, and 61 of the Rules of Procedure of the Court<sup>1</sup> (hereinafter “the Rules of Procedure”), orders the present Judgment, structured in the following order:

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<sup>1</sup> As stipulated in Article 79(1) of the Court’s Rules of Procedure that entered into force on June 1, 2010, “[c]ontentious cases submitted to the consideration of the Court before January 1, 2010, will continue to be processed in accordance with the preceding Rules of Procedure until the delivery of a judgment.” Consequently, the Court’s Rules of Procedure mentioned in this judgment correspond to the instrument approved by the Court at its forty-ninth regular session, held from November 16 to 25, 2000, partially amended at its eighty-second regular session held from January 19 to 31, 2009, and that were in force from March 24, 2009 until January 1, 2010.

# INTER-AMERICAN COURT OF HUMAN RIGHTS

## CASE OF FLEURY ET AL. V. HAITI

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## I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On August 5, 2009, in accordance with Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) presented, an application against the State of Haiti (hereinafter “the State” or “Haiti”) concerning case No. 12,459 *Lysias Fleury et al.* originating from the petition presented by the petitioner on October 11, 2002. On February 26, 2004, the Commission approved Report on Admissibility No. 20/04.<sup>2</sup> On March 16, 2009, the Commission adopted Report on Merits No. 06/09<sup>3</sup> under Article 50 of the Convention and, when forwarding it to the State, granted the latter two months to report on the measures adopted to comply with its recommendations. On May 12, 2009, the Commission received a brief from the representatives stating that they wanted the case to be submitted to the Court. On July 17, 2009, the Commission decided to submit this case to the Court, because it considered that Haiti had not adopted its recommendations. The Commission appointed Clare K. Roberts, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, Mario López Garelli and Karla I. Quintana Osuna as legal advisors.

2. The application relates to the alleged “illegal detention, torture, and cruel, inhuman and degrading treatment of Lysias Fleury that occurred on June 24, 2002, in Port-au-Prince, the subsequent lack of diligence in the investigation of the events, and the denial of justice to the detriment of Lysias Fleury and his family, and also the violation of the personal integrity of his family.”

3. The Commission asked the Court to declare the State responsible for the violation of the rights recognized in Articles 5(1) and 5(2) (Right to Personal Integrity), 7(2), 7(3), 7(4) and 7(5) (Right to Personal Liberty), 8 (Right to Judicial Guarantees) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), to the detriment of Lysias Fleury. The Commission also

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<sup>2</sup> In this report, the Commission decided to declare inadmissible the complaint regarding the alleged violation of Articles 5, 7, 8, 11, 25 and 1(1) of the American Convention on Human Rights. Admissibility Report No. 20/04 (file of attachments to the application, tome I, appendix 2, folios 30 to 36).

<sup>3</sup> In this report, the Commission concluded that the State was responsible for the violation, to the detriment of Mr. Fleury, of the rights not to be subjected to torture and other inhuman treatment, to personal liberty, to judicial guarantees and to judicial protection, based on Articles 5(1), 5(2), 7(2), 7(3), 7(4), 7(5), 8 and 25 of the American Convention, in conjunction with the violation of Article 1(1) thereof. Also, in this report the Commission made the following recommendations to the State: that it grant Mr. Fleury a remedy that included a thorough, prompt, impartial and effective investigation under the ordinary criminal jurisdiction of Haiti to establish responsibility for the violations committed against him, and that it prosecute and punish those found responsible; that it grant full reparation to Mr. Fleury and his immediate family; that it take the necessary measures to prevent and punish illegal and arbitrary detention in Haiti; that it take the necessary measures to ensure the effective prohibition of torture and cruel, inhuman or degrading treatment or punishment under Haiti’s domestic law; that it adopt any necessary measures to prevent future violations such as those perpetrated against Mr. Fleury, including training for the members of Haiti’s security forces on the international standards concerning the use of force and the prohibition of torture and cruel, inhuman or degrading treatment or punishment, arbitrary arrest and detention, and that it undertake the pertinent reforms to its investigation procedures and proceedings for the violation of human rights committed by members of the Haitian security forces to ensure that they are exhaustive, immediate and impartial, in accordance with the determinations made in the application; that it take measures to avoid a repetition of acts similar to those described in the application specifically; that it adopt, as a matter of priority, a policy to protect against and prevent violence against human rights defenders, and that it adopt a public policy to combat impunity for human rights violations against human rights defenders. *Cf.* Report on Merits No. 09/06 of March 16, 2009 (file of attachments to the application, tome I, appendix 1, folios 3 to 28).

asked the Court to declare the violation of Article 5 (Right to Personal Integrity), 8 (Right to Judicial Guarantees) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof (Obligation to Respect Rights), to the detriment of his wife Rose Benoit Fleury, their daughters Rose M. and Flemingkov Fleury, and their son Heulingher Fleury. Lastly, it asked for specific reparations and the payment of costs and expenses for the litigation of the case at the domestic and the international levels.

4. The application was notified to the State of Haiti and to the representatives of the alleged victims on September 9, 2009.

5. On November 27, 2009, Meetali Jain, Andrea Pestone and Smita Rao of the International Human Rights Law Clinic at American University,<sup>4</sup> representatives of the alleged victims (hereinafter “the representatives”), submitted to the Court their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”), pursuant to Article 36 of the Rules of Procedure. In this brief, they referred to the facts described in the Commission’s application, providing further information on them, and argued that, in addition to the violations alleged by the Commission, the State was responsible for the violation of the rights recognized in Articles 16 (Freedom of Association) and 22 (Freedom of Movement and Residence), in relation to Article 1(1), all of the American Convention, to the detriment of Mr. Fleury and his family. Lastly, the representatives requested specific reparations and payment of costs and expenses.

6. Taking into account the conditions of the Haitian institutional framework, and the dimension of the earthquake that occurred in January 2010 that seriously affected the functioning of the State, in an order of February 1, 2010, the Court considered that, at that time, it would be excessive to require the State to comply with the time frame established in the Rules of Procedure to answer the application and present observations on the pleadings and motions brief, since this had almost expired. Consequently, it decided that, during its first regular session of 2011, it would determine how to continue processing this case and, in particular, how to calculate the said time frame for the State to submit its answer to the application. In addition, it indicated that its previous decision did not suspend the other obligations of the State derived from the American Convention and other pertinent international treaties. On March 4, 2011, the State was informed that the suspension of the proceedings had concluded, so that they were re-opened as of that date. Nevertheless, during the proceedings before the Court, the State did not answer the application or the pleadings and motions brief of the representatives; furthermore, it did not participate in any way. Consequently, the Court has had to resume the proceedings and, in compliance with its functions under the Convention, must now deliver judgment.

## II PROCEEDINGS BEFORE THE COURT

7. On March 4, 2011, on the instructions of the President of the Court (hereinafter “the President”), the Secretariat informed the State of the conclusion of the time granted for the suspension of the proceedings in this case, established in the second operative paragraph of the above-mentioned order (*supra* para. 6), and that the proceedings would resume as of that date. Consequently, the Secretariat advised that the two-month period established in Article 39 of the Court’s Rules of Procedure for the State to present its answer to the

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<sup>4</sup> Subsequently, the representatives advised that, as of August 10, 2011, David Baluarte would be acting as a lawyer in the case (evidence file, tome III, folio 1048).

application and its observations on the pleadings and motions brief would start on its reception of that communication and its respective attachments. The State was again provided with a copy of the application and the representatives' brief with the respective attachments.

8. On May 20, 2011, the Secretariat communicated to the parties that, given the State's failure to respond, and in accordance to Articles 15 and 42 of the Rules of Procedure, the Court had decided that it was not necessary to hold a public hearing in this case. In addition, it asked the parties to present the final list of witnesses and expert witnesses, which the Commission and the representatives forwarded on May 27, 2011.

9. On June 1, 2011, the Court received an *amicus curiae* brief signed by Ariel Dulitzky, on behalf of the Human Rights Clinic of the School of Law School of the University of Texas at Austin, United States of America.

10. In an order of July 20, 2011, the President required the submission of affidavits by five expert witnesses, two proposed by the Commission and three by the representatives. In addition, the President informed the parties of the time frame for the presentation of their final written arguments on merits and reparations.

11. On September 1 and 3, 2011, the Inter-American Commission and the representatives of the alleged victim, respectively, forwarded their final written arguments. The State did not submit a brief.

### III PROVISIONAL MEASURES

12. On March 13, 2003, the Commission asked the Court to order the State to adopt provisional measures to protect the life and personal integrity of Lysias Fleury. On March 18, 2003, the President of the Court ordered the State to adopt, without delay, the urgent measures necessary to protect the life and personal integrity of the petitioner.<sup>5</sup> On June 7, 2003, the Court ratified the order of the President.<sup>6</sup> On December 2, 2003, due to the failure of the State to present any report, the Court issued an order declaring that the State had failed to comply with the orders and with its obligation to provide the corresponding report; it also reiterated the measures ordered. On November 25, 2008, despite considering "that the State ha[d] failed to comply with its obligation to inform the Court about the implementation of the measures ordered, the Court considered that, since the beneficiary of the measures has left the State that was supposed to protect him, and since no information has been received to indicate that he w[ould] return soon or that he wishe[d] to do so, the provisional measures in his favor ha[d] become ineffective."

### IV COMPETENCE

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<sup>5</sup> Cf. *Matter of Lysias Fleury*. Provisional measures with regard to Haiti. Order of the President of the Court of March 18, 2003.

<sup>6</sup> Cf. *Matter of Lysias Fleury*. Provisional measures with regard to Haiti. Order of the Inter-American Court of June 7, 2003.

13. The Inter-American Court has jurisdiction to hear this case in accordance with Article 62(3) of the Convention, because Haiti has been a State Party to the American Convention since September 27, 1977, and accepted the compulsory jurisdiction of the Court on March 20, 1998.

## V PRIOR CONSIDERATIONS

### A. The failure of the State to appear in the proceedings before the Court

14. Haiti failed to appear at any stage of the proceedings before the Court. In previous cases, the Court has considered that when a State does not specifically answer the application, the facts of the case regarding which it has remained silent are presumed to be true, provided that conclusions can be reached from the existing evidence that are consistent with those facts.<sup>7</sup> Hence, the Court has observed:

[...] that procedural inactivity does not give rise to a specific sanction against the parties, *stricto sensu*, nor does it affect the evolution of the proceedings; rather, it may eventually prejudice them if they decide voluntarily not to exercise fully their right to defense and not to execute procedural actions in their own interest, in accordance with the *audi alteram partem* principle. [...] International jurisprudence has recognized that the absence of one of the parties at any stage of the case does not affect the validity of the judgment.<sup>8</sup>

15. It should be noted that the application constitutes the factual framework for the proceedings<sup>9</sup> and delimits the legal arguments and the claims for reparations.<sup>10</sup> The procedural inactivity of the defendant State means that it is unable to complement or question, as appropriate, the facts and claims set out in the application, or in the pleadings and motions brief.<sup>11</sup>

16. According to Article 39(2) of the Rules of Procedure,<sup>12</sup> the Court is empowered to consider accepted the facts that have not been expressly denied and the claims that have not been expressly contested. Evidently, the Court is not obliged to do this in all the cases

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<sup>7</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 138, and *Case of Yvon Neptune v. Haiti. Reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 37.

<sup>8</sup> *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, paras. 60 and 62, and *Case of Yvon Neptune v. Haiti, supra note 7*, para. 17. See also, *inter alia*, International Court of Justice, *Compétence en matière d'Activités militaires et paramilitaires au Nicaragua et contre celui-ci* (Nicaragua c. États-Unis d'Amérique), Fond, arrêt, C.I.J. Recueil 1986, p. 23, para. 27; *Compétence en matière de pêcheries* (Royaume-Uni c. Islande), Fond, arrêt, C.I.J. Recueil 1974, p. 9, para. 17; *Essais nucléaires* (Australie c. France), *Arrêt du 20 décembre 1974*, C.I.J. Recueil 1974, p. 257, para. 15; *Plateau continental de la mer Egée* (Grèce c. Turquie), *Arrêt du 19 décembre 1978*, C.I.J. Recueil 1978, p. 7, para. 15, and *Personnel diplomatique et consulaire des États-Unis à Téhéran* (États-Unis d'Amérique c. Iran), *Arrêt du 24 mai 1980*, C.I.J. Recueil 1980, p. 18, para. 33.

<sup>9</sup> Cf. *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Barbani Duarte et al. v. Uruguay. Merits Reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 36.

<sup>10</sup> Cf. *Case of Yvon Neptune v. Haiti, supra note 7*, para. 18, and *Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 195, para. 33.

<sup>11</sup> Cf. *Case of Yvon Neptune v. Haiti, supra note 7*, para. 18

<sup>12</sup> "In its answer, the defendant must state whether it accepts the facts and claims or whether it denies them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested."

in which a similar situation occurs. Thus, it corresponds to the Court, in exercise of its inherent power to determine the scope of its own competence (*compétence de la compétence*),<sup>13</sup> to determine in each case the need to verify the facts, as they were presented by the parties, or by taking into account other elements of the body of evidence.

17. In this case, the State has not participated or carried out any procedural activity, either in the context of these proceedings, or during the processing of the provisional measures before this Court. The State's only intervention in relation to this case was at a hearing before the Commission in 2008, when the State acknowledged the facts of the case, indicating that it "acknowledged that, on June 24, human rights had been violated" and that most of the facts denounced by Mr. Fleury had been proved following an administrative investigation.<sup>14</sup> Over and above the possible prejudice that the State's lack of participation could cause it, this inactivity before an international human rights jurisdiction is contrary to the object and purpose of the American Convention and the mechanism of collective guarantee established therein.<sup>15</sup> Moreover, the acknowledgement before the Commission becomes fully effective in the proceedings before the Court.

18. In order to deliver this judgment, the Court finds, in function of Article 39(2) of its Rules of Procedure, that the State has accepted the facts described in the application, together with the facts that may be considered complementary<sup>16</sup> presented by the representatives.

19. Consequently, taking into account its powers to ensure the enhanced protection of human rights, the Court will deliver a judgment in which it determines the facts and the evidence with regard to the merits of the matter, as well as the corresponding reparations.<sup>17</sup>

## **B. Alleged victims**

20. In addition to the next of kin indicated in the application (*supra* para. 3), the representatives asked that Rosine Fénelon, Lysias Fleury's mother, be declared a victim and receive reparations for having suffered "physical, mental and moral harm," because she witnessed when her son was arrested and beaten by police agents, and they alleged that this could have contributed to her death within three months, because of the stress and anguish she suffered that day. In addition, they asked for reparations in favor of Willy Benoit, Mr. Fleury's brother-in-law, who had suffered "serious mental and moral harm" upon witnessing Mr. Fleury's arrest and had been forced to abandon his home for fear of reprisals by police agents from the Bon Repos Police Station.

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<sup>13</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 32, and *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 44.

<sup>14</sup> Minutes of Hearing No. 10 of March 7, 2008, 131st session of the Inter-American Commission on Human Rights in the case of Lysias Fleury v. Haiti (file of attachments to the application, tome I, folio 128).

<sup>15</sup> Cf. *Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of March 11, 2005. Series C No. 123, para. 38.

<sup>16</sup> Cf. *Case of the "Five Pensioners" v. Peru*, *supra* note 9, para. 153, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 36.

<sup>17</sup> Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 37.



21. The Court has established that alleged victims must be indicated in the Commission's report under Article 50 of the Convention and in its application. In addition, according to Article 34(1) of the Rules of Procedure, it is the responsibility of the Commission, and not this Court, to identify precisely and on the proper procedural occasion the alleged victims in a case before the Court.<sup>18</sup> Since Mrs. Fénelon and Mr. Benoit were not named as alleged victims in the Commission's application, they will not be considered alleged victims.

## VI EVIDENCE

22. Based on the provisions of Articles 46 and 50 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,<sup>19</sup> the Court will examine and assess the documentary evidence submitted by the parties on different procedural occasions. To this end, the Court will observe the principles of sound judicial discretion within the corresponding legal framework.<sup>20</sup>

### A. Documentary, testimonial and expert evidence

23. The Court received various documents presented as evidence by the Inter-American Commission and the representatives together with their main briefs (*supra* paras. 1, 5 and 11). In addition, affidavits were received from three expert witnesses:<sup>21</sup>

- a) *Mario Joseph*, expert witness proposed by the Commission, lawyer, who gave an opinion on the shortcomings of the Haitian criminal justice system, and on the alleged lack of investigation of acts in which State agents are presumably involved.
- b) *Thomas M. Griffin*, expert witness proposed by the representatives, Legal Affairs Director of the "Lamp for Haiti Foundation," who gave an opinion on the supposed conditions of Haitian detention centers and the alleged abuses carried out by the personnel of these centers in the context of the human rights situation in Haiti.
- c) *William G. O'Neill*, expert witness proposed by the representatives, Director of the Conflict Prevention and Peace Forum, who gave an opinion on the "climate for human rights defenders in Haiti, as well as on the situation of the Haitian National Police for several years, particularly with regard to impunity."

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<sup>18</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 42.

<sup>19</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69-76, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 16.

<sup>20</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*, *supra* note 19, para. 76, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 16.

<sup>21</sup> After their presentation had been required in the order of the President of July 20, 2011, in communications of August 8, 2011, the Commission desisted from presenting the expert opinion of Lizbeth Cullity, and the representatives did the same with regard to the expert opinion of Mary C. Cogar.

## **B. Admission of the evidence**

24. In this case, as in others, the Court admits the probative value of those documents presented by the parties at the appropriate procedural opportunity that were not contested or opposed, and the authenticity of which was not questioned.<sup>22</sup>

25. The Court finds it pertinent to admit the opinions given by the expert witnesses by means of affidavits, insofar as they are in keeping with the purpose defined by the President in the order requiring them (*supra* para. 10), and they will be assessed in the corresponding chapter, together with other elements of the body of evidence.<sup>23</sup>

26. Regarding the statements of the alleged victims and witnesses as well as the expert opinions presented in the proceedings before the Commission, which were offered by the Commission and the representatives, the Court recalls that, provided there is no dispute, for reasons of procedural economy and in keeping with the provisions of Article 46(2) of the Rules of Procedure, the President decided that “the evidence tendered before the Commission will be incorporated into the case file, provided it was received in adversarial proceedings, unless the Court considers it essential to repeat it.”

## **VII MERITS**

### **VII.1 FACTS**

27. As indicated in this judgment (*supra* para. 16), the Court considered that, since the State had failed to exercise any procedural activity in this case, it had accepted the facts described in the application, together with the facts that may be considered complementary presented by the representatives. Based on the foregoing, in order to determine the scope of the violations, the Court will now refer to the context of the case, and to specific facts related to Mr. Fleury's detention, the treatment to which he was subjected while deprived of liberty, the facts following his release, and the complaints filed regarding those facts.

#### **A. Context<sup>24</sup>**

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<sup>22</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra* note 7, para. 140 and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 21.

<sup>23</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997, and Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 27.

<sup>24</sup> The information in this section comes mainly from the following sources: United Nations, Economic and Social Council. Report on the situation of human rights in Haiti presented by the Independent Expert, Adama Dieng, E/CN.4/2001/106, of 30 January 2001, paras. 27 to 30, 38, 74, 75, 77 and 79; United Nations, Security Council. Report of the Secretary-General on Haiti, S/2004/300, 16 April 2004, paras. 31, 32, 35, 36 and 41; Report of the Secretary-General on the United Nations Stabilization Mission in Haiti (MINUSTAH), S/2005/124, 25 February 2005, paras. 34 and 37; Inter-American Commission on Human Rights, Annual Report, 2005, OEA/Ser.L/V/II.124, February 27, 2006, Chap. IV, Haiti, paras. 204, 237 and 238; Annual Report, 2004, OEA/Ser.L/V/II.122, February 23, 2005, Chap. II.C, para. 29, Chap. IV, Haiti, paras. 134, 135, 137, 142, 204; Annual Report, 2003, OEA/Ser.L/V/II.118, December 29, 2003, Chap. II.C, paras. 24 and 25, Chap. IV, Haiti, paras. 47 and 48; Annual Report, 2002, OEA/Ser.L/V/II.117, March 7, 2003, Chap. II.C, para. 27, and Chap. IV, Haiti, paras. 15, 21, 23, 39 and 41; Special report “*Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the International Community.*” OEA/Ser.L/V/II.123, October 26, 2005, Chap. III.D.2, para. 151; Affidavit of Thomas M. Griffin dated August 9, 2011, paras. 4, 9 and 10 (evidence file, tome III, folios 1063 and 1066);

28. According to different international entities, such as the United Nations Independent Expert on the situation of human rights in Haiti, the Secretary-General of the United Nations, and the Inter-American Commission, the facts of this case took place in 2002, in a context of political polarization, public insecurity, and institutional shortcomings in Haiti in which the National Police of Haiti (hereinafter also "NPH") were involved in cases of abuse of power and other criminal activities. In this context, the NPH constantly carried out illegal detentions, abusing of their authority, and inflicted torture and ill-treatment on those detained during arrests and also during detentions.

29. According to the above-mentioned sources, the investigations into the abuses committed by officials of the Haitian security forces were not effective, and the complaints filed by alleged victims rarely led to the prosecution and punishment of those responsible for such acts. The report of the United Nations Independent Expert established that this situation gave rise to a perception where the Haitian Police were seen as an entity above the law that enjoyed total impunity, in the absence of an effective accountability mechanism.

30. Also, according to the reports of the United Nations Independent Expert, the Inter-American Commission, and the United Nations Stabilization Mission in Haiti (hereinafter also "MINUSTAH"), human rights defenders were frequently subjected to threats and harassment because of their work.

## **B. The arrest of Lysias Fleury**

31. Lysias Fleury is a Haitian citizen and was 39 years of age at the time of the facts of this case. Prior to June 24, 2002, he lived in Lilavois with his wife Rose Lilienne Benoit Fleury and their three children, Rose Metchnikov, Flemingkov and Heulingher. Mr. Fleury worked for the non-governmental organization *Comisión Episcopal Nacional de Justicia y Paz* [National Episcopal Commission for Justice and Peace] (hereinafter also "Episcopal Commission" or "National Episcopal Commission for Justice and Peace") as a human rights defender and legal adviser and, since 2002, he supervised the organization's legal affairs. In addition, Mr. Fleury was a consultant in a law firm specializing in rural disputes.

32. As indicated by the representatives, in the performance of his work as a human rights defender, Mr. Fleury represented victims of domestic violence, sexual abuse, child abduction, and illegal arrest throughout Haiti. Lysias Fleury conducted investigations in police stations in connection with cases of illegal arrest or detention. These visits allowed him to gather information that was later used in drafting reports and making recommendations concerning the human rights violations that occurred under the Haitian criminal justice system. In addition, his responsibilities also included training detainees in the main prisons in Haiti, including detention centers, in police stations and, in particular, in the Bon Repos Police Station.<sup>25</sup>

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Affidavit of Mario Joseph of August 9, 2011 (evidence file, tome III, folio 1045), and Affidavit of William G. O'Neill dated August 4, 2011, para. 10 (evidence file, tome III, folios 1051, 1052 and 1059).

<sup>25</sup> Cf. Affidavit of Lysias Fleury dated November 12, 2009 (file of attachments to the brief with pleadings, motions and evidence presented by the representatives of the alleged victims, tome II, attachment 11, folios 641 to 649) and Affidavit of Rose Lilienne Benoit dated October 3, 2009 (file of attachments to the brief with pleadings, motions and evidence presented by the representatives of the alleged victims, tome II, attachment 11, folios 658 and 659).

33. At approximately 7 p.m. on June 24, 2002, two uniformed policemen and three other men arrived at Mr. Fleury's home, where he was with his wife and children, indicating that they had been informed that he had acquired a stolen water pump. Mr. Fleury denied the accusation and invited the agents to search his home and identify the object. However, the policemen decided to arrest him without a warrant.

34. At the time of his arrest, Mr. Fleury identified himself as a lawyer and human rights defender and showed the police his employee identity card of the above-mentioned non-governmental organization, Episcopal Commission for Justice and Peace, as a result of which the police threatened and intimidated him. In this regard, the representatives indicated that one of the agents stated: 'You work for human rights? You'll see...' Then, one of the men in civilian clothing grabbed Mr. Fleury by his throat and, using a gun, forced him to get into the back of a pick-up truck. The police agents hit Mr. Fleury in the face with a gun and he received repeated blows to the head. This treatment continued until his arrival at the Bon Repos Police Station in Port-au-Prince, where he was taken and detained for 17 hours.<sup>26</sup>

35. Mr. Fleury was not informed of the reasons for his arrest. Upon reaching the police station, he was placed in a cell that, according to Mr. Fleury, measured approximately 6 x 4 feet (1.83 x 1.22 m); the cell was damp, dirty, unventilated, and had no chairs. The cell was occupied by seven other individuals deprived of liberty. During the 17 hours of his detention, Mr. Fleury did not receive food or water.

36. Mr. Fleury was forced at gunpoint to clean the excrement in his cell with his bare hands. While he endured this abuse, one of the policemen told him that, if he had met Mr. Fleury on the street he would have killed him because he was a human rights activist. At one point, he was taken from the cell and beaten on the head and kicked by police officers at the Bon Repos Police Station. He suffered bruising all over his body, especially on his back and leg. According to Mr. Fleury, he allegedly received approximately 64 blows to the body and 15 severe simultaneous blows to both sides of his head at ear level<sup>27</sup> ("*kalot marassa*"<sup>28</sup>). His left arm and leg were fractured and his eardrum was perforated as a result of the beatings.<sup>29</sup>

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<sup>26</sup> Cf. Sworn statement of Lysias Fleury dated November 12, 2009 (file of attachments to the brief with pleadings, motions and evidence presented by the representatives of the alleged victims, tome II, attachment 11, folios 643 and 644).

<sup>27</sup> Cf. Copy of medical certificate dated August 2, 2002 (file of attachments to the application, tome I, attachment 3, folio 429); testimony of Salomon Senexant (file of attachments to the application, tome I, attachment 1, folio 406); testimony of Lysias Fleury (file of attachments to the brief with pleadings, motions and evidence presented by the representatives of March 7, 2008 (file of attachments to the application, tome I, attachment 2, folio 421).

<sup>28</sup> Technique frequently used by the Haitian National Police, which can result in damage to the ear and eardrum. Cf. Affidavit of Thomas Griffin dated August 9, 2011, which indicates "the acts of torture to which those detained were submitted included being hit with fists, sticks or belts, as well as the practice of *kalot marassa* which consisted in hard blows on the ears, which could result in injury to the eardrums" (file of evidence, tome III, folio 1063 and 1066). See also United Nations-OAS International Civilian Mission in Haiti, quarterly report October-November 1998, quarterly report January-March 1999, Report: *Haiti: Human Rights and Rehabilitation of Victims*, December 1996.

<sup>29</sup> Cf. Copy of medical certificate dated August 2, 2002 (file of attachments to the application, tome I, attachment 3, folio 429); Testimony of Salomon Senexant (file of attachments to the application, tome I, attachment 1, folios 406); Testimony of Lysias Fleury (file of attachments to the brief with pleadings, motions and evidence presented by the representatives of the alleged victims, tome II, attachment 11, folio 644); CIDH, Hearing No. 10, Case 12,459 – Lysias Fleury, March 7, 2008 (file of attachments to the application, tome I, attachment 2, folio 421).

37. Subsequently, the police ordered Mr. Fleury to sign a declaration stating that he had not been mistreated by the police, but rather by personnel of another State body, namely the Local Departments Administrative Council (CASEC).<sup>30</sup> In addition, according to Mr. Fleury, the police even offered to release him in exchange for money.

38. Mr. Fleury was released by the Haitian National Police, at around 12 m. on June 25, 2002.

### C. Facts following the release of Lysias Fleury

39. When members of the Episcopal Commission for Justice and Peace and his wife went to the Bon Repos Police Station to pick up Mr. Fleury, they found him outside the precinct, with his face disfigured, his arm swollen, and barely able to stand. They all entered the police station where, in the presence of these witnesses, Mr. Fleury told the police about the treatment he had received.

40. Mr. Fleury was then taken by his wife, Father Jan Hanssens and other members of the above-mentioned organization to have the injuries on his body photographed, and then to the Hospital of the State University of Haiti to undergo a medical examination. The examination concluded that he had a closed fracture of his left forearm, in addition to pain and deafness in his right ear. Also, in the hospital, he was diagnosed with "significant bruising in the gluteal area and the left thigh [as a result of] injury owing to an attack with some kind of object."<sup>31</sup> Following the medical evaluation, Mr. Fleury was taken to Villa Manrèse to rest with medical supervision. Despite the medical treatment, Mr. Fleury continues to be deaf in his right ear.

41. Subsequently, Mr. Fleury stayed with Father Jan Hanssens for some months. In late 2002 he resumed his work, but was unable to live with his family, who were then in Les Cayes, because he still feared for his life and that of his family. During this period, he lived in Despinos. For the first two years, he only visited his family at their home once. Mr. Fleury was only able to see his wife seven times, when she visited him in the office of the NGO, and he was never able to see his children. After the first two years, Mr. Fleury considered it possible to return home, but only for a few hours on each occasion.

42. Following his release, on several occasions unidentified individuals visited Mr. Fleury's neighborhood, monitored his family's home, and asked where he worked or where he could be found, which frightened his wife and children. Mr. Fleury returned home in January 2004, at which time a police officer asked the neighbors if he had returned. Lysias Fleury went into hiding again, taking refuge with priests and with a friend from January 2004 to December 2006, owing to his fear of returning home.

43. On October 22, 2007, after arriving in the United States of America to take part in a hearing before the Inter-American Commission in connection with his case, Mr. Fleury decided not to return to Haiti, considering that his life would be in danger. He therefore decided to apply for refugee status, which he was granted. During this period, Mr. Fleury

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<sup>30</sup> The CASEC is the body that represents territorial units in Haiti.

<sup>31</sup> Cf. Copy of medical certificate dated August 2, 2002, which states: "*diagnostic provisoire: fracture fermée cubitus gauche; condition associée: otalgie, surdit  droite*" [provisional diagnosis: closed fracture left forearm; association condition: earache, deafness right ear] (file of attachments to the application, tome I, attachment 3, folios 429); Medical report dated June 25, 2002 (file of attachments to the brief with pleadings motions and evidence, tome II, attachment 13, folio 680).

communicated with his family by telephone and sent them some of the money he earned as an unskilled worker in Philadelphia, Pennsylvania, by electronic transfer. Mr. Fleury's family arrived in the United States in May 2009.

#### **D. Complaints with regard to the facts**

44. On June 25, 2002, Guerdine Jean-Juste, the Episcopal Commission's lawyer, presented a brief to the Deputy Government Commissioner requesting he order the release of Mr. Fleury because he had been arrested without a warrant, contrary to his constitutional rights.

45. On June 27, 2002, Father Jan Hanssens filed a complaint with the HNP Inspector General requesting that an investigation be opened against the agents involved in the acts of torture against Mr. Fleury. Father Hanssens received no response to this complaint.

46. On August 1, 2002, Mr. Fleury filed a brief with the Government Commissioner of Port-au-Prince, reporting the events of June 24 and 25, 2002, and asking the Public Prosecution Service to institute criminal proceedings against the police agents of the Bon Repos Police Station.<sup>32</sup>

47. On February 22, 2003, Mr. Fleury met with Inspector John Prévost from the HNP General Inspectorate. At that time, he was invited to go to a room where the three policemen who allegedly arrested, detained, and assaulted him appeared one by one.<sup>33</sup> Mr. Fleury identified the alleged attackers in the presence of Inspector Prévost. Despite the identification, not one of these three agents was charged. In a letter to the Commission, Mr. Fleury stated that one of his torturers remained assigned to the Bon Repos Police Station and that Inspector Prévost had informed him that no punishment would be imposed on the other two policemen.

48. On October 1, 2007, an official of the Ministry of Foreign Affairs invited Mr. Fleury to a meeting to discuss his case. At that meeting, the Ministry's representative informed him that an investigation would be opened into the abuses perpetrated against him by members of the Police and that he should not to leave his home after 6 p.m., since the Ministry could not be responsible for his safety.

49. To date, no information has been received that any investigation has been opened, or that any disciplinary sanctions have been imposed in relation to the complaint filed on June 27, 2002, before the Head of the HNP General Inspectorate. The police agents in question and the civilians who took part in the facts remain HNP officials. In addition, no criminal investigation was opened concerning the complaint filed with the Government Commissioner, and no one has been accused of the facts and prosecuted. More specifically, neither Mr. Fleury nor the suspects he identified have been summoned to appear before a court, and a judge has not been assigned to the case, as required by Haitian law.<sup>34</sup>

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<sup>32</sup> Cf. Complaint filed by Mr. Fleury before the *Commissaire du Gouvernement Près le Parquet du Tribunal Civil* [Government Commissioner attached to the Public Prosecutor's Department of the Civil Court] (file of attachments to the application, tome I, attachment 4, folio 437).

<sup>33</sup> Cf. *Inter-American Commission on Human Rights, Hearing No. 10*. Mr. Fleury stated that Thimoté Désgranges is a police agent; "Tiblanç" is a civilian agent connected to the Police; and the other three individuals implicated are: Tefneau Joseph, Edris Erick and "Gentil." Fleury has referred to the five of them as police agents and "*para policiers*" [individuals working with the police] (file of attachments to the application, tome I, attachment 2, folios 420 and 421).

<sup>34</sup> Cf. *Inter-American Commission on Human Rights, Hearing No. 10*. (file of attachments to the application, tome I, attachment 2, folios 421 and 422). See also articles 50 and 51 of the Code of Criminal Procedure of Haiti,

## VII.2 RIGHT TO PERSONAL LIBERTY

### A. Arguments

50. The Inter-American Commission argued Mr. Fleury's arrest was not conducted according to the provisions of domestic law, since the HNP agents arrested him without showing him an arrest warrant specifying the charges against him and without capturing him *in flagrante delicto*. In addition, he was arrested at 7 p.m., outside the hours prescribed by the Haitian Constitution. The Commission argued that Mr. Fleury's arrest and detention were illegal and arbitrary and thus the State had violated Articles 7(2), 7(3) and 7(4) of the American Convention.

51. The Commission also noted that Haitian law stipulates that it is not permitted to detain anyone for more than 48 hours, unless they have been taken before a judge who must determine the legality of the arrest and this judge has confirmed the arrest by means of a duly-founded decision. Despite this, the Commission argued that "in this case, Mr. Fleury was detained for 17 hours in police custody, and no attempt was made by the corresponding police or judicial authorities to take him before a judge or other officer authorized by law to exercise judicial power." The Commission stated that, given the circumstances of excessive use of force, and the illegal and arbitrary arrest and detention of Mr. Fleury, "the State did not respect Mr. Fleury's right to be brought promptly before a judge, pursuant to Article 7(5) of the Convention."

52. In their arguments, the representatives endorsed the arguments set out by the Commission, adding that these "serious offenses were violations of both Haitian national law, and Article 7 of the American Convention."

### B. Considerations of the Court

53. The Court has reiterated that Article 7 of the American Convention contains two different types of regulations: one general and the other specific. The general one is contained in the first paragraph: "[e]very person has the right to personal liberty and security"; while the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty illegally (Art. 7(2)), or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for his detention and the charges against him (Art. 7(4)), to judicial control of the deprivation of liberty (Art. 7(5)), and to contest the legality of the arrest (Art. 7(6)).<sup>35</sup> Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.<sup>36</sup>

#### B.1 *The alleged illegal and arbitrary detention of Mr. Fleury (Article 7(2) and 7(3))*

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July 31, 1835 (file of attachments to the application, tome I, attachment 7, folio 612). Although the State has alleged that the agents were transferred to another area of the HNP, no evidence was provided to support this information during hearing No. 10, and the petitioners have contested it, specifically Mr. Fleury, who stated that he had seen at least one of his attackers in the Bon Repos Police Station and another working in the HNP General Inspectorate.

<sup>35</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 73.

<sup>36</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra* note 35, para. 54, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 73.

54. For the effects of Article 7(2) of the Convention, a detention, whether for a brief period, or a “delay,” even if merely for identification purposes, is a form of deprivation of physical liberty of the individual and, consequently, as a limitation of this liberty, it must adhere strictly to the relevant provisions of the American Convention and domestic law, provided that the latter is compatible with the Convention.<sup>37</sup> Thus, Article 7(2) of the Convention refers automatically to the domestic legal and constitutional provisions, so that any requirement established in them that is not complied with will cause this deprivation of liberty to be illegal and contrary to the American Convention.<sup>38</sup> Consequently, The Court must verify whether Mr. Fleury’s detention was carried out in keeping with Haitian law.

55. The 1989 Haitian Constitution established the right to personal liberty in the following provisions:

Article 24.1: No one may be prosecuted, arrested or detained except in the cases determined by law and as prescribed by law.

Article 24.2: Except when the perpetrator of a crime is caught *in flagrante delicto*, no one may be arrested or detained other than by a written order issued by a competent official.

Article 24.3: For such an order to be executed, the following requirements must be met:

- a. It must formally state the reason in Creole and in French for the arrest or detention, and the legal provision that establishes the punishment for the alleged act.
- b. Legal notification must be given and a copy of the order must be provided to the accused at the time of its execution.
- c. The accused must be notified of his right to be assisted by counsel at all stages of the investigation of the case up to the final judgment.
- d. Except when the perpetrator of a crime is caught *in flagrante delicto*, no arrest under an official warrant and no search may take place between 6 p.m. and 6 a.m.  
[...]

Article 26: No one may be detained for more than 48 hours unless he has been brought before a judge who has been asked to rule on the legality of the arrest and the said judge has confirmed the arrest by a duly-founded decision.<sup>39</sup>

56. In this case, the Court observes that Mr. Fleury was arrested without the issue or presentation of an arrest warrant that contained the justification for the arrest and the legal provision indicating the punishment associated with a crime previously defined in Haitian criminal law (*supra* para. 35). Furthermore, Mr. Fleury was not deprived of his liberty while *in flagrante delicto*. Moreover, as indicated by the parties and not contested by the State, Mr. Fleury’s arrest was carried out at 7 p.m. (*supra* para. 33); in other words, outside the hours established in the Constitution for such purposes. Consequently, Mr. Fleury’s arrest was evidently contrary to the provisions of domestic law and, therefore, illegal, in violation of Article 7(2) of the American Convention.

57. In relation to the arbitrariness of the detention, Article 7(3) of the Convention establishes that “no one shall be subjected to arbitrary arrest or imprisonment.” Regarding this provision, on other opportunities the Court has considered that no one may be subjected to arrest or imprisonment for reasons and using methods that – although

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<sup>37</sup> Cf. *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 76.

<sup>38</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra* note 35, para. 57, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 74.

<sup>39</sup> English version taken from the translation from French into Spanish made by the Court’s Secretariat.



classified as legal – can be considered incompatible with respect for the fundamental rights of the individual because, among other matters, they are unreasonable, unpredictable or disproportionate.<sup>40</sup>

58. Regarding Article 7(3), the Court has established that, although any detention must be carried out in accordance with the procedures established in domestic law, it is also necessary that the domestic law, the applicable procedures, and the general express or implicit principles must, in themselves, be compatible with the Convention.<sup>41</sup> However, as established by the Human Rights Committee, “‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law [...]”<sup>42</sup>

59. Any cause for the deprivation or restriction of the right to personal liberty should not only be established by law, in the terms of Article 7(3) of the Convention, but also its purpose must be legitimate and compatible with the Convention,<sup>43</sup> and it must not result from the exercise of rights. In this case, Mr. Fleury was not arrested *in flagrante delicto* and the purpose of his detention by the HNP was never to press charges or to bring him before a judge for his alleged or possible perpetration of an unlawful act, but had other reasons, such as possible extortion<sup>44</sup> or, in the context of the threats against and harassment of human rights defenders, to intimidate him and dissuade him from carrying out his work. Consequently, Mr. Fleury was detained arbitrarily, in violation of Article 7(3) of the Convention.

#### *B.2 The right to be informed of the reasons for the detention (Article 7(4))*

60. In cases in which the violation of Article 7(4) of the Convention is alleged, the Court must analyze the facts in light of domestic law and the provisions of the Convention, because the information about the “motives and reasons” for the detention must be given “when it occurs,” and because the right contained in that norm involves two obligations: (i) oral or written information on the reasons for the detention, and (ii) notification, in writing, of the charges.<sup>45</sup> In this case, the State did not inform Mr. Fleury of the “reasons” for his arrest or notify him of the “charges” against him, so that, in addition to being illegal (*supra* para. 56), his detention constituted a violation of the right recognized in Article 7(4) of the Convention.

#### *B.3 The right to be brought promptly before a judge (Article 7(5))*

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<sup>40</sup> Cf. *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, para. 47 and *Case of Torres Millacura et al. v. Argentina, supra* note 17, paras. 77 and 78.

<sup>41</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra* note 35, para. 91.

<sup>42</sup> *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra* note 35, para. 92. Human Rights Committee, *Case of Albert Womah Mukong v. Cameroon*, (458/1991), 21 July 1994, Doc. UN CCPR/C/51/D/458/1991, para. 9.8

<sup>43</sup> Cf. *Mutatis mutandi, Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra* note 35, para. 93, and *Case of Torres Millacura et al., supra* note 17, paras. 77 and 78.

<sup>44</sup> Sworn statement of July 2002, by Mr. Fleury (file of attachments to the application, tome I, attachment 1, folios 393 and 394).

<sup>45</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 106.

61. Article 7(5) of the Convention stipulates that the detention of an individual must be subject to prompt judicial review.<sup>46</sup> In this regard, the Court has indicated that immediate judicial control is a measure intended to avoid arbitrary or illegal detention, bearing in mind that, under the rule of law, it is the judge who must guarantee the rights of the individual detained, authorize the adoption of preventive or coercive measures when this is strictly necessary and, in general, ensure that the accused is treated in a manner consequent with the presumption of innocence.<sup>47</sup>

62. Article 26 of the Haitian Constitution provides that “no one may be detained more than 48 hours unless he has been brought before a judge who has been asked to determine the legality of the arrest and the said judge has confirmed the arrest by a duly-founded decision.”

63. In the instant case, Mr. Fleury was detained for 17 hours in the Bon Repos Police Station and was released before the competent authority was able to assess the legality of his arrest. As already indicated (*supra* paras. 56 and 59), the police did not have any real reason for detaining Mr. Fleury and did not attempt to open an investigation against him or to inform the competent authority of his detention. It is evident that any individual subject to any form of deprivation of liberty must be brought before the competent authorities to ensure, among other matters, his rights to personal liberty, personal integrity, and the guarantees of due process, and this must be effected immediately and, at most, within the maximum time frame for detention established by law, which in Haiti is 48 hours. Hence, the police or administrative authorities must demonstrate whether there were legitimate reasons or circumstances for failing to bring someone promptly before the competent authorities. However, in this case, having found that the detention of Mr. Fleury was illegal from the outset, in violation of Article 7(2), and since neither the Commission nor the representatives provided factual data or more specific arguments, the Court will not analyze the facts under Article 7(5) of the Convention.

64. Based on the above, the Court declares that the State violated the right to personal liberty, recognized in Article 7(1), 7(2), 7(3) and 7(4) of the Convention, in relation to its obligation to respect that right which is established in Article 1(1) thereof, to the detriment of Mr. Fleury.

### **VII.3 RIGHT TO PERSONAL INTEGRITY**

#### **A. Arguments**

65. The Commission argued the violation of the right to personal integrity,<sup>48</sup> for the following reasons: (a) the acts of which Mr. Fleury was a victim were intentional, since the

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<sup>46</sup> Article 7(5) of the American Convention establishes that:

Any persons detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a 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 ensure his appearance for trial.

<sup>47</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objections, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 84, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 93.

<sup>48</sup> Article 5(1) and 5(2) of the American Convention on Human Rights establishes that:

perpetrators used violence against him when they took him by the throat during his arrest and forced him to get into the police truck, when they obliged him to clean the excrement in his cell; when they beat and kicked his entire body and, finally, when they forced him to sign a declaration absolving the perpetrators from any responsibility; (b) these acts caused him physical and mental pain, as proved by the photographs showing the bruises on his body and the medical certificate describing his injuries; (c) they were committed against him as punishment, particularly because he was a human rights defender; (d) they were perpetrated by State agents, and (e) "they were degrading because he was severely humiliated in front of others." In light of the foregoing, the Commission stated that "the acts committed against Mr. Fleury meet the criteria of torture and cruel, inhuman, and degrading treatment." The Commission also indicated that "the actions of the State agents reveal a lack of respect for the inherent dignity of Mr. Fleury, also protected by Article 5(2) of the Convention."

66. The Commission added that "the facts and evidence in the case reveal the anguish and fear experienced by Mr. Fleury's family because they witnessed the abuse perpetrated by the State agents." In addition, the members of the family were obliged to live apart for long periods of time fearing reprisals by the perpetrators. The Inter-American Commission indicated that "the members of Mr. Fleury's family were also victims of the acts of the State agents," because his wife and children suffered severe anguish, fear and anxiety, which violated their right to physical, mental and moral integrity protected by Article [5(1)] of the American Convention, [in relation to Article 1(1) thereof]."

67. The representatives indicated that they agreed with the Commission, particularly in characterizing the acts committed against Mr. Fleury as torture. They also indicated that, under both domestic<sup>49</sup> and international law, the standards for the use of force prohibit its use unless it is strictly necessary and proportionate. In addition, they stated that the torture of Mr. Fleury "constituted an excessive use of force, because he had never threatened the safety of the police station or its officials." As for the detention conditions at the Bon Repos Police Station (*supra* paras. 35 and 36), the representatives observed that they did not meet the minimum standards for treatment of persons deprived of liberty, or the provisions of the Haitian Constitution, and constituted "supplementary" violations of Article 5(1) and 5(2) of the American Convention.

## **B. Considerations of the Court**

68. Article 5(1) of the Convention embodies in general terms the right to personal integrity of a physical, mental and moral nature; while Article 5(2) specifically establishes the absolute prohibition to subject any one to torture or to cruel, inhuman or degrading punishment or treatment, as well as the right of all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person.<sup>50</sup> The Court understands

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Every person has the right to have his physical, mental, and moral integrity respected.

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.

<sup>49</sup> Article 25 of the Constitution of Haiti establishes that:

Any unnecessary force or restraint to arrest a person or to keep him under arrest is prohibited, as is any psychological pressure or physical brutality, especially during interrogation.

<sup>50</sup> The principles contained in Article 5(2) of the Convention are also included in Articles 7 and 10(1) of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), which state, respectively, that, "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment [...]," and that

that any violation of Article 5(2) of the Convention necessarily results in the violation of Article 5(1) thereof.<sup>51</sup>

69. The Court will refer below to the following: (1) the alleged acts of torture and other cruel, inhuman and degrading treatment perpetrated against Mr. Fleury; (2) the conditions in which Mr. Fleury was detained, and (3) the alleged violation of the right to personal integrity to the detriment of Mr. Fleury's family. The alleged non-compliance with the obligation to investigate these facts will be addressed in the chapter on the rights to judicial guarantees and judicial protection of Mr. Fleury and of his family.

*1. The alleged acts of torture and other cruel, inhuman and degrading treatment perpetrated against Mr. Fleury*

70. First, the Court reiterates its case law to the effect that torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and mental, belongs today to the domain of international *jus cogens*.<sup>52</sup> This prohibition subsists even under the most difficult circumstances such as war, threat of war, the fight against terrorism and any other crimes, state of siege or emergency, civil unrest or domestic conflict, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters.<sup>53</sup>

71. Universal<sup>54</sup> and regional<sup>55</sup> treaties establish this prohibition, together with the non-repealable right of all human beings not to be subject to any form of torture. Several international instruments also embody this right and reiterate this prohibition,<sup>56</sup> even those relating to international humanitarian law.<sup>57</sup>

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"[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The sixth and first principles of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, respectively, state the same. For its part, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." *Cf.* International Covenant on Civil and Political Rights, Arts. 7 and 10(1); Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, principles 1 and 6, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3.

<sup>51</sup> *Cf. Case of Yvon Neptune v. Haiti, supra* note 7, para. 129.

<sup>52</sup> *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 95 and *Case of Torres Millacura et al. v. Argentina, supra* note 17, para. 86.

<sup>53</sup> *Cf. Case of Cantoral Benavides v. Peru, supra* note 52, para. 95 and *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 199.

<sup>54</sup> International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 10.

<sup>55</sup> Inter-American Convention to Prevent and Punish Torture, Article 2; African Charter on Human and Peoples' Rights, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Article 4, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.

<sup>56</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6; Code of Conduct for Law Enforcement Officers, Article 5; United Nations Rules for Juveniles Deprived of their Liberty, Rule 87(a); Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live, Article 6; United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17(3); Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Article 4, and

72. Still, to define what should be understood as “torture” in light of the provisions of Article 5(2) of the American Convention, according to the Court’s case law, an act constitutes torture when the ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a specific purpose or objective.<sup>58</sup>

73. In addition, the Court has indicated that the violation of an individual’s right to physical and mental integrity has different levels that range from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental consequences of which vary in intensity according to factors that are endogenous and exogenous to the individual (such as, duration of the treatment, age, sex, health, context, and vulnerability), which must be analyzed in each specific situation.<sup>59</sup>

74. Regarding the use of force by the security forces, this Court has indicated that this must respect criteria of legitimate reasons, need, appropriateness and proportionality.<sup>60</sup> Furthermore, the Court has indicated that any use of force that is not strictly necessary owing to the behavior of the person detained constitutes an attack on human dignity, in violation of Article 5 of the American Convention.<sup>61</sup>

75. In this case, Mr. Fleury was subjected to the following acts (*supra* paras. 34 and 36): (a) he was threatened at the time of his arrest; (b) he was taken by the throat by one of the policemen to force him to get into the truck in which he would be taken away detained, even though he was not resisting in any way; (c) at the time of his arrest he was hit in the face with a gun and hit on the head, ill-treatment that continued during the ride to the police station, and (d) during his detention he was obliged to clean the excrement in the cell in which he was detained with his bare hands as a form of humiliation, and received, approximately 64 blows to his head and the rest of his body, by kicks and using objects, and 15 severe simultaneous blows on both sides of the head (“*kalot marassa*”). As a result of this ill-treatment, Mr. Fleury suffered bruising mainly on his back and leg and other bruises on his whole body. In addition, his left arm and leg were fractured and he suffered a perforated eardrum as a result of the beatings.

76. As indicated, these acts took place in a context of public insecurity and the institutional shortcomings of the Haitian National Police, which was found to be involved in

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Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe, Guideline IV.

<sup>57</sup> Article 3 common to the four Geneva Conventions; Geneva Convention relative to the Treatment of Prisoners of War (Convention III), Arts. 49, 52, 87, 89 and 97; Geneva Convention relative to the Protection of Civilians in Time of War (Convention IV), Arts. 40, 51, 95, 96, 100 and 119; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art 75(2)(ii), and Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 4(2)(a).

<sup>58</sup> Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 120.

<sup>59</sup> Cf. *Case of Loayza Tamayo v. Peru*, *supra* note 23, paras. 57 and 58, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 86.

<sup>60</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, paras. 67 to 69, and *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, paras. 83 to 85.

<sup>61</sup> Cf. *Case of Loayza Tamayo v. Peru*, *supra* note 23, para. 57 and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 133.

cases of corruption, abuse of power, drug-trafficking, and other criminal activities, in addition to having committed illegal detentions, abuse of authority, torture and ill-treatment of detainees at the time of their arrest and during their detention (*supra* para. 28).

77. In any case, this Court's case law has also indicated that, whenever an individual in normal physical condition is detained and subsequently appears with health problems, the State must provide a credible explanation for this situation.<sup>62</sup> Consequently, there is a presumption that the State is responsible for the injuries exhibited by a person who has been in the custody of State agents,<sup>63</sup> and the State has the obligation to provide a satisfactory and convincing explanation of what happened and disprove the allegations of its responsibility using adequate probative elements.<sup>64</sup>

78. According to the description of the acts of violence suffered by Mr. Fleury at the hands of agents of the Haitian Police in the said context, there can be no doubt that those acts were committed intentionally and that they caused him severe suffering and physical aftereffects. In those circumstances, many of those acts can evidently be characterized as forms of torture and others as cruel, inhuman and degrading treatment.

79. Moreover, according to the reported facts, the purpose of the ill-treatment perpetrated against Mr. Fleury was to humiliate him and punish him for being a human rights defender. This is revealed by the constant references made by the members of the HNP to that fact when subjecting him to physical abuses (*supra* para. 36). In this regard, Mr. Fleury stated that, at the time of his arrest, after he had identified himself as a human rights defender, one of the policemen threatened him (*supra* para. 34), and when they ordered him to clean his cell, they stated: "the man who says he works with regard to human rights is now going to clean the cell."<sup>65</sup>

80. Regarding Mr. Fleury's professional status as a human rights defender, this Court reiterates that compliance with the obligation to create the necessary conditions for the effective exercise and enjoyment of the rights established in the Convention is inherent in the protection and recognition of the importance of the role played by the human rights defenders,<sup>66</sup> whose work is essential to strengthen democracy and the rule of law. In

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<sup>62</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra* note 47, para. 100, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 134.

<sup>63</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) vs. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 170 and para. 95, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 134.

<sup>64</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra* note 47, para. 111, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 134.

<sup>65</sup> Sworn statement of Mr. Fleury of July 27, 2002 (file of attachments to the application, tome I, folio 165).

<sup>66</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 74, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 87. See also, Organization of American States, "Human Rights Defenders in the Americas: Support for the individuals, groups, and organization of civil society working to promote and protect human rights in the Americas," AG/Res. 1671 (XXIX-O/99) of June 7, 1999; AG/Res. 1711 (XXX-O/00) of June 5, 2000, and AG/Res. 2412 (XXXVIII-O/08) of June 3, 2008; article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms establishes that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, 8 March 1999, article 1. See also, United Nations, *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of

addition, it should be emphasized that the monitoring, denunciation and educational activities performed by human rights defenders make an essential contribution to respect for human rights, because they act as guarantors against impunity.

81. In this regard, this Court recalls that the defense of human rights can be exercised freely only when those engaged in it are not victims of threats or any kind of physical, mental or moral violence, or other acts of harassment.<sup>67</sup> To this end, the States have the obligation to take special measures to protect human rights defenders in keeping with their functions against the acts of violence that are regularly committed against them and, among other measures, must protect them when they are threatened in order to avoid attempts on their life and integrity and generate conditions for the eradication of violations by State agents or private individuals, and investigate seriously and effectively the violations committed against them, in order to combat impunity.<sup>68</sup>

82. Based on the above, the Court concludes that Lysias Fleury was tortured and subjected to cruel, inhuman and degrading treatment on the premises of the Bon Repos Police Station by officials of the Haitian National Police. Therefore, the State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention to the detriment of Mr. Fleury.

## 2. *The conditions in which Mr. Fleury was detained*

83. This Court has indicated that, according to Articles 5(1) and 5(2) of the Convention, all those deprived of liberty have the right to live in detention conditions compatible with their personal dignity. In this regard, the States cannot invoke economic hardships to justify detention conditions that fail to comply with the relevant minimum international standards or to respect the dignity of the human being.<sup>69</sup>

84. This Court has indicated that, as the entity responsible for detention establishments, the State is in the special position of guarantor of the rights of all those in its custody.<sup>70</sup> Similarly, in view of this relationship and special interaction of subjection, the State must assume a series of specific responsibilities and take various special initiatives to guarantee to those detained the necessary conditions to contribute to the effective enjoyment of the rights that, under no circumstances, may be restricted, as well as those rights the restriction of which does not necessarily derive from the deprivation of liberty, including the rights to life, personal integrity, and due process.<sup>71</sup> The failure to comply with this may

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Offenders, UN Doc. No. A/CONF.144/28/REV.1, 7 September 1990, articles 16 to 22, and Council of the European Union, *Draft conclusions of the Council on the EU guidelines on human rights defenders*, 100056/1/04 REV 1, 9 June 2004. Furthermore, in a resolution of June 7, 1999, the OAS General Assembly called on the Member States to adopt the necessary measures to protect human rights defenders. AG/Res. 1671 (XXIX-0/99), *Human Rights Defenders in the Americas: Support for the individuals, groups, and organization of civil society working to promote and protect human rights in the Americas.*"

<sup>67</sup> Cf. Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II.124 Doc. 5 rev.1 of March 7, 2006, para. 46

<sup>68</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil*, supra note 66, July 6, 2009. Series C No. 200, para. 172.

<sup>69</sup> Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, supra note 60, paras. 85 and 87, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 226, para. 42.

<sup>70</sup> Cf. *Case of Neira Alegria et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Torres Millacura et al. v. Argentina*, supra note 17, para. 99.

<sup>71</sup> *Case of the Children's Rehabilitation Institute v. Paraguay*, Judgment of September 2, 2004, Series C No. 112, paras. 153 to 155

result in a violation of the absolute prohibition to inflict cruel, inhuman or degrading treatment.<sup>72</sup>

85. Furthermore, the Court has considered that detention in overcrowded conditions, with lack of ventilation and natural light, without a bed to rest on, or adequate hygiene conditions, in isolation or solitary confinement, or with undue restrictions on visits constitutes a violation of personal integrity.<sup>73</sup> In this regard, the United Nations Standard Minimum Rules for the Treatment of Prisoners establish basic criteria for interpreting the content of the right of those deprived of liberty to decent and humane treatment.<sup>74</sup> These rules include the strict prohibition of corporal punishment and confinement in dark cells, as well as the basic norms regarding accommodation and hygiene.<sup>75</sup>

86. In the circumstances of this case, Mr. Fleury was detained in an overcrowded cell with no ventilation, without adequate sanitary facilities and conditions of hygiene, and without access to food and drinking water (*supra* para. 35). Irrespective of the duration of the detention, any person in that situation must be treated with due respect for their dignity.

87. This Court finds that the detention conditions endured by Mr. Fleury did not meet the minimum standards of detention required by the international instruments, so that the State is responsible for the violation of Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof.

*3. The alleged violation of the right to personal integrity to the detriment of Mr. Fleury's family*

88. The Court observes that Mr. Fleury's family were affected by his condition in several ways: (a) his wife and eldest daughter witnessed his arrest and his ill-treatment, a situation which caused anguish and significant moral and mental suffering; (b) Mrs. Fleury saw her husband's condition on leaving the police station where he had been tortured; (c) Mrs. Fleury and her children experienced extreme moral suffering upon being separated from their husband and father during the years in which he remained in hiding for fear of reprisals; (d) Mr. Fleury's immediate family endured anxiety and anguish for years because they felt that were being watched by unknown individuals who were looking for him, and (e) Mr. Fleury's wife and children had to emigrate from Haiti to be reunited with him, which

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<sup>72</sup> Cf. *Case of Cantoral Benavides*, *supra* note 27, para. 95; *Case of Boyce et al.*, *supra* note 208, para. 88, and *Case of Bueno Alves*, *supra* note 157, paras. 75 and 76. In this regard, the Committee against Torture has stated that "[o]vercrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, [... i]n addition to contravening the United Nations Standard Minimum Rules for the Treatment of Prisoners, these and other serious inadequacies aggravate the deprivation of liberty of prisoners serving sentences and those awaiting trial, making of such deprivation cruel, inhuman and degrading punishment and, in the case of the latter, punishment served in advance of sentence." United Nations, Report of the Committee against Torture, twenty-fifth session (13 to 24 November 2000) / twenty-sixth session (30 April to 18 May 2001), A/56/44, 10 May 2001, para. 95(f).

<sup>73</sup> Cf. *Case of Loayza Tamayo v. Peru*, *supra* note 23, para. 58, and *Case of Yvon Neptune v. Haiti*, *supra* note 7, para. 131. See also Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rules 10 and 11.

<sup>74</sup> Cf. *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 133, para. 99 and *Case of Vera Vera v. Ecuador*, *supra* note 69, para. 50.

<sup>75</sup> Cf. United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rules 9 to 15.



greatly affected their cultural identity references. In particular, the professional life project of Mr. Fleury's wife was frustrated.

89. Based on all the above, this Court declares that the State is responsible for the violation of the right to personal integrity, in the terms of Article 5(1) of the American Convention, to the detriment of Mr. Fleury's wife Rose Benoit Fleury, their daughters Rose M. and Flemingkov Fleury and their son Heulingher Fleury.

#### **VII.4 RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE**

##### **A. Arguments**

90. The representatives argued that the threats, harassment and attacks against human rights defenders that oblige them to abandon their country of residence constitute "an indirect violation" of their freedom of movement and residence, a right protected in the Haitian Constitution<sup>76</sup> and in the American Convention.<sup>77</sup> They indicated that, in this case, Mr. Fleury and his family were forced to abandon their home, their neighborhood, and their country, owing to the State's inability to comply with its obligation to provide them with the necessary conditions of security to confront the threats and harassment of which they were victims, which would have allowed them freedom of movement and residence on Haitian territory. In addition, Mr. Fleury was not able to enjoy freedom of movement within his own country, had to live in hiding for five years, was forced to move constantly, and to leave his home and his family for fear of reprisals by State agents.

91. In addition, although they did not ask the Court to declare a violation of the right recognized in Article 17 of the American Convention,<sup>78</sup> the representatives stated that the forced displacement also caused serious problems within the family and that it had the same and perhaps even greater impact on the rest of the family, especially on the young children. They also argued that children who experience a rupture in the social ties that unite them with their family are particularly vulnerable to subsequent emotional problems.

92. Even though the Commission did not allege the violation of this right, it did refer in its application to the facts mentioned by the representatives.

##### **B. Considerations of the Court**

93. On previous occasions, the Court has established that the right to freedom of movement and residence recognized in Article 22(1) of the Convention is an essential

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<sup>76</sup> Article 41 of the Constitution of Haiti.

<sup>77</sup> Article 22(1) of the American Convention on Human Rights establishes that:  
Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

<sup>78</sup> Article 17(1) of the American Convention on Human Rights establishes that:  
The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

condition for the free development of the individual,<sup>79</sup> and includes the following: (a) the right of all persons lawfully within a State to move freely about in it and to choose their place of residence, and (b) their right to enter, to remain in, and to leave the territory of the State without unlawful interference. Thus, the enjoyment of this right does not depend on any specific purpose or reason for the person who wishes to move or to remain in a particular place.<sup>80</sup> In addition, the Court has considered that the right to freedom of movement and residence can be violated by *de facto* restrictions if the State has not established the conditions or provided the appropriate means to exercise it.<sup>81</sup> In this regard, the right to freedom of movement and residence may be affected when an individual is the victim of threats or harassment and the State does not provide the necessary guarantees to allow him to move about in and reside freely in the territory in question, even when the authors of the threats and harassment are non-State agents.<sup>82</sup>

94. In this case, although there is no evidence that the State formally restricted the freedom of movement and residence of the members of Lysias Fleury's immediate family, the facts that have been established lead the Court unequivocally to the conclusion that the said freedom of movement and residence has been limited by a serious *de facto* restriction originating from the threats and harassment that led to their departure from the country, as well as the justified fear arising from everything that happened to Mr. Fleury, added to the failure to investigate and prosecute those responsible for the facts, which has kept them away from their community.<sup>83</sup> This situation can also be included in the interpretation that the Court has made of Article 22(1) of the Convention.<sup>84</sup>

95. In the circumstances of the instant case, and given the situation of impunity, the State failed to comply with its obligation to provide Mr. Fleury with the necessary conditions of security for him to live peacefully at home with his family after he had been tortured by

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<sup>79</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 115 and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213 para. 197.

<sup>80</sup> Cf. *Case of Ricardo Canese v. Paraguay, supra* note 79, para. 115, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 79, para. 197. See also, United Nations Human Rights Committee, General Comment No. 27, of 2 November 1999, paras. 1, 4, 8 and 19.

<sup>81</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 110, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 79, para. 197.

<sup>82</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia, supra* note 66, para. 139, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 79, para. 197.

<sup>83</sup> Cf. *Case of the Moiwana Community v. Suriname, supra* note 81, para. 120 and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 150.

<sup>84</sup> Cf. *Case of the Mapiripán Massacre v. Colombia, supra* note 17, para. 188, and *Case of Chitay Nech v. Guatemala, supra* note 83, para. 141. See also Commission on Human Rights, United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 of 11 February 1998, p. 5. Annex. Introduction: scope and purpose. No 2. These principles have been recognized by the international community. See also United Nations, General Assembly, Protection of and assistance to internally displaced persons, A/RES/64/162, of 17 March 2010, p.1.; Cf. Council of Europe, Recommendation Rec(2006)6 of the Committee of Ministers to member States on internally displaced persons, 5 April, 2006; African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*, 23 October 2009, article 1(K), and Human Rights Council, Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin. A/HRC/13/21/Add.3, p. 4. II.4. In this regard, the OAS General Assembly has recommended that the States use the Guiding Principles as a basis for developing their policies and even that they consider incorporating them into their national laws in order to promote their implementation. Cf. AG/RES. 2508 (XXXIX-O/09) "Internally displaced persons," approved in the fourth plenary session held on June 4, 2009, second operative paragraph.

the HNP (*supra* para. 36). For five years, Mr. Fleury lived in hiding in Haiti, separated from his family, and with frequent displacements within Haitian territory so that his assailants could not find him (*supra* paras. 41 and 42). Finally, Mr. Fleury and his family had to go into exile and request refugee status in the United States of America because they feared for their safety in Haiti (*supra* para. 43). In this regard, Mrs. Fleury has stated that, after the facts occurred against her husband, unknown individuals “came to look for him frequently” and once she saw one of the alleged perpetrators watching her (*supra* para. 42). She added that all of this made her afraid.<sup>85</sup>

96. Based on the above considerations, the Court declares that the State is responsible for violating the right to freedom of movement and residence recognized in Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury, Rose Lillienne Benoit Fleury, and Rose Metchnikov, Flemingkov and Heulingher Fleury.

## VII.5 FREEDOM OF ASSOCIATION

### A. Arguments

97. The representatives argued that when a State commits violations against human rights defenders using threats to life, liberty and personal integrity perpetrated in reprisal for their work, which also leads to the exile of a human rights defender, as in this case, the freedom of association of the victim is restricted and, consequently, that right is violated in the terms of the American Convention. The representatives indicated that due to his profession, Mr. Fleury was known to the members of the Haitian National Police. In addition, Mr. Fleury, and his family, continued to receive threats from officials years after his release. All of the above proves that Mr. Fleury has been the target of harassment owing to his work as a human rights defender. Based on the foregoing, they considered that Mr. Fleury was also a victim of a violation of the rights recognized in Article 16 of the American Convention.

98. Although the Commission did not allege the violation of this right, it did refer in its application to the facts mentioned by the representatives.

### B. Considerations of the Court

99. Article 16(1) of the American Convention establishes that those who are under the jurisdiction of the States Parties have the right and the freedom to associate freely with others, without any interference from the public authorities that could limit or impair the exercise of this right. Thus, this is the right to associate with others in order to achieve a lawful common objective without pressure or interference that could alter or interfere with this objective.<sup>86</sup>

100. In addition to these negative obligations, the Inter-American Court has observed that freedom of association also “gives rise to positive obligations to prevent attacks on it, to

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<sup>85</sup> Testimony of Lillienne Benoit of November 13, 2009 (attachment 11 to the brief with pleadings, motions and evidence, tome 2, folio 659, para. 7).

<sup>86</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Preliminary objections*. Judgment of November 18, 1999. Series C No. 61, para. 156, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 143.

protect those who exercise it, and to investigate violations of this freedom.”<sup>87</sup> In this regard, the Court has established that States have the obligation to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to avoid any attempts on their life or safety; to refrain from imposing restrictions that would hinder the performance of their work, and to conduct a serious and effective investigation of any violations perpetrated against them, thereby combating impunity.<sup>88</sup>

101. Under the circumstances of this case, the analysis of a violation of freedom of association alleged by the representatives must be placed in the context of the relationship between the exercise of this right and the work of promoting and defending human rights. The Court accepted as proved that the agents who made the arrest inflicted extremely severe torture and ill-treatment while alluding to the fact that Mr. Fleury was a human rights defender (*supra* paras. 34 and 36), and that he was obliged to hide and flee for fear of reprisals by his assailants, after he had denounced and identified them (*supra* paras. 41 to 43).

102. In other words, there is sufficient evidence to consider that the violations perpetrated against Mr. Fleury were related to his work as a human rights defender so that, as a result of the facts of the case, he was unable to continue exercising his freedom of association with the organization for which he worked. Consequently, the State failed to guarantee his freedom of association in violation of Article 16 of the Convention.

## **VII.6 ACCESS TO JUSTICE (RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION)**

### **A. Arguments**

103. The Commission argued that, despite the complaints filed before the competent authorities by Mr. Fleury and other persons on his behalf, and the fact that he had identified those responsible before the authorities, “the HNP has not imposed any punishment on the agents” and the “police agents in question and the civilians connected to the police who allegedly participated in the ill-treatment of Mr. Fleury continue to work for the HNP.” In addition, no criminal investigation has been initiated based on the said complaints and those responsible for his arbitrary arrest and detention and the acts of torture he suffered have not been prosecuted or punished. In other words, the State has not provided Mr. Fleury or his family with a simple and prompt remedy or any other effective remedy before a competent judge or court to protect him from such acts, even though the State has the obligation to initiate *ex officio* and immediately an effective investigation that allows those responsible to be identified, prosecuted, and punished, when a complaint has been made or when there is a well-founded reason to believe that an act of torture has been committed. The time that has passed (more than seven years) since the acts of torture were committed, without an investigation being carried out, exceeds the reasonable time established in Article 8(1) of the American Convention. Lastly, the Commission argued that the facts prove that Mr. Fleury’s wife and children were also victims of the State’s inability

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<sup>87</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 76, and *Case of Kawas Fernández v. Honduras*, *supra* note 86, para. 144.

<sup>88</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil*, *supra* note 66, para. 77, and *Case of Kawas Fernández v. Honduras*, *supra* note 86, para. 145.

to provide an effective remedy with regard to the violations that occurred. Furthermore, the State has failed to comply with its obligation to protect human rights defenders.

104. The representatives agreed with the observations of the Commission. They added that article 27 of the Haitian Constitution stipulates that the alleged victims of arbitrary acts against personal liberty can have recourse to the domestic courts to file criminal proceedings against the perpetrators of such acts and that, in the instant case, the State failed in its obligation to conduct the corresponding investigation, because Mr. Fleury never had the right to present the case. They indicated that the impunity of the State agents who committed human rights violations has both individual and collective effects. In particular, it affects society's right to know the truth about what happened. In addition, they argued that the absence of a thorough and effective investigation of the facts is an additional source of suffering and anguish for the victims and their close family, who have the right to know what happened. In addition, the State must ensure that the settlement of the claims of victims of human rights violations and their immediate family is not obstructed or impeded by overly complicated procedures or obstacles in relation to compensation.

## **B. Considerations of the Court**

105. The Court has considered that the State is obliged to provide effective judicial remedies to those who allege that they are victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of the States to ensure the free and full exercise of the rights established by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>89</sup>

106. In addition, the Court has affirmed that the obligation to investigate, prosecute and, as appropriate, punish human rights violations is among the positive measures that States must adopt in order to ensure the rights recognized in the Convention,<sup>90</sup> pursuant to Article 1(1) thereof. This is an obligation that must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective, or as a mere measure taken by private interests, that depends upon the procedural initiative of the victims or their next of kin, or upon the production of evidence by private individuals.<sup>91</sup>

107. The Court has indicated that Article 8 of the Convention reveals that the victims of human rights violations or their next of kin must have wide-ranging possibilities of being heard and taking part in the respective proceedings, both to clarify the facts and punish those responsible, and also to seek adequate reparation.<sup>92</sup> In light of this obligation, once the State authorities are aware of an incident they must initiate, *ex officio* and without

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<sup>89</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Anzualdo Castro v. Peru*, *supra* note 53, para. 122.

<sup>90</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 7, para. 166, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 127.

<sup>91</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, Merits*. *supra* note 7, para. 177, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 112.

<sup>92</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra* note 58, para. 192, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 192.

delay, a serious, impartial, and effective investigation.<sup>93</sup> The investigation must be conducted using all available legal means in order to discover the truth.<sup>94</sup>

108. Furthermore, the Court has indicated that, under Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Articles 5(1) and 5(2) of the American Convention entails the State's obligation to investigate possible acts or torture and other cruel, inhuman or degrading treatment,<sup>95</sup> which obliges the State "to take [...] effective measures to prevent and punish [...] torture and other cruel, inhuman or degrading treatment or punishment."<sup>96</sup>

109. In this case, three complaints were filed before the Haitian authorities (*supra* paras. 44 to 46), in which they were informed of the illegal detention, the acts of torture and other cruel, inhuman and degrading treatment inflicted on Mr. Fleury during his detention at the Bon Repos Police Station. However, there is no evidence that any investigation was opened as a result of these complaints, either by disciplinary proceedings before the HNP, or by the respective criminal proceedings. The only known investigative measure with regard to the facts of June 2002 was an identification procedure where Mr. Fleury identified the agents who assaulted him. The identification took place on February 22, 2003, during a meeting with an inspector in the offices of the HNP General Inspectorate (*supra* para. 47). Moreover, the Inspector of the Police himself told Mr. Fleury that no investigation would be opened against the members of the police for the facts reported (*supra* para. 47). In the nine years that have passed since the facts occurred, no other investigative measures have been reported.

110. In other words, the administrative or judicial authorities failed to conduct a prompt, exhaustive, impartial, independent investigation of the facts within a reasonable time, which has evidently made it impossible to determine, individualize, and prosecute those responsible for the facts, despite having clear evidence to do this, including the testimony of Mr. Fleury himself.

111. In addition, the Court has observed the context of the facts of this case: the investigations into abuses committed by officials of the Haitian security forces were not effective and rarely did the complaints filed by alleged victims lead to the prosecution and punishment of those responsible for the facts, and this contributed to and encouraged impunity (*supra* para. 29).

112. Thus, those responsible for the acts of torture and the cruel and degrading treatment inflicted upon Mr. Fleury continue to benefit from complete impunity. Furthermore, there are individuals who were identified as perpetrators of those acts who continue working as HNP officials (*supra* para. 49).

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<sup>93</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*, *supra* note 17, paras. 219 and 223, and *Case of Contreras et al. v. El Salvador*, *supra* note 90, para. 128.

<sup>94</sup> Cf. *Case of the Mapiripán Massacre v. Colombia*, *supra* note 17, para. 222, and *Case of Contreras et al. v. El Salvador*, *supra* note 90, para. 128.

<sup>95</sup> Cf. *Case of Vargas Areco v. Paraguay. Merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 78, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 192. Similarly, see *Case of the Moiwana Community v. Suriname*, *supra* note 81, para. 92.

<sup>96</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 45, para. 126.

113. In this case, moreover, the lack of access to justice suffered by Mr. Fleury has affected his family, because during the months and years following his detention, the family has lived in fear of reprisals from the perpetrators (*supra* paras. 41 and 42), and this was encouraged by the above-mentioned situation of impunity. Nevertheless, although the members of the family may have been affected by the impunity, they did not attempt to file any remedies.

114. Based on the foregoing, the Court declares that the State violated the right of access to justice recognized in Articles 8(1) and 25 of the Convention, in relation to the obligation to respect this right established in Article 1(1) thereof, to the detriment of Mr. Fleury.

## **VIII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)**

115. Based on the provisions of Article 63(1) of the American Convention,<sup>97</sup> the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to repair it adequately,<sup>98</sup> and that this provision embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>99</sup>

116. This Court has established that reparations must have a causal relationship to the facts of the case, the violations that have been declared, the damage proved, and the measures requested to repair the respective damage. Consequently, the Court must observe the concurrence of all these factors in order to rule appropriately and in keeping with the law.<sup>100</sup>

117. Based on the violations of the American Convention, the Court will proceed to examine the claims submitted by the Commission and the representatives in light of the criteria established in its case law regarding the nature and scope of the obligation to repair<sup>101</sup> so as to decide measures aimed at repairing the damage caused to the victims.

### **A. Injured Party**

118. The Court reiterates that, under Article 63(1) of the American Convention, anyone who has been declared a victim of the violation of any right embodied therein is considered

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<sup>97</sup> This Article establishes that: “[i]f the Court finds that there has been a violation of a right or freedom protected by th[e] 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.”

<sup>98</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 239.

<sup>99</sup> *Cf. Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 62, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 239.

<sup>100</sup> *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 239.

<sup>101</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra* note 98, paras. 25 to 27, and *Case of Contreras et al. v. El Salvador, supra* note 90, para. 180.

an injured party.<sup>102</sup> Therefore, this Court considers as “injured party” Lysias Fleury, and also his family, namely: his wife Rose Benoit Fleury, their daughters Rose M. and Flemingkov Fleury, and their son Heulingher Fleury; consequently they will be considered beneficiaries of the reparations ordered by this Court.

## **B. Obligation to investigate the facts**

### *1. Arguments of the parties*

119. The Commission asked the Court to order the State “to conduct an exhaustive, prompt, impartial and effective investigation under the ordinary criminal jurisdiction in relation to the illegal and arbitrary detention of Mr. Fleury, as well as the torture he underwent.” The representatives agreed with the Commission.

### *2. Considerations of the Court*

120. Based on the conclusions indicated in Chapter VII of this judgment, the Court decides that the State must remove all factual and legal obstacles that maintain impunity in this case,<sup>103</sup> and initiate the necessary investigations to determine and, as appropriate, punish those responsible for the acts perpetrated against Lysias Fleury. The State must conduct and conclude the corresponding investigations and proceedings within a reasonable time in order to establish the complete truth of what occurred, and identify and prosecute and, as appropriate, punish all those responsible for the facts. Additionally, the results of the corresponding proceedings must be publicized so that Haitian society may know the facts of the present case, and also those responsible for them.<sup>104</sup>

121. Regarding the investigation of the acts of torture, it is important that the competent authorities take into consideration the international standards for documenting and interpreting the forensic evidence regarding the perpetration of acts of torture, particularly those defined in the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”).<sup>105</sup>

## **C. Measures of satisfaction and guarantees of non-repetition**

122. The Court will determine measures that seek to repair the non-pecuniary damage, that are not of a pecuniary nature, and will order measures of public scope or impact.<sup>106</sup>

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<sup>102</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 242.

<sup>103</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 277, and *Case of Contreras et al. v. El Salvador, supra* note 90, para. 185.

<sup>104</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs, supra* note 170, para. 118; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil, supra* note 70, para. 257, and *Case of Gelman v. Uruguay, supra* note 76, para. 256.

<sup>105</sup> Cf. United Nations, Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2001.

<sup>106</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra* note 99, para. 84 and *Case of López Mendoza v. Venezuela. Merits, reparations and costs*. Judgment of September 1, 2011. Series C No. 233, para. 213.



123. International case law and, in particular, the case law of the Court have consistently established that the judgment constitutes *per se* a form of reparation.<sup>107</sup> However, considering the circumstances of the case *sub judice*, in view of the harm caused to Lysias Fleury and the consequences of an immaterial or non-pecuniary nature resulting from the violations of Articles 5, 7, 8, 22 and 25 of the American Convention declared to the detriment of the victims, the Court finds it pertinent to establish the following measures.

#### 1. *Measures of satisfaction*

124. The Commission did not ask the Court to order any measure of satisfaction. The representatives asked the Court to order the State to publicly acknowledge its international responsibility for the human rights violations in this case and to make a “public apology” in a national newspaper.

125. In this case, as it has in others,<sup>108</sup> the Court finds it sufficient that the State publish, within six months of notification of this judgment:

- a) the official summary of this judgment prepared by the Court, once, in the Official Gazette;
- b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and
- c) the entire judgment, available for one year, on an official website.

#### 2. *Guarantees of Non-Repetition*

126. The Commission requested the Court to order the State to:

- a) “Adopt the necessary measures to [...] prevent and punish illegal and arbitrary detention”;
- b) “Ensure the effective prohibition of torture and cruel, inhuman and degrading treatment or punishment in domestic law”;
- c) Take any measures that “may be necessary to prevent future violations such as those committed against Mr. Fleury, including training for members of the Haitian security forces on the international standards concerning the use of force and the prohibition of torture and cruel, inhuman and degrading treatment or punishment, and arbitrary arrest and detention”;
- d) Undertake the “relevant reform of its investigation and prosecution proceedings for human rights violations committed by members of the Haitian security forces to ensure that they are exhaustive, prompt and impartial”;
- e) “Review and strengthen its accountability mechanisms, such as the HNP General Inspectorate and the Public Prosecution Service, and improve coordination between the State’s judicial officials and its Judiciary to ensure effective and independent investigations of human rights abuses committed by members of the Haitian security forces, and
- f) “Adopt, as a matter of priority, a policy to protect and prevent violence against human rights defenders and adopt a public policy to combat impunity for human rights violations against human rights defenders.”

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<sup>107</sup> Cf. *Case of Neira Alegria et al. v. Peru. Reparations and costs*, Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 243.

<sup>108</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, Operative paragraph 5(d), and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9; para. 252.

127. The representatives asked that, in addition to the measures indicated by the Commission, the Court order the State to:

- a) Take the necessary measures to improve the situation of the detention centers;
- b) Take the necessary measures to improve the training of the Haitian National Police on arrest and detention standards under domestic and international law, including those established in Articles 5 and 7 of the American Convention, and those for other human rights violations, as well as on the proportionate use of force;
- c) Adopt, within its justice system, all the necessary reforms to implement its obligations under the American Convention;
- d) Establish and maintain a commitment to the protection of human rights defenders, taking measures to safeguard the life, liberty and personal security of human rights defenders and their family, recognizing that human rights defenders provide an essential service to society by preserving the rule of law;
- e) Condemn actions that prevent or interfere, directly or indirectly, in the work of human rights defenders, and
- f) Condemn the practice of granting impunity to State agents in Haiti, including the perpetrators of different human rights violations.

128. In their final written arguments, the representatives reiterated their request for measures of reparation and asked for “additional reparations requested by the victim.”<sup>109</sup> In this regard, the Court indicates that the appropriate procedural opportunity for submitting requests for reparations is in the pleadings and motions brief, as established in Article 37 of the Rules of Procedure; consequently, it will not take into account the additional reparations requested.

*a) Measures to train public officials*

129. Based on the case file, the Court determined that the violations of Mr. Fleury’s rights are characterized by acts and omissions, particularly of officials of the Haitian National Police. The Court therefore establishes that the State must implement, within a reasonable time and with the respective budgetary provision, a compulsory program or course as part of the general and ongoing training of all ranks of the Haitian National Police; to include, *inter alia*, courses or modules on national and international human rights standards, particularly on the proportionate use of force by the State’s security forces, the appropriate treatment of detainees, and the investigation and prosecution of acts that constitute cruel, inhuman or degrading treatment, and torture.

130. In addition, the Court verified the violation of Mr. Fleury’s rights because he did not have effective access to justice. Consequently, the Court decides that the State must implement, within a reasonable time and with the respective budgetary provision, a compulsory program or course as part of the general and ongoing training of Haitian judicial officials; to include, *inter alia*, courses or modules on national and international human rights standards, and particularly with regard to arrests and detentions, and the

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<sup>109</sup> (a) The State must take the necessary measures to prevent these violations from being committed again; (b) the State of Haiti must introduce in its domestic legislation the prohibition and punishment of illegal and arbitrary arrests, as well as the prohibition of torture and other cruel, inhuman and degrading treatment in order to protect all Haitians against such practices; (c) it must improve the situation in detention centers throughout the country; (d) it must provide training to members of the HNP; (e) it must reform the justice system to comply with its obligations under the American Convention; (f) the State must take measures to protect human rights defenders, and (g) the State must remove all the obstacles or decisions that impede or obstruct the work of human rights defenders.

investigation and prosecution of acts that constitute illegal arrests or detentions, cruel, inhuman or degrading treatment, and torture.

*b) Other measures of reparation requested*

131. Regarding the accountability mechanisms for the members of the Haitian National Police, this Court has verified that, in its 2007 observations on its visit to Haiti, the Inter-American Commission recommended strengthening the internal control organs of the HNP, such as the Office of the HNP Inspector General, and that the investigation procedures of officials who could be implicated in human rights violations be reviewed.<sup>110</sup> It also recommended that coordination be improved between the State's judicial officials and its Judiciary in order to ensure effective and independent investigation of the human rights abuses committed by members of the Haitian security forces.<sup>111</sup> In this regard, in several reports, the Commission and the Independent Expert on the situation of human rights in Haiti have emphasized the need to professionalize the State's security forces and, in particular, they have mentioned the importance of conducting an effective process of selecting and certifying new recruits and existing officials in order to exclude those who have taken part in acts of corruption, human rights violations, and other crimes.<sup>112</sup>

132. Based on the preceding paragraph, taking into account the international cooperation processes that may exist in this regard, and to ensure that facts such as those of this case are not repeated, the State must take the institutional decisions and issue the necessary instructions to review and strengthen its accountability mechanisms and organs for the Haitian National Police who may be involved in human rights violations.

## **D. Compensation**

### *1. Pecuniary damage*

133. In its case law, the Court has developed the concept of pecuniary damage and has established that it supposes "the loss of or prejudice to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal relationship with the facts of this case."<sup>113</sup>

#### *a) Arguments of the parties*

134. The Commission asked the Court, without "prejudice to the claims presented by the representatives of the victims at the appropriate procedural moment, [...] to establish, in

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<sup>110</sup> Cf. Inter-American Commission on Human Rights, Observations of the Inter-American Commission on Human Rights on its visit to Haiti in April 2007, OEA/Ser.L/V/II.131, March 2, 2008 para. 22 and 23, and Special report "*Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the International Community*," *supra* note 24, paras. 127 and 131.

<sup>111</sup> Cf. Inter-American Commission on Human Rights, Observations of the Inter-American Commission on Human Rights on its visit to Haiti in April 2007, *supra* note 110, para. 21.

<sup>112</sup> Cf. United Nations, Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst, of 4 April 2011, A/HRC/17/42, paras. 57 to 63, Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst, of 26 March 2009, A/HRC/11/5, paras. 33, 37 and 38, Inter-American Commission on Human Rights, Annual Report 2009, chapter IV on Haiti, *supra* note 24, para. 19, and Special report "*Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the International Community*," *supra* note 24, para. 226.3.

<sup>113</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Contreras et al. v. El Salvador*, *supra* note 90, para. 223.

equity, the amount of compensation corresponding to consequential damages and loss of earnings, in exercise of its broad powers in this regard.”

135. The representatives asked the Court to order the State to pay the sum of US\$439,565.34 (four hundred and thirty-nine thousand five hundred and sixty-five United States dollars and thirty-four cents) to Mr. Fleury and US\$7,580.20 (seven thousand five hundred and eighty United States dollars and twenty cents) to his wife. The details of these amounts are as follows: (a) reimbursement of a loan that Mr. Fleury acquired with the Episcopal Commission for Justice and Peace between June 2002 and September 2003 for a total of US\$7,580.20 (seven thousand five hundred eighty United States dollars and twenty cents); (b) loss of earnings over the period when he was recovering from the injuries suffered as a result of the torture and ill-treatment during 2002, for a sum equivalent to US\$1,709.34 (one thousand seven hundred and nine United States dollars and thirty-four cents); (c) owing to his inability to resume his work as a consultant with the law firm of Roudy, Aly, Woodson Bertrand, Mr. Fleury accumulated 64 months of loss of earnings, corresponding to US\$51,243.73 (fifty-one thousand two hundred and forty-three United States dollars and seventy-three cents); (d) US\$2,057.50 (two thousand and fifty-seven United States dollars and fifty cents) for travel expenses for Mr. Fleury and his family when he had to go into exile in the United States; (e) US\$1,200.00 (one thousand two hundred United States dollars) for phone calls to his family when they were still in Haiti while Mr. Fleury was living in the United States; (f) US\$774.00 (seven hundred seventy-four United States dollars) for the cost of remittances made by Mr. Fleury to his family when he was in the United States and they were in Haiti; (g) US\$375,000.00 (three hundred and seventy-five thousand United States dollars) corresponding to the value of the house in a residential area of Port-au-Prince that he had to abandon, and (h) US\$5,737.45 (five thousand seven hundred and thirty-seven United States dollars and forty five cents) owing to the loss of earnings of Mrs. Benoit Fleury when she was forced to leave her job as owner of a boutique and as a seamstress.

#### b) Considerations of the Court

136. The Court observes that, from the information submitted by the parties, the following items can be distinguished regarding the victim’s loss of earnings: (a) loss of income from Mr. Fleury’s activities with the Episcopal Commission for Justice and Peace,<sup>114</sup> and (b) loss of earnings from Mr. Fleury’s activity with the law firm of Roudy, Aly, Woodson Bertrand.<sup>115</sup> The Court has verified that documentary evidence of Mr. Fleury’s earnings was only provided with regard to the former. The representatives provided statements to prove the other earnings.

137. Regarding consequential damages, the Court indicates that the information provided by the parties allows the following items to be inferred: (a) the debt that Mr. Fleury acquired with the organization from June 2002 to September 2003, for loans made while he was in hiding and did not exercise his professional activities;<sup>116</sup> (b) travel expenses for Mr. Fleury and his family because they had to go into exile in the United States;<sup>117</sup> (c) expenses

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<sup>114</sup> US\$1,709.34 (one thousand seven hundred and nine United States dollars and thirty-four cents)

<sup>115</sup> US\$51,243.73 (fifty one thousand two hundred and forty-three United States dollars and seventy-three cents)

<sup>116</sup> US\$7,580.20 (seven thousand five hundred and eighty United States dollars and twenty cents)

<sup>117</sup> US\$ 2,057.50 (two thousand and fifty-seven United States dollars and fifty cents)

for telephone calls to his family while they were still in Haiti;<sup>118</sup> (d) remittances of money by Mr. Fleury to help his family when he was in the United States and they were in Haiti,<sup>119</sup> and (e) loss of Mr. Fleury's house in Haiti, which he had to abandon when he went into exile without being able to sell it.<sup>120</sup> The Court finds that the body of evidence does not show that Mr. Fleury had a debt with the organization. In addition, although Mr. Fleury could prove the value of the property he owned in Haiti, he did not provide information on the current use of the house or on its legal contractual situation; moreover, the Court has no evidence that the house was indeed abandoned; that it was occupied by third parties who deprived Mr. Fleury of its possession; that neither he nor his family were any longer the owners of the house, or any other clear situation that entailed real impairment of his net worth.

138. Based on the above, the Court decides to establish, in equity, the sum of US\$65,000.00 (sixty-five thousand United States dollars) for pecuniary damage in favor of Lysias Fleury. This amount must be paid within the corresponding time frame established by the Court (*infra* fourth operative paragraph).

## 2. Non-pecuniary damage

139. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may consist of both the suffering and hardship caused to the direct victims and their next of kin, the impairment of values of great significance to the individual, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family."<sup>121</sup>

### a) Arguments of the parties

140. The Commission indicated that, in this case, "the non-pecuniary damage was evident owing to the detention and torture of Lysias Fleury, as well as the subsequent denial of justice." Regarding his family, it stated that "they have undergone intense mental suffering, anguish, grief and alteration of their life projects because of the State's acts and the lack of justice."

141. The representatives asked the Court to order compensation for non-pecuniary damage of: (a) US\$100,000 (one hundred thousand United States dollars) for Lysias Fleury, who suffered severe pain and physical injuries inflicted by torture, and who continues to suffer the physical aftereffects of torture, as well as the inhuman and degrading treatment used against him (he is almost deaf in his right ear, occasionally hears ringing due to the perforation of his eardrum, and is no longer able to lift his left arm or to carry heavy objects). In addition, he was separated from his wife and children for 64 months; (b) US\$50,000 (fifty thousand United States dollars) for his wife, Mrs. Benoit Fleury, who suffered mental and moral harm in relation to the physical, mental and moral injuries suffered by her husband. Also, Mrs. Fleury had to start a new life in the United States, "with a foreign culture, language and way of life," and had to abandon her own undertakings; (c) US\$25,000 (twenty five thousand United States dollars) for Rose Metchnikov Fleury, Mr. Fleury's daughter, who suffered mental and moral harm at the age of seven, when she witnessed the arrest of her father, because she did not see her father for two years, and

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<sup>118</sup> US\$ 1,200.00 (one thousand two hundred United States dollars)

<sup>119</sup> US\$774.00 (seven hundred and seventy-four United States dollars)

<sup>120</sup> US\$375,000.00 (three hundred and seventy-five thousand United States dollars)

<sup>121</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Reparations and costs, *supra* note 99, para. 84, and *Case of Contreras et al. v. El Salvador*, *supra* note 90, para. 227.

because she had been unable to live with him for almost seven years, and (d) US\$10,000 (ten thousand United States dollars) for Heulingher and Flemingkov Fleury, Lysias Fleury's two younger children, who did not see their father for two years and could not live with him for seven years.

142. The representatives requested US\$28,612.50 (twenty-eight thousand six hundred and twelve United States dollars and fifty cents) for future expenses for the psychiatric treatment of Mr. Fleury, his wife, and their daughter Rose.

b) Considerations of the Court

143. In establishing the compensation for non-pecuniary damages in this case, it must be considered that Mr. Fleury was subjected to torture and cruel and degrading treatment in the Bon Repos Police State, and that he suffered from being separated from his family for several years, from having to hide without the possibility of leading a family life, and from having to leave his profession as a human rights lawyers and go into exile. In addition, even today, Mr. Fleury suffers the physical aftereffects of the torture inflicted on him. In particular, he is almost deaf in the right ear and has great difficulty in raising his left arm or lifting heavy objects. It must also be considered that the members of his family suffered because they were prevented from seeing him for years and because they witnessed his violent and humiliating arrest. In the case of his daughters, they grew up without the presence of their father for several years; they had to leave their country, their culture and their standard of living to move abroad, where they had to live with a modest salary in more austere living conditions and, in the case of Mrs. Fleury, she had to leave her small businesses and her professional activity.

144. In addition, following the criteria established in other cases,<sup>122</sup> the Court considers that the non-pecuniary damage inflicted on Mr. Fleury is evident, because it is inherent in human nature that anyone subjected to torture experiences profound suffering, anguish, terror, helplessness and insecurity, so that this damage does not require evidence.

145. Consequently, the Court finds it appropriate to establish, in equity, the following amounts as compensation for non-pecuniary damage:<sup>123</sup>

- a) US\$50,000.00 (fifty thousand United States dollars) in favor of Lysias Fleury;
- b) US\$15,000.00 (fifteen thousand United States dollars) in favor of Lilienne Rose Benoit Fleury, Mr. Fleury's wife;
- c) US\$3,000.00 (three thousand United States dollars) in favor of each of his three children, namely: Rose, Flemingkov and Heulingher Fleury.

146. These amounts must be paid within the corresponding time frame established by the Court (*infra* fourth operative paragraph).

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<sup>122</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 157, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 259.

<sup>123</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs, supra* note 107, para. 56, and *Case of Barbani Duarte et al. v. Uruguay, supra* note 9, para. 260.

## E. Costs and expenses

147. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations recognized in Article 63(1) of the American Convention.<sup>124</sup>

### 1. Arguments of the parties

148. The Commission asked the Court to “order the State to pay the costs incurred at the domestic level in the processing of the judicial proceedings filed by the victims or their representatives in the domestic jurisdiction, as well as those incurred at the international level in the processing of the case before the Commission and those arising as a result of the proceedings before the Court that are duly authenticated by the representatives.”

149. The representatives asked the Court to order the State to pay the sum of US\$13,236.76 (thirteen thousand two hundred thirty-six United States dollars and seventy-six cents) to reimburse the costs and expenses incurred during the litigation of the case before the Inter-American Commission and Court. These include translation costs, transportation costs for Father Hanssens and Roxanne Dimanche for the hearing held by the Inter-American Commission, the transportation costs arising from client consultation, telephone calls and copying costs. They also indicated that this assessment included future costs in case a hearing was held at the seat of the Court.

### 2. Considerations of the Court

150. As the Court has indicated, costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice involve expenditure that must be compensated when the State's international responsibility is declared in a judgment. Regarding their reimbursement, the Court must assess prudently their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those arising during the proceedings before this Court, taking into consideration the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.<sup>125</sup>

151. In this regard, the Court reiterates that the claims of the victims or their representatives for costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural occasion granted to them; namely, in the pleadings and motions brief, without prejudice to the possibility of updating these claims subsequently, in keeping with the new costs and expenses that have been incurred as a result of these proceedings.<sup>126</sup> In addition, it is not sufficient that the parties merely present probative documents; but rather they are required to submit arguments that relate the

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<sup>124</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 266.

<sup>125</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra* note 124, para. 82, and *Case of Barbani Duarte et al. v. Uruguay*, *supra* note 9, para. 270.

<sup>126</sup> Cf. *Case of Chaparro Álvarez and Lapo Iñiquez v. Ecuador*, *supra* note 35, para. 275, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 197.

evidence to the fact that it is supposed to represent and that, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>127</sup>

152. Taking into account the arguments and observations of the parties, as well as the fact that, in this case, Mr. Fleury and his family have been represented by a university law clinic that acted *pro bono*, the Court determines, in equity, that the State must deliver the sum of US\$1,500.00 (one thousand five hundred United States dollars) to Mr. Fleury for costs and expenses. This amount must be paid within one year of notification of this judgment. Lysias Fleury will then deliver the amount he considers appropriate to those who represented him before the inter-American system. The Court also specifies that, during the procedure of monitoring compliance with this judgment, it may decide that the State must reimburse the victim or his representatives the reasonable expenses incurred at that procedural stage.

#### **F. Method of compliance with the payments ordered**

153. The State must pay the compensation for pecuniary and non-pecuniary damage, costs and expenses to Lysias Fleury and his family, namely: his wife Rose Benoit Fleury, their daughters Rose M. and Flemingkov Fleury, and their son Heulingher Fleury, as applicable, within one year of notification of the judgment, in accordance with the following paragraphs.

154. The State must comply with its obligations by payment in United States dollars or the equivalent amount in Haitian currency, using the exchange rate between the two currencies in force on the New York, United States, market the day before the payment to make the respective calculation.

155. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the time indicated, the State must deposit the amounts in their favor in an account or deposit certificate in a Haitian financial institution in United States dollars and in the most favorable financial conditions permitted by law and banking practice in Haiti. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

156. The amounts allocated in this judgment as compensation and reimbursement of costs and expenses must be delivered to the persons indicated integrally as established in this judgment, without any deduction arising from possible taxes or charges.

157. If the State should fall into arrears, it must pay interest on the amount owed, corresponding to bank interest on arrears in Haiti.

### **IX OPERATIVE PARAGRAPHS**

158. Therefore,

#### **THE COURT**

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<sup>127</sup> Cf. *Case of Chaparro Álvarez and Lapo Iñiquez v. Ecuador*, *supra* note 35, para. 277, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 17, para. 197.



**DECLARES,**

unanimously that:

1. The State is responsible for the violation of the right to personal liberty recognized in Article 7(1), 7(2), 7(3) and 7(4) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury, in the terms of paragraphs 56, 59, 60 and 64 of this judgment.
2. The State is responsible for the violation of the right personal integrity established in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury, in the terms of paragraphs 82 and 87 of this judgment.
3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury and his family, in the terms of paragraph 114 of this judgment.
4. The State is responsible for the violation of the right to personal integrity established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Rose Lilienne Benoit Fleury, and Rose Metchnikov, Flemingkov and Heulingher Fleury, in the terms of paragraph 89 of this judgment.
5. The State is responsible for the violation of the right to freedom of movement and residence established in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury, Rose Lilienne Benoit Fleury, Rose Metchnikov Fleury, Flemingkov Fleury and Heulingher Fleury, in the terms of paragraph 96 of this judgment.
6. The State is responsible for the violation of the right to freedom of association, established in Article 16 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lysias Fleury, in the terms of paragraph 102 of this judgment.

**AND DECIDES,**

unanimously that:

1. This judgment constitutes *per se* a form of reparation.
2. The State must initiate, conduct and complete the necessary investigations and proceedings, within a reasonable time, to establish the truth of the facts, and to identify and, as appropriate, punish those responsible for what happened to Lysias Fleury, in the terms of paragraphs 120 and 121 of this judgment.
3. The State must implement, within a reasonable time, a permanent compulsory course or program on human rights for officials of all ranks of the Haitian National Police, and the judicial officials of Haiti, in the terms of paragraphs 129 and 130 of this judgment.
4. The State must pay, within one year, the amounts established in paragraphs 138, 146 and 153 of this judgment as compensation for pecuniary and non-pecuniary damage

and reimbursement of costs and expenses, as appropriate, in accordance with paragraphs 136 to 138, 143 to 146, and 150 to 158 hereof.

5. The State must make, within six months, the publications decided in paragraph 125 of this judgment.

6. Within one year of notification of this judgment, the State must provide the Court with a report on the measures adopted to comply with it. As established in the American Convention on Human Rights, the Court will monitor full compliance with this judgment and will close the case when the State has fully executed its provisions.

Done at San Jose, Costa Rica, on November 23, 2011, in the Spanish and French languages, the Spanish text being authentic.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary